

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 31**

In the Matter of:

Canoga Healthcare, Inc., d/b/a  
West Hills Health and Rehabilitation  
Center,

Employer,

vs.

SEIU, Service Employees  
International Union,

Petitioner.

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Case No.: 31-RC-8826

**PETITIONER'S EXCEPTIONS TO  
ALJ'S REPORT AND  
RECOMMENDATIONS**

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Attorney for Petitioner SERVICE  
EMPLOYEES INTERNATIONAL  
UNION

Petitioner Service Employees International Union (“SEIU”) hereby files the following Exceptions to the ALJ’s Report and Recommendations on Objections issued in this matter on December 6, 2010:

<u>Exception No.</u>	<u>Page</u>	<u>Exception</u>
1.	3	To the ALJ’s finding that “Once inside the care facility, employees could access the polling area without going through or past the main entrance/lobby area.”
2.	3	To the ALJ’s finding that during the voting periods, the Administrator, Michael Seifert, “performed his normal duties” in his office adjoining the lobby or in the lobby area.
3.	3	To the ALJ’s finding that Mr. Seifert and the Employer’s labor consultants “greeted” employees as they entered the facility.
4.	3	To the ALJ’s finding that “there is no evidence that [Mr. Seifert or the Employer’s labor consultants] engaged in any form of electioneering.”
5.	3	To the ALJ’s mischaracterization of Objection 1 as alleging “impermissible electioneering.”
6.	3	To the ALJ’s misplaced reliance on <i>Boston Insulated Wire &amp; Cable Co.</i>
7.	3	To the ALJ’s failure to find from the evidence that the administrator of another Longwood Management Corp. facility was present in the lobby area during the voting periods.
8.	3	To the ALJ’s failure to find from the evidence that all employees had to pass through the main entrance lobby before voting.
9.	3-4	To the ALJ’s failure to find from the evidence that during the voting periods, Administrator Seifert could have brought the labor consultants, family members or employees into his office to meet with him, instead of conducting that business in the lobby area.
10.	3-4	To the ALJ’s failure to find from the evidence that during the voting periods, Administrator Seifert could have tracked whether employees arrived to work on time by using the time clock, instead of monitoring employees as they passed through the lobby area.
11.	3-4	To the ALJ’s failure to find from the evidence that during the voting periods, Administrator Seifert could have minimized his time spent in

		the lobby area by closing his office door.
12.	4	To the ALJ's mischaracterization of the evidence that "once employees reported to work they did not have to pass the main entrance/lobby to enter the polling place."
13.	4	To the ALJ's mischaracterization of the evidence that "[t]here is no evidence either Mr. Seifert or the consultants' conversations with employees related to the voting."
14.	4	To the ALJ's failure to find that the labor consultants engaged employees in extended conversations as they arrived to work.
15.	4 n.5	To the ALJ's rejection of Claudia Juarez's testimony regarding employees' reactions to the conduct of the Administrator and the consultants as "too subjective."
16.	4	To the ALJ's unwarranted application of <i>Boston Insulated Wire &amp; Cable Co.</i> to the Union's surveillance evidence.
17.	4	To the ALJ's mistaken conclusion that the facts of Objection 1 are controlled by <i>J.P. Mascaro &amp; Sons</i> and <i>Blaze Broiler</i> .
18.	4	To the ALJ's failure to find that the facts of Objection 1 are controlled by <i>Performance Measurements, Electric Hose &amp; Rubber, Belk's, ITT Automotive, and Transcare of New York, Inc.</i>
19.	4 n.6	To the ALJ's mischaracterization of the <i>Transcare of New York, Inc.</i> , decision.
20.	4	To the ALJ's failure to apply the surveillance analysis to Objection 1, and instead improperly to conflate the surveillance analysis with the electioneering analysis.
21.	4	To the ALJ's failure to find that the Administrator lacked any legitimate business justification for his continued presence in the lobby and main entrance area during the voting periods.
22.	4	To the ALJ's failure to find that the labor consultants' continued presence in the lobby and main entrance area during the voting periods was out of the ordinary.
23.	4	To the ALJ's failure to find that the labor consultants' continued presence in the lobby and main entrance area during the voting periods lacked any legitimate business justification.
24.	4	To the ALJ's failure to find that Administrator Seifert and the labor consultants engaged in improper electioneering by engaging workers in extended conversations.

25.	4	To the ALJ's conclusion that Objections 1 and 2 should be overruled.
26.	4-5	To the ALJ's failure to find that the Employer never stationed a security guard in the parking lot during the day until the two days of the election.
27.	4-5	To the ALJ's failure to find that the Employer did not call the police or retain a security guard after an alleged June 2010 Union trespass at the West Hills facility.
28.	4-5	To the ALJ's failure to find that the Employer did not retain a security guard during any shift changes until two weeks before the election, even though the Union had regularly been leafletting during shift changes starting in June 2010.
29.	4-5	To the ALJ's failure to find that the Employer did not retain a security guard during the daytime shift changes after an alleged August 2010 Union trespass at another Longwood facility, but only retained a security guard at night.
30.	4-5	To the ALJ's failure to conclude that the Employer lacked any legitimate business justification for stationing of a uniformed security guard in the parking lot during the daytime shift changes on the two days of the election.
31.	5	To the ALJ's failure to find that the security guard was escorting employees from their cars into the facility.
32.	5	To the ALJ's mistaken determination that the security guard was a credible witness.
33.	5	To the ALJ's failure to conclude from the evidence that Ms. Juarez had an adequate view of the employee parking lot and the security guard to support her testimony regarding the security guard's activities.
34.	5	To the ALJ's finding that Ms. Juarez had "limited views of the parking perimeter from her position outside the front/main entrance."
35.	5	To the ALJ's failure to find that the security guard's presence at the facility on the two days of the election was out of the ordinary.
36.	5	To the ALJ's failure to find that the security guard's presence at the facility on the two days of the election lacked a legitimate business justification.
37.	5	To the ALJ's mistaken conclusion that the facts at issue in <i>DHL Express, Inc.</i> are distinguishable from this case.

38.	5	To the ALJ's mischaracterization of the holding of <i>DHL Express, Inc.</i>
39.	5	To the ALJ's conclusion that Objection 3 should be overruled.
40.	5	To the ALJ's conclusion that Objections 1, 2 and 3 should be overruled.
41.	5	To the ALJ's failure to recommend that Objections 1, 2 and 3 should be sustained, and that the election should be set aside and a new election ordered.
42.	<i>passim</i>	To the ALJ's failure to examine the Employer's conduct as a whole to determine whether the election should be set aside and a new election ordered.

Dated: December 30, 2010

Respectfully submitted,



Eileen B. Goldsmith  
ALTSHULER BERZON LLP

Attorneys for Petitioner Service Employees  
International Union, CTW CLC

**PROOF OF SERVICE**

Re: Service Employees International Union, and  
Canoga Healthcare, Inc. dba West Hills Health & Rehabilitation Center

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, San Francisco, California 94108.

On **December 30, 2010**, I served the following document(s):

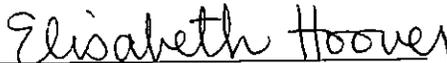
**PETITIONER'S EXCEPTIONS TO ALJ'S REPORT AND RECOMMENDATIONS**

on the parties, through their attorneys of record, via:

**E-mail or electronic transmission.** I caused the documents to be sent to the persons at their e-mail addresses. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this December 30, 2010, at San Francisco, California.

  
Elisabeth Hoover