UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32

CLEAR CHANNEL OUTDOOR, INC.

Employer Case No. 32-RC-139395

and

CONSTRUCTION AND GENERAL LABORERS LOCAL 304, LABORERS' LOCAL INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, AND THE NORTHERN CALIFORNIA DISTRICT COUNCIL OF LABORERS
Petitioner

and

TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS

EXCEPTIONS OF CLEAR CHANNEL OUTDOOR, INC. TO REPORT AND RECOMMENDATIONS ON OBJECTIONS

Pursuant to the provisions of Section 102.69 and 102.67 of the Board's Rules and Regulations, Clear Channel Outdoor, Inc. files these Exceptions to the Report and Recommendations of Regional Director George Velastegui, dated December 16, 2014.

The Objection filed by Clear Channel Outdoor, Inc. **(*See* Exhibit 1)** was based upon the same misconduct alleged in an unfair labor practice charged filed by Clear Channel Outdoor, Inc. in NLRB Case No. 32-CB-140956 **(*See* Exhibit 2)**.

As of today, December 30, 2014, Region 32 has made no disposition of Case No. 32-CB-140956, and its status is that it is still open. If the misconduct alleged in the unfair labor practice charge has merit, then, certainly, it would also constitute objectionable conduct on the part of the

Unions, requiring that the results of the election be set aside. Attached as **Exhibit 3,** please see the Position Paper in support of Case 32-CB-140956 for legal authority in support of these Exceptions. For confidentiality purposes, witness names have been redacted

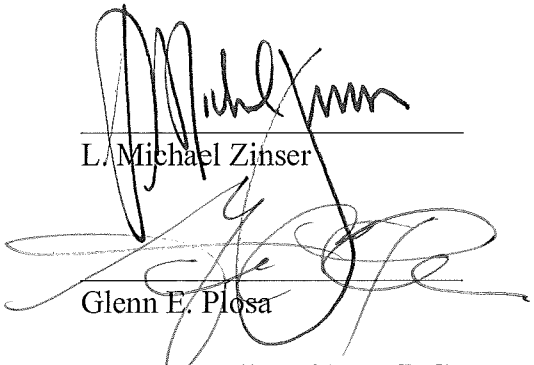
CONCLUSION

For the reasons set forth above, Clear Channel Outdoor, Inc. requests that its Objection be sustained and that the results of the election be set aside.

Dated: December 30, 2014

Nashville, Tennessee

Respectfully submitted,



L. Michael Zinser

Glenn E. Plosa

THE ZINSER LAW FIRM, P.C.
414 Union Street, Suite 1200
Nashville, TN 37219
Telephone: 615.244.9700
Facsimile: 615.244.9734

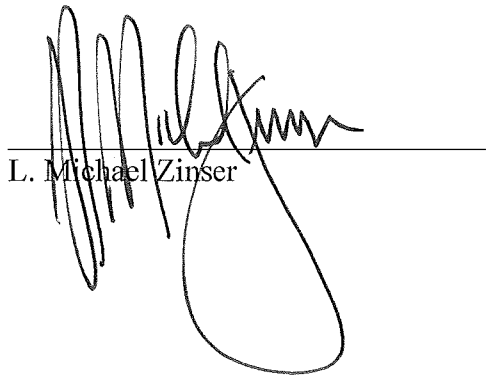
CERTIFICATE OF SERVICE

I hereby certify that the foregoing EXCEPTIONS OF CLEAR CHANNEL OUTDOOR, INC. TO REPORT AND RECOMMENDATIONS AN OBJECTIONS was served as indicated on this 30th day of December 2014, on the following:

George Velastegui, Regional Director
NLRB Region 32
Oakland Federal Building
1301 Clay Street, Room 300-N
Oakland, CA 94612-5211
(Via E-Filing and Facsimile at 510.637.3315)

Paul Supton, Esq., Counsel
Northern California District Council of Laborers
4780 Chabot Drive, Suite 200
Pleasanton, CA 94588-3322
(Via Facsimile at 925.469.6900 and U.S. Mail)

Sheila K. Sexton, Esq., Counsel
Teamsters Local 853
Beeson, Tayer & Bodine
Ross House, 2nd Floor
483 Ninth Street
Oakland, CA 94607
(Via Facsimile at 510.625.8275 and U.S. Mail)



L. Michael Zinser

EXHIBIT 1

THE ZINSER LAW FIRM A Professional Corporation

414 Union Street, Suite 1200
Bank of America Plaza
Nashville, Tennessee 37219
TELEPHONE 615.244.9700
FACSIMILE 615.244.9734
www.zinserlaw.com

OF COUNSEL
Dugan P. Kelley
Christman Kelley & Clarke, PC
Dallas, Texas
Licensed In Texas and California

Patrick J. Sullivan
Law Offices of Patrick J. Sullivan
Carlsbad, California
Licensed In California only

November 26, 2014
(Via Facsimile at 510.637.3315 and Federal Express)

George P. Velastegui, Regional Director
NLRB Region 32
Oakland Federal Building
1301 Clay Street, Room 300-N
Oakland, CA 94612-5211

RE: NLRB CASE NO. 32-RC-139395

Dear Director Velastegui:

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Clear Channel/Outdoor, Inc./Oakland files the following Objection to the conduct of Construction and General Laborers' Local 304, Laborers International Union of North America, AFL-CIO, and the Northern California District Council of Laborers:

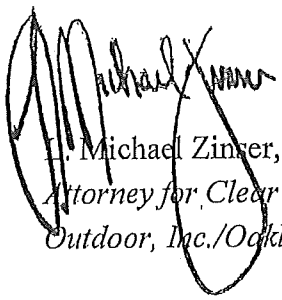
> On October 23, 2014, the above-named labor organizations filed an Election Petition to represent employees of the Employer. (See Attached Exhibit 1). An election was held on November 21, 2014. Since on or about October 23, 2014, the above-named labor organizations have seriously restrained and coerced the employees in the described unit, effectively destroying the laboratory conditions for a fair election on November 21, 2014. Section 10(j) relief is requested.
>
> The election results should be set aside and the above-named labor organizations should be precluded from petitioning for another election, and/or representing the employees in the unit described in Exhibit 1, for a 12-month period of time.

Our evidence in support of this Objection is the same evidence we submitted in support of the Unfair Labor Practice Charge filed by Clear Channel/Outdoor, Inc./Oakland in Case No. 32-CB-140956. Please see the evidence, including an affidavit, presented to your agent, Victor Sella-Villa, on November 18, 2014.

The 10-0 vote in favor of Construction and General Laborers' Local 304, Laborers International Union of North America, AFL-CIO, and the Northern California District Council of Laborers evidences the success of the threats and coercion of the unions.

Thank you for your prompt attention to this matter.

Sincerely,



L. Michael Zinzer,
Attorney for Clear Channel Outdoor, Inc./Oakland

LMZ/cbc

cc: Robert Schmitt
John O'Con
Glenn E. Plosa

EXHIBIT 1

Unit and Eligible Voters – The following unit is appropriate for purposes of collective bargaining within Section 9(b) of the Act:

> All full-time and regular part-time rotation/construction employees, including crew chiefs and electricians, employed by the Employer at its facility located at 2857 Hannah Street in Oakland, CA; excluding employees in units represented by other labor organizations, all other employees, confidential employees, office clerical employees, guards, supervisors as defined in the Act.

EXHIBIT 2

THE ZINSER LAW FIRM A Professional Corporation

414 Union Street, Suite 1200
Bank of America Plaza
Nashville, Tennessee 37219
TELEPHONE 615.244.9700
FACSIMILE 615.244.9734
www.zinserlaw.com

OF COUNSEL
Dugan P. Kelley
Christman Kelley & Clarke, PC
Dallas, Texas
Licensed in Texas and California

Patrick J. Sullivan
Law Offices of Patrick J. Sullivan
Carlsbad, California
Licensed in California only

November 14, 2014
(Via Facsimile at 510.637.3315 and Federal Express)

George P. Velastegui, Regional Director
NLRB Region 32
Oakland Federal Building
1301 Clay Street, Room 300-N
Oakland, CA 94612-5211

Dear Director Velastegui:

Attached is a copy of an Unfair Labor Practice Charge filed today on behalf of Clear Channel Outdoor, Inc./Oakland against Construction and General Laborers' Local 304, Laborers International Union of North America, AFL-CIO, and the Northern California District Council of Laborers.

The above-named unions have destroyed the laboratory conditions necessary for employees to have a fair election on November 21, 2014, the date of the currently scheduled election.

On behalf of Clear Channel Outdoor, Inc./Oakland, the undersigned will be prepared to present witnesses to Region 32 at 9:00 a.m. on November 18, 2014 to give evidence in support of this charge. Please advise as soon as possible the identity of the agent you assign to investigate this charge.

Thank you for your courtesy and cooperation.

Sincerely,

L. Michael Zinser,
Attorney for Clear Channel Outdoor, Inc./Oakland

LMZ/cbc
Encl.
cc: Robert Schmitt
John O'Con
Leo Inprasueth
Glenn E. Plosa

INTERNET
FORM NLRB-508
(2-08)

FORM EXEMPT UNDER 44 U.S.C 3512

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name	b. Union Representative to contact	
Construction and General Laborers' Local 304, Laborers International Union of North America, AFL-CIO, and the Northern California District Council of Laborers	Paul Supton	
c. Address *(Street, city, state, and ZIP code)*	d. Tel. No. 510.581.9600	e. Cell No.
29475 Mission Boulevard Hayward, CA 94544-6118	f. Fax No. 510.581.3435	g. e-Mail

h. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* ____ 8(b)(1)(A) ____ ____ ____ ____ ____ ____ of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

On October 23, 2014, the above-named labor organizations filed an Election Petition to represent employees of the Employer. (See Attached Exhibit 1). An election is scheduled for November 21, 2014. Since on or about October 23, 2014, the above-named labor organizations have seriously restrained and coerced the employees in the described unit, effectively destroying the laboratory conditions for a fair election on November 21, 2014. Section 10(j) relief is requested.

The petition filed by the unions in Case No. 32-RC-139395 should be dismissed; the election cancelled; and for at least a period of twelve (12) months, the above-named labor organizations should be precluded from petition for another election the unit described in Exhibit 1.

3. Name of Employer	4a. Tel. No. 615.244.9700	b. Cell No.
Clear Channel Outdoor, Inc./Oakland	c. Fax No. 615.244.9734	d. e-Mail

5. Location of plant involved *(street, city, state and ZIP code)*	6. Employer representative to contact
2857 Hannah Street, Oakland, CA 94607	L. Michael Zinser

7. Type of establishment *(factory, mine, wholesaler, etc.)*	8. Identify principal product or service	9. Number of workers employed
Outdoor Advertising Company	Outdoor Advertising	10

10. Full name of party filing charge	11a. Tel. No. 615.244.9700	b. Cell No.
Clear Channel Outdoor, Inc./Oakland	c. Fax No. 615.244.9734	d. e-Mail
11. Address of party filing charge *(street, city, state and ZIP code.)*		
555 12th Street, Suite 950, Oakland, CA 94607		

12. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By _____ President, The Zinser Law Firm
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 414 Union Street, Suite 1200
Nashville, TN 37219 *(date)* 11/14/14

Tel. No. 615.244.9700
Cell No.
Fax No. 615.244/9734
e-Mail

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 1

Unit and Eligible Voters – The following unit is appropriate for purposes of collective bargaining within Section 9(b) of the Act:

> All full-time and regular part-time rotation/construction employees, including crew chiefs and electricians, employed by the Employer at its facility located at 2857 Hannah Street in Oakland, CA; excluding employees in units represented by other labor organizations, all other employees, confidential employees, office clerical employees, guards, supervisors as defined in the Act.

EXHIBIT 3

THE ZINSER LAW FIRM A Professional Corporation

414 Union Street, Suite 1200
Bank of America Plaza
Nashville, Tennessee 37219
TELEPHONE 615.244.9700
FACSIMILE 615.244.9734
www.zinserlaw.com

OF COUNSEL
Dugan P. Kelley
Christman Kelley & Clarke, PC
Dallas, Texas
Licensed in Texas and California

Patrick J. Sullivan
Law Offices of Patrick J. Sullivan
Carlsbad, California
Licensed in California only

November 18, 2014
(Via Facsimile: 510.637.3315 & U.S. Mail)

Victor Sella-Villa
NLRB Region 32
1301 Clay Street, Suite 300N
Oakland, California 94612-5224

RE: NLRB CASE NO. 32-CB-140956; CONSTRUCTION AND GENERAL LABORERS' LOCAL 304, LABORERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, AND THE NORTHERN CALIFORNIA COUNCIL OF LABORERS (CLEAR CHANNEL OUTDOOR, INC./OAKLAND)

Dear Mr. Sella-Villa:

Please accept this statement as the position of Clear Channel Outdoor, Inc., Oakland Division ("Clear Channel/Oakland") with respect to the above-referenced charge. For the reasons explained herein, Clear Channel/Oakland believes that the Regional Director should cancel the election scheduled for November 21, 2013, in NLRB Case No. 32-RC-139395; that the Regional Director should issue a complaint; and that the Regional Director should seek injunctive relief in the U.S. District Court for the Northern District of California pursuant to Section 10(j) of the Act, 29 U.S.C. § 160(j). This statement is presented as a supplement to the witnesses we have offered to present, and the affidavit of [redacted] you have taken to authenticate the facts and evidence provided in this statement. We also offered to present [redacted] and [redacted]

In addition, we have provided you the names and phone numbers of the employees in the voter eligibility pool; you already have their addresses from the Excelsior List in Case No. 32-RC-139395. Given the threats and coercion involved thus far, I recommend that you consider the use of administrative subpoenas in order to get testimony from these witnesses.

I. FACTUAL BACKGROUND

Clear Channel/Oakland has ten operations employees who are not currently represented by any labor union. These employees are classified as eight rotation/construction employees and two electricians. These employees have, for many years, had contributions made on their behalf to benefit funds administered by the Laborers Trust Funds for Northern California. There has never been a signed collective bargaining agreement with Laborers Local 304 or the Northern California District Council of Laborers. Similarly, Clear Channel/Oakland has never been a signatory to any multi-employer agreement with these unions. Clear Channel/Oakland has had an informal arrangement whereby it made contributions to these Funds on behalf of the employees and the Funds accepted contributions on behalf of employees. These employees have been

covered by the Laborers Trust Funds for Northern California with respect to health and welfare, as well as pension.

On or about October 23, 2014, Laborers Local 304 and the Northern California District Council of Laborers (collectively "Local 304") filed a petition with Region 32 to represent the operations employees. The case was catalogued as NLRB Case No. 32-RC-139395. On October 31, 2014, the parties agreed to, and the Region approved, a stipulated election agreement. The stipulated election agreement called for an election on November 21, 2014.

On Friday November 7, 2014, [redacted] met with employees [redacted] The purpose of the meeting was to communicate to these employees the company's position that they should vote "no" at the upcoming election. Also present at the meeting was [redacted] and [redacted]

At this meeting, the employees brought up their pension. [redacted] stated words to the effect that "We, the employees, have been told by representatives of Laborers Local 304 that we will lose our pension if we do not vote for Local 304. If we vote "no," we will lose our pension." During the conversation, [redacted] explained that Local 304 had communicated the same threat of pension loss to them if they, individually, did not vote for Local 304 in the upcoming election. In addition, all three employees stated that representatives of Local 304 threatened them with the loss of their health insurance if they did not vote for Local 304 at the November 21, 2014 election.

On Monday, November 10, 2014, [redacted] and [redacted] met with three other employees, [redacted] the meeting, [redacted] volunteered that the union had threatened him and his coworkers, explaining, "We are being told by Local 304 representatives that we will lose our pensions, our health insurance, and our years of service with the pension if we do not vote for Local 304 on November 21, 2014." [redacted] and [redacted] agreed with [redacted]'s statement, explaining that they had received the same threat from Local 304 representatives. The employees were distressed as a result of Local 304's threats. The employees stated words to the effect that it was futile to vote against the union and that the threats of pension and health insurance loss left them with no choice but to vote for Local 304.

On Tuesday November 11, 2014, [redacted] met with [redacted]. At this meeting, these three employees stated that they did not feel that they had a choice in the election, due to the threats of losing their benefits.

On November 11, 2014, after his meeting, [redacted] saw [redacted] at the shop. [redacted] told [redacted] how important the pension issue was to him and he could just not risk losing his pension, as Local 304 had threatened.

Local 304's threats of pension and health insurance benefit loss constitute an extraordinary unfair labor practice and compel a cancelling of the scheduled election.

Local 304 has a business agent named Fernando Estrada. He has approached operations employees at the shop, outside the shop. Additionally, Dimas Cuevas has also approached employees outside the shop. Employees have voluntarily reported the names of these two business agents to managers at Clear Channel/Oakland.

Fernando Estrada, in particular, is not only a representative of Laborers Local 304. Mr. Estrada is an Employee trustee of the Laborers Trust Funds for Northern California. These are the trust funds to which Clear Channel/Oakland has historically made contributions on behalf of the operations employees. It is the threat of losing these benefits that the union has communicated to employees to force them to vote for Local 304 in the upcoming election; these threats violated the Act. The fact that the Local 304 business agent is also the trustee of the Trust Funds makes the threat all the more egregious and credible, in the eyes of the employees.

II. ARGUMENT

The operations employees at Clear Channel/Oakland have enjoyed stable benefits for as long as anyone can remember. The arrangement by which the Trust Funds accepted benefits on behalf of unrepresented employees is, perhaps, unorthodox. Unrepresented employees traditionally do not enjoy the benefits of union-affiliated trust funds. That this dynamic exists with respect to the operations employees of Clear Channel/Oakland is secondary to the fact that it is Local 304, through its representative (who also happens to be a trustee of the Funds) that is threatening the loss of benefits in an effort to impact the election.

This is a "duck soup" analysis of an unfair labor practice. If, for example, an employer threatened unrepresented employees with the loss of a company-sponsored 401(k) plan that employees had historically enjoyed if they voted for the union, the threat would be an unquestioned violation of the Act and tainted the election process. Similarly, if an employer threatened unrepresented employees with the loss of health insurance benefits that employees had historically enjoyed, unless they voted against a union, there would be no question that the threat violated the Act and tainted the election process. In fact, such hallmark violations of the Act would garner a bargaining order and injunctive relief pursuant to Section 10(j) of the Act.

In the instant case, the offending party is secondary to the violation. Both an employer and a union are bound by the tenets of the Act and cannot infringe upon employees' Section 7 rights, particularly in the context of an election. Local 304 has violated Section 8(b)(1)(A) of the Act.

A. Threatening the Loss of Benefits Violates Section 8(b)(1)(A) of the Act

In *Pattern Makers' League of N. Am., AFL-CIO v. N.L.R.B.*, 724 F.2d 57, 59 (7th Cir. 1983) aff'd, 473 U.S. 95 (1985), the court determined that the union violated Section 8(b)(1)(A) when it threatened employees with the loss of accrued pension benefits if the employees crossed a picket line and/or resigned their union membership. The Seventh Circuit affirmed the Board's ruling, in relevant part, explaining:

> The Board further ruled, in agreement with the finding of the administrative law judge, that the Union violated Section 8(b)(1)(A) by threatening employees with reprisals in the form of physical harm or loss of accrued pension benefits if the employees crossed picket lines and violated Section 8(b)(1)(A) and 8(b)(2) by imposing a fine and excessive fees in dues on an employee as a condition of readmission to the Union after expelling him for submitting his resignation and by attempting to cause an employee's discharge from employment for failing to comply with the provisions of the Union-security agreement. The Union has not challenged these rulings before this court, and, accordingly, they are summarily enforced.

Pattern Makers' League of N. Am., 724 F.2d at 59.

In *Local Union No. 167, Progressive Mine Workers of Am. v. NLRB*, 422 F.2d. 538, 540 (7th Cir. 1970), the court determined that the union violated Section 8(b)(1)(A) of the Act when the union threatened employees with the loss of accrued pension benefits for workers who went to work for a mine in where a competing union represented employees. The court explained:

> On the day they quit the Midwest mine, January 16, 1967, Bosse and Ude presented to the Union's financial secretary checks for $15.95 for their Union dues for the balance of the year. Although the Union originally accepted these two employees' dues, the Union subsequently, after a three-month retention, returned the dues. The Union asserted that Bosse and Ude were no longer eligible in the Welfare and Retirement Pension Plan because of their non-membership in the Union. The Board found that the Union violated § 8(b)(1)(A) of the Act by depriving Bosse and Ude of eligibility for pension and welfare benefits because of non-membership in the Union. The Board further found that the Union's refusal to accept their tendered dues and to permit these employees to remain eligible served as a warning to other Midwest employees that they too might lose such employment benefits in the event they went to work at a UMW mine and lost their membership in the Union. In this respect also, the Board found the Union's conduct violative of Section 8(b)(1)(A) of the Act.

The court continued:

> While a Union is free to "prescribe its own rules with respect to the acquisition and retention of membership therein," a Union violates Section 8(b)(1)(A) of the Act when it deprives or threatens to deprive employees of employment benefits in

> order to compel them to fulfill their membership obligations, or as a punishment for their having failed to meet such obligations. *See e.g. N.L.R.B. v. Int'l Hod Carriers*, 295 F.2d 657, 658 (7th Cir. 1961); *N.L.R.B. v. Int'l Union, United Auto Workers, Local 291*, 194 F.2d 698, 702 (7th Cir. 1952).

Local Union No. 167, 422 F.2d at 540.

Threatening employees violates employees' Section 7 rights. Actions that infringe upon employee's Section 7 rights are violations of either Section 8(a)(1) or 8(b)(1)(A) of the Act, depending upon whether the offending party is an employer or labor organization. Thus, Board precedent analyzing whether an employer has violated Section 8(a)(1) of the Act is equally applicable to an analysis of determining whether a labor organization violated Section 8(b)(1)(A) of the Act.

In *NLRB v. Dowell Div. of Dow Chemical Co.*, 420 F.2d 480, 482 (5th Cir. 1969), the court affirmed a Board finding that a company violated the Act by threatening employees, indirectly, with the loss of benefits, including retirement benefits, if employees voted for a union in an election. The court explained:

> ... the Company's suggestions of economic harm due to unionization have the natural tendency to imply retaliation for supporting the Union since they were not based on "demonstrably probably consequences beyond its control." Since the Company emphasized that it alone controlled the benefits of the employment relationship that were threatened by unionization, the employees could have reasonably inferred that their employer was willing to use its economic power to see that its dire predictions came true.

Dowell Div. of Dow Chemical Co., 420 F.2d at 482.

In *McLane/W. Inc. v. NLRB*, 723 F.2d 1454, 1457 (1983), the managers of a company threatened employees with loss of benefits if they voted for a union. In particular, the court explained:

> [The Company threatened] individual employees with loss of benefits, plant closure and physical violence, in this connection Shields (the employee) testified that McCarty (a supervisor) told him on more than one occasion that the employees would lose benefits if the union won the election. Shields said that McCarty told him that the employees would lose their profit-sharing plan.

McLane/W. Inc. v. NLRB, 723 F.2d 1457. The court affirmed the Board's finding that the threat of benefit loss violated the Act.

These cases are equally applicable to Local 304's violation of Section 8(b)(1)(A) of the Act in the instant case.

B. Injunctive Relief Pursuant to Section 10(j) is Appropriate

Section 10(j) of the Act states:

> (j) [Injunctions] The Board shall have power, upon issuance of a complaint as provided in Subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

29 U.S.C. § 160(j). A 10(j) injunction is as applicable to a labor organization for a violation of the Act as it is to an employer. The Act makes no distinction limiting injunctive relief pursuant to Section 10(j) to apply only to employers. In the instant case, injunctive relief pursuant to Section 10(j) is an appropriate remedy for Laborers Local 304's violations of the Act.

In *Kendellen v. Evergreen Am. Corp.*, 428 F. Supp. 2d 243, 252 (D.N.J. 2006), the court granted injunctive relief where the company threatened employees with the loss of benefits if a union was brought in, explaining:

> By coercively interrogating its employees, concerning their activities on behalf of the Union or how they intended to vote in an NLRB election, threatening its employees with plant closure, loss of jobs, loss of benefits, or other unspecified reprisals because of their union activities, soliciting grievances from employees, while impliedly promising to remedy such grievances [injunctive relief was appropriate].

In *Evergreen Am. Corp.*, the court further explained:

> Top employees in Evergreen's management talked to numerous employees about plant closures and the danger of joining the Union. These threats along with the numerous benefits that Evergreen provided to encourage employees not to join the Union have created a situation in which the Union will continue to lose its bargaining power if a bargaining order is not imposed. In fact, Evergreen has committed hallmark violations by making threats of plant closure and offering wage increases and promotions far beyond what it regularly made, which courts have found justify a bargaining order.

428 F. Supp. 2d 252.

10(j) relief has been granted where employers make threats of loss of benefits to employees if employees vote for a union. *See Hooks ex rel. N.L.R.B. v. Ozburn-Hessey Logistics, LLC*, 775 F. Supp. 2d 1029, 1042 (W.D. Tenn. 2011)(10(j) relief granted when employer made

threats including threat of loss of benefits to employees if they voted to have a union); *Norelli v. SFO Good-Nite Inn*, No. C06-07335 MJJ, 2007 WL 662477, at *15 (N.D. Cal. Mar. 1, 2007)("An order requiring Respondent to cease threatening employees with loss of benefits or promising employees certain benefits, in order to discourage union membership would have little hardship on Respondent.").

The instant case qualifies for injunctive relief pursuant to Section 10(j) of the Act. The threatening Local 304 representative is also an Employee Trustee – this is equal to a top manager of an employer communicating a threat to employees in an effort to sway employees to vote against union representation.

C. A Union's Violation of the Act is As Much a Violation As an Employer's Violation of the Act

The Taft Hartley amendments of 1947 added Section 8(b) to the National Labor Relations Act. Section 8(b) of the Act recognized that unions are as capable of violating employee Section 7 rights as employers. Section 8(b)(1)(A) of the Act is the parallel to Section 8(a)(1) of the Act.

In the instant situation, Local 304 representatives control the benefits. The proper analysis, therefore, is to apply the bevy of case law whereby an employer violates the Act by threatening the loss of an established benefit to coerce employees into voting a particular way at an NLRB election. Local 304's hallmark violations have destroyed the laboratory conditions mandated for the scheduled election. Local 304's threats have tainted the ability for a free and fair election, and have created a circumstance where it is inconceivable that employees will be able to freely decide whether to be represented by a union. This is an extraordinary and blatant violation of the Section 7 rights guaranteed to these employees. The appropriate recourse is for the election to be cancelled and for an injunction to issue pursuant to Section 10(j) of the Act.

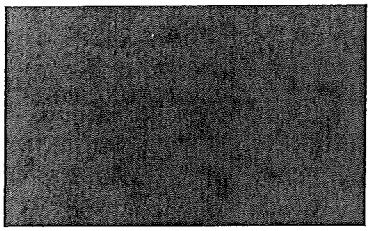
III. CONCLUSION

Local 304 has committed hallmark violations of the Act. The employees are unable to freely and fairly vote on whether to be represented by a union in the scheduled election. The appropriate remedy, in this case, is to cancel the election and enjoin Local 304 from representing the employees. The laboratory conditions have been so destroyed that no fair election can occur.

If an employer had committed such hallmark violations of the Act, the NLRB would be seeking 10(j) relief and requesting a bargaining order. With the bargaining order, the union would be presumed to be the representative for a twelve-month period of time. In this case, it is the union that has committed the hallmark violation. The equivalent remedy would be to preclude the union from petitioning for an election among this group of employees for a twelve-month period of time.

Very Truly Yours,

Glenn E. Plosa /JAT

Glenn E. Plosa

GEP/jat