UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION29

BROOKHAVEN MEMORIAL HOSPITAL
MEDICAL CENTER
Employer

and 29-RC-084828

LOCAL 342, UNITED FOOD AND
COMMERCIAL WORKERS UNION
Petitioner

REPORT ON OBJECTIONS, ORDER CONSOLIDATING CASES, AND NOTICE OF HEARING

On July 10, 2012,[1] Local 342, United Food and Commercial Workers Union, herein called the Petitioner or the Union, filed a petition in this matter seeking to represent certain employees employed by Brookhaven Memorial Hospital Medical Center, herein called the Employer.[2]

Pursuant to a Decision and Direction of Election, issued by the undersigned on November 28, an election by secret ballot was conducted on January 3, 2013 among the employees in the following unit:

> All full-time, regular part-time and per diem service and maintenance employees employed at the Employer's acute-care facility located at 101 Hospital Road, Patchogue, New York, but excluding: all other employees; professional employees, technical employees; skilled maintenance employees, business office clerical employees; MIS/IT personnel; quality control personnel; confidential employees; employees of, or working at or with subsidiaries, subcontractors, physician practices, or affiliated locations or organizations, any employees currently represented by Brookhaven Memorial Federation of Nurses and Health Professionals or by Local 111, International Brotherhood of Teamsters; members of the Board of Directors; owner; guards; and supervisors as defined by the Act.

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1 All dates are in 2012 unless otherwise indicated.

2 Local Union No. 111, International Brotherhood of Teamsters, intervened based on a showing of interest. Prior to the election, Local Union No. 111 withdrew from the election and disclaimed interested in the petitioned-for unit.

The Tally of Ballots made available to the parties at the conclusion of the election pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	606
Number of void ballots	1
Number of ballots cast for the Petitioner	227
Number of votes cast against participating labor organization	278
Number of valid votes counted	505
Number of challenged ballots	9
Number of valid votes counted plus challenged ballots	514

Challenges are not sufficient in number to affect the results of the election. A majority of the valid votes counted plus challenged ballots has not been cast for the Petitioner.

The Petitioner filed timely objections to conduct affecting the results of the election. A copy of the Petitioner's objections is attached hereto as Exhibit "A."

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Petitioner's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

The Objections

Request to Withdraw

The Petitioner has requested permission to withdraw Objections Nos. 1, 2, 3, 7, 9, 10, 11, 13, 14, 19, 20, 21, 22, 24, 27, 28, 30, 32B, 33A,[3] 34, 38, and those portions of 39 alleging suspension and constructive discharge of employees. The Employer does not object to the Petitioner's request. I hereby approve the withdrawal of the Petitioner's Objections Nos. 1, 2, 3, 7, 9, 10, 11, 13, 14, 19, 20, 21, 22, 24, 27, 28, 30, 32B, 33A, 34, 38, and those portions of 39 alleging suspension and constructive discharge of employees.

Objections Nos. 4, 5, 12, 15, and 37

In its fourth objection, the Petitioner alleges that on the day of the election, representatives of the Employer met with employees and advised them not to vote. In its fifth objection, the Petitioner alleges that during the critical period, agents and supervisors of the Employer distributed flyers which misrepresented to employees who could vote in the election. In its twelfth objection, the Petitioner alleges that while the polls were open, the Employer held captive audience meetings and told unit employees that they were not allowed to vote. In its fifteenth objection, the Petitioner alleges that during the critical period, the Employer posted literature which misrepresented who was eligible to vote in the election based on the Decision and Direction of Election issued by the undersigned. In its thirty-seventh objection, the Petitioner alleges that the Employer held captive audience meetings within twenty-four hours of the election. The Employer asserts that these objections lack merit.

In support of its fourth objection, the Petitioner states that named employees will testify that on the day of the election and while the polls were open, supervisors told employees not to

[3] In its objections, Petitioner includes two objections numbered 32 and two objections numbered 33. Accordingly, these objections will be referred to Objections Nos. 32A, 32B, 33A, and 33B.

vote or that they were not allowed to vote. In support of its fifth objection, the Petitioner states that during the critical period, the Employer distributed leaflets which improperly stated which employees could vote. According to the offer of proof, the Employer posted a flyer which included a list of "classifications of employees eligibe to vote" in the service and maintenance unit. The Petitioner contends that there were classifciations of employees who were eligible to vote but not included on this list. In support of its twelfth objection, the Petitioner states that named employees and a union organizer will testify that on the day of the election, while the polls were open, the Employer held captive audience meetings with bargaining unit employees and told them that they were not allowed to vote and that they should not try to vote. In support of its fifteenth objection, the Petitioner states named employees and a union organizer will testify that during the critical period, the Employer distributed and posted leaflets which improperly stated which employees were allowed to vote. In support of its thirty-seventh objection, the Petitioner states that named employees will testify that within twenty-four hours of the election, the Employer held captive audience meetings for employees in the nursing and environmental departments. The Employer denies these allegations.

Advising Employees Not To Vote

With regard to the Petitioner's allegation that the Employer advised employees not to vote or that they were not allowed to vote, contained in Objections Nos. 4 and 12, such conduct, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[4] In view of the conflicting positions and facts asserted by the parties regarding this allegation, I find that the Petitioner's Objection No. 4 and that portion of Objection No. 12

[4] See Chippy's of Florida, Inc., 185 NLRB 867 (1970) (in which the Board set aside an election after an employer, inter alia, directed employees not to vote); Kansas City B Focal Company, 236 NLRB 1663 (1978) (where the Board set aside an election because the employer incorrectly told an employee that he was ineligible to vote. The Board found that the employer had usurped the Board's authority to determine election eligibility and thereby interfered with the orderly election process).

alleging that the Employer directed employees not to vote would be best resolved by a hearing.

On November 26, 2012, the Region issued a Consolidated Amended Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057. These cases are scheduled to be heard by an Administrative Law Judge on March 21, 2013. Accordingly, I direct that the Petitioner's allegations that the Employer advised employees not to vote be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057 to be heard before an Administrative Law Judge.

Misleading Employees About Who Could Vote

With regard to the Petitioner's allegation that the Employer mislead employees about who could vote in the election, contained in Objections Nos. *5* and 15, such conduct, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[5] In view of the conflicting positions and facts asserted by the parties regarding this allegation, I find that the Petitioner's Objections Nos. 5 and 15 would be best resolved by a hearing. Accordingly, I direct that the allegation that the Employer mislead employees regarding which employees were eligible to vote be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

Captive Audience Meeting

In Objections Nos. 12 and 37, the Petitioner alleges that the Employer held captive audience meetings within twenty-four hours of the election. An employer may not require employees to attend a campaign meeting within twenty-four hours of an election, as the Board

[5] See Kansas City B Focal Company, 236 NLRB 1663 (1978) (where the Board set aside an election because the employer incorrectly told an employee that he was ineligible to vote. The Board found that the employer had usurped the Board's authority to determine election eligibility and thereby interfered with the orderly election process).

found in Peerless Plywood, 107 NLRB 427 (1953). Peerless does not bar every communication between an employer and its employees during this period. E.g., John W. Thomas Co., 111 NLRB 226 (1955) (in which the Board found that on the day of the election, representatives of the employer could communicate with employees in a non-partisan manner, including reminding employees of the election, urging them to vote, and reviewing which employees were eligible to vote in the election). However, an employer may not campaign at such meeting. See Montgomery Ward & Co., 124 NLRB 343, 344 (1959) (finding that in a question and answer session, the employer's expressed anti-union views rose to "the type of campaign electioneering intended to be regulated under the Peerless Plywood rule"). This alleged conduct of holding a captive audience campaign meeting within twenty-four hours of the election, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[6] In view of the conflicting positions and facts asserted by the parties regarding these alleged meetings, I find that the Petitioner's Objection No. 37 and that portion of Objection No. 12 alleging that the Employer held a captive audience meeting raise material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that the allegation that the Employer held captive audience campaign meetings within twenty-four hours of the election be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

Objection No. 6

In its sixth objection, the Petitioner states that the Employer provided an erroneous, inaccurate, and incomplete Excelsior list. The Employer asserts that this objection lacks merit.

In its offer of proof, the Petitioner states that the names and addresses of employees in

[6] See Peerless Plywood, 107 NLRB 427 (1953).

various classifications, including medical assistants, perioperative medical assistants, phlebotomists, environmental service workers, transporters, environmental leads, dietary leads, nutritional aides, sous chef, nursing assistants, unit secretaries, cardiac monitor techs, health information management clerks, health information management coders, and medical transcriptionists, amounting to approximately 79 employees, were omitted from the Excelsior list.

The Employer asserts that the environmental service workers, transporters, nutritional aides, unit secretaries, cardiac monitor techs, health information management clerks, and medical transcriptionists were included on the Excelsior list. The Employer did not, however, provide the names of the employees employed in these classifications, which would be necessary to verify its assertion. The Employer further states that the medical assistants, perioperative medical assistants, phlebotomists, and health information coders are technical employees and therefore not included in the unit of service and maintenance employees and properly left off the Excelsior list. Finally, the Employer maintains that the environmental leads, the nutritional leads, and the sous chef are supervisors within the meaning of the Act. According to the Employer, these technical and supervisory employees total 51 employees.

In Thrifty Auto Parts Inc., 295 NLRB 1118 (1989), the Board observed that by 'omitting a substantial number of names from the Excelsior list, an employer can defeat the very purpose of the Excelsior rule," which is meant to ensure an informed electorate by providing unions access to voters. See Thrifty Auto Parts Inc., 295 NLRB at 1118 (in which the Board found that an omission rate of 2 voters out of 21 eligible voters, or 9.5 percent of the eligible voters, was objectionable); see also North Macon Health Care Facility, 315 NLRB 359, 359 (1994) (finding that the employer's failure to provide full information on its Excelsior

list constitutes a "deviation from the Board's policy that an employer must 'substantially comply' with the Excelsior rule and tends to interfere with a free and fair election."). The independent investigation revealed that there were approximately 606 eligible voters. Thus, if the Employer omitted 79 names from the Excelsior list, as the Petitioner alleges, this would result in an omission rate of approximately thirteen percent, which would be objectionable. See Thrifty Auto Parts Inc., 295 NLRB at 1118.

Crediting the Employer that the environmental service workers, transporters, nutritional aides, unit secretaries, cardiac monitor techs, health information management clerks, and medical transcriptionists were included on the Excelsior list, the Employer states that 51 employees were not included on the Excelsior list because they were technical or supervisory. This number of employees, which represents an omission rate of 8.4 percent, might be objectionable. See Woodman's Food Markets, Inc., 332 NLRB 503 (2000) (in which the Board found that an omission rate of 6.8 could serve as grounds to set aside an election where the number of voters left off the Excelsior list was determinative.[7])

In view of the conflicting positions and facts asserted by the parties regarding the adequacy of the Excelsior list and the eligibility of certain employees, I find that Petitioner's Objection No. 6 raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that Objection No. 6 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

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[7] I note that the current Tally of Ballots stands at 227 votes for the Petitioner and 278 votes against a collective bargaining agent, a difference of 51 votes. While 51 votes would not be determinative in this case, in view of the substantial issue of fact concerning whether the names and addresses of at least 28 environmental service workers, transporters, nutritional aides, unit secretaries, cardiac monitor techs, health information management clerks, and medical transcriptionists were on the Excelsior list, a hearing is necessary.

Objections Nos. 8, 18, 29, and 39

In its eighth objection, the Petitioner alleges that during the critical period prior to the election, the Employer issued statements threatening plant closure and job loss if the Petitioner won the election. In its eighteenth objection, the Petitioner alleges that during the critical period, the Employer threatened retaliation for employees who supported the Petitioner, including termination. In its twenty-ninth objection, the Petitioner alleges that during the critical period, the Employer advised employees that selecting the Petitioner as their bargaining representative would be an economic hazard. In its thirty-ninth objection, the Petitioner alleges that the Employer terminated employees for their Union activity.[8] The Employer asserts that this objection is without merit.

In its offer of proof, in support of Objection No. 8, the Petitioner states that named employees will testify that many supervisors made statements which referenced job loss and closure of certain areas of the hospital and of the hospital itself. In its offer of proof in support of Objection No. 29, the Petitioner states that named employees will testify that the Employer created an atmosphere of fear when representatives of the Employer made direct and indirect statements threatening job loss and closure of certain areas of the hospital and the hospital itself if the Union won the election. The Petitioner further states that named employees will testify that Joanne Ullman was terminated because of her Union activity. The Employer denies these allegations.

Threats of Job Loss and Plant Closure

The foregoing alleged conduct of representatives of the Employer making threats of job

[8] As noted above, I granted the Petitioner's request to withdraw those portions of this objection alleging that employees were suspended and constructively discharged for their union activity.

loss and that areas of the hospital or the entire hospital might close, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[9] In view of the conflicting positions and facts asserted by the parties regarding these threats of job loss and closure, I find that the Petitioner's Objections Nos. 8 and 29 and that portion of Objection No. 18 alleging threats of job loss raise material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that the allegations of threats of job loss and plant closure encompassed by Objections Nos. 8, 18, and 29 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

Termination of Joanne Ullman

Objection No. 39 and that portion of Objection No. 18 alleging that Joanne Ullman was terminated for her support for the Union mirror an allegation in the unfair labor practice charge filed by the Petitioner against the Employer in Case No. 29-CA-095163,[10] which is currently pending investigation by this office. Accordingly, I will await the outcome of the unfair labor practice investigation before making a determination on Objection No. 39 and that portion of Objection No. 18 alleging that Joanne Ullman was terminated for her support for the Union.

Objection No. 16

In its sixteenth objection, the Petitioner alleges that during the critical period, the Employer improperly restricted access of Union supporters to the Employer's premises. The Employer asserts that this objection lacks merit.

The Consolidated Complaint alleges, inter alia, that in March 2011, the Employer issued

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[9] See Community Action Commission of Fayette County, Inc., 338 NLRB 664, 667 (2002) (setting aside an election following threats of job loss); Chardan Inc., d/b/a Perfect Art, 332 NLRB 850 (2000) (where the Board held that a threat to close the plant served as grounds for setting aside an election).

[10] I note that the gravamen of the allegation concerning the discharge of employees constitute an unfair labor practice requiring a finding that the Employer's conduct constituted a violation of Section 8(a)(3) of the Act. Accordingly, this allegation must be decided in an unfair labor practice proceeding. See Texas Meat Packers, Inc., 130 NLRB 279 (1961).

and disseminated to employees a revised "Authorized and Designated Areas for Employees Policy," which restricts employees' off-duty access to the Employer's premises, and that this policy has been maintained since March 2011. In its offer of proof, the Petitioner states that named employees will testify that during the critical period, they were denied access to the Employer's premises despite the fact that they were employees of the hospital. While the Board will usually consider only post-election conduct when deciding to set aside an election, the board has held that pre-petition conduct may also be considered when that conduct "adds meaning and dimension to related postpetition conduct." Dresser Industries, 242 NLRB 74, 74 (1979).

In this case, the pre-petition promulgation of the rule and the post-petition enforcement of the rule are closely related. Accordingly, the Administrative Law Judge may consider the promulgation of the rule when evaluating the allegation in Objection No. 16. Because the Employer continued to enforce this rule during the critical period, I direct that Objection No. 16 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

Objections Nos. 17 and 23

In its seventeenth objection, the Petitioner alleges that during the critical period, the Employer created an atmosphere of apprehension in the minds of employees where employees could reasonably infer that their employment would be jeopardized if they supported the Union. In its twenty-third objection, the Petitioner alleges that during the critical period, the Employer advised employees that they would suffer from an adverse change in working conditions if the Union won the election. The Employer asserts that this objection lacks merit.

In support of Objection No. 17, the Petitioner states that named employees will testify that they were made to fear for their jobs and that threats of reprisals intensified as the election

grew closer. The Petitioner also states that named employees will testify that they were told they would suffer adverse working conditions due to their activities on behalf of the Petitioner. The Employer denies these allegations.

The allegations of this objection are substantially identical to allegations contained in the Consolidated Complaint. The Consolidated Complaint alleges, inter alia, that on or about September 18, 2012, the Employer threatened employees with unspecified reprisals and worse shifts if they selected a union as their bargaining representative.

The misconduct alleged in Objections Nos. 17 and 23, which mirrors the allegations of the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, occurring within the critical period, if true, would, in my view, warrant setting aside the election.[11] Therefore, I direct that Objections Nos. 17 and 23 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

I note that the Consolidated Complaint also alleges that on about February 6, 2012, prior to the critical period, the Employer threatened employees with worse shifts, lower wages, less personal time, and worse insurance if they selected a union as their bargaining representative. While these allegations occurred pre-petition, as stated above, such conduct may be considered with conduct occurring within the critical period when it "adds meaning and dimension to related postpetition conduct." Dresser Industries, 242 NLRB 74, 74 (1979). In this case, the Employer's pre-petition threats of adverse working conditions for supporting a union constitute the same type of conduct alleged in Objections Nos. 17 and 23. Accordingly, the Administrative Law Judge may consider these allegations in the Consolidated Complaint which lend meaning and

[11] See Liberty House Nursing Homes, 245 NLRB 1194 (1979) (setting aside an election following threats of more onerous working conditions if a union won an election).

dimension to the allegations in Objections Nos. 17 and 23.

Objections Nos. 25, 31, 32A, and 35

In its twenty-fifth objection, the Petitioner alleges that during the critical period, the Employer provided employees with benefits and changes in working conditions in order to persuade employees to vote against the Union. In its thirty-first objection, the Petitioner alleges that during the critical period, the Employer solicited grievances. In Objection No. 32A, the Petitioner alleges that during the critical period, the Employer adjusted and corrected grievances. In Objection No. 35, the Petitioner alleges that during the critical period, the Employer made promises of benefits and changes in working conditions to discourage support for the Petitioner. The Employer asserts that these objections lack merit.

In its offer of proof, the Petitioner asserts that named employees will testify that the Employer solicited and remedied grievances in both captive audience meetings and one-on-one conversations with employees. The Petitioner also states that named employees will testify that in employee meetings, the Employer promised employees improved working conditions and changes in terms and conditions of employment. In addition, the Petitioner asserts that many of the election campaign leaflets distributed by the Employer provided in support of these objections support a finding that the Employer solicited and remedied grievances as well as making promises of benefits in order to discourage support for the Petitioner. The Employer denies these allegations.

The foregoing alleged conduct of soliciting and adjusting grievances and of promising employees benefits in order to discourage support for the Union, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[12] In view of the

[12] See House of Raeford Farms, Inc., 308 NLRB 568 (1992) (in which the Board set aside an election following a

conflicting positions and facts asserted by the parties regarding this objection, I find that the Petitioner's Objections Nos. 25, 31, 32A, and 35 raise material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that Objections Nos. 25, 31, 32A, and 35 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

I note that the Consolidated Complaint in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057 alleges, inter alia, that in February and March 2012, the Employer solicited employee complaints and grievances and promised employees increased benefits and improved terms and conditions of employment. While these allegations occurred pre-petition, as stated above, the pre-petition conduct may be considered with conduct occurring during the critical period when the pre-petition conduct "adds meaning and dimension to related postpetition conduct." Dresser Industries, 242 NLRB 74, 74 (1979). In this case, the allegations that in February and March, 2012, the Employer solicited and adjusted grievances and made promises of benefits constitute the same type of conduct as the allegations in Objections Nos. 25, 31, 32A, and 35. Accordingly, the Administrative Law Judge may consider these allegations in the Consolidated Complaint which lend meaning and dimension to the allegations in Objections Nos. 25, 31, 32A, and 35.

Objection No. 26

In its twenty-sixth objection, the Petitioner alleges that on the day of the election, the Employer engaged in unlawful surveillance of employee's Union activity and intimidated voters.

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finding that an employer had solicited and adjusted employees' grievances during the critical period of an election); Liberty House Nursing Homes, 245 NLRB 1194 (1979) (setting aside an election following, inter alia, promises of improved working conditions).

The Employer asserts that this objection lacks merit.

In support of this objection, the Petitioner states that a named employee will testify that on the day of the election, s/he was followed both on and off the hospital premises and that his/her activity was observed. The Employer denies these allegations.

The foregoing alleged conduct of surveilling employees' Union activity, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[13] In view of the conflicting positions and facts asserted by the parties regarding this objection, I find that Petitioner's Objection No. 26 raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that Objection No. 26 be merged with the Consolidated Complaint and Notice of Hearing in Case Nos. 29-CA-080380, 29-CA-086444, and 29-CA-090057, to be heard before an Administrative Law Judge.

Objections Nos. 33B and 36

In Objection No. 33B, the Petitioner alleges that on the day of the election, the Employer interrogated and polled employees about the support for the Petitioner. In Objection No. 36, the Petitioner alleges that during the critical period, the Employer polled employees about their support for the Petitioner. The Employer asserts that these objections lack merit.

In its offer of proof, the Petitioner states that named employees will testify that during the critical period and on the day of the election, the Employer asked them how they intended to vote in the election.

The allegations of Objections No. 33B and 36 mirror allegations contained in the unfair labor practice charge filed by the Petitioner against the Employer in Case No. 29-CA-095163, which is currently pending investigation by this office. Accordingly, I will await the outcome of

[13] See Liberty House Nursing Homes, 245 NLRB 1194 (1979) (setting aside an election following, inter alia, surveillance of employees' union activity).

the unfair labor practice investigation before making a determination on Objections Nos. 33B and 36.

Objection No. 40

In its fortieth objection, the Petitioner alleges that the Employer has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights and interfered with employees' ability to exercise their free choice in the election. The Employer asserts this objection lacks merit.

The independent investigation revealed that on December 18, the Petitioner filed an unfair labor practice charge in Case No. 29-CA-095163, which is currently under investigation. In the event that this investigation uncovers additional conduct which may be objectionable occurring within the critical period, I will consider directing that a hearing be held on such conduct. See White Plains Lincoln Mercury, Inc., 288 NLRB 1133, 1137 (1988) (granting a Regional Director the discretion to broaden an investigation beyond matters specifically set forth in objections).

SUMMARY

In summary, I have approved the Petitioner's request to the withdraw Objections Nos. 1, 2, 3, 7, 9, 10, 11, 13, 14, 19, 20, 21, 22, 24, 27, 28, 30, 32B, 33A, 34, 38, and those portions of 39 alleging suspension and constructive discharge of employees. I have deferred the allegations in Objections Nos. 33B, 36, 39, and that portion of Objection No. 18 alleging termination of employees for Union activity. Further, I have directed that a hearing be held regarding Objections Nos. 4, 5, 6, 8, 12, 15, 16, 17, 23, 29, 31, 32A, 35, 37, and that portion of Objection No. 18 alleging threats of job loss and plant closure.

ORDER CONSOLIDATING CASES

NOW, THEREFORE, the undersigned Regional Director, having duly considered the matter and deeming it necessary in order to effectuate the policies of the Act, and to avoid unnecessary cost or delay,

HEREBY ORDERS, pursuant to Section 102.33 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that these cases be consolidated for the purpose of hearing, ruling and decision by an Administrative Law Judge, and thereafter, that Case No. 29-RC-084828 shall be transferred to and continued before the Board in Washington, D.C., for further processing and the provisions of Section 102.69 of the Board's Rules and Regulations shall govern the filing of Exceptions.

PLEASE TAKE NOTICE that on March 21, 2013, at 9:30 a.m., and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

Dated at Brooklyn, New York, on this 21st day of February, 2013.

James G. Paulsen

James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

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BROOKHAVEN MEMORIAL HOSPITAL MEDICAL CENTER,

Employer,

and

Case #:
29-RC-084828

LOCAL 342, AND UNITED FOOD AND COMMERCIAL WORKERS UNION,

Petitioner,

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OBJECTIONS TO ELECTION FILED BY UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 342

United Food And Commercial Worker's Union, Local 342 ("Local 342") by its attorney Ira D. Wincott, Esq., and in accordance with Section 102.69(a) of the Rules and Regulations of the National Labor Relations Board, as amended, (the "Board Rules and Regulations"), respectfully submits the following Court objections to the "conduct of the election" and "objections to conduct affecting the results of the election," and objections relative to the election conducted by several board agents on behalf of the Honorable James G. Paulson, the Regional Director for Region 29 (the "Regional Director") of the National Labor Relations Board ("Board") on January 3, 2013 (the "Election") in furtherance of the Decision and Direction of the Election dated November 28, 2012 ("DDE"):

1. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, offered payments for employees to come in to work to vote.

2. The election was conducted in circumstances where the Employer, during the "critical period," and within twenty-four (24) hours of the election, and at the time of the

Exhibit A

election, through its agents, changed working conditions of the employees of the employer, including holding "mandatory" training sessions on the day of the election

3. The election was conducted in circumstances where the Employer, through its agents, within twenty-four (24) hours prior to the Election and on the day of the Election, distributed and made available anti-union literature.

4. The election was conducted in circumstances where the Employer, on the day of the election, by its agents and supervisors, met with employees and advised them not to vote.

5. The election was conducted in circumstances where the Employer, during the "critical period" through its agents and supervisors, interfered with employees' freedom of choice, by distributing flyers that misrepresented to employees as to who could vote and who could not vote in the election.

6. The election was conducted in circumstances where the Employer, through its agents, submitted an inaccurate, incomplete and erroneous Excelsior list.

7. The election was conducted in circumstances where, on the day of the election, eligible employees were not allowed to vote and were turned away from the polling place.

8. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and supervisors, issued statements threatening plant closure and job loss if employees voted for the Union.

9. The election was conducted in circumstances where, within twenty-four (24) hours prior to the election, the Employer, through its agents, supervisors and owners conducted electioneering, including but not limited to advising employees to Vote No against the Union.

10. The election was conducted in circumstances, where, when the polls were open for voting, the Employer, through its agents, supervisors and owners conducted electioneering, including but not limited to advising employees to Vote No against the Union.

11. The election was conducted in circumstances where, within twenty-four (24) hours prior to the election, the Employer allowed certain employees to conduct electioneering on behalf of the Employer and conduct polling on behalf of Employer of employees.

12. The election was conducted in circumstances where the Employer, while the polls were open and on other times during the day of the election, through its agents and supervisors, held captive audience meetings advising proposed bargaining unit employees that they were not allowed to vote.

13. The election was conducted in circumstances where the Employer, while the polls were open and on other times during the day of the election, through its agents and supervisors promised personal favors in exchange for voting against the Union.

14. The election was conducted in circumstances where the Employer, during the critical period and up to and including while polls were open and on other times during the day of the election, through its agents and supervisors, offered employees compensatory services in exchange for registering their intention to vote with the Human Resources office and in exchange for voting.

15. The election was conducted in circumstances where the Employer, during the critical period through its agents and supervisors, released and/or allowed to be posted and/or distributed, literature that misrepresented the NLRB decision on the direction of election and the make up of the petitioned for bargaining unit.

16. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and supervisors improperly restricted access of Union supporters to the Employer's premises.

17. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, issued statements that created an atmosphere of apprehension in the minds of the employees and employees could reasonably infer that their employment would be jeopardized if they supported the Union.

18. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, threatened retaliation for Union support, including termination with misrepresentation and coercion.

19. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, promised changes in working conditions to employees in order to vote against the Union.

20. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and supervisors, conducted captive audience speeches on work time wherein the Employer and its representatives made improper anti-union representations and provided employees with "benefits" not previously received.

21. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, discriminated against employees for participating in the Union activity.

22. The election was conducted in circumstances where the Employer, within twenty-four (24) hours prior to the election, through its agents and servants, paid monies to employees and/or bribed employees to vote against the Union on the day of the election.

23. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, advised employees that they would suffer from an adverse change in working conditions if the Union won the election.

24. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, discriminated, intimidated, and harassed employees for participating in the Union activity.

25. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, provided employees with benefits and changes in working conditions in order to get employees to vote against the Union.

26. The election was conducted in circumstances where the Employer, before and during the election and while the polls were open, through its agents, supervisors, and security personnel engaged in unlawful surveillance of Union activity and intimidation of voters.

27. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and servants, discriminated against employees for participating in the Union activity.

28. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, advised the employees, and created an impression that it was futile for them to vote for the Union as their bargaining representative.

29. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, advised the employees and conveyed and created an atmosphere of fear by portraying a selection of the Union as a bargaining representative to its employees as an economic hazard.

30. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, promised benefits to its employees.

31. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, solicited grievances.

32. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and supervisors, adjusted and supervising corrected grievances.

33. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, intimidated, threatened and harassed employees and created an impression that it was futile for them to vote for the Union as their bargaining representative in an effort to discourage Union activity.

32. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, changed the working conditions of the employees of the Employer in order to discourage voting for the Union and to discourage Union activity.

33. The election was conducted in circumstances where the Employer, on the day before the election, by its supervisors, interrogated employees and polled employees.

34. The election was conducted in circumstances where the Employer, on the day before the election, through its agents and supervisors, promised employees, benefits and/or "favors" for them to vote against the Union.

35. The election was conducted in circumstances where the Employer, during the "critical period," through its agents, conducted captive audience speeches wherein promises of benefits were made as well as changes in working conditions.

36. The election was conducted in circumstances where the Employer, during the "critical period," through its agents and supervisors, engaged in polling employees.

37. The election was conducted in circumstances where the Employer, within twenty-four (24) hours prior to the election, conducted captive audience speeches.

38. The election was conducted in circumstances where the Employer, on the election date, conducted captive audience speeches.

39. The election was conducted in circumstances where the Employer, during the critical period, suspended, constructively discharged and/or terminated employees for Union activity.

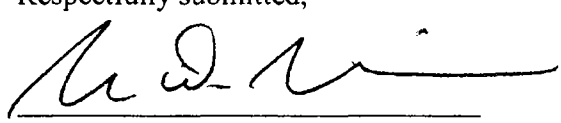
40. By the above and other conduct, the Employer interfered with, coerced and restrained employees in exercise of their Section 7 rights and has interfered with their ability to exercise their free and reason choice in the election.

CONCLUSION

The conduct objected to above destroyed the laboratory conditions under which the election ought to have been conducted.

Dated: Mineola, New York
January 9, 2013

Respectfully submitted,



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