UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

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Omniplex World Services,

Employer,

and

Law Enforcement Officers Security Unions
LEOSU-DC,

Case No. 05-RC-179184

Petitioner,

and

Service Employees International Union, Local 32BJ,

Intervenor.

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# SEIU LOCAL 32BJ'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S ORDER DENYING ITS MOTION TO INTERVENE

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## INTRODUCTION

Petitioner, Law Enforcement Officers Security Union LEOSU-DC a/w Law Enforcement Officers Security and Police Benevolent Association (LEOS-PBA) ("LEOSU") filed a petition to represent a unit of security officers employed by Omniplex World Services Corporation ("Omniplex") at FDIC buildings in Washington, DC and Arlington, Virginia. Service Employees International Union, Local 32BJ ("Local 32BJ" or "Union") moved to Intervene in the proceedings and to appear on the ballot. Even though Local 32BJ currently represents the Omniplex employees, the Regional Director denied Local 32BJ's motion to intervene.

This case raises an important issue warranting review:

The Regional Director concluded that Section 9(b)(3) precludes Local 32BJ, the incumbent union, from intervening in the election and being listed on the ballot, even for an arithmetical calculation. In light of *Loomis Armored US, Inc.,* 364 NLRB No. 23 (2016), the Board should grant review to reconsider its decision in *University of Chicago,* 272 NLRB 873 (1984) to bar guard/non-guard unions from being listed on the ballot in Board-conducted elections. In *Loomis,* the Board recognized that §9(b)(3) does not limit an employer's ability to voluntarily recognize a guard/non-guard union. Allowing such unions to appear on the ballot provides the most accurate measure of the employees' preferences regarding representation, promoting both the employees' §7 rights and allowing the employer to properly exercise its discretion regarding voluntary recognition. This is especially true where, as here, the guard/non-guard union is the incumbent representative.

## STATEMENT OF FACTS

LEOSU filed the petition at issue in this case on June 28, 2016, during the open period in the current collective bargaining agreement between Omniplex and the Union ("CBA"). The Petition seeks to represent "all full-time and part time armed and unarmed security officers employed by the employer" and to exclude "clerical, managerial, salaried, and supervisory personnel as defined by the Act." Omniplex began providing security services at the FDIC in January 2015. Prior to Omniplex, AlliedBarton Security Services ("ABSS") was the security contractor.

**A. Bargaining History.**

ABSS began providing FDIC with security services at its Washington DC and Arlington, Virginia buildings in November 2007. In October 2013, ABSS voluntarily recognized Local 32BJ as the bargaining representative of FDIC officers, after the Union established that a majority of officers had signed authorization cards seeking Local 32BJ to represent them as their exclusive bargaining representative. ABSS and the Union bargained a Rider for the FDIC officers,[1] which was in effect from December 1, 2013 through August 30, 2016. The Rider was applicable to all "security officers employed at FDIC-Washington DC and FDIC Arlington Virginia."

In the fall of 2014, the Union learned that Omniplex would be taking over the security services contract at FDIC from ABSS. As it hired nearly all of the incumbent officers, Omniplex agreed to recognize the Union and the parties

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[1] Local 32BJ and ABSS were already signatories to a master collective bargaining agreement covering locations in the Washington DC metro area. The contract covering the FDIC officers was deemed a "rider" to that master agreement.

bargained the CBA, in effect from January 1, 2015 through August 30, 2016. The CBA applies to "all full-time and regular part-time security officers ("Security Employees") employed at the FDIC in Washington, DC and Virginia, excluding managers, supervisors, professionals, confidential employees, non-security officer employees, and clericals within the meaning of the Labor Management Relations Act. Supervisors herein shall include shift supervisors." Local 32BJ seeks to bargain a successor contractor with Omniplex, and is in the midst of negotiating new health care language for the current CBA.

**B. The Election.**

LEOSU filed the petition on June 28, 2016,[2] and the Union was notified the afternoon of June 29. The Union sought to intervene, as it is the current authorized representative of the officers. The pre-election hearing was scheduled for July 7. Prior to the hearing, the Union submitted a Motion to Intervene and a Statement of Position. The Regional Director denied the Union's motion the afternoon of July 6.

On July 6, the Union emailed the assigned board agent to inquire as to whether the pre-election hearing was still scheduled, or if an election stipulation had been reached. After learning that the hearing was cancelled the Union requested a copy of the election stipulation. The Region advised Local 32BJ that it would not provide the Union with a copy of the Stipulation. However, the Region would give the Union certain details concerning the method of the election, the election's date/times and date of the ballot count over the telephone. The Union

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[2] Unless otherwise noted, all dates occurred in 2016.

requested a copy of the *Excelsior* List, but the Region has not responded to Local 32BJ's inquiry. It is the Union's understanding that the Region is mailing out the election ballots on July 21.

## ARGUMENT

### A. Local 32BJ May Request Review of the Regional Director's Decision Denying its Motion to Intervene.

The Board's rules regarding the procedure for obtaining review of a Regional Director's denial of a motion to intervene are not completely clear. Section 102.67 provides both that "any interested person" may file a request for review and that "no party" shall be denied the opportunity file such a request – it is not clear if "party" status is required or if an entity that has sought and been denied party status qualifies as a "party" for purposes of that section. The Board has resolved this ambiguity by allowing proposed intervenors to file requests for review. *St. Mary's Duluth Clinic Health System,* 332 NLRB 1419, 1422 (2000). Similarly, in *Share Group,* 323 NLRB 704 (1997) and *Union College,* 247 NLRB 531 (1980), labor organizations filed requests for review after Regional Directors refused to allow them to intervene. While the Board denied the requests for review, it did not suggest that a request for review was the incorrect procedure to present the issue to the Board.

Further, Section 102.65(c), which specifically addresses motions for intervention, provides that "As stated in §102.67, the parties may request Board review of regional director actions." This provides further support for the conclusion that when a Regional Director denies a motion to intervene, the labor

organization that has sought to intervene may file a request for review pursuant to Section 102.67.

Nevertheless, in an abundance of caution, if the Board decides that the Union may not file a request for review, Local 32BJ asks that the Board treat this application as a request for permission to file a special appeal pursuant to Section 102.65(c).

**B. The Board Should Overrule *University of Chicago,* and Allow Local 32BJ to Intervene and Appear on the Ballot.**

The Board's recent decision in *Loomis Armored US, Inc.,* 364 NLRB No. 23 (2016) calls into question the continuing validity of *University of Chicago.* In *Loomis,* the Board acknowledged that §9(b)(3) only "imposes two specific limitations on the Board's authority relative to units of guards." *Id.*, slip op. at 4. Under the plain language of §9(b)(3), only inclusion of guards in a bargaining unit with non-guard employees and Board certification of a guard/non-guard union in a representation election is prohibited. While the Board may not certify a guard/non-guard union to represent a unit of guards, §9(b)(3) does not prevent the Board from permitting such a union to intervene and appear on the ballot in order to obtain an accurate measurement of the employees' desires regarding representation.

Section 7 gives all employees, including guards, the right to bargain collectively through representatives of their own choosing. *Loomis Armored US, Inc.,* 364 NLRB, slip op. at 4. In *The Wackenhut Corp.*, 348 NLRB 1290 (2006), the Board reaffirmed guards' §7 right to organize with a guard/non-guard union and

that guards possess the same rights as non-guard employees, upholding the ALJ's conclusion that

> "[a]lthough Section 9(b)(3) prohibits Board certification of a mixed-guard union, it does not operate to prevent guard employees from joining a labor organization, and this principle extends to labor organizations which also represent non-guard employees ... . Guards are employees within the meaning of Section 2(3) and possess the same rights as nonguard employees under Section 7."

*Id.* at n. 2 and 1297 (internal quotation marks omitted). *See also University of Chicago*, 272 NLRB at 876, n. 26 (guards are free under the Act to choose a guard/non-guard union); *Loomis Armored US, Inc.*, 364 NLRB No. 23 (employers violate 8(a)(5) if they withdraw recognition without actual loss of majority status, workers at issue were members of Teamsters locals); *White Superior Division*, 162 NLRB 1496 (1967), *enf'd* 404 F.2d 1100, 1103 (6th Cir. 1968) (employer violated §8(a)(1) and (3) by abolishing the positions of security guards who organized with International Association of Machinists); *Bel-Air Mart Inc.*, 203 NLRB 339 (1973), *enf'd* 497 F.2d 322 (4th Cir. 1974) (following *White Superior Division*); *Burns International Security Services*, 216 NLRB 11 (1975) (employer violated §8(a)(1) and (3) when it unlawfully discharged, surveilled and interrogated officers during organizing campaign with Laborers' union); *Guardsmark, LLC*, 344 NLRB 809 (2005), *enf'd in part* 475 F.3d 369 (D.C. Cir. 2007) (employer violated §8(a)(1) by maintaining unlawful handbook provisions; officers organized with SEIU local).

Furthermore, nothing in §9(b)(3) prohibits an employer from voluntarily recognizing and bargaining with a guard/non-guard union for a unit of guards. *Stay*

*Security*, 311 NLRB 253 (1993). In *Loomis*, the NLRB overturned *Wells Fargo, Corp.*, 270 NLRB 787 (1984), and it's holding that it was permissible for an employer to withdraw recognition from a guard/non-guard union, even without actual loss of majority support. 364 NLRB, slip. op at pg. 2. The Board found that "this interpretation unnecessarily sacrifices one of the Act's primary objectives—the promotion of stability of established collective bargaining relationships." *Id.* Moreover, the Board reiterated, "guards still retain their rights as employees under the [Act], notwithstanding the terms of Section 9(b)(3)." *Id.*, citing 93 Cong.Rec. 6601 (1947). Accordingly, the Board found that an employer's withdrawal of recognition, absent an actual loss of majority status, was unlawful. *Id.*, slip op. at 7.

The cardinal tenet of the Act is that employees should have the right to freely choose their bargaining representative. The Act permits officers to choose a guard/non-guard union as their representative. Thus, both employees and employers have an interest in the Board conducting elections for guards where employees are free to express their support for their chosen representative, even if that representative may not be certified. There is no compelling policy that poses an obstacle to the inclusion of a guard/non-guard union on an election ballot. Indeed, the Supreme Court long ago made clear that a prohibition against certification in the Act "is not a barrier to the conduct by the Board of an election not followed by a certification." *NLRB v. District 50, United Mine Workers,* 355 U.S. 453, 461 (1958).

Despite these principles, in *University of Chicago,* 272 NLRB 873 (1984), the Board held that guard/non-guard unions may not participate in Board-conducted elections for guard units. The Board acknowledged that nothing in §9(b)(3) compelled it to exclude a non-certifiable union from the ballot, *see id.* at 874, n. 8, yet it overturned longstanding Board precedent to announce a rule that results in elections where employees are denied an opportunity to uninhibitedly express support for the representative of their choosing. The Board should apply its reasoned logic in *Loomis Armored* to the election context and overturn *University of Chicago,* as it is based upon a misunderstanding of the policy underlying §9(b)(3) and it gives too little weight to the §7 rights of employees. Guard/non-guard unions should be allowed to fully intervene in elections for guards, including an appearance on election ballots.

**1. Congress Withheld from Guard/Non-Guard Unions Only the Benefits of Certification, Nothing More.**

Section 9(b)(3) provides, in part, that "no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards." (Emphasis added). Certification of a bargaining representative imposes certain obligations upon an employer, and it grants certain privileges to a union. Most importantly, when a union is certified, the employer has a duty to recognize and bargain with that union, and a certified union enjoys an irrebuttable presumption of majority status for one year. *Ray Brooks v. NLRB,* 348 U.S. 96 (1954). In addition,

certified unions enjoy protections against recognitional picketing by rival unions, and they are freed from restrictions on recognitional picketing in Section 8(b)(7).

By prohibiting a guard/non-guard union from obtaining certification, Congress ensured that employers could not be compelled to recognize such a union. An election that is not followed by a certification in no way compels an employer to recognize the guard/non-guard union.

**2. Congress Did Not Intend to Deny Guard/Non-Guard Unions all Access to Participation in Board Elections.**

As the Seventh Circuit cautioned the Board, there is no need to look beyond the language of the Act to understand the scope of the limitation created by §9(b)(3). *General Service Employees Union, Local 73*, 230 F.3d at 914. As the Board recently found, "the *only* limitation" under §9(b)(3) for a guard-only bargaining unit "is that the labor organization representing such employees cannot be 'certified,' if, in other aspects of its operation it admits non-guard employees..." *Loomis Armored US, Inc.*, 364 NLRB, slip op. at n.27 (emphasis supplied). *University of Chicago* was a far too expansive restriction on the rights of security guards under the Act and it's holding violates the principle that "exceptions to the Act's protections should be construed narrowly." *Id.*, slip op. at pg. 2. As the Board cautioned, "administrators and reviewing courts must take care to assume that exemptions from NLRA coverage are not so expansively interpreted as to deny protection to workers the Act was designed to reach." *Id.*, slip op. at pg. 5, citing, *Holly Farms Corp. v. NLRB*, 517 U.S. 392, 399 (1996).

While the Act only withholds certification from guard/non-guard unions, in *University of Chicago,* the Board read into §9(b)(3) a bar to inclusion on the ballot altogether. The Region has taken this proscription one step farther and prohibited the Union from participating in any part of the election process. Congress never intended this result. When Congress intended to do more than deny a union certification under the Act, it explicitly provided so. In the §§9(f), (g) and (h) Taft-Hartley amendments to the Act, added concurrently with §9(b)(3), Congress barred non-complying unions from participating in the Board's processes to a far greater degree than in §9(b)(3). Subsection (f) explicitly prohibited the Board from investigating any questions concerning representation and from issuing complaints on unfair labor practice charges filed by any unions that did not file their constitution, bylaws, and certain reports with the Secretary of Labor. Similarly, subsection (h) explicitly prohibited the Board from investigating representation questions or pursuing unfair labor practices charges for any union that had not filed an anti-communist affidavit. Had Congress intended to dramatically restrict the access of guard/non-guard unions to its processes, it clearly knew how to draft §9(b)(3) to prohibit more than certification. It did not do so.

Moreover, when examining the restrictions of §§9(f), (g) and (h) in *NLRB v. District 50, United Mine Workers of America*, the Supreme Court noted that, even with the far more extensive prohibitions in these subsections, the Board could "conduct an election among the employees and certify the union if it wins the

election provided it is in compliance but otherwise certify only the arithmetical results." 355 U.S. at 462 (1958).

Accordingly, there is no statutory bar to returning to the customary Board practice, engaged in prior to *University of Chicago,* of placing guard/non-guard unions on the ballot, in order to obtain an accurate arithmetic determination of voters' preferences. *See Bally's Park Place*, 257 NLRB 777 (1981); *Fisher-New Center Co.*, 170 NLRB 909, n.10 (1968); *Columbia-Southern Chemical Corp.*, 110 NLRB 1189, n.6 (1954).

### 3. Permitting Guard/Non-Guard Unions to Intervene Does Not Undermine the Congressional Prohibition on Certification.

#### a. Prior to *University of Chicago*, the Board allowed guard/non-guard unions to appear on election ballots.

For decades prior to *University of Chicago*, the Board allowed guard/non-guard unions to intervene when an election petition was filed, a practice identified in *The William J. Burns Int'l Detective Agency, Inc. ("Burns II")*, 138 NLRB 449 (1962). The Board's stated purpose in permitting intervention and appearance on the ballot was "to obtain a complete expression of the employees' preferences as to representation which [is] beneficial to labor and management and thereby serve[s] the cause of stable labor relations." *Rock-Hill-Uris, Inc. v. McLeod*, 236 F. Supp. 395, 397 (S.D.N.Y. 1964). In reversing *The Wackenhut Corporation*, which briefly prohibited "stranger" unions from intervening,[3] the Board in *Bally's Park Place, Inc.,* once-again allowed all guard/non-guard unions to intervene. The Board

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[3] Even *The Wackenhut Corp.*, 223 NLRB 83 (1976), barred only "stranger unions," not incumbent guard/non-guard unions from intervening.

explained in *Bally's* that "[t]he Act deprives a nonqualified union only of the benefits of certification. Guards have the right to designate as their bargaining agent a union that the Board is proscribed from certifying. By permitting a nonqualified intervenor to appear on the ballot, we will be acting in accordance with §9(b)(3) and will be contributing to stable labor relations by allowing employees to express fully their wishes as to a collective-bargaining agent." *Id.* at 779. This conclusion was overturned in *University of Chicago.*

In *University of Chicago,* the Board claimed that it was merely complying with the purpose of the §9(b)(3) to "ensure that an employer is not compelled by Board action to bargain with [a guard/non-guard union]." 272 NLRB at 875. However, its decision to bar guard/non-guard unions from intervening and appearing on the ballot does not further this stated purpose. The appearance on a ballot of a guard/non-guard union does not force an employer to recognize such a union. Even if every guard in a bargaining unit voted for a guard/non-guard union, absent certification, the union could not force the employer to recognize or bargain with it. As *Loomis* again affirmed, if officers select a guard/non-guard union as their representative, it is the employer's decision whether or not to voluntarily recognize such a union representative. 364 NLRB, slip op. at 2. *See also Brink's,* 272 NLRB 868, 870 (1984) (the Act's prohibition on certification of a mixed union does *not* prohibit an employer from voluntarily recognizing a mixed union as the representative of a guard unit); *Velez v. Puerto Rico Marine Management, Inc.*, 957 F.2d 933 (1st Cir. 1992) (mixed guard/non-guard unions have the right under §7 to

organize guards and an employer of such guards may voluntarily recognize a mixed union as their collective bargaining representative); *NLRB v. White Superior Division*, 404 F.2d. at 1103 ("[i]f guard employees do join a union which also represents non-guards, their membership is not unlawful, and in fact an employer may, if it wishes, recognize such a union for purposes of collective bargaining").

On the other hand, an employer may be willing to recognize a guard/non-guard union to represent its guards, but it may want assurances that the guards truly prefer the guard/non-guard union to a union that exclusively represents guards. To the extent the Board has held that "Board-conducted elections are the preferred way to resolve questions regarding employees' support for unions," *Levitz Furniture of the Pacific,* 333 NLRB 717, 723 (2001), it would be anomalous to hold that the Board will not conduct a genuine election when both a guard/non-guard union and a guard-only union seek to represent a unit of guards. *Cf. Intl. Bhd. of Teamsters, Local 344 v. NLRB*, 568 F.2d 12, 17 (7th Cir. 1977) ("[W]e recognize that a Board-conducted election might provide a better indication of the majority will of the employees and thereby promote stable labor relations").

The Board's longstanding policy of permitting guard/non-guard unions to intervene and appear on the ballot closely adhered to the plain language of §9(b)(3), which prohibits only certification, while allowing guards to fully exercise their §7 right to freely choose their collective bargaining agent. That policy should be restored.

b. **Allowing guard/non-guard unions to intervene and appear on the election ballot better ensures guards' § 7 right to freely choose a bargaining representative, regardless of whether the Petitioner prevails in the election.**

The Board's pre-*University of Chicago* policy of permitting guard/non-guard unions to intervene in elections and appear on the ballot should be reinstated as it better comports with the rights guaranteed guards in §7 of the Act. The Board has explained that when it conducts a representation election, "it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees." *General Shoe Corporation,* 77 NLRB 124, 127 (1948). An election cannot possibly determine the "uninhibited desires" of employees when employees are not permitted to cast votes for their preferred representative. In fact, in *Rock-Hill-Uris,* the Board correctly pointed out to the district court that "the result of all inclusive balloting... is a more reliable index of electoral will." *Rock-Hill-Uris*, 236 F.Supp. at 388. As a consequence of *University of Chicago,* an employee who prefers to be represented by Local 32BJ in this election must join those who oppose any representation and vote "No" in the representation election. Requiring employees to vote against representation in order to obtain representation is no way to protect their §7 rights and is incompatible with basic notions of democracy.

In political elections, the Supreme Court has held that "the right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot." *Williams v. Rhodes,* 393 U.S. 23, 31 (1968). The same is true with respect to the §7 rights of workers when a

union that has presented a proper showing of interest is deprived of a place on the ballot. Indeed, the Supreme Court has repeatedly recognized that there is a significance attached to appearing on a printed ballot, noting that write-in candidates have "only a slight chance of victory." *U.S. Term Limits, Inc. v. Thornton,* 514 U.S. 779, 830-831 (1995).

The current Board practice impermissibly encroaches upon employees' broad §7 rights. As expressed by Member Zimmerman in his *University of Chicago* dissent, "[b]y denying Board access to noncertifiable unions, my colleagues have diminished the employees' Section 7 rights to choose or reject collective-bargaining representation - the cardinal tenet which the Act mandates and which the Board is assigned to effectuate in administering the Act... the majority has not only limited the number of candidates that might be available for the guards to choose from, it has, more importantly, denied those employees a possible choice of representative, a choice for which they may already have indicated a preference." 272 NLRB at 878.

The impingement on workers' rights instituted by *University of Chicago* is placed into particularly sharp relief in situations such as this, where a guard/non-guard union is the incumbent union. Unless Local 32BJ is permitted to appear on the ballot, determining the true meaning of a "no" vote is impossible. Such opaqueness creates confusion and places employees, Omniplex and the Region in a difficult bind.[4] The decision to bar Local 32BJ from the ballot presents Omniplex

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[4] The current practice is also unfair to guard-only unions. The Board recognized as much when it allowed unions that did not comply with §§ 9(f)(g) and (h) to appear on the ballot. *See Concrete Joists & Products Co.,* 120 NLRB 1542,

officers with a false and misleading choice, between only "*Law Enforcement Officers Security Unions LEOSU-DC*" and "no union." The proposed ballot prevents employees from reaffirming support for their *current, lawful representative*, if they wish to do so. A vote for "no union" is shrouded in mystery; no party, nor the Region, will be able to determine whether such a vote indicates that an employee seeks to continue to be represented by Local 32BJ, or if she desires to be without union representation altogether. Thus, barring the lawful incumbent from the ballot dilutes employee free choice and substantively undermines the Omniplex employees' right to select a representative of their own choosing.

Moreover, should the "no's" prevail, Omniplex is in a difficult position, as it would be faced with the unenviable choice of either continuing to recognize Local 32BJ, potentially in violation of the officers' wishes, or withdrawing recognition, also potentially in contravention of the officers' desire. Either result could subject Omniplex to further legal action. *See Loomis Armored US, Inc.*, 364 NLRB, slip op. at 7. Similarly, should the "no" votes prevail, the Region would certify the results of the election as "no union," when, in actuality, the officers may wish to retain Local 32BJ. Thus, the Region would be complicit in affirmatively undermining the officers' wishes and their §7 rights. Accordingly, the interests of the employees who wish to support their current collective bargaining representative should be given weight and Local 32BJ should be permitted to appear on the ballot.

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1548 (1958) (explaining that "if meaningful election results are to be obtained, noncomplying unions must be placed on the ballot so that they, like other competitors, can claim only the votes of their true adherents, and not be permitted to lay claim to all the "No" votes).

When denying the Union's Motion to Intervene, the Regional Director argued that "if the Petitioner receives a majority of the votes cast in the election, it would not be necessary to address Local 32BJ's contention that *University of Chicago* should be overturned." Order at pg. 2. However, a vote for "*Law Enforcement Officers Security Unions LEOSU-DC*" - even if Petitioner wins - does not ameliorate the §7 harm to officers of barring the Union from the ballot. A ballot with only no union or LEOSU presents a false choice to the workers as to what the lawful options are concerning union representation at Omniplex. Although the Union is the current representative at Omniplex, there is nothing on the face of the ballot to indicate that Local 32BJ is a lawful choice. A worker could easily - and incorrectly - conclude that if she wished to continue having union representation, the only way to do so is by voting for LEOSU.

Thus, unlike any other Board election - or historically, in guard units - there is no way to accurately determine what "yes" truly means or if the worker voted for LEOSU freely and clearly. Much like a circumstance where "no union" prevails, any "LEOSU" vote is also tainted, as there is no way to measure whether the officers truly seek to vote for LEOSU or if they believe that this is the only lawful choice they have to secure union representation. Accordingly, by refusing to permit Local 32BJ on the ballot, the Region suborns a misleading exercise that undermines workers right to freely choose a representative and one of the fundamental tenants of the Act.

The absurdity of the current regime is further illuminated by the course of conduct in this case. After receiving the election petition as an "interested party," Local 32BJ submitted its Motion to Intervene and a Statement of Position. At some point on the day when the Union's Motion to Intervene was denied, an election stipulation was reached between LEOSU and Omniplex. Although the Region barred the Union from receiving a copy of the Stipulation, based on its interpretation of *University of Chicago*, the Region verbally communicated certain election information to the Union. Similarly, the Union was barred from receiving a copy of the Excelsior List, even though it (presumably) contains information concerning its own members. Thus, although the Union currently represents the workers at the worksite where the election will be held, and is the source that workers turn to when they have questions about their workplace, it was barred from receiving any official notices concerning the election. The Region's awkward accommodation of the Union's current role at the worksite - giving the Union verbal details of the election, while barring it from receiving any official paperwork - elucidates the flawed logic of barring the incumbent from the election process.

**c. Inclusion of guard/non-guard unions on the ballot will not mislead officers in believing that the Union can be certified.**

Finally, to the extent that the Board fears permitting a guard/non-guard union to appear on the ballot will mislead guards into believing that Local 32BJ can be certified, these fears are easily remedied. Prior to *University of Chicago*, in order to dispel any such confusion, the Board simply added language to the Notice of Election stating that although employees could vote for the guard/non-guard union,

the Region could not certify it, nor was the employer compelled to bargain with it. *See Rock-Hill-Uris*, 236 F. Supp. at 399. The Board could easily reinstate this practice, eliminating any confusion.

On the other hand, permitting Local 32BJ to appear on the ballot and providing an arithmetical calculation of all of the votes would aid the "fundamental purpose of the §9(b)(3) prohibition..." as such a demonstration of employee choice would aid Omniplex when "decid[ing] for themselves whether to recognize and bargain with" Local 32BJ. *Loomis Armored US, Inc.*, 364 NLRB, slip op. at pg. 5.

The Board should overturn *University of Chicago* and allow Local 32BJ to intervene and appear on the ballot, returning to its longstanding practice of allowing guards to freely express their choice of bargaining representative.

## CONCLUSION

The Board should grant the request for review and should overrule *University of Chicago*, and allow Local 32BJ to intervene in 05-RC-179184 and permit the Union to appear on the ballot.

Dated: July 15, 2016

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of **SEIU LOCAL 32BJ'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S ORDER DENYING ITS MOTION TO INTERVENE**, was served on this 15th day of July 2106 via electric mail on the following parties:

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