UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD[1]
REGION 32

CHILDREN'S HOSPITAL AND RESEARCH CENTER OF OAKLAND, INC., d/b/a CHILDREN'S HOSPITAL OF OAKLAND

Employer

and **Case 32-RC-5617**

NATIONAL UNITED HEALTHCARE WORKERS[2]

Petitioner

and

SERVICE EMPLOYEES INTERNATIONAL UNION – UNITED HEALTHCARE WORKERS - WEST[3]

Intervenor

SUPPLEMENTAL DECISION ON CHALLENGED BALLOTS AND OBJECTIONS AND NOTICE OF HEARING

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have caused an investigation of Intervenor's challenges and objections to the election in this matter to be conducted. As a result of that investigation, I am setting for hearing the challenges to the ballots of Battsengel Cook, Ivonne Wilkes, and Reginal Wright; I am overruling Intervenor's Objections Nos. 1-4, 6, 7, 10-13, 15-17, 19, 23, 25-27, 29, 31, and 33-35; and I am setting Objections Nos. 14, 18, 20-22, 24, and 30 for

[1] Hereinafter referred to as the Board.
[2] Hereinafter referred to as Petitioner or NUHW.
[3] Hereinafter referred to as Intervenor or SEIU.

hearing. I also hereby approve Intervenor's September 22, 2011,[4] request to withdraw Objection Nos. 5, 8, 9, 28, and 32.

The Election

The Petition in this matter was filed by the National Union of Healthcare Workers on February 2, 2009, seeking to represent a unit of approximately 376 employees who are currently represented by SEIU United Healthcare Workers – West. The processing of the petition was blocked for an extended period of time by unfair labor practice charges filed by the Intervenor. Once those blocking charges were resolved, pursuant to the Regional Director's July 6 Decision and Direction of Election, an election was conducted on August 17 in the following appropriate unit:

> All full-time and regular part-time, CCSTs, Central Processing Techs I, Central Processing Techs II, Critical Care Support Techs, Dishwashers, Food Service Workers, Stores Clerks, Head Housekeeping Aides, Housekeeping Aides, Functional Hospital Assistants, Linen Workers, LVNs, Patient Care Assistants, Rehabilitation Aides, Ward Clerks, Cooks, Medical Assistants, Clinical Lab Assistants I, Clinical Lab Assistants II, Clinical Lab Assistants III, Research Lab Assistants I, Research Lab Assistants II, Nuclear Med Techs, Sonographer Trainees, Sonographer Technician, Dedicated Lab Sonographers I, Dedicated Lab Sonographers II, ECG/Holter Techs, Lead Neuro Technician, OR Tech Trainees, OR Techs, Respiratory Care Practitioners I, Respiratory Care Practitioners II, RCP Transports, Equipment Technician, Pulmonary Function Techs I, Pulmonary Function Techs II, Pulmonary Function Techs III, Instrumentation Techs II during the payroll period ending June 25, 2011. EXCLUDED: All other employees, guards, and supervisors as defined in the Act.

At the conclusion of the ballot count, the Tally of Ballots served on the parties showed the following results:

> Approximate number of eligible voters……..…376
> Number of void ballots…… ……..…1
> Number of votes cast for NUHW……....163
> Number of votes cast for SEIU – UHW ……159
> Number of votes cast for NEITHER ……..5
> Number of valid votes counted…. ……..…327
> Number of challenged ballots…….3

[4] All dates refer to 2011, unless otherwise specified.

Valid votes counted plus challenged ballots……...330

The challenged ballots are sufficient in number to affect the results of the election. Thereafter, Intervenor filed timely objections to the election on August 24, a copy of which was served on the other parties by the Region.

The Challenged Ballots

Battsengel Cook

At the election, Intervenor challenged the ballot of Battsengel Cook on the basis that she either worked insufficient hours to qualify as a regular employee and/or that her status was incorrect. The Intervenor subsequently clarified that the objection is based on its belief that as of the payroll eligibility cutoff date, Cook was no longer employed by the Employer in a unit position. Petitioner counters that although Cook was promoted to a non-Unit position on April 17, she remained eligible to vote because the promotion was provisional and temporary, as she returned to Unit work on July 1 after failing her preceptorship test.

The Region conducted an investigation into Cook's eligibility. The investigation disclosed that from August 27, 2007 until April 17, Cook was employed by the Employer as a Clinical Lab Assistant III, a unit position. In late February, Cook passed the California State RN examination and received her RN license. Thereafter, around March 20, Cook applied for an RN position with the Employer. On April 17, the Employer awarded Cook an RN position in the unit represented by the California Nurses Association (CNA). Cook's job promotion was documented in a "Confirmation of Status Change," which specified her new title as "New Title: RN I," "Status Change Date:

4/17/11," and "Union Code: CNA." The document stated "Justification for Actions/Comments: Took position #6241, CNA benefits."

The investigation disclosed that Cook intended for the RN position to be permanent. However, Cook started the RN position on a 90 day probationary period, which included going through a new hire orientation and a training period. Towards the end of her 90 day probation, the Employer determined that Cook had failed to perform satisfactorily in the new position. As a result, Cook was transferred back to her previous position as a Clinical Lab Assistant III on July 1, and she returned to work in that position on July 8, both of which dates were after the eligibility cutoff date set forth in the Decision and Direction of Election. Cook's change of status back to a Unit member was documented in a "Confirmation of Status Change" form, which specified that on "7/1/11" Cook was transferred to the job title "Clinical Lab Assistant III", "Reason: Return to Old Position," "Union Code: UHW." The document stated "Justification for Actions/Comments: Return to previous position as she did not pass her orientation in hem/onc/bmt preceptorship." The document was signed by "B. Husband" of the Human Resources Department on July 6.

In *Extendicare Health Services,* 347 NLRB 544 (2006), the Board found that an employee was eligible to vote even though he had graduated from nursing school and been promoted from a unit CNA position to a non-unit "graduate practical nurse" (GPN) position prior to the payroll eligibility cutoff date. In finding him eligible to vote, the Board relied on the fact that the employee returned to the unit after the cutoff date but prior to the election because he failed the LPN licensing exam. Under these circumstances, the Board found that the promotion was nothing more than a short term

transfer pending clarification of the promotion's permanent status. The Board stated that a relevant factor was the rate of success in passing the LVN exam and that the party seeking to exclude the employee from the unit has the burden of proof to show that there was an overall high success rate in passing the exam, which would show that the employee did not have a reasonable expectancy of returning to the unit.

Under the above-described circumstances, and in order to determine whether Cook had a reasonable expectancy of returning to the unit even though she had been promoted to an RN position, I find that Intervenor's challenge to the ballot cast by Battsengel Cook raises substantial and material issues of fact or law that can best be resolved by a hearing.

Ivonne Wilkes

Intervenor challenged the ballot of Ivonne Wilkes on the basis that she is no longer employed by the Employer. Petitioner counters that Wilkes was on worker's compensation leave as of the payroll eligibility date and therefore she was eligible to vote. The Employer placed Wilkes' name on the *Excelsior* list, thereby evidencing that it considered her eligible to vote.

The Employer provided evidence that Wilkes was on medical leave during the period prior to and after the date of the August 17 election. Specifically, the Employer provided a copy of Wilkes' Personnel Action Form, dated August 19, which indicates that since the effective date of "02/23/11" Wilkes' employment status was "Leave of Absence," and indicated "Reason: Workers Comp Leave." Thus, according to the Employer's evidence, Wilkes was on workers compensation leave from February 23 to at least August 19, the date of the document provided by the Employer.

Intervenor argues that there was no reasonable expectation that Wilkes would return to work, and offered hearsay evidence that Wilkes herself indicated that she was no longer employed at the Employer's hospital.

The general rule regarding employees who are on medical leave is that they are presumed to remain in that status until recovery and are thus eligible to vote. A party seeking to overcome that presumption has the burden of proof to demonstrate that the employee has been discharged or has resigned. *Edward Waters College,* 307 NLRB 1321 (1992).

Here it is unclear from the administrative investigation of the challenge to Wilkes' ballot whether she has been discharged or resigned, or whether she instead intends to return to work once she has recovered. Accordingly, I find that Intervenor's challenge to the ballot cast by Ivonne Wilkes raises substantial and material issues of fact or law that can best be resolved by a hearing.

Reginal Wright

The Board challenged the ballot of employee Reginal Wright on the basis that he arrived to vote after the polls closed during the morning session. An employee who arrives at the polling place after the designated polling period has ended is not entitled to have his or her ballot counted, absent extraordinary circumstances, unless the parties agree not to challenge the ballot. *Laidlaw Transit, Inc.,* 327 NLRB 315 (1999). No such agreement exists in this case.

Petitioner argues that Wright's ballot should be counted because, even assuming he was a few seconds late, he was delayed due to exceptional circumstances in that he was pulled over by a police officer for having tinted windows while he was driving to the

polling location. Petitioner also offered the testimony of Wright, who would purportedly testify that he arrived prior to the official announcement by the Board Agent that the polls were closed. Finally, Petitioner offered the name of a witness who would testify that she saw Wright entering the polling area just as the Board Agent began to say that that the polls were closed.

Intervenor argues that no evidence of a traffic violation has been put forward by Petitioner. Intervenor also argues that Wright did arrive after the polls closed and that the Board agent conducting the election informed Wilkes that he could return to vote during either the afternoon or the evening session, but Wilkes declined that offer. Under these circumstances, Intervenor argues that Petitioner has failed to demonstrate that there are sufficient extraordinary circumstances to overcome a challenge to a ballot based on tardiness.

I do not find the proffered evidence regarding Wright's purported traffic ticket sufficient to warrant further consideration.[5] However, in order to resolve the factual dispute over whether or not Wright arrived at the polling location prior to the time that the polls closed, I find that the Board's challenge to the ballot cast by Reginal Wright raises substantial and material issues that can best be resolved by a hearing.

The Objections[6]

. **Objections Nos. 1 through 3**

(1) The names of persons not eligible to vote are on the Excelsior List.

(2) The Excelsior List failed to include complete zip codes, phone

[5] See *Monte Vista Disposal Co.,* 307 NLRB 531 (1992), in which the Board adopted "a bright line rule terminating the balloting at the conclusion of the voting period." The Board reasoned that the "exceptional circumstances" exception to this bright-line rule should be limited to circumstances such as where one of the parties was responsible for the tardiness of the late-arriving voter - a situation not present in the case before me.

[6] A copy of Intervenor's Objections is attached hereto as Appendix A.

numbers, email addresses, worksites for each eligible voter, classification and shift.

(3) The Excelsior List was not produced to the parties in a timely manner.

In Objection No. 1, Intervenor contends that the *Excelsior* list contained the names of employees not eligible to vote. However, I note that Intervenor's Offer of Proof does not proffer the names of any witnesses who purportedly could testify that there were, in fact, ineligible names included in the list, let alone that such additions constituted substantial non-compliance with the requirements set forth in *Excelsior Underwear,* 156 NLRB 1236 (1966). Rather, Intervenor's Offer of Proof states only that it has several named witnesses who can testify that the list was inaccurate. But it provides no further details to support this contention, such as names of eligible voters left off the list or names of ineligible voters included in the list. Nor does Intervenor identify whether the allegedly ineligible voters were included on the July 12 list or the revised August 9 list. As a result, the only evidence that exists to support this objection is the fact that during the election, Intervenor challenged the ballots of employees Battsengel Cook and Ivonne Wilkes.

In cases where there has been a substantial *omission* of eligible voter names on the *Excelsior* list, the Board has found substantial noncompliance with the *Excelsior* rule. See *Idaho Supreme Potatoes*, 218 NLRB 38 (1975) (finding noncompliance with *Excelsior* where 81 names out of 146 were omitted); *Blue Onion*, 175 NLRB 9 (1969) (finding noncompliance where nearly half of the eligible employees' names were left off of list); See also *Woodman's Foods Market*, 332 NLRB 503, 504-505 (2002) (holding that the percentage of omitted names is one among several factors to consider in finding substantial non-compliance). As the Board has noted, the touchstone for substantial

noncompliance with the *Excelsior* rule is the "degree of prejudice to the channels of communication." See *Avon Products,* 262 NLRB 46 (2001) (election not set aside).

In the instant case, there is no contention that any names of eligible voters were omitted from the list. Rather the only contention appears to be that the names of two (or perhaps more) unspecified but allegedly ineligible voters were included on the list. However, I find that the inclusion of the names of two allegedly ineligible voters on the list of 376 eligible voters is insufficient, as a matter of law, to constitute substantial non-compliance with the *Excelsior* list requirement. "Generally, the Board will not set an election aside because of an insubstantial failure to comply with the *Excelsior* rule if the employer has not been grossly negligent and has acted in good faith." *Lobster House,* 186 NLRB 148 (1970). I also note that the Board is more concerned with the omission of names from the list than it is with the inclusion of the names of a small number of potentially ineligible voters. Finally, I note that Intervenor challenged the ballots of allegedly ineligible voters Battsengel and Cook and that it had the right to (but did not) challenge any additional voters who it claims should not have been eligible to vote. I also note that in this Supplemental Decision I am setting the challenges to the ballots of Battsengel Cook and Ivonne Wilkes for hearing. Under these circumstances, there is no merit to Intervenor's contention that the Employer engaged in objectionable conduct by including the names of ineligible voters on the *Excelsior* list.

Accordingly, I am overruling Objection No. 1.

In Objection No 2, the Intervenor contends that the Employer, in providing the voter eligibility list required by *Excelsior,* was obligated to provide a list that identified the complete zip code and e-mail address for each voter, phone number for each voter,

work site of each voter, classification and shift. The initial *Excelsior* List provided by the Employer on July 12 included the full names of employees in alphabetical order and complete employee addresses, including the 5 digit zip codes. The "revised" Excelsior List provided by the Employer on August 9, contained the same information as the first list, and in addition included employee identification numbers and hire dates.

In considering Objection 2, I note that the Regional Director's Decision and Direction of Election included the standard requirement that "within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all eligible voters." *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The Employer timely complied with that requirement by providing the Region with the first voter eligibility list on July 12. As noted above, the July 12 list contained the full names of employees in alphabetical order, and the full addresses of employees, including the corresponding 5 digit zip code. However, Intervenor objected to the List, contending that it was incomplete. Therefore, on August 9 the Employer sent a revised list of eligible voters. The revised August 9 list contained the same identifying information as the first list and, in addition, included employee identification numbers and hire dates. In a letter dated August 10, Intervenor raised the same objection to this revised August 9 list.

In this case I find that by providing the July 12 list, the Employer fully complied with existing Board precedent. This precedent has consistently interpreted *Excelsior Underwear* as requiring no more than that an employer provide a printed list consisting of employee full names and addresses. Indeed, the Board has adhered to this interpretation even in circumstances that would appear to present more compelling justification than

that shown here for expanding the requirements of *Excelsior Underwear*. In this regard, in *Trustees of Columbia University*, 350 NLRB 574 (2007), the Board held that it was not objectionable for an employer that operated a research vessel on which the petitioned-for unit employees worked, to refuse to supplement the voter eligibility list with the e-mail addresses of eligible voters, even though the vessel was at sea for most of the pre-election period. In overruling the petitioner's objection, the Board reaffirmed that the applicable standard in assessing whether an employer has complied with its eligibility list obligation is whether the list provided by the employer is substantially complete and accurate with respect to providing the information required by *Excelsior Underwear*, namely, employee names and addresses. *Id*. at 575. Accordingly, I find that the voter eligibility list submitted by the Employer on July 12 was in substantial compliance with the requirements of *Excelsior Underwear* and, therefore, Intervenor's contentions regarding the alleged insufficiency of that list are without merit.

Accordingly, I am overruling Objection No. 2.

In Objection No. 3, Intervenor contends that the *Excelsior List* was not provided to the parties in a timely manner. This objection is premised on the contention that the August 9 voter eligibility list was untimely. However, I note that the Employer did, as set forth above, provide a legally sufficient eligibility list on July 12. This was well within the requisite seven day time limit set forth in the Regional Director's Decision and Direction of Election. Thus, I reject the Intervenor's untimeliness argument.

Accordingly, I am overruling Objection No. 3.

Objections Nos. 4, 7, 15

4. The employer told eligible voters that they would lose employment opportunities if they supported the Union.

7. The employer threatened to close part of the facility and/or to take other retaliatory measures if the Union won the election.

15. The employer undermined the Union by unilaterally changing terms and conditions of employment relating to a notice provision involving the closure of part of a department, and by refusing to process a grievance over the issue.

In support of Objections Nos. 4, 7, and 15, the Intervenor's Offer of Proof proffers the names of seven named witnesses who would purportedly testify that about a week prior to the August 17 election, without giving Intervenor proper notice, the Employer announced to employees that it would be closing its Sleep Lab. The Offer of Proof further alleges that the Employer has refused to process a grievance over the closure.

In examining these three objections, I note that the factual allegations and legal theories presented to substantiate them are the same as those presented in Section 8(a)(1), (2), and (5) unfair labor practice charges filed by Intervenor on August 15 in Cases 32-CA-062706; 32-CA-062724; 32-CA-062737; and 32-CA-062885. Accordingly, in resolving these three objections, I will take into consideration the evidence presented in those cases. I note that after a full investigation, on October 28, the Region dismissed each of these charges for lack of merit.

With regard to Objection Nos. 4 and 7, as an initial matter Intervenor's Offer of Proof fails to identify the names of any witnesses who will testify that the Employer told employees that they would lose employment opportunities if they supported the Union or that the Employer threatened to close part of the facility and/or to take other retaliatory measures if Intervenor won the election. I also note that Intervenor failed to produce any

such evidence during the investigation of the four above-referenced unfair labor practice cases. As the objecting party, Intervenor has the sole burden of providing evidence in support of its objections. *Builders Insulation Inc.*, 338 NLRB 93, 794 (2003). To satisfy this burden, Intervenor may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objection. *Heartland of Martinsburg*, 313 NLRB 665, 655 (1994); *Holladay Corp.,* 266 NLRB 621, 621 (1983).

In this case, Intervenor has done none of the above. Instead, Intervenor is apparently arguing that, as a matter of law, the Employer's August 9 announcement to unit employees that the Sleep Lab was going to be closing on September 9 constituted an unlawful threat and objectionable conduct since the announcement was made one week prior to the election. Intervenor apparently asserts that the closure announcement was per se objectionable due to the timing alone. I hereby reject this argument. Absent evidence that the closure was in any way related to the pending election, and absent any evidence of express threats linking the closure to the election, I do not find that an employer decision to close one small department and to lay off four employees in an overall unit of around 376 employees is per se objectionable conduct. As such, I am overruling Objections Nos. 4 and 7.

With regard to Objection No. 15, this objection concerns the allegation that the Employer made a unilateral change in an existing term and condition of employment relating to a contractual provision requiring the Employer to provide the Union with a certain amount of advance notice before closing a department and by refusing to process a grievance over the issue. Although Objection No. 15 does not explicitly claim a

violation of Section 8(a) (5) of the Act, it presents issues that, if true, would violate the Act. It is well established that the Board will not consider such alleged unfair labor practices as objectionable conduct in the absence of a merit determination in an unfair labor practice case. See *Times Square Stores Corp*., 79 NLRB 361 (1948); *Texas Meat Packers*, 130 NLRB 279 (1961); *Virginia Concrete Corp.,* Inc., 338 NLRB 1182 (2003).[7] That requirement has not been satisfied in this matter. As stated above, the Section 8(a)(5) unfair labor practice charges filed by Intervenor on this issue were dismissed by Region 32 on October 28 for lack of merit. The determination not to issue complaint regarding such allegations precludes further consideration of these allegations in an objections proceeding. Accordingly, I am overruling Objection No. 15.

In sum, I am overruling Objections Nos. 4, 7, and 15.

Objection No. 6

6. The Employer and Petitioner interfered with the rights of employees by singling out known Union adherents and publicly insulting them.

In support of this Objection, Intervenor offered the testimony of one of its employee supporters who would purportedly testify that during the critical period she was singled out by NUHW supporters – aided by Employer supervisors – because of her outspoken support for SEIU. These alleged attacks included false allegations about her work performance fabricated by NUHW supporters and reported to her supervisor in an effort to get her disciplined or terminated.

In considering this objection, I note that the factual allegations and legal theories presented to substantiate it are the same as those presented in an unfair labor practice

[7] The gravamen of Objection No. 15 would be an 8(a)(5) allegation rather than an 8(a)(3) allegation. However, as the Board stated in *Virginia Concrete, supra, "the rationale of Texas Meat Packers* has also been applied in cases, like this one, where the gravamen of the allegation is an 8(a)(5) violation."

charge filed by the Intervenor in Case 32-CA-25668. Accordingly, in resolving this objection, I will take into account the evidence presented during that investigation.

The investigation in Case 32-CA-25668 revealed that the employee in question was called into a meeting with two managers on March 25. The managers informed the employee that they had received e-mails from other supervisors complaining that this employee was observed talking on her cell phone, taking naps, and conducting union business while she was on duty. The managers informed the employee that if she did not correct these issues, she would be disciplined. The meeting ended without the employee saying anything in her defense. Finally, I note that during the investigation, Intervenor did not present any evidence that Petitioner sent the Employer any of these e-mail complaints; that Petitioner was in any way involved in this meeting; or that Petitioner's agents publicly insulted this employee in any way.

On June 24, the Region dismissed Case 32-CA-25668 for lack of merit after determining that there was no causal link between the employee's allegedly improper treatment by managers and her union activity, no evidence that Petitioner was in any way involved in the underlying incidents, and no evidence of anti-union animus. Intervenor appealed this dismissal but its appeal was denied on August 17.

As the objecting party, Intervenor has the sole burden of providing evidence in support of the objection. *Builders Insulation,* supra. Under the above-detailed circumstances, I find that Intervenor has failed to meet this burden. Moreover, even if I were to assume that the Employer and/or Petitioner engaged in improper conduct towards this one employee, by Intervenor's own account, there were no other employees present in this meeting who could have been intimidated or coerced by this alleged conduct and

Intervenor has presented no evidence that the news of this alleged insulting conduct was disseminated among any of the other unit employees. Under these circumstances, I find that Intervenor has presented insufficient evidence to establish that either the Employer or Petitioner engaged in objectionable conduct by singling out known Union adherents and publicly insulting them.

Therefore, I am overruling Objection No. 6.

Objections Nos. 10, 11, 17, 25, and 34

10. The employer imposed a discriminatory, no-solicitation and/or discriminatory no-distribution rule on employees and/or the Union in a manner designed to interfere with conduct of a fair election.

11. The employer denied employees access to their Union representatives during the period preceding the conduct of the NLRB election.

17. The employer instituted new rules without bargaining with the Union.

25. The employer's agents demonstrated favoritism toward Petitioner by, among other things, hugging Sal Rosselli, NUHW's President, and allowing him and other NUHW staff access to non-public areas of the hospital, including but not limited to break rooms, to campaign for Petitioner. [8]

34. The employer, by its agents, denied employees access to their Union representatives during the period preceding the NLRB conducted election by, among other things, refusing Union representatives access to members and the facility.

In its Offer of Proof in support of these objections, Intervenor provided the names of five SEIU staff witnesses who would purportedly testify to being denied access to the Employer's facilities at various times during the election campaign. In the objections themselves, the Intervenor also alleges that the Employer instituted new, more restrictive access rules for non-employee representatives from SEIU. Finally, Intervenor alleges

[8] The portion of Objection No. 25 alleging that the Employer showed favoritism towards NUHW by hugging Rosselli in the presence of eligible voters will be addressed below along with Objections Nos. 23, 26, and 27.

that the Employer disparately enforced its access policies by granting unprecedented access rights to non-employee representatives from NUHW.

The factual allegations and legal theories presented to substantiate Objections Nos. 10, 11, 17, 25, and 34 are the same as those presented in Section 8(a)(2) and (5) unfair labor practice charges filed with the Region in Cases 32-CA-25834, 32-CA-062486 and 32-CA-062648. Accordingly, I will take the evidence disclosed during those investigations into account in resolving these objections. The investigations disclosed that the Employer's allegedly objectionable access policy restricting non-employee SEIU representatives' access rights to employee break rooms at the Employer's main hospital facility has been in effect since 2009. The investigations further disclosed that SEIU was aware of these policies yet did not file an unfair labor practice charge objecting to these procedures or to the Employer's announcement that it was interpreting the access clause in this manner within six months of the time that the Employer made this announcement. Accordingly, the Region dismissed Case 32-CA-25834 on September 29 and dismissed Cases 32-CA-062486 and 32-CA-062648 on October 28 on the basis that these allegations are time-barred by Section 10(b) of the Act.[9]

Similarly, with regard to the allegation that the Employer disparately enforced its access policies by granting NUHW non-employee representatives unprecedented access to the Employer's facility for the purpose of electioneering, this is also an allegation that was raised and addressed during the investigation of Cases 32-CA-062486 and 32-CA-062648. On October 28, the Region dismissed these charges on the basis that the Employer's access policy for its satellite Primary Care Facility on Claremont Avenue

[9]On November 10, the dismissal of Case 32-CA-25834 was sustained by the Office of Appeals. The appeals of the dismissals of the other two cases are still pending.

allowed non-employee representatives from both SEIU and NUHW to have access to the employee break rooms.

In these circumstances, I find that Intervenor has failed to make a showing sufficient to warrant a hearing regarding these objections. Accordingly, I am overruling Objections Nos. 10, 11, 17, 25, and 34.

Objection No. 13

13. The Petitioner made captive audience speeches to employees within 24 hours before the scheduled time of the Board conducted election.

In support of this objection, Intervenor provided the name of a witness who would purportedly testify to NUHW holding what Intervenor claims to have been a captive audience meeting with employees in the Employer's cafeteria within the 24-hour period prior to the election.

The *Peerless Plywood* rule applies to both unions and employers alike, and forbids election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for an election. See *Peerless Plywood Co.,* 107 NLRB 427, 429 (1954). A finding of a violation of this prohibition is grounds for setting aside the election whenever valid objections are filed. See *id*. at 429. On the other hand, brief remarks by a union to a non-captive audience do not violate the rule. See *id*. at 430; *Nebraska Consolidated Mills*, 165 NLRB 639 (1967); *Comcast Cablevision of New Haven*, 325 NLRB 833(1998).

Here, the purported meeting, by its very nature, does not appear to constitute a captive audience meeting, given its cafeteria location and the normal right of employees to come and go from the cafeteria. Moreover, Intervenor has offered no evidence to

show that employee attendance at these alleged cafeteria meetings was mandatory. Accordingly, I am overruling Objection No. 13.

Objections Nos. 14, 20, 21

14. The employer and Petitioner engaged in surveillance of employees as they were voting in the National Labor Relations Board conducted election, interfering with the laboratory conditions necessary for the conduct of a fair election.

20. The employer and Petitioner engaged in surveillance of voters at or near the election area, interfering with the laboratory conditions necessary for the conduct of a fair election.

21. The employer's managers held meetings in the polling area during voting times, interfering with the laboratory conditions necessary for the conduct of a fair election.

In support of Objections Nos. 14, 20, 21, Intervenor provided the names of six witnesses who purportedly would testify that on the election day six named NUHW staff members stationed themselves near the polling location in positions from which they could "visibly see, keep track, and count who voted in the election." Intervenor asserts that the six NUHW staff members were located at the entryway of the voting location, which compelled voters to walk past them in order to enter the voting booths. In addition, Intervenor alleges that the Employer's managers held all-day management meetings in conference rooms adjacent to the polling area at the Employer's Primary Care building. Intervenor alleges that the managers who attended these meetings could observe employees who were entering the polling area to cast their ballots.

The Board has found that the continued presence of employer representatives in an area where employees had to pass through to vote and where the managers observed employees waiting in line to vote interfered with an election. *ITT Automotive,* 324 NLRB 609 (1997); *Electric Hose & Rubber Co.,* 262 NLRB 186 (1982); *Performance Measurements Co.,* 148 NLRB 1657 (1964). However, where there is insufficient

evidence to establish that employees had to pass by the employer's representative in order to vote, the Board has found that even a continued presence by an employer representative outside a polling place does not constitute objectionable surveillance. *J.P. Mascaro and Sons,* 345 NLRB 637, 639 (2005). In *J.P. Mascaro,* the Board also noted that it would have reached the same result if the case involved a union official standing near the polling area for the entire day.

In the above-circumstances, I find that Intervenor has demonstrated that Objections No. 14, 20 and 21 raise substantial and material issues of fact or law that warrant a hearing.

Objection No. 16

16. The employer's agents physically assaulted Union representatives in the presence of eligible voters.

In support of Objection No. 16, Intervenor offered the testimony of SEIU-UHW Representative Marta Ramirez, who would purportedly testify that on a date during the critical period she was assaulted by supervisor Nancy Medrano in the presence of eligible voters.

The factual allegations and legal theory presented to substantiate Objection No. 16 are the same as those presented in an unfair labor practice charge filed with the Region in Case 32-CA-25667. Accordingly, I will consider the evidence uncovered during that investigation in resolving this objection. This investigation disclosed that Section E09 of the Employer's Human Resources Policy and Procedures Manual states, "Persons not employed by [the Employer] may not solicit or distribute literature on [Employer] property at any time for any purpose." However, Section 27.3, the access clause in the collective-bargaining agreement, modifies this prohibition by granting Intervenor

representatives the limited right to solicit and distribute material in the cafeteria and designated lounges.

On April 4, Ramirez began leafleting outside the Employer's facility on the Employer's private property in front of the emergency room and main entrance. A supervisor approached Ramirez and told her that she was violating the Employer's distribution policy and directed her to move to the public sidewalk on 52nd street. Ramirez initially complied with this instruction. However, about a half hour later, Ramirez walked from the public sidewalk onto the Employer's private property to hand an employee a leaflet. At this point, according to Ramirez, Supervisor Medrano yelled at her to move back to the public sidewalk, grabbed her arm and pushed her back towards the sidewalk. Ramirez states that she does not know if any of the unit employees saw this incident.

In Case 32-CA-25667, the Region dismissed the allegation that Medrano's actions constituted an assault.[10] In so concluding, the Region noted that after the Employer's initial oral notification to Ramirez to move off of the Employer's private property, Ramirez re-entered the Employer's private property some 30 minutes later. In so doing, Ramirez went beyond her contractual right to access the Employer's facility in order to leaflet and thereby violated the Employer's Human Resources Policy. As a result, Ramirez was engaged in trespass. Under these circumstances, the Region determined that the subsequent alleged physical contact between Supervisor Madrano and Ramirez (which the Employer denies occurred) was not sufficiently restraining or coercive to be considered an unfair labor practice. Moreover, this contact was not overly forceful or violent, Ramirez was not injured or intimidated by these events, and she did not consider

[10] On August 17, this dismissal was upheld by the Office of Appeals.

calling the police to report an assault. More importantly, by the Intervenor's own account, there were no employees present that would have felt intimidated or coerced by this alleged conduct and Intervenor has presented no evidence that the news of this alleged assault was disseminated among any of the unit employees. Consequently, Medrano's conduct, even if improper, could not have interfered with the employees' free choice in the election.

Therefore, I am overruling Objection No. 16.

Objection No. 18

18. The Petitioner altered a NLRB document which makes it appear that the NLRB supported it.

In support of Objection No. 18, Intervenor offered the testimony of three witnesses who would purportedly testify that NUHW produced and distributed a flyer that included the image of a sample NLRB ballot that was altered to make it appear that the NLRB endorsed the Petitioner in the upcoming election. The allegedly objectionable flyer contained a Xeroxed copy of an NLRB sample ballot with an "X" marked on the box next to Petitioner's name. Significantly, the sample ballot on the leaflet did not contain the Board's standard disclaimer language. Instead, on the flyer, the following text appears below the reproduced ballot: "The NLRB does not endorse any choice in this election. Any markings that you may see where no [sic] put there by the NLRB.[11]"

In *Ryder Memorial Hospital*, 351 NLRB 214, 216 (2007), the Board revised the Board's official election ballot to include the following disclaimer language: "The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National

[11] A copy of this flyer is attached hereto as Appendix B.

Labor Relations Board." The Board stated that in future cases it would decline to set aside elections based on a party's distribution of an altered sample ballot, provided that the sample ballot is an actual reproduction of the Board's sample ballot." However, if a party distributed an altered sample ballot from which the disclaimer language was deleted, the Board would consider the deletion intentional and would deem the altered sample ballot to be objectionable.

In the instant case, Intervenor has provided evidence that the reproduced sample ballot was not an actual and identical reproduction of the Board's sample ballot. In particular, I note that the sample ballot distributed by Petitioner deletes the Board's standard disclaimer language, and instead replaces it with alternative language created by Petitioner. Under these circumstances, I find that this objection raises a substantial and material issue of fact and law that is best resolved through a hearing. Accordingly, I am setting Objection No. 18 for hearing.

Objection No. 19

19. There was confusion over the identity of the Union, as Petitioner claimed that they were "Local 250," the predecessor labor organization to SEIU-UHW.

In support of Objection No. 19, Intervenor offers the testimony of two witnesses who would testify that eligible voters were confused about the identity of the labor organizations involved in the election, and that some eligible voters believed that NUHW, and not UHW, was the successor union to Local 250.

The Board has set aside elections where employee confusion about the identity of the petitioning union was based on misrepresentations made by union organizers for that union. For example, in *Humane Society for Seattle/King County*, 356 NLRB No. 13 (October 28, 2010), the Board set aside an election where officials of a petitioning union

misrepresented to employees that the new union they were voting for was independent from the petitioning union. The Board found that at least some voters voted for the petitioning union mistakenly believing that they were voting for the new union, when in fact the new union was going to be under the leadership of the petitioning union. Under these circumstances, the Board overturned the election based on the "strong showing of employee confusion over the identify of the organization seeking representative status and the importance of the identity of the organization to this particular group of voters, because of the closeness of the vote, and because the confusion was created by the [petitioning union's] own conduct, we cannot conclude that a majority of the employees selected the [petitioning union] as their representative." *Id*. at 6 (citing *Pacific Southwest Container*, 283 NLRB 79, 80 fn. 7 (1987).

In the instant case Objection No. 19 alleges that "there was confusion over the identity of the Union, as Petitioner claimed that they were 'Local 250, the predecessor labor organization to SEIU-UHW.'" Thus, on its face, Objection No. 19 appears to allege that Petitioner engaged in some affirmative conduct that misled the voters about its identity. However, in its Offer of Proof, Intervenor states only that two witnesses will testify that "some eligible voters were confused about the identity of the labor organizations involved in the election, and that some eligible voters believed that NUHW – not UHW – was the successor to Local 250." Under these circumstances, I find that Intervenor has not met its burden of offering to present witnesses who will provide testimony that Petitioner engaged in some affirmative conduct that misled voters about its identity, as is required by *Humane Society*, *supra*, and *Pacific Southwest*, *supra*. Rather, its only claim is that some eligible voters were confused. Accordingly, since Intervenor

has not met its burden of proof, I am overruling Objection No. 19. See *Builders Insulation Inc.*, 338 NLRB 93, 794 (2003).

Objection No. 22

22. The Petitioner promised eligible voters that they would pay less dues and/or not have to pay initiation fees if they voted for NUHW.

In support of Objection No. 22, Intervenor offered the testimony of five witnesses who would testify that NUHW "supporters and agents" promised eligible voters that they would pay less dues and/or not have to pay initiation fees if they voted for NUHW. Intervenor also offered a copy of what is presumably an NUHW-made flyer that states "NUHW dues will be much less"; and "Any member who works in a bargaining unit where the dues rate under SEIU was based on a flat rate rather than a percentage based system shall immediately have their dues reduced by twenty five percent when their bargaining unit becomes covered by a NUHW collective bargaining agreement."

The Supreme Court has held that where a union offers to waive initiation fees on condition that employees sign authorization cards prior to the election, such conduct is grounds for setting aside an election. See *NLRB v. Savair Mfg. Co*., 414 U.S. 270 (1973). The Court reasoned that this offer was akin to a financial bribe to induce employees to sign authorization cards. However, where the initiation fee waiver offer remains available to employees after the election regardless of whether they signed cards or the way they voted, the offer is not objectionable. See *L.D. McFarland Co*., 219 NLRB 575 (1975).

In the instant case, the flyer attached to the Offer of Proof ostensibly in support of Objection No. 22 does not condition waiver of the initiation fee on the signing of an authorization card. Rather, it states that all employees will pay lower dues if NUHW

wins the election, and it does not limit this offer only to those employees who vote for NUHW. Therefore, the flyer as campaign material is not grounds for setting aside the election. As such, I will not order a hearing regarding the flyer itself.

However, Intervenor's Offer of Proof is not stated in such a way that limits Objection No. 22 to the flyer alone. Rather, the witnesses offered would purportedly testify that NUHW "promised eligible voters that they would pay less dues and/or not have to pay initiation fees if they voted for NUHW." Under these circumstances, I am setting Objection No. 22 for hearing, but will limit the scope of the hearing to testimony from witnesses who can testify that they have direct non-hearsay personal knowledge that agents of Petitioner affirmatively made such a conditional offer to employees.

Objections No. 23, 25, 26, 27

23. The employer's agents made pro-NUHW statements to eligible voters in the period prior to the election.

25. The employer's agents demonstrated favoritism towards Petitioner by, among other things, hugging Sal Rosselli, NUHW's President.

26. The employer's agents demonstrated favoritism toward Petitioner by allowing and/or encouraging its charge nurses to campaign for Petitioner.

27. The employer's agents demonstrated favoritism toward Petitioner by joining and supporting Petitioner's staff while they were participating in another labor organization's informational picket and by meeting with Petitioner's staff in management's offices at the facility.

In support of Objections No. 23 and 26, Intervenor has proffered the testimony of three witnesses who would testify that a manager in the Employer's Primary Care Department stated that employees should vote for NUHW. In support of Objection No. 25, Intervenor offered the testimony of four witnesses who would testify that this same manager hugged Sal Rosselli in the presence of unit employees in the employee break room. In support of Objection No. 27, Intervenor offered testimony from a witness who

would testify that she saw the Employer's Employee and Labor Relations Manager join an NUHW picket line outside the Employer's facility.

The Board has long held that an employer does not improperly interfere with an election by merely expressing a preference for one of two competing unions, and accompanying such a statement with reasons, where the reasons themselves are not improperly or coercively set forth or accompanied by threats of reprisal or promises of benefit. *Stewart-Warner,* 102 NLRB 1153 (1953). See also, *Fabriko, Inc.,* 227 NLRB 387; and *Raley's,* 348 NLRB 382, 408 (2006).

In the instant case, Intervenor offers no evidence that the statements or conduct of the manager in question were accompanied by any threats of reprisals or promises of benefits. It has also offered no evidence that the Employer "encouraged" any of its managers or supervisors to campaign for Petitioner. Therefore, I find that Intervenor has failed to meet its burden of providing evidence in support of these three objections. See *Builder's Insulation,* supra. As such, I am overruling Objection Nos. 23, 25, and 26.

As regards Objection No. 27, I note that the factual allegations and legal theories offered in support of this objection are identical to those put forward in Case 32-CA-25669. However, that case was dismissed on May 23 for lack of merit on the basis that the Employee and Labor Relations Director in question was merely talking to NUHW staffers, one of whom was a former employee, for less than a minute at a California Nurses Association picket line outside the Employer's facility.[12] Notably, the Employer official was not carrying a sign or wearing any NUHW paraphernalia. Intervenor's objection does not raise any new facts or legal theories that were not already considered in determining Case 32-CA-25669. As such, I am overruling Objection No. 27.

[12] This dismissal was upheld by the Office of Appeals on August 4.

Objection No. 24

24. The Petitioner took photographs or videotapes of Union supporters engaged in protected, concerted activity.

In support of Objection No. 24, Intervenor offered the testimony of three witnesses who would purportedly testify that "NUHW agents" photographed employees at or near the polling areas.

In *Mike Yurosek & Sons, Inc.*, 292 NLRB 1074 (1989), the Board held that it was objectionable conduct for a union agent to photograph employees as they entered the plant, absent a contemporaneous legitimate explanation being given to the employees being photographed. Similarly, in *Robert Orr – Sysco Food Services*, 334 NLRB 977 (2001), the Board stated that it is well-established law that absent proper justification, photographing employees as they engage in protected concerted activity is objectionable conduct that warrants the direction of a new election unless the impact on the election is *de minimus*.

Intervenor's Offer of Proof proffers witnesses who would purportedly testify that Petitioner's agents photographed employees at or near the polling area. However, it is unclear from the Offer of Proof whether these photographs were taken before or after the polls closed. If the photographs were taken after the closing of the polls, this conduct could not, as a matter of law, have affected the results of the election. However, if the photographs were taken before the closing of the polls, this conduct could have affected the election results. Under these circumstances, to develop a sufficient record to resolve this objection, I find that Objection No. 24 raises substantial and material issues of fact or law that warrant a hearing. Therefore, I am setting Objection No. 24 for hearing.

Objection No. 29

29. The employer undermined the Union by repudiating a grievance settlement agreement just before the election.

Intervenor's Offer of Proof is completely silent regarding Objection No. 29. Nevertheless, I note that this same issue was the subject of an unfair labor practice charge filed on August 16 by Intervenor in Case 32-CA-062907. The charge in that case alleged that the Employer violated Sections 8(a)(3) and (5) of the Act by repudiating a single grievance settlement agreement without providing advance notice and a chance to bargain with the Union and in retaliation for the grievant's Union and/or protected concerted activity. Although Objection No. 29 does not explicitly claim violations of Sections 8(a)(3) and (5) of the Act, it presents issues that, if true, would violate the Act. As noted, supra, it is well established that the Board will not consider such alleged unfair labor practices as objectionable conduct in the absence of a merit determination in an unfair labor practice case. *Texas Meat Packers*, supra. That requirement has not been satisfied in this matter. The Section 8(a)(3) and (5) unfair labor practice charge filed by Intervenor in Case 32-CA-062907 on this issue was dismissed by Region 32 on October 28 for lack of merit.[13] The determination not to issue complaint regarding such allegations precludes further consideration of these allegations in an objections proceeding. Accordingly, I am overruling Objection No. 29.

Objection No. 30

30. The employer, by its agents, escorted Union representatives through the facility.

Regarding Objection No. 30, Intervenor presented an Offer of Proof that five named witnesses could testify that on the day of the election, the Employer disparately

[13] This dismissal is still pending before the Office of Appeals.

enforced its escort policies by requiring representatives from Intervenor to be escorted when they visited the Employer's facility while allowing representatives of Petitioner access to the facility without an escort. I find that Objection No. 30 raises substantial and material issues of fact or law that can best be resolved by a hearing.

Objection No. 31

31. The employer aided and assisted Petitioner by recognizing and bargaining with an "NUHW Steward" over the termination of a member of the Union in order to deprive that worker the right of Union representation and arbitration that is set forth in the grievance procedure section of (the) CBA.

In support of this objection, Intervenor offers the names of seven witnesses who would testify that the Employer "recognized and dealt with an 'NUHW Steward'" over grievances, including a termination.[14]

Although Objection No. 31 does not explicitly claim violations of Sections 8(a)(2) or (5) of the Act, it presents unfair labor practice issues by alleging that the Employer recognized and bargained with Petitioner, a labor organization that does not currently represent its employees and/or by refusing to recognize and bargain with designated representatives of Intervenor. The Board ordinarily will not permit the litigation of unfair labor practices in a representation proceeding absent the consolidation of that proceeding with an unfair labor practice proceeding in which the allegedly objectionable conduct has been plead in a complaint. See, *Texas Meat Packers, supra*.

The instant objection parallels two unfair labor practice charges filed by Intervenor in Cases 32-CA-24977 and 32-CA-062854. With regard to Case 32-CA-24977, that charge blocked the processing of the instant petition for some time.

[14] In its Offer of Proof in support of Objection No. 31, Intervenor also offers the names of three additional witnesses who would purportedly testify that Supervisor Clarence Dickson refused to allow UHW stewards to represent employees. However, I have not considered this evidence and I will not set it for hearing as it does not pertain to the matter encompassed by Objection No. 31.

However, that case was subsequently the subject of an informal Board settlement agreement. The notice posting period expired on July 12 and the case closed on compliance on August 2. Thereafter, processing of the petition in Case 32-RC-5617 was resumed and the representation election was conducted on August 17. Under these circumstances, since the allegations raised in Case 32-CA-24977 were fully remedied prior to the election, I do not find that these allegations raise substantial and material issues of fact or law that warrant setting Objection 31 for hearing.

With regard to Case 32-CA-062854, that case was dismissed by the Region for lack of merit on October 28.[15] Under these circumstances, this determination not to issue complaint regarding the allegations in Case 32-CA-062854 precludes further consideration of these allegations in an objections proceeding.

Accordingly, I am overruling Objection No. 31.

Objection No. 33

33. The Petitioner linked its predictions and/or risk-warnings related generally to bargaining and, specifically, to health insurance, to the employer's unfair labor practice related to health insurance.

In support of this objection, Intervenor offered the testimony of four witnesses who will purportedly testify that Petitioner "linked its predictions and risk-warnings related generally to bargaining and, specifically, to health insurance to the Employer's unfair labor practice related to health insurance." Intervenor offers a packet of sample flyers from Petitioner as further evidence in support of this objection. Each flyer cites the

[15] This dismissal is still pending before the Office of Appeals.

increased cost of healthcare premiums that resulted from the new collective-bargaining agreement that the Employer and Intervenor entered into in December 2010.[16]

In Case 32-CA-24750, the Region determined that the Employer had unlawfully implemented changes to employee health benefit plans during the bargaining for the current collective-bargaining agreement at a time when no impasse in bargaining with the Intervenor had occurred. On January 24, the Regional Director approved an informal Board settlement agreement in that case. As part of the settlement agreement, the Employer was required to reimburse employees who were charged healthcare premiums during the period in which the Employer had unlawfully changed to a new health coverage plan, and to post an appropriate Notice To Employees. The Employer complied with its remedial obligations, the posting period for that case has expired, and the case closed on compliance on August 2. In the meantime, Intervenor and the Employer bargained for and reached an agreement on a new contract that is effective by its terms from December 8, 2010 through April 30, 2014. According to the leaflets distributed by Petitioner, the bargained for changes to healthcare coverage in that new contract resulted in increased costs to employees.

In examining the disputed flyers, I note that the flyers do not reference the previous unfair labor practice charge against the Employer regarding healthcare benefits. Rather, the flyers refer to the benefits that were lawfully bargained for under the new collective-bargaining agreement. Under the above-detailed circumstances, I find that the statements in Petitioner's flyers regarding healthcare cost increases are referring to the actual contract provisions that were bargained for between Intervenor and the Employer,

[16] For example, one leaflet states "Under SEIU's contract, I got hit with health premiums charges of $254 a month." Another leaflet states "FACT: Under SEIU's contract we're paying for healthcare premiums that used to be free…"

rather than to any benefits unilaterally implemented by the Employer in violation of the Act. Therefore, even if I assume, *arguendo*, that the objected-to statements in Petitioner's campaign flyers are misrepresentations, I find that such misrepresentations about the health and welfare provisions in the current contract between SEIU and the Employer do not constitute objectionable conduct. *Midland National Life Insurance Co.,* 263 NLRB 127, 130 (1982).

Accordingly, I am overruling Objection No. 33.

Objections Nos. 12 and 35

12. The employer and Petitioner created an atmosphere of fear and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election.

35. The employer, by its agents, interfered with, restrained, and/or coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

As the objecting party, Intervenor has the sole burden of providing evidence in support of its objections. *Builders Insulation,* supra. To satisfy this burden, Intervenor may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objection. *Heartland of Martinsburg*, 313 NLRB 665 (1994); *Holladay Corp.,* 266 NLRB 621, 621 (1983). In the alternative, Intervenor may provide specific affidavit testimony and other forms of evidence in support of its objections. *Builders Insulation, supra.*

Here, no such support has been provided regarding Objections Nos. 12 and 35. Rather, Intervenor's Offer of Proof in support of these objections merely states "With respect to objections 12 and 35, see above." In these circumstances I find that Objections Nos. 12 and 35 are nothing more than "catch-all" objections that are non-specific on their

face and for which Intervenor has failed to identify any specific evidence that has not already been dealt with in this Supplemental Decision. Accordingly, I am overruling Objections Nos. 12 and 35.

CONCLUSION

In summary, I am setting for hearing the challenges to the ballots of Battsengel Cook, Ivonne Wilkes, and Reginal Wright; I am overruling Intervenor's Objections Nos. 1-4, 6, 7, 10-13, 15-17, 19, 23, 25-27, 29, 31, and 33-35; I am setting Objections Nos. 14, 18, 20-22, 24, and 30 for hearing; and I am approving Intervenor's request to withdraw Objection Nos. 5, 8, 9, 28, and 32.

Notice of Hearing

IT IS HEREBY ORDERED that a hearing on challenges to the ballots of Battsengel Cook, Ivonne Wilkes, and Reginal Wright, and on Objections Nos. 14, 18, 19, 20-22, 24, and 30 be held before a duly designated Hearing Officer of the National Labor Relations Board.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within fourteen (14) days from the issuances of said report, any party may file with the Board an original and one (1) copy of exceptions to such report, with supporting brief if desired. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, on the other party to the proceeding and with the undersigned. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions, may decide the matter forthwith upon the record or may take other disposition of the case.

PLEASE TAKE NOTICE that on December 1, 2011, at 9:00 a.m. PST, at the Oakland Regional Office, and continuing on consecutive days thereafter until completed, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a hearing officer of the National Labor Relations Board upon the aforesaid challenges and objections, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matters.

DATED AT Oakland, California, November 17, 2011.[17]

/s/ William A. Baudler
William A. Baudler
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5211

[17] Under the provisions of Section 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must be received by the Board in Washington, DC by December 1, 2011. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has submitted timely to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding. *The request for review may be filed electronically through the Agency's website, www.nlrb.gov, but may not be filed by facsimile*. Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. *Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.