

**The Permanente Medical Group, Inc., and Kaiser Foundation Hospitals and National Union of Healthcare Workers and SEIU-UHW (Service Employees International Union, United Healthcare Workers—West).** Case 32–RC–005774

July 25, 2012

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

The National Labor Relations Board, by a three-member panel, has considered objections to an election held between October 18 and November 8, 2010,<sup>1</sup> and the administrative law judge's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 139 votes for Petitioner National Union of Healthcare Workers (NUHW), 148 votes for Intervenor SEIU-UHW, 2 votes against representation, 4 void ballots, and 3 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the administrative law judge's findings and recommendations only to the extent consistent with this Decision, and finds that a certification of representative should be issued.<sup>2</sup>

I. BACKGROUND

This case arises from NUHW's objections to a representation election held for a unit of medical social workers (MSWs) employed by the Employers in Northern

California. NUHW's objections are based on earlier unlawful employer conduct directed at three units of employees located in Southern California, and on SEIU-UHW's campaign in the instant election that was based in part on that earlier conduct. We find no merit in any of these objections.

A. *Unlawful Conduct in the Southern California Professionals Units*

In February 2009, NUHW filed representation petitions seeking certification in three units located in Southern California, which are collectively known as the Southern California professionals units (Southern California units). Those units are employed by Kaiser Foundation Hospitals, an employer in this proceeding, and Southern California Permanente Medical Group (collectively, "the Southern California employers"). At the time NUHW filed the 2009 petitions, the Southern California units were represented by SEIU-UHW. After an extensive campaign, the Southern California unit employees selected NUHW as their bargaining representative, and the Board certified NUHW in February 2010.

During initial contract negotiations, NUHW asked the Southern California employers to continue the extant terms and conditions of employment. The Southern California employers, however, decided to withhold certain employee benefits<sup>3</sup> that arose from their national agreement with the National Coalition of Kaiser-Permanente Unions (the Coalition). Unlike SEIU-UHW, NUHW was not a member of the Coalition and thus was not party to the national agreement. As a result, the Southern California employers contended, the units could no longer take advantage of those benefits.

In response, NUHW filed unfair labor practice charges against the Southern California employers on March 30. The Region issued a complaint on August 27 and petitioned the United States District Court for the Central District of California for a Section 10(j) injunction on October 4. Administrative Law Judge William L. Schmidt held hearings on the unfair labor practice complaint on October 18 and 19. Approximately 2 months later, he issued a decision finding the Southern California employers' conduct unlawful. In addition, the district court issued a preliminary injunction requiring the Southern California employers to cease and desist their

<sup>1</sup> The judge inadvertently stated in her report that the critical period ended on October 4. See, e.g., *Cedars-Sinai Medical Center*, 342 NLRB 596, 598 fn. 13 (2004) ("As a general rule, the period during which the Board will consider conduct as objectionable (i.e., the 'critical period') is the period between the filing of the petition and the date of the election.")

Unless otherwise stated, all dates refer to 2010.

<sup>2</sup> NUHW filed 71 objections to this election. The Regional Director sent Objections 1 (first part), 2, 3, 4, and 6 to hearing, and those objections are the subject of the present exceptions. The Regional Director overruled the remaining objections without a hearing; NUHW requested review of that decision. Today, in a separate order, we deny NUHW's request for review.

The judge recommended that the notice for a new election be supplemented as specified in *Lufkin Rule Co.*, 147 NLRB 341 (1964). SEIU-UHW excepts. Because we overrule NUHW's objections, we need not pass on this exception.

NUHW timely filed exceptions with supporting argument. Approximately 5 days after the due date for exceptions, NUHW filed corrected exceptions. SEIU-UHW moves to strike NUHW's corrected exceptions. We find that SEIU-UHW was not prejudiced by NUHW's corrections, which were few and unsubstantial; in any event, we do not find merit in NUHW's exceptions. We therefore deny the motion to strike.

<sup>3</sup> These benefits included scheduled raises, tuition reimbursements, and paid leave for steward training.

unlawful conduct.<sup>4</sup> On March 3, 2011, the Board adopted Judge Schmidt's decision.<sup>5</sup>

### B. *The Campaign in the MSW Unit*

In the meantime, on June 29, NUHW filed the instant petition to represent the MSWs in Northern California. The Southern California employers' refusal to apply the national agreement to the NUHW-represented employees became a major issue during the MSW unit campaign. During the critical period,<sup>6</sup> SEIU-UHW repeatedly referred to that conduct and purportedly threatened that, if the MSWs voted in favor of NUHW, the Employers would likewise deprive the MSW unit employees of similar benefits. NUHW vigorously responded to SEIU-UHW's campaign, arguing that the Southern California employers' actions were unlawful. For support, NUHW cited the Acting General Counsel's decision to issue a complaint and his decision to petition the Federal district court for injunctive relief. On October 7, the Employers announced that, effective October 15, MSW employees would receive a scheduled raise, a benefit that SEIU-UHW purportedly threatened would be lost if the MSW employees selected NUHW as their representative.

As stated above, NUHW ultimately lost the election conducted between October 18 and November 8.

## II. DISCUSSION

### A. *Objection 1 (first part): The Employers' Conduct*

Under the particular circumstances presented here, we agree with the judge that the Southern California employers' unlawful conduct did not itself have a tendency to interfere with the MSWs' free choice in this election. That conduct was remote in time, predating the critical period by several months, and did not directly affect the MSW unit. See *Ideal Electric & Mfg. Co.*, 134 NLRB 1275, 1278 (1961); compare *Cedars-Sinai Medical Center*, 342 NLRB at 598 fn. 13. In fact, the only employer-related conduct that NUHW contends occurred during the critical period were statements made by Kaiser Southern California President Ben Chu in which he observed that certain benefits were tied to the Coalition's national agreement. NUHW provides no evidence, however, that Chu's statements were directed toward the

MSW unit. We therefore find that Chu's statements are irrelevant to this objection.<sup>7</sup> But even if the Southern California employers' conduct might have had some lingering collateral effect on the MSW unit, we find that it was countered by NUHW's vigorous response, which highlighted the Acting General Counsel's decision to file a complaint and to petition for injunctive relief in that case. That the Southern California employers' conduct became the object of SEIU-UHW's campaign predictions during the critical period in this case does not change our analysis of whether that conduct is objectionable here.<sup>8</sup>

### B. *Objections 2, 3, 4, and 6: SEIU-UHW's Conduct*

In Objections 2, 3, and 6, NUHW contends that SEIU-UHW interfered with employee free choice by threatening that, if NUHW won the election, the Employers would deprive the MSW unit of certain benefits, including scheduled raises and performance bonuses.

The judge found that SEIU-UHW's statements to the MSWs about the Southern California employers' conduct were factually accurate. She further acknowledged that SEIU-UHW had no involvement in the unfair labor practices committed in Southern California and would be unable to control the Employers' future actions in the event that the Board certified NUHW as the representative of the MSW unit. The judge also noted NUHW's spirited response to SEIU-UHW's campaign. Nonetheless, she concluded that SEIU-UHW, in her words, "emphasiz[ed] and paralleliz[ed]" the Southern California case to the present one, and thereby "invited, if not provoked" the obvious inference that the earlier conduct would be repeated in the MSW unit if the employees voted for NUHW. The judge therefore sustained these objections. For the reasons set forth below, we disagree and so find merit in SEIU-UHW's exceptions.

Unlike the judge, we find that SEIU-UHW's statements during the critical period about the Southern California case did not constitute objectionable threats. Even assuming that SEIU-UHW's statements could be construed as "threats," rather than as predictions of what the Employers might do based on past conduct, SEIU-UHW manifestly had no power to carry out such threats. It is

<sup>4</sup> *Small ex rel. NLRB v. Southern California Permanente Medical Group*, No. CV10-7395 GAF FM0x, 2010 WL 5509922 (C.D. Cal. Dec. 16, 2010).

<sup>5</sup> *Southern California Permanente Medical Group*, 356 NLRB 783 (2011). There were no exceptions to the judge's findings regarding the underlying merits of the case; the Acting General Counsel filed a limited exception to the judge's unit description.

<sup>6</sup> The critical period spanned a time period after the refusal but before the administrative law judge, district court, or Board decisions on the lawfulness of that refusal.

<sup>7</sup> Those statements are also the subject of NUHW's Objection 1 (second part), in which NUHW claims that the Employers violated Sec. 8(a)(1) by threatening similar reprisals or loss of benefits if NUHW won the election in the MSW unit. As stated above, the Regional Director dismissed the second part of Objection 1 without a hearing, and in a separate order issued today, we deny NUHW's request for review of that decision.

<sup>8</sup> As the judge found, NUHW failed to cite any authority in which the Board confronted facts similar to those presented by this objection. To the extent that her report can be read as holding that the lack of such authority is, by itself, a sufficient reason to overrule the objection, we disagree.

well established that the Board will not find a threat by a party to be objectionable unless the party has the ability to carry out the threat. See, e.g., *Smithfield Packing Co.*, 344 NLRB 1, 11 (2004), enfd. 447 F.3d 821 (D.C. Cir. 2006); *Pacific Grain Products*, 309 NLRB 690, 691 (1992).<sup>9</sup> That SEIU-UHW had no control over what the Employers might do if NUHW won the election is exemplified by the Employers' decision to grant raises in October that SEIU-UHW purportedly threatened would not be paid. Under these circumstances, we find that SEIU-UHW's campaign statements were not objectionable.

In Objection 4, NUHW contends that SEIU-UHW threatened to bar NUHW from membership in the Coalition if the MSWs voted for NUHW, and thereby deprive the MSWs of the benefits of membership. The judge did not specifically address this objection, but we find that it must also be overruled. SEIU-UHW's campaign statements do not constitute threats. Rather, they are nothing more than restatements of the Coalition's rules and by-laws, which bar raiding unions from membership, and the national agreement. To the extent that the statements suggest a loss of terms and conditions of employment, they constitute mere misrepresentations that do not warrant setting aside the election. See *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982). We therefore find that these statements did not have a tendency to interfere with employee free choice.

Overall, these objections are similar to those raised and overruled in *Air La Carte*, 284 NLRB 471 (1987). There, the employer voluntarily recognized a union as the collective-bargaining representative for a unit of its employees, but, before a contract could be signed and ratified, two other unions jointly petitioned to represent the unit. The incumbent union and the employer subsequently entered into a contract. During the campaign, a steward for the incumbent union told her fellow employees that, if they voted for the joint petitioners, they would lose their contract and, during the interim period of no contract, they could lose health benefits, seniority rights, and suffer a reduction in pay. *Id.* at 473, 478. The Board concluded that the incumbent union's statement that the employees would lose their contract was an accurate one. It also found that the steward's statement regarding loss of existing terms and conditions of employment could

not constitute an objectionable threat by the incumbent union because it had no control over what action the employer might take if it lost the election. The Board observed that, at most, the statement regarding loss of terms and conditions constituted a misrepresentation that did not warrant setting the election aside. *Id.* at 474; see also *More Truck Lines*, 336 NLRB 772, 773 (2001), enfd. 324 F.3d 735 (D.C. Cir. 2003).

As in *Air La Carte*, we leave the task of policing and evaluating SEIU-UHW's statements to the parties and, ultimately, to the employees themselves. See *Midland National Life Insurance Co.*, above. In this vein, we reiterate that NUHW presented a spirited counterargument to SEIU-UHW's campaign propaganda in which it repeatedly cited the Acting General Counsel's decision to file a complaint against the Southern California employers and to petition for injunctive relief. In these circumstances, the employees certainly had an opportunity to seriously and fairly consider the arguments raised by SEIU-UHW and NUHW. Cf. *National League of Professional Baseball Clubs*, 330 NLRB 670, 678 (2000).

Accordingly, we find that SEIU-UHW's campaign statements did not have a tendency to interfere with the MSWs' freedom of choice in the election, and we overrule NUHW's Objections 2, 3, 4, and 6.

#### CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Service Employees International Union, United Healthcare Workers—West, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time medical social workers employed by the Employers in positions covered by the collective bargaining agreement between the Employers and SEIU-UHW effective October 1, 2005, including Medical Social Worker I, Medical Social Worker II, and Medical Social Worker III; excluding any medical social worker assigned to be Director of Social Services at any of the Employers' facilities or to whom the Employers have given the authority to hire, promote, discipline, discharge, or otherwise change status or to effectively recommend such action, all employees represented by other unions, confidential employees, guards, and supervisors as defined in the National Labor Relations Act.

<sup>9</sup> Compare *Baja's Place*, 268 NLRB 868 (1984) (finding union's threat to "get" employee and his job were not idle threats in part because the union wielded substantial influence in the local industry); *United Broadcasting Company of New York*, 248 NLRB 403 (1980) (finding union's threat to blacklist employees who voted against union to be objectionable because employees could reasonably fear it was within the union's power).

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For the Intervenor: *Bruce A. Harland, Atty. (Weinberg, Roger & Rosenfeld)*, of Alameda, California.

For the Employers: *Ronald E. Goldman, Atty., Kaiser Permanente*, of Oakland, California; *Michael R. Lindsay, Atty. (Nixon Peabody, LLP)*, of Los Angeles, California.

ADMINISTRATIVE LAW JUDGE REPORT AND RECOMMENDATIONS ON OBJECTIONS

LANA PARKE, Administrative Law Judge. The National Union of Healthcare Workers (the Petitioner or NUHW) filed a petition on June 29, 2010,<sup>1</sup> seeking representation of employees of The Permanente Medical Group, Inc. and Kaiser Foundation Hospitals (the Employers)<sup>2</sup> in a medical social workers bargaining unit (MSW unit) then, and currently, represented by Service Employees International Union, United Healthcare Workers - West (the Intervenor or SEIU-UHW). The Regional Director for Region 32 of the National Labor Relations Board (the NLRB or the Board) issued his Decision and Direction of Election on September 7. An election by mail ballot was conducted between October 18 and November 8 in the MSW unit described below, the employees of which were located in 37 separate Kaiser facilities throughout the Employers’ northern California region:

All full-time and regular part-time medical social workers employed by the Employers in positions covered by the collective bargaining agreement between the Employers and SEIU-UHW effective October 1, 2005, including Medical Social Worker I, Medical Social Worker II, and Medical Social Worker III; excluding any medical social worker assigned to be Director of Social Services at any of the Employers’ facilities or to whom the Employers have given the authority to hire, promote, discipline, discharge, or otherwise change status or to effectively recommend such action, all employees represented by other unions, confidential employees, guards, and supervisors as defined in the National Labor Relations Act.

The election resulted in the following final tally of ballots:

Approximate number of eligible voters .....	378
Number of void ballots .....	4
Number of votes cast for NUHW .....	139
Number of votes cast for NEITHER .....	2
Number of votes cast for SEIU – UHW .....	148
Number of valid votes counted .....	289
Number, of challenged ballots .....	3
Valid votes counted plus challenged ballots .....	292

Following the election, the Petitioner filed timely objections to the election on November 17. On February 23, 2011, the

<sup>1</sup> All dates refer to 2010, unless otherwise indicated.

<sup>2</sup> Numerous entities make up the Kaiser Permanente enterprise of which the Employers are two. Herein, the national enterprise is referred to as Kaiser Permanente; unless separate designation is necessary, other groupings within Kaiser Permanente, aside from the Employers, are referred to as Kaiser.

Regional Director issued his Supplemental Decision and Notice of Hearing (decision on objections), recommending that Petitioner’s Objections 5 and 7–71 be overruled in their entirety and setting for hearing, as limited in the decision, Objections 1–4 and 6. Hearing on those objections was held in Oakland, California, on May 2 and 3, 2011.

Unless otherwise explained, findings of fact herein are based on party admissions, stipulations, uncontroverted relevant testimony, and findings of fact made by Administrative Law Judge William L. Schmidt in Case 21–CA–039296 and adopted by the Board (with minor modification of unit description) at *Southern California Permanente Medical Group*, 356 NLRB 783 (2011). On the entire record and after considering the briefs filed by the Petitioner, the Intervenor, and the Employers, I find the following events occurred in the circumstances described during the critical period.

FINDINGS OF FACT AND DISCUSSION

A. Legal Overview

The critical period during which conduct allegedly affecting the results of a representation election must be examined “commences at the filing of the representation petition and extends through the election.” *E.L.C. Electric, Inc.*, 344 NLRB 1200, 1201 fn. 6 (2005). Here, the critical period is June 29 through October 4.

The Board does not lightly set aside representation elections.<sup>3</sup> “There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991). The burden of proving a Board-supervised election should be set aside is a “heavy one.”<sup>4</sup> The burden is even heavier where the vote margin is large.” *Trump Plaza Associates*, 352 NLRB 628, 629–630 (citing *Avis Rent-A-Car System*, 280 NLRB 580, 581–582 (1986)). The objecting party must show that objectionable conduct affected employees in the voting unit. *Avante At Boca Raton, Inc.*, 323 NLRB 555, 560 (1997) (overruling employer’s objection where no evidence unit employees knew of alleged coercive incident).

As the objecting party, the Petitioner has the burden of proving interference with the election. See *Jensen Pre-Cast*, 290 NLRB 547 (1988). The test, applied objectively, is whether election conduct has the tendency to interfere with employees’ freedom of choice.<sup>5</sup> The Petitioner must show the conduct in question had a reasonable tendency to interfere with employ-

<sup>3</sup> *Quest International*, 338 NLRB 856 (2003); *Safeway, Inc.*, 338 NLRB 525 (2002); *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citing *NLRB v. Monroe Auto Equipment Co.*, 470 F.2d 1329, 1333 (5th Cir. 1972), cert. denied 412 U.S. 928 (1973)).

<sup>4</sup> *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989) (quoting *Harlan No. 4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir.), cert. denied 416 U.S. 986 (1974)).

<sup>5</sup> *Taylor Wharton Division*, 336 NLRB 157, 158 (2001); *Cedars-Sinai Medical Center*, 342 NLRB 596 (2004); *Baja’s Place*, 268 NLRB 868 (1984).

ees' free and uncoerced choice in the election to such an extent that it materially affected the results of the election.<sup>6</sup>

*B. The Petitioner's Objections 1 through 4 and 6*

(1) The employer, by its agents, violated Section 8(a)(1) and Section 8(a)(5) by committing unlawful unilateral changes by withholding and/or cancelling scheduled annual across-the-board raises, tuition-reimbursement benefits, and union-steward training programs for employees represented by NUHW in other units.<sup>7</sup>

(2) The SEIU, by its agents, widely disseminated to employees the threat that if NUHW won this election, the employer would not pay contractually bargained-for wage increases including but not limited to threats that the employer would not provide employees with an upcoming salary increase due in or around October 2010.

(3) The SEIU, by its agents, widely disseminated to employees the threat that if NUHW won this election, the employer would not pay an already bargained-for Performance Sharing Program (PSP) bonus.

(4) The SEIU, by its agents, widely disseminated to employees the threat that if NUHW won the election that they would lose the benefits of the Coalition of Kaiser Permanente Unions and the benefits of the National Agreements because SEIU would forever bar NUHW participation in such bargaining.

(6) The SEIU, by its agents, widely disseminated to employees these threats, including but not limited to the SEIU's threat that Kaiser had "confirmed that NUHW members at Kaiser are not automatically eligible to receive Performance Sharing Program (PSP) bonuses" and that employees would not get such bargained-for bonuses if NUHW won.

1. Facts

*a. Unfair labor practices in the southern California professional units*

In 1995, labor organizations representing various units of Kaiser Permanente employees formed a Coalition of Kaiser Permanente Unions (the Coalition). The Coalition was comprised of local and International unions representing Kaiser Permanente employees in defined geographic regions and existed for the purpose of facilitating collective bargaining with Kaiser Permanente entities.<sup>8</sup> The Coalition's rules and bylaws determine eligibility for membership. In pertinent part, the Coalition bars from membership labor organization that obtain representative status by "raiding"<sup>9</sup> a unit of a coalition member.

In 1996, Kaiser Permanente and the Coalition entered into a national labor management partnership agreement (the LMP).

<sup>6</sup> *Madison Square Garden Ct., LLC*, 350 NLRB 117, 119 (2007) (internal quotations and citations omitted); *Quest International*, 338 NLRB 856, 857 (2003).

<sup>7</sup> The Regional Director overruled the second part of Objection 1: "[the employers violated Section 8(a)(5) and (1) of the Act by] threatening similar reprisal and/or loss of benefits if NUHW won in this unit."

<sup>8</sup> Not all unions representing Kaiser employees participate in the Coalition.

<sup>9</sup> Raiding is an attempt by one union to obtain collective-bargaining rights over a unit of employees already represented by another union.

Thereafter, local, regional, and national negotiations were conducted under auspices of the LMP. The negotiations resulted in successive national collective-bargaining agreements between Kaiser Permanente and SEIU-UHW, the penultimate of which was effective by its terms from October 1, 2005, through September 30, 2010 (the national agreement), followed by the current agreement effective October 1 through September 30, 2012. SEIU-UHW and the Employers have been parties to seriatim local agreements covering the MSW unit, effective October 1, 2005, through September 30, 2010, and October 1, 2010, through September 30, 2013, each of which was integrated with the relevant national agreement to provide for a basic wage structure and a variety of fringe benefits, including provisions for tuition reimbursement, PSP bonuses, and across-the-board wage increases.

The LMP provided, inter alia, a performance sharing plan (the PSP). The stated purpose of the PSP was to recognize the value of national agreement-covered employees' contributions to Kaiser Permanente by permitting them to share in the company's performance gains. The PSP was, in short, a bonus incentive program, the amounts of which were annually agreed upon between the Coalition and Kaiser Permanente. Historically, the PSP was calculated in January and February based on performance in the preceding year and paid to employees in March.<sup>10</sup>

In 2007, following a merger of labor organizations, SEIU-UHW became the recognized representative for three professional collective-bargaining units in southern California—the Health Care Professionals unit, the Psych-Social Chapter unit, and the American Federation of Nurses unit (the SoCal-pro units)—comprised within the work forces of Southern California Permanente Medical Group and Kaiser Foundation Hospitals (collectively, the SoCal-pro employers).<sup>11</sup> One of the Employers herein—Kaiser Foundation Hospitals—is also one of the SoCal-pro employers.

SEIU-UHW and the SoCal-pro employers were, at all material times, parties to the national agreement as well as a local CBA covering each of the SoCal-pro units. The interrelated national and local CBAs provided for basic wage structures and a variety of fringe benefits, including provisions for tuition reimbursement, paid time off for stewards to attend union-sponsored steward training sessions, PSP bonuses, and across-the-board wage increases. In 2008, an agreement among the parties to these agreements provided for across-the-board wage adjustments for, inter alia, employees in the SoCal-pro units, in the pay periods closest to October 1, 2008, and 2009 as well as a further adjustment of 2 percent to be effective in the pay period closest to April 1. The PSP bonus provisions of the national agreement applied to each of the SoCal-pro units.

In late January 2009, certain former SEIU-UHW officers and professional organizers formed NUHW and commenced raiding units represented by SEIU-UHW. On February 27, 2009,

<sup>10</sup> Noncoalition negotiated contracts may contain bonus incentive programs, but they do not necessarily have the same terms as, and are not designated as, a PSP program.

<sup>11</sup> The Southern California pro units are separate and distinct from the MSW unit.

NUHW filed representation petitions with the Board seeking certification as the collective-bargaining representative for the SoCal-pro units.

On February 3, the Board certified NUHW as the exclusive bargaining representative of the SoCal-pro units, and the SoCal-pro employers and NUHW commenced bargaining. At the initial bargaining meeting, NUHW requested that the SoCal-pro employers continue in effect until October 1 the terms of its agreements with SEIU-UHW. At a bargaining meeting held February 26, Kaiser's representatives told NUHW representatives that the SoCal-pro employers would not continue the terms of the agreements with SEIU-UHW, that the employees would not receive the 2-percent pay increase that had been negotiated in 2008, that the employees would not receive further tuition reimbursements, and that the NUHW stewards would not receive paid time off for steward training. Thereafter, the following sequence of events occurred:

*March*—Employees in the SoCal-pro units received the PSP bonuses based on calculations of Kaiser's 2009 performance.

*March 18*—At the March 18 bargaining session, the SoCal-pro employers presented NUHW negotiators with a letter stating that participation in the Coalition was a precondition to applying agreement terms to the NUHW-represented units, a participation NUHW would be unlikely ever to realize.

*March 30*—NUHW filed ULP charges against the SoCal-pro employers in Case 21-CA-39296 (ULP charges), alleging that by unilaterally withholding certain benefits from employees in the Southern California pro units, the SoCal-pro employers had violated Section 8(a)(5) and (1) of the Act.

*April*—The SoCal-pro employers refused to pay the SoCal-pro unit employees the contractually projected two percent April adjustment. Kaiser paid the adjustment to employees in the Kaiser service and technical employees throughout California (the statewide unit) represented by the Intervenor.

*End May*—Negotiations on the national agreement concluded.

*June 14 through June 23*—National agreement ratified.

*June 29*—NUHW filed the instant representation petition, Case 32-RC-5774, beginning the critical period.

*June 29*—NUHW also filed a representation petition in Case 32-RC-5775, seeking to represent the statewide unit.

*August 27*—Based on the ULP charges, the Regional Director issued a complaint and notice of hearing against the SoCal-pro employers.

*September 13 to October 4*—the Regional Director conducted the mail ballot election among employees in the statewide unit.

*October 18–November 8*—the Regional Director conducted the mail-ballot election among employees in the MSW unit.

*October 4*—Region 21 in Los Angeles filed with the U.S. Central District Court a petition for temporary injunc-

tion against the SoCal-pro employers seeking to enjoin the commission of ULPs in the SoCal pro units.

*October 6*—Ballots in the statewide unit election tallied: NUHW—11,364; SEIU-UHW—18,290.

*October 18 and 19*—Judge Schmidt opened hearing on the ULP charges.

*November 11*—Ballots in the MSW unit tallied: NUHW—139; SEIU-UHW—148.

*December 13*—Judge Schmidt issued decision on the ULP charges, finding that the SoCal-pro employers violated Section 8(a)(5) and (1) of the Act by unilaterally withholding an April 2010 wage increase, tuition reimbursement for continuing education courses, and paid steward-training time off from employees in the SoCal-pro units (Kaiser's ULPs).<sup>12</sup>

*March 3, 2011*—The Board, in the absence of exceptions, with a minor unit-description modification, adopted Judge Schmidt's findings and conclusions at *Southern California Permanente Medical Group*, 356 NLRB 783.

#### *b. Intervenor's campaign in the MSW unit*

During the critical period, the Intervenor widely disseminated throughout the MSW unit written campaign materials. Many of these materials referred, explicitly and implicitly, to the Kaiser ULPs detailed in Judge Schmidt's decision, as well as to prospective nonpayment of the PSP incentive bonus. The following statements are representative excerpts from the Intervenor's campaign materials disseminated widely during the critical period:

- NUHW has filed a petition to take away our union and our [new] contract. No matter what they try to tell us, the bottom line is: Their petition threatens to wipe away . . . our raises, healthcare, pensions, and job security. We would have to re-bargain our entire contract.
- Southern California Kaiser pros who voted for NUHW in January still don't have the 2% pay raises that SEIU-UHW members got in April . . . [quoting a statewide-unit member]: "NUHW can't even get the 2% raise that we've seen in our paychecks for three months now."
- If [NUHW replaces SEIU-UHW as our union] our new contract and everything in it is gone and has to be re-bargained. . . . In January, Kaiser Healthcare Professionals in So Cal voted to join NUHW and they lost their contract, the 2% raise that SEIU-UHW members got in April, continuing education reimbursements, and more.
- [Quoting an MSW unit member]: "To date, because the S. CA Professionals voted for NUHW, they are now at least 5% behind us in raises."
- [Quoting an SEIU-UHW member]: "We get a total of 9% in raises over the next three years while NUHW is scratching and clawing to get their

<sup>12</sup> Nonpayment of PSP bonuses was not an issue in the March 30 ULP charges.

members in So CA the 2% raise that we got in April. We have no changes to our benefits while NUHW's benefits are up for grabs. . . . If you look at the facts, it's obvious: Win with SEIU-UHW or lose with NUHW."

- The National Agreement applies only to the unions in the Coalition (32 unions including SEIU bargaining the National Agreement). . . . If a bargaining unit is not represented by a Coalition Union, then the provisions of this National Agreement will not apply. NUHW is not a part of the Coalition, and thus employees represented by NUHW will not be covered by the National Agreement.
- While SEIU-UHW members have enjoyed the benefits of their 2% April raise for five months, NUHW members at Kaiser are going to trial to try and get the raise—a process that will likely take years with no guarantee they will be successful. Worse, the Southern California professionals who switched to NUHW are reporting being told by Kaiser that they will not be getting the 3% raise that all SEIU-UHW members will receive in October. That means in 10 months under NUHW, the Southern RNs and Pros will be 5% behind SEIU-UHW members on their raises—and facing the loss of their PSP bonuses.
- Two Approaches to Raises at Kaiser
 

The SEIU-UHW way: One simple step

A. Vote for SEIU-UHW and get all the raises in your contract—guaranteed, on time and without going to court.

The NUHW Way: Years of legal fights

A. File charges with the NLRB

B. Six months later go to a trial

C. Wait months for the judge to make a decision and hope the judge decides for you not against you

D. The decision gets appealed to the NLRB in Washington D.C.

E. A year later the NLRB issues a decision, which could be for or against you

F. That decision is appealed in federal court, which could rule for or against you, and ultimately could go the U.S. Supreme Court.

G. Several years later the case could be resolved with no guarantee of ever getting the raise.
- [From a flyer showing the photographs of five S. CA professionals] In NUHW, we lost our raises and guaranteed PSP Bonus. Don't make the same mistake we did. . . .

[Quoting pictured employees of the SoCal-pro units]:  
 "It was bad enough that giving up our SEIU-UHW contract meant we lost the 2% raise we were supposed to get in June. But now we're also losing our PSP Bonus."

◦ "When I counted up everything I've lost since my co-workers switched to NUHW—the PSP and the raises for the next three years—I estimate it adds up

to about \$20,000. That's a huge step backwards for my co-workers and me."

◦ [Quote from Cleante Stain (Stain), an employee in the psych-social SoCal-pro unit]: "We bet our future on NUHW, and we lost big. It was a mistake to put our raises and PSP at risk. I urge you not to take the same chance we did."

- In January 2010, Kaiser Healthcare Professions in So Cal voted to join NUHW and they lost their contract, the 2% raise that SEIU-UHW members got in April, Continuing Education reimbursements and more.
- With NUHW, we'd have to start bargaining all over again, just like the Kaiser pros in Southern California who voted for NUHW in January . . . here's what the Kaiser pros already lost with NUHW:
 

LOST RAISES: NUHW is in an ugly legal battle with Kaiser over the 2% raises SEIU-UHW members got in April but they didn't.

LOST CEU'S: Continuing Education Units no longer reimbursed.
- [Quoting an MSW unit member]: "I used my last PSP bonus to confirm a trip reservation to Alaska. I know co-workers who have used theirs to pay off credit cards. This is a significant amount of money, and I don't understand why NUHW wants us to take the risk of losing it."
- On a conference call with Kaiser employees August 3, Kaiser Southern California President Ben Chu confirmed that NUHW members at Kaiser are not automatically eligible to receive Performance Sharing Program (PSP) bonuses. The PSP adds thousands of dollars to Kaiser workers' income each year . . . Chu made it clear that only members of unions in the Coalition of Kaiser Permanente Unions-like SEIU-UHW-are guaranteed the bonus as part of the national agreement we just approved by an overwhelming majority. NUHW could try to negotiate a bonus, but they are unlikely to succeed because it is a function of the Partnership and Coalition which they are not a part of. No Kaiser union outside the Coalition or national contract gets the PSP bonus.
- [Quoting a SoCal-pro unit member]: "It's bad enough that we lost our 2% raise in April and our continuing education reimbursements. Now we just found out that we're losing our PSP bonuses too. It keeps getting worse with NUHW."

During the critical period, the Intervenor utilized the services of Cleante Stain (Stain), a psychiatric social worker employed by Kaiser Permanente in one of its southern California facilities and a member of the psych-social SoCal-pro unit.<sup>13</sup> As ar-

<sup>13</sup> Stain's purported photograph and quotation appears in one of the Intervenor's flyers detailed above. The parties stipulated that Stain's testimony taken in an earlier hearing in Case 32-RC-2775 be incorporated herein.

ranged by SEIU-UHW,<sup>14</sup> Stain was present at an SEIU-UHW-sponsored meeting of MSW unit employees in Oakland, attended by as many as 40 employees. It is not clear from Stain's testimony what, specifically, she told the MSW unit employees. Generally, in the course of her visits, Stain told employees the SoCal-pro units did not get their 2-percent raise after selecting NUHW as their bargaining representative and suggested employees ask themselves if they could afford to live without the 2 percent. Stain further told employees that selecting NUHW might put at risk the 3-percent raise scheduled for October and that the SoCal-pro units had been told they would not get the PSP bonus in March because they were not a part of the Coalition. It is reasonable to infer that Stain delivered essentially the same message to the MSW unit employees in Oakland.

*c. Petitioner's campaign in the MSW unit*

During the critical period, the Petitioner widely disseminated throughout the MSW unit written campaign materials countering the Intervenor's communications. The following are relevant, representative excerpts from the Petitioner's campaign materials:

- You can keep contract raises and benefits . . . the National Labor Relations Board agrees NUHW is right. SEIU hasn't been truthful. On August 27, 2010 the National Labor Relations Board General Counsel took legal action in Case 21-CA-39296 to protect Kaiser Professions who have joined NUHW and are entitled to all of their previously scheduled raises and tuition reimbursements. When we vote NUHW, our contract raises and benefits are protected.
- When the National Labor Relations Board sought an injunction against Kaiser on Oct. 4, they set the record straight. It was against the law for Kaiser to withhold the raises and benefits of workers who voted to join NUHW. When SEIU campaigned for months saying otherwise, they were lying about our rights.
- Last week, NUHW's attorneys filed objections to both Kaiser's and SEIU's conduct in the Service and Tech election. Misconduct included Kaiser illegally withholding raises and threatening to do the same to workers who were voting to join NUHW.
- [Provided web link for employees to read the injunction sought by Region 21] The NLRB says Kaiser broke the law by withholding raises. The NLRB says we get all the raises and benefits of the National Agreement, the local agreements, and the LMP . . . if we were entitled to it under SEIU, we're entitled to it in NUHW . . . U.S. District courts and appellate courts defer to the NLRB, and grant almost every request for injunction.
- [NUHW Bulletin story regarding the service and technical unit election] Employees' choice thwart-

ed by delays in NLRB enforcement, false fear campaign by SEIU and employer [resulted in] 11,364 [votes for NUHW and 18,290 . . . for SEIU—and workers are calling for a new election. [Quoting a statewide unit employee]: “Workers can't have a fair vote when they don't know they have the right to choose without being punished for it. SEIU and Kaiser management threatened people's livelihood and the NLRB didn't take action to protect us until it was too late.”. . . Just hours after voting ended, the NLRB exposed SEIU's scare tactic as a lie [when the NLRB filed for injunction].

- In charges filed yesterday by the National Labor Relations Board, the federal government has instructed Kaiser management that all the raises and benefits of workers who vote for NUHW, including our April raise, are guaranteed by law and must be paid. . . . This action by the government . . . directly contradicts what SEIU has been telling Kaiser workers . . . for months.
- The Federal Government has filed charges against Kaiser, which will have to pay the professionals with interest and reinstate all of the protections they have withheld.
- NLRB puts it in writing: Raises, PSP, and benefits are all guaranteed by law when we join NUHW.
- There is no other way to put it. SEIU has been lying to us about our raises and benefits. . . . *We all have the right to join NUHW, and when we do our raises and benefits are guaranteed by law.*
- It's the Law; our PSP is just another benefit that we'll keep when we vote to join NUHW. [Citing *More Truck Lines, Inc.*] The employer must keep everything the same while we negotiate for improvements.

*d. NLRB Regional Office information*

During the critical period, NLRB regional staff responded to public inquiries about Kaiser elections by reading the following script:

In general, an employer' is required to maintain existing contract terms when a new union is selected to represent bargaining unit employees, subject to further bargaining . . . the Regional Director in Region 21 (Los Angeles) . . . issued a complaint alleging, among other things, that Kaiser violated the National Labor Relations Act by refusing to grant a wage increase that had been scheduled to go into effect on April 1, 2010. . . . That matter will go to hearing before an administrative law judge if the parties are unable to settle the case.

The outcome of every case filed before the NLRB depends on the particular facts applicable to that case. Because every situation may have unique facts, it cannot be stated with certainty what Kaiser's obligation would be if NUHW became the bargaining representative of the unit employees scheduled to vote

<sup>14</sup> SEIU paid Stain's travel expenses and an amount comparable to her hourly pay rate for the time she expended.

in the mail ballot representation election that will begin on September 13, 2010.<sup>15</sup>

### C. Discussion

Petitioner's Objection 1 asserts, essentially, that the SoCal-pro employers' unlawful conduct toward NUHW-represented employees in the SoCal pro units, in and of itself, interfered with the election. The Board holds that 8(a) violations may, a fortiori, interfere with an election unless the unlawful conduct is so de minimis that it is virtually impossible to conclude the violations could have affected the results of the election.<sup>16</sup> While it is true that one of the Kaiser employers involved in this case engaged in unlawful conduct, as detailed in *Southern California Permanente Medical Group*, supra, the conduct did not occur in the MSW unit but in the SoCal pro units, which are distinct and separate geographically from the MSW unit. Kaiser argues that its earlier conduct in discrete bargaining units cannot be considered objectionable in the MSW unit election, as the conduct was not directed at MSW unit employees. Essentially, Kaiser maintains that conduct affecting one bargaining unit cannot be applied to a separate bargaining unit as a fortiori conduct. There being no authority establishing that conduct in a geographically separate unit can, without more, interfere with an election in another unit, I recommend that Objection 1 be overruled.

A determination that Kaiser's ULPs did not, a fortiori, interfere with the MSW unit election so as to justify setting it aside, does not eliminate Objections 2, 3, 4, and 6, however. The Intervenor's campaign repeatedly correlated Kaiser's ULPs to the MSW unit, emphasizing the benefit risk the unlawful conduct denoted for employees who selected NUHW as their representative. The crucial question, then, is whether by emphasizing and parallelizing Kaiser's ULPs, The Intervenor's campaign unfairly interfered with MSW unit employees' election choice. Also to be considered is whether pronouncements that MSW unit employees would be ineligible for PSP incentive bonuses if they selected NUHW interfered with the election.

The Intervenor argues that its campaign statements during the critical period (1) were neither threatening nor untruthful, but were factual, good-faith statements of potential voting consequences relevant to employees' decisions about union representation; (2) were factual predictions or statements of risk and not "unanswerable threats that employees fear because they know the speaker . . . can carry them out"; (3) caused no employee fear, which, if any existed, resulted from "employees' own reasoned choices based on all the available information, in a campaign in which each union had the ability to present its version of the facts"; (4) were objective statements about Kaiser's behavior—at worst, misrepresentations or incomplete

statements of the law made during a campaign—neither of which are grounds for setting aside the election.

It is true that the Intervenor had no control over or involvement in Kaiser's ULPs and that the Intervenor could not control Kaiser's future actions regarding MSW unit benefits. As the Intervenor points out, its challenged statements were factual recountings of what Kaiser had done in the SoCal-pro units, which, the Intervenor represents, were made in good faith.<sup>17</sup> The accuracy and good faith of the Intervenor's reporting is not, however, dispositive of the issues. The Board applies an objective standard when evaluating whether statements interfere with free election choice, looking neither at motivation nor subjective effect.<sup>18</sup>

The Intervenor points out that at the time it described Kaiser's ULPs to MSW unit employees, Kaiser's actions had not been judicially found to be unlawful. The absence of a judicial pronouncement does not alter the fact that Kaiser's conduct was, at all times critical to the election, unlawful. However factually accurate the Intervenor's statements may have been, the Intervenor's campaign specifically linked its predictions or risk warnings to existing and ongoing Kaiser ULPs not to future lawful behavior.

Insofar as the Intervenor's campaign focused on Kaiser's conduct in the SoCal-pro units, its objective effect was to warn employees that they jeopardized monetary benefits if they changed representatives. In the Intervenor's communications, Kaiser's ULPs figured as concrete, menacing reminders that Kaiser had unilaterally withheld benefits from employees in the SoCal-pro units when they chose to be represented by NUHW. Viewed objectively, the Intervenor's statements presented an obvious cause and effect: SoCal-pro units voted for NUHW; Kaiser withdrew certain of their established benefits. The Intervenor's communications invited, if not provoked, the obvious inference that Kaiser's conduct would be repeated as to MSW unit benefits if employees voted for the Petitioner.

As the Intervenor points out, MSW unit employees could not reasonably have feared that the Intervenor could withhold benefits, and employee fears as to what would happen under NUHW representation may have stemmed from reasoned conclusions based on available facts, facts that the Intervenor neither created nor misrepresented but merely disseminated. But the very interconnection of unlawful conduct with campaign rhetoric is the problem here. The Intervenor's messages rested on coercive bedrock, i.e., the existence of unremedied ULPs that clearly paralleled the MSW employees' situation. Viewed objectively, the facts—broadcast widely during the critical period—must have signified to MSW unit employees the likelihood that Kaiser would, consistent with continuing misconduct, unlawfully eliminate certain MSW unit benefits if employees chose NUHW. Under those circumstances, the known existence of

<sup>15</sup> There is no evidence as to how many, if any, MSW unit employees sought election information from the Region.

<sup>16</sup> See *Perdue Farms*, 323 NLRB 345 (1997); *Pembrook Management*, 296 NLRB 1226, 1242 (1989); *Airstream, Inc.*, 304 NLRB 151, 152 (1991). In assessing whether unfair labor practices could have affected the results of the election, the Board considers "the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors." *Super Thrift Market, Inc.*, 233 NLRB 409 (1977).

<sup>17</sup> I accept the Petitioner's good-faith claim even though its disseminated caution that unit employees could obtain established raises through NUHW only after years of legal fights suggests awareness that Kaiser's conduct was unlawful.

<sup>18</sup> *S.T.A.R., Inc.*, 347 NLRB 82 (2006).

the facts had, at the very least, the tendency to interfere with employees' freedom of choice.<sup>19</sup>

Prospective curtailment of PSP incentive bonuses to employees in the SoCal-pro units was not at issue in *Southern California Permanente Medical Group*, supra, but Judge Schmidt's reasoning can be applied to that benefit as well. Employee entitlement to PSP incentive bonuses was the product of the national agreement, as were the benefits Kaiser had unlawfully, unilaterally changed. Judge Schmidt rejected Kaiser's arguments that (1) participation in the Coalition and the LMP was a precondition to the application of the national agreement to the SoCal-pro units and (2) that benefits therein were "creatures of the national agreement that ceased to apply when the employees selected a [non-Coalition] bargaining agent, such as the NUHW." Rather, as Judge Schmidt explained, "the terms of each [applicable] agreement as a whole—local, cross-regional, and national—[made] up the terms and conditions of employment encompassed by the statutory duty to bargain under Section 8(a)(5)."

Under Judge Schmidt's reasoning, Kaiser was required to maintain and continue conditions of employment that came into being "by virtue of prior commitment or practice,"<sup>20</sup> i.e., the prior commitments memorialized by the terms of the applicable agreements. Although the precise incentive bonus design entitled "Performance Sharing Plan," the payouts of which required an annual agreement between the Coalition and Kaiser, might not have survived a change of bargaining representative, the granting of incentive bonuses constituted a term and condition of employment that Kaiser was required to maintain and continue in substance if not in specific form, unless altered through collective bargaining.

The Intervenor's widely disseminated warnings that PSP incentive bonuses could be lost if employees selected NUHW were erroneous since Kaiser's practice of granting incentive bonuses was subject to change only through collective bargaining. Further, the Intervenor was joined in its warnings by Kaiser's president, Chu, who informed employees that only members of coalition unions were guaranteed PSP incentive bonuses. The Intervenor widely disseminated Chu's statement, giving weight to the Intervenor's repeated forewarnings that representational change might endanger PSP incentive bonuses. In these circumstances, widely disseminated warnings that PSP incentive bonuses would not survive a change of representative must also have tended to interfere with employees' freedom of choice.

Employers and SEIU-UHW argue that both unions actively campaigned and had ample opportunity to urge their respective merits on the voters and to promulgate their respective messages in the campaign. Employers argue that the Petitioner's ex-

tensive counteractive campaign, as well as the Region's well-publicized complaint and notice of hearing and court injunction filings, gave voters sufficient information to permit a free and uncoerced choice in the election. It is true the Petitioner informed voters of all relevant Board proceedings, repeatedly accused the Intervenor of lying, and assured unit employees that Kaiser's benefit withdrawals could not lawfully be repeated. While the Board's legal proceedings against Kaiser weighted the Petitioner's assurances, since Kaiser actively disputed the charges, employees must have realized that only litigation would resolve the issues. Indeed, one of the Intervenor's handouts emphasized that if unit employees chose the Petitioner, they would receive established raises only through "The NUHW Way: [after] Years of legal fights." The timeline of legal proceedings tended to affirm the Intervenor's caution: although complaint issued on August 27, the ULP hearing did not open until October 18, the day balloting commenced, and initial decision would not issue for nearly 2 months. The Petitioner's counter-campaign could not, when weighed against pending litigation of indeterminate outcome and unremedied ULPs, be reasonably expected to persuade voters that the Intervenor's warnings were mere campaign propaganda. The unavoidable inference to be drawn from these circumstances is that MSW unit employees voted with objectively reasonable, albeit inaccurate and ULP-induced, apprehensions that a vote for the Petitioner was a vote for benefit reduction.

The Intervenor's widely disseminated, consistent warnings that Kaiser was likely to repeat its 2009 unlawful conduct in the MSW unit if unit employees selected the Petitioner as their collective-bargaining representative tended to stoke unwarranted and coerced voter fears. Given the Intervenor's relatively small margin of victory, the Intervenor's conduct, viewed objectively, had a reasonable tendency to interfere with unit employees' free and uncoerced choice in the election. Accordingly, I recommend that Objections 2, 3, 4, and 6, in the circumstances described by Objection 1, be sustained.

#### RECOMMENDATION

Based on the above, I recommend that Objections 2, 3, 4, and 6 be sustained and that Objection 1 be overruled. Accordingly, I recommend that the Board election in Case 32-RC-005774 be set aside and a new election be held.<sup>21</sup> Inasmuch as I have recommended that Objections 2, 3, 4, and 6 be sustained, I recommend that the mail-ballot election held in Case 32-RC-005774 be set aside and that the representation proceeding be remanded to the Regional Director for Region 32 for the purpose of conducting a second election.

Further, and in accordance with *Lufkin Rule Co.*, 147 NLRB 341 (1964), and *Fieldcrest Cannon, Inc.*, 327 NLRB

<sup>19</sup> See *Taylor Wharton*, 336 NLRB 157, 158 (2001), and *Vegas Village Shopping Corp.*, 229 NLRB 279, 280 (1977) (employer's unlawful conduct among one unit of employees in a metropolitan area "would tend to discourage all employees in the . . . area from voting for the same Union which was on the ballot for both units" and have a coercive impact on the employees in both units).

<sup>20</sup> *Alpha Cellulose Corp.*, 265 NLRB 177, 178 fn. 1 (1982), enf. mem. 718 F.2d 1088 (4th Cir. 1983).

<sup>21</sup> Pursuant to the provisions of Sec. 102.69 of the Board's Rules and Regulations, within 14 days from the date of issuance of this Recommended Decision, either party may file with the Board in Washington, D.C., an original and eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may adopt this Recommended Decision.

109 fn. 3 (1998), I recommend that the following notice be issued in the Notice of Second Election in Case 32-RC-005774:

**NOTICE TO ALL VOTERS**

The mail ballot election held between October 18 and November 8 was set aside because the National Labor Relations Board found that certain conduct of SEIU-UHW-West in the circumstances of unfair labor practices committed by Kaiser Foundation Hospitals and Southern California Permanente Medical Group among three professional collective-bargaining units of Kaiser employees in Southern California interfered with the exercise of a free and reasoned choice among employees in the following unit:

All full-time and regular part-time medical social workers employed by the Employers in positions covered by the collective bargaining agreement between the Employers and SEIU-UHW effective October 1, 2005, including Medical Social Worker I, Medical Social Worker II, and Medical Social Worker III; excluding any medical social worker assigned

to be Director of Social Services at any of the Employers' facilities or to whom the Employers have given the authority to hire, promote, discipline, discharge, or otherwise change status or to effectively recommend such action, all employees represented by other unions, confidential employees, guards, and supervisors as defined in the National Labor Relations Act.

Therefore, a new election will be held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit and protects them in the exercise of this right, free from interference by any of the parties.<sup>22</sup>

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<sup>22</sup> Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, DC, within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington by August 2, 2011.