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10 UNITED STATES OF AMERICA
11 NATIONAL LABOR RELATIONS BOARD

12 Kaiser Foundation Health Plan, Inc.; Kaiser
13 Foundation Hospitals; Southern California
14 Permanente Medical Group; The Permanente
15 Medical Group, Inc.,

16 Employer,

17 and

18 National Union of Healthcare Workers

19 Petitioner,

20 and

21 Service Employees International Union, United
22 Healthcare Workers – West

23 Intervenor/Incumbent.

) Case No. 32-RC-5774

) **SEIU, UHW – WEST’S ANSWERING**
) **BRIEF TO NUHW’S BRIEF IN**
) **SUPPORT OF EXCEPTIONS TO THE**
) **ADMINISTRATIVE LAW JUDGE**
) **REPORT AND RECOMMENDATIONS**
) **ON OBJECTIONS**

1 Intervenor, SEIU, United Healthcare Workers – West (“SEIU-UHW” or the “Union”)
2 submits this Answering Brief in response to Petitioner’s, National Union of Healthcare Workers’
3 (“NUHW”), Brief in Support of NUHW’s Exceptions to the Administrative Law Judge (“ALJ”)
4 Report and Recommendations on Objections.¹ In its brief, NUHW claims that the ALJ ignored
5 “longstanding Board law” by concluding “that here [sic] is no legal authority establishing that
6 conduct in a in [sic] a [sic] geographically separate unit can, without more, interfere with an
7 election in another unit.” NUHW Brief at p. 2. NUHW cannot point to any “longstanding Board
8 law” that stands for the proposition that unlawful conduct committed in a geographically separate
9 unit interferes with conduct in another unit;² and, therefore, NUHW’s exception to the ALJ’s ruling
10 with respect to Objection 1 should be rejected.

11 Indeed, the very cases that NUHW cite in its brief do not support its argument. In *Vegas*
12 *Village Shopping Corp.*, 279 NLRB 279 (1977), during an election in two separate bargaining units
13 of the same employer, which involved the same labor organization, the employer engaged in
14 certain unfair labor practices in one bargaining unit. The Board set aside the elections in both
15 units, even though the unfair labor practices occurred in only one of the units, because the
16 employer’s “unlawful conduct was likely to have a coercive impact on employees in both units in
17 the Las Vegas area.” *Vegas Village*, 229 NLRB at 280.

18 Similarly, in *Vencor Hosp.*, 324 NLRB 234, 235 (1997), the Board set aside an election
19 involving a nonprofessional unit of employees, who worked in the same hospital as employees in
20 the professional unit, because the employer engaged in unlawful conduct that directly affected
21 employees in the professional unit. Thus, like *Vegas Village*, the employees in the two bargaining
22 units, in *Vencor*, worked in the same facility – or, put another way, the same geographical area.

23
24 ¹ On August 21, 2011, Petitioner filed a “Corrected Brief,” but did not specify what was corrected
25 in its original brief. Given that its Corrected Brief was filed after the due date for exceptions,
26 SEIU-UHW respectfully requests that it be stricken.

27 ² NUHW seems to concede this point, noting that “The Board always looks at the surrounding facts
28 and circumstances to make this determination. If this is what the ALJ’s [sic] meant by writing that
such unlawful conduct “without more” is not objectionable, then NUHW agrees with that finding.”
NUHW Brief at p. 5.

1 Here, the elections in the MSW unit and Southern California Professional units not only
2 took place at different times but occurred in different geographical areas. The Board in *Vegas*
3 *Village* and in *Vencor* found that the employer's ULPs had a coercive effect on the election in both
4 units because both elections occurred at the same time in the same geographical location.

5 For all of these reasons, SEIU-UHW request that NUHW's exception be rejected.

6 Dated: August 25, 2011

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PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On August 25, 2011, I served upon the following parties in this action:

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copies of the document(s) described as:

SEIU, UHW – WEST’S ANSWERING BRIEF TO NUHW’S BRIEF IN SUPPORT OF EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE REPORT AND RECOMMENDATIONS ON OBJECTIONS

BY MAIL I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar 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.

BY EMAIL I caused to be transmitted each document listed herein via the email address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on August 25, 2011.



Karen Scott

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