

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**UNITE HERE LOCAL 7,**

Charging Party,

**and**

**ONSITE NEWS,**

Respondent

**Case Nos.     05-CA-076019  
                  05-RD-001500**

**CHARGING PARTY UNITE HERE LOCAL 7'S OPPOSITION TO RESPONDENT'S  
EXCEPTIONS**

January 2, 2013

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This case concerns two threats that the Respondent made to employees on the eve of a decertification election. The Respondent's General Manager threatened to more strictly enforce work rules if employees continued to be represented by UNITE HERE Local 7 ("Local 7"). ALJ Dec. 5:2-16. The Administrative Law Judge concluded that the threat, made separately to two employees, violated Section 8(a)(1) and were objectionable conduct sufficient to overturn the election results. ALJ Dec. 7:26-35. The General Counsel is filing an opposition to the Respondent's exceptions to the unfair labor practice finding. Local 7 joins the General Counsel's brief. This brief explains why the election should not be overturned.

"[I]t is the Board's usual policy to direct a new election whenever an unfair labor practice occurs during the critical period since '[c]onduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammelled choice in an election.'" *Clark Equipment Co.*, 278 NLRB 498, 505 (1986) (quoting *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962)) (emphasis in original). In rare cases, the Board will refrain from overturning an election if the Board concludes that the illegal conduct could not have affected the results of the election. Among the factors the Board examines to make this determination are the severity of the violations, the extent of dissemination, the size of the unit, and the proximity of the conduct to the election date. *Detroit Medical Center*, 331 NLRB 878 (2000).

Here, a high-level manager, the Respondent's General Manager, threatened two employees (Kevin Wheeler and Monae Whitehead) during the critical period and within one month of the election. ALJ Dec. 5:34-35. Respondent does not dispute *when* these conversations occurred, but instead asserts that the illegal threats made to employees Kevin Wheeler and Monae Whitehead are not sufficient to overturn the election because the threats were not disseminated to other employees. That is wrong.

Wheeler testified that he discussed the conversation with seven other employees, including Whitehead, two weeks or less before the election.<sup>1</sup> TR 48:8-49:6, 60:16-61:2. No conflicting evidence was presented. In addition, Respondent's General Manager London Perry admitted that he told employees that he "would no longer be as toleration of rule violations as [he] ha[d] been in the past." TR 30:4-8; *see also* TR 33:18-34:2 (quoting from Gen. Counsel Exh. 3).

The vote tally in the election was 15 votes against the union and 7 votes for the union. If just four of the employees who voted against the union had voted for the union, the election would have resulted in a tie and Local 7 would not be decertified. Given that the Respondent's illegal threats were made and disseminated to a total of eight employees before in the two-week period before the election, it is impossible to conclude that the threats could not have affected the election's outcome.

For all of the foregoing reasons, the ALJ's recommendation that the election results be overturned should be adopted.

DATED: January 2, 2013

DAVIS, COWELL & BOWE, LLP

/s/ Kristin L. Martin

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<sup>1</sup> The threat to Wheeler was made after a grievance meeting held on February 23, 2012, TR 42:12-25; and the election was on March 9, 2011. ALJ Dec. 3:38.

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO**

I am employed in the County of San Francisco, State of California. I am over the age of 18 years, and am not a party to the within action; my business address is 595 Market Street, Ste. 1400, San Francisco, CA 94105.

On January 2, 2013, I served the following document(s) described as

**Charging Party UNITE HERE Local 7's Opposition to Respondent's Exceptions**

on the interested parties in this action to the following parties:

Charles Hildebrant  
The Roberts Law Group  
1029 Vermont Ave NW, Ste 300  
Washington, DC 20005-6324

Matthew Turner  
National Labor Relations Board, Region 5  
Bank of America Center, Tower II  
100 S. Charles Street, 6th Floor  
Baltimore, MD 21201

via the following method:

- (BY U.S. Mail)** I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at San Francisco, California.
- (By E-Mail)** I transmitted a copy of the foregoing document(s) via e-mail to the addressee(s)  
[hildeb01@aol.com](mailto:hildeb01@aol.com), [matthew.turner@nrb.gov](mailto:matthew.turner@nrb.gov)
- (STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 2, 2013 at San Francisco, California.

/s/ Dinh Luong  
Dinh Luong