UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

CARE ONE AT MADISON AVENUE, LLC **D/B/A CARE ONE AT MADISON AVENUE,** Employer, And	Case No. 22-RC-072946
1199 SEIU, UNITED HEALTHCARE WORKERS EAST, Petitioner.	

EMPLOYER'S EXCEPTIONS TO THE HEARING OFFICER'S REPORT ON OBJECTIONS

Comes now the Employer, Care One at Madison Avenue, LLC d/b/a Care One at Madison Avenue ("Employer") and hereby files the following Exceptions to Hearing Officer Joseph Calafut's June 18, 2012 Report on Objections ("Report"). The rationale and legal precedent supporting the Employer's Exceptions are set forth in the accompanying Brief.

The Employer excepts to the Report's findings, omissions, and recommendations as follows:

1. The Hearing Officer's finding that the Employer did not provide an explanation for not calling Frank as a witness to refute the assertion of Walsh and Elliot that Frank threatened Walsh that he was going to "kick his ass" (Report at 7).

2. The Hearing Officer's finding that "record evidence demonstrates that Frank...frequently engaged in campaign activities on behalf of the Employer" (Report at 7).

3. The Hearing Officer's finding that "the testimony of Walsh and Elliot provides a more detailed recollection of the details concerning Frank's alleged threat to Walsh" than the

testimony of Sara Flaumenhaft, the Employer's Director of Recreation, "whose recollection lacked the same degree of specificity" (Report at 7).

4. The Hearing Officer's finding that he should credit the testimony of Walsh and Elliot over that of Flaumenhaft with respect to the allegation that Frank threatened Walsh that he was going to "kick his ass" (Report at 7).

5. The Hearing Officer's failure to find that Yvania Aristil, the Union observer for both the morning and afternoon voting sessions, was not standing with Walsh and Elliot when Frank had the exchange with Walsh and Elliot that is the subject of this objection (Report at 7-8).

6. The Hearing Officer's finding that Frank threatened Walsh that he was going to "kick his ass" or words to that effect (Report at 7-8).

7. The Hearing Officer's conclusion that "[i]n light of the closeness of the election results, and the credited evidence of the threat made by an Employer agent in the presence of an eligible voter", objectionable Employer conduct affected the outcome of the election and Objection No. 9 should be sustained (Report at 8).

8. The Hearing Officer's finding that Arezzo testified that "Administrators were instructed to discuss the changes 'on all shifts with all employees'" (Report at 12).

9. The Hearing Officer's conclusion that "the Respondent unlawfully withheld implementation of the improved health insurance benefits for unit employees voting in the election while at the same time lawfully implementing the improved benefits for non-unit employees" (Report at 12-13).

10. The Hearing Officer's otherwise correct conclusion that benefits were lawfully implemented for non-unit employees insofar as the Hearing Officer further stated that those

non-unit employees included "employees employed at other Employer facilities" the Report correctly defined the "Employer" as Care One at Madison Avenue LLC d/b/a Care One at Madison Avenue, and there is not any record evidence (nor could there be) that this Employer employs anyone at any other facility (Report at 12-13).

11. The Hearing Officer's conclusion that during the critical period an employer that withholds from voters benefits conferred upon non-voting unit employees is required to (1) inform[ ] [voters] that the sole purpose of the postponement is to avoid the appearance of influence with respect to the election and (2) provide[ ] assurances [to voters] that the benefits would be applied to them retroactively after the campaign regardless of the results" (Report at 13).

12. The Hearing Officer's (apparent) finding that the benefits withheld from the Employer's voting unit were conferred "system-wide" (as opposed to conferred at all of the facilities under the supervision of Director of Regional Operations Brian Karstetter except for the voting unit at the Madison Avenue site) (Report at 13).

13. The Hearing Officer's conclusion that during the critical period Arezzo failed to satisfy an obligation to assure unit employees that they would be given the benefit after the election (Report at 13).

14. The Hearing Officer's finding that "Arezzo's comments essentially placed the blame on the Petitioner for the fact that the benefits were being withheld from unit employees, though they were simultaneously being provided to all other company employees" (Report at 13).

15. The Hearing Officer's conclusion that the propositions to which exception is taken in Exception Nos. 11-14 above are supported by the Board decisions cited at page 13 of the Report.

16. The Hearing Officer's recommendation that the Board sustain Objection No. 16 "[b]ased on the foregoing, noting particularly the closeness of the election results, the credited evidence of the posting of the health insurance changes, its widespread distribution to non-unit employees at the facility, and the lack of assurances given to unit employees of their ultimate entitlement to the reduced insurance premiums" and his related conclusion that the conduct in issue "affect[ed] the results of the election" (Report at 13).

17. The Hearing Officer's finding that "[Ricky] Elliot fully corroborated Walsh's testimony" concerning the exchange involving Keith that is the subject of Exception No. 19 (Report at 14).

18. The Hearing Officer's finding that "[Asha] George's testimony was contradictory regarding whether she overheard the entire conversation" involving Keith that is the subject of Exception No. 19 (Report at 14).

19. The Hearing Officer's finding that he "cannot credit [George's] testimony" concerning the exchange involving Keith that is the subject of Exception No. 19 (Report at 14).

20. The Hearing Officer's finding that he should "credit the testimony of Walsh and Elliot that the Employer indicated to a unit employee that the Union would never get a contract with the Employer at its Madison Avenue facility if it prevailed in the election" (Report at 15).

21. The Hearing Officer's conclusion that "[i]n light of the closeness of the election results, and based on the foregoing", Objection No. 19 should be sustained because the conduct in issue "affect[ed] the results of the election" (Report at 15).

22. The Hearing Officer's conclusion and recommendation that the Board sustain Objection Nos. 9, 16 and 19, set aside the election, and conduct a rerun election (Report at 15).

23. The Hearing Officer's conclusion that a rerun election should be held if Objections 9 and 19 are sustained.

Respectfully submitted,

s/Jedd Mendelson_____

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Dated: July 13, 2012

CERTIFICATE OF SERVICE

The undersigned certifies that on the 13th day of July 2012, the foregoing Employer's Exceptions to Report of Hearing Officer was served on:

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s/Jedd Mendelson_____
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