

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GENERAL GROCERY WAREHOUSE  
& DAIRY DIVISION

Employer

and

Case 22-RD-188411

KEVIN ROOSEVELT DAVIS,  
Petitioner

and

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 11

Intervenor

ORDER

The Employer's Request for Review and the Petitioner's Request for Review of the Regional Director's Report<sup>1</sup> on Challenged Ballots and Objections, Revised Tally of Ballots, and Certification of Representative raise substantial and material issues with respect to the resolution of Gilberto Figueroa's challenged ballot, which can best be resolved after a hearing. Accordingly, the case is remanded to the Regional Director for a hearing and the issuance of a supplemental decision.<sup>2</sup> The Requests for Review are denied in all other respects.<sup>3</sup>

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<sup>1</sup> We have treated the Regional Director's "Report On Challenged Ballots and Objections" as a Decision on Challenged Ballots and Objections. See 79 Fed. Reg. 74412 fn. 464 (Dec. 15, 2014).

<sup>2</sup> Member Pearce would also grant the Requests for Review regarding Figueroa's challenged ballot but, unlike his colleagues, he would remand the case to the Regional Director for further investigation and, if necessary, a hearing.

<sup>3</sup> In denying review of Objection 1, we rely on the principles stated in *Daimler-Chrysler*, 338 NLRB 982, 982-983 (2003). The Board assumes that a voter, by casting a ballot, "evinces an intent to participate in the election process and to register a preference." *Id.* The Board accordingly gives effect to this preference whenever possible while avoiding speculation on the meaning of a typical "X", stray marks, or physical alterations. *Id.* On the ballot at issue, the voter's "X" is located outside but near the "YES" box, and exclusively on the "YES" (left) side of the ballot. And unlike the cases on which the Employer relies, no marking appears in the "NO" box or anywhere on the "NO" side (right) of the ballot; nor is there any other marking on the ballot. Under these circumstances, we find that no speculation is necessary to conclude that the voter intended to vote "YES" and that the ballot should be counted. Cf. *Hanson Cold Storage Co.*, Case 13-RC-169141 (2016) (not reported in Board volumes) (where marks on the ballot were all in or near the "YES" box, ballot was valid), citing *Kaufman's Bakery*, 264 NLRB 225 (1982).

PHILIP A. MISCIMARRA, CHAIRMAN

MARK GASTON PEARCE, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., May 17, 2017.

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Chairman Miscimarra joins in granting review as to Figueroa's challenged ballot, and would also grant review with respect to Objection 1, which alleges that the Regional Director improperly counted an irregularly marked ballot as a yes vote. As the Board plainly stated in *Daimler-Chrysler*, supra, 338 NLRB at 983, "a ballot must be voided where a voter has not registered a mark in either a "YES" or a "NO" square, or has not otherwise made his or her preference clear." While the Board counted the irregularly marked ballot at issue in *Daimler-Chrysler*, that ballot had an X in the "YES" box, a question mark next to the "YES" box, and no marks in any other area of the ballot. In this case, unlike *Daimler-Chrysler*, the disputed ballot does not have a mark in either the "YES" or "NO" square. Instead, the ballot is marked with an X centered over the words "DO NOT SIGN THIS BALLOT," which appear underneath but outside the general area of the ballot in which the YES" square is located, with part of one arm of the X extending into that area. Chairman Miscimarra believes that the Regional Director erred in finding that this ballot "clearly expresses the voter's intent to vote 'Yes'..." in these circumstances. Instead, he believes that the Board should declare this ballot void.