

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Eighteenth Region

GENESIS ATTACHMENTS, LLC

Employer

and

UNITED STEELWORKERS OF AMERICA,
AFL-CIO

Petitioner

Case 18-RC-084559

**HEARING OFFICER'S REPORT AND
RECOMMENDATION TO THE BOARD ON OBJECTIONS
TO CONDUCT AFFECTING THE RESULTS OF AN ELECTION**

Pursuant to a petition filed on July 5, 2012,¹ by the United Steelworkers of America, AFL-CIO (Petitioner or Union) and a Stipulated Election Agreement executed by the parties and approved by the Regional Director on July 16, an election by secret ballot was conducted on August 15 among certain employees of Genesis Attachments, LLC (Employer).² The results of the

¹ Unless otherwise indicated, all dates are in 2012.

² The appropriate collective bargaining unit agreed to by the parties and approved by the Regional Director is defined as:

Employees Eligible to Vote. All full-time and regular part-time production and maintenance employees, including machinists, refurbish technicians, welders, assemblers, machine operators, warehouse/shipping assistants, factory helpers, machine maintenance mechanics, painters, and building/grounds maintenance employees who work at the Employer's facility located at 1000 Genesis Drive, Superior, WI.

Employees Not Eligible to Vote. All office clericals, sales employees, managers, and guards and supervisors as defined in the Act, as amended.

Others Permitted to Vote. At this time, no decision has been made regarding whether Excavator Shop Leadmen or Technical Field Service Representatives are included, or excluded from, the bargaining unit, and individuals in those classifications may vote subject to challenge. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

election are set forth in the Tally of Ballots, which was served on the parties at the conclusion of the election.³

On August 20, Petitioner filed timely objections to conduct affecting the results of the election, a copy of which was served on the Employer. Thereafter, on August 28, the Regional Director for the Eighteenth Region issued a Report on Objections to Conduct Affecting the Results of the Election, Order Directing Hearing, and Notice of Hearing, in which he ordered that a hearing be conducted for the purpose of receiving evidence to resolve the issues raised by the objections to the election. In his August 28 report and order, the Regional Director directed the hearing officer to prepare and serve on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues.

Accordingly, on September 6, a hearing was held in Duluth, Minnesota, before the undersigned hearing officer. The Employer and Petitioner were represented at the hearing and had the full opportunity to call, examine, and cross-examine witnesses, and to introduce evidence regarding the issues.

Upon the entire record in this case,⁴ and from my careful observation of the demeanor of

³ The Tally of Ballots shows:

Approximate number of eligible voters	84
Number of void ballots	0
Number of votes cast for labor organization.....	31
Number of votes cast against participating labor organization	49
Number of valid votes counted	80
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots.....	81

⁴ Permission was granted by the undersigned for the filing of briefs. The Employer and Petitioner subsequently filed briefs, which I have duly considered in formulating my recommendations.

the witness while testifying under oath,⁵ I recommend overruling the objections in their entirety and issuing an appropriate Certification of Results of Election.

This report will first briefly set forth the objections and the legal standards the Board uses to determine whether conduct is objectionable. Then, I will describe the Employer's operation and briefly introduce Samuel Scott, the only witness in this case. Finally, I will apply the legal standards to the credible record evidence adduced at the hearing with respect to each of Petitioner's three objections.

THE OBJECTIONS

On August 20, Petitioner filed three objections to conduct affecting the results of the election. Petitioner's first objection alleges that the Employer allowed two employees to conduct antiunion meetings with other employees during times normally scheduled for production. The second objection alleges that the Employer harassed and intimidated an employee who was a known Union supporter by instructing the employee that the employee could not talk to any co-workers; by watching the employee, including walking side by side with the employee; and by sending the employee on errands away from the work site on the days immediately preceding the election. The third objection alleges that the Employer met with employees on August 14, 2012, for the purpose of asking them about their concerns.

The Board does not lightly set aside representation elections. "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desire of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v.*

⁵ In the resolution of all issues where credibility of oral testimony became a factor, I have carefully considered the demeanor and the conduct of the witness, as well as his candor, objectivity, bias or lack thereof, and have carefully weighed the witness' understanding of the matter to which he has testified, the plausibility, consistency and probability of his testimony, as well as whether parts of the testimony should be accepted when other parts are rejected.

Hood Furniture Mfg. Co., 941 F.2d 325, 328 (5th Cir. 1991). The Board’s standard for evaluating objectionable conduct by a party or party agent is whether such conduct reasonably tends to interfere with the employees’ exercise of their free choice in an election; the test is objective.

Cambridge Tool & Mfg. Co., Inc., 316 NLRB 716 (1995). Third-party conduct is viewed under a heightened standard requiring that objectionable conduct be “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Mastec Direct TV*, 356 NLRB No. 110, slip op. at 3 (2011), citing *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). The burden of proving that a Board-supervised election should be set aside is on the objecting party. *Waste Management of Northern Louisiana, Inc.*, 316 NLRB 1389 (1998).

FINDINGS OF FACT AND ANALYSIS

The Employer’s Operation

According to the Stipulated Election Agreement, the Employer is a Delaware corporation with a facility in Superior, Wisconsin, where it is engaged in the business of manufacturing mobile shears.⁶ The record evidence demonstrates that the Employer’s facility has two levels: the upper level, which houses the offices of the engineers, human resources, accounting, and managers; and the lower level, which includes areas for production, sales, and purchasing. There is a conference room and an employee lunchroom located on the lower level. It is not clear how many total employees are employed by the Employer, but approximately 84 production and maintenance employees were eligible to vote in the election.

The Witness

The only witness to testify in this proceeding was Samuel Scott, who was called by Petitioner. Scott describes himself as the lead union organizer at the Superior facility. He has

⁶ The Employer’s facility in Superior, Wisconsin is the only facility at issue in this matter.

been employed by the Employer for about eight years as a maintenance employee. In this position, Scott is responsible for cleaning and maintaining both the building and the grounds. His duties include picking up garbage outside, sweeping the sidewalk, cleaning the bathrooms, replacing burned-out lights, cleaning filters in the wash bay, and checking first-aid kits. Scott works from 7:00 a.m. to 3:00 p.m.

Objection No. 1: The Employer allowed two employees to conduct antiunion meetings with other employees during times normally scheduled for production

Facts: Scott testified that at about 11:45 a.m. on Friday, July 20, he was walking to the supply closet to retrieve paper towels when he observed employees walking into the downstairs conference room. Scott saw a total of 15 or 20 employees go into the conference room, including the first-shift machinists, assemblers, rework employees, and one laborer. Scott later saw the employees leave the conference room at around 12:15 p.m. He testified that this meeting started before the lunch period and ran into the lunch period. The door to the conference room was closed for the duration of the time the employees were in the room. Afterward, other employees told Scott that lead machinist Shawn Gerulli led the meeting and talked about why the employees should not vote for the Union. It is undisputed that Gerulli is a member of the bargaining unit eligible to vote in the election.

On Monday, July 23, lead welder Mike Johnson told Scott that he was going to have a meeting because Scott Gerulli had one the previous Friday. At about 1:45 p.m. that day, Scott observed another meeting taking place, this time in the downstairs lunchroom. Through the window in the door he saw about 30 to 40 employees and observed what appeared to be an argument between some of the employees. Scott testified that the employees he saw at the meeting were the first-shift welders and the second-shift machinists; he did not see any supervisors in the

meeting. The meeting ended at around 2:15 or 2:20 p.m. Scott testified that this occurred around a shift change. At shift change, the employees who are starting their shifts arrive 10 or 15 minutes early to get ready to start work at 2:00 p.m.; other employees are changing clothes after getting off work at 2:00 p.m. Employees who attended the meeting told Scott that lead welder Mike Johnson led the meeting and spoke about why the employees should not vote for the Union.⁷

Scott did not personally attend the July 20 or July 23 meetings, nor did he personally hear what was said at either meeting. Scott testified that the Employer did not offer him the chance to hold a meeting, but that he did not ask any supervisors or managers for permission to hold a meeting.

Analysis and Recommendation: Petitioner's objection appears to rest on three alternative theories as to why the conduct is objectionable: first, that the Employer knowingly allowed the antiunion meetings to take place on work time; second, that Gerulli and Johnson were agents of the Employer and made objectionable statements in the meetings; and third, that Gerulli and Johnson engaged in objectionable conduct as third-party actors. All of these theories fail in light of the record evidence, and I therefore recommend that this objection be overruled.

With respect to the Union's first theory, Petitioner failed to adduce any record evidence to show that the Employer knowingly allowed the July 20 and July 23 meetings to take place. Although Scott assumes that the Employer gave Gerulli and Johnson permission to hold the meetings, the record lacks any non-hearsay evidence to substantiate his assumption. There is also no evidence that the Employer refused any employee's request to hold an employee meeting in support of the Union.

⁷ Scott testified that an employee who was present at the July 23 meeting took notes at the meeting and gave him the notes afterward. Petitioner offered these notes into evidence, but the Employer objected on the ground that the notes were hearsay. I sustained the objection and put the notes in the rejected exhibit file. I did not rely on the notes in reaching my decision, as they lacked foundation and were clearly hearsay.

Petitioner's second theory that Gerulli and Johnson made objectionable statements as agents of the Employer also fails. Where a party representative or agent engages in pre-election campaign conduct, that conduct will warrant overturning an election where the objecting party can show that the conduct has a reasonable tendency to interfere with employee free choice. See, e.g., *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716 (1995); *Randell Warehouse of Arizona, Inc.*, 347 NLRB 591, 597 (2006). The burden of proving agency status is on the party asserting it. *Mastec Direct TV*, 356 NLRB No. 110, slip op. at 3 (2011), citing *Cornell Forge*, 339 NLRB 733, 733 (2003).

Here, the record evidence adduced by Petitioner does not establish that Gerulli and Johnson are agents of the Employer. The Board applies common law principles when examining whether an employee is an agent of the employer. For an employee to be an agent by virtue of apparent authority, there must be a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. See generally *Great American Products*, 312 NLRB 962 (1993); *Dentech Corp.*, 294 NLRB 924 (1989); *Service Employees Local 87 (West Bay)*, 291 NLRB 82 (1988).

Although it is undisputed that Gerulli and Johnson are both leadmen, this fact alone does not establish that they are agents of the Employer. The Board has found leadmen to be agents of an employer where the employer puts them forward as the "authoritative communicator on behalf of management." *Southern Bag Corp., Ltd.*, 315 NLRB 725, 725 (1994)(finding that a leadman is an agent when he stops production without the permission of the employer in order to conduct meetings with employees on production issues); see also *Corner Furniture Discount Center*, 339 NLRB 1122 (2003); *Minnesota Boxed Meat*, 282 NLRB 1208 (1987).

Here, the record establishes that the leadmen hold “stand-up meetings” with employees at shift changes and are unit employees who are eligible to vote. While Scott believes that Gerulli and Johnson received management permission to hold the meetings, there is no non-hearsay testimony to support Scott’s belief or to show that the Employer otherwise acted in a way to suggest that Gerulli and Johnson possessed apparent authority to speak on the Employer’s behalf. In short, there is insufficient evidence to establish that Gerulli and Johnson are the Employer’s agents.

Finally, the record evidence is not sufficient to show that Gerulli’s and Johnson’s conduct is objectionable under the elevated third-party standard. Under that standard, election results will be overturned only if the objecting party shows that the conduct was “so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Mastec Direct TV*, 356 NLRB No. 110, slip op. at 3 (2011), citing *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984); see also *Lamar Advertising of Janesville*, 340 NLRB 979, 980 (2003); *Cal-West Periodicals*, 330 NLRB 599, 600 (2000). The record evidence fails to establish the substance of any statements made in either the July 20 or July 23 meeting. With respect to the July 20 meeting, Petitioner’s non-hearsay testimony proves only that a meeting occurred at around lunch time in the conference room, and that 15 or 20 employees were present. As to the July 23 meeting, the non-hearsay evidence establishes that a meeting occurred in the downstairs lunchroom, at around the time of the afternoon shift change, and that 30 or 40 employees were present.

Scott was not present at either meeting and, while he spoke to employees who were present and even obtained notes from one such employee, Scott’s testimony reflecting the employees’ account of the meeting is hearsay. Because there is no admissible record evidence to establish that Gerulli or Johnson made any objectionable comments in either the July 20 or the July 23 meeting,

there is certainly insufficient evidence to prove that their conduct was so aggravated that it created a general atmosphere of fear and reprisal. For the foregoing reasons, I recommend that this objection be overruled.

Objection No. 2: The Employer harassed and intimidated an employee who was a known union supporter by instructing the employee that the employee could not talk to any co-workers, by watching the employee including walking side by side with the employee, and by sending the employee on errands away from the work site on the days immediately preceding the election.

Facts: Samuel Scott testified regarding this objection. It is undisputed that the Employer's supervisors were aware of Scott's support for the Union and his involvement in the Union's organizing efforts. Scott testified that he was involved in the campaign for two years and during that time he frequently spoke to supervisors regarding his support for the Union. He also talked to his fellow employees about the Union and asked them to sign authorization cards at the Employer's facility. Additionally, the record established that Scott previously filed National Labor Relations Board charges alleging that the Employer retaliated against him for his union activity.

According to Scott, on around July 2, his supervisor, Scott Woerle, gave him an anonymous letter stating that even though he had a different supervisor, things had not changed and he still talked too much. Scott remembers that Woerle said he "didn't want him talking to nobody no more." Scott testified that employees often talk to other employees while working and during breaks.

Scott also testified that in August, just before he went on vacation, he was off the clock and was talking to another employee about the Union and about his wife's cooking. It is not clear from the record whether at the time of this incident Scott was on break or had clocked out for the day. Scott recalled that supervisor Uremovich approached him and told him not to talk to people and said that he had to leave. Scott protested that others were standing there talking. Uremovich

replied that he did not care and that Scott had to leave because he was slowing down other employees.

Scott testified generally that, after the petition was filed on July 5, the supervisors watched him more closely than usual: that they were standing next to him more often and following him around. According to Scott, his own supervisor, Scott Woerle, as well as supervisors Jim Abrahamson and Matt Uremovich, watched him and checked on his work. As an example, Scott recalled that his supervisor checked on him every 5 or 10 minutes while he was cleaning the filters in the wash bay. Cleaning the filters is a normal part of Scott's job, but it was very unusual to have a supervisor checking on his work so frequently. Scott testified that he normally only sees supervisor Woerle about every two hours and that he rarely interacts with supervisors Abrahamson or Uremovich.

On Monday, August 13, Scott returned to work after his week-long vacation and went about his regular work tasks for about 45 minutes. Supervisor Woerle then instructed Scott to go upstairs and clean the windows in the office area. This task took two or three hours to complete.

On August 14—the day before the election—Scott performed his usual daily tasks until about 10:30 a.m., at which point supervisor Woerle told him to go to Menards to buy some supplies and to Duluth to pick up parts. Scott protested that another employee had just gone to Duluth and did not run the errands. Woerle replied that he had to go and they'd organize it better the next time. Scott was gone from the facility for about two-and-a-half hours. When he returned from these errands, he was sent upstairs to take care of some fruit flies, but he did not find any fruit flies once he got upstairs. It is not clear how long Scott was upstairs to address the fruit-fly problem.

On the evening of August 13 and the morning of August 14, Scott distributed a pronoun letter at work. He placed copies on the lunchroom tables and handed them out to a few employees. Scott did not write the letter, but received it from an anonymous source with a note asking him to distribute it to employees. He was not reprimanded for distributing the letter.

Scott testified that he washed the office windows approximately every two months, or when visitors were coming to the plant. According to Scott, it was unusual for the supervisor to remove him from his regular routine to wash the windows, and it was unusual for him to wash the office windows while people were working in the offices. Scott testified that he went to Menards every month or two and, before the Menards trip on August 14, he had not gone for about a month. Prior to August 14, the Employer had not sent Scott to pick up parts. Scott was regularly called to remove fruit flies as part of his job.

Analysis and Recommendation: Petitioner's objection alleges three types of conduct that harassed and intimidated union supporter Sam Scott: that the Employer instructed Scott that he could not talk to other employees; that the Employer more closely supervised Scott; and that the Employer assigned Scott to jobs away from the facility. Whether these incidents are viewed individually or as a pattern of conduct, I find that the Employer's conduct did not reasonably tend to interfere with the employees' free and uncoerced choice in the election.

The record reveals two incidents where the Employer instructed Scott not to talk to other employees; neither incident amounts to objectionable conduct. The first incident occurred on July 2, three days prior to the filing of the petition. Because this conduct did not occur within the critical period, which starts on the day the petition is filed and extends through the election, it cannot serve as the basis for an objection. See, e.g., *E.L.C. Electric, Inc.*, 344 NLRB 1200, 1201 (2005).

In the second incident, supervisor Uremovich instructed Scott to not talk to other employees and to leave. Scott was not on the clock—he was either on break or off for the day—and he admits that he was talking to an employee who was on the clock. Although Scott recalls that he was talking about the Union and his wife’s cooking at the time, Uremovich’s statement did not reference the Union and there is insufficient evidence that the statement was related to Scott’s union activity. In addition, there is no evidence that anyone other than Scott and the other employee heard the statement. In light of these circumstances, Uremovich’s statement appears to be a simple reprimand. However, even if Uremovich’s statement were viewed as a violation of Section 8(a)(1), the conduct is not sufficient to affect the results of the election, as it affects just one or two employees and the record does not establish that it was widely disseminated in the unit. See, e.g., *Waste Management of Santa Clara Co., Inc.*, 310 NLRB 629 (1993); *Coca-Cola Bottling Co.*, 232 NLRB 717 (1977).

Petitioner asserts that the Employer harassed and intimidated Scott by more closely supervising him, by watching him closely and walking side by side with him. Although I find Scott to be a credible witness, his testimony with respect to this issue is vague and conclusory. He recounted only one specific example of the close supervision. It appears from the record that Scott was the only employee subjected to the alleged close supervision and there is no evidence that any other unit employees were aware it was happening to Scott. The record lacks any specific evidence regarding the number of incidents of close supervision, which do not seem especially severe. Moreover, there is insufficient evidence of any nexus between Scott’s protected activity and the close supervision. It is impossible to conclude, based on the record evidence, that the Employer’s close supervision of Scott had any tendency to interfere with employee free choice.

See *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716 (1995); *Taylor Wharton Division Harsco Corp.*, 336 NLRB 157 (2001).

Finally, Petitioner argues that the Employer intimidated and harassed Scott by assigning him to off-site tasks in the two days before the election. The Board finds discriminatory work reassignments preceding an election to be objectionable where the assignment is “notorious, manifest to all employees in one of the Respondent’s most populous departments.” *Diamond Walnut Growers, Inc.*, 326 NLRB 28, 29 (1998). For example, the Board set aside the results of an election where, in the two weeks before a rerun election, the Employer reassigned a returning striker from his high-paying forklift job to a low-paying job cracking walnuts in the plant’s most populous department. *Id.* In contrast, Scott was simply assigned to do periodic tasks that were already part of his regular job duties. These tasks lasted for only a few hours each day, and the record shows that Scott still had the opportunity to distribute prounion leaflets to employees on August 13 and 14.

Even when viewing the totality of the Employer’s conduct towards Scott, it still falls short of being objectionable. As noted above, objectionable conduct has “a reasonable tendency to interfere with employee free choice.” *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716 (1995). The Board considers a number of factors in applying this standard, including the number and severity of the incidents and whether the incidents would likely cause fear among the employees; the number of employees subjected to the conduct; whether the conduct occurred close to the election date and the closeness of the final vote; and the extent to which the conduct was disseminated among employees. See *Taylor Wharton Division Harsco Corp.*, 336 NLRB 157, 158 (2001), citing *Avis Rent-A-Car System*, 280 NLRB 580, 581 (1986).

Here, the Employer's alleged objectionable harassment and intimidation affected only Scott, and there is no evidence that it was disseminated to other employees. Although some of the Employer's alleged objectionable conduct occurred in the days just before the election, it appears that it had little effect on Scott or other employees, as he was still able to talk to employees about the Union and to pass out pronunion literature. In addition, the final vote was not especially close—the Union lost by 18 votes. The evidence does not support the Union's claim that the Employer's conduct toward Scott had a reasonable tendency to interfere with employee free choice. Accordingly, I recommend that this objection be overruled.

Objection No. 3: The Employer met with employees on August 14 for the purpose of asking them about their concerns.

Facts: Samuel Scott testified with respect to this objection. At around 2:10 p.m. on Tuesday, August 14, Scott walked into the lower-level lunchroom to clean up garbage. Scott observed that there were about 15 second-shift employees and supervisor Matt Uremovich in the room. As Scott walked into the room, Uremovich was passing out pieces of paper to the employees. Scott heard Uremovich say the word improve, and then something to the effect of what they write down is confidential; he then heard an employee reply that it was not confidential because they were handing him the paper. According to Scott, he was in the room for only a short time—he picked up some of the garbage and then left.

Analysis and Recommendation: Petitioner seems to object to the Employer's conduct on the basis that the Employer engaged in objectionable activity either by soliciting grievances or by holding a captive-audience meeting within 24 hours of the election. The record evidence, however, fails to establish that the Employer's conduct is objectionable under either theory.

An employer violates the Act and engages in objectionable conduct where, during an organizing campaign, it solicits grievances from employees and promises—either expressly or impliedly—that it will remedy the employees’ grievances. See, e.g., *In re Majestic Star Casino, LLC*, 335 NLRB 407 (2001); *Maple Grove Health Care Center*, 300 NLRB 775 (2000); *Sweetwater Paperboard*, 357 NLRB No. 142, slip op. at 1 (2011). Here, the record lacks evidence establishing that supervisor Uremovich either solicited grievances from the employees or promised to address grievances. Based on what Scott heard and witnessed while he was in the room, I cannot conclude that the Employer was soliciting grievances.

There is likewise insufficient evidence that the Employer’s August 14 meeting amounted to a captive-audience speech in violation of the *Peerless Plywood* rule, which prohibits election speeches on company time to massed assemblies of employees within 24 hours of the election. 107 NLRB 427 (1953). Although the August 14 meeting may have occurred during the 24-hour period prior to the election, the record evidence does not suggest that the supervisor was discussing the Union or the election during this meeting, which is a critical element of an unlawful captive-audience speech. See, e.g., *Andel Jewelry Corp.*, 326 NLRB 507 (1998).

For the foregoing reasons, I recommend that this objection be overruled.

CONCLUSIONS AND RECOMMENDATION

In view of the foregoing findings of fact, and after carefully considering all of the evidence in the record, I conclude that the Employer has not engaged in objectionable conduct. I further recommend that the Board issue an appropriate Certification of Results of Election.⁸

⁸ *Right to File Exceptions*: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board’s Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street N.W., Washington, DC 20570-0001.

Signed at Minneapolis, Minnesota, this 28th day of September, 2012.

/s/ Rachael M. Simon-Miller

Rachael M. Simon-Miller, Hearing Officer
National Labor Relations Board
Eighteenth Region
330 South Second Avenue, Suite 790
Minneapolis, MN 55401-2221

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on **October 12, 2012**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.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.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Hearing Officer's Report and Recommendation to the Board on Objections to Conduct Affecting the Results of the Election was issued on September 28, 2012, and served upon the parties by overnight delivery to their legal counsel or representative on the same date. Courtesy copies were also sent by regular U.S. Mail to Mr. Lundgren, Mr. Perpich, and Mr. Brean on the same date.

George Dubovich, Representative of Petitioner
Organizing Coordinator
United Steelworkers District #11
2929 University Avenue SE, Suite 150
Minneapolis, MN 55414

Richard L. Samson, Attorney for Employer
Jeremy C. Moritz, Attorney for Employer
Ogletree Deakins
155 N. Wacker Drive, Suite 4300
Chicago, IL 60606-1787

Cindy Lundgren
Genesis Attachments, LLC
1000 Genesis Drive
Superior, WI 54880-1351

Jerry Perpich
Staff Organizer
United Steelworkers of America
2929 University Ave SE, Suite 150
Minneapolis, MN 55414

Richard Brean
General Counsel
United Steel, Paper, Forestry, Rubber,
Manufacturing, Energy, Allied Industrial and Service Workers
5 Parkway Center, Suite 807
Pittsburgh, PA 15220-3608

Rachael M. Simon-Miller

Rachael M. Simon-Miller

Hearing Officer