



Company asserts in the alternative that the Union's selection of Pabon as an observer requires the Board to sustain the Company's objection and set aside the election because Pabon has the same duties and responsibilities as Whiting and would therefore also be a supervisor.

2. (Rep. p. 29) The Hearing Officer erred in finding that all of the mandatory meetings and safety meetings occurred during the critical period.

3. (Rep. p. 38) The Hearing Officer erred as a matter of law in finding that Bryant's threat of plant closure tended to interfere with employee free choice.

4. (Rep. p. 38) The Hearing Officer erred in finding that other factors weigh in favor of finding that Bryant's threat affected the outcome of the election.

5. (Rep. p. 39) The Hearing Officer erred in finding that Bryant's remark was severe and likely to generate fear among employees.

6. (Rep. p. 39 ) The Hearing Officer erred in finding that the Employer stated that having a union would result in the loss of customers and jobs.

7. (Rep. p. 40) The Hearing Officer erred as a matter of law by not following the precedent of *Somerset Welding & Steel, Inc.* 314 NLRB 829 (1994).

8. (Rep. p. 40) The Hearing Officer erred in finding that Wasko, McIlvaine and Schwarz threatened employees.

9. (Rep. p. 43) The Hearing Officer erred in crediting the testimony of employee witnesses that the employer told employees that if the Union won, Union officials would decide that employees had to strike and employees would have no input. In addition, the Hearing Officer erred in finding that the PowerPoint and March 13 scripted speech reinforced this testimony.

10. (Rep. p. 43) The Hearing Officer erred in finding that Schwarz testified. Schwarz did not testify.

11. (Rep. pp. 43-44) The Hearing Officer erred as a matter of law in relying on *VJNH*, 328 NLRB 87 (1999) to find that the Employer's conduct was unlawful.

12. (Rep. p. 44) The Hearing Officer erred in finding that the Company told employees that if the Union won, Union officials would require them to strike and they would not have input into the decision to strike.

13. (Rep. p. 48) The Hearing Officer erred in crediting the testimony of witnesses that Stewart threatened employees with discharge if the Union won the election.

14. (Rep. p. 49) The Hearing Officer erred in finding and recommending that there is merit to Union objections 5, 7 and 11, that the election be set aside, and that a second election be directed.

15. The Board lacks a quorum to act on the Hearing Officer's Report on Challenges and Objections.

Based upon the above exceptions, MaxPak respectfully objects to the Hearing Officer's recommendation that the Board sustain Union objections 5, 7 and 11 and to set aside the election and direct a second election, if the revised tally shows that a majority of votes were cast against the Union.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing was electronically filed with the National Labor Relations Board Region 12 on this the 29<sup>th</sup> day of May, 2012 and served on the parties listed below by e-mail and by Federal Express on the 29th day of May, 2012:

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