

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD<sup>1</sup>  
REGION 32

EDEN MEDICAL CENTER

Employer

and

Case 32-RD-1486

UNITED HEALTHCARE WORKERS WEST,  
SERVICE EMPLOYEES INTERNATIONAL UNION

Union

and

VICTORIA DRUECKHAMMER

Petitioner

**SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the objections to be conducted and hereby overrules the Petitioner's and Employer's objections in their entirety, and, as the Union has received a majority of valid votes cast in the election, issues a Certification of Representative.

**The Election**

Pursuant to a Decision and Direction of Election issued on July 19, 2006,<sup>2</sup> an election by secret ballot was conducted on August 17, 2006,<sup>3</sup> in the following unit:

All full-time and regular part-time admitting registrars, van drivers, financial counselors, histology assistants, secretaries, analysts/coders, emergency registrars, unit clerks, clerks, transcriptions employees, medical records clerks, scheduling coordinators, medical office assistants, PBX operators,

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<sup>1</sup> Hereinafter referred to as the Board.

<sup>2</sup> Although the petition was initially filed on July 22, 2005, processing of the petition was blocked by a series of unfair labor practice charges beginning on July 27, 2005.

<sup>3</sup> All subsequent dates refer to calendar year 2006 unless otherwise indicated.

storekeepers, couriers, dark room technicians, outpatient registrars, insurance verifiers, acuity auditors, and materials and inventory control specialists employed at the Employer's 20103 Lake Chabot Road, Castro Valley, California facility; excluding all other employees, buyers, admitting assistants, guards, and supervisors as defined in the Act.

The Tally of Ballots served on the parties on September 5<sup>4</sup> showed the following results:

Approximate number of eligible voters.....	148
Number of void ballots.....	0
Number of votes cast for participating labor organization. . .	.60
Number of votes against participating labor organization.....	55
Number of valid votes counted.....	115
Number of challenged ballots.....	1
Valid votes counted plus challenged ballots.....	116

Challenges were insufficient in number to affect the election results. Thereafter, Petitioner and the Employer separately filed timely objections to the election, copies of which were served on the other parties by the Region.

### **The Objections**

#### Petitioner Objection No. 1

It was witnessed that the voting observer for the Union, Judy Pinero, studied the list during the first voting session, keeping it in front of her at all times, reading it numerous times and taking inventory of who had voted. During her break in the voting session, it was also witnessed that Judy called other shop stewards to have them contact employees that had not voted yet, according to the list, in order to get them to the polls.

#### Employer Objection No. 1

During the election, the observer for the Union, Judy Pinero, studied the list of eligible voters, which she kept in front of her during voting. Pinero appeared to be memorizing the names of the individuals who had not voted. After the completion of the first voting session, Pinero telephoned shop stewards, advising them to contact employees who she knew had not yet voted in order to tell those employees to vote.

The Petitioner submitted statements from several employees in support of its objections. The Employer provided a letter from its counsel stating that it was relying on

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<sup>4</sup> The ballots were impounded until September 5 because Case 32-CA-22724 was pending.

the evidence that the Petitioner was furnishing to the Board. Although the Employer did not supply its own supporting evidence regarding its objections, the evidence submitted by the Petitioner will be also applied to those Employer's objections that closely parallel the Petitioner's objections.<sup>5</sup>

There were two voting sessions on the day of the election. The first session was held from 6:30 a.m. to 9:00 a.m. and the second was from 2:30 p.m. to 5:30 p.m. One of the witnesses states, in relevant part, that during both the morning and afternoon voting sessions, Union observer Judy Pinero appeared to "closely study" the voter eligibility list. Another witness claims that during the morning voting session she observed Pinero "constantly looking over the membership list for long periods of time as if to be memorizing those individuals who had voted and not voted."<sup>6</sup> A third witness states that during the break between polling times she overheard Connie Taylor, whom the Petitioner identifies as a shop steward, place a cell phone call after Taylor's pager went off. According to this witness, Taylor said, "Hi Judy," and then said that she had not called anyone yet because she had been too busy but would start making calls. The statement is silent as to how long the cell phone conversation lasted, and does not claim that she heard the other end of the conversation. There is no claim that Taylor wrote down the names of any employees during or after this conversation. The remaining

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<sup>5</sup> The Union argues that the Employer has not met its burden to provide evidence in support of its objections, and therefore, the Employer's objections should be overruled. Under *City Wide Insulation of Madison, Inc.*, 338 NLRB 793 (2003), to satisfy this burden a party may specifically identify witnesses who would provide direct rather than hearsay testimony to support its objections, specifying which witnesses would address which objections. *Id.*, *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). In the alternative, a party may provide specific affidavit testimony and other specific evidence in support of its objections. *City Wide Insulation of Madison, supra*. This evidence or description of evidence must be provided to the Regional Office "within 7 days of the day the objections are required to be filed or within such additional time as may have, upon a timely request, been allowed by the Regional Director." *Id.* (quoting from NLRB Casehandling Manual (Part Two) Section 11392.6). Although this period may be extended by the Regional Director, it is, in the absence of an extension, strictly enforced. *StarVideo Entertainment, L.P.*, 290 NLRB 1010 (1988). The Employer provided no evidence of its own, and did not indicate how it became aware that the Petitioner had submitted evidence sufficient to support the Employer's objections. Thus, there is an issue as to whether the Employer met its burden of providing evidence in support of its objections. The Union additionally claims that the Employer and the Petitioner have "conspired" to decertify the Union. In regard to the Union's latter assertion, this representation case matter is not the appropriate forum to investigate what is essentially an unfair labor practice allegation. The issue of whether the Employer has met its burden of providing evidence in support of its objections is moot, in that I have concluded that all of its objections lack merit in any event.

<sup>6</sup> It is noted that one of the Petitioner's witnesses concedes that all observers were curious as to the number of persons who had voted.

witnesses state only that they received telephone calls from unnamed persons after they had already voted. Neither of these witnesses indicates the time when the phone calls were received. There is no claim that observer Pinero at anytime wrote down or appeared to write down the names of any voters during the voting times.

The Board's prohibition regarding either maintaining a list of those who voted or appearing to do so is to insure free, non-coerced elections, the assumption being that voters might be intimidated if they knew or could reasonably infer that their names were being recorded on unauthorized lists. *Piggly-Wiggly #011*, 168 NLRB 792 (1967). I find that what Pinero appeared to be doing did not measure up to this prohibition, for even crediting the witnesses, she only appeared to be intently studying the list. Indeed, a primary function of election observers is to carefully review the eligibility list to insure that the names of voters are correct and identify them for voting purposes. The Board has never held that this type of conduct merits a new election. Accordingly, this aspect of the objections lacks merit, and it is overruled.

With respect to the alleged telephone call made between voting sessions, there is no evidence, or for that matter, even the assertion, that Pinero, while serving as an observer, called anyone while the polls were open. Even assuming, however, that it was Pinero who, in fact, did call Taylor during the period between polling times, there is no evidence or claim that she relayed the names of those who had already voted to Taylor. The one end of the conversation that was overheard does not substantiate that any names were relayed. Thus, at most, this cited evidence amounts to "little more than speculation about the possibility of irregularity," which does not raise a reasonable doubt as to the fairness and validity of the election. *Sawyer Lumber Co.*, 326 NLRB 1331 (1998). However, viewing this aspect of the objections in a light most favorable to the Petitioner and the Employer, I find that even if Pinero had informed others of those employees who had not yet voted, I find no authority wherein the Board muzzles election observers during voting sessions regarding their recollection of who has voted, especially where there was no evidence that it influenced the vote of any employee. *T.K. Harvin & Sons*, 316 NLRB 510, 537 (1995). Accordingly, Petitioner Objection No. 1 and Employer Objection No. 1 are overruled in their entirety.

## Petitioner Objection No. 2

Doug Jones, the shop steward at Eden for Local 250, was seen standing outside the door to the conference room where the voting took place during times when the polls were open. He was also witnessed making phone calls as each voter left the poll.

## Employer Objection No. 2

During balloting, shop steward Doug Jones stood immediately outside the area where the voting was taking place. When Jones saw employees exiting the polling area, Jones made telephone calls on his cellular phone to report on who had and had not voted.

In support of this objection, the Petitioner submitted a declaration from an employee who claims that on the morning of the election, after he had left the conference room where the voting was taking place, he exited through a door that led downstairs to a parking lot and saw an unidentified "Union representative" at the bottom of the steps. According to this employee, the unidentified man politely said "Good morning" and made a call on his cell phone as the voter walked away. The employee acknowledges that he did not hear what was said by either party during the cell phone conversation, but according to him, co-workers confirm that they also saw the man at the same spot at various times throughout the election day during the scheduled voting times.

Although the objections state that the individual who allegedly engaged in this conduct was shop steward Doug Jones, the evidence provided by the Petitioner does not substantiate this claim.<sup>7</sup> Rather, as it stands, the evidence fails to provide the specificity required with regard to the individual subject to this claim. Accordingly, for the reasons cited in footnote 3, the objections fail. Moreover, even if it was Jones, these objections lack merit anyway as the alleged conduct occurred away from the voting area after the employees involved had voted, and, without more, the individual did nothing wrong. Accordingly, these objections are overruled.

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<sup>7</sup> If the "Union representative" described by the Petitioner's witness was, in fact, Jones, I find it highly unlikely that that the witness would not have been able to identify him, because, as shop steward, Jones was an employee who would have been known to other employees.

### Employer Objection No. 3

Prior to the election date, representatives of the Union visited members of the bargaining unit at their homes and coerced and intimidated unit members to stay away from the election place unless they intended to vote for the Union.

In support of this Employer objection two employee statements were provided by the Petitioner. According to one, an unidentified "member" of the Union visited her at home on her day off, wanting to tell her why she should vote for the Union, and asking her to sign a petition saying she would do so. She told the "member" that she was very well informed by the shop steward in her department and there was no reason for the "member" to show up at her home.

The second employee claimed that on August 13, an unidentified "Union rep" showed up at her house, asked if she knew about the upcoming vote, and asked if she had any questions or concerns that the "Union rep" could answer for her. After this employee told her she had all of her answers, the "Union rep" asked which way she was going to vote. Thereupon, the employee told her to leave.

This objection fails for the same reasons discussed in footnote 3, and I am overruling it on this basis. Nevertheless, even if names and specifics were provided, the conduct described does not constitute grounds to set aside the election. Indeed, in *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1961), the Board established the rule that an employer must provide a labor organization with the names and home addresses of bargaining unit employees in order to facilitate labor organizations being able to communicate with employees in their homes. In this case, while some of the visitors may have asked the employees how they intended to vote in the upcoming election, the Board has never held that a union merely asking an employee how he was going to vote constitutes objectionable conduct. Even though these employees may have felt uncomfortable when people from the Union visited them at home, their subjective reactions are irrelevant in determining whether objectionable conduct occurred. *Culinary Foods, Inc.*, 325 NLRB 664 (1998); *Picoma Industries*, 296 NLRB 498, 499 (1989). I am, therefore, overruling this objection.

## CERTIFICATION OF REPRESENTATIVE

Pursuant to the authority vested in the undersigned by the National Labor Relations Board,

**IT IS HEREBY CERTIFIED** that a majority of valid votes cast in the election have been cast for United Healthcare Workers West, Service Employees International Union, and that it is the exclusive collective bargaining representative for the employees in the bargaining unit set forth below:

All full-time and regular part-time admitting registrars, van drivers, financial counselors, histology assistants, secretaries, analysts/coders, emergency registrars, unit clerks, clerks, transcriptions employees, medical records clerks, scheduling coordinators, medical office assistants, PBX operators, storekeepers, couriers, dark room technicians, outpatient registrars, insurance verifiers, acuity auditors, and materials and inventory control specialists employed at the Employer's 20103 Lake Chabot Road, Castro Valley, California facility; excluding all other employees, buyers, admitting assistants, guards, and supervisors as defined in the Act.

Dated at Oakland, California, October 10, 2006.<sup>8</sup>

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/s/ Alan B. Reichard  
Alan B. Reichard, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, California 94612-5211

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<sup>8</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, 1099 14th Street, NW, Washington, DC, 20570-0001. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of objections are not part of the record unless included in the Report or appended to the request for review or opposition thereto which a party submits to the Board. The request for review must be received by the Board in Washington, DC by October 24, 2006. In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: [www.nlr.gov](http://www.nlr.gov).