

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNITED STATES INFRASTRUCTURE)
CORPORATION (USIC),)
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Employer,)
)
and)
)
RALPH FINLEY, An Individual,)
)
Petitioner,)
and)
)
COMMUNICATIONS WORKERS OF)
AMERICA, LOCAL 3682,)
)
Union.)

CASE NO. 11-RD-000732

EXCEPTIONS TO REPORT AND RECOMMENDATIONS
ON CHALLENGED BALLOTS

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On December 6, 2011, the Acting Regional Director for Region 11 of the National Labor Relations Board ("NLRB" or "Board") issued "Report and Recommendations on Challenged Ballots" in the above-captioned matter. ("Report")¹ Pursuant to Section 102.69 of the Board's Rules, United States Infrastructure Corporation ("USIC" or the "Employer"), by counsel, files its Exceptions to Report and Recommendations On Challenged Ballots ("Exceptions"). The Employer excepts to certain of the statements the Acting Regional Director ("ARD") included in the "The Challenges" and in the "Conclusions and Recommendations" portions of the Report as follows:

¹ The Report and Recommendations on Challenged Ballots is cited as "Report," followed by citation to page number(s).

1. To the ARD's statement in The Challenges portion of the Report that, "On September 28, 2011, at the ballot count, the Employer challenged the ballots of Erin Bass and Maurice Grizzard." (Report, p. 2) The basis for this exception is that it is wrong and unsupported by the record. (Ex. 1, pp. 1-5). Rather, the record shows that, at the September 28, 2011 ballot count, the Employer challenged ballots on the outer yellow envelope of which were written the Key Numbers 6 ("Ballot No. 6") and 46 ("Ballot No. 46"). (Ex. 1, p. 2)². The record further shows that, at the September 28, 2011 ballot count, the Board Agent represented that the Region had written these numbers on the outer yellow envelopes to correspond with the names listed in order on the *Excelsior* list and that it assigned Key Number 6 to Erin Bass ("Bass") and Key Number 46 to Maurice Grizzard ("Grizzard"). (Ex. 1, p. 1) The record further shows that, at the ballot count, the Employer challenged the ballot in the yellow outer envelope bearing Bass's Key Number ("Ballot No. 6") because the signature it bore did not reasonably appear to be Bass's signature and the Employer also challenged the ballot in the yellow outer envelope bearing Grizzard's Key Number ("Ballot No. 46"), because the signature it bore did not reasonably appear to be Grizzard's signature. (Ex. 1, p. 2) The record further shows that the Employer stated the Employer was challenging each of these ballots because the "name and number don't match." (Exhibit 1, p. 2).
2. To the ARD's statement in The Challenges portion of the Report that "the Employer challenged the ballots of Erin Bass and Maurice Grizzard: 1) because the key number on each of their outer yellow envelopes did not match the voter's name." (Report, p. 2) The basis for this exception is that it is wrong and unsupported by the record. (Ex. 1, pp. 1-5).

² The Regional Director conducted no hearing on the ballot challenges. Thus, the only record in this case upon which the Employer may rely in responding to the Report is the Statement of Position the Employer submitted to the Regional Director in support of its ballot challenges, which the Employer refers to here as "Exhibit 1," and attached hereto. The Employer will designate further references to Exhibit 1 as "Ex. 1," followed by citation to page number(s).

The Employer incorporates herein its basis for this exception as stated in Exceptions paragraph no. 1. In addition, the record states the Employer challenged the ballots because the "name and number don't match." (Ex. 1, p. 2) The "name" to which the Employer referred was the name on the *Excelsior* list and not the "voter's name." (Ex. 1, p. 1-2).

3. To footnote 1 of the ARD's statement in The Challenges portion of the Report that "The yellow outer envelope is marked with the voter's "key number" from the *Excelsior* list. Upon return, the Region checks to ensure that the voter's key number and name match." (Report, p. 2) A basis for this exception is that it is unsupported by the record. (Ex. 1, pp. 1-5). The record shows that the Region, by its Board Agent, checked Key Number 6 against the corresponding name on the *Excelsior* list, but did not ensure that they matched Ballot No. 6 and, in fact, noted that they did not. (Ex. 1, p. 2, footnote 1). The record further shows that the Region, by its Board Agent, checked Key Number 46 against the corresponding name on the *Excelsior* list, but did not ensure that they matched Ballot No. 46 and, in fact, noted that they did not. (Ex. 1, p. 2, footnote 1).
4. To the ARD's statement in The Challenges portion of the Report that, "On September 28, 2011, at the ballot count, the Employer challenged the ballots of Erin Bass and Maurice Grizzard . . . and [because] 2) the outer yellow envelopes did not bear the signature of the individual assigned to each envelope's respective key number." (Report, p. 2) The basis for this exception is that it is wrong and unsupported by the record. (Ex. 1, pp. 1-5). The Employer incorporates herein its bases for this exception as stated in Exceptions paragraph nos. 1, 2 and 4 herein.
5. To the ARD's statement in The Challenges portion of the Report that, "The Employer asserts that its challenges should be sustained because counting the challenged ballots would destroy

the integrity of the mail ballot procedure, as the requisite laboratory conditions have not been maintained." (Report, p. 2) The basis for this exception is that it is incomplete and, therefore, misleading and unsupported by the record. (Ex. 1, pp. 1-5). The record shows that the Employer asserted that the challenges to Ballot Nos. 6 and 46 should be sustained because counting the challenged ballots would destroy the integrity of the mail ballot election procedure because the ballots lack the requisite safeguards and thus destroy the laboratory conditions; established Board precedent strictly enforces its mail ballot identification measures to protect the integrity of the mail ballot system; and established Board law necessitated that the Regional Director sustain the challenged ballots to protect the integrity of the mail ballot election process. (Ex. 1, pp. 2-5).

6. To the ARD's statement in The Challenges portion of the Report that "the Union states that Maurice Grizzard and Erin Bass are father and daughter, who share the same mailing address." (Report, p. 2). The basis for this exception is that it is unsupported by the record. (Ex. 1, pp. 1-5).
7. To the ARD's statement in The Challenges portion of the Report that, "Thus, Grizzard and Bass received and marked their ballots at the same time and inadvertently 'swapped' their return envelopes when assembling their ballots for return to the Regional Office." (Report, p. 2) The basis for this exception is that it is unsupported by the record. (Ex. 1, pp. 1-5). The ARD's Report makes this statement following use of the word "Thus," signaling that she based this statement on the contents of the prior statement, which, even if true, merely states that the Union states that Grizzard and Bass are father and daughter who share the same mailing address and, thus, fails to support the ARD's statement. (Report, p. 2).

8. To the ARD's Conclusion that "the Employer argues that, as a matter of law, the two ballots with transposed key numbers and signatures must be deemed void." (Report, p. 2) The basis for this exception is that it is wrong and unsupported by the record and misrepresents the Employer's argument. (Ex. 1, pp. 1-5). The record does not support the conclusion that the Employer argues that there are "two ballots with transposed key numbers and signatures." (Ex. 1, pp. 1-5) The record shows that the Employer argues that Ballot No. 6 does not appear to bear the signature of Erin Bass, who was the only eligible voter assigned Key Number 6 and thus must be deemed void and that Ballot No. 46 does not appear to bear the signature of Maurice Grizzard, who was the only eligible voter assigned Key Number 46 and thus must be deemed void. (Ex. 1, pp. 1-5)
9. To the ARD's Conclusion that the Employer "contends that there is at least the appearance that each voter handled the ballot of the other, based on the circumstance that each of the blue envelopes containing the voter's actual ballot was placed in the yellow envelope assigned to the other." (Report, p. 2) The basis of this exception is that it is wrong and unsupported by the record. (Ex. 1, pp. 1-5). The record shows that the Employer stated that the Board Agent speculated that Bass and Grizzard switched their respective numbered envelopes. (Ex. 1, p. 3) The record further shows that the Employer merely stated that it appears that Bass signed, and thus touched, Grizzard's outer yellow mail ballot envelope and vice versa. (Ex. 1, p. 3) There is no record evidence that each of the blue envelopes containing the voter's actual ballot was placed in the yellow envelope assigned to the other or that the Employer contends that each of the blue envelopes containing the voter's actual ballot was placed in the yellow envelope assigned to the other. (Ex. 1, pp. 1-5).

10. To the ARD's Conclusion that, "Because the Casehandling Manual provides that ballots are not to be touched by anyone other than the voter, the Employer submits that this appearance has destroyed the laboratory conditions." (Report, p. 2) The basis for this exception is that it is unsupported by and misstates the record. (Ex. 1, pp. 1-5). The record shows that the Employer stated that Section 11340.4 (e) of the NLRB Case Handling Manual states that, "Only a Board agent will touch any ballot, even if the ballot drops to the floor." (Ex. p. 3) The record further shows that the Employer contends that, while Board mail ballot procedures contemplate that postal service workers will touch mail ballot envelopes deposited into the U.S. mail for delivery to the Regional Office, they do not contemplate that anyone else will do so and they certainly do not contemplate that individuals other than the eligible voters assigned the corresponding Key Numbers would complete and sign the ballots. (Ex. 1, p. 3) The record also includes representative samples of Bass's and Grizzard's signature (Ex. 1, Exhibits 1, 2, and 3) and that the Employer contends the signature samples make apparent that Bass did not sign Ballot No. 6 and Grizzard did not sign Ballot No. 46. (Ex. 1, p. 3, Exhibits 1, 2 and 3) The record shows that the Employer contends that it appears that Bass signed, and thus touched, the mail ballot assigned to Grizzard and vice versa. (Ex. 1, p. 3) The record further shows that the Employer submits that Bass's and Grizzard's apparent act of signing and touching ballots that were not assigned to them destroyed the laboratory conditions with respect to Ballot No. 6 and Ballot No. 46. (Ex. 1, p. 3)

11. To the ARD's Conclusion that, "In support of these arguments, the Employer relies both on *Thompson Roofing, Inc.*, 291 NLRB 743 (1988), in which the Board held that a mail ballot on which the voter had printed, rather than signed, his name, should be deemed void, and

Mission Industries, 283 NLRB No. 154 (1987), in which the Board held that a mail ballot that was returned to the regional office without its attached identification stub was properly deemed void." (Report, pp. 2-3). The basis for this exception is that it misstates the record. The record shows that the Employer also relies on *Brink's Armored Car*, 278 NLRB 141 (1986), in which the Board stated that if an individual had picked up a mail ballot from the Region's office on an eligible voter's behalf, "the Board would have had no way of determining with any degree of certainty that [the intended recipient] was the one who received the ballot and ultimately voted it," and in which the Board further explained that, in such circumstances, the normal presumption of accurate mail delivery or personal delivery at a Regional Office to a voter with proper identification would not have been available. (Ex. 1, p. 2) The record also shows that the Employer relies on NLRB Casehandling Manual §11322.1 for the proposition that identifying voters is a fundamental purpose of election observers, whose job is to ensure the individual requesting a ballot is, indeed, the individual who casts the ballot, and on NLRB Casehandling Manual §11340.4 (e), which states that only a Board agent will touch any ballot, even if the ballot drops to the floor. (Ex. 1, p. 3) The record also shows that the ARD's Conclusion fails fully to state the entire bases upon which the Employer relies upon *Thompson Roofing, Inc.*, 291 NLRB 743 (1988) and *Mission Industries*, 283 NLRB No. 154 (1987). (Ex. 1, pp. 3-5)

12. To the ARD's Conclusion that, "In essence, the Employer argues for a per se rule, mandating that any deviation from mail ballot procedures or instructions must invalidate the nonconforming ballot." (Report, p. 3) The basis for this exception is that it is wrong and unsupported by the record. The record shows that the Employer argues that the ARD should

apply the principles of established Board law and the Casehandling Manual and sustain the challenged ballots. (Ex. 1, pp. 2-5)

13. To the ARD's Conclusion that, "Hence, because the key numbers on the two envelopes do not match the assigned voters for those key numbers, the ballots here must be void." (Report, p. 3) The basis of this exception is that it is unsupported by the record. The ARD's use of the word, "Hence" implies that the Employer's argument that, "because the key numbers on the two envelopes do not match the assigned voters for those key numbers, the ballots here must be void," is based on the ARD's Conclusion in the prior sentence, which the Employer maintains is erroneous and, therefore, it incorporates herein its basis for this exception as stated in Exceptions paragraph no. 12.
14. To the ARD's Conclusion that, "The parties agree that the two voters who submitted the challenged ballots are father and daughter who share the same mailing address." (Report, p. 3) The basis for this exception is that the Employer has no evidence that the Union agrees that the two voters who submitted the challenged ballots are father and daughter who share the same mailing address. The further basis for this exception is that the record shows that the Employer has only stated that, upon information and belief, Grizzard is Bass's father. (Ex. 1, p. 2, footnote 2)
15. To the ARD's Conclusion that "Each signed the yellow envelope that had the other's key number affixed to it." (Report, p. 3) The basis for this exception is that it is unsupported by the record. (Ex. 1, pp. 1-5)
16. To the ARD's Conclusion that "There is no evidence that . . . individuals other than these two voters marked the ballots that were contained in the sealed blue envelopes that were contained within the yellow signed envelopes." (Report, p. 3) The basis for this exception is

that the uncontradicted record shows that someone other than Bass signed the outer yellow envelope of Ballot No. 6, which was assigned to her and that someone other than Grizzard signed the outer yellow envelope of Ballot No. 46, which was assigned to him. (Ex. 1, pp. 1-2, Report) The record contains no evidence concerning the ballots that are contained in the sealed blue envelopes that were contained within the yellow signed envelopes. (Ex. 1, pp. 1-5) To the contrary, the record shows that the ARD stated that she recommends that the outer yellow envelopes of Ballot Nos. 6 and 46 be opened. (Report, p. 5)

17. To the ARD's Conclusion that, "The parties are in agreement that the signatures of both voters, albeit affixed to envelopes with the other key number, are authentic." (Report, p. 3) The basis for this exception is that it is unsupported by the record. The Employer stated only that it appears that Bass signed, and thus touched, Grizzard's mail ballot envelope and vice versa. (Ex. 1, p. 3)
18. To the ARD's Conclusion that, "in *Space Mark, Inc.*, 325 NLRB 1140 (1998), the Board sanctioned a deviation from the requirements of the Casehandling Manual in a duplicate ballot situation when it permitted the second mail ballot received from a voter to be counted, rather than the ballot received first." (Report, p. 4) The basis for this exception is that it is unsupported by the cited case. In *Space Mark, Inc.*, 325 NLRB 1140 (1998), the Board did not sanction a deviation from the requirements of the Casehandling Manual in a duplicate ballot situation because the Casehandling Manual states that if two envelopes are received from the employee to whom the duplicate was mailed, only the ballot first postmarked should be counted and the Board determined that the first ballot was not "received from the employee to whom the duplicate was mailed," but rather, from his wife, and therefore, "the second ballot was the only ballot actually completed by [eligible voter]."

19. To the ARD's Conclusion that, "Although the Board's decision does not specifically set out its rationale for countermanding the guidelines of the Casehandling Manual, the Board implicitly applied a rule of reason to the unique facts of the case." (Report, p. 4) The basis for this exception is that it is unsupported by the cited case. The Board distinguished the *Space Mark, Inc.* facts from those the cited Casehandling Manual guidelines address and reached its conclusion on that basis. There is no factual support for the ARD's Conclusion that the Board "implicitly applied a rule of reason to the unique facts of the case."
20. To the ARD's Conclusion that, "in *Space Mark, Inc.*, the Board expressed no concerns about delving into the unique facts and circumstances surrounding submission of the duplicate mail ballots, which involved the actions of a voter and his non-voting spouse." (Report, p. 4) The basis for this exception is that it is unsupported by the cited case. The *Space Mark, Inc.* Board did not "delve into the unique facts and circumstances surrounding submission of the duplicate mail ballots," as the Board states, "There was no dispute regarding the facts of what had occurred with the two ballots involving [eligible voter]," and, therefore, they had no need to do so. *Id.* at 1142.
21. To the ARD's Conclusion that "Thus, when evaluating situations in which there have been deviations from specified mail ballot procedures, the Board does not invariably apply a per se rule." (Report, p. 4) The basis for this exception is that it is unsupported by the cited case and the facts. The ARD's use of the word, "Thus," implies that the following statement is based on the ARD's Conclusion in the prior sentence, which the Employer maintains is erroneous and, therefore, it incorporates herein its basis for this exception as stated in Exceptions paragraph no. 20.

22. To the ARD's Conclusion that "It further appears that the Board has found that some inquiry into the circumstances surrounding the deviation may be appropriate, so long as there is no opportunity for coercion or confusion in that process." (Report, p. 4) The basis for this exception is that it is unsupported by the facts and the cited case.
23. To the ARD's Conclusion that, "Here, I find the application of the rule of reason is appropriate, and that its application defeats the per se rule for which the Employer argues." (Report, p. 4) The basis for this exception is that it is unsupported by established Board law.
24. To the ARD's Conclusion that, "As an initial matter, I find that the limited inquiry into the facts and circumstances here, as in *Space Mark, Inc.*, creates no opportunity for confusion or coercion." (Report, p. 4) The basis for this exception is that it is unsupported by the Board's *Space Mark, Inc.* decision and other established Board law.
25. To the ARD's Conclusion that, unlike *Thompson Roofing*, where the Board construed the voter's actions to be in direct contravention of a directive to sign, rather than print, his name, here the actions of the two voters in using each other's numbered envelope was inadvertent." (Report, p. 4) The basis for this exception is that it is unsupported by the record. The record states that the instructions sent with the mail ballots required each voter to (1) mark the ballot contained in the mail ballot packet the Region mailed to that employee, (2) insert it in the blue envelope included in the mail ballot packet the Region mailed to that employee, (3) place the blue envelope into the Key Numbered outer yellow envelope the Region mailed to that employee, (4) sign the Key Numbered outer envelope included in the mail ballot packet the Region mailed to that employee, and (5) mail or hand deliver the signed Key Numbered envelope to the Regional Office. (Ex. 1, p. 4) Therefore, as in *Thompson Roofing*, the voter's actions were in direct contravention of a directive concerning the voting

process, in this case the directive to "sign the Key Numbered outer envelope included in the mail ballot packet the Region mailed to that employee." (Ex. 1, p. 4) Further, the record fails to support the statement that the two voters "us[ed] each other's numbered envelope," or that, if they did, their actions were inadvertent. (Ex. 1, pp. 1-5)

26. To the ARD's Conclusion that she does not "find persuasive the Employer's argument that Section 11130.4(e) of the Casehandling Manual, which provides that only a Board agent may touch a ballot that falls on the floor during an election serves to invalidate the ballots." (Report, pp. 4-5) The basis for this exception is that it is unsupported by established Board law.
27. To the ARD's Conclusion that, "there is no evidence that either voter handled the ballot of the other." (Report, p. 5) The basis for this exception is that it is unsupported by the record. There is some evidence that Grizzard handled the ballot of Ballot No. 6, which was assigned to Bass, as Grizzard's name is signed on the outer yellow envelope of Ballot No. 6 and there is some evidence that Bass handled the ballot of Ballot No. 46, which was assigned to Grizzard, as Bass's name is signed on the outer envelope of Ballot No. 46. (Ex. 1, p. 3)
28. To the ARD's Conclusion that "there is no contention that the ballots were cast by anyone other than the two voters who share the same mailing address." (Report, p. 5) The basis for this exception is that it is unsupported by the record. The Employer contended that it was unknown who cast Ballot Nos. 6 and 46 and that this fact "raises a reasonable doubt concerning whether only eligible voters participated in the election and whether each of those eligible voters cast only one ballot." (Ex. 1, pp. 4-5) Since Grizzard and Bass were eligible voters, the Employer's statement that there was reasonable doubt concerning whether only eligible voters participated in the election refutes the ARD's statement that there was no

contention the ballots were cast by anyone other than the "two voters who share the same mailing address." Further, the Employer stated that, "even if, as [Board Agent] Johnson speculates and the Union likely will argue, Bass and Grizzard switched their respective numbered envelopes," the Employer did not contend that, "Bass and Grizzard switched their respective numbered envelopes," but rather, merely acknowledged that others did or may so contend. (Ex. 1, p. 3)

29. To the ARD's Conclusion that she finds that, "the inadvertent transposing of the two numbered outer envelopes does not, in itself, invalidate the ballots." (Report, p. 5) The basis for this exception is that it is unsupported by the record or established Board law. The record fails to support the statement that any action taken was "inadvertent" or that the two numbered outer envelopes were "transposed." (Ex. 1, pp. 1-5) Further, established Board law requires that the ballots be invalidated. *Thompson Roofing, Inc.*, 291 NLRB 743 (1988); *Mission Industries*, 283 NLRB 1027 (1987); *Brink's Armored Car*, 278 NLRB 141 (1986); NLRB Casehandling Manual §§11322.1 and 11340.4 (e).
30. To the ARD's failure to find that the Region assigned each name on the *Excelsior* list the Employer provided to the Region a number that coincides with the voter's name. (Report, pp. 1-5)
31. To the ARD's failure to find that the Region assigned the number "6" to Bass and the number "46" to Grizzard. (Report, pp. 1-5)
32. To the ARD's failure to find that the Region mailed mail ballot packages to each of the individuals on the *Excelsior* list the Employer provided to the Region, including Bass and Grizzard. (Report, pp. 1-5)

33. To the ARD's failure to find that The Region included in each of the mail ballot packets sent to each of the individuals on the *Excelsior* list the Employer provided to the Region a pre-addressed yellow outer envelope on which the Region imprinted the intended recipient's corresponding Key Number. (Report, pp. 1-5)
34. To the ARD's failure to find that the Region included in each of the mail ballot packets sent to each of the individuals on the *Excelsior* list the Employer provided to the Region instructions directing the voters to insert their completed ballot into the pre-addressed yellow outer envelope and sign the attestation included on the envelope before mailing the envelope to the Regional Office. (Report, pp. 1-5)
35. To the ARD's failure to find that the Employer challenged the ballot in the yellow outer envelope bearing Bass's Key Number ("Ballot No. 6") because the signature it bore did not reasonably appear to be Bass's signature. (Report, pp. 1-5)
36. To the ARD's failure to find that the Employer challenged the ballot in the yellow outer envelope bearing Grizzard's Key Number ("Ballot No. 46"), because the signature it bore did not reasonably appear to be Grizzard's signature. (Report, pp. 1-5)
37. To the ARD's failure to find that the Employer specifically stated the Employer was challenging each of these ballots because the "name and number don't match." (Report, pp. 1-5)
38. To the ARD's failure to find that the Employer did not offer "returned wrong envelope" as an explanation for the Employer's "Reason for Challenge." (Report, pp. 1-5)
39. To the ARD's failure to find that the Region should sustain the Employer's challenges to Ballot No. 6 and Ballot No. 46. (Report, pp. 1-5)

40. To the ARD's failure to find that the danger that the laboratory conditions surrounding an election may be destroyed are greater in mail balloting situations than in manual elections because of the absence of direct Board supervision over the employees' voting. (Report, pp. 1-5)
41. To the ARD's failure to find that the Region cannot rely upon the normal presumption of accurate mail delivery since the challenged ballots properly were mailed to the same address. (Report, pp. 1-5)
42. To the ARD's failure to find that the Region must rely upon proper identification. (Report, pp. 1-5)
43. To the ARD's failure to find that voters in this election had just one means by which they could present proper identification to the Board – placing their signature on the yellow envelope bearing their assigned Key Number. (Report, pp. 1-5)
44. To the ARD's failure to find that neither of the contested envelopes bear the signature of the individual assigned the respective Key Number. (Report, pp. 1-5)
45. To the ARD's failure to find that the contested ballots lack the requisite safeguards to ensure the designated eligible voters cast them. (Report, pp. 1-5)
46. To the ARD's failure to find that Section 11340.4(e) of the NLRB Casehandling Manual states that "Only a Board agent will touch any ballot, even if the ballot drops to the floor." (Report, pp. 1-5)
47. To the ARD's failure to find that, while Board mail ballot procedures contemplate that postal service workers will touch mail ballot envelopes deposited into the U.S. mail for delivery to the Regional Office, they do not contemplate that anyone else will do so. (Report, pp. 1-5)

48. To the ARD's failure to find that the Board mail ballot procedures do not contemplate that individuals other than the eligible voters assigned the corresponding Key Numbers would complete and sign the ballots. (Report, pp. 1-5)
49. To the ARD's failure to find that copies of documents from Bass's and Grizzard's personnel records and other documents the Employer submitted bearing Bass's and Grizzard's signatures (Ex. 1, Exhibits 1-3) make apparent that Bass did not sign Ballot No. 6 and Grizzard did not sign Ballot No. 46. (Report, pp. 1-5)
50. To the ARD's failure to find that it appears that Bass signed, and thus touched, Grizzard's outer yellow mail ballot envelope and vice versa. (Report, pp. 1-5)
51. To the ARD's failure to find that Bass's and Grizzard's acts destroyed the laboratory conditions with respect to Ballot No. 6 and Ballot No. 46. (Report, pp. 1-5)
52. To the ARD's failure to find that, by way of analogy and example, had Bass, in a non-mail ballot election, offered Grizzard's name to the election observers, the Employer's observer properly would have challenged Bass's ballot, even though Bass's name was on the *Excelsior* list. (Report, pp. 1-5)
53. To the ARD's failure to find that, pursuant to NLRB Casehandling Manual Section 11322, identifying voters is a fundamental purpose of election observers, whose job is to ensure the individual requesting a ballot is, indeed, the individual who casts the ballot. (Report, pp. 1-5)
54. To the ARD's failure to find in the mail ballot election context that there is no election observer, but rather the Board has devised a Key Number system whereby the Region assigns each *Excelsior* list name a corresponding number and the person to whom that number has been assigned is mailed and must sign and return the ballot envelope bearing that Key Number. (Report, pp. 1-5)

55. To the ARD's failure to find that this Key Number system acts as the only means by which the Region can identify eligible voters and ensure the integrity of the ballots and the election. (Report, pp. 1-5)
56. To the ARD's failure to find that she must abide by the Key Number System as the sole safeguard to the mail ballot election system. (Report, pp. 1-5)
57. To the ARD's failure to find that established Board precedent strictly enforces its mail ballot identification measures to protect the integrity of the mail ballot system. (Report, pp. 1-5)
58. To the ARD's failure to find that the Board historically has taken seriously the importance of protecting the integrity of the mail ballot system by enforcing its mail ballot identification measures. (Report, pp. 1-5)
59. To the ARD's failure to find that, in *Thompson Roofing, Inc.*, 291 NLRB 743-44 (1988), the Board voided a ballot because the voter printed, rather than signed, his name on the ballot, explaining, "[t]he Board has adopted specific procedures for mail ballot elections to preserve the integrity of the election process. These procedures, including the pertinent instructions here that voters sign and not print their names on the ballot envelope, are necessary because mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections because of the absence of direct Board supervision over the employees' voting." (Report, pp. 1-5)
60. To the ARD's failure to find that, in *Thompson Roofing, Inc.*, 291 NLRB 743-44 (1988), the employer, who challenged the Board's decision to void the ballot, wrongly argued that "at the heart of the Act is an employee's right to vote in a representation election and that absent evidence of fraud or other types of ineligibility a voter should not be disenfranchised for the reason at issue." (Report, pp. 1-5)

61. To the ARD's failure to find that in *Thompson Roofing, Inc.*, 291 NLRB 743-44 (1988), even after acknowledging there was no evidence of fraud, nor any doubt that the ballot was, in fact, the ballot of the individual whose name was printed on the envelope, the Board sustained the challenge. (Report, pp. 1-5)
62. To the ARD's failure to find that in *Thompson Roofing, Inc.*, 291 NLRB 743-44 (1988), the Board relied on the specific instructions accompanying the mail ballot packets the Region mailed to the eligible voters, which stated that voters were to sign and not print their names on the outside of the envelope. (Report, pp. 1-5)
63. To the ARD's failure to find that in *Mission Industries*, 283 NLRB 1027 (1987), the Board sustained a challenged ballot where the identification stub of each mail ballot envelope bore the voter's signature and Key Number but, when the challenged mail ballot arrived at the Regional Office in the official envelope, the identification stub was missing. (Report, pp. 1-5)
64. To the ARD's failure to find that established Board law necessitates that she sustain the challenged ballots to protect the integrity of the mail ballot election process. (Report, pp. 1-5)
65. To the ARD's failure to find that, as in *Thompson Roofing*, 291 NLRB 743-44 (1988), Bass and Grizzard failed to follow the explicit mail ballot instructions. (Report, pp. 1-5)
66. To the ARD's failure to find that, in our case, the mail ballot election instructions required each voter to (1) mark the ballot contained in the mail ballot packet the Region mailed to that employee, (2) insert it in the blue envelope included in the mail ballot packet the Region mailed to that employee, (3) place the blue envelope into the Key Numbered outer yellow envelope the Region mailed to that employee, (4) sign the Key Numbered outer envelope

- included in the mail ballot packet the Region mailed to that employee, and (5) mail or hand deliver the signed Key Numbered envelope to the Regional Office. (Report, pp. 1-5)
67. To the ARD's failure to find that the individuals mailing Ballot No. 6 and Ballot No. 46 necessarily did not follow the mail ballot instructions. (Report, pp. 1-5)
68. To the ARD's failure to find that Ballot No. 6 and Ballot No. 46 do not bear the signatures of the eligible voters to whom the Region assigned these Key Numbers. (Report, pp. 1-5)
69. To the ARD's failure to find that, if the eligible voters to whom Ballot No. 6 and Ballot No. 46 were assigned had followed the mail ballot instructions, they would have signed the envelope bearing the Key Number the Region assigned to them. (Report, pp. 1-5)
70. To the ARD's failure to find that, as in *Thompson Roofing, Inc.*, 291 NLRB 743-44 (1988), the Region must sustain the Employer's challenge because the ballots fail to comply with the Region's mail ballot instructions. (Report, pp. 1-5)
71. To the ARD's failure to find that, while the Board in *Thompson Roofing*, 291 NLRB 743-44 (1988) refused to count a ballot cast by the correct voter because he merely printed, rather than signed, his name, in our case, there is no evidence that either Bass or Grizzard completed the correct ballot. (Report, pp. 1-5)
72. To the ARD's failure to find that Ballot No. 6 and Ballot No. 46 even more profoundly failed to comply with the Board's established mail ballot instructions than the challenged ballot in *Thompson Roofing* 291 NLRB 743-44 (1988) and, therefore, she must sustain the Employer's challenge to both of these ballots. (Report, pp. 1-5)
73. To the ARD's failure to find that, as in *Mission Industries*, 283 NLRB 1027 (1987), permitting inquiry into the source of Ballot No. 6 and Ballot No. 46, which lack the signature of the eligible voters to whom the Region assigned these Key Numbers, raises a reasonable

doubt concerning whether only eligible voters participated in the election and whether each of those eligible voters cast only one ballot. (Report, pp. 1-5)

74. To the ARD's failure to find that, as in *Mission Industries*, 283 NLRB 1027 (1987), permitting inquiry into the source of Ballot No. 6 and Ballot No. 46 would greatly increase the potential for confusion and coercion and would be unlikely to dispel the reasonable doubt concerning the validity of these ballots. (Report, pp. 1-5)

75. To the ARD's failure to sustain both of the Employer's ballot challenges because established Board law requires the Board to enforce the mail ballot election procedure strictly to protect the integrity of the mail ballot election system. (Report, pp. 1-5)

Contemporaneous with the filing of these Exceptions, the Employer files a Brief in Support of Exceptions To Report and Recommendations On Challenged Ballots. For the reasons set out herein and in its Brief, the Employer requests the ARD's Report be reversed in each particular as specified above and that findings be entered in accordance with the Employer's Exceptions.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of December, 2011, a true and correct copy of the foregoing document was served via email to the following parties of record and the Acting

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