

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 12**

**GEO Corrections Holdings, Inc.,**

**Employer,**

**v.**

**International Union, Security, Police and  
Fire Professionals of America (SPFPA),**

**Petitioner.**

**CASE 12-RC-097792**

**BRIEF IN SUPPORT OF GEO CORRECTIONS HOLDINGS, INC.'S  
EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND  
RECOMMENDATIONS ON OBJECTIONS TO ELECTION**

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Employer GEO Corrections Holdings, Inc. ("GEO" or "Company") respectfully files this Brief in support of its Exceptions to the Hearing Officer's Report and Recommendations on Objections to Election ("Report") issued in the above-captioned matter.

**I. STATEMENT OF THE CASE**

This matter arises out of a representation election conducted on March 20, 2013 by Region 12 of the National Labor Relations Board ("the Board") among employees of GEO at its D. Ray James Detention Facility in Georgia to determine whether the International Union, Security, Police and Fire Professionals of America ("SPFPA" or "Union") would become the employees' bargaining representative. Prior to the election, Regional Director Margaret J. Diaz approved a Stipulated Election Agreement ("Agreement") between GEO and the SPFPA which set forth the details of the election, including identifying the following job classifications that were eligible to vote:

**Included:** All full time and regular part time corrections officers, food service officers and transportation officers employed by the Employer at its facilities located at 3262 Highway 252, Folkston, Georgia.

**Excluded:** All other employees, office clerical employees, professional employees and supervisors as defined in the act.

(Stipulated Election Agreement, Board's Ex. 1(i)).

On March 27, 2013, GEO timely filed Objections to the Conduct of the Election and Conduct Affecting the Election. GEO's objections are as follows:

**Objection 1:** SPFPA, by its agents, representatives, and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by coercing and intimidating employees during the critical period before the election, which interfered with the employees' ability to exercise their free and uncoerced choice in the election.

**Objection 2:** During the election, and during the critical period before the election, SPFPA, by its agents, representatives, and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by advising employees and GEO's designated observer that certain employees who were included in the unit pursuant the Stipulated Election Agreement were not eligible to vote in the election.

**Objection 3:** During the election, one of SPFPA's designated observers interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by improperly monitoring employee voting and discriminatorily challenging only those votes SPFPA perceived as "no" votes.

**Objection 4:** During the election, one of SPFPA's designated observers abused the NLRB processes and intimidated employees by challenging all perceived "no" votes, so that employees who did not support SPFPA would be required to include their names on votes, thereby losing their right to a secret ballot election, which such conduct interfered with the employees' ability to exercise their free and uncoerced choice in the election and interfered with the conduct of the election.

**Objection 5:** By the foregoing and other unlawful misconduct, SPFPA and its agents, representatives and/or supporters destroyed the necessary laboratory conditions and interfered with the holding of a free and fair election among the employees on March 20, 2013, and such conduct substantially and materially affected the outcome of the election.

On April 10, 2013, the Regional Director issued its Report on Objections and Order Directing a Hearing. A hearing was held in Jacksonville, Florida on April 24-27 before Hearing Officer Gregory Powell from Region 11. The Hearing Officer's Report, issued on May 14, 2013, recommended that all of the Employer's objections be overruled. GEO files these Exceptions to the Hearing Officer's finding that the Petitioner did not engage in objectionable conduct requiring the overturning of the election results and rerun of the election.

## **II. BRIEF STATEMENT OF THE FACTS**

### **A. Background**

GEO is a large operator of prisons and other correctional facilities. (Tr. 20:4-11).<sup>1</sup> It has contracts with several state and federal agencies, such as the Federal Bureau of Prisons and Immigration and Customs Enforcement, Department of Homeland Security. (Id.) The D. Ray James Detention Facility is a secure facility and is operated pursuant to a contract with the Federal Bureau of Prisons. (Id.) The D. Ray James Facility houses approximately 2,800 inmates. (Tr. 21:1-2).

### **B. The Stipulated Unit**

On February 15, 2013, more than one month prior to the election, GEO and the Union entered into a Stipulated Election Agreement which provided that three classifications of GEO employees would be permitted to vote in the election: corrections officers, food service officers, and transportation officers. (See Board Ex. 1(i)). Corrections officers at the D. Ray James Detention Facility are charged with maintaining the general security of the facility. (Tr. 19:13-16). These officers are posted at various stations throughout the facility, including inmate dormitories, the entry point, the outside grounds, the drug testing and investigation unit, and the

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<sup>1</sup> Citations to the Report are denoted as "Report p. \_\_\_"; Transcript citations are denoted as "Tr. \_\_\_"; Board Exhibits are denoted as "Board Ex. \_\_\_" and Employer Exhibits are denoted as "Co. Ex. \_\_\_".

armory, among other locations. (Tr. 20:14-16; 21:8-13; 149:20-24; 152:4-6; 193:16-20; 200:20-24). The officers perform varying duties, such as monitoring prisoners during recreational time and supervising prisoners on work duty, including but not limited to inmate grounds keeping. (Tr. 152:4-6, 14-16; 200:20-24). Rotation of duty post varies as some posts are rotated weekly and others only every few months. (Tr. 174-24). Despite varying job duties for each post, all of the employees are classified as corrections officers. (Tr. 152:14-16; 193:16-20). Accordingly, all the corrections officers were covered by the Stipulated Election Agreement and were eligible to vote in the election.

The two remaining employee job classifications in the Stipulated Election Agreement were the food service officers and the transportation officers. The food service officer job duties include supervising inmates who are assigned to cafeteria duty and monitoring inmates during meal periods. (Tr. 19:17-18). The transportation officers, who are armed at all times, are charged with monitoring employees while moving them on and off the secure facility. (Tr. 19:18-20; 21:19-21).

### **C. The Union's Objectionable Conduct**

In the days and weeks prior to the election, Officer Pamela Paolantonio and several Union supporters harassed and coerced GEO employees to vote in favor of SPFPA in the election. For example, in the days prior to the election, Officer Cynthia Moody was cornered by Officers Linda Dowling and Paolantonio in the control room on two occasions and prohibited from gaining access to the facility until she talked to them about the Union. (Tr. 326:15 – 327:18; 327: 22 – 328:25). Officer Lisa Kirkland was harassed and intimidated by Union supporters Officers Paolantonio, Kimberly Harmon, Amanda Newman and Elizabeth Peeples both on Facebook and while on her post to vote in favor of the Union. (Tr. 100:8 – 101:7; 104:10-16; 103:18-23). Officer Laurie Zawadowicz was harassed and intimidated by Union

supporters in person, at work and over the Internet, and, as a result of the Union's conduct did not vote in the election. (Tr. 377:18-24).

It is undisputed that in the weeks prior to the election, several Union supporters, including Officers Paolantonio, Newman, and Holcomb, told the food service officers they were not eligible to vote, despite the fact that the Stipulated Election Agreement clearly stated that these employees were included in the Stipulated Unit. (Tr. 51:18-23; 276:12-22). Union election observer Officer Paolantonio also told GEO's election observer, Aaron Jolly, in the days prior to the election, that food service officers were not permitted to vote in the election. (Tr. 28:19 – 29:5). When Mr. Jolly disagreed, Ms. Paolantonio responded that Mr. Jolly was incorrect. (Id.)

On the day of the election, Officer Paolantonio challenged all but two of the food service officers votes and defended her actions by stating she had her "marching orders." (Tr. 32:4-16). Although the plan to discourage food service officers from voting in the election was carried out by Ms. Paolantonio, and several other Union supporters within the facility, it was endorsed by the Local SPFPA President. Indeed, SPFPA Local President Daniel Lloyd admitted to GEO employee Sandra Goodwin that although the Union knew the food service officers were covered by the Stipulated Election Agreement, the Union challenged the food service officers because it was unsure of how they would vote in the election. (Co. Ex. 2).

**D. Election Results**

The election took place on March 20. The initial results of the election were 114 votes in favor of the Union, 85 votes against the Union, 31 votes challenged, and 31 employees did not vote. (Tr. 22:9-15). Of the challenges, 30 were entered by the Union and one was entered by the Board Agent. The Union and GEO were able to resolve some of the challenges resulting in the final tally being 117 votes in favor of the Union, 102 votes against the Union, 11 votes remaining challenged, and 31 employees did not vote. (Tr. 22:9-15). GEO filed these objections as a result

of the Union supporters' conduct on the day of and immediately prior to the election.

### **III. ARGUMENT**

The above facts prove a pattern of deceptive and manipulative conduct proliferated by Union agents and third-party SPFPA supporters who unlawfully influenced the outcome of the election. These employees actively spread false rumors about voting eligibility and harassed and intimidated employees to support the Union, thereby interfering with the election process in an effort to ensure a higher turnout of pro-Union employees.

In spite of irrefutable record evidence demonstrating numerous instances of Union misconduct during the critical period which affected the results of the election, the Hearing Officer overruled each of GEO's Objections. Upon close examination, it is evident that the Report is fraught with erroneous conclusions. The Hearing Officer misapplied controlling law concerning agency status and the standard for third-party conduct, and failed to give due consideration to testimony he credited from Company witnesses. In light of these faulty conclusions, the Board must reverse the Hearing Officer's findings, set aside the election results, and order a new election.

**A. The Hearing Officer Erroneously Concluded that Officer Pamela Paolantonio's Conduct did not Reasonably Tend to Interfere with Employees' Free and Uncoerced Choice in the Election.**

**1. The Hearing Officer Erroneously Concluded that Officer Pamela Paolantonio was not a Union Agent.**

GEO excepts to the Hearing Officer's conclusion that Union Election Observer Pamela Paolantonio was not a Union agent. (Report p. 5). The Hearing Officer's contention that Ms. Paolantonio could not be a SPFPA agent because she was not employed by the Union and did not admit to being directed by the Union simply ignores the legal standards for determining whether an individual is an agent of the Union. (Id.)

In deciding whether an individual is an agent of the Union, the Board applies common law agency principles. Dr. Rico Perez Products, 353 NLRB 452, 463 (2008). Courts have concluded that under the National Labor Relations Act (the “Act”), agency principles must be expansively construed, particularly when questions of union responsibility are presented. Pratt Towers, Inc., 338 NLRB No. 8, slip op. at 12 (2002). The question of whether the specific acts performed were actually authorized or subsequently ratified by the Union is not controlling; rather, the final inquiry is always whether the amount of association between the Union and the employee organizers is significant enough to justify charging the Union with the conduct. See International Brotherhood of Electrical Workers, 343 NLRB 1486, 1498 (2004). If there is apparent authority or a reasonable basis for the belief that the union authorized the alleged agent to perform the acts in question, then agency principles impute liability to the union. Bloomfield Health Care Center, 352 NLRB 252, 256 (2008). When the individuals committing misconduct are union agents, the Board will set aside the election results when the conduct “reasonably tend[ed] to interfere with the employees’ free and uncoerced choice in the election.” Id.

Notably, during the three-day hearing, the Union did not refute GEO’s evidence that Officer Paolantonio was instrumental in discouraging food service officers from voting, recruiting employees to sign Union authorization cards and attend union events, challenging employees covered both by the Stipulated Election Agreement and the Excelsior List, and asking GEO employees how they planned to vote. (Tr. 32:4-16; 102:12-21; 103:12-17; 312:21-25; 363:18-24; 423:15 – 424:4). 103:11-15; Tr. 423:11-23). Such actions gave GEO employees reasonable basis to believe Ms. Paolantonio acted as an agent of the Union. See Beaird-Poulan Division, Emerson Electric Co., 247 NLRB 1365, 1380-01 (1980) (“Alone among the union adherents, Williams enjoyed a position in which employees looked to him as a spokesman for the

Union when he purported to speak on its behalf Williams helped to initiate the campaign . . . he was looked upon by the employees as a person who spoke with inside information and some degree of authority. Therefore, Williams can fairly be considered as a Union agent in making such statements.”). See Cornell Forge Company and International Brotherhood of Boilermakers, 339 NLRB 733, \*\*5 (2003) (in-plant organizers may be agents of the union when they serve as the primary conduits for communication between the union and other employees or are substantially involved in the election campaign). Furthermore, the Union confirmed that Ms. Paolantonio was an agent of the Union when the Local President condoned Ms. Paolantonio’s actions and told Officer Goodwin the SPFPA challenged the food service officers because the Union did not know how they would vote. See Kitchen Fresh, Inc. v. NLRB, 716 F.2d 351, 355 (6th Cir. 1983) (an individual can be held to be a union agent if the union instigated, authorized, solicited, ratified, condoned, or adopted the individual's actions or statements or clothed the individual with apparent authority to act on behalf of the union); see also NLRB v. L&J Equip. Co. Inc., 745 F.2d 224, 233 (3rd Cir. 1984) (agency relationship exists between an employee and a union if “the union cloaked the employee with sufficient authority to create a perception among the rank-and-file that the employee acts on behalf of the union” and did not repudiate the employee’s statements or actions).

The Hearing Officer’s Report all but ignored testimony from GEO’s witnesses that demonstrated Officer Paolantonio acted with apparent authority to represent the Union. However, the subjective view among employees about whether an employee is a representative of a union is relevant to the analysis. Battle Creek Health Sys., 341 NLRB No. 882, 894 (2004). Here, the evidence supports a finding that GEO employees reasonably believed Ms. Paolantonio was an agent for the Union. For example, Officer Jolly testified that when Officer Paolantonio

challenged all but two of the food service officers' votes, she defended her actions to by stating she had her "marching orders," which he understood to mean the Union told her who to challenge. (Tr. 32:4-16). Ms. Paolantonio similarly told Officer Paul Degener that she challenged his vote because she had her "marching orders," which he understood to mean the Union told her who to challenge. (Tr. 312:21-25). She also told Brandi Manning she was "just doing my job" by challenging Ms. Manning's vote, which Ms. Manning understood to mean the Union told Ms. Paolantonio who to challenge. (Tr. 363:18-24). In addition, Darryl Mendyk testified that he believed Ms. Paolantonio received her objections list from the Union. (Tr. 199:3-13). Christina Davis testified that the "Union Director," meaning Ms. Paolantonio, told her prior to the election that the food service officers' votes would be challenged. (Tr. 236:1-7). Finally, Laurie Zawadowicz testified Ms. Paolantonio repeatedly questioned her as to why she did not attend Union meetings. (Tr. 371:14-25).

In sum, the Hearing Officer erroneously held that Ms. Paolantonio was not a Union agent. The clear preponderance of the relevant evidence demonstrates that Paolantonio was an authorized agent acting on behalf of the Union, and that employees reasonably understood her to be the same.

**2. The Hearing Officer Improperly Analyzed the Conduct of Ms. Paolantonio under the "Third-Party" Conduct Standard.**

The Hearing Officer's conclusion that Ms. Paolantonio was a third-party rather than a Union agent taints his analysis of her conduct. Where misconduct is attributable to third parties the Board will overturn an election only if the misconduct is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). Certainly this standard sets the bar much higher for parties seeking to overturn election results, as compared to the agency standard outlined above. This standard is

more restrictive, and fundamentally different than the agency standard, which again requires only that the comments and actions by the Union agents “reasonably tend[ed] to interfere with the employees’ free and uncoerced choice in the election.” Bloomfield Health Care Center, 352 NLRB at 256.

**3. Ms. Paolantonio’s Conduct Interfered with the Employees’ Free and Uncoerced Choice in the Election.**

The Board takes a hardline approach toward improper behavior by an agent of a party to the election. Orleans Mfg. Co., 120 NLRB 630, 633 (1958). “A free and fair choice is impossible if the atmosphere surrounding the election is poisoned by coercive conduct which induces employees to base their vote not upon conviction, but ‘upon fear or ... any other improperly induced consideration.’” NLRB v. L&J Equip. Co., Inc., 745 F.2d 224, 236 (5th Cir. 1984). The Board has long recognized that coercive or intimidating conduct that destroys laboratory conditions, and interferes with employees’ free and uncoerced choice in the election, warrants overturning an election. Sewell Mfg. Co., 1962 NLRB Lexis 147, \*11 (1962); Baja’s Place, Inc., 268 NLRB 868 (1984).

Here, Officer Paolantonio sought to prevent the food service officers from voting in the election by intentionally telling them, up through the actual date of the election, that they were not eligible to vote. (Tr. 351:21-352:5). Officer Paolantonio likewise intimidated her coworkers in an effort to coerce them to vote for the Union. To that end, in the days prior to the election, Ms. Paolantonio cornered Officer Moody in the control room of the facility on two occasions and prohibited her from gaining access to the facility until Ms. Moody agreed to discuss the Union. (Tr. 326:15 – 327:18; 327: 22 – 328:25). During these meetings, Officer Paolantonio quoted scripture to Ms. Moody in an effort to intimidate her and told Ms. Moody she would be left behind and not protected if she failed to support the Union. (Tr. 328:16-25). The harassment

made Ms. Moody concerned for her safety while at work. (Tr. 330:18-23). Ms. Paolantonio also made sexually explicit and inappropriate comments to Officer Wessinger to intimidate her to vote for the Union, stating “you need to get off of your knees and get your own opinion. You need to vote yes.” (Tr. 135:6-21). Finally, Ms. Paolantonio harassed and intimidated several other employees, including Officer Lisa Kirkland, to vote for the Union. (Tr. 102:12-21; 103:5-15, 104:10-21).

The Hearing Officer also wrongly concluded that Ms. Paolantonio’s challenges of 17 food service officers and 5 corrections officers were reasonable and for cause. (Report p. 6, 7, 11, 13, 14, 16). In reaching this determination, the Hearing Officer indicated that Ms. Paolantonio challenged the corrections officers working in grounds services “because she did not believe these two men were corrections officers,” challenged the corrections officer working in the armory “because he basically repaired locks and assisted food service officers in the chow hall facility,” and challenged food service officers because they wore different colored uniforms than Paolantonio did. (Report at 16). Importantly, Ms. Paolantonio never testified at the hearing and her reasoning for challenging the employees is nowhere on the record. Accordingly, the Hearing Officer’s conclusions are based purely on his own speculation and conjecture regarding Ms. Paolantonio’s motives.

Ms. Paolantonio’s aforementioned conduct interfered with these employees’ free and uncoerced choice in the election and, because Ms. Paolantonio is an agent of the Union, warranted overturning the election. Because the Hearing Officer analyzed the conduct of Ms. Paolantonio under the incorrect – and more severe – third-party actor legal standard, his analysis and conclusions must be set aside.

**B. The Hearing Officer Erroneously Concluded that the Conduct of Third-Party Union Supporters did not Create a General Atmosphere of Fear and Reprisal Rendering a Free Election Impossible.**

GEO excepts to the Hearing Officer's finding that the conduct of third-party Union supporters Harmon, Smith, Peeples, Newman and Huggins did not create an atmosphere of fear and reprisal among GEO's employees. (Report at 12). The Hearing Officer concluded that there was no basis to set aside the election because the employees made no threats of bodily harm. (Report at 10). However, there is no such requirement that a third-party threaten physical bodily harm to employees or their families to set aside an election. Indeed, the Board has reversed elections for third-party conduct short of threatening physical harm. See Smithers Tire & Auto. Testing, 308 NLRB 72, 73 (1992)(sustaining an Employer's objections and ordering a new election after pro-union employees threatened to flatten the tires of employee's automobile). "Realistically speaking, and in order to near if not arrive at the highly desired laboratory conditions for an election, this is the most workable approach. Parties to an election and their well wishers are thus put on notice that prohibited conduct engaged in by anyone may forfeit an election. This then will serve to put a premium on proper deportment by all parties." Teamsters Local 980 (Landis Morgan), 177 NLRB 579, 584 (1969). Conduct which violates the Act is, *a fortiori*, conduct which interferes with an election unless it is so *de minimis* that it is virtually impossible to conclude that the violation could have affected the results of the election. Airstream, Inc., 304 NLRB 151, 152 (1991); Dal-Tex Optical Co., 137 NLRB 1782, 1786 (1962). Therefore, prohibited conduct, including improper deportment, engaged in by anyone may forfeit an election. Landis Morgan, 177 NLRB at 584.

GEO further excepts to the Hearing Officer's findings that only one employee testified that altercations with the Union were heated. (Report at 9). During the hearing, multiple GEO employees, including Officers Wessinger, Grayson, Kirkland, Moody and Zawadowicz, testified

that they were harassed and intimidated to vote for the Union by Officers Paolantonio, Smith, Newman, Huggins, and Peeples. Surprisingly, the Hearing Officer's Report did not address the testimony of any of these witnesses. (Report at 9). The flaw is critical to the Hearing Officer's Report. Officers Kirkland, Moody and Wessinger each testified that the actions of the Union supporters caused them to fear for their safety and protection from inmates at work. (Tr. 370:16 – 371:6; 372:23 – 373:15; 375:10-17; 375:23 – 376:3; 104:17-25; 330:2-23). Officers Kirkland and Grayson both testified that they were bullied and harassed by the Union supporters on Facebook and at work. (Tr. 57:17 – 76:11; 104:10-21). Officers Moody, Grayson, Kirkland, Wessinger and Shawn Woods each testified that Union supporters confronted them regarding the votes and subsequently belittled them, called them names, or threatened them with isolation. (Tr. 54:14 – 55:11; 75:17 – 76:11; 135:8 – 136:9; 222:2-23). In addition, the Union supporters vandalized the property of Officer Berke, a known opponent of the Union. (Tr. 120:2-10; 124:13-25).

Moreover, contrary to the Hearing Officer's findings, rumors of these acts of intimidation and vandalism were widely disseminated at the facility, and several employees testified that they were aware of the constant harassment of employees. (Tr. 105:6-25; 309:10-21; 320:1-9; 346:22 – 347:14). Officers Gordon and Moody testified that they were concerned that in the event of an emergency at the facility, Union supporters would refuse to assist those employees who did not vote for the Union. (Tr. 104:11-23; 347:3-8). The Union supporters' conduct had a significant effect on the election and caused Officers Zawadowicz and Porschia Fluker not to vote in the election. (Tr. 80:23 – 81:4; 377:6-24). If these two Officers did not vote due to the Union's conduct, the Region cannot say with certainty that the other 31 Officers who did not vote – a number which could have affected the outcome of the election – did not do so because of the

Union's harassment and intimidation.

C. **The Hearing Officer Erroneously Concluded that the Union's Attempts to Prohibit Food Service Officers from Voting did not Disturb the Laboratory Conditions of the Election.**

GEO excepts to the Hearing Officer's conclusion that the attempts of the Union and its third-party supporters to inhibit food service officers and several corrections officers from voting in the election did not disturb the election results. (Report at 6, 7, 11, 15). At the hearing, the Union did not deny that it intentionally told food service officers they were ineligible to vote, nor did it present any witnesses to refute or explain the admission from SPFPA Local President Daniel Lloyd, that SPFPA only challenged the food service officers because it was unsure of how those Officers planned to vote. The Union did not deny that it challenged only the ballots of perceived no voters in an effort to intimidate those other non-Union supporters from voting in the election. Incredibly, despite these tacit admissions of a Union-endorsed plan to disenfranchise voters, the Hearing Officer concluded that these actions did not affect the course of the election, and therefore did not merit setting the election results aside. (Report p. 12, 16).

In support of his conclusion, the Hearing Officer first determined that food service officers could not have been inhibited from voting based on the Union's actions for two reasons: (1) during the time period prior to the election "there was an issue as to which job classifications would be included in the bargaining unit;" and (2) the Company held meetings and sent letters to the bargaining unit members disabusing them of the Union's misinformation. (Report at 6, 7). The first reason is factually inaccurate. The parties entered into the Stipulated Election Agreement on February 15, more than one month prior to the election. The Agreement clearly stated that the unit included "corrections officers, food service officers, and transportation officers." (Board Ex. 1(i)). Thus there was no dispute regarding the bargaining unit during the critical period prior to the election, other than the one falsely created by the Union. As to the

second reason, although it is true that the Company communicated to food service officers that they were permitted to vote, it does not follow that the Union's conduct could not have compromised the results of the election. Indeed, despite the fact that the Company made several efforts to clarify voter eligibility, the Union repeatedly undermined those efforts. After Officer Gordon received clarification from a supervisor that he could vote in the election, Ms. Paolantonio repeated to him that food service officers would not be allowed to vote, and, if he voted, she would challenge his ballot and it would be rejected. (Tr. 349:18 – 350:8). On a separate occasion three days prior to the election, Officer Huggins told Officer Grayson that she was not allowed to vote in the election and if she voted, the Union would challenge her vote so she would not be counted. (Tr. 58:13 – 54:22). Union supporters continued to tell Food Services Officers they were ineligible to vote up to and on the date of the election. (Tr. 351:21 – 352:5). Thus, it is quite probable that the remaining food service officers who did not vote in election did so because they were uncertain of their eligibility and concerned their votes would be challenged.

The Hearing Officer also erred when he determined that Union's confessed conduct could not have affected the outcome of the election because the Union followed all of the proper procedures for challenging ballots. (Report p. 16). This conclusion overlooks that the Union, through its Local President, admitted to strategically challenging all perceived "no" votes. (See Co. Ex. 2). Although the Board's procedures may permit parties to challenge votes, it certainly cannot condone challenging employees in bad faith to sway an election or disenfranchise voters. That is precisely what the Union did here. The Union's strategy to disenfranchise voters was successful as evidenced by Officer Zawadowicz's testimony that she did not vote in the election because of this conduct. (Tr. 377:6-24).

Importantly, the Board has made clear that the success or failure of the Union's conduct does not determine whether there has been improper interference with employees' Section 7 rights. Garment Workers, ILGWU (Georgetown Dress Corp.), 214 NLRB 706 (1974). Rather, the misconduct is measured by whether it might interfere with, restrain or coerce employees in the exercise of the rights guaranteed them in the Act. Id., see also Steelworkers, Local Union 550, 223 NLRB 854, 855 (1976). Because the Union's conduct might have interfered with or restrained the food service officers' Section 7 rights, the election must be set aside.

**IV. CONCLUSION**

For all the foregoing reasons, GEO Corrections Holdings, Inc. respectfully requests that the Region decline to adopt the Hearing Officer's Report and Recommendations, that it sustain the Employer's Objections, and that it order a second election.

Respectfully submitted,

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