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11 UNITED STATES OF AMERICA  
 12 NATIONAL LABOR RELATIONS BOARD  
 13 REGION 20

14 WOODLAND SKILLED NURSING FACILITY, INC., ) Case No. 20-RC-18211  
 15 d/b/a WOODLAND SKILLED NURSING FACILITY, )

16 Employer, )  
 17 and ) **SEIU, UNITED HEALTHCARE**  
 18 NATIONAL UNION OF HEALTHCARE WORKERS, ) **WORKERS – WEST’S**  
 19 Petitioner, ) **EXCEPTIONS TO REGIONAL**  
 20 and ) **DIRECTOR’S SUPPLEMENTAL**  
 21 SEIU, UNITED HEALTHCARE WORKERS – WEST, ) **DECISION REGARDING**  
 22 Intervenor/Incumbent Union. ) **INTERVENOR’S OBJECTIONS**  
 23 ) **TO THE ELECTION**

24 SEIU, United Healthcare Workers – West (the “Union” or “SEIU-UHW”) takes the  
 25 following exceptions to the Regional Director’s May 13, 2011 Supplemental Decision Regarding  
 26 Intervenor’s Objections to the Election in the above-referenced case.

Number	Reference to Decision	Exception taken to and SEIU-UHW’s basis for exception to:
1.	Page 3	<p>The Regional Director’s finding that because Intervenor did not submit evidence by April 6 the only evidence before the Region was Intervenor’s “above-noted assertions.”</p> <p>The Union submits that the finding is clearly erroneous and prejudicial to SEIU-UHW. In particular, the Union notes that Objections 4 through 6 are based clearly on the Employer’s</p>

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		<p>unlawful recognition of Petitioner for a period of one year and the Employer's provision of access to Petitioner's agents during that unlawful recognition period. The Regional Director's finding suggests that the Region is not aware of that unlawful recognition. But that is not the case.</p> <p>The Region is well-aware that the Employer granted unlawful recognition to Petitioner as evidence thereof is in the Region's own case files, namely in the Region's files for case numbers <b>20-CB-13284</b> and <b>20-CA-34373</b>. It is well-established that the Board may take administrative notice of its own case files. <i>Lord Jim's</i>, 234 NLRB 1098 (1982).</p> <p>Based on the record, and specifically the Region's own files, it was error to find that there does not exist any issue that would warrant a hearing or at least further investigation. The Board should find that the finding is not supported by a thorough administrative investigation, as required by Section 102.67(c)(1) of the Board's Rules and Regulations.</p>
2.	Page 3-6	<p>The Regional Director's finding and decision that the Employer's violation of the seven-day <i>Excelsior</i> requirement "did not compromise the important goal of ensuring that all employees had an opportunity to become 'fully informed about the arguments concerning representation.'"</p> <p>The Union submits that the conclusion and finding was in error because it raises a substantial question of law or policy for which there is no officially reported Board precedent, especially in light of the unique facts in this case. The Board should ensure that employers uniformly comply with the basic <i>Excelsior</i> requirements, otherwise the rule will be swallowed by the proliferation of nuanced exceptions.</p> <p>In addition, there are compelling reasons for ensuring that the <i>Excelsior</i> requirements be strictly met at least in a case with facts such as this one. In particular, the fact that for a period of one year just before the election the Employer granted illegal recognition and access rights to Petitioner.</p> <p>That one-year period of illegal recognition and access allowed Petitioner to obtain an advantage that is underscored by the low voter participation and resulting margin of victory in this election. The Employer's six-day delay in submitting to the Region the eligibility list served only to compound the advantage granted to Petitioner by the Employer's earlier illegal conduct.</p> <p>The Employer's compliance with the seven-day <i>Excelsior</i> requirement would have served to ensure that "the purposes behind the <i>Excelsior</i> requirement of providing employees with a full opportunity to be informed of the argument concerning representation have [not] been frustrated." <i>Bon Appétit Management Co.</i>, 334 NLRB 1042 (2001).</p>

1 For the foregoing reasons, Intervenor/Incumbent Union, SEIU United Healthcare Workers  
2 – West, submits that the record contains sufficient evidence of conduct that had the tendency to  
3 interfere with free choice and respectfully requests that the Board reject the Regional Director’s  
4 May 13, 2011 Supplemental Decision Regarding Intervenor’s Objections to the Election or order a  
5 hearing thereon.

6 Dated: May 26, 2011

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

By:   
MANUEL A. BOIGUES  
Attorneys for Intervenor/Incumbent Union  
SEIU, United Healthcare Workers – West

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1 **PROOF OF SERVICE**

2 I am a citizen of the United States, and a resident of the State of California. I am over the  
3 age of eighteen years, and not a party to the within action. My business address is 1001 Marina  
4 Village Parkway, Suite 200, Alameda, California 94501-1091. On May 26, 2011, I served upon  
5 the following parties in this action:

6 Latika Malkani  
7 Siegel & LeWitter  
8 1939 Harrison Street, Suite 307  
9 Oakland, CA 94612

Stephen Shipley, VP of Operations  
North American Health Care  
2097 Stagecoach Rd, Ste 110  
Santa Rosa, CA 95404

9 Fax: (510) 452-5004

Fax: (707) 541-6633

10 Joseph F. Frankl, Regional Director  
11 NLRB, Region 20  
12 901 Market Street, Suite 400  
13 San Francisco, CA 94103

13 Fax: (415) 356-5156

14 copies of the document(s) described as:

15 **SEIU, UNITED HEALTHCARE WORKERS – WEST’S EXCEPTIONS TO**  
16 **REGIONAL DIRECTOR’S SUPPLEMENTAL DECISION REGARDING**  
17 **INTERVENOR’S OBJECTIONS TO THE ELECTION**

17 **[X] BY MAIL** I placed a true copy of each document listed herein in a sealed envelope,  
18 addressed as indicated herein, and caused each such envelope, with postage thereon fully  
19 prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar  
20 with the practice of Weinberg, Roger & Rosenfeld for collection and processing of  
correspondence for mailing, said practice being that in the ordinary course of business, mail  
is deposited in the United States Postal Service the same day as it is placed for collection.

21 **[X] BY FACSIMILE** I caused to be transmitted each document listed herein via the fax  
number(s) listed above or on the attached service list.

22 I certify that the above is true and correct. Executed at Alameda, California, on May 26,  
23 2011.

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25 J. L. Aranda