

# H. SANFORD RUDNICK & ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

Via fax 202-273-4270

November 7, 2012

National Labor Relations Board  
Office of Executive Secretary  
1099 14<sup>th</sup> St., NW S11610  
Washington, DC. 20570  
Attn: Lester A. Heltzer, Executive  
Secretary

Re: Cervera Automotive Group  
LLC DBA Veracom Ford (Employer)  
Exceptions to Regional Directors Report  
On Objections and Challenges to Election in Case No.  
20-RC-86155

Dear Mr. Heltzer:

Pursuant the Board's rules and regulations concerning the filing of Exceptions to the Regional Director's Report on Respondent's Objections to the Election under the Rules and Regulations of the National Labor Relations Board (NLRB) under Section 102.69 and 102.67, the Respondent submits the following Exceptions and case law to the Regional Director's Report on Respondent's Challenges and Objection's to the Election with the Machinists Local 1414 (Union). (Exhibit 1, See Report on Objections and Challenges by NLRB)

The petition was filed on July 27, 2012 by the Union. (See Exhibit 2) The parties stipulated to an election agreement on August 14, 2012 that an election was to be conducted on September 4, 2012 among the employees of the Employer, in the unit agreed appropriate for the purposes of collective bargaining. (See Exhibit 3)

The first tally of ballots was served upon the parties at the conclusion of the election, on September 4,, 2012 showed that of approximately 13 eligible voters, 0 votes were cast ballots for the Employer and 5 votes were cast ballots the petitioner. There six challenged ballots which were sufficient to affect the results of the election. (See Exhibit 4)

Subsequently, the NLRB on a unilateral basis without a stipulation by the Employer determined that the challenges to the 6 determinative challenged ballots be overruled, opened and counted. The Employer did not stipulate to the second tally of votes. (See Exhibit 5,5A)



Thereafter, on October 24, 2012 said ballots were opened and counted without the consent of the Employer, and a revised Tally of Ballots was served on the parties showing that of approximately October 24, 2012 eligible voters, 5 votes for the Petitioner and 0 Votes for the Employer, with no challenged ballots remaining. (See Exhibit 5)

According to the Attachment to Exhibit 5 to the revised tally of ballots, Clay Allen and Andrew Virey, whose names did not appear on the voter eligibility list in this matter, cast ballots in the election conducted on September 4, 2012.(See 5A) The Employer maintains that it correctly left the names off the list because they were not unit employees eligible to vote.

These two individuals have been named as discriminates in a charge that the Petitioner filed against the Employer in Case 20-CA-87857. (See Exhibit 6) The Petitioner stated Clay Allen was terminated for union activities but the NLRB stated he was not terminated for union activities but for legitimate business reasons and dismissed his allegation filed by the Union. Also, the NLRB stated that the Employer terminated Adan Barajas and transferred another employee, of Andrew Virey, to another dealership of the Employer on the account of their support of the Union which is false and without merit. In fact, the Employer has a regular past practice of transferring his employees to his other location on a regular basis depending on his production needs. (Exhibit 7)

The NLRB stated according to the Case Handling Manual Part (Two, Section 11361.4) these two individuals executed a waiver of his right to maintain the secrecy of their ballots and requested that their ballots be opened and considered.

The NLRB on the second revised tally of ballots held that the employee Clay Allen voted in favor of representation.

Andrew Viray, the second employee, voted in favor of the Union.

The Board stated that if Allen and eligible to vote, the number of challenged ballots diminishes to six to four and there is no longer determinative of the results of the election.

If on the other hand, one of them is eligible to have voted, the vote in favor of representation will become 6 and the number of challenged ballots five or fewer, again rendering the challenged ballots no longer determinative.

Likewise, if both Allan and Viray are eligible to have voted, the four remaining challenged ballots become moot.

Accordingly a majority of the Employees has indicated their desire to be represented by the Petitioner. (See Exhibit 5)

THE EMPLOYER CONTENDS THE REGIONAL DIRECTOR ERRORED IN OPENING THE BALLOTS OF MR. ALLEN AND ANDREW VIREY WITHOUT A STIPULATION BY THE EMPLOYER. ALSO, WITH THE OPENING OF THE BALLOTS OF CLAY ALLEN AND ANDREW VIRAY DESTROYS THE SECRECY OF VOTING IN THE SECRET BALLOT ELECTION WHICH IS THE PURPOSE OF THE NLRB ELECTION PROCEDURE.

The Employer contends that if Clay Allen reapplied for employment or takes other action against the Employer, the opening of his ballot might influence the Regional Director that the Employer now has knowledge that Mr. Allen supports the Union.

This is the purpose of the Act to keep the secrecy of the ballots from the knowledge of the Employer. (See Exhibit 13 p 4, Section 2 which states "the results of the election is to designate or select an exclusive representative for the purposes of collective bargaining are determined by the secret ballot vote of a majority of employees in an appropriate bargaining unit, Section 9(a) and 2(4).

Even though Clay Allen is no longer working for the Employer and was terminated for legitimate business reasons, just the fact that Mr. Allen's ballot was opened to tell the Employer his status of the Union, violates the principles of a secret ballot election that the Act was established to protect.

Also, on page 6, paragraph 2 of Exhibit 13, it states the NLRA empowers the Board to make rules and regulations to carry out the provisions of the Act. In other words, to be a legitimate exercise of the NLRB's power, the proposed rules and regulations must advance the Section 9 election processes and promote the NLRA's policies. This means the NLRA must guarantee the privacy of an employee's vote.

Furthermore, since Andrew Viray continues to work for the Employer and his vote was opened to show he supports the Union, the Union or Mr. Viray might contend in the future if the Employer takes any adverse action against the employee for legitimate business reasons, which the Employer is not going to do, the Regional Director might take his support for the Union and the reason the Employer allegedly might take action against the employee.

Hence, if the Employer took any alleged adverse action against the employees on a hypothetical basis, which the Employer will not, the Regional Directional will contend that it was their support of the Union that the Employer took action against the employees. Again this violates the privacy guaranteed under section 9(a) 2 of the Act. (See Exhibit 13 p4, Section 2)

Again, the Employer contends the Regional Director also erred in opening Mr. Viray's ballot since those violates the fundamental principles of an NLRB election that maintains the secrecy of the election so an Employer does not know if an employee supports or does not support the Union when an employee votes.

Hence, if the Employer took any legitimate disciplinary action against Mr. Viray, which he is not going to, the Wright Line Defense which is the case at 251 NLRB 1088 might not be available to the Employer since Mr. Viray ballot was opened. Now, the Employer has knowledge of Mr. Viray's status with the Union.

Again, the Employer contends the Regional Director erred when it opened these two ballots Mr. Clay and Mr. Viray which undermines the secrecy of voting in an NLRB Board Election without the stipulation and consent of the Employer. (See Section 9(a) and 2(4) of the NLRA Section 2 of Exhibit 13.)

Notwithstanding the above, the opening of Mr. Clay Allen and Andrew Viray ballots during the election destroys the secrecy of the Election process during the Election. Also, since the Employer had no knowledge of which of his employees supported the Union, this might hamper the Employer's actions in the future since the NLRB has told the Employer who supports the Union or not.

Again, the Employer contends this violates the secrecy of voting in a secret ballot election where each employee has the right to vote for or against the Union without his vote being exposed to the Employer on his support of the Union. (See Exhibit 13, p 4 Section 2)

Thus, the Employer believes the Regional Director erred by opening the ballots of Clay Allen and Andrew Viray which destroyed the secrecy in the secret ballot election and process and denies the Employer Due Process in possibly taking legitimate business action in the future to his employees which was destroyed by the Regional Director opening of their ballots.

Also, the primary goal of the proposed regulations is to ensure that all parties substantive and procedural rights are protected. (See page 7 Section A of Exhibit 13)

THE EMPLOYER CONTENDS THE REGIONAL DIRECTOR ERRED BY NOT SENDING OUT A LETTER TO THE EMPLOYER TELLING THE EMPLOYER WHEN THE EVIDENCE WAS DUE TO OBJECTIONS TO THE ELECTION WHICH WERE PREPARED FOR REGION 20. ALL OR MOST NLRB REGIONS FOLLOW THIS PROCEDURE IN THE US BY SENDING OUT A LETTER WHEN THE EVIDENCE WAS DUE FOR THE OBJECTIONS TO AN ELECTION. THE EMPLOYER CONTENDS THE REGIONAL DIRECTOR DENIED THE EMPLOYER DUE PROCESS BY NOT SENDING OUT A LETTER FOR A DEADLINE FOR FILING THE EVIDENCE IN THE ELECTION AND OVERRULING THE OBJECTIONS TO THE ELECTION BY THE EMPLOYER

Pursuant to Section 102.69(a) of the Rules and Regulations of the NLRB, the Employer has seven (7) days to file their evidence to support his objections within 7 days. In all elections my firm has had in 30 years, each NLRB Region sends out a letter informing the Employer of the specific date when the evidence is due. (See Exhibit 15 of Employer's letter to the NLRB in not receiving a letter of the specific time when to file objections).

On September 24, 2012, I received an email from Alaina Gibson, Board Agent of Region 20 stating that they did not receive any evidence of the objections which is attached. (See Exhibit 9)

My office never received a letter from Region 20 when the Employer's evidence was due concerning the evidence. (See Exhibit 10) I called up the Assistant Regional Director, and he stated the Region does not have to send out this letter which I disagreed by my past practice at other NLRB Regions. (See Exhibit 11)

I told the Assistant Regional Director my firm has always received a letter when the evidence of the objections is due since this date is as important as the date as the Employer submitting the names and addresses of the Excelsior List for the election. The Assistant Regional Director stated they would have been dismissed anyway due to the case Midland National 263 NLRB 127,133 (1982) (See Exhibit 14)

Also, the Assistant Regional Director sent the Employer the case in an email of Koon Ford of Annapolis and John Lawrence , Petitioner and District No. 65, United Automobile, Aerospace and Agricultural Implement Workers of America, 308 NLRB 155 stating that the NLRB does not have to give notice to the Employer when evidence of objections are due. (See Exhibit 12)

Notwithstanding this fact, during the current election, a Board agent in Region 20 gave me a telephone call when they did not receive the Excelsior, voting list, in the above case by the specific deadline which had to be filed by the Employer. Thus, the Employer believes Region 20 erred when it did not send out a notice or letter of when the evidence was due concerning the objections which was a denial of due process to the Employer. The NLRB cannot pick and choose what notifications it will and will not give an Employer. All deadlines must be sent to the Employer on a consistent basis.

Based upon Region 20 who did not send out the normal and customary letter when the evidence was due for the Objections, the Employer did not send in its evidence which was prepared to be timely filed. (See Exhibit 10)

Further, since the NLRB is a federal agency all Regions must follow the same guidelines of sending out letters when evidence is due such as the Excelsior list, evidence of unfair labor practices, dates for elections, answers to complaints, trials, etc. If the same practices and procedures were not followed in each Region this would make it impossible for an Employer to follow the rules and procedures of the NLRB.

This practice of sending out a letter or notification when evidence was due for evidence of objections was followed as in other Regions, such as Region 32, Oakland, which is attached which is 20 miles away from Region 20 in San Francisco as well as Region 21, Los Angeles and most Regions throughout the United States. (See Exhibit 15)

Hence, the Employer believed Region 20 erred and denied the Employer due process in the election since the Union did not conduct a fair election and interfered with the free atmosphere of the Election by not sending the Employer this normal and customary letter when the evidence was due.

Pursuant to *Minn-Dak Farmers Cooperative v NLRB* (1994) 32F3rd 390, 147 LRRM (BNA) the Court held the NLRB should provide due process safeguards in the election process. The election process should not lack the due process safeguards between the Union and the Employer. The "due process test" is whether there is a question of representation.

A question of representation is defined as a sufficient doubt about the Union's status as legitimate representative of employees in a particular unit that a new election should be conducted to determine employee sentiment. See *Seattle-First v NLRB* 892 F2nd at 797.

Applying the above cases to the instant case, the NLRB did not allow the Employer to give his objections to the NLRB if the union's conduct interfered with the free atmosphere of the election and depriving the Employer the due process of a fair election by showing evidence of misconduct by the Union during the course of the Election.

Also, in most of or not all of the NLRB agencies in the United States, they send out a letter informing the Employer when their objections to an election is required then this gives the Employer due process which the Regional Director in Region 20 did not do in the instant case. (See Exhibit 15)

Furthermore, according to the public Commentary from Ellen Dannin to Mr. Lester Helzer of the Executive Secretary's office, she states "that the primary goal of the proposed regulations of the NLRB is to ensure that all parties substantive and procedural labor rights are protected". (See Exhibit 13 p 7, paragraph 2)

Further, she states on p 1, paragraph 3, Exhibit 13, that the National Labor Relations Act has two main functions: ensuring that elections allow employees to decide whether to be represented by a union and protecting and enforcing employees rights to freedom of association, self-organization, and collective bargaining. Congress created the NLRB to enforce these rights.

In other words, in order for employees to have a fair and equitable election, there cannot be any interference with the free atmosphere of the election and the NLRB must allow the Union and the Employer due process to present evidence that might show there has been misconduct in the election as in the instant case.

Again, since Region 20 did not allow the Employer to present evidence of alleged misconduct by the Union, deprives the Employer of due process caused by the Regional Director by not allowing the Employer to file his evidence of objections to the Election by the Union. In fact, the Employer sent in his evidence of the objections of the Union to the Region Director but the Regional Director denied due process of the Employer from reviewing the objections to determine if they interfered with the free atmosphere of the election. (See Exhibit 14)

Also, according to the United States Court of Appeals for the First District, Sullivan Brothers Printers Inc, Petitioner v NLRB Respondent, No. 95-1733 (1996) the Petitioner Sullivan stated that the NLRB did not satisfy the minimal due process standards in his case. See Seattle First 475 US at 204. Generally, the Board will look for such due process safeguards as notice of election to all members, an adequate opportunity for members to discuss the election and reasonable precautions to maintain ballot secrecy.

Applying the Sullivan case (supra) to the instant case, the Employer contends that due process was denied since the employees did not have an adequate opportunity for members to discuss the election and the Union's evidence that interfered with the free atmosphere of the election.

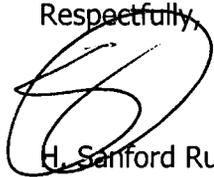
Also, the Employer contends due process was denied to the Employer since the Union interfered with the free atmosphere of the Election by making promises of benefits, misrepresentations and threats during the election. Since the Employer was denied of giving his evidence of the objections of the Union, the Employer was denied due process. See (Exhibit 8)

Hence, the Employer believes the Regional Director in Region 20 erred when he denied the Employer due process by not allowing his evidence of the objections of the Union to be considered by the Regional Director. Therefore, the Employer believes the Executive Secretary office should allow the Employer to file his objections that were dismissed in Region 20 for not being timely and to overturn the election by the misconduct of the Union.

Lastly, each NLRB Region cannot have its own rules and procedures for conducting elections and filing evidence for appeals since it would be impossible to understand the rules and regulations in each Region throughout the United States. The rules and regulations of the NLRB must be uniform and consistent.

Therefore, the Employer believed the Regional Director erred by opening the ballots of two employees concerning the Employer's challenges and denied the Employer the right to file his evidence of his objections in Exhibit 8. Hence, the Executive Secretary must overturn the Regional Director's decision not to allow the Employer to file the Employer's evidence of his Objections and opened the ballots of two employees concerning the Employer's challenges to these employees.

Respectfully,

A handwritten signature in black ink, appearing to be "H. Sanford Rudnick", written over the word "Respectfully,".

H. Sanford Rudnick JD, Labor Consultant

cc: Tim Peck, Region 20 Assistant Regional Director, Alaina Gibson (415-356-5156)

David Rosenfeld, Attorney for Machinists 1414 (510-337-1023)

## PROOF OF SERVICE

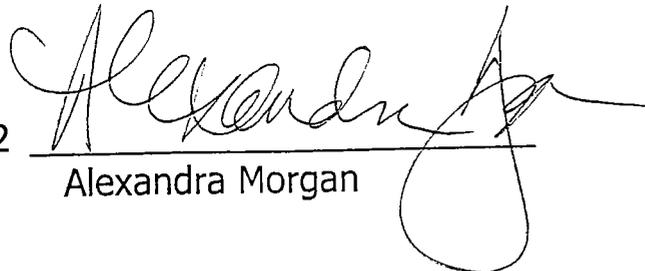
I certify that I am over the age of 18 and I am not a party to the within action. My business address is 1200 Mt. Diablo Blvd. S105, Walnut Creek, California. 94596. On September 7, 2012, I personally mailed the Employers Exceptions to the Regional Directors Report on the Objections and Challenged Ballots to the Conduct Affecting the Outcome of the Election and caused it to be sealed and deposited in the United States Mail at Walnut Creek, Ca. with postage fully prepaid thereon, addressed in the manner set forth below:

National Labor Relations Board Region 20  
901 Market Street 9<sup>th</sup> FL.  
San Francisco, Ca. 94612  
(F) 415-356-5156  
Regional Director, Joe Frankl

David Rosenfeld, Attorney at Law  
Weinberg, Roger and Rosenfield  
1001 Marina Village Parkway  
Alameda, CA. 94501-1091  
(F)510-337-1023

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: September 7, 2012



Alexandra Morgan

ORDER SECTION  
MLTB

2012 NOV - 8 PM 3: 08

RECEIVED

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD<sup>1</sup>  
REGION 20

CERVERA AUTOMOTIVE GROUP  
LLC D/B/A VERACOM FORD,

Employer,

and

Case 20-RC-86155

MACHINISTS DISTRICT LODGE 190,  
MACHINISTS LOCAL LODGE NO. 1414

Petitioner

**REPORT ON CHALLENGED BALLOTS AND EMPLOYER'S  
OBJECTIONS TO CONDUCT OF ELECTION**

Upon a petition filed on July 27, 2012<sup>2</sup>, and pursuant to a Stipulated Election Agreement that I approved on August 14, an election by secret manual ballot was conducted on September 4 in the following appropriate collective-bargaining unit:

All full-time and regular part-time Service Advisors and Technicians employed by the Employer at its facility located at 790 North San Mateo Dr., San Mateo, California; excluding all other employees, managers, guards, and supervisors as defined in the Act.<sup>3</sup>

Upon the conclusion of the election, the Board agent served a copy of the official Tally of Ballots on the parties. The Tally showed the following results:

Approximate number of eligible voters .....	13
Void ballots.....	0
Votes cast for Petitioner .....	5

<sup>1</sup> Also referred to as Board.

<sup>2</sup> All dates refer to 2012.

<sup>3</sup> The payroll period for eligibility ended on August 1.

**EXHIBIT** 

Votes cast against Union.....	0
Valid votes counted.....	5
Challenged ballots.....	6
Valid Votes counted plus challenged ballots .....	11

### The Challenged Ballots

Petitioner challenged the ballot cast by **Tardip (Harry) Singh** on the ground that his job classification was not included in the bargaining unit, and the Board challenged the ballots cast by **Clay Allen, Andrew Viray, Micah Branzuela, Philip Branzuela** and **Matthew Branzuela** on the ground that their names were not on the voter eligibility list.

### **Analysis and Recommendation:**

Two of the individuals who cast challenged ballots, **Clay Allen** and **Andrew Viray**, have been named as discriminatees in the charge that Petitioner filed against the Employer in Case 20-CA-87857. Pursuant to *Casehandling Manual (Part Two), Representation Proceedings*, Section 11361.4, Allen and Viray each submitted an executed waiver of his right to maintain the secrecy of his ballot and requested that his ballot be opened and considered. On October 24, the opening and inspection of their respective ballots revealed that each indicated a desire to be represented by Petitioner. Accordingly, a Revised Tally of Ballots was served upon the parties confirming that, regardless of the voting eligibility of Allen and Viray, the challenged ballots are no longer determinative of the election outcome. Because Petitioner has received a majority of the valid votes cast regardless of Allen's and Viray's respective eligibility to vote, I recommend that the Board issue a Certification of Representative in favor of Petitioner.

### The Objections

On September 11, the Employer timely filed Objections to Conduct of Election (Objections), a copy of which was served on the Petitioner. The Objections read verbatim as follows:

Objection Number 1: The Union and/or its agents during the course of the election promised the employees they could get them into the Machinists Health and Welfare Pension Plan if they voted for the Union. Said conduct adversely affected the results of the election.

Objection Number 2: During the course of the election, the Union and/or its agents made promises to the employees that they could get higher wages and benefits by getting the Employer to sign a contract if they voted for the Union. Said conduct adversely affected the results of the election.

Objection Number 3: During the course of the election, the Union and/or its agents stated that if they did not vote for the Union the Employer would terminate their jobs.

Objection Number 4: During the course of the election, the Union and/or its agents induced employees to sign union authorization cards by representing that if they signed an authorization card before the election, the Union would waive payment of initiation fees and reduce the dues of the employees. Said conduct interfered with the results of the election.

Objection Number 5: During the course of the election, the Union and/or its agents misrepresented to the employees the type of wages and benefits it would receive under Union conditions. Said conduct interfered with the results of the election.

Objection Number 6: During the course of the election, the Union and/or its agents started a rumor that if the Union won the election the Employer would close his facility. Said conduct interfered with the results of the election.

Objection Number 7: During the course of the election, the Union and/or its agents started a rumor that if the Union won the election the Employer would terminate his employees. Said conduct interfered with the results of the election.

Objection Number 8: During the course of the election the Union observer was a supervisor and his presence as an observer intimidated and coerced the employees during the vote to vote for the Union. Said conduct interfered with the results of the election.

**Analysis and Recommendation:**

Section 102.69(a) of the Board's *Rules and Regulations* requires, inter alia, that, "Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections." Similarly, Section 11392.6 of the Board's *Casehandling Manual, Part Two, Representation Proceedings* provides that absent receipt of timely evidence that establishes a prima facie case in support of objections, the Regional Director need not investigate them. Further, it instructs that unless the objecting party has specifically identified witnesses who assertedly would provide direct evidence to substantiate its allegations, the Regional Director should overrule them without further ado.

To comply with its obligation, the Employer had to submit evidence in support of its Objections by September 18. Notwithstanding its representative's assertion that he was aware of the provision in the Board's *Rules and Regulations* that sets the deadline to submit the offer of proof, the Employer failed to comply, and neither did it seek or receive an extension of time to make such a submission. In short, the Employer failed timely to make any offer of proof, much less to identify potential witnesses who purportedly would testify in support of its Objections. Accordingly, I recommend that the Board overrule its Objections in their entirety.

### Summary

Inspection of the challenged ballots cast by **Allen** and **Viray** established that whatever their respective eligibility, challenged ballots are no longer determinative of the election results and that a majority of voters cast ballots in favor of Petitioner. Furthermore, the Employer failed to meet the procedural requirement set forth in the Board's *Rules and Regulations* to submit a timely offer of proof. It hence did not raise any material and substantial issue of fact that would warrant a hearing over its Objections, much less necessitate setting aside the election. For the reasons set forth above, I recommend that the Board overrule the Employer's Objections in their entirety and issue a Certification of Representative.

**DATED AT** San Francisco, California this 30<sup>th</sup> day of October 2012.<sup>4</sup>



---

Joseph F. Frankl, Regional Director  
National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, California 94103

---

<sup>4</sup> Under the provisions of Section 102.69 of the Board's *Rules and Regulations*, a party may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570. Exceptions may also be submitted by electronic filing. See the Attachment provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at [www.nlr.gov](http://www.nlr.gov), for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. Exceptions must be received by the Board in Washington D.C. by 5:00 p.m. (ET) on **November 13, 2012**, and may *not* be filed by facsimile.

Under the provisions of Section 102.69(g) of the *Rules*, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director and which is not included in this Report, is not part of the record before the Board and will not be considered unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append copies of evidence timely submitted to the Regional Director shall preclude a party from relying on such evidence in any subsequent related unfair labor practice proceeding.

DO NOT WRITE IN THIS SPACE

PETITION

20-RC-086155 Date Filed 7/27/2012

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, number them accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named here, the statement following the description of the type of petition shall not be deemed made.) (Check One)

RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

RM-REPRESENTATION (EMPLOYER PETITION) One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of the employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

UC-UNIT CLARIFICATION - A labor organization is currently recognized the Employer, but Petitioner seeks clarification of placement of certain employees.  
(Check One)  In unit not previously certified.  In unit previously certified in Case No.

AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. Attach statement describing the specific amendment sought.

2. Name of Employer: **Corvus Automobile Group LLC d/b/a Veracom Ford** Employer Representative to contact: **Robert Brenzuela** Telephone Number: **(650) 340-7199**

Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code): **790 North San Mateo Dr. San Mateo, CA 94402** Telecopier Number (Fax): **(650) 375-8787 / (650) 340-7189**

3a. Type of Establishment: **Automobile Dealership** 3b. Identify principal product or service: **Automobiles**

5. Unit Involved (in LC petition, describe present bargaining unit and attached description of proposed clarification.)

Included: **All Service Advisors and Technicians.** 6a. Number of Employees in Unit: Present **6**

Excluded: **All other employees, guards and supervisors** Proposed (by UC/AC): **6**

6b. Is this petition supported by 30% or more of the employees in the unit?  Yes  No

7a.  Request for recognition as Bargaining Representative was made on (Date) **By this Petition** and Employer declined recognition on or about (Date) **Not applicable in RM, UC, and AC**

7b.  Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state): **None** Affiliation: **None**

Address, Telephone No. and Telecopier No. (Fax): **None** Date of Recognition or Certification: **None**

9. Expiration Date of Current Contract, if any (Month, Day, Year): **None** 10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year): **None**

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes  No  11b. If so, approximately how many employees are participating? **None**

11c. The employer has been picketed by or on behalf of (Insert Name) **None**, a labor organization, of (Insert Address) **None** Since (Month, Day, Year) **None**

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in Item 5 above, (if no, so state)

Name	Affiliation	Address	Date of Claim

13. Full name of party filing petition (If labor organization, give full name, including local name and number): **Machinists District Lodge 190, Machinists Local Lodge No. 1414**

14. Address (street and number, city, state, and ZIP code): **150 South Boulevard San Mateo, CA 94402-2470**

14b. Telephone No. (650) 341-2680  
14c. Telecopier No. (Fax) (650) 341-4050

15. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when petition is filed by a labor organization): **International Association of Machinists and Aerospace Workers, AFL-CIO**

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name (Print): **Paul A. Rosenfeld** Signature: *[Signature]* Title (if any): **Attorney**

Address (street and number, city, state, and ZIP code): **1001 Marina Village Parkway, Suite 200 Alameda, CA 94501** Telephone No. **510 337-1001**

Telecopier No. (Fax) **510 337-1023**

RECEIVED  
 JUL 27 2012  
 SAN FRANCISCO, CA

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY A FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001) PRIVACY ACT STATEMENT

1/677966 Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to

EXHIBIT

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
**STIPULATED ELECTION AGREEMENT**

The parties agree that a hearing is waived, that approval of this Agreement constitutes withdrawal of any notice of hearing previously issued in this matter, that the petition is amended to conform to this Agreement, and further **AGREE AS FOLLOWS:**

**1. SECRET BALLOT.** A secret-ballot election shall be held under the supervision of the Regional Director in the unit defined below at the agreed time and place, under the Board's Rules and Regulations.

**2. ELIGIBLE VOTERS.** The eligible voters shall be unit employees employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced. The employer shall provide to the Regional Director, within 7 days after the Regional Director has approved this Agreement, an election eligibility list containing the full names and addresses of all eligible voters. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **North Macon Health Care Facility**, 315 NLRB 359, 361 (1994).

**3. NOTICE OF ELECTION.** Copies of the Notice of Election shall be posted by the Employer in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

**4. ACCOMMODATIONS REQUIRED.** All parties should notify the Regional Director as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, and request the necessary assistance.

**5. OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

**6. TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

**7. POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

**8. RECORD.** The record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

**9. COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). Cervera Automotive Group LLC d/b/a Veracom Ford, a California corporation, with an office and place of business located at 790 North San Mateo Dr., San Mateo, California, the sole facility involved herein, is engaged in the business of operating an automobile dealership which sells and repairs vehicles for retail customers. During the past 12 calendar months, a representative period, the Employer, in the course and conduct of its business operations, derived gross revenue in excess of \$500,000 and purchased and received goods or services valued in excess of \$5,000 directly from points located outside the State of California.

8-14-12 SJP

**10. WORDING ON THE BALLOT.** When only one labor organization is on the ballot, the choice shall be "Yes" or "No". If more than one labor organization is on the ballot, the choices shall appear as follows, reading left to right or top to bottom. (If more than one labor organization is on the ballot, any labor organization may have its name removed by the approval of the Regional Director of a timely written request.)

- First
- Second
- Third

**11. PAYROLL PERIOD FOR ELIGIBILITY.**

**THE PERIOD ENDING** August 1, 2012

Employees eligible to vote are those who averaged 4 hours or more per week during the calendar quarter preceding August 1, 2012, *Davison-Paxon*, 185 NLRB 21 (1970).

**12. DATE, HOURS, AND PLACE OF ELECTION.**

**DATE:** September 4, 2012

**HOURS:** 12:00 noon to 12:30 p.m.

**PLACE:** The Break Room of the Employer's facility located 790 North San Mateo Dr., San Mateo, California

**13. THE APPROPRIATE COLLECTIVE-BARGAINING UNIT.**

**Including:** All full-time and regular part-time Service Advisors and Technicians employed by the Employer at its facility located at 790 North San Mateo Dr., San Mateo, California.

**Excluding:** All other employees, managers, guards, and supervisors as defined in the Act.

Cervera Automobile Group LLC  
d/b/a Veracom Ford

(Employer)

Machinists District Lodge 190,  
Machinists Local Lodge No. 1414

(Petitioner)

By

(Signature)

(Date)

By

(Signature)

(Date)

(Title)

(Title)

**Recommended:**

(Board Agent)

(Date)

**Date approved**

Regional Director, National Labor Relations Board

Case 20-RC-86155

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

Date Filed

Case No. 20-RC-086155 7/27/2012

Date Issued 9/4/2012

City SAN MATEO State CA

Type of Election:  
(Check one:)

(If applicable check either or both:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction Incumbent Union (Code)

- 8(b) (7)
- Mail Ballot

CERVERA AUTOMOTIVE GROUP LLC D/B/A VERACOM FORD  and  MACHINISTS DISTRICT LODGE 190, MACHINISTS LOCAL LODGE NO. 1414	Employer      Petitioner
--	--

### TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- |  |           |
|--|-----------|
| 1. Approximate number of eligible voters   | <u>13</u> |
| 2. Number of Void ballots  | <u>0</u>  |
| 3. Number of Votes cast for <u>PETITIONER</u>  | <u>5</u>  |
| 4. Number of Votes cast for  | <u>—</u>  |
| 5. Number of Votes cast for  | <u>—</u>  |
| 6. Number of Votes cast against participating labor organization <input checked="" type="checkbox"/>                 | <u>0</u>  |
| 7. Number of Valid votes counted (sum 3, 4, 5, and 6)  | <u>5</u>  |
| 8. Number of challenged ballots  | <u>6</u>  |
| 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8)  | <u>11</u> |
| 10. Challenges are <u>not</u> sufficient in number to affect the results of the election.                            |           |
| 11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for <u>PETITIONER</u> |           |

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer (see name above) 9/4/12

For Petitioner (see name above)

For

**EXHIBIT 1**

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

CERVERA AUTOMOTIVE GROUP LLC D/B/A  
VERACOM FORD

Employer

and

MACHINISTS DISTRICT LODGE 190, MACHINISTS  
LOCAL LODGE NO. 1414

Petitioner

Case No. 20-RC-086155

Date Issued 10/24/2012

Type of Election (Check one:)

- Consent Agreement
- Stipulation
- Board Direction
- RD Direction

(Also check box below  
where appropriate)

8 (b)(7)

REVISED TALLY OF BALLOTS

(Counting of Challenged Ballots) *opening*

The undersigned agent of the Regional Director certifies that the results of counting the challenged ballots directed ~~to be counted by the~~ *opening* resulted from the voters' Waivers executed on 10/17/2012 and the addition of these ballots to the original Tally of Ballots, executed on 9/4/2012, were as follows:

	Original Tally	Challenged Ballots Counted	Final Tally
Approximate number of eligible voters	13		
Number of Void ballots	0	-	0
Number of Votes cast for _____	5	-	5
Number of Votes cast for _____	---	-	1
Number of Votes cast for _____	---	-	1
Number of Votes cast against participating labor organization(s) ...	0	-	0
Number of Valid votes counted	5		5
Number of Undetermined challenged ballots	6		See Attachment
Number of Valid votes counted plus challenged ballots	11		See Attachment
Number of Sustained challenges (voters ineligible)			See Attachment

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are <sup>not</sup>~~(not)~~ sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has ~~(not)~~ been cast for \_\_\_\_\_  
MACHINISTS DISTRICT LODGE 190, MACHINISTS LOCAL LODGE NO. 1414

For the Regional Director *Flavin*

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that this counting and tabulating, and the compilation of the Final Tally, were fairly and accurately done, and that the results were as indicated above. We also acknowledge service of this Tally.

For Employer (see name above)  
*Did not appear*

For Petitioner (see name above)  
~~Did not appear~~

For \_\_\_\_\_  
**EXHIBIT 5**

*F. Hernandez*  
*Arthur [Signature]*

Attachment to Revised Tally of Ballots

Cervera Automobile Group LLC d/b/a Veracom Ford, 20-RC-86155

Clay Allen and Andrew Viray, whose names did not appear on the voter eligibility list in this matter, cast ballots in the election conducted on September 4, 2012. The Employer maintains that it correctly left their names off the list because they were not unit employees eligible to vote.

These two individuals have been named as discriminatees in the charge that Petitioner filed against the Employer in Case 20-CA-87857.

Pursuant to *Casehandling Manual (Part Two), Representation Proceedings*, Section 11361.4, these two individuals each submitted an executed waiver of his right to maintain the secrecy of his ballot and requested that the ballot be opened and considered. On October 24, 2012, the opening and inspection of the ballot revealed that:

Clay Allen voted in favor of against representation.

Andrew Viray voted in favor of against representation.

In these circumstances, with both voters indicating a desire to be represented:

If both Allen and Viray are indeed ineligible to have voted, the number of challenged ballots diminishes from six to four and is no longer determinative of the results of the election.

If, on the other hand, one of them is eligible to have voted, the vote in favor of representation will become six and the number of challenged ballots five or fewer, again rendering the challenged ballots no longer determinative.

Likewise, if both Allen and Viray are eligible to have voted, the four remaining challenged ballots become moot.

Accordingly, a majority of employees has indicated its desire to be represented by Petitioner.

  
\_\_\_\_\_

Board Agent

10/24/2012

Date

**EXHIBIT 5A**

FORM EXEMPT UNDER 44 U.S.C. 3612

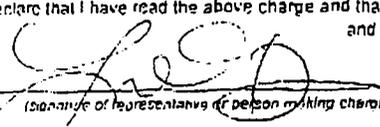
INTERNET  
FORM NLRB-501  
(2-08)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 20-CA-087857	Date Filed 8/21/2012

**INSTRUCTIONS:**

File an original with NLRB Regional Director for the Region in which the alleged unfair labor practice occurred or is occurring

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer Cervera Automobile Group LLC d/b/a Veracom Ford	b. Tel. No. (650) 340-7199 c. Cell No. f. Fax No. (650) 375-8787 (650)340-7189
d. Address (Street, city, state, and ZIP code) 790 North San Mateo Dr San Mateo, CA 94402	e. Employer Representative Robert Brenzuola g. e-Mail h. Number of workers employed
i. Type of Establishment (factory, mine, wholesaler, etc.) Automobile Dealership	j. Identify principal product or service Automobiles
k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) subsections) (3) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.	
2 Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) Within the last six months the above named employer discharged two employees on account of their union and/or protected activity. The employer has also transferred employees out of the bargaining unit to prevent them from voting. The employer furthermore has threatened and otherwise coerced employees	
4 Full name of party filing charge (if labor organization, give full name, including local name and number) Machinists District Lodge 190, Machinists Local Lodge No. 1414	
4a. Address (Street and number, city, state, and ZIP code) 150 South Boulevard San Mateo, CA 94402-2470	4b. Tel. No (650) 341-2689 4c. Cell No. 4d. Fax No (650) 341-4050 4e. e-Mail
5 Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization) International Association of Machinists and Aerospace Workers, AFL-CIO	
<b>6 DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief	
By  (Signature of representative of person making charge)	Lisi R. Duncan, Attorney (Print type name and title or office, if any)
Address: 1001 Marina Village Parkway Suite 200 Alameda, CA 94501	Tel. No. (510) 337-1001 Office, if any, Cell No. Fax No. (510) 337-1023 e-Mail
	08/21/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

1/6/812102

**EXHIBIT**



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 20  
901 MARKET ST  
STE 400  
SAN FRANCISCO, CA 94103-1738

Agency Website: [www.nlr.gov](http://www.nlr.gov)  
Telephone: (415)356-5130  
Fax: (415)356-5156

October 25, 2012

H. SANFORD RUDNICK, LABOR CONSULTANT  
H. SANFORD RUDNICK & ASSOCIATES  
1200 MT DIABLO BLVD, STE 105  
WALNUT CREEK, CA 94596-4823

Re: Cerva Automobile Group LLC d/b/a  
Veracom Ford  
Case 20-CA-087857

Dear Mr. RUDNICK:

This is to advise you that I have approved withdrawal of the 8(a)(3) allegation in the above-captioned charge that the Employer terminated Clay Allen on account of his Union activities.

The remaining 8(a)(1) and (3) allegations that the Employer terminated Adan Barajas and transferred Andrew Viray on account of their Union activities and promised benefits to an employee to discourage support for the Union are not being withdrawn and will be the subject of further proceedings.

Very truly yours,

JOSEPH F. FRANKL  
Regional Director

cc: ROBERT BRENZUELA, Employer  
Representative  
CERVERA AUTOMOTIVE GROUP LLC  
D/B/A VERACOM FORD  
790 N SAN MATEO DR  
SAN MATEO, CA 94401-2224

PEDRO MENDEZ  
MACHINISTS DISTRICT LODGE  
190, MACHINISTS LOCAL LODGE  
NO. 1414  
150 SOUTH BLVD  
SAN MATEO, CA 94402-2470

DAVID ROSENFELD, ESQ.  
WEINBERG, ROGER & ROSENFELD  
1001 MARINA VILLAGE PKWY STE 200  
ALAMEDA, CA 94501-6430

**EXHIBIT 7**

**H. SANFORD RUDNICK & ASSOCIATES  
LABOR CONSULTANTS  
H. SANFORD RUDNICK JD  
1200 MT. DIABLO BLVD. S105  
WALNUT CREEK, CA. 94596  
(925) 256-0660**

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
REGION 20**

**CERVERA AUTOMOTIVE GROUP  
LLC DBA VERACOM FORD  
(EMPLOYER)**

**AND**

**CASE NO. 20-RC-086155**

**MACHINISTS DISTRICT  
LODGE LOCAL 1414(UNION)**

**EMPLOYER'S OBJECTIONS  
TO THE CONDUCT OF THE  
ELECTION BY THE UNION**

---

**CERVERA AUTOMOTIVE GROUP LLC, DBA VERACOMFORD (Employer) hereby objects to the following conduct of the Machinists District Lodge Local 1414 (Union) which adversely affected the outcome of the election in the above entitled case.**

**OBJECTION NUMBER 1:** The Union and/or its agents during the course of the election promised the employees they could get them into the Machinists Health and Welfare Pension Plan if they voted for the union. Said conduct adversely affected the results of the election.

**EXHIBIT 2**

**OBJECTION NUMBER 2:** During the course of the election, the Union and/or its agents made promises to the employees that they could get higher wages and benefits by getting the Employer to sign a contract if they voted for the Union. Said conduct adversely affected the results of the election.

**OBJECTION NUMBER 3:** During the course of the election, the Union and/or its agents stated that if they did not vote for the union the Employer would terminate their jobs.

**OBJECTION NUMBER 4:** During the course of the election, the Union and/or its agents induced employees to sign union authorization cards by representing that if they signed an authorization card before the election, the Union would waive payment of initiation fees and reduce the dues of the employees. Said conduct interfered with the results of the election.

**OBJECTION NUMBER 5:** During the course of the election, the Union and/or its agents misrepresented to the employees the type of wages and benefits it would receive under union conditions. Said conduct interfered with the results of the election.

**OBJECTION NUMBER 6.** During the course of the election, the Union and/or its agents started a rumor that if the Union won the Election the Employer would close his facility. Said conduct interfered with the results of the Election.

**OBJECTION NUMBER 7.** During the course of the election, the Union and/or its agents started a rumor that if the Union won the Election the Employer would terminate his employees. Said conduct interfered with the results of the Election.



## PROOF OF SERVICE

I certify that I am over the age of 18 and I am not a party to the within action. My business address is 1200 Mt. Diablo Blvd. S105, Walnut Creek, Ca. 94596. On September 11, 2012, I personally mailed the Employers Objections to the Conduct Affecting the Outcome of the Election and caused it to be sealed and deposited in the United States Mail at Walnut Creek, Ca. with postage fully prepaid thereon, addressed in the manner set forth below:

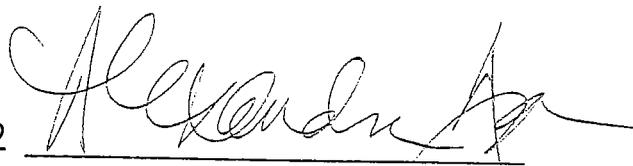
National Labor Relations Board Region 20  
Regional Director, Joe Frankl  
901 Market Street 9<sup>th</sup> FL.  
San Francisco, Ca. 94612  
(F) 415-356-5156

Machinists Local 1414  
150 South Blvd.  
San Mateo, Ca. 94402  
Pedro Mendez Business Agent (F 650-341-4050)

David Rosenfeld, Attorney at Law  
Weinberg, Roger and Rosenfield  
1001 Marina Village Parkway  
Alameda, CA. 94501-1091  
(F)510-337-1023

I declare that the foregoing is true and correct to the best of my knowledge.

Dated: September 11, 2012

  
\_\_\_\_\_  
Alexandra Morgan

sanford rudnick

---

**From:** Gibson, Alaina [Alaina.Gibson@nlrb.gov]  
**Sent:** Friday, September 21, 2012 9:19 AM  
**To:** sanford rudnick  
**Subject:** 20-RC-86155: Veracom Ford Objections

Sandy,

Regarding the Employer's objections to the election in the above-captioned matter, the deadline for submitting evidence in support of the objections has passed without any response. Accordingly, I write to solicit your withdrawal of the objections. Absent your withdrawal, the objections will be procedurally overruled.

Please let me know by COB, Tuesday, September 25 whether you will withdraw the objections.

Thanks,

*Alaina K. Gibson*

National Labor Relations Board, Region 20  
901 Market Street, Suite 400  
San Francisco, CA 94103  
☎ 415.356.5184 | 📠 415.356.5156  
[www.nlrb.gov](http://www.nlrb.gov)

EXHIBIT 1

## DECLARATION OF ROBERT BRANZUELA

1. I have been informed that this Declaration concerns an election petition that was filed by the Machinists Union Local 1414 (Union) concerning statements of promises of benefits and rumors preceding the Election on September 4, 2011 that the dealership would shut down and layoff all its employees and the misrepresentation of promise of benefits and the effect of bargaining.
2. I am the managing partner of the dealership which is located at 790 North San Mateo Blvd. San Mateo, Ca. 94491 concerning the technicians and service writers. I hire and fire, discipline and give raises and evaluations to all the employees at the dealership. There were 13 employees voting in the election.
3. The vote was 5 votes for the petitioner (Union) and No votes for the dealership. There were 6 challenges to the voters to the election.
4. With respect to Objection 1, we had a meeting with the employees on approximately August 2, 2012 where I heard Juan Castellanos, a technician who previously worked at a Union dealership, state that the Union wages and benefits compared to our was like a Lincoln to a Kia.

I believed this to mean that the Union promised him higher wages and a better health plan and pension plan. He stated that under a union contract their would be higher wages and benefits. This was probably the reason why all the employees voted for the employees.

(See Wagner Electric Corp., 167 NLRB 532(1967), S & O Security Inc. vs UPGWA 271 NLRB No. 211, 1984-5 CCH NLRB, Section 16,669, Teletype Corp., 122 NLRB 1594(1959); General Cable Corp., 170 NLRB 1682 (1968), NLRB vs Savior Mfg. 414 US 270 (1973) This statement by a technician that the Union can get higher wages and benefits by making promises to the employees are specific and timely evidence in support of their objections. See Star Video Entertainment, 290 NLRB 1010(1988) and Goody's Family Clothing, 308 NLRB 181 (1992)

With respect to the case. Midland National Life Insurance Company, 263 NLRB 127,133 (1982), the Board held it would not probe into the truth or the falsity of the parties campaign statements.

The Employer believes employees are not able to understand that a union cannot obtain benefits automatically by just winning an election but must achieve them by collective bargaining. The Employer contends the employees are not labor attorneys and cannot distinguish what the Union can obtain or cannot obtain immediately after the election. The test, an objective one, is whether the union conduct has a tendency to interfere with the with the employees' freedom of choice.

**EXHIBIT** 10

As stated above since the employees are not familiar with federal labor law such promises would have a tendency to interfere with the employees free choice in the election.

3. With respect to Objection 2, I heard a rumor going around the dealership from my employees that if the Union won the election, that negotiations would start immediately after the election the company could have to sign a contract and wages and benefits would only go up. This was probably the reason why all the employees voted for the Union. This was probably the reason why all the employees voted for the Union.

See Chilllicothe Paper Co, NLRB, 1961, 41 LRRM 1285; James Lees and Sons Company, NLRB, (1961), 47LRRM 1285; P.D. Gwaltney, Jr. & Co. NLRB, 1947, 1172, Meridan Grain & Elevator Co.; NLRB 1947, 20 LRRM 1214

With respect to the case, Midland National Life Insurance Company, 263 NLRB 127,133 (1982), the Board held it would not probe into the truth or the falsity of the parties campaign statements. The Employer believes employees are not able to understand that a union cannot obtain benefits automatically by just winning an election but must achieve them by collective bargaining.

The Employer contends the employees are not labor attorneys and cannot distinguish what the Union can obtain or cannot obtain immediately after the election. The test, an objective one, is whether the union conduct has a tendency to interfere with the with the employees' freedom of choice. As stated above since the employees are not familiar with federal labor law such promises would have a tendency to interfere with the employees' free choice in the election.

4. With respect to Objection number 3, during the course of the election, I heard a rumor from the employees that if they did not vote for the Union the dealership would terminate their job. During the Election I had to terminate Clay Allen for poor job performance and Adan Barajas who was accused of theft of taking a company tool referred to a Vehicle Communications Module (VCM) which the Employer believed belonged to the dealership.

This was probably the reason why all the employees voted for the Union since they thought they were going to be terminated. Thus, the Employer alleges that these rumors were instigated by the Union were so egregious as to create a general atmosphere of fear and coercion during the election concerning the employees where the NLRB set aside the Union election.

(See Cal West Periodicals, Inc. 330 NLRB 599, Westwood Horizon Hotel 270 NLRB 802, 1984) Also, the Region held that in following cases, that is, in Hurwitz Electric Co., 146, NLRB 1265, Steak House Meat Co. 206 NLRB 28(1978), Vickers, Inc. 152 NLRB 793(1965); National Gypsum Co. 133, NLRB 1492 (1962), and Caroline Poultry Farms, Inc. (1953) 104 NLRB 255, held where the Union threatened and prejudiced employees by implying disadvantageous economic consequences, loss of jobs, etc. it was a violation of the Act

5. With respect to Objection Number 4, I heard a rumor from the employees that the Union would waive payment of initiation fees and dues if they signed union cards before the election. If they did not sign the union cards after the petition was filed they would have to pay union and initiation fees. (See NLRB vs Savior Mfg. 414 US 270) It is objectionable for a union to offer to waive initiation fees for employees who sign union authorization cards before the election. Savior requires that objectionable conduct in this regard is that which requires an outward manifestation of support such as signing an authorization card or joining the union.

6. With respect to Objection Number 5, the Union misrepresented to the employees the type of higher wages and benefits they would get under a union contract especially if you look at the statement of Juan Castellanos, a technician, who worked at a prior Union shop during our meeting on August 2, 2012.

See Chilllicothe Paper Co, NLRB, 1961, 41 LRRM 1285; James Lees and Sons Company, NLRB, (1961), 47LRRM 1285; P.D. Gwaltney, Jr. & Co. NLRB, 1947, 1172, Meridan Grain & Elevator Co.; NLRB 1947, 20 LRRM 1214

With respect to the case, Midland National Life Insurance Company, 263 NLRB 127,133 (1982), the Board held it would not probe into the truth or the falsity of the parties campaign statements.

The Employer believes employees are not able to understand that a union cannot obtain benefits automatically by just winning an election but must achieve them by collective bargaining. The Company also objects that Imer Hernandez, a Company supervisor, engaged in pro-Union, pre-election conduct while he was a supervisor which reasonably tended to coerce or interfere with the employees and was likely to impair the employees' freedom of choice in the election. (See Harborside Health Inc., 343 NLRB No.100 ,2004) The Employer contends the employees are not labor attorneys and cannot distinguish what the Union can obtain immediately after the election. The test, an objective one, is whether the union conduct has a tendency to interfere with the with the employees' freedom of choice. As stated above since the employees are not familiar with federal labor law such promises would have a tendency to interfere with the employees free choice in the election.

7. With respect to Objection 6, I heard a rumor from the employees prior to the Election that if the Union won the Election the Employer would close its facility. I believe this rumor was created by me terminating two employees for legitimate business reasons for poor job performance and theft of company equipment. (See Cal West Periodicals, Inc. 330 NLRB 599, Westwood Horizon Hotel 270 NLRB 802, 1984) Also, the Region held that in following cases, that is, in Hurwitz Electric Co., 146, NLRB 1265, Steak House Meat Co. 206 NLRB 28(1978), Vickers, Inc. 152 NLRB 793(1965); National Gypsum Co. 133, NLRB 1492 (1962), and Caroline Poultry Farms, Inc. (1953) 104 NLRB 255, held where the Union threatened and prejudiced employees by implying disadvantageous economic consequences, loss of jobs, etc. it was a violation of the Act.

8. With respect to Objection 7, I heard a rumor from my employees that I would terminate other employees if the Union won the Election since one employee was terminated prior to the election and one employee was terminated after the petition was filed. This was probably the reason why all the employees voted for the Union.

(See Cal West Periodicals, Inc. 330 NLRB 599, Westwood Horizon Hotel 270 NLRB 802, 1984) Also, the Region held that in following cases, that is, in Hurwitz Electric Co., 146, NLRB 1265, Steak House Meat Co. 206 NLRB 28(1978), Vickers, Inc. 152 NLRB 793(1965); National Gypsum Co. 133, NLRB 1492 (1962), and Caroline Poultry Farms, Inc. (1953) 104 NLRB 255, held where the Union threatened and prejudiced employees by implying disadvantageous economic consequences, loss of jobs, etc. it was a violation of the Act

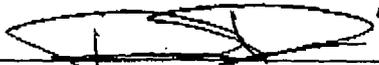
9. With respect to Objection 8, the Union selected an observer who was a supervisor of the Service Department who intimidated and coerced the employees during the vote for the Union. This is probably the reason why all the employees voted for the Union.

The Company also objects that Benjamin Barger, a Company supervisor and in charge of the Service Department, engaged in pro-Union, pre-election conduct while he was a supervisor which reasonably tended to coerce or interfere with the employees and was likely to impair the employees' freedom of choice in the election. See, Harborside Health Inc., 343 NLRB No.100 (2004). When he was selected as the Union observer, which the Company had no knowledge, he intimidated and coerced the employees into all voting for the Union. You should note Ben Barger shortly resigned at the dealership after the vote. (See New England Lumber Division of Diamond International v NLRB, 649 F2nd 1)

In addition, after I posted the Notice of Election 72 hours prior to the election, the Notice stated that Federal Law prevented me from making any promises during an election, threats or rumors of closure or terminating my employees because they might have supported the Union. You should note I have hired many technicians and other employees who worked for other Union dealerships.

Thus, I believe these threats and rumors of closure, and promises of benefits came from the Union. I never had any conversations with the employees concerning this threats, rumors and increased benefits since it is a violation of Federal law according to the Notice of Posting from the National Labor Relations Board.

I declare the above Declaration is true to the best of my knowledge and was executed in San Mateo, Ca. 94306 on 9/24/2012 2012.

  
\_\_\_\_\_  
Robert Branzuela, Managing Partner

H. SANFORD  
RUDNICK  
& ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

Via Email [tim.peck@nlrb.gov](mailto:tim.peck@nlrb.gov)

Via Fax 415-356-5156

September 24, 2012

National Labor Relations Board  
Region 20  
901 Market Street S 400  
San Francisco, Ca. 94103  
Attn: Alaina Gibson, Board Agent  
Tim Peck, Assistant Regional Director

Re: Case No. 20-RC-086155  
Cervera Automotive Group DBA Veracom Ford (Employer)

Dear Alaina and Tim:

In your email on September 21, 2012 you stated the Employer did not give timely evidence of objections concerning the objections to the Election in the above case. I was shocked that you did not send out this letter when the evidence was due like my firm has received for 30 years.

As you know I have handled dozens of elections all over the country and in every case that my firm ever had an election, the Region has sent out a letter requesting the Employer's due date of evidence of its Objections to the Election as the Board does in other jurisdictions. (See attachments of other NLRB Regions requesting the evidence) You will note Region 32 on October 5, 2011 and Region 21 requested the Employer had 7 days to submit its evidence. Also, I tried to reach other Board agents in Region 20 which I could not contact on the due date of the evidence.

I believe this is a denial of due process in the Board by not complying with all the other Regions procedure of informing the Employer of the due date of the evidence of the Objections. Also, the Board wants to conduct a fair election and allow the Employer to submit any evidence of wrongdoing by the Union.

As I have stated above, every other NLRB region where I have represented other clients, the standard practice was Region always send the Employer a letter of a notice of evidence when objections are due. (Attached are letters from different Boards requesting when evidence is due for objections to the election. ) As you know my firm has been practicing before the Board for over 30 years and this had been their standard practice.

I believe the Board has denied the Employer due process in filing its evidence. Further, all NLRB agencies must follow the same rules and standard procedures.

One NLRB region cannot unilaterally make up its own rules of procedures. This is a federal agency and it must act uniformly.

Thus, if the Employer is not allowed to submit its evidence, I will have to file exceptions of your dismissal since I did not receive a letter from your Region stating when the date the evidence is due. Thus, my client would appreciate filing the attached evidence of its objections. Thank you for your anticipated cooperation in allowing the Employer to submit its evidence which is attached.

Respectfully,



H. Sanford Rudnick JD  
Robert Branzuela, President

**EXHIBIT //**

**Koons Ford of Annapolis, Inc. and John R. Lawrence, Petitioner and District No. 65, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO. Case 5-RD-1046**

September 29, 1992

ORDER DENYING REVIEW

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Union's request for review of the Regional Director's supplemental decision (the relevant portion of which is attached). The request for review is denied as it raises no substantial issues warranting review.<sup>1</sup>

MEMBER DEVANEY, dissenting.

Contrary to my colleagues, I would direct that the Regional Director receive and consider the Union's evidence in support of its objections. Although it is the Region's usual practice to notify objecting parties of the receipt of their objections and their obligation to present supporting evidence within the 14-day period prescribed by Section 102.69(a) of the Board's Rules, the Region gave no such notification in the instant

<sup>1</sup> For the reasons stated in *Public Storage*, 295 NLRB 1034 (1989), we do not agree with the dissent that the Union's late-tendered evidence should be accepted because the Union failed to receive a courtesy reminder of the due date for submission of that evidence.

case. In addition, the Union, prior to the Region's mailing of the instant supplemental decision, requested that the Region receive and consider its evidence. In these circumstances, I would order that the Regional Director consider the Union's objections on their merits. See my dissent in *Public Storage*, 295 NLRB at 1035.

APPENDIX

On July 13, the Union filed timely objections to conduct affecting the results of the election. Under the provisions of Section 102.69(a) of the Board's Rules and Regulations, objections are due within 7 days after the preparation of the tally of ballots and the objecting party is required to furnish its supporting evidence to the Region within fourteen days after the issuance of the tally of ballots. Thus, the Intervenor was required to submit its supporting evidence by July 21. *Craftmatic Comfort Mfg. Corp.*, 299 NLRB 514 (1990). The undersigned neither granted nor was requested to grant additional time to the Intervenor to tender its supporting evidence. The Board noted in *Star Video Entertainment L.P.*, 290 NLRB 1010, that the time limits set forth in the Rules and Regulations concerning the submission of evidence in support of objections to an election are to be strictly applied. More recently, the Board decided in *Public Storage, Inc.*, 295 NLRB 1034, that it was in error to accept evidence in support of objections received after the time period provided for in the Rules and Regulations, and in the absence of a timely request for an extension previously having been granted.

In light of the Intervenor's failure to submit evidence in support of its objections by July 21, I overrule the Union's Objections in their entirety and issues the following Certification of Results of Election.

**EXHIBIT** 12



August 19, 2011

Lester A. Heltzer  
Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> Street, NW  
Washington, DC 20570

Re: Public Commentary from Ellen Dannin  
29 CFR Parts 101, 102 and 103  
Representation -- Case Procedures; Proposed Rule  
RIN 3142-AA08

**Why the Amendments to the NLRB's Proposed Election Regulations Should Be Approved**  
Ellen Dannin<sup>1</sup>

It has been so long since the National Labor Relations Board (NLRB) election regulations have been updated that they still include requirements for carbon copies and say nothing about using electronic filing or communications. The proposed amendments would allow the NLRB to use 21<sup>st</sup> century technology to streamline processes and protect the rights of all parties involved in an NLRB election. More than that, the amendments would bring the NLRB into better compliance with Congress' mandates under the National Labor Relations Act. Finally, the proposed regulations draw on lessons learned from decades of experience handling hundreds of thousands of cases each year under the Federal Rules of Civil Procedure.

The discussion here first provides background on the legal requirements for rulemaking related to the National Labor Relations Act and outlines basic NLRA election procedures. It then discusses whether the proposed rules comply with and promote the NLRA's policies. The discussion includes changes that would allow the Board to make use of modern technology to lower costs and provide information to all parties. The overarching focus here is whether and how key features of the new regulations promote the National Labor Relations Act's policies and purposes.

**Introduction**

The National Labor Relations Act has two main functions: ensuring that elections allow employees to decide whether to be represented by a union and protecting and enforcing

---

<sup>1</sup> Fannie Weiss Distinguished Faculty Scholar and Professor of Law, Penn State Dickinson School of Law.

employee rights to freedom of association, self-organization, and collective bargaining. Congress created the National Labor Relations Board to enforce these rights.

## I. The Legal Requirements for NLRA Rulemaking

As in all rulemaking, the proposed amendments to NLRA election regulations must be placed in the context of agency rulemaking procedures. Federal agencies can issue or amend regulations only if they conform to the laws that control the rulemaking process. In the case of the proposed NLRB election amendments, the process and regulations must comply with rulemaking standards under Administrative Procedure Act (APA) § 553(c) and National Labor Relations Act (NLRA) § 6.

APA § 553(c) says: “After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose.”<sup>2</sup> The National Labor Relations Act gives the NLRB the power to make rules and regulations. NLRA § 6, says that the Board shall have authority to make, amend, and rescind “rules and regulations *as may be necessary to carry out the provisions of this Act.*” In other words, the proposed amendments should be approved if they are necessary to carry out the NLRA’s requirements. It is also possible for the choice of union representation to be made through voluntary processes, for example, through card check recognition. The proposed regulations concern only the NLRB election process and say nothing about card check or voluntary employer recognition.

The NLRA sections that are relevant to the proposed amendments are §§ 1, 7, 8(c), and 9. Section 1 sets out the NLRA’s statement of its policies, and § 7 defines employee rights. These two sections delineate the basic criteria for assessing the legality of the proposed regulations.

### Section 1. Findings and Policies

...  
It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

### Section 7. Rights of Employees

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities . . .

In other words, to be in compliance with the NLRA, the regulations must promote full freedom

---

<sup>2</sup> <http://www.archives.gov/federal-register/laws/administrative-procedure/553.html>

of worker association and choice of representative and protect the right of employee self-organization.

There is some confusion on this point, but the NLRA gives rights only to employees. It does not give rights to either employers or unions. Some call § 8(c) the employer free speech right. However, the plain language of § 8(c) says nothing about rights nor does it mention employers. The full text of § 8(c) says:

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit.

In other words, what § 8(c) does is create an affirmative defense from a finding that an unfair labor practice has been committed. The neutral language means that this affirmative defense could apply to any entity charged with committing an unfair labor practice based on speech. The only such entities are employers and unions.

In 1947, Congress enacted the Labor Management Relations Act (LMRA or Taft-Hartley) to amend the NLRA. The LMRA created additional rights and responsibilities:

Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest. *It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.*<sup>3</sup>

In short, these policy sections from the NLRA and LMRA, along with provisions concerning elections, set standards for determining whether the proposed regulations are necessary to carry out the provisions of the Act.

## **II. The Basics of National Labor Relations Board Election Processes**

There are several types of NLRB elections based on its specific purpose and who files the

---

<sup>3</sup> 29 USC § 141(b).

petition. The purpose of the most commonly held category of elections allows employees to choose whether or not to be represented by a labor organization for collective bargaining. These elections are RC (certification of a bargaining representative and usually filed by a labor organization), RD (decertification of a bargaining representative and usually filed by an employee in the bargaining unit), and RM (certification or decertification of a bargaining representative when the petition is filed by an employer).<sup>4</sup> These terms – RC, RD, and RM – are used throughout the current and proposed regulations and by those practicing in this area. The NLRB held 2969 elections of these types in FY2010.<sup>5</sup>

UC (unit clarification) and AC (amendment to certification) petitions provide an orderly process to accommodate changes or errors in the composition of the bargaining unit.<sup>6</sup> UD (union deauthorization) petitions allow employees to choose whether to rescind language in their collective bargaining agreement that authorizes a union to require employees to make union dues payments in order to retain their jobs. Only 235 UD, UC, and AC petitions were filed in FY2010.<sup>7</sup>

Although all of these elections are initiated by filing the same NLRB form, each has distinct processes and consequences. The focus of the discussion here is on RC, RD, and RM procedures, for it is these elections that are the main focus of the proposed regulations and changes to them are likely to be the most controversial.

Before discussing the specifics of the proposed changes, here are the basic elements of the election processes Congress created to promote employees' NLRA rights. The relevant NLRA sections are included for easier reference.

1. Elections are to take place in a unit appropriate for collective bargaining. § 9(a)
2. The results of the election to designate or select an exclusive representative for the purposes of collective bargaining are determined by the secret ballot vote of a majority of employees in an appropriate bargaining unit. §§ 9(a) and 2(4)
3. The Board is required to “decide in each case” a unit appropriate for collective bargaining. § 9(b)
4. The bargaining unit should be one that assures to employees the fullest freedom in exercising their NLRA rights. § 9(b)
5. The mechanism that sets this process in motion is the filing of a petition, following the

---

<sup>4</sup> National Labor Relations Board, Casehandling Manual, Part Two, Representation Proceedings §§ 11002-11003 (Aug. 2007) <http://www.nlr.gov/sites/default/files/documents/44/chm2.pdf>

<sup>5</sup> Office of the NLRB General Counsel, Summary of Operations (Fiscal Year 2010) Memorandum No.GC 11-03 2 (Jan. 10, 2011).

<sup>6</sup> Office of the NLRB General Counsel, Summary of Operations (Fiscal Year 2010) Memorandum GC 11-03 2 (Jan. 10, 2011).

<sup>7</sup> Office of the NLRB General Counsel, Summary of Operations (Fiscal Year 2010) Memorandum GC 11-03 2 (Jan. 10, 2011).

procedures created by NLRB regulations. § 9(c)

6. Election petitions may be filed by “an employee or group of employees or any individual or labor organization acting in their behalf” or by an employer. § 9(c)(1)(A), (B)

7. An RC petition filed by or on behalf of employees must allege “that a substantial number of employees wish to be represented for collective bargaining and that their employer declines to recognize their representative.” § 9(c)(1)(A)(i).

8. An RD petition may be filed to determine whether employees want the certified or recognized bargaining representative to continue as their representative. § 9(c)(1)(A)(i).

9. An RM petition may be filed by an employer who alleges that one or more individuals or labor organizations have presented a claim to be recognized as the employees’ exclusive representative. § 9(c)(1)(B)

10. When a petition has been filed, the Board shall investigate whether “it has reasonable cause to believe that a question of representation affecting commerce exists.” §§ 9(c) and 2(7).

11. That investigation shall take place through an appropriate hearing upon due notice. § 9(c)

12. If the hearing record shows that a question concerning representation exists, the Board shall direct an election by secret ballot and shall certify its results. § 9(c)(1)

13. Hearings may be waived “by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.” § 9(c)(4)

14. A UD petition can be filed by an employee or employees in a bargaining unit covered by a collective bargaining agreement to rescind the contract’s dues authorization language. § 9(e)(1)

15. A UC petition can be filed to clarify whether certain classifications of employees should be placed in a bargaining unit. § 9(b)

16. An AC petition may be filed to amend the unit certification to reflect changes in the name or affiliation of the employer or of the certified labor organization. § 9(b)

For each of these basic components, there are additional issues, such as who can file each type of petition, what must be filed to support the petition, and what outcome is possible for each type of petition filed.

Consider the requirement that each type of petition be supported by a “showing of interest.” A showing of interest means that petitioners must present evidence of support for the requested relief before proceeding with the petition. Depending on the situation, showings of interest can be based on signed union authorization cards (RC), signed employee petitions (RD), or employer statements (RM), among others. After this preliminary stage, there are many points during the pre-election process at which disputes can arise. In addition, there can also be post-election

disputes challenging whether an employee was eligible to vote, objecting to the way an election was conducted, and even questioning whether the election should have taken place. Details about the election process may be found in the NLRB's *Casehandling Manual for Representation Proceedings*.<sup>8</sup>

### III. Do the Proposed Rules Comply with and Promote the NLRA's Policies?

Section 6 of the NLRA empowers the Board to promote the Act's policies by making, amending, and rescinding rules and regulations *as may be necessary to carry out the provisions of this Act.*" In other words, to be a legitimate exercise of the NLRB's power, the proposed amendments must advance the § 9 election processes and promote the NLRA's policies.

The Board has acknowledged its obligation to comply with these requirements in its summary of the proposed amendments:

As part of its ongoing efforts to more effectively administer the National Labor Relations Act (the Act or the NLRA) and to further the purposes of the Act, the National Labor Relations Board (the Board) proposes to amend its rules and regulations governing the filing and processing of petitions relating to the representation of employees for purposes of collective bargaining with their employer. The Board believes that the proposed amendments would remove unnecessary barriers to the fair and expeditious resolution of questions concerning representation. The proposed amendments would simplify representation-case procedures and render them more transparent and uniform across regions, eliminate unnecessary litigation, and consolidate requests for Board review of regional directors' pre- and post-election determinations into a single, post-election request. The proposed amendments would allow the Board to more promptly determine if there is a question concerning representation and, if so, to resolve it by conducting a secret ballot election.<sup>9</sup>

In other words, the proposed amendments promote Congress' mandates in both the LMRA and the NLRA. When it enacted the Labor Management Relations Act in 1947, Congress re-affirmed the need to provide orderly and peaceful procedures to prevent interference with one another's legitimate rights.<sup>10</sup> The rights of employees include the rights "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" and to refrain from those activities.<sup>11</sup> These rights put into effect the NLRA policies of encouraging the practice and procedure of collective bargaining and protecting workers' exercise of "full freedom of association, self-organization, and designation of representatives of their own choosing" so that employees can negotiate their terms and

---

<sup>8</sup> <http://www.nlr.gov/sites/default/files/documents/44/chm2.pdf>

<sup>9</sup> 76 FR 36812 (June 22, 2011)

<http://www.federalregister.gov/articles/2011/06/22/2011-15307/representation-case-procedures#p-3>

<sup>10</sup> 29 U.S.C. § 141(b)..

<sup>11</sup> 29 U.S.C. § 157.

conditions of employment.<sup>12</sup> How these rights are promoted by the proposed amendments is discussed in more detail below.

### **A. Overview of the Proposed Regulations**

The primary goal of the proposed regulations is to ensure that all parties' substantive and procedural labor rights are protected. The amendments will lower costs by streamlining and simplifying NLRB election processes; by employing modern communication technologies regularly used by the public, businesses, and government; by eliminating redundant processes; by holding hearings only when issues are in dispute; and by encouraging parties to narrow issues in dispute. These innovations will lower costs for all parties, especially for small businesses, and ultimately benefit the public as a whole.

Petitions for election trigger a period of uncertainty that can affect how a workplace functions. As a result, delay is the enemy of employer and employee productivity. Electronic communications as a standard part of case handling and the elimination of redundant procedures will promote speedier decision-making and elections. As a result, they promote the legitimate interests of all parties – and the public – by allowing the workplace to return to normal productivity more quickly.

Even more important, for the first time, the NLRB will be able to directly inform affected employees about their legal rights and address problems quickly. Indeed, the NLRB's directly informing employees of the status of their case is among the most important changes proposed. It acknowledges that the point of the election process is to promote employees' interests in choosing whether to have union representation. Under the current regulations, employees only receive information about their rights and election processes second hand, through employers, unions, rumor, and scuttlebutt. The new regulations require the NLRB to inform employees about the status of their case, to the extent possible and give employees direct access to the NLRB via email if they have questions or if problems arise.

The second major innovation can be found in amendments that import procedural changes that have been widely used by federal and state courts for many years to encourage information sharing and problem solving, to streamline processes, to eliminate unnecessary delay, and to protect all parties' substantive and procedural rights. The process by which these innovations are progressively examined and improved involves tripartite participation of court personnel and the plaintiff and defendant bars and constant re-assessment. In short, the federal courts' use of these procedures has generated empirical evidence that informs the NLRB's amendments.

Each year, the federal district courts handle 100 times the number of cases processed by the NLRB. According to the Federal Judicial Center's most recent caseload statistics for the U.S. District Courts, nearly 300,000 cases were processed in 2010. In FY2010, 3204 representation cases were filed with the NLRB, a 10% increase from the FY2009 intake of 2,912, but still a tiny number compared to federal civil case filings.

---

<sup>12</sup> 29 U.S.C. § 151.

The proposed amendments rely on that greater federal court experience by incorporating similar methods into the NLRB's pre- and post-election processes. Among other things, they import methods of proven worth in order to determine what issues are actually in dispute, encourage agreement, and eliminate redundant procedures. For example, the proposed regulations eliminate redundant processes by creating a preference for using a single post-election hearing for resolving challenges to the eligibility of voters along with any objections to the election and the conduct of the election. This proposed change incorporates the NLRB's experience that many issues in dispute before an election is held, such as whether specific employees should be included in the bargaining unit and thus allowed to vote, become moot after the election outcome is known.

#### **B. The Use of Modern Technology to Lower Costs, Provide Information to All Parties, and Expedite Election Cases**

The proposed regulations require the email address of all party representatives, and parties are strongly encouraged to use email for all communications connected with processing petitions and to file documents electronically. § 102.61. In addition, § 102.62(d) requires employers to transmit the voter list electronically to the NLRB and all parties to the election. The voter list is to include employees' available email addresses along with their full names, home addresses, available telephone numbers, work locations, shifts, and job classifications.

This requirement is likely to be controversial among employers for a number of reasons.. Employers are accustomed to considering personnel information to be confidential and take seriously their obligations not to violate privacy rights. It is natural that they might, therefore, be reluctant to provide all or some of the employee information required under the new regulations. Employers may also be concerned that other parties might misuse the information or fail to protect it.

However, employee information has long been provided in NLRB elections, with little, if any, evidence of misuse of the list or other problems. That information is relevant to issues such as deciding who should be included in the unit and ensuring that the list is accurate and that elections run smoothly. Furthermore, there are important preconditions to a union's right to have that information. A petition for election must have been filed and that petition must have been supported by a "showing of interest." In the case of RC petitions, the showing of interest that supports the petition is usually in the form of union authorization cards signed by more than 30% of the employees in the bargaining unit. Usually the showing of interest is far higher than a majority, and often is at or near 100%. Misconduct by the union can lead to the filing of objections to the conduct of the election and unfair labor practice charges. As a result, a union can lose an election when a majority of employees cast or would have cast votes for the union.

In addition, providing the information to all parties makes it possible for all parties to the election to police pre-election conduct and remedy problems as early as possible so that elections run smoothly. For example, this requirement makes it possible for the NLRB to email information directly and quickly to employees in the unit. The proposed regulations require the NLRB to email the Final Notice of Election directly to employees if employee emails are available. *See, e.g.*, §§ 102.62(e), 102.63(a)(2), 102.67(a), (b), (i). The requirement to provide

employee email addresses gives employees access to information about their legal rights directly from the government and from all parties to the election. Providing employees with information via email from all parties allow employees to assess information about union representation, the election process, and issues such as dues. It will also make it possible for the NLRB to be made aware of problems earlier and to take rapid action to address them.

In other words, this is a situation far different from those that give employers concern about breaches of privacy, and there is a strong public interest in making the information available to employees. Employees cannot have true freedom of choice if they lack information on which they can base that choice. However, it must be remembered that the party with the most access to employees continues to be the employer.

The new regulations require that employers and the NLRB send information and specific documents directly to employees who have email addresses. For example, if the employer customarily communicates with its employees electronically, the employer is required to send the NLRB's Initial Notices of Election directly to employees, as well as posting them in the workplace. § 102.63 (a)(2). These notices provide information about NLRB elections and employee protections and rights. The notices allow employees to carefully read and digest the information away from work where they will have more time and privacy. It would also address common problems experienced with NLRB notices to employees, such as employers not posting the notices, allowing notices to be defaced, and posting notices where supervisors visibly observe employees and, as a result make employees reluctant to read them.

Traditionally employees' only contacts with the NLRB have been notices posted on workplace bulletin boards and board agents at elections. And even though the law forbids defacing the notices, the NLRB has had only the slightest control over whether the notices are posted or defaced. Directly giving employees information that the government is involved and how employees can contact NLRB agents should assure employees that they can seek out accurate information and help if they have questions or problems. In short, this new requirement will help ensure that employees have access to information that can stem problems in the election process and protect employees' rights to a free choice in the election.

The new regulations reflect the greater speed and accuracy available with electronic record keeping and transmission. The ability to use electronic documents and electronic transmission makes it possible to expedite elections by eliminating delay involved in constructing, copying, filing, and mailing documents.

We are long past the days when lists of employees had to be typed and retyped, but the NLRB's current election regulations remain stuck in the IBM Selectric era. The proposed regulations acknowledge that today employers small and large use electronic records as a matter of course for core functions, such as maintaining personnel information, and employees regularly use electronic communications at work and home. Because virtually all employers today maintain employee information in electronic form, they can quickly extract that information from data bases to construct government reports that can then be transmitted electronically. As a result, incorporating modern technology into NLRB functions will cost less than current practices.

For all these reasons, the NLRB has correctly concluded that standard use of electronic communication technologies supports the proposed regulations concerning voter lists and employee information.

### **C. Amendments that Incorporate Experience Under the Federal Rules of Civil Procedure**

The proposed regulations borrow and build on the experience with litigation in federal and state courts in a number of ways and at various stages of the election process, as discussed in more detail below.

First, the proposed regulations incorporate experience under Rule 1 of the Federal Rules of Civil Procedure (FRCP). Rule 1 says that the rules “should be construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding.” That is also the goal of the proposed NLRB regulations.

Rule 26(a)(1) of the FRCP imposes an immediate obligation on parties to disclose a wide range of specific information shortly after a case is filed, including names and contact information of people with discoverable information about claims and defenses, copies of documents that can be used to support claims or defenses, and evidence that can be used to calculate damages. As the case progresses, discovery rules provide access to information relevant to issues in a case, and Rules 11 and 37 impose meaningful sanctions on those who fail to meet their obligations set out in the rules. Parties to litigation are not particularly enthusiastic about providing any of this information, but doing so is the price for a functioning system of justice.

FRCP Rule 56 provides a summary judgment process to resolve issues that do not need to be tried. The proposed NLRB election procedures include provisions that encourage parties to resolve election issues amicably and avoid the cost of unnecessary litigation. Indeed, most NLRB elections are held based on agreements by the parties. The processes in the proposed regulations seek to amicably resolve as many disputes as possible while also addressing those that cannot be settled in the most efficient way possible. In particular, this means not relitigating issues and not litigating when other alternatives exist.

Before reviewing the proposed regulations, it is helpful to keep in mind the purpose of NLRB election hearings. The proposed regulations define the purpose of a hearing to be determining if a question of representation exists. That means that an election petition has been filed and the petition concerns a unit of employees in which collective bargaining can appropriately take place. If there is such a unit and there is no bar to holding an election, then the regional director shall direct an election to resolve the question of representation. § 102.64(a)

#### **1. Procedures Immediately After Filing a Petition**

Several amendments to the NLRB regulations create new procedures that require parties to disclose information and to identify and resolve disputes as early in the process as possible. For example, at the time a petition is filed, petitioners must provide specific information and materials to all parties, including a copy of the petition, a description of procedures in representation cases, and a Statement of Position form. § 102.60. The regional offices will

provide assistance in filling out the Statement of Position for those who need it. *See, e.g.*, § 102.63(a)(1)

Statements of Position are new in these proposed regulations, but they essentially formalize longstanding Board practices to promote election agreements and avoid hearings that are unnecessary. Statements of Position become part of the record, § 102.68, and their function is similar to the disclosures required by FRCP Rule 26(a).<sup>13</sup> They are an important innovation that would operate at critical stages in the election process to identify issues that are or are not in dispute. There is no discovery in NLRB cases, so Statements of Position help clarify and narrow issues and streamline the hearing and decision process.

The philosophy of the proposed regulations is that providing information on parties' positions can help move the parties to agreement and focus attention on matters where there is actual disagreement. For example, the Statement of Position for RC petitions (petitions in which a labor organization seeks certification as the employees' representative) requires that the employer take a position on basic issues and provide basic information.

The employer's Statement of Position shall state whether the employer agrees that the Board has jurisdiction over the petition and provide the requested information concerning the employer's relation to interstate commerce; state whether the employer agrees that the proposed unit is appropriate, and, if the employer does not so agree, state the basis of the contention that the proposed unit is inappropriate, and describe the most similar unit that the employer concedes is appropriate; identify any individuals occupying classifications in the petitioned-for unit whose eligibility to vote the employer intends to contest at the pre-election hearing and the basis of each such contention; raise any election bar; state the employer's position concerning the type, dates, times, and location of the election and the eligibility period; and describe all other issues the employer intends to raise at the hearing.

§ 102.63(b)(1)(i)

Employers who do not agree that the petitioned-for unit is appropriate must provide "the full names, work locations, shifts, and job classifications of all employees in the most similar unit that the employer concedes is appropriate." § 102.63(b)(1)(iii) There are similar requirements for RM petitions, § 102.63(b)(2), and RD petitions, § 102.63(b)(3). Statements of Position provide information that is relevant to processing all election petitions and prompt parties to assess their evidence and positions as early as possible.

The proposed regulations also impose sanctions, similar to those under FRCP Rule 37(b)(2)(ii)<sup>14</sup>, for refusing to provide required information. The sanctions prohibit a "disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence." In addition, under the proposed regulations, "The employer shall be precluded from contesting the appropriateness of the petitioned-for unit at any time and from contesting the eligibility or inclusion of any individuals at the pre-election hearing, including by presenting

---

<sup>13</sup> <http://www.law.cornell.edu/rules/frcp/Rule26.htm>

<sup>14</sup> <http://www.law.cornell.edu/rules/frcp/Rule37.htm>

evidence or argument, or by cross-examination of witnesses, if the employer fails to timely furnish” basic information concerning employees whom the employer does not agree should be in the unit and that is necessary to make that determination. § 102.63(b)(1)(v). Similar requirements for Statements of Position, disclosure, and sanctions appear in sections that concern petitions other than RC petitions.

These provisions may seem to fall heavily on the employer. However, the statements of position are targeted to the party that has the most accurate information on issues relevant to the type of petition and stage of the proceedings. The employer is the only party with basic information about employee job classifications, tasks, pay, benefits, and other information necessary to decide issues central to election cases. In addition, experience has shown that employers who oppose unions have strong incentives to take actions that impede hearings and deprive employees of their legal rights to make a free choice whether to be represented by a union. The sanctions in the proposed regulations do no more than take away incentives to destroy employee rights under the NLRA.<sup>15</sup> Just as with court litigation, eliminating issues can help parties reach a settlement and avoid the cost of unnecessary litigation.

## 2. Pre-Election Hearings

If the parties are unable to agree to an election, a pre-election hearing may be needed. Efforts to narrow disputes and facilitate agreement to the extent possible continue even though a hearing has been scheduled. In order to eliminate unnecessary delay and wasteful litigation in both pre- and post-election initiatives, the proposed regulations create procedures that are similar to those commonly used in court litigation to resolve cases without the need for a hearing. Indeed, the proposed regulations explicitly borrow from summary judgment practice, Fed. R. Civ. Proc. Rule 56, when they say that it “shall be the duty of the hearing officer to inquire fully into all *genuine disputes as to material facts* in order to obtain a full and complete record upon which the Board or the regional director may discharge their duties under section 9(c) of the Act.” § 102.64(b)

In the pre-election stage, at the beginning of the hearing, the petitioner must respond to each issue raised in the responding party’s completed Statement of Position. This allows the hearing officer to determine whether there are issues on which the parties agree. The regulations state that no evidence can be received on any issue if the parties have not taken adverse positions on it. The only exception is that, if the respondent has not taken a position on the appropriateness of the petitioned-for unit, the petitioner must still make the case for the appropriateness of that unit. The petitioner may present evidence on the unit through sworn statements, declarations, or

---

<sup>15</sup> In a two day pre-election hearing in which I was involved, the union petitioned for representation for a single store. The employer took the position that only a multi-location unit that included all of the employer’s stores in the area was an appropriate unit and presented evidence in support of that unit. The second day, the union amended its petition to include employees at all the employer’s stores in the area and provided additional cards in support of its amended petition. The employer’s attorney then took the position that only single store units were an appropriate unit.

Unfortunately, the temptations to engage in this sort of nonproductive litigation have effectively been rewarded and imposed real costs on employees and employee rights. In addition, they have also cost the public by wasting NLRB time, resources, and money.

witnesses and other evidence. § 102.66(a)(1)-(3).

Pre-election hearings may also use offers of proof on matters in dispute. The hearing officer is directed to solicit offers of proof from all parties, either in writing or on the record. Offers of proof can include the identity and testimony of each witness the party plans to call. The hearing officer is directed to hear testimony and accept relevant evidence “only if the offers of proof raise a genuine dispute as to any material fact.” § 102.66(b) In addition, sanctions are imposed on parties that fail to meet these obligations. They are “precluded from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue that the party failed to raise in its timely Statement of Position or to place in dispute in response to another party’s Statement.”

In addition, a party whose Statement of Position contends that the petitioned-for unit is not appropriate, but fails to identify the most similar unit that it concedes is appropriate, will be precluded from raising any issue as to the appropriateness of the unit, presenting any evidence relating to the appropriateness of the unit, cross-examining any witness concerning the appropriateness of the unit, and presenting argument concerning the appropriateness of the unit. § 102.66(c)

Even though the rules push parties to be straightforward about their positions and to work toward settling disputes, there are some exceptions. For example, the proposed regulations state that parties are not “precluded from contesting or presenting evidence relevant to the Board’s statutory jurisdiction to process the petition,” nor is a party precluded from challenging a voter because the party did not contest a voter’s eligibility to vote or inclusion in the bargaining unit during the pre-election hearing or from challenging the eligibility of any voter during the election. § 102.66(c) In other words, parties who want to raise these issues need not fear they will be barred if they do not raise them in a pre-election hearing. This means that parties can proceed to an election more quickly, and the results of the election may make the issues moot so no post-election hearing is required.

Finally, the proposed regulations limit pre-election litigation of issues to those that must be litigated before an election can be held. For example, the proposed regulations require the hearing officer to close the hearing if the only issues remaining in dispute concern the eligibility or inclusion of individuals to be included in the bargaining unit and if the number of potential voters affected would be less than 20% of the unit if they were found eligible to vote. § 102.66(d) In similar proceedings before the regional director, the regional director “shall direct that those individuals be permitted to vote subject to challenge.” § 102.67(a).

The value of such a procedure can only be assessed by understanding the ways in which NLRB hearings have been used to deprive employees of their rights under the NLRA. Holding hearings to determine whether a handful of employees in a particular job classification should be placed in the bargaining unit can be a tactic to force agreement that the employees be excluded or included, even though the result may be a unit that is not cohesive and is difficult to represent. The proposed regulations remove improper incentives that could cause an employer to insist on inclusions or exclusions in order to deprive employees of their NLRA rights to representation and collective bargaining.

These rules may cause concern among employees in a bargaining unit and at the workplace in general. The proposed regulations address this problem by including information about the situation in the Final Notice to Employees of Election. The notice must inform employees that specific employees have not been included in, nor excluded from, the bargaining unit, and that they will be allowed to vote subject to challenge. In addition, the election notice in such a case is to tell employees that eligibility or inclusion in the unit will be resolved, if necessary, after the election. § 102.67 (a) This amendment provides a solution to a persistent problem that addresses a common situation that leads to delay and disquiet among employees.

### **3. Other Amendments to Address the Problems of Delay**

The effects of delay fall disproportionately on the parties to an election. In general, studies shows that delay and the uncertainty and even fears accompanying it fall most heavily on employees. Some employers contend that they have a right to a long campaign in order to ensure that employees are well informed before casting a ballot. However, only employees are expressly given rights protected by the NLRA. Those rights are set out in clear and positive language, and when those rights are violated, the NLRB will prosecute those whose speech violates their rights.

Some claim an employer speech right exists under the NLRA; however, the language that is supposed to underpin that right says nothing about rights nor is it limited to employers. Rather, § 8(c) provides nothing more than a narrow affirmative defense for an entity charged with an unfair labor practice based on speech, and the only entities that can be charged with an unfair labor practice – including unfair labor practices based on speech – are employers and unions. When employers claim a speech right, they must recognize that unions could also claim a speech right based on the same language in § 8(c). Unions have long wanted access to the workplace during an organizing campaign, and parity of rights under § 8(c) might be grounds for giving them that right.

However, the plain language of § 8(c) provides no support for a free speech right for either employers or unions. That means that employers have no grounds on which to claim a right to delay. In the absence of any express employer speech right, the fallback argument an employer can make for delay is that its employees need information. However, employees do not lack information about their working conditions. While doing their jobs, employees will have had the opportunity to collect empirical evidence on their working conditions.

If anything, employees need information on what life with union representation would be. Anti-union campaigns often make claims about unions and union representatives' conduct; however, that information is often not accurate. More accurate information could be provided by allowing unions regular access to employees in the workplace during the pre-election period. However, it is unlikely that employers would agree to such access.

### **IV. Assessing the Appropriateness of the Proposed Regulations**

It is obvious that the proposed regulations include a number of innovations that would better protect parties' substantive and procedural rights and make incremental improvements in the

election rules. The issue, though, when promulgating new regulations, is whether the proposed regulations are necessary to carry out the provisions of the Act. That decision must be guided by the express purposes and policies set by Congress. The NLRA's sole focus is on employee rights to freedom of association, and collective bargaining as fundamental to the welfare of the economy of the United States. What the LMRA adds is that there must be mutual respect of the rights of employees, unions, and employers.

In enacting the NLRA, Congress made employee freedom of association and collective bargaining the foundation for the proper functioning of a democratic society. In other words, the value of employees who have the bargaining power to be paid well and have good benefits and working conditions must be placed in its larger social context. In the NLRA, Congress observed that employers have the benefit of incorporation or partnership law that allow them to be far more successful than if they could only operate sole proprietorships. In return for the valuable right to incorporate and act as a collective entity, it is reasonable for society to make demands of employers. This includes fair treatment of employees and unionization as a counterbalance to the power created by incorporation.

When it enacted the Labor Management Relations Act in 1947, Congress made clear that employees, employers, and unions must respect each other's "legitimate rights" under law. To this end, Congress re-affirmed the need to provide orderly and peaceful procedures to prevent interference with one another's legitimate rights.<sup>16</sup> The rights of employees include the rights "to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection" and to refrain from those activities.<sup>17</sup> These rights put into effect the NLRA policies of encouraging the practice and procedure of collective bargaining and protecting workers' exercise of "full freedom of association, self-organization, and designation of representatives of their own choosing" so employees could negotiate their terms and conditions of employment.<sup>18</sup> Section 6 of the NLRA empowers the Board to promote the Act's policies by making, amending, and rescinding rules and regulations *as may be necessary to carry out the provisions of this Act.*"

As discussed above, the proposed amendments are a legitimate exercise of the NLRB's power. They advance § 9 election processes and support the right of employees to make a free choice as to bargaining representation. In sum, they would improve the operation of the NLRB's election procedures over those regulations now in place. Therefore, the proposed regulations should be adopted as necessary to carry out the provisions of the Act.

---

<sup>16</sup> 29 U.S.C. § 141(b).

<sup>17</sup> 29 U.S.C. § 157.

<sup>18</sup> 29 U.S.C. § 151.

**sanford rudnick**

---

**From:** Peck, Timothy W. [Timothy.Peck@nlrb.gov]  
**Sent:** Wednesday, October 03, 2012 9:41 PM  
**To:** sanford rudnick  
**Cc:** 'robert@veracom.com'; Owens, Daniel J.; Gibson, Alaina  
**Subject:** RE: MyFax Delivery from 925 256 0980

Did you read the Koons case Sandy? I see no discretion. If I'm missing something, please point out where.

---

From: sanford rudnick [sandy@rudnick.com]  
Sent: Wednesday, October 03, 2012 11:11 PM  
To: Peck, Timothy W.  
Cc: 'robert@veracom.com'; sanford rudnick  
Subject: RE: MyFax Delivery from 925 256 0980

Tim: Thank you for your response. The issue in the instant case is all NLRB regions must follow the same rules and regulations. It must offer fairness and equality to all employers as well as follow the same rules and regulations. If one Region sends out a letter when evidence is due for evidence of when objections are due, all regions must do the same. I have observed this procedure by the NLRB for 30 years. I have already written an appeal to Washington based on this issue. Perhaps this issue will go to a higher level to give the Employer due process. You have the discretion to allow the Employer to file his evidence which I sent to you. Respectfully, Sandy

H. SANFORD RUDNICK & ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

1200 Mt. Diablo Blvd., # 105 Walnut Creek, CA 94596 • Direct: 800-326-3046 • 925-256-0660  
• Fax: 925-256-0980 1990 N. California Blvd., # 830, Walnut Creek, CA 94596 • E-Mails:  
sandy@rudnick.com<mailto:sandy@rudnick.com> • www.unionexpert.com

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us, by replying to this e-mail message, that you have received the message in error and then delete this e-mail message from your system. Thank you

---

From: Peck, Timothy W. [mailto:Timothy.Peck@nlrb.gov]  
Sent: Wednesday, October 03, 2012 6:34 PM  
To: sanford rudnick; robert@veracom.com  
Cc: Owens, Daniel J.; Gibson, Alaina  
Subject: RE: MyFax Delivery from 925 256 0980

**EXHIBIT 14**

Mr. Rudnick,

I must deny your request. Your client is free, of course, to exercise the choice it wishes. As I have told you on a couple of occasions, I read Board precedent clearly to preclude the Regional Director from accepting and considering your late-filed offer of

proof. I think that you will find Koons Ford of Annapolis, Inc., 308 NLRB 1067 (1992) precisely and inarguably on point.

Tim Peck  
Assistant to the Regional Director

From: sanford rudnick [mailto:sandy@rudnick.com]  
Sent: Wednesday, October 03, 2012 2:47 PM  
To: Peck, Timothy W.; robert@veracom.com  
Cc: Owens, Daniel J.; Gibson, Alaina  
Subject: FW: MyFax Delivery from 925 256 0980

Tim: Request for acceptance of evidence of objections by Veracom Ford or I will have no choice but to appeal for denial of due process. Sandy Rudnick JD

H. SANFORD RUDNICK & ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

1200 Mt. Diablo Blvd., # 105 Walnut Creek, CA 94596 • Direct: 800-326-3046 • 925-256-0660  
• Fax: 925-256-0980 1990 N. California Blvd., # 830, Walnut Creek, CA 94596 • E-Mails:  
sandy@rudnick.com<mailto:sandy@rudnick.com> •  
www.unionexpert.com<http://www.unionexpert.com>

This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us, by replying to this e-mail message, that you have received the message in error and then delete this e-mail message from your system. Thank you

---

From: MyFax [mailto:NoReply@MyFax.com]  
Sent: Wednesday, October 03, 2012 2:43 PM  
To: sanford rudnick  
Subject: MyFax Delivery from 925 256 0980

[[http://www.myfax.com/images/logo\\_myfax\\_fax\\_received\\_email.gif](http://www.myfax.com/images/logo_myfax_fax_received_email.gif)]

[[http://www.myfax.com/images/icon\\_arrow\\_green.gif](http://www.myfax.com/images/icon_arrow_green.gif)]

Report this as Junk<<https://secure.myfax.com/public/spamreport.aspx?id=180111184115231080081094180119170071179053201035179165067185046222241079047135210111229071092>>

[[http://www.myfax.com/images/icon\\_arrow\\_green.gif](http://www.myfax.com/images/icon_arrow_green.gif)]

MyFax Support<<http://www.myfax.com/support/>>

[[http://www.myfax.com/images/icon\\_arrow\\_green.gif](http://www.myfax.com/images/icon_arrow_green.gif)]

Login to MyFaxCentral<<https://secure.myfax.com/login.aspx>>

You have received a fax!

Fax Received at:

10/03/2012 17:40:04 GMT -4

Receiving Fax Number:

(925) 262-2399

# of Pages:

7

Sending Fax:

925 256 0980

Caller Id:

9252560980

Please note that the image shown below is only the first page of the attached fax. To view your fax, open the attachment.

[cid:image001.gif@01CDA1A3.48B253C0]

Thank you for using MyFax. Try our other products:  
[www.protus.com/try](http://www.protus.com/try)<<http://www.protus.com/try>>.

**sanford rudnick**

**From:** Peck, Timothy W [Timothy.Peck@nlrb.gov]  
**Sent:** Wednesday, October 03, 2012 6:34 PM  
**To:** sanford rudnick; robert@veracom.com  
**Cc:** Owens, Daniel J., Gibson, Alaina  
**Subject:** RE MyFax Delivery from 925 256 0980

Mr Rudnick,

I must deny your request. Your client is free, of course, to exercise the choice it wishes. As I have told you on a couple of occasions, I read Board precedent clearly to preclude the Regional Director from accepting and considering your late-filed offer of proof. I think that you will find *Koons Ford of Annapolis, Inc.*, 308 NLRB 1067 (1992) precisely and inarguably on point.

Tim Peck  
 Assistant to the Regional Director

**From:** sanford rudnick [mailto:sandy@rudnick.com]  
**Sent:** Wednesday, October 03, 2012 2:47 PM  
**To:** Peck, Timothy W.; robert@veracom.com  
**Cc:** Owens, Daniel J.; Gibson, Alaina  
**Subject:** FW: MyFax Delivery from 925 256 0980

Tim: Request for acceptance of evidence of objections by Veracom Ford or I will have no choice but to appeal for denial of due process Sandy Rudnick JD

## H. SANFORD RUDNICK & ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

1200 Mt. Diablo Blvd., # 105 Walnut Creek, CA 94596 • Direct. 800-326-3046 • 925-256-0660 • Fax. 925-256-0980

1990 N. California Blvd., # 830, Walnut Creek, CA 94596 • E-Mails [sandy@rudnick.com](mailto:sandy@rudnick.com) • [www.unionexpert.com](http://www.unionexpert.com)

*This e-mail message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential, and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us, by replying to this e-mail message, that you have received the message in error and then delete this e-mail message from your system. Thank you*

**From:** MyFax [mailto:NoReply@MyFax.com]  
**Sent:** Wednesday, October 03, 2012 2:43 PM  
**To:** sanford rudnick  
**Subject:** MyFax Delivery from 925 256 0980



[▶ Report this as Junk](#)
[▶ MyFax Support](#)
[▶ Login to MyFaxCentral](#)

### You have received a fax!

Fax Received at	10/03/2012 17:40:04 GMT -4
Receiving Fax Number	(925) 262-2399
# of Pages	7
Sending Fax	925 256 0980
Caller Id	9252560980

Please note that the image shown below is only the first page of the attached fax. To view your fax, open the attachment.

10/4/2012

10/03/2012 13 58 FAX 925 256 0980

SANDY RUDNICK

001/007

# H. SANFORD RUDNICK & ASSOCIATES

Labor Consultants to Management

H. SANFORD RUDNICK, J.D.

DATE: 10-3-12

TIME: 2PM

FAX: 925/256-0980

PH: 925/256-0660

H. SANFORD RUDNICK & ASSOCIATES

CONFIDENTIAL

---

### Facsimile Transmission Sheet

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: TIM PECK ARD

FIRM: REGION 20

FAX #: 415 356 5156

FROM: H. SANFORD RUDNICK,

Total # of Pages 7  
(including cover page)

---

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL US BACK AS SOON AS POSSIBLE AT 800-326-3046.

MESSAGE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

---

1200 MT. DIABLO BLVD., SUITE 105 WALNUT CREEK, CA 94596 • Direct: 800/326-3046 FAX: 925/256-0980  
1990 N. CALIFORNIA BLVD., S830, WALNUT CREEK, CA 94596 • E-Mail: sandy@rudnick.com • Web Address: unionexpert.com

Thank you for using MyFax Try our other products [www.protus.com/try](http://www.protus.com/try)

10/4/2012

**NATIONAL LABOR RELATIONS BOARD****Region 32**

Ronald V. Dellums Federal Building & Courthouse  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5224

Telephone: 510/637-3257

FAX: 510/637-3315

Website: [www.nlr.gov](http://www.nlr.gov)

October 5, 2011

Via Facsimile &amp; U.S. Mail

Sanford Rudnick, Labor Consultant  
H. Sanford Rudnick & Associates  
1200 Mt Diablo Blvd  
Ste 105  
Walnut Creek, CA 94596-4823

F Matt Surowiecki, President  
Steeler, Inc.  
6851 Smith Ave  
Newark, CA 94560-4223

**Re: Steeler, Inc.**  
**Case 32-RC-063182**

Gentlemen:

This is to acknowledge receipt of Objections to the Election in this matter that you filed on October 5, 2011, for the Steeler, Inc. A copy of the objections is hereby served upon the other parties.

Section 102.69(a) of the Board's Rules and Regulations states, in pertinent part:

Within 7 days after filing objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.

Pursuant to Section 11392.6 of the Board's Casehandling Manual, it is incumbent on the party that has filed objections to furnish evidence sufficient to provide a prima facie case in support thereof. Such evidence should identify the nature of the misconduct on which the objections are based. An objecting party may satisfy its burden by providing the names of witnesses who will furnish direct rather than hearsay testimony to support its objections, and providing a description of the relevant information each witness will provide, specifying which witness will address which objections. NLRB Casehandling Manual (Part Two), Section 11392.6; *Transcare New York, Inc.*, 355 NLRB No. 56 (2010); *Builders Insulation, Inc.*, 338 NLRB 793 (2003); *The Daily Grind*, 337 NLRB 655 (2002); *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983). In the alternative, an objecting party may provide specific affidavit testimony and other specific evidence in support of its objections.

**EXHIBIT** 15

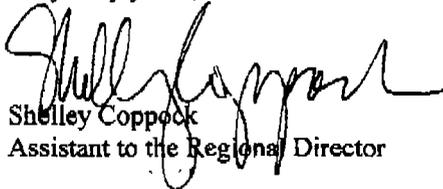
Case 32-RC-063182

October 5, 2011

In this matter, the Employer's evidence in support of its objections must be received in the Regional Office by no later than October 12, 2011. Failure to submit sufficient evidence in support of the objections by this deadline will result in the objections being overruled.

If you have any questions regarding this matter, please contact me at (510) 637-3257 or at [shelley.coppock@nlrb.gov](mailto:shelley.coppock@nlrb.gov).

Very truly yours,



Shelley Coppock  
Assistant to the Regional Director

Enclosure

cc:

Sheila K. Sexton, Esq.  
Beeson, Tayer & Bodine  
Ross House, 2nd Floor  
483 Ninth Street  
Oakland, CA 94607

Stuart Helfer  
Teamsters, Local 853, International  
Brotherhood Of Teamsters  
2100 Merced St  
Ste B  
San Leāndro, CA 94577-3265



United States Government  
NATIONAL LABOR RELATIONS BOARD  
Region 21  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449  
Telephone: (213) 894-5204  
Facsimile: (213) 894-2778

Resident Office:  
555 W Beech St - Suite 418  
San Diego, CA 92101-2939  
Telephone: (619) 557-6184  
Facsimile: (619) 557-6358

June 28, 2012

H. SANFORD RUDNICK, LABOR CONSULTANT  
H. SANFORD RUDNICK  
1200 MT DIABLO BLVD., STE 105  
WALNUT CREEK, CA 94596-4823

Re: AmbuServe Ambulance  
Case 21-RC-081393

Dear Mr. Rudnick:

The investigation of the objections to the conduct of the election or conduct affecting the results of the election in the above-captioned case, which you filed, has been assigned to Board Agent **John Hatem**.

Section 102.69(a) of the Board's Rules and Regulations provides:

Within 7 days after the filing of objections, or such additional time as the regional director may allow, the party filing objections shall furnish to the regional director the evidence available to it in support of the objections.

Accordingly, the required evidence must be submitted to the undersigned as soon as possible and in no event later than the close of business on **Thursday, July 5, 2012**. If such evidence is not furnished by the time set forth, the objections are subject to being overruled without further notice or investigation. Upon good cause shown, additional time in which to provide the evidence may be granted.

Case 21-RC-081393

-2-

June 28, 2012

Evidence should be in the form of affidavits, written statements, or documents. If the evidence cannot be submitted in written form, but is to be presented through witnesses with knowledge of the allegations set out in the objections, a short statement as to the evidence each witness will be able to furnish must be submitted by the above date.

Very truly yours,



Olivia Garcia  
Regional Director

Enclosure: Copy of Objections

cc: MELISSA HARRIS, OWNER  
AMBUSERVE AMBULANCE  
15105 S BROADWAY  
GARDENA, CA 90248-1821

OG/mf

sanford rudnick

---

**From:** Hill, Bruce [Bruce.Hill@nlrb.gov]

**Sent:** Friday, June 29, 2012 3:09 PM

**To:** sanford rudnick

**Cc:** Garcia, Olivia; Hatem, John

**Subject:** Request for Extension of Time, Ambuserve Objections

The evidence in support of the Employer's Objections is due by close of business on Wednesday, July 11, 2012. This presumes the Employer's agreement when to open and count the challenged ballots swiftly and without undue delay. Please note this is a one time only grant of an extension of time and should not be expected to be automatic in the future.

The agreement on the challenged ballots has been approved by the Regional Director, and John Hatem will be in contact with you about when to open and count the challenged ballots.



RECEIVED  
 2012 NOV -8 PM 3:08  
 NEED  
 ORDER SECTION



Express

RECEIVED

2012 NOV -0 PM 3: 08

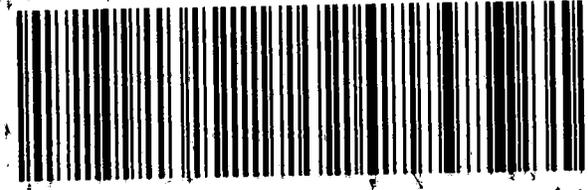
FLB3  
ORDER SECTION

FedEx  
TRK# 8010 3995 3577  
0215

THU - 08 NOV A1  
STANDARD OVERNIGHT

20570  
DC-US  
DCA

XC BZSA



Emp# 723818 Q7NOV12 CCRA 515C1/6713/6F83

00075  
00200

FedEx NEW Package  
Express US Airbill  
FedEx Tracking Number 8010 3995 3577

Form No. 0215  
SLA2  
Recipient's Copy

fedex.com 1800.GoFedEx 1800.463.3339

RECIPIENT: PEEL HERE

1 From This portion may be removed for Recipient's records.  
Date 11-7-12  
FedEx Tracking Number 801039953577

Sender's Name  
Company H SANFORD RUDNICK AND ASSOC  
Address 1200 MT DIABLO BLVD STE 105  
City WALNUT CREEK State CA ZIP 94596-4823

2 Your Internal Billing Reference

To Recipient's Name OFFICE OF EXECUTIVE SECRETARY  
202 275 1940

Company NATIONAL LABOR RELATIONS BOARD

Address 1099 14TH ST NW S11610  
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address  
Use this line for the HOLD location address or for continuation of your shipping address.

City WASHINGTON State CA ZIP 20570

0454392924



4 Express Package Service  
NOTE: Services and/or fees changed. Please select carefully.  
Packages up to 150 lbs. For packages over 150 lbs., use the new FedEx Express Freight US Airbill.

Next Business Day  
FedEx First Overnight  
FedEx Priority Overnight  
FedEx Standard Overnight  
2 or 3 Business Days  
NEW FedEx 2Day A.M.  
FedEx 2Day  
FedEx Express Saver

5 Packaging  
FedEx Envelope  
FedEx Pak  
FedEx Box  
FedEx Tube  
Other

6 Special Handling and Delivery Signature Options

SATURDAY Delivery  
No Signature Required  
Direct Signature  
Indirect Signature  
Does this shipment contain dangerous goods?  
No Yes  
Dry Ice  
Cargo Aircraft Only

7 Payment Bill to:  
Sender  
Recipient  
Third Party  
Credit Card  
Cash/Check

Total Packages Total Weight  
Credit Card Acct. No.

fedex.com 1800.GoFedEx 1800.463.3339