

1 BRUCE A. HARLAND, Bar No. 230477
MANUEL A. BOIGUES, Bar No. 248990
2 YURI G. GOTTESMAN, Bar No. 264924
WEINBERG, ROGER & ROSENFELD
3 A Professional Corporation
1001 Marina Village Parkway, Suite 200
4 Alameda, California 94501-1091
Telephone 510.337.1001
5 Fax 510.337.1023

6 Attorneys for Charging Party
SEIU, United Healthcare Workers – West
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8 UNITED STATES OF AMERICA
9 NATIONAL LABOR RELATIONS BOARD
10 REGION 32
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12) Case No. 32-RC-5617
13	CHILDREN’S HOSPITAL AND RESEARCH)
14	CENTER OF OAKLAND, INC., dba CHILDREN’S) SEIU, UNITED HEALTHCARE
15	HOSPITAL OF OAKLAND,) WORKERS – WEST’S
16	Employer,) EXCEPTIONS TO THE
17	and) ADMINISTRATIVE LAW
18	NATIONAL UNION OF HEALTHCARE) JUDGE’S REPORT AND
19	WORKERS,) RECOMMENDATIONS
20	Petitioner,)
21	and)
22	SERVICE EMPLOYEES INTERNATIONAL UNION,)
	UNITED HEALTHCARE WORKERS – WEST,)
	Intervenor.)

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1 SEIU, United Healthcare Workers – West (the “Union” or “UHW”) takes the following
 2 exceptions to the Administrative Law Judge’s Report and Recommendations issued on
 3 December 28, 2011 in the above-referenced case.
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Number	Reference to Report	Exception Taken To and Basis:
1	Page 7	<p>The ALJ’s finding and conclusion that “there was no direct view of the entrance to the OPC [Outpatient Clinic] where the polling was located from the bench by the hospital’s main entrance or from the smoking area frequented by Ms. Roe.”</p> <p>The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence, including testimony from Petitioner’s own organizer, that the entrance to the OPC building was clearly visible from both the bench and Ms. Roe’s smoking area. (See Tr. 169 [testimony of Felipe Garcia]; 237 [testimony of Jasmyn Carpenter] 486 & 487 [testimony of Fay Roe that one could see whether employees walking on the sidewalk made a right to enter the OPC Building.]; 490 [testimony of Fay Roe that entrance to OPC was visible from the smoking area].)</p>
2	Page 7	<p>The ALJ’s finding and conclusion that “[t]here were three routes that voters could take to get to the polling in the basement of the OPC on August 17 from the main hospital.”</p> <p>The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence that there were, at best, only two routes from the main hospital to the OPC, i.e., the pedestrian bridge and through the crosswalk after exiting the main entrance of the hospital.</p> <p>The Union further takes exception to this finding and conclusion on the basis that evidence of other routes was irrelevant to whether Petitioner engaged in unlawful surveillance of eligible voters who accessed the OPC Building through the entrance that was visible to Petitioner’s organizers.</p>
3	Page 9	<p>The ALJ’s finding and conclusion that the “conduct of Petitioner’s staffers took place sufficiently removed from the polling area.”</p> <p>The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence that during voting times Petitioner’s organizers stationed themselves at a bench from which they had a clear view of whether workers who exited the main hospital and used the crosswalk to access the</p>

1			sidewalk along the OPC Building made a right turn in order to enter the OPC Building, where the polling occurred. (See above Exception No. 1.)
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3	4	Page 9	The ALJ's finding and conclusion that "it was virtually impossible to prove that the eligible voters had to pass by the Petitioner's staff near the main hospital in order to vote or to even identify who the eligible voters were." (See above Exception No. 1.)
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6	5	Page 9	The ALJ's reliance upon – as material and relevant – on the fact that "there were several other destinations for someone walking past the Petitioner's staff."
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8			The Union submits that this fact is irrelevant because the Petitioner's organizer admitted that they had a clear view to whether employees made a right turn to enter the OPC Building. (See above Exception No. 1.)
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11	6	Page 9	The ALJ's finding and conclusion that "[n]o improper surveillance by Petitioner's staff at the polling areas was proven in this case." (See above Exception No. 1.)
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13	7	Page 9	The ALJ's finding and conclusion that "there is no evidence that any of the Employer's managers were actually observing anyone going into or out of the polling area."
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15			The Union submits that the finding was in error because it raises a substantial question of law or policy for which there is no officially reported Board precedent. Under Board precedent it is unlawful conduct for an employer representative to maintain a continued presence in an area where employees had to pass them through to vote and where the managers observed employees waiting in line to vote. But, contrary to the ALJ's finding and conclusion, Board precedent does not require that an objecting party must also present evidence that managers "were actually observing anyone going into or out of the polling area."
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21	8	Page 9	The ALJ's finding and conclusion that "manager meetings took place outside the polling session periods."
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23			The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence in the form of schedules showing that management meetings were held in Conference Room A, the OPC Auditorium, and Conference Room D, both during polling and non polling times. (See Intervenor Exhs. 3 and 4).
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26	9	Page 9	The ALJ's finding and conclusion that the rooms where the manager meetings were held "were located too far away from the voting area."
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28			The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to

1 2 3		the overwhelming evidence that the management meetings were in conference rooms located down the hallway from the polling site in the basement of the OPC Building. (See Intervenor Exhs. 3 and 4; see also Tr. Petitioner Exh. 4, photos 1 and 2; see also Tr. 321 and 338.)
4 5 6 7 8 9 10 11 12 13	10 Page 12	<p>The ALJ's finding and conclusion that Petitioner's offer regarding union dues "was not conditioned or limited only to those eligible voters who support NUHW."</p> <p>The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence showing that Petitioner's organizer, Faye Roe, was unable to explain why Petitioner promised to waive the union initiation dues for workers at Children's Hospital if they voted to join Petitioner. (Tr. 508.)</p> <p>The Union also submits that the finding was in error because it raises a substantial question of law or policy for which there is no officially reported Board precedent. Specifically, there is no Board precedent addressing whether it is unlawful for a labor organization that is seeking to raid the members of an incumbent union to promise to waive the union initiation dues of the entire bargaining unit in exchange for that bargaining unit's vote to decertify the incumbent union.</p>
14 15 16 17 18 19 20	11 Page 12	<p>The ALJ's finding that "neither the language in the flyer (P. Exh. 1) nor the statements made by...Ms. Roe...constitute objectionable conduct."</p> <p>The Union submits that the finding was in error because it raises a substantial question of law or policy for which there is no officially reported Board precedent. Specifically, there is no Board precedent addressing whether it is unlawful for a labor organization that is seeking to raid the members of an incumbent union to promise to waive the union initiation dues of the entire bargaining unit in exchange for that bargaining unit's vote to decertify the incumbent union.</p>
21 22 23 24 25 26 27 28	12 Page 12, fn. 10	<p>The ALJ's finding and conclusion that there is not sufficient evidence that Petitioner's organizers took photographs of eligible voters from the bench near the main hospital entrance."</p> <p>The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence showing that Petitioner's organizers took pictures of workers who were crossing the street on their way toward the OPC Building entrance, (see Tr. 278-282, 310, 313, 315, 349, 352, 353-54, and 358), and Petitioner's organizers could see if those workers made a right turn to enter the OPC Building where the polling site was located. (See above Exception No. 1.)</p>

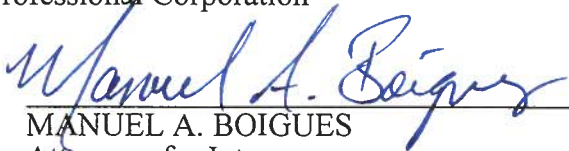
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2	13	Page 12, fn. 10	The ALJ's finding and conclusion that "there is no way of knowing whether people on the OPC sidewalk were eligible voters or not." (See above Exception No 1.)
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4	14	Page 12, fn. 10	The ALJ's finding and conclusion that "there were at least 3 ways to get to the polling room" and the ALJ's reliance upon this fact as material and relevant. (See above Exception No. 2.)
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6	15	Page 12, fn. 10	The ALJ's reliance upon – as material and relevant – the fact that "there were several other reasons for someone to be on the OPC sidewalk other than to go vote." (See above Exception No. 1.)
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9	16	Page 12, fn. 10	The ALJ's reliance upon – as material and relevant – the fact that the bench area from where Petitioner's organizers took photographs was not near the polling area." (See above Exception No. 1.)
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11	17	Page 13	The ALJ's reliance upon – as material and relevant – the fact that "[l]ater on August 17, Mr. Garcia and other Intervenor representatives, including Mr. Davere Godfrey, were given free reign of the hospital, and were allowed to move freely without any escort as they accessed the upper nursing floors in the presence of Employer managers and came in and out of the main hospital through the day."
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15			The Union submits that this fact is irrelevant to whether it was unlawful for the Employer to impose its previously abandoned security escort policy only upon Intervenor's Representatives, and not on Petitioner's organizers, upon their arrival at the facility on election day. (See Tr. 164, 170, 214, 219, 325-27, and 503-04.)
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19	18	Page 13	The ALJ's failure to give credence to the testimony of Felipe Garcia that "Petitioner's organizer, Pat Alvarez, was allowed entrance into the Employer's facility without an escort that same day."
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22			The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence that was not rebutted by Petitioner or the Employer. (Tr. 170.)
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24	19	Page 14	The ALJ's finding and conclusion that the "Employer's employee labor relations manager, Brenda Husband, credibly testified that the unchanged escort policy between Employer and Intervenor since the spring of 2009 through August 17 involved the ambassador or a security official normally contacting Ms. Husband and letting her know the identity of the Intervenor's representative seeking access to some part of the facility like the cafeteria."
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28			The Union submits that the finding and conclusion is clearly

1		erroneous and prejudicial to SEIU-UHW, as it is contrary to the overwhelming evidence by individuals with first hand knowledge that the Employer had not enforced the security escort policy for several months. (Tr. 214, 219, and 326-27.)
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4	20	Page 14
5		The ALJ's finding and conclusion that Intervenor "at times. violated the Employer's rules."
6		The Union submits that the finding and conclusion is clearly erroneous and prejudicial to SEIU-UHW, as there is no evidence in the record to support it.
7	21	Page 14
8		The ALJ's finding and conclusion that "[t]he election day escort policy applied equally to Intervenor and Petitioner." (See above Exception No. 17.)
9	22	Page 14
10		The ALJ's finding and conclusion that the documents requested in Intervenor's subpoena duces tecum to Petitioner "are now irrelevant as moot."
11	23	Page 14
12		The ALJ's finding that Intervenor's subpoena duces tecum to Petitioner "must remain quashed...because Intervenor failed to allow [Petitioner] a reasonable time to comply."
13	24	Page 15
14		The ALJ's reliance on Section 102.31(b) of the NLRB's Rules and Regulations and <i>Brink's, Inc.</i> , 281 NLRB 468 (1986) as a basis to deny Intervenor's request for reconsideration of the decision to quash the subpoena duces tecum.
15	25	Page 15
16		The ALJ's recommended language for the Notice of Second Election states "National United Healthcare Workers" as opposed to the correct name for Petitioner, i.e., "National Union of Healthcare Workers."
17	26	Page 15, fn. 15
18		The ALJ's failure to recommend Intervenor's request for an extraordinary remedy that, in light of the vote margin, Petitioner be required to mail a copy of the Second Notice of Election to each eligible voter.
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21 Dated: January 11, 2012

22 WEINBERG, ROGER & ROSENFELD
23 A Professional Corporation

24 By:



25 MANUEL A. BOIGUES
26 Attorneys for Intervenor
27 SEIU, United Healthcare Workers – West

28 120629/650864

1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I am employed in
3 the County of Alameda, State of California, in the office of a member of the bar of this Court, at
4 whose direction the service was made. I am over the age of eighteen years and not a party to the
5 within action.

6 On January 11, 2012, I served the following documents in the manner described below:

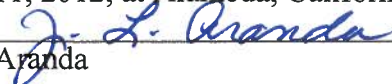
7 **SEIU, UNITED HEALTHCARE WORKERS – WEST’S EXCEPTIONS TO THE**
8 **ADMINISTRATIVE LAW JUDGE’S REPORT AND RECOMMENDATIONS**

9 BY MAIL I placed a true copy of each document listed herein in a sealed envelope,
10 addressed as indicated herein, and caused each such envelope, with postage thereon fully
11 prepaid, to be placed in the United States mail at Alameda, California. I am readily
12 familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of
correspondence for mailing, said practice being that in the ordinary course of business,
mail is deposited in the United States Postal Service the same day as it is placed for
collection.

13 BY FACSIMILE I am personally and readily familiar with the business practice of
14 Weinberg, Roger & Rosenfeld for collection and processing of document(s) to be
transmitted by facsimile and I caused such document(s) on this date to be transmitted by
facsimile to the offices of addressee(s) at the numbers listed below.

15 Ms. Bonnie Glatzer 16 Nixon Peabody 17 1 Embarcadero Center, 18th Floor San Francisco, CA 94111	(866) 216-2516	(415) 984-8333
18 Latika Malkani 19 Siegel, LeWitter & Malkani 20 1939 Harrison Street, Suite 307 Oakland, CA 94612	(510) 452-5004	(510) 452-5000
21 Gary Connaughton 22 National Labor Relations Board, Region 32 1301 Clay Street, Room 300N Oakland, CA 94612-5211	(510) 637-3315	(510) 637-3256
23 William Baudler, Regional Director 24 National Labor Relations Board, Region 32 1301 Clay Street, Room 300N Oakland, CA 94612-5211	(510) 637-3315	(510) 637-3257

25 I declare under penalty of perjury under the laws of the United States of America that the
26 foregoing is true and correct. Executed on January 11, 2012, at Alameda, California.

27 
J. L. Aranda