

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

NATIONAL VISION, INC., D/B/A	:	
AMERICA’S BEST CONTACTS AND EYEGLASSES,	:	
	:	
Employer,	:	
	:	
and	:	Case 18-RC-065382
	:	
UNITED FOOD AND COMMERCIAL WORKERS	:	
UNITED LOCAL 653,	:	
	:	
Petitioner.	:	

**EMPLOYER’S EXCEPTIONS TO THE REGIONAL DIRECTOR’S REPORT AND  
RECOMMENDATION ON OBJECTIONS AND RECOMMENDATION THAT  
CERTIFICATION OF REPRESENTATIVE ISSUE**

Pursuant to Section 102.69 of the National Labor Relations Board’s Rules and Regulations, National Vision, Inc., d/b/a America’s Best Contacts and Eyeglasses (“Employer”) files Exceptions and a Supporting Brief to the December 7, 2011 Report and Recommendation on Objections and Recommendation that Certification of Representative Issue (“Report”) of Marlin O. Osthus, Regional Director for the Eighteenth Region (“Regional Director”).

1. The Employer excepts to the Regional Director’s failure to conclude that Assistant Manager Roger Longenecker (“Longennecker”) was a Supervisor as defined by Section 2(11) of the Act. While the Regional Director assumed for purposes of her Report that Longenecker was a statutory supervisor, the Employer excepts to any finding by the Regional Director to the contrary. The evidence presented and/or identified and available to the Region during its investigation into the September 26, 2011 Objections to Election (“Objections”) filed by the Employer clearly established Longenecker’s supervisory status.

2. The Employer excepts to the Regional Director's conclusion that the Employer failed to show by *prima facie* evidence the existence of substantial and material disputes which, if resolved in the Employer's favor, would require the setting aside of the election. The evidence presented and/or identified and available to the Region during its investigation into the Objections demonstrated that a statutory supervisor pressured employees in multiple settings to vote for the United Food and Commercial Workers Union Local 653 ("Union") or risk adverse employment action.

3. The Employer excepts to the Regional Director's conclusion that Longenecker's improper support of the Union with his subordinates did not tend to coerce or interfere with employee free choice. The evidence presented and/or identified and available to the Region during its investigation into the Objections established the employees' view that Longenecker was their supervisor and in a position to impact their employment both positively and negatively. Accordingly, Longenecker's implied and expressed threats that employees would lose their jobs if they voted against the Union coerced and interfered with the employees' free choice.

4. The Employer excepts to the Regional Director's conclusion that Longenecker's improper support of the Union in the presence of subordinate employees occurred in a single instance. The evidence presented and/or identified and available to the Region during its investigation into the Objections demonstrated that a statutory supervisor pressured employees to vote in multiple settings and on multiple occasions, including on and away from the worksite and in one-on-one and group meetings.

5. The Employer excepts to the Regional Director's disregard of established Board precedent apparently because of the dates in which the cases were issued. The cases cited by the

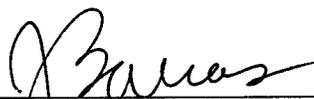
Employer to the Regional Director, *El Rancho Market*, 235 NLRB 468, 473-4 (1978), *enfd.* 603 F.2d 223 (9th Cir. 1979) and *Sheraton Motor Inn*, 194 NLRB 733, 734 (1971) remain valid and enforceable Board law. The Regional Director erred in refusing to apply the Board's holdings in those cases simply because of the dates they were issued.

6. The Employer excepts to the extent the Regional Director failed to conclude that Longenecker's activity that implied that the Employer favored the Union constituted objectionable conduct.

The Employer hereby incorporates its Supporting Brief and accompanying documents into its Exceptions to the December 7, 2011 Report and Recommendation on Objections and Recommendation that Certification of Representative Issue.

Dated: December 20, 2011

Respectfully submitted,

By: 

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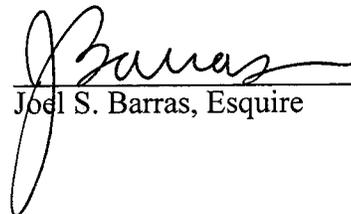
**CERTIFICATE OF SERVICE**

I hereby certify that National Vision, Inc.'s Exceptions to the December 7, 2011 Report and Recommendation on Objections and Recommendation that Certification of Representative Issue and Supporting Brief have been served via either electronic filing or certified mail, pre-paid postage, on this 20th day of December, 2011, upon the following:

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