GRILL CONCEPTS SERVICES, Inc., d/b/a
THE DAILY GRILL, Employer.

and

UNITE HERE LOCAL 1, Petitioner.

EXHIBIT INDEX

Case No. 31-RC-209589

Exhibit No.	Description	Pages
1.	Employer's RC Hearing Supplemental Brief and Supporting Declaration of Michael Burnett dated November 24, 2017	2-22
2.	Decision and Direction of Election dated November 30, 2017	23-38
3.	Request to Block and Offer of Proof dated December 15, 2017	39-67
4.	Employer's Election Objections and Offers of Proof dated December 29, 2017 and Supplemental Offer of Proof dated January 18, 2018	68-123
5.	Partial Decision on Objections and Notice of Hearing dated April 11, 2018	124-130
6.	Transcript of Hearings on Election Objections ➢ April 23, 2018 - Hearing Transcript ➢ April 24, 2018 - Hearing Transcript ➢ April 25, 2018 - Hearing Transcript	 131-384 385-699 700-949
7.	Report and Recommendations on Objections issued on June 7, 2018 by Region's hearing officer	950-964
8.	Exceptions to the Hearing Officers Report and Recommendations dated June 21, 2018	965-979
9.	Decision and Certification of Election issued by the Region on July 24, 2018	980-991
10.	Order on Request for Review of the Regional Director's Partial Decision dated August 3, 2018	992-994

EXHIBIT 1

EXHIBIT 1

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

UNITE HERE - LOCAL 11

And

Case 31-RC-209589

Grill Concepts Services, Inc. d/b/a The Daily Grill

RC Hearing Supplemental Brief

Respondent Grill Concepts Services, Inc. dba The Daily Grill submits this supplemental brief and accompanying evidence as directed by the Regional Director during the November 20, 2017 RC hearing. As discussed on the record at the hearing and below, Respondent requests a manual election in this matter, consistent with the Board's longstanding policy favoring manual elections.

A. The "Longstanding Policy" of Manual Election Must be Followed

In deciding which type of election to conduct, the Regional Director's ultimate duty is to select the method that "would enhance the opportunity for all to vote. (See NLRB Case Handling Manual, Section 11301.2.) To that end, the Board adheres to a long-established rule that elections should be conducted manually. This policy is unequivocally stated in the Board's Case Handling Manual and in Board decisions:

> The Board's longstanding policy is that representation elections should, as a general rule, be conducted manually.
>
> (NLRB Case Handling Manual, Section 11301.2.)
>
> Because of the value of having a Board agent present at the election, the Board's long-standing policy, to which we adhere, has been that representation elections should as a general rule be conducted manually, either at the workplace or at some other appropriate location.
>
> (*San Diego Gas & Elec*., 325 NLRB 1143, 1144 (1998).)

The courts and the Board recognize very few exceptions to the longstanding policy in favor of manual ballot elections. Keeping with the Board's goal of striving to enhance the opportunity to vote, the Board should deviate from the manual election procedure only in the rare circumstance where a mail ballot election is likely to increase voter turnout.

The Case Handling Manual, following the Board's decision in *San Diego Gas & Electric, supra*, allows for departure from the normal practice of manual elections in limited circumstances. The Board may direct a mail ballot election "where circumstances tend to make it difficult for eligible employees to vote in a manual election or where a manual election, though possible, is impractical or not easily done." (Case Handling Manual, Section 11301.2.) The Manual specifies three situations which "normally *suggest* the propriety of using mail ballots" (emphasis added): (1) where employees are scattered geographically, (2) where employees are scattered by significantly varying schedules, so that they are not present at common locations at common times, and (3) where there is a strike, lockout, or picketing in progress.

In arguing for a mail ballot election, Unite Here! Local 11 ("Local 11" or "the union") disingenuously confuses the *suggestion* of the appropriateness of a mail ballot election with a *mandate*. To achieve the Board's goal of maximizing the opportunity to vote, it must still consider whether a mail ballot election is likely to produce a higher voter turnout than manual ballot, even in one of the "suggested" circumstances. The union ignores this reality, and argues that since the Daily Grill's employee's schedules vary, the election *must* proceed by mail ballot. The union offers no argument or evidence that a mail ballot will enhance the opportunity to vote.

Even where a manual election is not guaranteed to achieve 100% voter turnout, the Board properly exercises its discretion to order a manual vote. In *Cast North America (Trucking) Ltd. v. NLRB* 207 F.3d 994 (2000), the Board's Regional Director ordered a manual election for a unit of truck drivers, mechanics, and trucking yard personnel. Five employees were unable to attend the election due to their work schedules. The employer argued that a mail ballot was therefore required because it would allow these five employees an opportunity to vote. The Seventh Circuit rejected the employer's argument as follows:

> San Diego Gas does not hold that mail ballot elections must be held in all cases in which they may be appropriate, but rather reaffirms the broad discretion enjoyed by the Regional Directors in determining which type of election is appropriate.
>
> (*Id*. at 1000.)

In this case, Local 11 argues that Board rules *require* a mail ballot election, a position soundly rejected by the Court in *Cast* as too rigid. Moreover, Local 11 cannot produce any admissible facts to support its argument that a mail ballot in this case would actually increase voter turnout. Thus, for the reasons articulated in *Cast* and *San Diego Gas*, the Regional Director should not depart from the Board's longstanding policy of favoring manual ballot elections.

B. A Manual Election Will Maximize the Opportunity to Vote

The Daily Grill proposes that a manual election be conducted on Friday, December 15, 2017, at The Daily Grill's premises. All hours of operation can be made available for voting. The Daily Grill has a private dining room called "The Board Room" that it will make available for voting. [See photograph, Ex. A to Declaration of Michael Burnett ("Burnett Dec.").) Alternatively, since The Daily Grill is located inside the Westin Hotel, a conference room in the Hotel can be reserved for voting.

The Daily Grill's scheduling practices can ensure the maximum opportunity for its employees to vote. As requested by the Hearing Officer, below are The Daily Grill's employee scheduling details:

- The Daily Grill employs 25 full-time employees, and 51 part-time employees. All report to the same location for work.
- Part-time employees are those who work fewer than 30 hours per week.
- Shifts are generally designated by breakfast, lunch, and dinner.
- Front-of-house employees include servers, bussers, hosts, bartenders, and cocktail servers, generally work 5 to 6 hour shifts.
- Heart-of-house employees include cooks, dishwashers, and kitchen staff, who generally work 6 to 8 hour shifts.
- Schedules are released every Thursday for the following week, starting Monday.
- All employees provide their availability for work in advance of scheduling. Days employees are not available or do not wish to work are called "blackout days." No Daily Grill employee currently lists Friday as a "blackout day."
- Paychecks are issued every other Friday. 34 employees receive manual paychecks on-site.
- The Daily Grill holds all-employee meetings every six months, in which all employees are scheduled to report to work.

(Burnett Dec., ¶¶ 3 through 9.)

Taking into account scheduling practices and other factors discussed below, The Daily Grill anticipates that Friday, December 15, will give *all* employees the opportunity to vote. Fridays are generally the busiest days, with the most employees scheduled to work. (Burnett Dec., ¶ 10.) Additionally, most of the 34 Daily Grill employees that receive manual paychecks regularly come into The Daily Grill on payday to pick up their checks, even when not scheduled to work. (Burnett Dec., ¶ 8.)

Most importantly, The Daily Grill can and will schedule *all employees* to work on December 15 to ensure all have the opportunity to vote. December 15 is projected to be one of the busiest days of the year for The Daily Grill. The restaurant already has reserved a party of 40 guests for lunch, a party of 40 guests for dinner, and a party of 55 guests for dinner. (Burnett Declaration, ¶ 10.) Accordingly, The Daily Grill anticipates scheduling nearly *all* of its employees to work to fulfill its business needs. Consistent with its normal practice of determining employee availability for scheduling purposes, The Daily Grill has already determined that all employees will be available to work on December 15. In anticipation of heavy business on December 15, and in order to maximize employees' opportunity to vote, The Daily Grill has prepared a schedule for the week of December 11, which schedules all active employees to work on December 15.[1] (Ex. B to Burnett Dec..) Holding a manual election on December 15 will enable the highest possible number of employees to vote.

[1] Three employees are currently on leave of absence.

The union has attempted to show, through unfounded documents purporting to establish schedules and statistical conjecture based thereon, that a manual election on a single day would disenfranchise a significant percentage of employees. The union's unfounded data is entirely unreliable because (1) the percentages reflected in the submitted documents do not add to 100, and (2) the data does not take into account employees on leave of absence, thus skewing the percentages of available employees working artificially low.

A mail-ballot election is not reasonably likely to achieve a greater opportunity to vote than a manual election on-site, for which The Daily Grill can schedule all its employees. Indeed, the union has not even *attempted* to show that a mail ballot would reach more employees. Based on USPS data, 6.8 million pieces of mail were lost in 2016. (See https://ribbs.usps.gov/uaamail/documents/tech_guides/FY2016/.) There is a substantial chance that employees' mail ballots would either never reach them, or get lost after their vote is cast and mailed back.

Additionally, although The Daily Grill strives to maintain accurate and current address information for its employees, it is not assured that all employees have updated their contact information at the time of the election. Uncertainty with the accuracy of address information, as well as the prospect of lost mail, make it reasonably likely that some voters would be disenfranchised by a mail ballot election.

C. The Daily Grill Must Have an Opportunity to Exercise its Constitutional and Statutory Rights

The Daily Grill is entitled to reasonable and adequate time to inform the employees about the issues at stake in the election, and to express its views regarding the election. The National Labor Relations Act expressly reserves the employer's right to disseminate to employees any views in written, printed, graphic or visual form regarding certification election so long as the employer's expression contains no threat of reprisal or force or promise of benefit. (29 U.S.C. § 158(c); See *N. L. R. B. v. Clearfield Cheese Co*., 322 F.2d 89, 92 (3d Cir. 1963).) This right is protected by the First Amendment to the Constitution. (See *Id*.)

The enactment of 29 USC 158(c) "manifests congressional intent to encourage free debate on issues dividing labor and management." (*See Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. 53, 62–63 (1966).) In discussing this important right in *Linn*, The U.S. Supreme Court invoked a "profound * * * commitment to the principle that debate * * * should be uninhibited, robust, and wide-open. (*Id*. at 62.)

In setting an election date, the Board must abide the commitment to free and open debate, and allow The Daily Grill to exercise of its statutory and Constitutional right to express its opinions inform its employees of the importance of a union election. This, necessarily, requires a reasonable opportunity in which to do so before the election. Setting the election on December 15 accommodates this right.

Importantly, a December 15 election does not impose an unreasonable delay, as the union has argued. The union's RC Petition was served on The Daily Grill on November 9, 2017. A December 15 election is only 37 days after service of the petition. According to the NLRB, the median number of days between petition and election is 36 days in contested cases, in fiscal year 2017. (https://www.nlrb.gov/news-outreach/graphs-data/petitions-and-elections/median-days-petition-election.) Based on the NLRB's own data, a December 15 election reflects the usual number of days from petition to election.

D. Conclusion

Setting a manual election for December 15 fulfills the Board's goal of maximum voter opportunity, follows the Board's longstanding general rule and practice, accommodates the employees whose interests are at stake, and ensures that The Daily Grill has a fair opportunity to exercise its Constitutional rights.

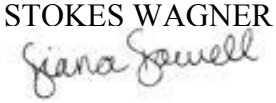
Tellingly, the union has presented no argument or evidence that a mail ballot is reasonably calculated to allow greater voter opportunity than a manual election. Instead, the union focuses only on unfounded and speculative assertions that a manual vote *might not* result in 100% voter turnout. The union's failure to address the obvious question – whether a mail ballot would result in greater turnout – is fatal to its request. It is apparent that the union is not concerned with universal voter turnout, but rather, specific voter turnout. The union's position is simply and transparently not asserted in the interest of the employees it purports to care about.

For the reasons discussed above, The Daily Grill requests a manual election, conducted on-site at The Daily Grill on December 15, 2017. To order otherwise, in light of the Board's longstanding general rule and practices, relevant law, and the competent evidence, would be an abuse of the Regional Director's discretion.

Dated: November 24, 2017

Respectfully Submitted,

STOKES WAGNER



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ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC.
d/b/a/ The Daily GRill

and Case 31-RC-209589

UNITE HERE - LOCAL 11

DECLARATION OF MICHAEL BURNETT

I, Michael Burnett, declare:

1. I am the Regional Director of Operations for Grill Concepts Services, Inc. dba The Daily Grill. As part of my job duties, I have an active role in the direct management of The Daily Grill located at 5410 West Century Blvd in Los Angeles ("The Daily Grill"). I have personal knowledge of the facts set forth below.

2. The Daily Grill has a private dining room on-site, called the "Board Room," which will accommodate a manual vote. The shades can be drawn so that no one can see inside. There is ample space immediately outside of the restaurant, within a few steps from the door to the private dining room, for employees to congregate while waiting to vote, if necessary. Photographs of the Board Room are attached hereto as Exhibit A.

3. The Daily Grill has 25 full-time, and 51 part-time, hourly non-supervisory employees. Part time employees are those who work less than 30 hours per week.

4. Employees at the Daily Grill work in three general shifts: (1) breakfast, in which the first clock-in is at 4:30 a.m.; (2) lunch, in which the first clock-in is generally at 10:30 a.m.; and dinner, in which the first clock-in is generally at 4 p.m.. Breakfast and lunch shifts often overlap, as to lunch and dinner shifts.

5. Front-of-house employees include servers, hosts, bussers and expo, bartenders, and cocktail servers. Their shifts are generally between five and six hours. Back-of-house employees include cooks, pantry cooks, line cooks, prep cooks, and dishwashers. Their shifts are generally between 6 and 8 hours. On particularly busy days, which are generally Fridays, The Daily Grill schedules all or nearly all of its employees.

6. The Daily Grill releases schedules every Thursday for the week starting the following Monday. Scheduling is based upon forecasted sales. Since The Daily Grill is located inside a business hotel, scheduling demands vary based upon the hotel's business expectations for

the week, including expected occupancy, and whether events are scheduled for the hotel. Prior year sales for a given week are also taken into account.

7. All employees provide their availability for work in advance of scheduling. Days employees are not available or do not wish to work are called "blackout days." Previously, only one Daily Grill employee listed Friday as a "blackout day." However, that employee has recently advised that his scheduling needs are changing, and that his availability is more flexible. Currently, there are no employees who have Friday "blackout days." Accordingly, all Daily Grill employees can generally be scheduled to work on Fridays.

8. Paychecks are issued every-other Friday. The next two pay-days are December 1, and December 15. Thirty four (34) employees receive manual checks, and those employees come into The Daily Grill to retrieve their paychecks. Most of these 34 employees come into the restaurant on payday to pick up their checks, even if they are not scheduled to work.

9. The Daily Grill holds all-employee meetings, which all employees are scheduled to attend, once every six months. These meetings are scheduled with two weeks' notice to employees.

10. Fridays are generally the busiest days at The Daily Grill, and when the most employees are scheduled. Friday, December 15, is projected to be one of the busiest days of the year, due to hosting multiple private parties in addition to regular walk-in business during that time of year. On December 15, we have already reserved a party of 40 for lunch, a party of 55 for dinner, and a party of 40 for dinner. In anticipation of heavy business on December 15, I have created a schedule for the week starting December 11, in which all of the restaurant's active employees are scheduled to work on December 15. The restaurant has three employees on leave of absence, who are not scheduled. True and correct copies of the schedules for all employees for the week starting December 11, and including December 15, is attached hereto as Exhibit B.

I declare under the penalty of perjury under the Laws of the State of California, that the foregoing is true and correct. Executed on November 24, 2017 at Los Angeles, California.

Michael Burnett

Exhibit A

EXIT
BOARD ROOM
BOARD ROOM
FIRE

WESTIN
BOARD ROOM
BOARD ROOM

Exhibit B

Schedule DG on Century

	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
11/24/17 5:59 PM	11-Dec			12-Dec			13-Dec			14-Dec			15-Dec			16-Dec			17-Dec		
Servers	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**
Chudney Dyane				5:30	on call		6:30	on call					5:30	on call		5:30	on call		5:30	on call	
Ashlynn Camberos	5:30	on call		5:30	on call		5:30	on call		5:30	on call			11:00							
Moises Perez	5:30	on call		6:30	on call		5:30	on call		5:30	on call		5:30						5:30	on call	
Francisco Davilla	8:30	11:00		9:00	11:00									11:00							
Alberto Lazaro	9:00	11:00					9:00	11:00		9:00	11:00		9:00	11:00		9:00	11:00				
Leo Pineda	on call	10:30								8:30	on call		8:30	on call		8:30	10:30		9:00	11:30	
Luis Vargas					11:30			11:30			11:30			11:30			11:30				
Cassandra D.				on call	10:30								on call	10:30		6:30	11:00		8:30	11:00	
Damian Gaucin	6:30	on call		8:30	11:00		on call	10:30		on call	10:30		9:00								
Lupe Leon		L 5:30	Lounge					L 5:30	Lounge					11:30					on call	10:30	
Sarah Warwick							8:30	11:00		6:30	on call		6:30	on call		5:30	11:00		6:30	on call	
Have	**5**	**3**		**5**	**4**		**5**	**3**		**5**	**3**		**5**	**6**		**5**	**5**		**4**	**3**	
Want	**5**	**3**		**5**	**4**		**5**	**4**		**5**	**3**		**5**	**5**		**5**	**5**		**5**	**3**	

	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
Servers	11-Dec			12-Dec			13-Dec			14-Dec			15-Dec			16-Dec			17-Dec		
Ramin Azad			on call			4:30						5:00			4:00						
Sergio Orozco			6:30			5:30			on call			6:30			6:00						
Victor Cruz						4:00						6:00			on call			5:30			
Jaime Arellano			6:00						5:30			6:00			5:00			5:00			
Katherine Macanufo									5:00						5:00						6:30
Staten Williams						6:30						5:30			4:30						
Marilyn Mineo						6:00			6:00						6:30			on call			
Jesse McIntosh															6:30			6:30			5:30
Alex Han						5:00									5:30			4:00			
Miguel Pina			4:30			on call			4:00						5:30						4:30
Veronica Oliva			4:00			5:30			4:30			on call			5:00			5:00			on call
Grace Matias			5:30									4:30			5:30						5:00
Gregory Johnson						5:30						4:00			4:30						4:00
Have			**5**			**8**			**5**			**7**			**12**			**5**			**5**
Want			5			8			5			7			10			5			5

Schedule DG on Century

	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
11/24/17 5:59 PM	11-Dec			12-Dec			13-Dec			14-Dec			15-Dec			16-Dec			17-Dec		
HOST/HOSTESS	B	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**	**B**	**L**	**D**
Georgette T.							6:30	on call		6:30	on call		6:30	on call		6:30	on call		6:30	on call	
Macey Sheets	6:30	on call		6:30	on call									11:30		on call	11:00		on call	11:00	
Sindy Valdez	on call	11:00		on call	11:00		on call	11:00		on call	11:00		on call	11:00							
Kimberly M.		on call	4:30		on call	4:30					on call	4:30			5:00		on call	4:30			
Stephanie M.								on call	4:30					on call	4:30					on call	4:30
Nataly Ramirez														on call	5:30		on call	5:30			
Lupe Leon																					
Have	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**2**	**3**	**1**	**1**	**2**	**1**	**1**	**1**
Want	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**1**	**2**	**1**	**1**	**2**	**1**	**1**	**1**

Schedule DG on Century

11/24/17 5:59 PM	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday		
	11-Dec			12-Dec			13-Dec			14-Dec			15-Dec			16-Dec			17-Dec		
BUSS/EXPO	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D	B	L	D
Sandra diaz							5:30	on call		5:30	on call		5:30	on call		5:30	on call		5:30	on call	
Sergio Rivera	5:30	on call		5:30	on call		on call	10:45		on call	10:45		on call	10:45							
Enrique Lopez			5:30			5:30			5:30			5:30			5:30						
Vincente Avila		DXP	3:45		DXP	3:45					DXP	3:45	Lch XPO	12:00			DXP	3:45		DXP	6:00
Martin Tellez			3:30			3:30									3:30						
Eduardo Tellez	on call	10:45		on call	10:45									DXP	3:45	on call	10:45				5:30
Alexis Laracuente		DXP	6:00					DXP	6:00		DXP	6:00		DXP	5:00		DXP	6:00		DXP	3:45
Manny Avila									3:30						7:00			5:30			3:30
Ramon Jiminez						7:00			7:00			3:30			6:30			3:30	on call	10:45	
Josue Munoz			7:00		DXP	6:00		DXP	3:45					12:00							
Edson Valdes												7:00		DXP	6:00			7:00			7:00
Have	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**4**	**1**	**3**	**7**	**1**	**1**	**5**	**1**	**1**	**4**
Want	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**	**1**	**1**	**5**

Schedule DG on Century

	Monday			Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday			
11/24/17 5:59 PM	11-Dec			12-Dec			13-Dec			14-Dec			15-Dec			16-Dec			17-Dec			# of
Restaurant Bar	**AM**		**PM**	**AM**		**PM**	**AM**		**PM**	**AM**		**PM**	**AM**		**PM**	**AM**		**PM**	**AM**		**PM**	Shifts
Robin Gunn		3:45	Rest		5:00	Rest		5:00	Rest					11:00						3:45	Rest	**5**
Jessica Eller	Train	3:30	cocktail		3:30	cocktail		3:30	cocktail		3:30	cocktail		5:00	cocktail							**5**
Kristy Hudson											5:00	Rest		5:30	Rest	9:30	MB		9:30	MB		**4**
Marcel Escobar		5:00	Rest		3:45	Rest	9:30	MB						3:45	Rest		5:00	Rest				**5**
Kurt Mann	9:30	MB						3:45	Rest		3:45	Rest		5:00	Rest					5:00	Rest	**5**
Cassidy Thomas				9:30	MB					9:30	MB		9:30	MB			3:45	Rest				**4**
																						# of
Century Lounge			**PM**			**PM**			**PM**			**PM**			**PM**			**PM**			**PM**	Shifts
Nestor Samayoa														5:00	LB		3:30	LB				**2**
Jeff Wilson		3:30	LB		3:30	LB		6:30	LB					6:30	LB					3:30	LB	**5**
Erin Pruziner					6:30	LB		3:30	LB		3:30	LB		5:30	LB							**4**
Jenn G.		6:30	LB								6:30	LB		3:30	LB		6:30	LB		6:30	LB	**5**
Cocktail			**PM**						**PM**			**PM**			**PM**			**PM**			**PM**	
Lupe Leon		5:30	Lounge					5:30	Lounge					6:00	Lounge							**3**
Elizabeth Pye											5:30	Lounge		5:30	Lounge		5:30	Lounge		5:30	Lounge	**4**
Amanda Cepeda	Train	L 3:30	cocktail		5:30	Lounge								3:30	cocktail		3:30	cocktail		3:30	cocktail	**4**
Jaime Arellano																						**0**
Veronica Oliva																						**0**
Have	**1**	**6**		**1**	**6**		**1**	**5**		**1**	**6**		**1**	**12**		**1**	**6**		**1**	**6**		**14**
Want	**1**	**6**		**1**	**6**		**1**	**6**		**1**	**6**		**1**	**6**		**1**	**6**		**1**	**6**		

Dishwashers

11/24/17 5:59 PM	*Monday*	*Tuesday*	*Wenesday*	*Thursday*	*Friday*	*Saturday*	*Sunday*
	11-Dec	12-Dec	13-Dec	14-Dec	15-Dec	16-Dec	17-Dec
Dishwashers AM							
Marcelino Perez	6:30a-1:30p	6:30a-1:30p	6:30a-1:30p	6:30a-1:30p	8:00a 4;00p	off	off
Francisco Cortes	9:00a 4;00p	8:00a 4;00p	off	off	8:00a 4;00p	9:00a 4;00p	9:00a 4;00p
Rafael Delfin	off	off	9:00a 4;00p	9:00a 4;00p	6:30a-1:30p	6:30a-2:30p	6:30a-1:30p
Dishwashers PM							
Carolina	5:00p-11:30p	off	5:00p-12:00p	5:00p-12:00p	5:00p-12:00p	off	5:00p-12:00p
Jeffrey Mora	6:00p-1:00a	6:00p-1:00a	off	off	5:00p-11:30p	5:00p-11:30p	6:00p-1:00a
Alfredo Santana	off	5:00p-11:30p	6:00p-1:00a	6:00p-1:00a	6:00p-1:00a	6:00p-1:00a	off

Line Cooks

11/24/17 5:59 PM	Monday	Tusday	wenesday	Thursday	Friday	Saturday	Sunday
Line Cooks	11-Dec	12-Dec	13-Dec	14-Dec	15-Dec	16-Dec	17-Dec
Breakfast							
Humberto Miranda	4:30a-12:30p	4:30a-12:30p	4:30a-12:30p	4:30a-12:30p	4:30a-12:30p	OFF	OFF
Benjamin Acosta	7:30a-2:00p	7:30a-2:00p	OFF	OFF	7:30a-2:00p	4:30a-12:30p	4:30a-12:30p
Sautee							
Guadalupe Fuentes	OFF	4:30p-12:30a	4:30p-12:30a	4:30p-12:30a	5:00p-1:00a	5:00p-1:00a	OFF
prep							
Jose martinez	3:00-10:30pm	3:00-10:30pm	3:00-pm grill-11	OFF	3:00p-9:00p	OFF	5:00p-12:30a
Victor Ramires	3:00p-9:00p	OFF	OFF	3:00-pm grill-11	3:00p-9:00p	3:00p-9:00p	3:00p-9:00p
Jose Villagrana	4:30p-12:30a	3:00p-9:00p	3:00p-9:00p	3:00p-9:00p	pantry	pantry	OFF
Broiler							
Daniel Guitron	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:30p	OFF
Jaime Arrizon	OFF	OFF	3:00-10:30pm	3:00-10:30pm	3:00-10:30pm	3:00-10:30pm	3:00-10:30pm
Griddle							
Lucas Chim	OFF	OFF	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p
Honorato	3:00-10:30pm	3:00-10:30pm	OFF	OFF	3:00-10:30pm	3:00-10:30pm	3:00-10:30pm
Alex							7:00a

Pantry

10/30/15 12:00 AM	*Monday*	*Tuesday*	*wenesday*	*Thursday*	*Friday*	*Saturday*	*Sunday*
	11-Dec	12-Dec	13-Dec	14-Dec	15-Dec	16-Dec	17-Dec
Pantry pm							
Jessica Aceves	3:00p-11:00p	OFF	OFF	3:00p-11:00p	3:00p-11:00p	3:00p-11:00p	3:00p-11:00p
Sandra Martinez	sick	sick	sick	OFF	3:00p-11:00p	OFF	7:30a-2:00p
Pantry am							
Maria Vargas	5;30a 12;30	5;30a 12;30	5;30a 12;30	5;30a 2;00	7:30a-2:00p	OFF	5;30a 12;30
Jose Palacios	OFF	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	7:30a-2:00p	OFF
Jose villagrana	hot line	prep	prep	prep	5;30a 1;00p	5;30a 1;00p	OFF
mariana	7:30a-2:00p	3:00p-11:00p	3:00p-11:00p		7:30a--2:00p		

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

UNITE HERE - LOCAL 11

And

Case 31-RC-209589

Grill Concepts Services, Inc. d/b/a The Daily Grill

PROOF OF SERVICE

I am employed in the County of Tompkins, State of New York. I am over the age of eighteen years and not a party to the within action; my business address is 903 Hanshaw Road, Ithaca, New York 14850.

On November 24, 2017, I caused the following document(s) to be served:

- **RC Hearing Supplemental Brief and Supporting Documents**

on the interested party below in this action by filing the enclosed.

☐ BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

☒ BY THE NLRB'S ELECTRONIC FILING SYSTEM on its website: http://www.nlrb.gov.

☒ BY ELECTRONIC MAIL to: Simone.Gancayco@nlrb.gov; jblasi@unitehere11.org.

☐ BY EXPRESS MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure Section 1013(c).

Executed on November 24, 2017, at Ithaca, New York.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Eleanor McCloskey
STOKES WAGNER
903 Hanshaw Road
Ithaca, NY 14850

EXHIBIT 2

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC. D/B/A
THE DAILY GRILL

Employer

and

Case 31-RC-209589

UNITE HERE LOCAL 11

Petitioner

DECISION AND DIRECTION OF ELECTION

On November 8, 2017, UNITE HERE Local 11 (Petitioner) filed the petition in Case 31-RC-209589 under Section 9(c) of the National Labor Relations Act (Act). The Petitioner seeks to represent a unit of all non-supervisory employees employed by Grill Concepts Services, Inc., d/b/a The Daily Grill (Employer) at its restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045.

A hearing was held on November 20, 2017, on the petition referenced above before a Hearing Officer of the National Labor Relations Board (Board). The following issues were litigated at the hearing and will be discussed in this decision: (1) whether the Employer is engaged in commerce within the meaning of Section 2(6) of the Act; and (2) whether the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. This decision will also address whether the petitioned-for unit of employees is an appropriate unit for bargaining. In addition, this decision addresses the type of election to be directed.

The Board has delegated its authority in this proceeding to me under Section 3(b) of the Act. For the reasons set forth below, based on the entire record in this proceeding and relevant Board law, I find that the Employer is engaged in commerce within the meaning of Section 2(6) of the Act, the Petitioner is a labor organization within the meaning of Section 2(5) of the Act, and the petitioned-for unit is an appropriate unit. Accordingly, I shall direct an election in that unit. Furthermore, I have determined that a mail ballot election will be held.

A. Discussion

1. Jurisdiction

In *Grill Concepts Services, Inc. d/b/a The Daily Grill*, 364 NLRB No. 36, slip op.at 3 and 8 (2016), the Employer admitted, and the Board found, that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Based on the Employer's admission and the Board's finding in the prior case, I find that the Employer is

engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

2. Labor Organization

Section 2(5) of the Act defines "labor organization" as follows:

> The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purposes, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

To constitute a labor organization under Section 2(5) of the Act: (1) employees must participate; (2) the organization must exist, at least in part, for the purposes of "dealing with" the employer; and (3) these dealings must concern "grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." *Vencare Ancillary Services, 334 NLRB 965*, 969 (2001). In this case, it is clear that Petitioner is a labor organization within the meaning of the Act. The record demonstrates that employees participate in the organization by, for example, attending meetings and voting for the executive board. The record also shows employees file grievances with the Petitioner against employers, which initiates a process whereby representatives of the Petitioner work with employers to help resolve issues at the workplace, and the Petitioner negotiates with employers over labor disputes, wages, rates of pay, and other matters related to terms and conditions of employment through arbitrations, grievance meetings, committee worker meetings, and contract negotiations. Therefore, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.[1]

3. Appropriate Unit

The Act does not require a petitioner to seek representation of employees in the most appropriate unit but only in *an* appropriate unit. *Overnite Transportation Co.,* 322 NLRB 723 (1996) (emphasis added). In determining an appropriate unit, the Board first considers the petitioned-for unit. *P.1. Dick Contracting,* 290 NLRB 150, 151 (1988). The Board has stated that a petitioned-for-single-facility unit is presumptively appropriate. *See, e.g., Hilander Foods*, 348 NLRB 1200 (2006).

The petitioned-for unit here is a wall-to-wall unit of all non-supervisory employees employed at the Employer's restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045. Thus, the petitioned-for-unit is presumptively appropriate. Although the Employer refused to stipulate that the unit is appropriate, the Employer has not raised any objections to the petitioned-for unit.[2]

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[1] I also note that in *Grill Concepts Services, Inc.*, 364 NLRB No. 36, slip op. at 3, and 8, the Employer admitted, and the Board found, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

[2] I note that although the Employer filed a Statement of Position, it failed to properly serve that Statement of Position on the Petitioner. Therefore, pursuant to Section 102.66(d) of the Board's Rules and Regulations, the

I find that the petitioned-for unit is an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

There are approximately 76 employees in the Unit found to be appropriate.

4. Mail Ballot Election

The Petitioner asserts that a mail ballot election would be appropriate. The Employer opposes a mail ballot election and proposes a manual election to be held on December 15, 2017. The Board has a long-held policy of setting elections "at times and places, including whatever special provisions appear to be appropriate, that will best insure maximum participation in light of what is known at the time the procedures are set up." *Versail Mfg., Inc.*, 212 NLRB 592, 593 (1974).

In *San Diego Gas and Elec.*, 325 NLRB 1143 (1998), the Board noted that when deciding whether to conduct a mail ballot election, Regional Directors should consider at least the following situations that normally would suggest the propriety of using mail ballots: (1) where eligible voters are ''scattered'' because of their job duties over a wide geographic area; (2) where eligible voters are ''scattered'' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (3) where there is a strike, a lockout or picketing in progress. This is consistent with the guidance in Section 11301.2 of the current National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings (Casehandling Manual). As noted in Section 11301.2 of the Casehandling Manual, employees may be deemed "scattered" when they work different shifts, or work combinations of full-time and part-time schedules. According to this Section of the Casehandling Manual, the Regional Director should also consider the desires of the parties, the likely ability of voters to read and understand mail ballots, and the availability of addresses for employees, as well as the efficient use of the Agency's financial resources. Regional Directors have broad discretion to authorize mail balloting when appropriate. *National Van Lines*, 120 NLRB 1343, 1346 (1956); *San Diego Gas and Elec*, supra at 1144.

The Employer employs about 25 full-time and 51 part-time unit employees. Thus, a vast majority of the unit employees work part-time. The Employer's attorney stated at the hearing that all employees work at least once a week. Employees are generally scheduled to work either breakfast, lunch, or dinner shifts. However, the shift start times and end times for employees vary significantly. For example, there are employees who work on the breakfast shift that start as early as 4:30 a.m. and others start at 5:30 a.m., 6:30 a.m., 7:30 a.m., 8:30 a.m., or 9:00 a.m. At the hearing, the Petitioner submitted into the record copies of employee schedules for the weeks of August 28, 2017, September 18, 2017, September 25, 2017, October 2, 2017, October 16, 2017, October 23, 2017, October 30, 2017, November 6, 2017, and November 13, 2017, which show that the unit employees are "scattered" in that their work schedules vary

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Employer would be precluded from raising this issue, cross-examining any witness concerning the issue or presenting argument concerning the issue. Nevertheless, before directing an election, I must determine that the unit is appropriate.

significantly such that they generally are not present at a common location at common times.[3] These schedules reveal that on any given day, about 40% or more of the workforce is not scheduled to work. Thus, a manual election held on any day of the week would disenfranchise about 40% or more of the workforce. Moreover, these employee schedules also show that even if the manual election were held over two days, it would disenfranchise a large number of workers as more than 15% of the workforce would not be scheduled to work at least once during any two-day period. *See M & N Mail Serv., Inc.*, 326 NLRB 451 (1998) (holding that a mail ballot was appropriate where 15% of the bargaining unit would not be scheduled to work or be available at the employer's premises for an election conducted over two days); *see also Reynolds Wheels International*, 323 NLRB 1062 (1997) (the Board agreed with a Regional Director's decision to conduct a mail ballot election where the eligible voters were scattered in terms of working staggered shifts such that it would require three consecutive days of manual balloting to accommodate all eligible voters).

The Employer offered to schedule all employees to work on December 15, 2017 to ensure that all have the opportunity to vote. However, given the large number of part-time employees, altering the schedule of a substantial number of employees by requiring all workers to work on the day of the election would likely cause inconvenience to employees, who may have conflicting second jobs, family, or school obligations and might affect their views on the election process. *See London's Farm Dairy, Inc.*, 323 NLRB 1057 (1997) (finding that a mail ballot election is appropriate where the "mail ballots would avoid inconveniencing the need to impose work schedule changes on a significant number of employees, who may have family responsibilities or other plans for what would normally be their off-work time and might resent the change as something effectively forced on them by those who initiated and supported the organizing campaign").[4] The Employer asserts that it anticipates December 15, 2017 will be a busy day and therefore to fulfill its business need and to maximize employees' opportunity to vote, although the Employer typically does not create schedules until Thursday of the week before, the Employer prepared and submitted a schedule for the week that includes December 15, 2017. This schedule submitted by the Employer raises a question as to whether the Employer would otherwise have scheduled all of these employees to work on December 15, 2017. Specifically, the schedule includes a section that identifies two categories, "Have" and "Want," with numbers assigned to each category. Although not explained, these numbers appear to

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[3] Since the method of election is not a "litigable" issue, the Hearing Officer granted the Employer's Petition to Revoke Subpoena with respect to a subpoena served by the Petitioner on the Employer to obtain records concerning employee schedules. Likewise, the Petitioner was not permitted to elicit testimony from a witness to authenticate the schedules. Although these employee schedules were introduced into the record at the hearing by the Petitioner and the Employer was provided with copies of them, the Employer has not disputed the accuracy of the schedules other than to note in its post-hearing brief that they do not take into account employees on leaves of absence. The Hearing Officer specifically invited the Employer to provide information to counter the schedules introduced into the record by the Petitioner.

[4] The Petitioner also raised a concern that scheduling all employees to work on the day of the election might violate the Act's prohibition on granting benefits if the Employer provided compensation employees would not otherwise earn for coming to the worksite on the date of the a manual election. *See Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995) (setting aside an election where the employer offered to pay employees two hours of compensation of any employee who was not scheduled to work on the election date and came in for the election).

signify the number of employees that "have" been scheduled for each shift versus the number of employees that are actually "want[ed]" for each shift. For each day other than December 15, 2017, the number of employees listed in the "Have" column equals the number of employees in the "Want" column. However, for December 15, 2017, and only for December 15, 2017, for many job positions and shifts, the number of employees that have been scheduled exceeds the number listed in the "want[ed]" column.

After careful consideration of the record and the desires of the parties, I am directing that a mail ballot election be held. In reaching this decision, I note that the eligible voters are ''scattered'' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times. I also note the absence of any evidence that the voters would be unable to read or understand mail ballots,[5] and I note that the Employer attempts to maintain current addresses for employees. Moreover, for the reasons described above, I do not think it appropriate to schedule the election for December 15, 2017, a date on which the Employer is willing to schedule all employees to work.

Accordingly, a mail ballot election will be held.

B. Conclusions and Findings

Based upon the entire record in this matter, including any stipulations by the parties, and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.[6]

2. The Employer is engaged in commerce within the meaning of Section 2(6) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. There is no collective-bargaining agreement covering any of the employees in the petitioned-for unit, and there is no contract bar, or any other bar, to this proceeding.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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[5] The Notice of Election, the Instructions to Eligible Employees Voting By United States Mail, and the election ballot shall be in English and Spanish.

[6] Although the Hearing Officer initially indicated that supplemental briefs need not be served on the other parties, this issue was clarified in an Order issued by the Acting Regional Director on November 21, 2017, which ordered the parties to serve a copy of their respective briefs on the other party at the same time the briefs are filed with the Region.

6. The following employees of the Employer constitute a unit appropriate (the Unit) for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

   Included: All non-supervisory employees employed by Grill Concepts Services, Inc., d/b/a The Daily Grill at its restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045.

   Excluded: All managers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

Accordingly, I direct an election in the Unit above.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the Unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **UNITE HERE Local 11**.

A. Election Details

As detailed above, I have determined that a mail ballot election will be held. The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At **3:00 p.m. on Thursday, December 7, 2017**,[7] ballots will be mailed to voters from the National Labor Relations Board, Region 31, 11500 West Olympic Blvd., Suite 600, Los Angeles, CA 90064. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Saturday, December 9, 2017**, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310) 307-7325.

Voters must return their mail ballots so that they will be received in the National Labor Relation Board, Region 31 office by close of business on **Thursday, December 21, 2017**. All ballots will be commingled and counted at the Region 31 office on **Friday, December 22, 2017 at 2:00 p.m.** In order to be valid and counted, the returned ballots must be received in the Region 31 office prior to the counting of the ballots.

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[7] Under existing NLRB practice, an election is not ordinarily scheduled for a date earlier than 10 days after the date when the Employer must file the eligibility list with the Regional Office. In the instant case, the Petitioner has waived its right to have the eligibility list for the 10-day period or for any shorter period of time. Petitioner thus has waived its right to file objections to the election based on the fact that it will not have the eligibility list for the 10-day period.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **November 26, 2017**, 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 have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees 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 since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the Regional Director and the parties by **Monday, December 4, 2017**. The list must be accompanied by a certificate of service showing service on all parties. **The Region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once

the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. **The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election.** For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

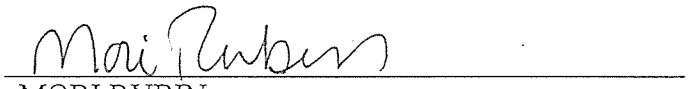
RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this Decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: November 30, 2017



MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

PURPOSE OF ELECTION: This election is to determine the representative, if any, desired by the eligible employees for purposes of collective bargaining with their employer. (See VOTING UNIT in this Notice of Election for description of eligible employees.) A majority of the valid ballots cast will determine the results of the election. Only one valid representation election may be held in a 12-month period.

SECRET BALLOT: The election will be by secret ballot carried out through the U.S. mail under the supervision of the Regional Director of the National Labor Relations Board (NLRB). A sample of the official ballot is shown on the next page of this Notice. Voters will be allowed to vote without interference, restraint, or coercion. Employees eligible to vote will receive in the mail *Instructions to Employees Voting by United States Mail*, a ballot, a blue envelope, and a yellow self-addressed envelope needing no postage.

ELIGIBILITY RULES: Employees eligible to vote are those described under the VOTING UNIT on the next page and include employees who did not work during the designated payroll period because they were ill or on vacation or temporarily laid off. Employees who have quit or been discharged for cause since the designated payroll period and who have not been rehired or reinstated prior to the date of this election are not eligible to vote.

CHALLENGE OF VOTERS: An agent of the Board or an authorized observer may question the eligibility of a voter. Such challenge must be made at the time the ballots are counted.

AUTHORIZED OBSERVERS: Each party may designate an equal number of observers, this number to be determined by the NLRB. These observers (a) act as checkers at the counting of ballots; (b) assist in identifying voters; (c) challenge voters and ballots; and (d) otherwise assist the NLRB.

METHOD AND DATE OF ELECTION

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 3:00 p.m. on Thursday, December 7, 2017, ballots will be mailed to voters from the National Labor Relations Board, Region 31, 11500 W Olympic Blvd., Suite 600, Los Angeles, CA 90064-1753. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Saturday, December 9, 2017, should communicate immediately with the National Labor Relations Board by either calling the Region 31 Office at (310)307-7325.

Voters must return their mail ballots so that they will be received in the National Labor Relation Board, Region 31 office by close of business on Thursday, December 21, 2017. All ballots will be commingled and counted at the Region 31 Office on Friday, December 22, 2017 at 2:00p.m. In order to be valid and counted, the returned ballots must be received in the Region 31 Office prior to the counting of the ballots.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

VOTING UNIT

EMPLOYEES ELIGIBLE TO VOTE:

Those eligible to vote are: All non-supervisory employees employed by Grill Concepts Services, Inc. d/b/a The Daily Grill at its restaurant at 5410 West Century Boulevard, Los Angeles, CA 90045, who were employed by the Employer during the payroll period ending November 26, 2017.

EMPLOYEES NOT ELIGIBLE TO VOTE:

Those not eligible to vote are: All managers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

UNITED STATES OF AMERICA
ESTADOS UNIDOS DE AMERICA
National Labor Relations Board
Junta Nacional De Relaciones Del Trabajo

31-RC-209589

OFFICIAL SECRET BALLOT
PAPELETA SECRETA OFICIAL
For certain employees of
Para Ciertos Empleados De
GRILL CONCEPTS SERVICES, INC. D/B/A THE DAILY GRILL

Do you wish to be represented for purposes of collective bargaining by
¿Desea usted estar representado para los fines de negociar colectivamente por
UNITE HERE LOCAL 11?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCIÓN

YES SI	NO NO
☐	☐

DO NOT SIGN THIS BALLOT. See enclosed instructions.
NO FIRME ESTA PAPELETA. Vea las Instrucciones incluidas.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

La Junta Nacional de Relaciones del Trabajo no respalda a ninguna de las opciones en esta elección. Cualquier marca que se pueda ver en cualquier muestra de la papeleta no fue hecha por la Junta Nacional de Relaciones del Trabajo.

SAMPLE
MUESTRA

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

United States of America
National Labor Relations Board

NOTICE OF ELECTION

INSTRUCTIONS TO EMPLOYEES VOTING BY U.S. MAIL

RIGHTS OF EMPLOYEES - FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union
- Choose representatives to bargain with your employer on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities
- In a State where such agreements are permitted, the Union and Employer may enter into a lawful union-security agreement requiring employees to pay periodic dues and initiation fees. Nonmembers who inform the Union that they object to the use of their payments for nonrepresentational purposes may be required to pay only their share of the Union's costs of representational activities (such as collective bargaining, contract administration, and grievance adjustment).

It is the responsibility of the National Labor Relations Board to protect employees in the exercise of these rights.

The Board wants all eligible voters to be fully informed about their rights under Federal law and wants both Employers and Unions to know what is expected of them when it holds an election.

If agents of either Unions or Employers interfere with your right to a free, fair, and honest election the election can be set aside by the Board. When appropriate, the Board provides other remedies, such as reinstatement for employees fired for exercising their rights, including backpay from the party responsible for their discharge.

The following are examples of conduct that interfere with the rights of employees and may result in setting aside of the election:

- Threatening loss of jobs or benefits by an Employer or a Union
- Promising or granting promotions, pay raises, or other benefits, to influence an employee's vote by a party capable of carrying out such promises
- An Employer firing employees to discourage or encourage union activity or a Union causing them to be fired to encourage union activity
- Making campaign speeches to assembled groups of employees on company time where attendance is mandatory, within the 24-hour period before the mail ballots are dispatched
- Incitement by either an Employer or a Union of racial or religious prejudice by inflammatory appeals
- Threatening physical force or violence to employees by a Union or an Employer to influence their votes

The National Labor Relations Board protects your right to a free choice.

Improper conduct will not be permitted. All parties are expected to cooperate fully with this Agency in maintaining basic principles of a fair election as required by law.

Anyone with a question about the election may contact the NLRB Office at (310)235-7351 or visit the NLRB website www.nlrb.gov for assistance.

WARNING: This is the only official notice of this election and must not be defaced by anyone. Any markings that you may see on any sample ballot or anywhere on this notice have been made by someone other than the National Labor Relations Board, and have not been put there by the National Labor Relations Board. The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election.

Form NLRB-4910
(4-2015)

Estados Unidos de América
Junta Nacional de Relaciones del Trabajo

AVISO DE ELECCION

INSTRUCCIONES PARA LOS EMPLEADOS QUE VOTAN POR CORREO DE LOS ESTADOS UNIDOS

OBJETIVO DE LA ELECCION: Esta elección es para que los empleados que son elegibles para votar escojan a su representante, si hubiese alguno, con el fin de negociar colectivamente con el Empleador. (Fíjese en LA UNIDAD DE VOTACION en este Aviso de Elección, de los empleados que son elegibles para votar). La mayoría de votos válidos emitidos determinará los resultados de la elección. Solamente se puede celebrar una elección válida de representación dentro de un período de 12 meses.

PAPELETA DE VOTACION SECRETA: La elección será por votación secreta a través del correo de los Estados Unidos bajo la supervisión del Director Regional de la Junta Nacional de Relaciones del Trabajo (JNRT). Una muestra de la papeleta de votación oficial se muestra en la siguiente página de este Aviso. Los votantes podrán votar sin interferencia, restricción, ni amenaza. Los empleados elegibles para votar recibirán por correo, las *Instrucciones Para los Empleados que Votan por el* Correo *de los Estados Unidos,* una papeleta de votación, un sobre azul, y un sobre amarrillo con su dirección y franqueo pre-pagado.

REGLAS DE ELEGIBILIDAD: Los empleados elegibles para votar son aquellos que están definidos según la UNIDAD DE VOTACION en la siguiente página, e incluye a los empleados que no trabajaron durante el período de la nómina designada porque estaban enfermos o en vacaciones, o estaban temporalmente descansados. Los empleados que hayan renunciado o que hayan sido despedidos con causa desde el período de la nómina designada y quienes no hayan sido recontratados o reincorporados antes de la fecha de esta elección *no* son elegibles para votar.

IMPUGNACION DE LOS VOTANTES: Un agente de la Junta o un observador autorizado puede cuestionar la elegibilidad de un votante. Dicha impugnación debe de ser hecha al momento del conteo de las papeletas.

OBSERVADORES AUTORIZADOS: Cada parte puede designar un número igual de observadores, este número será determinado por la JNRT. Aquellos observadores (a) actúan como controladores en el área de votación y durante el conteo de los votos; (b) ayudan a identificar a los votantes; (c) impugnan a votantes y papeletas y (d) de otra forma asisten a la JNRT.

METODO Y FECHA DE LA ELECCION

La elección será conducida a través del correo de los Estados Unidos. Las papeletas de votación serán enviadas por correo a los empleados contratados en la unidad apropiada de la negociación colectiva. A las 3:00 p.m. el jueves 7 de diciembre del 2017, las papeletas de votación serán enviadas por correo a los votantes desde la Junta Nacional de Relaciones del Trabajo, Región 31, 11500 W Olympic Blvd., Suite 600, Los Angeles, CA 90064-1753. Los votantes deben de firmar la parte de afuera del sobre en el cual la papeleta se regresa. Cualquier papeleta de votación recibida en un sobre que no esté firmado será automáticamente nula.

Aquellos empleados que creen que son elegibles para votar y no recibieron una papeleta por correo a más tardar el sabado, 9 de diciembre del 2017, deberán comunicarse de inmediato con la Junta Nacional de Relaciones del Trabajo, ya sea llamando a la Región 31 Oficina en (310)307-7325.

Para ser contada, su papeleta debe ser recibida en la Oficina Regional antes de o al final del dia de jueves, 21 de diciembre del 2017. Todas las papeletas serán mezcladas y contadas en la Oficina de la Región 31 el viernes, 22 de diciembre del 2017 a las 2:00 p.m. Para que sean validas y contadas, las papeletas de votación regresadas deberán ser recibidas en la Región 31 Oficina antes del conteo de las papeletas.

ADVERTENCIA: Este es el único aviso oficial de esta elección y no deberá ser mutilado por ninguna persona. Cualquier marca que usted vea en cualquier papeleta de muestra o en cualquier parte de este aviso, ha sido hecha por personas ajenas a la Junta Nacional de Relaciones del Trabajo, y no han sido puestas ahí por la Junta Nacional de Relaciones del Trabajo. La Junta Nacional de Relaciones del Trabajo es una agencia del Gobierno de los Estados Unidos, y no respalda a ninguna de las opciones en esta elección.

Form NLRB-4910
(4-2015)

Estados Unidos de América
Junta Nacional de Relaciones del Trabajo

AVISO DE ELECCION

INSTRUCCIONES PARA LOS EMPLEADOS QUE VOTAN POR CORREO DE LOS ESTADOS UNIDOS

UNIDAD DE VOTACION

EMPLEADOS QUE SON ELEGIBLES PARA VOTAR: All non-supervisory employees employed by Grill Concepts Services, Inc. d/b/a The Daily Grill at its restaurant at 5410 West Century Boulevard, Los Angeles, CA 90045, who were employed by the Employer during the payroll period ending November 26, 2017.

EMPLEADOS QUE NO SON ELEGIBLES PARA VOTAR: All managers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

UNITED STATES OF AMERICA
ESTADOS UNIDOS DE AMERICA
National Labor Relations Board
Junta Nacional De Relaciones Del Trabajo
31-RC-209589

OFFICIAL SECRET BALLOT
PAPELETA SECRETA OFICIAL
For certain employees of
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Do you wish to be represented for purposes of collective bargaining by
¿Desea usted estar representado para los fines de negociar colectivamente por
UNITE HERE LOCAL 11?

MARK AN "X" IN THE SQUARE OF YOUR CHOICE
MARQUE CON UNA "X" DENTRO DEL CUADRO DE SU SELECCIÓN

YES SI	NO NO
☐	☐

DO NOT SIGN THIS BALLOT. See enclosed instructions.
NO FIRME ESTA PAPELETA. Vea las Instrucciones incluidas.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

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SAMPLE
MUESTRA

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Form NLRB-4910
(4-2015)

Estados Unidos de América
Junta Nacional de Relaciones del Trabajo

AVISO DE ELECCION

INSTRUCCIONES PARA LOS EMPLEADOS QUE VOTAN POR CORREO DE LOS ESTADOS UNIDOS

DERECHOS PARA EMPLEADOS – LA LEY FEDERAL LES DA EL DERECHO DE:

- Formarse, unirse o apoyar a una unión
- Escoger a representantes para que negocien de su parte con su empleador
- Actuar junto con otros empleados por beneficio y protección mutua
- Elegir no participar en ninguna de estas actividades protegidas
- En un Estado donde tales acuerdos son permitidos, la Unión y el Empleador podrán celebrar un acuerdo legal de protección sindical que requiera que los empleados paguen cuotas periódicas y cuotas de iniciación. Los no-miembros que informen a la unión de su objeción a que sus pagos sean usados con propósitos no representativos, podrán ser requeridos de pagar solo la porción de los costos de la unión por actividades representativas (tales como negociación colectiva, administración de contratos y resolución de quejas).

Es la responsabilidad de la Junta Nacional de Relaciones del Trabajo proteger a los empleados en el ejercicio de estos derechos.

La Junta desea que todos los empleados que sean elegibles para votar estén completamente informados sobre sus derechos según la ley Federal y desea que ambos, El Empleador y las Uniones, sepan que se espera de ellos cuando se celebra una elección.

Si los agentes, tanto de las Uniones o del Empleador interfieren con sus derechos de tener una elección libre, justa, y honesta, la elección podría ser desestimada por la Junta. Cuando es apropiado, la Junta proporcionara otros recursos, tales como la reincorporación de los empleados despedidos por ejercer sus derechos, incluyendo el pago retroactivo por parte de los responsables de sus despidos.

Los siguientes son ejemplos de conductas que interfieren con los derechos de los empleados y puede resultar en la desestimación de la elección:

- Un empleador o la unión que amenace con la pérdida de trabajos o beneficios.
- Una de las partes capaces que promete u otorga promociones, aumento de sueldos, u otros beneficios para influenciar el voto del empleado.
- Un empleador que despide a empleados para desalentar o alentar la actividad de unión, o una unión que cause sus despidos para alentar la actividad de la unión.
- Dar discursos de campaña para congregar grupos de empleados en horas de trabajo, donde la asistencia es obligatoria, dentro del periodo de las 24 horas antes de que los centros de votación abran por primera vez, o que las papeletas de votación por correo sean despachadas.
- Un empleador o la unión que instigue prejuicios raciales o religiosos por medio de apelaciones inflamatorias.
- Una unión o un empleador que amenace a los empleados con fuerza física o violencia para influenciar sus votos.

La Junta Nacional de Relaciones del Trabajo protege su derecho a una libre selección.

No se permitirán conductas inapropiadas. Se espera que todas las partes cooperen totalmente con esta Agencia para mantener los principios básicos de elecciones justas como es requerido por la ley.

Cualquier persona con preguntas sobre una elección puede contactar a la Oficina de la JNRT al (310)235-7351 o visitar la página web de la JNRT www.nlrb.gov para ser asistido.

ADVERTENCIA: Este es el único aviso oficial de esta elección y no deberá ser mutilado por ninguna persona. Cualquier marca que usted vea en cualquier papeleta de muestra o en cualquier parte de este aviso, ha sido hecha por personas ajenas a la Junta Nacional de Relaciones del Trabajo, y no han sido puestas ahí por la Junta Nacional de Relaciones del Trabajo. La Junta Nacional de Relaciones del Trabajo es una agencia del Gobierno de los Estados Unidos, y no respalda a ninguna de las opciones en esta elección.

EXHIBIT 3

EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC.
d/b/a/ THE DAILY GRILL

and Case 31-RC-209589

UNITE HERE - LOCAL 11

REQUEST TO BLOCK

Grill Concepts Services, Inc. d/b/a The Daily Grill is a party to the representation proceeding in Case 31-RC-20958. It is filing an unfair labor practice charge in Case 31-RC-209589 and hereby requests that the petition be blocked by this charge.

Pursuant to NLRB Section 103.20, this Request to Block is supported by the enclosed "Offer of Proof," which is submitted herewith but not served on other parties to this case.

Dated: December 15, 2017

Respectfully Submitted,

STOKES WAGNER

_/s/ *Adam L. Parry*_____
Diana Dowell
Adam L. Parry
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

OFFER OF PROOF

1. Witness Name: Stephanie Mendez

Summary of testimony: Ms. Mendez is expected to testify consistent with her signed written statement attached hereto as Exhibit A. *To wit*, that on December 9, 2017, UNITE HERE! Local 11 director Alex and her former co-worker visited her home and persisted in attempting Ms. Mendez and her sister, Kimberly Mendez, who is also a Daily Grill employee, to vote "yes" for the union, and to complete their mail ballots in view of the union representatives.

2. Witness Name: Benjamin Acosta

Summary of testimony: Mr. Acosta is expected to testify consistent with his signed written statement attached hereto as Exhibit B. *To wit*, that on December 9, 2017, Local 11 representatives waited for Mr. Acosta at his home, and attempted to coerce him to open his ballot so they could tell him how to vote.

3. Witness Name: Kurt Mann

Summary of testimony: Mr. Mann is expected to testify consistent with his signed written statement attached hereto as Exhibit C. *To wit*, that On December 9, 2017, Local 11 representatives gained unauthorized access into his apartment complex, visited him at his home, interrogated him regarding his mail ballot and vote, and attempted to coerce him to allow them to help complete his ballot.

4. Witness Name: Macy Sheets

Summary of testimony: Ms. Sheets is expected to testify consistent with her signed written statement attached hereto as Exhibit D. *To wit*, that on December 10, 2017, Local 11 representatives came to her house to interrogate her regarding her ballot.

5. Witness Name: Lucas Chim

Summary of testimony: Mr. Chim is expected to testify consistent with his signed written statement attached hereto as Exhibit E. *To wit*, that on December 11, 2017, two Local 11 representatives were waiting for him at his house, and interrogated him regarding his mail ballot.

6. Witness Name: Jose Palacios

Summary of testimony: Mr. Palacios is expected to testify consistent with his signed written statement attached hereto as Exhibit F. *To wit*, that on December 9, 2017, two Local 11 representatives were waiting for him at his home to tell him to not forget to support the union.

7. Witness Name: Ashlynn Camberos

Summary of testimony: Ms. Camberos is expected to testify consistent with her signed written statement attached hereto as Exhibit G. *To wit*, that on December 9, 2017, Daily Grill employee Sandra Diaz and another person repeatedly came to her house to interrogate her about her mail ballot.

8. Witness Name: Mary Ang

Summary of testimony: Ms. Ang is expected to testify consistent with her signed written statement attached hereto as Exhibit H. *To wit*, that on December 12, 2017, Daily Grill employee Francisco Davila reported to her that Local 11 representatives came to his home over the weekend of December 9 and 10 to ask him to complete his mail ballot in their presence.

9. Witness Name: Robin Gunn

Summary of testimony: Ms. Gunn is expected to testify consistent with statements made by her in a text message, which is attached hereto as Exhibit I. *To wit*, that Local 11 employees went to her parents' home in an attempt to make contact with Ms. Gunn.

EXHIBIT A

EXHIBIT A

12/09/17

Today at around 12pm I was at my parents house and the union director Alex and my old co-worker gustavo showed up to our door step I personally didn't want to talk to them and neither did my sister so we tried to ignore them but they wouldn't go away so kimberly, being the nicer of the two, went to go talk to them so they would go away so she did, I was sending my sisters out so they could get the idea that we were on our way out but they didn't. I stood by the door listening and heard them say in an upset way "well you're going to be hurting other people by doing that" so I went out to see what was going on and they were leaving kim came back inside and told me they were trying to make her vote in front of them and when she said no that she was propably not going to vote yes they got mad and said what I heard and left.

— Stephanie Mendez

EXHIBIT B

EXHIBIT B

12-12-17

Benjamín Acosta.

El 29 de noviembre me visitaron en mi casa era el dia de mi descanso y estubieron 45 minitos explicandome detodo y les dije que no estaba interesado y despues el sabado 9 de dic. me estaban esperando que llegara al a casa porque ese dia llego la voteta en el correo. y querian que sacara la voleta para que me explicara como votar y les dipe que eso ya era personal. que no queria me estubiran molestando mi visitandome a mi casa.

B. Acosta

STC INTERPRETING

Certificado de Precisión de la Traducción

Doy fe de que los documentos de:

Declaración de Benjamín Acosta

Han sido traducidos de los idiomas:

Inglés a español

En nombre de STC Interpreting, por la traductora profesional,

Silene Conceicao

Por medio de la presente certifico que domino los idiomas **inglés** a **español** y que la traducción anexa a este certificado es una traducción completa, verdadera y precisa del documento indicado arriba.

Esto certifica únicamente la exactitud de la traducción. No garantizamos que el original sea un documento genuino o que las afirmaciones contenidas en el documento original sean verdaderas. Además, STC Interpreting no asume ninguna responsabilidad por la manera en la que el cliente o cualquier tercero utilice la traducción, incluyendo los usuarios finales de la traducción.

Se anexa una copia de la traducción a este certificado.

Doy fe de que las afirmaciones anteriores son verdaderas.

Firma del Traductor

Traductor: Silene Conceicao

STC Interpreting

Fecha: 13/12/2017

Certified Translation
STC Interpreting
ATA Member #253785

9854 National Blvd. # 359
Los Angeles, CA 90034
www.STCinterpreting.com
Phone: 310-287-0405
Fax: 310-943-2747
support@STCinterpreting.com

12-12-17

Benjamín Acosta.

On November 29th, they came to my home, this was my day of rest and they stayed for 45 minutes, explaining me everything and I told them that I was not interested and, later, on Saturday, Dec. 9th, they were waiting for me to come home because I got the ballot in the mail and they wanted me to take out the ballot so they could tell me how to vote and I told them that it was a personal thing, that I didn't wish them to be bothering me by visiting me at home.

[Signature]

B. Acosta

EXHIBIT C

EXHIBIT C

DAILY GRILL
DG
RESTAURANT & BAR

On 12-9-17, representatives for Local 11 showed up at my house without permission and knocked on my door. They were not permitted into my apartment building by me, but some how managed to enter the premises anyway. They asked me about my ballot and whether I had signed it yet. They also wanted to know if they could help me fill it out and help mail it. I told them I could handle it and closed the door on them. They also were bragging about the deal they negotiated for the Renaissance Hotel nearby.

Kurt Mann

12/12/17

EXHIBIT D

EXHIBIT D

DAILY GRILL
DG
RESTAURANT & BAR

on December 10th I was just about to lay down with my baby. I laid down for 15 mins and then recieved a knock on my door. I assumed it was my mother-in-law so I got up an answered the door. It was not who I expected. It was the union. They wanted to confirm I got my ballot. I answered "yes" and that I alreddy filled it out and sent it in. They then try to assume I was tired because I go out. I got even more annoyed with that comment. I said "NO, I don't go out I have a baby and on my days off I like to take naps with her." They then tried to appolagize, but I

didnt care for there appology.
I may have been rude but I just
said bye and shut the door
in their faces. I was not happy
with getting woken up by people
I didnt care to see.

Sunday, December 10th

- Macey Sheets -

EXHIBIT E

EXHIBIT E

Yo Lucas Chim
El dia Lunes 11. Diciembre
12:30 pm llegel ami domicilio
y 2 personas dela union
me preguntaron si llome
abia llegado la boleta
melos esqui le les dije queno

Lucas Chim

12-13-17

EXHIBIT F

EXHIBIT F

Yo: Jose Palacios

El sabado 9 del mes de Diciembre.
Aproximadamete ala 4:30 Pm
me estaban Esperando 2
Personas de la Union para de-
Cirme que no se me olvidara
de apoyarlos.

Att: Jose Palacios.

12-13-2017

EXHIBIT G

EXHIBIT G

DAILY GRILL
DG
RESTAURANT & BAR

On Saturday

Dec 9, 2017 Sandra Diaz
and a Lady came to my door
asked for me my fiance said
he was asleep. she came back
again less than an hour later
saying she saw me through
the window the said we was this
close to text me, she left
came Back next Sunday
he opened the door she asked
if he Received my ballot he
said yes.

- Ashlynn Cambers

EXHIBIT H

EXHIBIT H

12/12/17

Francisco Davila approached me today and mentioned that union reps showed up at his house over the weekend asking him to sign in front of them. After he said he knows that they are not suppose to be there, they change their tone and said that they are just making sure that he received his ballot.

Mary Ang

12/12/17

EXHIBIT I

EXHIBIT I

12/12/17

Francisco Davila approached me today and mentioned that union reps showed up at his house over the weekend asking him to sign in front of them. After he said he knows that they are not suppose to be there, they change their tone and said that they are just making sure that he received his ballot.

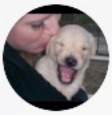
Mary Ang

12/12/17

EXHIBIT J

EXHIBIT J

Verizon LTE VPN 2:19 PM



Robin

Hi just got the email plus my parents b4 the email told me two people from the union showed up my dad said I wasn't home which I wasn't then said ok we'll be back in a few hours he had to tell them don't bother she out for the night
Yes this is my legal address but I'm not always here
I don't have "Sergio" on of the man guys number saved on my phone but if you have a number I can call to tell them to stop showing up at my parents house

iMessage

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC.
d/b/a THE DAILY GRILL

and Case 31-RC-209589

UNITE HERE - LOCAL 11

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 600 W. Broadway, Suite 910, San Diego, California 92101.

On November 15, 2017, I caused the following document(s) to be served: **REQUEST TO BLOCK** on the interested party below in this action by filing the enclosed

☐ BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

☒ BY ELECTRONICMAIL to: Jeremy Blasi, Esq at jblasi@unitehere11.org

☐ BY EXPRESS MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure Section 1013(c).

Executed on November 15, 2017, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Perla D. Cuevas

PERLA D. CUEVAS
STOKES WAGNER
600 W. Broadway Ste. 910
San Diego, CA 92102

EXHIBIT 4

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, Inc., d/b/a
THE DAILY GRILL,

Employer,

and **Case No. 31-RC-209589**

UNITE HERE LOCAL 11,

Petitioner.

OBJECTIONS TO ELECTION
WITH OFFERS OF PROOF

AND NOW comes the Employer/Respondent, Grill Concepts Services, objects to the conduct of the recent mail ballot election conducted pursuant to the Regional Director's order of November 30, 2017, and requests that the Regional Director refuse to certify the results of the election. As predicted by the Respondent's Request for Review of the Regional Director's order, the mail ballot election resulted in significant improprieties in the Union's conduct, as well as the unnecessary voiding of ballots that were incompletely filled out due to confusion over the guarantee of anonymity. These irregularities prevented a number of employees from having their votes tallied and allowed the Union unlawfully to coerce employees with respect to their votes, and requires that the Regional Director withhold certification of the election and instead order a new manual ballot election as originally requested by the Respondent.[1]

[1] The Hearing Officer improperly found as "fact" that the Respondent is an employer subject to the Act based solely on a Board decision, 364 NLRB No. 36 (2016), that is currently on appeal. DDE at 1-2. Respondent does not stipulate to jurisdiction, no other evidence was submitted to prove jurisdiction, and Respondent does not waive its objection to jurisdiction by filing these Objections.

BACKGROUND

After the Union requested a mail ballot election among the Respondent's employees, the Region assigned Simone Gancayco to the case as Hearing Officer. Simone Gancayco is currently serving as the Counsel for the General Counsel in a hotly contested case, *Hotel Bel-Air*, No. 31-CA-074675, in which she is arguing for the GC against the undersigned counsel, who are representing the Hotel. Respondent promptly objected to her participation and filed a position statement stating its objection, citing not only the appearance of conflict, but also the fact that Gancayco essentially ignored the Respondent's request for a formal check of a showing of interest.[2]

The Region held a hearing on November 20, 2017, to address the Union's demand for a mail ballot election and the Respondent's request that the election be conducted manually, before a different Hearing Officer, Marissa Dagdagan (though no guarantee was made that Ms. Gancayco was otherwise uninvolved in the matter). The hearing officer heard only one live witness, offered by the Union. She refused to allow any of the Respondent's witnesses to testify, including Tom Kerzie, who was subpoenaed by the Union, but whose testimony would have supported the Respondent's position that a manual election was the only appropriate form of voting. The Union

[2] "Illustrating Ms. Gancayco's apparent lack of impartiality, on November 16, Ms. Dowell submitted to Ms. Gancayco a request pursuant to CHM 11009.1, along with an appropriate list of eligible voters, for a formal check of the showing of interest. The request was submitted at 12:04 pm PT; Ms. Gancayco responded immediately, at 12:32 pm PT, with simply the following statement –'The Petitioner has submitted the requisite showing of interest in support of the petition' –and no further explanation. While this Employer understands the administrative nature of the determination of the showing of interest, nonetheless, an employer is entitled to submit information relevant to the question, and Regional staff are obligated to 'consider' such information. CHM 11021, 11030. There is no reason to believe that the voter list submitted on the 16th was reviewed or checked against the list of card-signers submitted by the Union, for purposes of ensuring that a requisite number of current employees have signed those cards." Respondent's Position Statement, filed November 17, 2017.

submitted unauthenticated employee "schedules" and unfounded documentary exhibits apparently prepared by counsel, on which the Regional Director heavily relied in reaching the erroneous conclusion that "even if a manual election were held over two days, it would disenfranchise a large number of workers, as more than 15% of the workforce would not be scheduled to work at least once during any two-day period." DDE at 4. By comparison to the 15% of employees the Regional Director feared might be disenfranchised in a manual election, nearly 30% of the employees were ultimately disenfranchised (22 of 76) due to the voiding of ballots cast (7), never having received a ballot (at least 1), and possible and apparent union coercion and intimidation.

The Regional Director also declined to consider the Respondent's offer to schedule all of its employees to work on December 15, and erroneously concluded, "altering the schedules of a substantial number of employees by requiring all workers to work on the day of the election would likely cause inconvenience to employees, who may have conflicting second jobs, family, or school obligations and might affect their views on the election process." DDE at 4. In fact, the Respondent's Regional Director of Operations, Michael Burnett, submitted an affidavit that the hearing officer ignored. The affidavit established:

- that that no current employee has identified Friday as a "blackout day", i.e., a day that s/he could not work, thus belying the conclusion referenced above that scheduling everyone to work on Friday, December 15 might have "inconvenienced" employees with other obligations on that day;
- that due to the anticipated press of business on December 15, Respondent was likely to schedule all or nearly all of its employees to work on that day in any event; and
- that December 15 would be a payday on which a large plurality of its employees would be coming in anyway to pick up their paychecks.

Burnett Affidavit, ¶¶ 7, 8, 10. Burnett's testimony, which the Regional Director totally ignored, made it clear that a manual election held on December 15 would have ensured a larger voter turnout than a mail ballot.

Despite the obvious deficiencies in the Union's evidence, the Regional Director accepted the Union's position and issued the Decision and Direction of Election ordering a mail ballot election, contrary to decades of Board precedent expressing a clear preference for manual, in-person balloting. The DDE ordered that the ballots be sent out on December 7, that notice be posted by the Respondent informing the employees about the election, and that the ballots be returned by December 21. DDE at 6-8.

On December 15, the Respondent filed an Unfair Labor Practice charge accompanied by a Request to Block, on the ground that the Union came unbidden to employees' homes, unlawfully attempted to coerce them into filling out their ballots in front of Union representatives, and unlawfully attempted to coerce them into voting for the Union. *See* Request to Block, December 15, 2017, and associated ULP, No. 31-CB-211892. The Regional Director refused to block the election despite this overwhelming evidence that the election had been tainted by the Union's conduct.

The total number of eligible voters was 76. Of these, only 61 attempted to cast ballots. Seven (7) ballots were voided because of the absence of signatures on the outside envelope (one of which was whited out). Fifty-four (54) ballots were counted by the Region, and according to the Region, 29 voted in favor of the Union, with 25 against. The seven uncounted ballots, plus one that one employee never received, would have had significant impact on the outcome of the election, which was decided by four votes.

All of these irregularities were exactly what the Respondent predicted when it challenged

the mail ballot election procedure.

ARGUMENT

As provided in the Board's Case Handling Manual, at 11301.2: "The Board's longstanding policy is that representation elections should, as a general rule, be conducted manually." The exceptions are identified as "(a) where eligible voters are 'scattered' because of their job duties over a wide geographic area; (b) where eligible voters are 'scattered' in the sense that their work schedules vary significantly, so that they are not present at a common location at common times; and (c) where there is a strike, a lockout or picketing in progress." *Id*. It is undisputed that (c) does not apply, and even the Union Petitioner did not argue that the employees were scattered geographically. Its sole argument, and the basis for the Regional Director's decision, was the assertion that the employees are "scattered in the sense that their work schedules vary significantly". This is both a false assertion and an insufficient basis on which to order an election by mail. Where none of the identified factors are met, a manual ballot should be ordered. *See, e.g., In Re United Maint. Co., Inc.*, 2013 WL 4855389, at *1, n.1 (NLRB Sept. 12, 2013) (Miscimarra dissent).

Respondent and its counsel know of no cases, either through more than 40 years of experience with union elections or through legal research, in which a hotel or restaurant election has previously been held via mail ballot, probably because single sites like restaurants and hotels are perfectly situated for manual elections. Neither the Board nor the Union has cited any, and indeed, the Union has not identified a single mail ballot election in which it was previously involved. This case apparently marks the first for both, without any justification, much less substantial justification.

The hearing officer refused to allow live testimony from any of Respondent's proposed

witnesses, nor did the Regional Director take sufficient account of the affidavit submitted by the Respondent's Regional Director of Operations, Michael Burnett, whose testimony made it clear that a manual election held on December 15 would have ensured a larger voter turnout than a mail ballot.[3] The participation in the mail ballot election was fairly weak, disenfranchising several employees who clearly wanted to vote: nearly 30% of the employees in the unit did not have a vote, including nearly 10% of the total voting unit who attempted to cast a mail ballot but had their vote voided. A manual election, for which the Daily Grill could schedule all employees to work, was overwhelmingly more likely to result in greater voter turnout, approaching 100%. "[I]t is well known that voter turnout is considerably higher in manual as opposed to mail ballots elections, and maximizing voter turnout is a legitimate objective in all elections." *Nouveau Elevator Indus., Inc.*, 326 NLRB 470 (1998) (approving manual election of two 9-hour days in Manhattan, New York, despite the argument that the employees lived and worked in numerous locations throughout the New York City metropolitan region, and worked a myriad of schedules). *See also Shepard Convention Servs., Inc. v. N.L.R.B.*, 85 F.3d 671, 675 (D.C. Cir. 1996) (citation omitted) ("[P]ostal elections generally inspire lower participation than on-site elections." – in *Shepard*, out of 538 eligible employees, only 77 cast valid ballots in mail-only election); *Cast N. Am. (Trucking) Ltd. v. N.L.R.B.*, 207 F.3d 994, 996 (7th Cir. 2000) (upholding the Regional Director's decision to order a manual ballot for a long-haul trucking company, even in the face of the fact that some of the truckers would be too far away and thus unable to vote on the day of the election).

It was, moreover, completely inappropriate for the Regional Director to conclude that the

[3] As noted above, Burnett testified: that no current employee has identified Friday as a "blackout day", i.e., a day that s/he could not work; that due to the press of business on December 15, Respondent will likely schedule all of its employees to work on that day; and that December 15 will be a payday on which a large plurality of its employees would be coming in anyway to pick up their paychecks. Burnett Affidavit, ¶¶ 7, 8, 10.

Respondent's willingness to schedule all employees to work on December 15 should be viewed as somehow "raising a question". DDE at 4-5. *See London's Farm Dairy, Inc*., 323 NLRB 1057, 1059 (1997) (Higgins dissent):

> My colleagues do not suggest that it would be improper for the Employer to change work schedules in order to accommodate a traditional manual election. Indeed, any such suggestion should be rejected. There is no evidence that the change is aimed at facilitating the voting of only those thought to be against the Union. Rather, the change was aimed at facilitating a manual ballot. … [T]he message to employees is that the Employer has taken an action to facilitate the voting process by making it easier for employees to vote. Where, as here, the Employer is willing to make a change in order to allow Board procedures to operate in the optimal way, we should not reject the overture or condemn it. Rather, we should accept it as an accommodation to Board processes, just as we routinely accept an employer's offer to hold an election on its premises.

Moreover, as Burnett's affidavit also points out, the Respondent schedules all-employee meetings once every six months with two weeks' notice. Burnett Affidavit at ¶ 9. It would therefore have been no special hardship or unique circumstance for all the employees to show up on this particular Friday.

The presence of a Board agent in a manual election context helps to prevent improprieties being committed by a party without the knowledge of the Board – as happened in this case. The Respondent's Request to Block and the Offers of Proof in support thereof, filed on December 15, recited proof that Union representatives came to employees' homes unbidden, refused to leave, and attempted to coerce them into filling out their ballots in favor of the Union, sometimes even asking to "help" the employee in filling out the ballot. Such conduct by the Union would have been absolutely barred in a manual election. *See, e.g., Milchem, Inc.*, 170 NLRB 362 (1968) (Union representative talking to voters while they waited to vote required new election: "[T]he potential for distraction, last minute electioneering or pressure, and unfair advantage from prolonged conversations between representatives of any party to the election and voters waiting to

cast ballots is of sufficient concern to warrant a strict rule against such conduct. … The final minutes before an employee casts his vote should be his own, as free from interference as possible."); *see also Human Dev. Ass'n, Inc.*, 314 NLRB 821 (1994) (finding that employer violated the Act by asking its employees to bring their Board election ballots to meetings called the employer). It is clear that here, the mail ballot election allowed for, and resulted in, the Union exercising pressure, intimidation, and coercion to interfere with employees' free choice in the election.

Concerns like these have been expressed by representatives of the Board itself, as noted in Daniel V. Yager's monograph, *NLRB Agency in Crisis* (1996). Yager quotes comments from Richard J. Roth, Assistant Director of Brooklyn NLRB Regional Office, and Nina Rzymski, NLRB Region 6, Election Specialist, to the effect that:

> • The presence of a Board agent at an election gives employees a greater sense of security that their rights are being preserved over mail balloting;
>
> • The potential in a mail ballot election for interference by either party increases the likelihood of a second election having to be conducted because of misconduct;
>
> • By including ballots with other "junk mail" that employees typically receive, it "dilutes the seriousness of the process;" and
>
> • If the voter is confused or uncertain about the process, there is no official agent available to answer questions, increasing the likelihood that the voter will procrastinate and/or "find it easier to not vote."

Id. at 46. The absence of an official agent to answer questions was the cause of the failure of several employees to sign the outside envelope of the ballot, resulting in the voiding of their ballots. Note that at least fourteen employees apparently did not attempt to mail ballots, as shown by the fact that only 61 of a possible 76 were mailed (and another was not cast because the employee never received a ballot). Roth's and Rzymski's concerns regarding the deficiencies of mail ballot process were proven justified in this case.

This election involved a single restaurant site where all eligible voters perform their work duties. An appropriate space for the balloting was available, in an enclosed dining room. All of the employees could have been scheduled to work on Friday, December 15. Contrary to the Regional Director's assertion that employees might have had other obligations on the Friday proposed for the Fridays, not a single one of the employees is unavailable to work on Fridays. Burnett Affidavit at ¶¶ 2, 7, 8, 10. A Board agent could have been available to ensure that no voting improprieties occurred, and to answer any questions about the process. And finally, holding an on-site, manual election would almost certainly have resulted in a higher turnout than in this mail election. In short, there was no justification for ordering a mail ballot election, and the election as it transpired failed to meet the basic standards for fairness and participation.

CONCLUSION

In over forty years of representing hotels and restaurants in labor disputes, the law firm representing the Respondent has never been involved in an election conducted by mail ballot. Neither the Regional Director nor the Union has cited a case with facts similar to this one in which a mail ballot has been ordered and upheld. The results of the election order in this case were, as Respondent predicted, Union misconduct, voter confusion, and voter suppression. The results of this election cannot be certified. Moreover, a Complaint should issue on the ULP filed by the Respondent on December 15, and that matter resolved before another election is ordered.

Respectfully Submitted,

STOKES WAGNER

_/s/ *Adam L. Parry*_____
Diana Dowell
Adam L. Parry
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC.
d/b/a/ THE DAILY GRILL

and Case 31-RC-209589

UNITE HERE - LOCAL 11

OBJECTION TO ELECTION

Grill Concepts Services, Inc. d/b/a The Daily Grill is a party to the representation proceeding in Case 31-RC-209589. It is filing an objection to election in Case 31-RC-209589 and hereby requests that the Regional Director refuse to certify the results of the election.

This Objection to Election is supported by the enclosed "Offer of Proof," which is submitted herewith but not served on other parties to this case.

Dated: December 29, 2017

Respectfully Submitted,

STOKES WAGNER

_/s/ *Adam L. Parry*_____
Diana Dowell
Adam L. Parry
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

OFFER OF PROOF

1. Witness Name: Stephanie Mendez

Summary of testimony: Ms. Mendez is expected to testify consistent with her signed written statement attached hereto as Exhibit A. *To wit*, that on December 9, 2017, UNITE HERE! Local 11 director Alex and her former co-worker visited her home and persisted in attempting Ms. Mendez and her sister, Kimberly Mendez, who is also a Daily Grill employee, to vote "yes" for the union, and to complete their mail ballots in view of the union representatives.

2. Witness Name: Benjamin Acosta

Summary of testimony: Mr. Acosta is expected to testify consistent with his signed written statement attached hereto as Exhibit B. *To wit*, that on December 9, 2017, Local 11 representatives waited for Mr. Acosta at his home, and attempted to coerce him to open his ballot so they could tell him how to vote.

3. Witness Name: Kurt Mann

Summary of testimony: Mr. Mann is expected to testify consistent with his signed written statement attached hereto as Exhibit C. *To wit*, that on December 9, 2017, Local 11 representatives gained unauthorized access into his apartment complex, visited him at his home, interrogated him regarding his mail ballot and vote, and attempted to coerce him to allow them to help complete his ballot.

4. Witness Name: Macy Sheets

Summary of testimony: Ms. Sheets is expected to testify consistent with her signed written statements attached hereto as Exhibit D & L. *To wit*, that on December 10, 2017, Local 11 representatives came to her house to interrogate her regarding her ballot. Then, on December 26, 2017, Ms. Sheets received her ballot back in the mail as she did not sign it under the presumption her vote was to be confidential. It was then too late for her to send her ballot. She voted and wants her vote to be counted.

5. Witness Name: Lucas Chim

Summary of testimony: Mr. Chim is expected to testify consistent with his signed written statement attached hereto as Exhibit E. *To wit*, that on December 11, 2017, two Local 11 representatives were waiting for him at his house, and interrogated him regarding his mail ballot.

6. Witness Name: Jose Palacios

Summary of testimony: Mr. Palacios is expected to testify consistent with his signed written statement attached hereto as Exhibit F. *To wit*, that on December 9, 2017, two Local 11 representatives were waiting for him at his home to tell him to not forget to support the union.

7. Witness Name: Ashlynn Camberos

Summary of testimony: Ms. Camberos is expected to testify consistent with her signed written statement attached hereto as Exhibit G. *To wit*, that on December 9, 2017, Daily Grill employee Sandra Diaz and another person repeatedly came to her house to interrogate her about her mail ballot.

8. Witness Name: Mary Ang

Summary of testimony: Ms. Ang is expected to testify consistent with her signed written statement attached hereto as Exhibit H. *To wit*, that on December 12, 2017, Daily Grill employee Francisco Davila reported to her that Local 11 representatives came to his home over the weekend of December 9 and 10 to ask him to complete his mail ballot in their presence.

9. Witness Name: Robin Gunn

Summary of testimony: Ms. Gunn is expected to testify consistent with statements made by her in a text message, which is attached hereto as Exhibit I. *To wit*, that Local 11 employees went to her parents' home in an attempt to make contact with Ms. Gunn.

10. Witness Name: Nataly Ramirez

Summary of testimony: Ms. Ramirez is expected to testify consistent with her signed written statement attached hereto as Exhibit J. *To wit*, that she never received a mail ballot, although she called the National Labor Relations Board twice, per the Board's instructions.

11. Witness Name: Daniel Guitron

Summary of testimony: Mr. Guitron is expected to testify consistent with her signed written statement attached hereto as Exhibit K. *To wit*, that he mailed in his ballot, but did not sign because he thought it was to be anonymous. Mr. Guitron then received another mail ballot but did not send because he thought it was too late.

EXHIBIT A

EXHIBIT A

12/09/17

Today at around 12pm I was at my parents house and the union director Alex and my old co-worker gustavo showed up to our door step I personally didn't want to talk to them and neither did my sister so we tried to ignore them but they wouldn't go away so kimberly, being the nicer of the two, went to go talk to them so they would go away so she did, I was sending my sisters out so they could get the idea that we were on our way out but they didn't. I stood by the door listening and heard them say in an upset way "well you're going to be hurting other people by doing that" so I went out to see what was going on and they were leaving kim came back inside and told me they were trying to make her vote in front of them and when she said no that she was propably not going to vote yes they got mad and said what I heard and left.

— Stephanie Mendez

EXHIBIT B

EXHIBIT B

12-12-17

Benjamín Acosta.

El 29 de noviembre me visitaron en mi casa era el dia de mi descanso y estubieron 45 minitos explicandome detodo y les dije que no estaba interesado y despues el sabado 9 de dic. me estaban esperando que llegara al a casa porque ese dia llego la voteta en el correo. y querian que sacara la voleta para que me explicara como votar y les dipe que eso ya era personal. que no queria me estubiran molestando mi visitandome a mi casa.

B. Acosta

STC INTERPRETING

Certificado de Precisión de la Traducción

Doy fe de que los documentos de:

Declaración de Benjamín Acosta

Han sido traducidos de los idiomas:

Inglés a español

En nombre de STC Interpreting, por la traductora profesional,

Silene Conceicao

Por medio de la presente certifico que domino los idiomas **inglés** a **español** y que la traducción anexa a este certificado es una traducción completa, verdadera y precisa del documento indicado arriba.

Esto certifica únicamente la exactitud de la traducción. No garantizamos que el original sea un documento genuino o que las afirmaciones contenidas en el documento original sean verdaderas. Además, STC Interpreting no asume ninguna responsabilidad por la manera en la que el cliente o cualquier tercero utilice la traducción, incluyendo los usuarios finales de la traducción.

Se anexa una copia de la traducción a este certificado.

Doy fe de que las afirmaciones anteriores son verdaderas.

Firma del Traductor

Traductor: Silene Conceicao

STC Interpreting

Fecha: 13/12/2017

Certified Translation
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ATA Member #253785

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Phone: 310-287-0405
Fax: 310-943-2747
support@STCinterpreting.com

12-12-17

Benjamín Acosta.

On November 29th, they came to my home, this was my day of rest and they stayed for 45 minutes, explaining me everything and I told them that I was not interested and, later, on Saturday, Dec. 9th, they were waiting for me to come home because I got the ballot in the mail and they wanted me to take out the ballot so they could tell me how to vote and I told them that it was a personal thing, that I didn't wish them to be bothering me by visiting me at home.

[Signature]

B. Acosta

EXHIBIT C

EXHIBIT C

DAILY GRILL
DG
RESTAURANT & BAR

On 12-9-17, representatives for Local 11 showed up at my house without permission and knocked on my door. They were not permitted into my apartment building by me, but some how managed to enter the premises anyway. They asked me about my ballot and whether I had signed it yet. They also wanted to know if they could help me fill it out and help mail it. I told them I could handle it and closed the door on them. They also were bragging about the deal they negotiated for the Renaissance Hotel nearby.

Kurt Mann

12/12/17

EXHIBIT D

EXHIBIT D

DAILY GRILL
DG
RESTAURANT & BAR

on December 10th I was just about to lay down with my baby. I laid down for 15 mins and then recieved a knock on my door. I assumed it was my mother-in-law so I got up an answered the door. It was not who I expected. It was the union. They wanted to confirm I got my ballot. I answered "yes" and that I alreddy filled it out and sent it in. They then try to assume I was tired because I go out. I got even more annoyed with that comment. I said "NO, I don't go out I have a baby and on my days off I like to take naps with her." They then tried to appolagize, but I

didnt care for there appology.
I may have been rude but I just
said bye and shut the door
in their faces. I was not happy
with getting woken up by people
I didnt care to see.

Sunday, December 10th

- Macey Sheets -

EXHIBIT E

EXHIBIT E

Yo Lucas Chim
El dia Lunes 11. Diciembre
12:30 pm llegel ami domicilio
y 2 personas dela union
me preguntaron si llome
abia llegado la boleta
melos esqui le les dije queno

Lucas Chim

12-13-17

STC INTERPRETING

Certification of Translation Accuracy

I attest that the documents of:

Lucas Chim - Statement

Have been translated from the languages:

Spanish to English

On Behalf of STC Interpreting, by professional translator,

Silene Conceicao

I hereby certify that I am fluent & conversant in the **Spanish** and **English** languages, and that the translation attached to this certificate, is a full, complete, true and accurate translation of the above document.

This is to certify the correctness of the translation only. We do not guarantee that the original is a genuine document, or that the statements contained in the original document are true. Further, STC Interpreting assumes no liability for the way in which the translation is used by the customer or any third party, including end users of the translation.

A copy of the translation is attached to this certification.

I attest the preceding statements to be true.

Translator's Signature

Translator: Silene Conceicao

STC Interpreting

Date: December 18, 2017

9854 National Blvd. # 359
Los Angeles, CA 90034
www.STCinterpreting.com
Phone: 310-287-0405
Fax: 310-943-2747
support@STCinterpreting.com

I, Lucas Chim, on Monday, December 11, at 12:30 pm, I arrived to my home and two persons from the Union asked me if I had already received the ballot. I dodged them, I told them I haven't.

Lucas Chim

13/12/17

EXHIBIT F

EXHIBIT F

Yo: Jose Palacios

El sabado 9 del mes de Diciembre.
Aproximadamete ala 4:30 Pm
me estaban Esperando 2
Personas de la Union para de-
Cirme que no se me olvidara
de apoyarlos.

Att: Jose Palacios.

12-13-2017

STC INTERPRETING

Certification of Translation Accuracy

I attest that the documents of:

Jose Palacios - Statement

Have been translated from the languages:

Spanish to English

On Behalf of STC Interpreting, by professional translator,

Silene Conceicao

I hereby certify that I am fluent & conversant in the **Spanish** and **English** languages, and that the translation attached to this certificate, is a full, complete, true and accurate translation of the above document.

This is to certify the correctness of the translation only. We do not guarantee that the original is a genuine document, or that the statements contained in the original document are true. Further, STC Interpreting assumes no liability for the way in which the translation is used by the customer or any third party, including end users of the translation.

A copy of the translation is attached to this certification.

I attest the preceding statements to be true.

Translator's Signature

Translator: Silene Conceicao

STC Interpreting

Date: December 18, 2017

9854 National Blvd. # 359
Los Angeles, CA 90034
www.STCinterpreting.com

Phone: 310-287-0405
Fax: 310-943-2747
support@STCinterpreting.com

I, Jose Palacios, on Saturday, December 9, approximately at 4:30 pm, two persons from the Union were waiting for me to tell me not to forget to support them.

Sincerely,

Jose Palacios

13/12/2017

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EXHIBIT G

EXHIBIT G

DAILY GRILL
DG
RESTAURANT & BAR

On Saturday

Dec 9, 2017 Sandra Diaz
and a Lady came to my door
asked for me my fiance said
he was asleep. she came back
again less than an hour later
saying she saw me through
the window the said we was this
close to text me, she left
came Back next Sunday
he opened the door she asked
if he Received my ballot he
said yes.

- Ashlynn Cambers

EXHIBIT H

EXHIBIT H

12/12/17

Francisco Davila approached me today and mentioned that union reps showed up at his house over the weekend asking him to sign in front of them. After he said he knows that they are not suppose to be there, they change their tone and said that they are just making sure that he received his ballot.

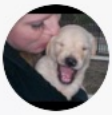
Mary Ang

12/12/17

EXHIBIT I

EXHIBIT I

Verizon LTE VPN 2:19 PM



Robin

Hi just got the email plus my parents b4 the email told me two people from the union showed up my dad said I wasn't home which I wasn't then said ok we'll be back in a few hours he had to tell them don't bother she out for the night
Yes this is my legal address but I'm not always here
I don't have "Sergio" on of the man guys number saved on my phone but if you have a number I can call to tell them to stop showing up at my parents house

iMessage

EXHIBIT J

EXHIBIT J

Declaration of Nataly Ramirez

I, Nataly Ramirez, declare:

I am an hourly non-supervisory employee of the Daily Grill on Century Boulevard. I never received a mail ballot for the UNITE HERE! Local 11 election. I have called the National Labor Relations Board twice, per the Board's instructions, to try to get a ballot sent to me in time to cast my vote. Despite calling the Board twice per the instructions, I still have not received a ballot.

I declare under penalty of perjury under the laws of The State of California that the foregoing is true and correct.

Executed on December 20, 2017, at Los Angeles, California.

Nataly Ramirez

Nataly Ramirez

EXHIBIT K

EXHIBIT K

12/26/17

I received my ballot on Saturday and mailed out my vote on Monday. I don't remember the exact dates but on Friday I got a new ballot. They said my ballot was not signed but I did not sign because it was suppose to be anonymous. I never sent in the second ballot, I thought it was too late.

Daniel Guitron Daniel Guitron

12-26-17

EXHIBIT L

EXHIBIT L

I Macey Sheets filled out my ballot at the beginning of December. I turned my ballot in without signing the back. I thought it was supposed to be confidential so I didn't sign. I did not noticed until the night of Dec. 26th that I got my ballot returned. I am now to late to send in my ballot. I voted & wanted it to count!

— macey Sheets —

December 27th 2017

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC.
d/b/a/ THE DAILY GRILL

and Case 31-CB-211892

UNITE HERE - LOCAL 11

SUPPLEMENTAL OFFER OF PROOF IN SUPPORT OF UNFAIR LABOR PRACTICES CHARGES

Grill Concepts Services, Inc. d/b/a The Daily Grill ("Grill Concepts") is a party to the representation proceeding in Case 31-RC-209589. On December 15, 2017, Grill Concepts filed an Unfair Labor Practice ("ULP") charge, accompanied by a Request to Block the election supported by an Offer of Proof. The offer of proof identies nine (9) witnesses and their expected testimony, and attaches a signed written statement for each. Grill Concept's ULP charge was assigned case number 31-CB-211892. Grill Concept's submits this Supplemental Offer of Proof in support of its ULP charge.

Pursuant to NLRB Section 103.20, the following "Supplemental Offer of Proof" is submitted to the Board but not served on other parties to this case.

Dated: January 18, 2018

Respectfully Submitted,

STOKES WAGNER

_/s/ *Adam L. Parry*_____
Diana Dowell
Adam L. Parry
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

SUPPLEMENTAL OFFER OF PROOF

1. Witness Name: Macy Sheets

Summary of testimony: Ms. Sheets is expected to testify consistent with her signed written statements attached hereto as Exhibit A. *To wit*, that on December 26, 2017, Ms. Sheets received her ballot back in the mail as she did not sign it under the presumption her vote was to be confidential. It was then too late for her to send her ballot. She voted and wants her vote to be counted.

2. Witness Name: Nataly Ramirez

Summary of testimony: Ms. Ramirez is expected to testify consistent with her signed written statement attached hereto as Exhibit B. *To wit*, that she never received a mail ballot, although she called the National Labor Relations Board twice, per the Board's instructions.

3. Witness Name: Daniel Guitron

Summary of testimony: Mr. Guitron is expected to testify consistent with his signed written statement attached hereto as Exhibit C. *To wit*, that he mailed in his ballot, but did not sign because he thought it was to be anonymous. Mr. Guitron then received another mail ballot but did not send because he thought it was too late.

4. Witness Name: Franscisco Davila

Summary of Testimony: Mr. Davila is expected to testify consistent with his signed written statement attached hereto as Exhibit D. *To wit*, that he mailed in his ballot, but did not sign because he thought it because he didn't read the instructions. He received another ballot, but did not sign it because he thought it was to be anonymous.

EXHIBIT A

I Macey Sheets filled out my ballot at the beginning of December. I turned my ballot in without signing the back. I thought it was supposed to be confidential so I didn't sign. I did not noticed until the night of Dec. 26th that I got my ballot returned. I am now to late to send in my ballot. I voted & wanted it to count!

— macey Sheets —

December 27th 2017

EXHIBIT B

Declaration of Nataly Ramirez

I, Nataly Ramirez, declare:

I am an hourly non-supervisory employee of the Daily Grill on Century Boulevard. I never received a mail ballot for the UNITE HERE! Local 11 election. I have called the National Labor Relations Board twice, per the Board's instructions, to try to get a ballot sent to me in time to cast my vote. Despite calling the Board twice per the instructions, I still have not received a ballot.

I declare under penalty of perjury under the laws of The State of California that the foregoing is true and correct.

Executed on December 20, 2017, at Los Angeles, California.

Nataly Ramirez

Nataly Ramirez

EXHIBIT C

12/26/17

I received my ballot on Saturday and mailed out my vote on Monday. I don't remember the exact dates but on Friday I got a new ballot. They said my ballot was not signed but I did not sign because it was suppose to be anonymous. I never sent in the second ballot, I thought it was too late.

Daniel Guitron Daniel Guitron

12-26-17

EXHIBIT D

12/26/17

When I got my ballot I sent it in without signing the outside envelope. I did not read the instructions; I just put in my vote and mailed it out. They returned my original vote and new ballot a few days later to my home address. I did not sign the second one because I thought it was anonymous.

Franscisco Davila

12-26-17

EXHIBIT 5

EXHIBIT 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC. D/B/A
THE DAILY GRILL

Employer

and **Case 31-RC-209589**

UNITE HERE LOCAL 11

Petitioner

PARTIAL DECISION ON OBJECTIONS AND NOTICE OF HEARING

Pursuant to a Decision and Direction of Election that issued on November 30, 2017, a mail ballot election was conducted from December 7 through 21, 2017 in a unit consisting of all non-supervisory employees employed by Grill Concepts Services, Inc., d/b/a The Daily Grill (Employer) at its restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045. The tally of ballots, which issued on December 22, 2017 when the ballots were counted, showed that of the approximately 76 eligible voters, 29 cast ballots for UNITE HERE Local 11 (Petitioner), and 25 cast ballots against representation. There were 7 void ballots and no challenged ballots. Therefore, the Petitioner received a majority of the votes.

On December 29, 2017, the Employer timely filed its Objections to Election with Offers of Proof (Employer's Objections). A copy of the Employer's Objections to the mail ballot election is attached.[1] On January 9, 2018, the instant case was blocked from further processing and held in abeyance pending the outcome of the investigation of the unfair labor practice charge in Case 31-CB-211892 because the allegations in the charge paralleled, at least in part, the Employer's Objections. Now that the investigation in Case 31-CB-211892 has been completed, I have carefully considered the Employer's Objections and offer of proof. As the Board recently noted with respect to offers of proof, "[an] objecting party has the duty of furnishing evidence or a description of evidence that, if credited at hearing, would warrant setting aside the election." *Jacmar Food Service Distribution*, 365 NLRB No. 35, fn. 2 (2017).

For the reasons discussed below, to the extent the Employer's Objections relate to the appropriateness of my having directed a mail ballot election, including the voiding of seven unsigned ballots and one employee allegedly not receiving a ballot, I am overruling the Employer's Objections in this regard in their entirety.[2] However, to the extent the Employer's

[1] The document submitted by the Employer called "Objections to Election with Offers of Proof" did not actually contain the offer of proof. Rather, the Employer's offer of proof was submitted on the same day, December 29, 2017, in a separate document the Employer called "Objections to Election." That document only included the offer of proof. The copy of the Employer's Objections attached hereto does not include the Employer's offer of proof.

[2] I note that the Employer's Objections does not specifically number any of its objections/arguments.

Objections allege that Petitioner and/or third parties visited employees' homes to coerce them to vote in the election, to vote for the Petitioner, and/or to fill out their mail ballot in the presence of Petitioner's representatives and/or third parties, I find the objection raises substantial and material issues of fact that can best be resolved on the basis of record testimony taken at hearing; since the Employer's Objections do not give a specific objection number to this objection, I shall refer to this objection as the Home Visits Regarding Ballots Objection. Accordingly, I am setting the Home Visits Regarding Ballots Objection for a hearing.

I. THE EMPLOYER'S OBJECTIONS

a. Objections to Mail Ballot Election

In the Employer's Objections, the Employer generally objects to my having directed a mail ballot election. As explained in detail in the Decision and Direction of Election, the mail ballot election was directed because I found that employees were scattered insofar as their work schedules vary significantly such that they generally are not present at a common location at common times. The appropriate way for the Employer to obtain review of my direction of a mail ballot election would be by filing a request for review of the pre-election decision with the Board under Section 102.67 of the Board's Rules and Regulations. However, since the Employer raises this matter in its Objections, I will address some of the issues raised by the Employer.[3]

[3] Although not necessary, I will comment on a few of the Employer's arguments. First, the Employer questions the reliance in the Decision and Direction of Election on "unauthenticated employee 'schedules' and unfounded documentary exhibits" presented by the Petitioner during the pre-election hearing. However, as noted in the Decision and Direction of Election, although the employee schedules referenced in the Decision and Direction of Election were introduced into the record at the pre-election hearing by the Petitioner and the Employer was provided with copies of them, the Employer did not and has not disputed the accuracy of the schedules other than to note in its pre-election post-hearing brief that they do not take into account employees on leaves of absence. Notably, the Hearing Officer specifically invited the Employer to provide information to counter the schedules introduced into the record by the Petitioner, but the Employer did not do so. Instead, the Employer argues that employees were not scattered because it offered to schedule everyone to work on Friday, December 15, 2017, a weekday which no unit employee has as a "blackout" day (i.e. a day when she/he is not available to work for the Employer). The Decision and Direction of Election addressed this argument by the Employer and explains why a manual election on that date was not directed. Further, the fact that employees did not have Fridays as a "blackout" day does not mean that employees would not have otherwise been inconvenienced by being scheduled to work on a day that they would not have otherwise been scheduled to work but for the election. Nothing in the offer of proof submitted in support of the Employer's Objections challenges any of these findings. *See London's Farm Dairy, Inc.*, 323 NLRB 1057 (1997) (finding that a mail ballot election is appropriate where the "mail ballots would avoid inconveniencing the need to impose work schedule changes on a significant number of employees, who may have family responsibilities or other plans for what would normally be their off-work time and might resent the change as something effectively forced on them by those who initiated and supported the organizing campaign"). I further note that contrary to the Employer's assertions, an affidavit the Employer attached to its post-hearing brief was fully considered and was addressed in detail in the Decision and Direction of Election, which noted that the proposed work schedule for December 15, 2017 attached to the affidavit was insufficient to justify directing a manual election. Further, a manual versus a mail ballot election is purely an administrative determination and the Hearing Officer properly explored the parties' positions regarding election arrangements, which can be done without sworn witness testimony. See, Section 11301.4 of the current National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings (Casehandling Manual) (the determination of whether to conduct a mail ballot or a manual election is not a litigable issue); *2 Sisters Food Group, Inc.*, 357 NLRB 1816 (2011); *Halliburton Services*, 265 NLRB 1154 (1982); and *Manchester Knitted Fashions, Inc.*, 108 NLRB 1366, 1366 (1954) (holding that "[t]hose factors which

To the extent that the Employer's Objections argue that the mail ballot election disenfranchised nearly 30% of the eligible voters, including seven voters whose ballots were voided and one who allegedly did not receive a ballot, the Employer's arguments in this regard are without merit. First, with respect to the Employer's assertion that the mail ballot election disenfranchised nearly 30% of the eligible voters based on the fact that only 54 ballots of 76 eligible voters were counted, this assertion is wholly incorrect. Based on the Employer's offer of proof, only one of the 76 eligible voters did not receive a ballot, making her the only potentially disenfranchised employee, whose vote – given the 29-25 margin in favor of the Petitioner – would not have been determinative. Thus, even assuming that the mail ballot election disenfranchised one eligible voter, it would not merit setting aside the election because the vote would not have been determinative. In fact, even if it had been determinative, this would not render the election invalid. *See J. Ray McDermott & Co., Inc. v. NLRB*, 571 F.2d 850, 855 (5th Cir. 1978) (the Board need not find an election by mail invalid "whenever a potentially decisive number of votes, no matter how small, is lost through the vagaries of mail delivery."); *Versail Manufacturing, Inc.*, 212 NLRB 592, 593 (1974) (Board noting that setting aside election unwarranted where "the crucial employee was prevented from voting by reason of sickness or some other unplanned occurrence beyond the control of the parties, the Board, or the employee.").

Of the remaining 21 eligible voters who did not vote or have their votes counted, 14 of those eligible voters chose not to vote in the election and it is undisputed that they did not submit a ballot to be counted. Nothing in the Employer's offer of proof establishes or even addresses how these 14 eligible voters were specifically disenfranchised by the mail ballot election process or that they would have voted had I directed a manual election.

The ballots of the remaining seven eligible voters were properly voided. The Employer acknowledges that the seven ballots were voided because of the absence of signatures on the outside envelope (one of which was whited out[4]). Casehandling Manual Section 11336.5(c) clearly provides that ballots returned in envelopes without signatures should be voided. *See Thompson Roofing, Inc.*, 291 NLRB 743 (1988). As previously explained in a February 2, 2018 letter to the parties in response to the Employer's request to count the voided ballots, the voiding of the seven ballots received in unsigned envelopes was properly done in accordance with the Board's longstanding procedures. Notably, the voters in this case were provided clear voting instructions, in at least three different ways, that they were required to sign the back of the yellow envelopes in which they were sending their ballots back to the Region for the count. First, the Notice of Election (which was printed in both English and Spanish) clearly informed voters that "Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void." The Employer was

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determine where an election may best be held are peculiarly within the Regional Director's knowledge. His close view of the election scene, including the many imponderables which are seldom reflected in a record, is essential to a fair determination of this issue.").

[4] I note that the Region received this ballot with the required signature whited out. Thus, for the reasons detailed herein, the ballot was properly voided.

required to post this Notice of Election and copies of this Notice with these clear instructions were also mailed to voters along with the voter kits. Second, the Region provided the voters with Form NLRB-4175, Instructions to Eligible Employees Voting By United States Mail (Instructions), in English and Spanish, as part of the voter kits. The voters were informed in the Instructions to "SIGN THE BACK OF THE YELLOW RETURN ENVELOPE IN THE SPACE PROVIDED." Third, the following instructions were clearly printed on the back of the yellow envelopes in which the ballots were returned by the voters: "Seal Envelope. Sign your Name Across the Flap. DO NOT PRINT." Further, pursuant to Section 11336.4(b) of the Casehandling Manual, the election administrative professional did, where sufficient time remained before the voting deadline, send a duplicate kit with a letter to employees who returned ballots in envelopes that had not been signed explaining that failure to sign voids a return ballot. The letter also included a phone number to call if the voter had any questions.

After careful consideration of the Employer's arguments, I adhere to my determination in the Decision and Direction of Election that a mail ballot election was appropriate in this situation for the reasons described in that Decision and Direction of Election and I overrule the Employer's Objections in this regard.

To the extent the Employer's Objections relate to how the mail ballot election was conducted, including the voiding of seven unsigned ballots and one employee potentially not receiving a ballot, I overrule the Employer's Objections in this regard in their entirety.

b. Home Visits Regarding Ballots Objection

In the Employer's Objections, the Employer also asserts that the Petitioner and/or third parties visited employees' homes to coerce them to vote in the election, to vote for the Petitioner, and/or to fill out their mail ballot in the presence of Petitioner's representatives and/or third parties. In support of this portion of the Employer's Objections, the Employer proffers that it will call at least nine eligible voters to testify that representatives of the Petitioner and/or third parties, including other employees of the Employer, visited their homes (in some cases repeatedly and in some cases refusing to leave) and either attempted to persuade them to vote for the Petitioner, interrogated them about the election ballot, and/or attempted to coerce the employee(s) to fill out their ballot in front of the Petitioner and/or to accept help from the Petitioner in completing the ballot.

It is well settled that the Board will not lightly set aside a representation election and that the burden of proof on a party seeking to have a Board-supervised, secret-ballot election set aside is a heavy one. *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000); *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 806 (6th Cir. 1989).

In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool Pearson Education, Inc.*, 316 NLRB 716 (1995). Thus, under the Board's test, the issue is not whether a party's conduct in fact coerced employees but whether the party's misconduct reasonably tended to interfere with the employees' free and uncoerced choice

in the election. *Baja's Place*, 268 NLRB 868 (1984); *see also Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), *citing Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the non-objecting party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), *citing Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Under the standard for third-party objectionable conduct, the Board will set an election aside if the objecting party establishes that the alleged conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). In applying this standard, the Board evaluates not only the nature of the alleged misconduct and the number of employees involved but also, among other things, whether the misconduct was disseminated to unit employees and the proximity of the misconduct to the election. *Id.* (in assessing threats made by employees, who were not union agents, the Board noted that it "evaluates not only the nature of the threat itself, but also ... whether reports of the threat were disseminated widely within the unit ... and whether the threat was 'rejuvenated' at or near the time of the election.").

Here, the Employer's Home Visits Regarding Ballots Objection raises substantial and material issues of fact relating to conduct by the Petitioner and/or third parties that can best be resolved on the basis of record testimony taken at hearing.

I, therefore, will set the Home Visits Regarding Ballots Objection for a hearing.

II. CONCLUSION AND ORDER

Based on the foregoing, to the extent the Employer's Objections relate to the appropriateness of the mail ballot election, including the voiding of seven unsigned ballots and one employee potentially not receiving a ballot, I overrule the Employer's Objections in this regard in their entirety. However, to the extent the Employer's Objections allege that the Petitioner and/or third parties visited employees' homes to coerce them to vote in the election, to vote for the Petitioner, and/or to fill out their mail ballot in the presence of Petitioner's representatives and/or third parties (the Home Visits Regarding Ballots Objection, as identified above), I have concluded that the evidence described in the offer of proof submitted by the

Employer accompanying its Objections could be grounds for overturning the election if introduced at hearing.

Therefore, in accordance with Section 102.69(c)(1)(ii) of the Board's Rules and Regulations, IT IS ORDERED THAT a hearing be held before a Hearing Officer designated by me, for the purpose of receiving evidence to resolve the issues raised by the Home Visits Regarding Ballots Objection. At the hearing, the parties will have the right to appear in person to give testimony, and to examine and cross-examine witnesses. Upon the conclusion of the hearing, the Hearing Officer shall submit to me and serve on the parties a report containing resolution of the credibility of witnesses, findings of fact, and recommendation as to the disposition of the Home Visits Regarding Ballots Objection.

NOTICE OF HEARING

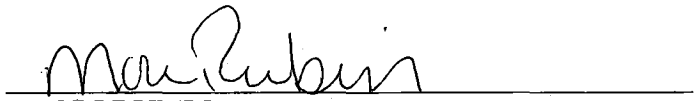
Starting at **9:00 a.m. on Monday, April 23, 2018**, in a hearing room located at National Labor Relations Board, Region 31, the hearing on the Home Visits Regarding Ballots Objection, as described above, will be conducted before a Hearing Officer of the National Labor Relations Board. The hearing will continue on consecutive days thereafter until completed unless I determine that extraordinary circumstances warrant otherwise.

RIGHT TO REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this Decision as it pertains to the objections that are overruled. The request for review must conform to the requirements of Section 102.67(e) and (i)(1) of the Board's Rules and may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: April 11, 2018



MORI RUBIN
Regional Director
National Labor Relations Board, Region 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

EXHIBIT 6

EXHIBIT 6

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

Grill Concepts Services, Inc. d/b/a The Daily Grill, Case No. 31-RC-209589

Employer,

and

Unite Here Local 11,

Petitioner.

_____

_____

Place: Los Angeles, California

Dates: April 23, 2018

Pages: 1 through 252

Volume: 1

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(602) 263-0885

UNITED STATES OF AMERICA

BEFORE THENATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:	
GRILL CONCEPTS SERVICES, INC. D/B/A THE DAILY GRILL, Employer, and UNITE HERE LOCAL 11, Petitioner.	Case No. 31-RC-209589

The above-entitled matter came on for hearing, pursuant to notice, before **LYNN TA**, Hearing Officer, at the National Labor Relations Board, Region 31, 11500 West Olympic Boulevard, 6th Floor, Los Angeles, California 90017, on **Monday, April 23, 2018, 9:24 a.m.**

1 **APPEARANCES**

2 **On behalf of the Employer:**

3 **ADAM L. PARRY, ESQ.**
STOKES WAGNER
4 600 West Broadway, Suite 910
San Diego, CA 92101
5 Tel. (619)232-4261

6 **On behalf of the Petitioner:**

7 **JEREMY BLASI, ESQ.**
UNITE HERE LOCAL 11
8 464 South Lucas Avenue, Suite 201
Los Angeles, CA 90017
9 Tel. (213)481-8530

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1 **INDEX**

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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Benjamin Acosta Amezaga	21	48	79		
Lucas Chim	86	100	118		
Kimberly Mendez	121	132	151		
Ashlynn Camberos	155	183	210		
Kurt Mann	218	233	241/244 250	242/244	

1 **EXHIBITS**

2

3 EXHIBIT	IDENTIFIED	IN EVIDENCE
4 **Board**		
5 B-1(a) through B-1(e)	7	86
6 **Employer:**		
7 E-1	40	48
8 E-2	42	48
9 E-3	82	84
10 E-4	95	96
11 E-5	99	99
12 E-6	99	99
13 E-7	151	153
14 E-8	171	175
15 E-9	177	178
16 E-10	179	181
17 E-11	226	227
18 E-12	230	230
19 E-13	231	232

20

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1 **PROCEEDINGS**

2 HEARING OFFICER TA: Okay. So this hearing will be in
3 order. This is a hearing before the National Labor Relations
4 Board in the Matter of 31-RC-209589. This is Grill Concepts
5 Services, Inc. d/b/a The Daily Grill, and Unite Here Local 11.
6 This is pursuant to the order of the Regional Director dated
7 April 11th, 2018. The Hearing Officer conducting the hearing
8 is Lynn Ta.

9 The official reporter makes the only official transcript
10 of these proceedings. And all citations and briefs and
11 arguments must refer to the official record. In the event that
12 any of the parties wish to make off the record remarks,
13 requests to make such remarks should be directed to the Hearing
14 Officer and not the official reporter. Statements of reason in
15 support of motions and objections should be specific and
16 concise. Exceptions automatically follow all adverse rulings.
17 Objections and exceptions may on appropriate request, be
18 permitted to an entire line of questioning.

19 It appears from the Regional Director's order dated April
20 11th, 2018, that this is held for the purpose of taking
21 evidence concerning the Union and/or third parties visiting the
22 homes of employees to coerce them to vote in the election, to
23 the vote for the Union, and/or to fill out their mail ballot in
24 the presence of union representatives and/or third parties.
25 This is referred to by the Regional Director as the home visits

1 regarding ballots objection. There are no other issues.
2 The parties have been advised that the hearing will
3 continue from day to day as necessary until completed, unless
4 the Regional Director concludes that extraordinary
5 circumstances warrant otherwise.
6 The parties have been advised that upon request they are
7 entitled to a reasonable period at the close of the hearing for
8 closing arguments. Briefs are allowed only by special
9 permission within the time and addressing the subjects
10 permitted by me, as Hearing Officer.
11 Please be aware that the party seeking to challenge the
12 results of the election bears the burden of proof. You must
13 present specific detailed evidence in support of your position.
14 General conclusionary statements by witnesses will not be
15 sufficient.
16 In due course, I will prepare and file with the Regional
17 Director my report and recommendations in this proceeding, and
18 will cause a copy thereof to be served on each of the parties.
19 The procedure to be followed from that point forward is set
20 forth in §102.69 of the Rules and Regulations.
21 Will counsel and any other representatives for the parties
22 please state their appearances for the record? Employer?
23 MR. PARRY: Adam Parry for the Employer, Grill Concepts
24 Services, Inc.
25 MR. BLASI: Jeremy Blasi for the Union, Unite Here Local

1 11.

2 HEARING OFFICER TA: Okay. Great.

3 Are there any other appearances?

4 MR. PARRY: No.

5 HEARING OFFICER TA: Okay. Let the record reflect no

6 further responses. I now propose to receive the formal papers.

7 They have been marked for identification as Board Exhibits 1(a)

8 through 1(e) inclusive, Exhibit 1(e) being an index and

9 description of the entire exhibit.

10 As a point of clarification on the formal papers, I wanted

11 to note that for Exhibit 1(a), the objections to election with

12 offers of proof were submitted. But it did not actually

13 contain the offers of proof, and the offers of proof were

14 submitted separately, and it was labeled objections to

15 election. We didn't include the offers of proof in the formal

16 papers. But if there's any question as to why those documents

17 appear duplicative, it's because of a mislabeling of the

18 objections to elections. Is that clear?

19 MR. PARRY: No. What's the mislabeling?

20 HEARING OFFICER TA: So it was -- the objections to

21 election with offers of proof were submitted, but it was

22 submitted without the actual offers of proof. And then the

23 offers of proof came in separately and it was labeled

24 objections to election. So we basically submitted both

25 documents, but without the offers of proof, which is why it

1 appears duplicative.

2 MR. PARRY: And the reason that we did not -- we submitted

3 objections to election with offer of proof only to the Board

4 only -- or to the Region. We did not serve the offers of proof

5 pursuant to Board rule that requires that they remain

6 confidential, the identities of the witnesses.

7 HEARING OFFICER TA: Okay.

8 MR. PARRY: And that's why they were submitted -- the

9 entire packet was submitted to the Region. Only part of it

10 was served on the Union.

11 HEARING OFFICER TA: Right.

12 MR. PARRY: And that was to maintain the

13 confidentiality --

14 HEARING OFFICER TA: Sure.

15 MR. PARRY: -- pursuant to Board rule.

16 HEARING OFFICER TA: Right. Yeah. But I just wanted --

17 just for clarity's sake, in terms of why it might appear that

18 they're duplicates. That's why. And thank you for providing

19 that further clarification.

20 Another point of clarification for the Board exhibits is

21 the affidavits of service. So the partial decision on

22 objections and notice of hearing were first served on April

23 11th, 2018. And then the Region became aware that it was

24 served without the objections. So it was served again on April

25 12th, 2018. But this is just again to clarify why there are

1 two certificates of service. It's because the first time it
2 was served, it was served without the objections.
3 MR. PARRY: And then on the index, which was Exhibit 1(e),
4 where it says Exhibit 1(d), affidavit of service, 1(a) and 1(b)
5 dated April 12th, 2015, the '15 is --
6 HEARING OFFICER TA: Oh.
7 MR. PARRY: -- I believe is going to be incorrect.
8 HEARING OFFICER TA: You're right. Okay.
9 MR. PARRY: And actually --
10 HEARING OFFICER TA: We should make that correction.
11 MR. PARRY: -- if we look at 1(d), 1(d) says April 11th,
12 2018, as does 1(c). So they both say April 11th, 2018 on
13 them.
14 HEARING OFFICER TA: Okay. Thank you for catching that
15 error, counsel. I will -- I think at the break we'll make
16 those corrections then. Thanks for catching that. Okay.
17 MR. PARRY: And I don't know that there's -- in each --
18 okay. I see in the -- on 1(d), in the sworn statements, it
19 says it was made on April 12th. But then it's dated and signed
20 April 11th.
21 HEARING OFFICER TA: Can you say that again?
22 MR. PARRY: On the affidavit of service, Exhibit 1(d), in
23 the first paragraph, I, the undersigned employed at National
24 Labors Relations Board.
25 HEARING OFFICER TA: Yeah. Right.

1 MR. PARRY: And then it says, say that on April 12th, I
2 served the above entitled documents. But the signature line --
3 HEARING OFFICER TA: Right.
4 MR. PARRY: -- the date is April 11th.
5 HEARING OFFICER TA: Okay. We will -- yeah, we'll make
6 those corrections and get those documents in order then. Thank
7 you for pointing that out.
8 MR. PARRY: I mean, I don't know that it's appropriate to
9 alter a declaration of service. I was just pointing out the
10 error.
11 HEARING OFFICER TA: Well, yeah. I don't know if this --
12 MR. PARRY: If it's --
13 HEARING OFFICER TA: -- if it was like an erroneous
14 certificate that was printed. I will check though to see what
15 the situation is with regard to those certificates. So --
16 MR. PARRY: And I suppose if it's corrected, the signature
17 should be dated today --
18 HEARING OFFICER TA: Right.
19 MR. PARRY: -- on the --
20 HEARING OFFICER TA: Right. Yeah. Okay. So because
21 there are issues with the dates on the certificates of service,
22 we'll defer receiving those into evidence until later.
23 MR. PARRY: So on that ground, I would just state an
24 objection -- or reserve an objection on the inaccuracy of these
25 certificates of services --

1 HEARING OFFICER TA: Okay.

2 MR. PARRY: -- for the time being.

3 HEARING OFFICER TA: Okay. Noted. Okay. Okay. Let's

4 move along.

5 So the hearing -- the reasons for the hearing are set

6 forth in the notice. And those are, as stated previously, the

7 home visits regarding ballots objections. Would the parties

8 briefly state their position at this point on the objections

9 filed by the Employer? You want to begin, the Employer?

10 MR. PARRY: Yes. Adam Parry for Grill Concepts Services,

11 Inc. The position of the Employer is that the home visits by

12 the Union or its representatives or agents that it sent to

13 employees' homes constituted unfair labor practice. They

14 interfered with the employees' free choice in the election.

15 And they require that a new election be directed.

16 And as for the scope of the testimony today, there is

17 going to be evidence relating precisely to the home visits.

18 But it is the Employer's position that anything reasonably

19 arising from the home visits or from any employee's knowledge,

20 or just the fact that they heard about home visits happening,

21 is subject to being taken into evidence in this hearing as

22 being related to those home visits and their potential

23 influence it may have had on the election.

24 HEARING OFFICER TA: Okay. Anything further?

25 MR. PARRY: We were advised that we'd have an opportunity

1 for closing statements. I would put briefly in the record that
2 the NLRB law, Board law, as well as federal case law provides
3 that where there's an unfair labor practice that occurs during
4 the critical period of the election which constitutes an unfair
5 labor practice, that a fortiori, which is conduct that
6 interferes with the free and untrammeled choice in an election,
7 and that is established through numerous Board cases.
8 So the standard of review here is seeing whether that
9 conduct actually occurred. And that's where the inquiry -- it
10 doesn't need to go any farther than that. If this conduct
11 occurred, that constitutes unfair influence by the Union on the
12 election. Regardless of what extent, that requires directing a
13 new election in this case.
14 HEARING OFFICER TA: Okay. And counsel, just in the event
15 of closing statements, if you could provide relevant authority,
16 that would be helpful.
17 MR. PARRY: I certainly will.
18 HEARING OFFICER TA: Thank you.
19 And can the Union state its position on the record?
20 MR. BLASI: Sure. And before I do that, if I could just
21 clarify, will the Union have an opportunity to make an opening
22 statement once the Employer's put on its case, so we have the
23 benefit of knowing what the Employer's case is all about? Or
24 is this our opening statement for that purpose?
25 HEARING OFFICER TA: Well, I think we'll wait to see how

1 the testimony goes and what evidence is received. And then
2 from there, we can, I think, make a decision about how we're
3 going to do -- whether the Union will be able to make an
4 opening statement. But I think right now it would be premature
5 to require you to do that right now. Okay. Do you want to --
6 MR. BLASI: Sure.
7 HEARING OFFICER TA: -- state your position --
8 MR. BLASI: So --
9 HEARING OFFICER TA: -- to the extent that you --
10 MR. BLASI: Sure. Absolutely. Thank you.
11 The Union's position is that no objectionable conduct has
12 occurred in the course of the Region carrying out this
13 election. Broadly speaking, the Union carefully followed a set
14 of rules to ensure the secrecy of the election was carefully
15 maintained. We're aware of no instance in which the integrity
16 of the secret ballot was compromised or the Board's rules were
17 otherwise violated in any way. We're aware of no instance in
18 which the Union or third parties coerced employees through
19 threats of reprisal or other means.
20 We do not know, as I sit here, what the allegations the
21 Employer intends to make at this hearing are in support of the
22 vague and general language of its objections. We are aware the
23 Employer failed to put on any witnesses in support of the
24 parallel unfair labor practice charges that it filed concerning
25 apparently the same conduct, and then unsuccessfully appealed

1 the decision of the Region to dismiss those charges for lack of
2 prosecution or presenting evidence. So as of yet, we have no
3 information about what those charges concerned. At no time
4 have we heard of any specific alleged misconduct, and again, do
5 not believe that any occurred.
6 HEARING OFFICER TA: Thank you.
7 MR. PARRY: And just for the record, the disposition of
8 the unfair labor practices action should have no bearing
9 whatsoever on this hearing and the weight of the evidence.
10 HEARING OFFICER TA: All right. So noted.
11 Okay. Anything else?
12 MR. PARRY: Yes. Before we call any witnesses, counsel
13 for Local 11 has said that he may intend to put on rebuttal
14 witnesses. I know there are a few people in the audience here
15 who I don't know who they are. But they are likely potential
16 witnesses. And especially given the nature of the testimony
17 and the allegation of coercion or intimidation, I think it's
18 appropriate, and we'd request that these people be excluded
19 from the hearing.
20 HEARING OFFICER TA: Okay. So is this your -- is it a
21 motion for sequestration then?
22 MR. PARRY: Yes.
23 HEARING OFFICER TA: Okay. Counsel, what's your position
24 on that?
25 MR. BLASI: Well, again, the Union doesn't know who its

1 witnesses will be. I think individuals concerned about this
2 case have a right to be here and observe testimony. So we
3 would oppose that motion. If the Region does determine that
4 it's appropriate to exclude witnesses, of course we would need
5 to have a party representative. And we'd have to confer about
6 who that should be.
7 HEARING OFFICER TA: Okay.
8 MR. PARRY: Well, I understand the individual sitting at
9 the table is a representative of Local 11.
10 HEARING OFFICER TA: Okay.
11 MR. PARRY: I don't think it's appropriate for him to be
12 there when he may be subject to some of these allegations. But
13 for the people that are sitting in the audience, I don't
14 understand who -- if the Union intends to call witnesses, who
15 else they would call? They have people here. And as I said,
16 given the nature of the allegations and the fact that we're
17 talking about coercion or intimidation of employees who
18 they're -- these are the people that are going to be
19 testifying, to the extent it may affect their testimony, it is
20 entirely appropriate given that circumstance, and in the event
21 that the people sitting here may testify, that they be
22 excluded.
23 HEARING OFFICER TA: Okay. Counsel, are the individuals
24 possible witnesses?
25 MR. BLASI: They are possible witnesses. Of course there

1 are many other possible witnesses, including employees of the
2 Employer, other Union staff persons, former employees, and the
3 like. So it's possible these individuals would be called to
4 testify. But it's also possible they wouldn't, and other
5 people would be called. It all depends on what the Employer's
6 case is about, which again, we really don't know at this point.
7 HEARING OFFICER TA: Okay.
8 MR. PARRY: And in the interest of maintaining the
9 integrity of this hearing and the testimony, the Employer has
10 not brought in its witnesses to sit in and listen, because I
11 think that would be inappropriate because we want each witness
12 testifying to what they know, and not what somebody else knows.
13 And if there's witnesses called for the Union, they should be
14 testifying as to their independent knowledge and not reflecting
15 on the testimony that they've already heard. And so to that
16 extent, if it -- I'll just leave it at that for now.
17 HEARING OFFICER TA: I'm going to grant the motion for
18 sequestration. So this means that all persons who are going to
19 testify in this proceeding, with specific exceptions, may only
20 be present in the hearing room when they are giving testimony.
21 Each party may select one person to remain in the room and
22 assist it in the presentation of its case. They may remain in
23 the hearing room even if they are going to testify or have
24 testified.
25 The order also means that from this point on until the

1 hearing is finally closed, no witness may discuss with other
2 potential witnesses either the testimony that they have given
3 or that they intend to give. The best way to avoid any
4 problems is simply not to discuss the case with any other
5 potential witnesses until after the hearing is completed.
6 Under the rule as applied by the Board with one exception,
7 counsel for a party may not in any manner, including by showing
8 of transcripts of testimony, inform a witness about the content
9 of the testimony given by a preceding witness without expressed
10 permission of the Hearing Officer. However, counsel for a
11 party may inform counsel's own witness of the content of
12 testimony and may show to a witness transcripts of testimony
13 given by a witness for the opposing side in order to prepare
14 for rebuttal of such testimony.
15 I expect counsel to police the sequestration order and to
16 bring any violation of it to my attention immediately. Also,
17 it is the obligation of counsel to inform potential witnesses
18 of their obligations under the order. It is also recommended
19 that as witnesses leave the witness stand upon completion of
20 their testimony, they be reminded that they are not to discuss
21 their testimony with any other witnesses until the hearing is
22 complete.
23 Are there any other motions?
24 MR. PARRY: Not at this time.
25 HEARING OFFICER TA: Okay.

1 MR. PARRY: Not from the Employer.

2 HEARING OFFICER TA: So at this time do we want to

3 exclude --

4 MR. BLASI: Madam Hearing Officer, the Union requests just

5 a two or three-minute recess, so the Union can determine who

6 should stay as the party representative and who should leave.

7 HEARING OFFICER TA: Okay. Sure. Let's go off the

8 record.

9 (Off the record at 9:42 a.m.)

10 HEARING OFFICER TA: Okay. Back on the record. At this

11 time, we can move forward with the presentation of evidence.

12 Will the Employer please call its first witness to the

13 stand?

14 MR. BLASI: Madam Hearing Officer, before we do, can I

15 just make one comment for the record?

16 HEARING OFFICER TA: Sure.

17 MR. BLASI: Or maybe it's more of a question. The Union

18 just wants to make clear it does not waive any objection as to

19 the scope of testimony that the --

20 HEARING OFFICER TA: Okay.

21 MR. BLASI: -- Employer might offer. Specifically, in

22 regards to matters that are not included in the objections that

23 were filed in this case. As you know, the Board's rules are

24 very strict in terms of when objections must be filed, and it

25 makes clear that no party has a right to amend objections or

1 file objections beyond the seven day period. And to the extent
2 that the Employer attempts to elicit testimony in support of
3 allegations that do not support the charges -- or the
4 objections but would support other conceivable objections the
5 Employer chose not to file; the Union would object to that
6 testimony. And we want to make sure that our position on that
7 is preserved. And obviously, if that happens during the
8 witness' testimony, I'll make that objection then. But just so
9 the Hearing Officer and the parties anticipate the Union's
10 position on that, I wanted to put that into the record.
11 HEARING OFFICER TA: Okay. Great. Thank you. So noted.
12 Do you want to call your first witness?
13 MR. PARRY: Yes. We'd like to call Benjamin Acosta.
14 Before we begin, where's the best place -- maybe the reporter
15 can help us, with where the interpreter should sit --
16 HEARING OFFICER TA: Oh, yeah. Sorry, I have not
17 accounted for that.
18 MR. PARRY: -- so she can be heard?
19 HEARING OFFICER TA: Let's see.
20 MR. PARRY: We can bring maybe a chair in front of the
21 stand.
22 HEARING OFFICER TA: I'm going to go off the record.
23 (Off the record at 9:57 a.m.)
24 HEARING OFFICER TA: All right. Are we back on? Okay.
25 Okay. Can you please state your name and spell it for the

1 record?

2 MR. ACOSTA: Benjamin Acosta Amezaga.

3 HEARING OFFICER TA: And can you spell it?

4 MR. ACOSTA: B-E-N-J-A-M-I-N, Acosta, A-C-O-S-T-A, Amezaga

5 is, A-M-E-Z-A-G-A.

6 MR. PARRY: Thank you, Mr. Acosta.

7 HEARING OFFICER TA: Okay. Hang on. Let me swear him in.

8 I actually need to swear in the interpreter too. So -- okay.

9 So Mr. Amezaga, can you raise your right hand, please?

10 Whereupon,

11 **BENJAMIN ACOSTA AMEZAGA**

12 having been duly sworn, was called as a witness herein and was

13 examined and testified, by and through an interpreter as

14 follows:

15 HEARING OFFICER TA: Okay. And for the interpreter,

16 please raise your right hand. And just to clarify, you're

17 translating into Spanish?

18 THE INTERPRETER: Yes.

19 HEARING OFFICER TA: Okay.

20 **INTERPRETER SWORN**

21 HEARING OFFICER TA: Thank you.

22 THE INTERPRETER: My name is Teri Szucs. I'm a court

23 certified interpreter. My certification number is 05450985. I

24 have been placed under oath by the Hearing Officer.

25 HEARING OFFICER TA: Can you state your name again?

1 THE INTERPRETER: Teri, T-E-R-I, Szucs, S-Z-U-C-S.
2 HEARING OFFICER TA: Okay. Great.
3 Okay. Go ahead, counsel.
4 **DIRECT EXAMINATION**
5 Q BY MR. PARRY: Mr. Acosta, thank you very much for being
6 here. Can you start by just telling us what you do for a
7 living?
8 A I'm a cook at The Daily Grill?
9 Q And how long have you worked at The Daily Grill?
10 A Three years and two months or three months.
11 Q And so you were an employee of The Daily Grill since at
12 least November 2017, correct?
13 A Yes.
14 Q Okay. And are you aware of this Union election proceeding
15 that's been going on since approximately November of 2017?
16 A Yes.
17 Q And during this process, have you ever been visited at
18 your home by people who you understood to be working for the
19 Union in some way?
20 A Yes.
21 Q And how many times has that happened?
22 A Three times.
23 Q Okay. Let's start with the first time. Do you recall
24 about when the first visit was?
25 A Not the exact date. But what happened was, the first

1 visit, I agreed to talk to them.
2 Q Okay. And I know you don't recall the exact date. But do
3 you remember the month?
4 A I don't remember. It was -- I don't even remember
5 exactly.
6 HEARING OFFICER TA: If we can turn off all phones that
7 would be great.
8 THE WITNESS: I don't know the exact month or date.
9 Q BY MR. PARRY: It was in 2017?
10 A Yes. Yes. Like in the month of December.
11 Q Okay. And do you remember about what time of day it was?
12 A Well, I finish work at 3. Get home, 3:30, 4. It was
13 approximately or exactly 4:00.
14 Q Now, you said you accepted speaking with them. How many
15 people were there?
16 A The first time, two.
17 Q Did you know who the --
18 A And I agreed to speak with them.
19 Q And did you know who those people were?
20 A I don't know them.
21 Q Did they identify -- oh, I'm sorry go --
22 THE INTERPRETER: No, you're jumping a little bit on my
23 ear.
24 MR. PARRY: I'll slow down.
25 THE INTERPRETER: And he's not going to like it.

1 THE WITNESS: The first time I did not know them.
2 Q BY MR. PARRY: Did they identify themselves and tell you
3 who they were?
4 A Yes. They told me they were working for the Union. They
5 were clear that they were coming to talk to me about the Union.
6 I mean, when I agreed to talk to them, I wanted them to talk to
7 me about it because I had never worked for a union.
8 Q Okay. Was one of the people that visited you right there,
9 was it a gentleman sitting here at the table next to me?
10 A No.
11 Q Was it -- these two people, was it two men, a man and a
12 woman, or two women?
13 A The first time, there were two women.
14 Q Okay. And you said you accepted speaking to them. What
15 did they say to you?
16 A They started talking to me about benefits and what they
17 promised. They explained everything. And they taught me how
18 the Union worked. I honestly said no, that I did not believe
19 in their promises.
20 Q If you can recall, what promises did they make exactly?
21 A There was going to be more money. Though what I did not
22 believe that insurance was going to be free. That all medical
23 coverage would be free. And that's when I said I did not agree
24 because I didn't believe them.
25 Q And so this first visit they promised that you would get

1 free medical benefits, correct?
2 A Yes.
3 Q Is there anything else that they promised?
4 MR. BLASI: Objection. Leading question.
5 HEARING OFFICER TA: You can just rephrase, counsel.
6 MR. PARRY: Okay.
7 Q BY MR. PARRY: Was there anything else that they promised?
8 A Well, they were explaining everything they offer. Like
9 better conditions -- better working conditions at the
10 restaurant and more help.
11 Q Did they ask you how you were intending to -- how you
12 intended to vote?
13 A That was the second time.
14 Q Okay. We'll get to that. And how long did this first
15 visit last, if you can recall?
16 A You mean how long it lasted, like how much time the first
17 visit?
18 Q The first visit, how long were they at your home?
19 A They were there for quite some time. They were talking
20 there for about 30 to 35 minutes.
21 Q Were they being pushy or forceful with you?
22 A Not the first time.
23 Q Okay. Let's talk about the second time. Do you recall
24 about when the second time you were visited was?
25 A No, not the date. I don't know the exact time. But the

1 second time, there were two women and a man.
2 Q Was this in December of 2017 some time?
3 A Yes, yes, yes. It was about a week after the first visit.
4 Q Okay. And this was before the vote period closed?
5 A A week or a few days before voting.
6 Q Okay. And you said it was two women and one man; is that
7 correct?
8 A That second visit, yes.
9 Q Did you recognize any of those three people?
10 A I didn't know any one of the three.
11 Q Were the two women the same two women that visited you the
12 first time?
13 A Yes. They were the same two from the first time.
14 Q And did they identify themselves again?
15 A Well, yes. But I mean, I had already seen them the first
16 time. The one who identified himself was the male. But the
17 second time, yes, they started pressuring me.
18 Q And this is the man that was present on the second visit?
19 A He pulled out paperwork, folders. And he told me that
20 other Daily Grills in other states had insurance, had a union.
21 And he was very persistent about taking me to a local
22 restaurant that had a union. And I said I was not interested.
23 Q The man that was there, is he sitting in this room?
24 A No, he's not.
25 Q Did any of the three union representatives on the second

1 visit make promises to you?
2 A No. They just wanted to show me paperwork showing that
3 other restaurants had unions.
4 Q What was the paperwork that he showed you, or they showed
5 you, to the best that you recall?
6 A There was a folder saying that other Daily Grills in other
7 states work with unions. And they were comparing benefits.
8 Q Did he make any promise that he could get you the benefits
9 that other Daily Grills supposedly had?
10 A Well, yes, they were always promising better salaries.
11 MR. BLASI: Madame Hearing Officer, I just want to object
12 on relevance grounds. The question of promises, even if it
13 were objectionable conduct, is not a matter raised in the
14 objections. And it's unclear what the purpose of his testimony
15 is.
16 MR. PARRY: Of course it is. It's --
17 HEARING OFFICER TA: Yeah. I'm going to overrule. I
18 think it goes to the content of what was being said at these
19 home visits. So I'll allow it.
20 MR. PARRY: Thank you.
21 Q BY MR. PARRY: To the best you can describe, what were
22 they doing that you described as -- or that you said was
23 forceful or pushy?
24 MR. BLASI: Objection. Misstates the witness' testimony.
25 MR. PARRY: I can rephrase.

1 HEARING OFFICER TA: Rephrase. Can you rephrase?
2 MR. BLASI: And again, a leading question.
3 HEARING OFFICER TA: Rephrase, counsel.
4 Q BY MR. PARRY: How would you describe the way they were
5 speaking to you on the second visit?
6 A On the second appointment, the two ladies, yes, they were
7 pressuring me. They were talking. And the man that was with
8 them was the one showing me the paperwork. The man that was
9 showing me the papers and explaining things to me, he said that
10 this is wrong, you're being exploited. He was pushing me. He
11 was like pushing me. I said I worked my whole life as a cook
12 for 30 years and I've never worked for a union.
13 HEARING OFFICER TA: Okay. I'm sorry, I'm going to have
14 to -- sorry, I'm going to have to go off the record just a
15 minute. I've got to consult with --
16 (Off the record at 10:13 a.m.)
17 HEARING OFFICER TA: Interpreter, do you want to just
18 state what his statement was? Well, do you want to ask the
19 question again?
20 THE INTERPRETER: I said it and then I forgot.
21 MR. PARRY: I know what the answer was. And I don't want
22 to ask the question --
23 HEARING OFFICER TA: Right.
24 MR. PARRY: I mean, I can ask the question again. But it
25 was --

1 HEARING OFFICER TA: I can't even remember what he just
2 said either.
3 MR. PARRY: -- a long answer.
4 MR. BLASI: You can ask the court reporter.
5 HEARING OFFICER TA: Yeah. Court reporter, can you read
6 back -- well, I guess he -- it never went -- did it go on the
7 record, his last statement?
8 MR. PARRY: That's the problem.
9 THE INTERPRETER: And then he asked me a question.
10 THE COURT REPORTER: And that's when you said go off the
11 record.
12 HEARING OFFICER TA: Yeah.
13 THE INTERPRETER: Sorry.
14 HEARING OFFICER TA: Okay. No. That's -- thank you.
15 THE INTERPRETER: I retain it until I say it.
16 HEARING OFFICER TA: That's fine. Okay. So now we'll go
17 off the record. We'll take a ten-minute recess.
18 (Off the record at 10:15 a.m.)
19 HEARING OFFICER TA: And I apologize, the acting ARD came
20 in during our hearing and noticed that the interpreter who is
21 here was not provided by the Region. And we generally don't
22 allow parties to provide that service. It's something that the
23 Region will provide. And we weren't notified that
24 interpretation services were needed. So right now I wanted to
25 take the parties' position on this issue about the interpreter.

1 Mr. Blasi, do you want to --

2 MR. BLASI: I mean, obviously, I'm just hearing of this

3 now. It does raise concerns because I think we'd need to take

4 some testimony from the interpreter as to communications she

5 may or may not have had with the Employer.

6 HEARING OFFICER TA: Sure.

7 MR. BLASI: And her background and qualifications.

8 HEARING OFFICER TA: Right.

9 MR. BLASI: I don't think it's ideal by any means.

10 HEARING OFFICER TA: Okay.

11 THE INTERPRETER: May I? I'm federally certified.

12 HEARING OFFICER TA: Yeah.

13 THE INTERPRETER: Federally court certified and state

14 certified.

15 HEARING OFFICER TA: Okay.

16 THE INTERPRETER: Which is one step above the

17 administrative hearing certified, but it's inclusive of.

18 HEARING OFFICER TA: Yeah. And I don't think the matter

19 is your qualification. I'm sure you're very qualified. But

20 the issue is, parties paying for the service.

21 MR. BLASI: Exactly.

22 HEARING OFFICER TA: So --

23 MR. BLASI: Particularly in a hearing where it sounds like

24 much of the testimony is going to be --

25 HEARING OFFICER TA: Right. And as I understand it, the

1 office manager is trying to locate a Spanish interpreter for
2 today. So I wanted -- counsel, you said you had two to three
3 other witnesses; is that right?
4 MR. PARRY: Aside from Mr. Acosta, there's two to three
5 that would need interpretation.
6 HEARING OFFICER TA: Okay.
7 MR. PARRY: And because of the operational needs of the
8 restaurant, I was hoping to get them finished first --
9 HEARING OFFICER TA: Right.
10 MR. PARRY: -- so they could get to work.
11 HEARING OFFICER TA: Okay. So --
12 MR. BLASI: And I'll say, at this point, the Union's not
13 prepared to stipulate to having a translator that's paid by the
14 Employer.
15 HEARING OFFICER TA: Right. Okay. Okay. So do you
16 think -- do you have any witnesses that don't require --
17 MR. PARRY: Yes.
18 HEARING OFFICER TA: Okay. Do you think we can put them
19 on until we can kind of sort out what's going on with the
20 interpreter situation?
21 MR. PARRY: We could.
22 HEARING OFFICER TA: Okay.
23 MR. PARRY: I would like to finish Mr. Acosta's testimony.
24 I understand.
25 HEARING OFFICER TA: Yeah.

1 MR. PARRY: And you raised the possibility of questioning
2 the interpreter about her qualifications and her contact with
3 my office. And I think that would be appropriate. And you'll
4 find that there's --
5 HEARING OFFICER TA: Right.
6 MR. PARRY: Or with the Employer. And I can say that it
7 is basically my paralegal, Ms. Cuevas (phonetic), sitting here
8 next to me, that coordinated and spoke to her and got her in.
9 HEARING OFFICER TA: Right, right. And again, even if,
10 you know, all of it was impartial and everything was conducted
11 properly, it just goes back to the issue of who's paying for
12 the services. And we're not allowed to let parties essentially
13 pay for a service that the Region normally provides. So --
14 MR. PARRY: I'm also happy to split the cost with the
15 Union, so that it's equal.
16 MR. BLASI: The Union represents low wage workers and is
17 not in a position to pay for a cost that it would not normally
18 incur.
19 HEARING OFFICER TA: Right.
20 MR. PARRY: I've seen their filings and so --
21 HEARING OFFICER TA: Okay. So why don't we then go off
22 the record? Let me double check with how regional management
23 wants to deal with the interpreter issue. And then I'll come
24 back in and we can talk some more.
25 Off the record.

1 (Off the record at 10:41 a.m.)

2 HEARING OFFICER TA: An interpreter who is currently in

3 the building in another hearing. And she is -- I think we have

4 her for about an hour. So if we can continue with this witness

5 for about an hour. And then hopefully, the other interpreter

6 that the Region is trying to secure will get here maybe --

7 hopefully by like 1:00, if not sooner. Then we can continue

8 with that. Is that --

9 MR. PARRY: If we have an hour, I think we can get the

10 witnesses that we need, I'm hoping, interpreted, done.

11 HEARING OFFICER TA: How long do you think Mr. Acosta's

12 testimony would take?

13 MR. PARRY: For me?

14 HEARING OFFICER TA: Uh-huh.

15 MR. PARRY: I think maybe 20 minutes. I don't know

16 what --

17 HEARING OFFICER TA: Okay.

18 MR. PARRY: -- if there's going to be cross-examination.

19 HEARING OFFICER TA: Okay.

20 MR. BLASI: There will be.

21 HEARING OFFICER TA: Yeah. Okay.

22 MR. PARRY: And how long that's going to go. And --

23 HEARING OFFICER TA: Okay. Okay. Well, we'll go for the

24 hour then. And then, you know, from there --

25 MR. BLASI: I'm sorry, which hour? I'm a little confused

1 on when.

2 HEARING OFFICER TA: Are you Kayla?

3 THE INTERPRETER: Yes.

4 HEARING OFFICER TA: Okay. Go ahead and have a seat.

5 Thank you.

6 So she's here.

7 MR. BLASI: So the Board's translator is free for an hour,

8 and then not free after that, is that --

9 HEARING OFFICER TA: So she's free for an hour. She's

10 here for another hearing.

11 MR. BLASI: Right.

12 HEARING OFFICER TA: She's on her break right now.

13 MR. BLASI: I see.

14 HEARING OFFICER TA: And then -- yeah, she was doing

15 double duty. And then, hopefully by then, after -- when she's

16 needed back at the other hearing, then we will have --

17 MR. BLASI: We will have somebody else.

18 HEARING OFFICER TA: -- the interpreter here.

19 MR. BLASI: You said she's available at 1 or something?

20 Hopefully.

21 HEARING OFFICER TA: We're looking at -- we're trying to

22 get her or him, you know, by 1:00 if not sooner. I mean, we

23 will probably break for lunch at some point, too. So --

24 MR. BLASI: Sure. I mean, that sounds like it'll work

25 out.

1 HEARING OFFICER TA: Okay. Yeah, yeah.

2 So at this point, we'll excuse Teri. Yeah. Thank you so

3 much.

4 Okay. Let's go off the record.

5 (Off the record at 10:59 a.m.)

6 HEARING OFFICER TA: Let's go on the record.

7 **INTERPRETER SWORN**

8 HEARING OFFICER TA: Okay. Thank you.

9 Counsel, do you want to continue with your --

10 MR. PARRY: Yes, I do. Thank you.

11 Can I have the last answer read back, please?

12 THE COURT REPORTER: "THE WITNESS: The second

13 appointment, the two ladies, yes, they were

14 pressuring me. They were talking. And the man that

15 was with them was the one showing me the papers.

16 The man that was showing me papers and explaining

17 things to me, he said, this is wrong, you're being

18 exploited. You're being -- he was pushing me. He

19 was like pushing me. I said, I've worked my whole

20 life as a cook for 30 years and I've never worked

21 for a union."

22 That was it.

23 HEARING OFFICER TA: Okay.

24 MR. PARRY: And we had the translation of the very last

25 statement about a question being asked and that's what I was

1 getting it. Maybe I can just clear it up.
2 HEARING OFFICER TA: Yeah.
3 Q BY MR. PARRY: Mr. Acosta, you understand you're still
4 under oath, correct?
5 A Yes. Of course.
6 Q Now, just to clarify, did you testify that one of the
7 union representatives asked you a question?
8 A Yes.
9 Q And what was the question?
10 A What would you do if the Union would come in here to Daily
11 Grill.
12 Q Did you answer the question?
13 A I would be a part of the Union. I would work if they gave
14 me work. And if the Union doesn't come in, I'm going to
15 continue working the same.
16 Q And after that question and answer, did they continue
17 pressuring you?
18 MR. BLASI: Objection. It's a leading and suggestive
19 question.
20 HEARING OFFICER TA: Counsel, can you rephrase?
21 Q BY MR. PARRY: After the question that you just discussed
22 and the answer, did you have any further conversation?
23 A That day, no, not anymore. I just told them that I was
24 not interested. Not to bother me anymore. Not to visit me at
25 home. That if they wanted to speak with me, I work at Daily

1 Grill inside the Westin Hotel in the morning every (sic). That
2 was it.
3 Q And are we still talking about the second time they
4 visited you?
5 A Yes. That's correct.
6 Q And did the Union leave you alone after that?
7 A Well, they would walk off talking to themselves. But they
8 left.
9 Q Okay. Did they bother you again at home ever?
10 A The third time.
11 Q Okay. Let's talk about that third time. Do you recall
12 about when that was -- month?
13 A Exactly three, four days after when they sent in the
14 voting bulletins. And then I didn't like that anymore, because
15 I worked on Friday and I asked the chef that I had not received
16 the voting ticket in the mail. And he said to me, don't worry
17 about it, you might receive it today or tomorrow. On Saturday,
18 I worked at 4:30 and leave at 1. I get home at 1:25, 1:30.
19 That's when I didn't like it anymore because they were waiting
20 for me in front of the mailbox.
21 Q And when you say they, this is again, representatives that
22 you understood to be from the Union?
23 A Yes. The same two ladies and the same man.
24 Q And what did they do on this instance when they were
25 waiting outside your mailbox?

1 A When I confronted them, I said to them, I didn't like this
2 for them to be following me, for them to be looking for me.
3 When I opened the mailbox, I took out the voting ticket. And a
4 lady told me, open it. And I said, excuse me, that's personal,
5 please, leave me alone. No. But they kept explaining to me,
6 like, oh, Mr. -- we're going to help you fill it out. And I
7 said, I don't need that, this is personal mail. So then
8 that's when I said, a little bit upset, get out of here in
9 English, to leave, I didn't want to speak with them. And
10 that's my story.
11 Q Did they leave immediately after you told them to leave?
12 A When I told them I didn't want anything to do with them,
13 to please leave me alone, they left.
14 Q Now, this third visit, did the people from the Union make
15 any offers or promises to you?
16 A Nothing. They didn't speak to me again. They left.
17 Because I told them I didn't want -- and even less at home.
18 Q Did you feel pressured by them on the third visit?
19 A The third time, yes, because when I saw them, that they
20 were there waiting for me to get out of work, I didn't like
21 that anymore.
22 Q Now, I believe you said they were waiting for you right
23 next to your mailbox or in front of your mailbox; is that
24 accurate?
25 A That's correct.

1 Q Can you tell me about how your -- at home, is it -- you
2 have a mailbox that's outside on the street, or is by your
3 door?
4 A The mailbox is in front of my house. They were parked in
5 front of my house. When I arrived to the driveway, I get off
6 the truck, and they right away walked to where I am at in front
7 of the mailbox.
8 Q As best you can tell, were all the three of them in a
9 single car or truck?
10 A I didn't see that. But both ladies were there, and the
11 man was walking.
12 Q So when you -- to walk to your mailbox, you had no choice
13 but to run into them; is that right?
14 MR. BLASI: Objection. Leading.
15 HEARING OFFICER TA: Okay.
16 MR. PARRY: I'll re-ask it.
17 Q BY MR. PARRY: Was there any way you could get to your
18 mailbox without having to interact with them on this occasion?
19 A No, because they were already in front of me.
20 Q I think you mentioned -- maybe this was on the second
21 visit that the people from the Union that visited you wanted
22 you to go with them to a restaurant; do you recall that?
23 A Well, yeah. I don't remember the name of the restaurant.
24 But they would push me that they would pay for expenses, that
25 they would take me especially, so I could go visit the

1 restaurant that works with the Union, so I could see how it
2 works. More respect. A lot of workers. A lot of help. And I
3 told them I was not interested.
4 Q Did they offer to pay for a meal for you at a restaurant?
5 A No. Just to go visit them.
6 Q What -- and maybe you've already said this. What day and,
7 if you can remember, what time of day was the third visit?
8 A The third visit, I don't remember the exact day, but it
9 was on a Saturday at 1:30 in the afternoon.
10 Q And was this at a time before the voting closed, as far
11 as you knew?
12 A Yes.
13 Q Did you ever give the Union your address?
14 A When I accepted to speak with them, they had my
15 information.
16 Q But you never gave it to them?
17 A No. I spoke with them and they had my address there. I
18 proved that, yes and yes. I gave them my name and my phone
19 number.
20 Q Mr. Acosta, sometime after that visit, you provided a
21 statement, right?
22 A To whom?
23 Q To The Daily Grill?
24 A Oh, yes. Yes. I wrote it.
25 Q And I'm going to show you, if I may, additional documents

1 that I would like to offer into evidence.
2 A Yes, I did this.
3 Q So this is your handwriting on this document?
4 A Yes. And that's my signature.
5 MR. PARRY: May we mark this as an exhibit, so that we
6 can -- it's easy to refer to?
7 HEARING OFFICER TA: Yes. That's fine. Let's --
8 MR. PARRY: This would be Exhibit 2.
9 HEARING OFFICER TA: Well, let's mark it as Employer's
10 Exhibit 1.
11 **(Employer Exhibit Number 1 Marked for Identification)**
12 MR. PARRY: Okay.
13 HEARING OFFICER TA: Okay.
14 MR. BLASI: So there's actually three documents here.
15 MR. PARRY: And I'll cover that.
16 HEARING OFFICER TA: Yeah. Why don't you go ahead? I
17 think we can mark it as Exhibit 1 with three pages; is that
18 right?
19 MR. PARRY: Yes.
20 Q BY MR. PARRY: So Mr. Acosta, looking back at this, what's
21 we're going to call Exhibit 1, the first page of that, is that
22 your handwriting?
23 A Yes.
24 Q And that's your signature on the bottom?
25 A Correct. Yes.

1 Q And it has a date across the top, 12/12/17. Did you make
2 this statement -- or did you write this statement on December
3 12th, 2017?
4 A Yes. Yes, that's my handwriting.
5 Q And is what you said in this statement true?
6 A Yes.
7 MR. PARRY: Now, the second and third pages, I don't
8 expect that you know what these are. But I'll state for the
9 record that these are a certified translation of the statement
10 that he provided.
11 THE WITNESS: Yes, that's correct.
12 Q BY MR. PARRY: Now, does this statement describe the --
13 one of the visits by the Union? Or maybe not one. Does this
14 describe the visits by the Union that we've discussed today?
15 MR. BLASI: Objection. Vague.
16 THE WITNESS: Yes.
17 HEARING OFFICER TA: Can you clarify, counsel?
18 MR. PARRY: Okay.
19 Q BY MR. PARRY: Is this statement -- did you write this to
20 describe the visits that the Union made to you?
21 A Yes.
22 Q I want to hand you another document. And I'll just ask,
23 do you recognize that document?
24 A Yes.
25 Q And you understand that this is the same statement typed

1 out and made under oath?
2 A Yes.
3 Q Okay. Is that your signature on the bottom?
4 A Yes. That's correct.
5 MR. PARRY: I'd like to mark this -- what I just handed to
6 him, as Employer's Exhibit 2 and move it into evidence. And
7 then I'd also move into evidence Exhibit Number 1.
8 **(Employer Exhibit Number 2 Marked for Identification)**
9 HEARING OFFICER TA: Is there any way, Interpreter, you
10 can translate the statements?
11 MR. PARRY: To read it into the record?
12 HEARING OFFICER TA: Yeah. To read it into the record. I
13 don't want to admit into evidence the interpretations -- the
14 ones that have been provided.
15 MR. PARRY: Perhaps I can just ask him to read his
16 statement, and she can interpret while he reads it?
17 HEARING OFFICER TA: Okay. That'd be great. Yeah.
18 Q BY MR. PARRY: Mr. Acosta, will you just read aloud your
19 statement that's written there?
20 A This one?
21 Q Sure. That one's fine. Yes.
22 A Okay.
23 MR. PARRY: And just -- actually, we're going to -- I
24 mean, I would ask that we just stipulate they're the same one
25 so we don't have to do this twice, if counsel would. But

1 otherwise, we'll just read both Exhibit 1 and Exhibit 2 into
2 the record.
3 Q BY MR. PARRY: Let's start with Exhibit 1, that's
4 handwritten.
5 A This one?
6 MR. PARRY: If we're not going to admit the translation.
7 HEARING OFFICER TA: Counsel, do you -- I'm assuming that
8 you don't want to stipulate that they're identical?
9 MR. BLASI: I mean, I haven't had a chance to --
10 HEARING OFFICER TA: Okay.
11 MR. BLASI: -- compare word for word the documents.
12 MR. PARRY: We'll just do both of them. That's fine.
13 Q BY MR. PARRY: So can you just read aloud the handwritten
14 statement that you gave?
15 A "On December 12th of 2017, I, Benjamin Acosta, the
16 29th of November, they visited my house. It was my
17 day off. And they spent 45 minutes explaining to me
18 about everything. And I told them that I was not
19 interested. And on Saturday, the 9th of December,
20 they were waiting for me to arrive home because that
21 day was the day that the voting ticket would arrive
22 in the mail. They wanted for me to take it out, the
23 ticket, for them to explain to me how to vote. And I
24 said to them, that that was personal. That I didn't
25 want them to be bothering me nor to visit me at

1 home." That's it.
2 Q Okay. And that was the handwritten statement you just
3 read from, correct?
4 A Yes.
5 HEARING OFFICER TA: And Mr. Acosta, can you just tell us
6 the date of that document?
7 THE WITNESS: December 12th of 2017.
8 HEARING OFFICER TA: Thank you.
9 MR. PARRY: I was going to do the same thing with Exhibit
10 2, unless there's a stipulation.
11 HEARING OFFICER TA: Yeah. If counsel's --
12 MR. PARRY: We might as well just do that.
13 HEARING OFFICER TA: -- not stipulating, we'll just --
14 MR. BLASI: I mean, if it's -- if you want to just give me
15 a second, I'll compare them.
16 MR. PARRY: Well, how about I ask this.
17 Q BY MR. PARRY: Mr. Acosta, can you look at Exhibit Number
18 1, the handwritten one, and Exhibit 2, which is the typed
19 exhibit, and tell us whether those two statements are identical
20 with the exception of the statement under penalty of perjury?
21 A Yes.
22 Q Thank you. Now, these -- this statement that you gave,
23 which is set forth in those two --
24 HEARING OFFICER TA: I'm sorry, can we just take a minute?
25 Can we go off the record?

1 MR. PARRY: Sure.

2 HEARING OFFICER TA: Just because I noticed there was an

3 individual in the room. And because of the sequestration --

4 (Off the record at 11:17 a.m.)

5 MR. PARRY: Okay. So I suppose now I'll move to admit

6 both Exhibits 1 and 2 into evidence.

7 HEARING OFFICER TA: Okay. That's fine.

8 MR. PARRY: Thank you.

9 Q BY MR. PARRY: And now, in these statements -- or this one

10 statement that's in both Exhibit 1 and 2, you mentioned dates

11 November 29th and December 9th. And then you executed this on

12 December 12th of 2017. Does this refresh your recollection as

13 to when the meetings with -- or when the home visits happened?

14 A No. Not exactly. But on the 29th of November was the

15 first visit. The date that I signed it was on the 12th. That

16 was at the restaurant.

17 Q So these three visits, based on reviewing this -- your

18 statement, is it -- would it be accurate to say that these

19 three visits occurred between November 29th and December 9th?

20 A Yes.

21 Q Thank you. I've got no further questions, Mr. Acosta.

22 Thank you.

23 MR. PARRY: At this point, I'll reserve for redirect.

24 HEARING OFFICER TA: Okay. Counsel?

25 MR. BLASI: If I could just take a few minutes to prepare

1 my cross. This is the first time hearing any of this. So --
2 HEARING OFFICER TA: Sure. Okay. So let's -- is five
3 minutes okay?
4 MR. BLASI: Could we have ten?
5 HEARING OFFICER TA: Okay. Let's take ten. Let's go off
6 the record.
7 MR. PARRY: I'm just concerned with the rate of this
8 that -- we've had several breaks. And most of the breaks we
9 come back and we're waiting for counsel for the Union to get
10 started. And we've got several more witness.
11 HEARING OFFICER TA: Okay. So let's --
12 MR. PARRY: And limited availability here.
13 HEARING OFFICER TA: Okay. Let's come back --
14 MR. BLASI: I would just point out that the Union is
15 attempting to both investigate the claims and prepare
16 cross-examination and understand the basic facts for the very
17 first time without the benefit of knowing any of this. And so
18 some amount of preparation is required to represent my client
19 in a meaningful manner.
20 HEARING OFFICER TA: Okay.
21 MR. PARRY: And that's the nature of the proceeding under
22 the Rules. We are required to maintain confidentiality of
23 these witnesses until we're asked to bring them forth in an
24 evidentiary hearing. And that's --
25 MR. BLASI: Actually, I think --

1 MR. PARRY: -- that's the rule. That's the requirement.
2 MR. BLASI: I believe counsel actually indicated earlier
3 that he believed that the Union had received the offer of
4 proof, which is obviously not accurate.
5 MR. PARRY: Well, I misspoke on that because I was looking
6 at the exhibits from the Region. And I -- because it said
7 offer of proof.
8 HEARING OFFICER TA: Sure.
9 MR. PARRY: I intentionally did not serve the Union with
10 this because I was complying with the rule.
11 HEARING OFFICER TA: Right. Okay. Let's -- counsel,
12 let's do ten minutes. But let's stick to a very strict ten
13 minutes.
14 MR. BLASI: Sure.
15 HEARING OFFICER TA: So back here at 11:30. Okay. Thank
16 you.
17 (Off the record at 11:20 a.m.)
18 HEARING OFFICER TA: Okay, we ready? All right. Back on
19 the record.
20 Okay, so I just wanted to clarify also that the Employer
21 has moved for Employer's Exhibit 1 to be moved into evidence.
22 I'm going to mark it right now. And I wanted to clarify that
23 it's only the first page of Employer's Exhibit 1.
24 MR. PARRY: Well, I -- can I just -- and I apologize for
25 interrupting.

1 HEARING OFFICER TA: Uh-huh.

2 MR. PARRY: But I moved to admit the entire exhibit, but I
3 understand the issue on that.

4 HEARING OFFICER TA: Yeah, counsel do you have a position?
5 These are -- the other two pages are the interpretation of the
6 handwritten document. And again, what's counsel's position on
7 the --

8 MR. BLASI: Well, I think counsel's position -- our
9 position is that this was read into the record and the
10 translation was provided. So that should be the official
11 translation. Not some hearsay document that the Employer is
12 trying to introduce.

13 HEARING OFFICER TA: Okay, yeah, so I'm going to -- I'm
14 going to admit only the first page into evidence. And I'm
15 marking Employer's Exhibit 2. Counsel for the Union do you
16 have any objections to admitting this into evidence?

17 MR. BLASI: No.

18 HEARING OFFICER TA: Okay. Great. Then Employer's
19 Exhibit 1 and 2 are admitted into evidence.

20 **(Employer Exhibit Numbers 1 and 2 Received into Evidence)**

21 HEARING OFFICER TA: Okay, Union counsel, you want to --
22 you can start your cross.

23 MR. BLASI: Okay.

24 **CROSS-EXAMINATION**

25 Q BY MR. BLASI: Good morning, Mr. Acosta.

1 A How are you?
2 Q Very well. Thank you.
3 So I wanted to ask you just a few background questions. I
4 assume you met with somebody from the company when you gave the
5 statement that is marked as Employer's Exhibit 1. Is that
6 right?
7 MR. PARRY: Objection, it lacks foundation.
8 HEARING OFFICER TA: Counsel, can you just lay --
9 MR. BLASI: Sure.
10 HEARING OFFICER TA: Yeah.
11 MR. BLASI: Well, okay.
12 Q BY MR. BLASI: Did you meet with any representative of the
13 Employer at any time to discuss concerns you had about the
14 union elections?
15 MR. PARRY: Objection. It's overbroad and vague. At any
16 time.
17 HEARING OFFICER TA: Counsel, can you narrow your
18 question?
19 Q BY MR. BLASI: Since, say November -- the beginning of
20 November 2017, did you have any conversations with members of
21 Daily Grill Management, about the union election?
22 MR. PARRY: It's still overbroad and vague. It's outside
23 of the scope of the matters at issue, as well.
24 HEARING OFFICER TA: I'm going to sustain the objection.
25 Can we just -- can we narrow to a specific --

1 MR. BLASI: You want me to ask a specific date or
2 something? I mean these are absolutely questions that I'm
3 entitled to ask about how this statement came to be and the
4 conversations that led up to it; that's, you know, black letter
5 Board law that these are relevant to the validity of the
6 statements.
7 MR. PARRY: You're entitled to ask the entire course of
8 the election process, focusing -- and I think it was even
9 counsel's sort of standing objection that you reserved, that
10 nothing be outside of the scope of the home visits. And he's
11 apparently attempting to ask about any communications with the
12 Employer, throughout this entire process.
13 MR. BLASI: Employer objects to my more specific question
14 on the basis that I haven't laid a foundation. I'm now
15 attempting to lay that foundation.
16 HEARING OFFICER TA: Yeah, so, yeah, so let's --
17 MR. PARRY: Foundation and outside the scope.
18 HEARING OFFICER TA: Okay, let's just go with the -- yeah,
19 a short line of questioning to lay the foundation, and to get
20 at, you know, whatever information you're trying to get at.
21 Q BY MR. BLASI: Sure. So did you meet with any
22 representative of management of The Daily Grill regarding the
23 election from, say, toward the end of November 2017 to the
24 beginning of December 2017?
25 MR. PARRY: It's again overbroad, vague, ambiguous, and

1 outside the scope.

2 HEARING OFFICER TA: I'm going to overrule. He's just

3 laying foundation.

4 THE WITNESS: Well, we met, but no. At Daily Grill, we

5 spoke about that, but not exactly a representative from the

6 Union.

7 Q BY MR. BLASI: No, my question was whether you met with a

8 representative of management.

9 MR. PARRY: Same objection.

10 THE WITNESS: Of Daily Grill?

11 Q BY MR. BLASI: That's right.

12 A Yes.

13 Q And who did you meet with?

14 MR. PARRY: Can I -- I'm still going to object on the

15 grounds that this is overbroad and outside the scope.

16 HEARING OFFICER TA: Can you -- counsel can you ask him

17 what --

18 MR. BLASI: I can be explicit with the Hearing Officer

19 about the purpose of this line of inquiry, if you'd like.

20 HEARING OFFICER TA: Okay.

21 MR. BLASI: I intend to ask the witness about whether

22 appropriate assurances were provided to him --

23 HEARING OFFICER TA: Okay.

24 MR. BLASI: -- which is a matter that the Board is, one,

25 consider relevant to the credibility and context in which

1 Employer's statements should be considered.
2 HEARING OFFICER TA: Okay.
3 MR. BLASI: In hearings.
4 HEARING OFFICER TA: Okay, so let's ask very narrow, very
5 pointedly.
6 MR. BLASI: I'm trying to get as narrow as possible.
7 HEARING OFFICER TA: Yeah.
8 MR. BLASI: I keep getting interrupted.
9 HEARING OFFICER TA: Okay.
10 MR. BLASI: This wouldn't take nearly as long if I wasn't
11 being interrupted every time I attempt to ask a basic question.
12 MR. PARRY: I'm going to object to objectionable
13 questions.
14 HEARING OFFICER TA: Okay, continue, counsel.
15 Q BY MR. BLASI: Okay, and so I'm sorry it's been a few
16 minutes. You said you did meet with somebody from management
17 of Daily Grill to talk about the election process?
18 MR. PARRY: It misstates his testimony, and still outside
19 the scope, and overbroad.
20 THE WITNESS: Yes.
21 Q BY MR. BLASI: Okay, and who did you --
22 HEARING OFFICER TA: I'm going to overrule the objection.
23 I'm trying to develop a complete record here. Let's give him
24 some leeway to see what he's going to ask.
25 MR. PARRY: I just don't understand, he's got a statement

1 with a date on it. It shouldn't be that hard, but --
2 HEARING OFFICER TA: Okay, continue counsel.
3 Q BY MR. BLASI: Okay, and who did you meet with from the
4 management of The Daily Grill?
5 MR. PARRY: It's vague as to time, overbroad, outside the
6 scope.
7 MR. BLASI: I just set the time in the last question.
8 HEARING OFFICER TA: Okay, I'm overruling.
9 THE WITNESS: No, we just met to talk about what was going
10 on about the Union. What we thought about it. That's it. But
11 we didn't talk about anything.
12 Q BY MR. BLASI: And who did you meet with from management?
13 A With the employees and with Michael. He explained to us
14 what was going on. That's it.
15 Q Is that Michael Burnett?
16 A Yes, the manager.
17 Q Okay, and did you talk to Michael Burnett about the
18 subject matter of the statement that's marked as Employee's
19 Exhibit 1?
20 A No, no.
21 Q Okay, did you talk to anyone else from the company about
22 the subject matter of the statement Employer's Exhibit 1?
23 A No.
24 Q You never had any interaction with somebody from the
25 company about this statement?

1 A No.
2 Q Okay, how did you come to submit this -- write this
3 statement?
4 MR. PARRY: Objection, vague --
5 THE WITNESS: You're talking about that letter that I
6 wrote? Talking there at the restaurant, I told them that that
7 had happened to me.
8 Q BY MR. BLASI: And who did you tell?
9 A There to the restaurant, to Shell (phonetic), for example.
10 Q Who is Shell?
11 A Martin Garcia.
12 Q And what position does that person have at the restaurant?
13 A He's the chef, the executive chef there.
14 Q You met -- you spoke with the executive chef about what
15 was going on?
16 A Amongst all the cooks, we spoke to him and we spoke about
17 that. That happened to me, and I contacted to them about it.
18 That's it.
19 Q Okay, and what did the chef say to you when you made those
20 comments?
21 A Well, I just mean several of us. We commented about what
22 happened to us. I don't know who he spoke with. That's a
23 different story.
24 Q All right. So there were several people who spoke with
25 the chef?

1 A All talked about our experiences. Each person talks about
2 what happened to them.
3 Q And you had this conversation with the chef. Where did
4 this happen?
5 A Well, there at the kitchen. We work together.
6 Q And did the chef ask you any questions about, you know,
7 what was going on?
8 A We just commented about what had happened. Because I got
9 the card on Saturday and I told him what had happened about
10 that, and that was it.
11 Q And what did he say during this conversation? How did the
12 conversation -- strike that. How did the conversation begin
13 with?
14 A Amongst all of us, we were talking amongst ourselves about
15 what was happening with the Union. That was it.
16 Q And who was in the room when this conversation was --
17 MR. PARRY: Objection. It lacks foundation. Speculative.
18 MR. BLASI: Speculative as to this conversation being in a
19 room?
20 HEARING OFFICER TA: Overruled.
21 THE WITNESS: We were not in a room. We were in the
22 kitchen working. Working, we were talking there amongst
23 ourselves. We were not behind closed doors in a room to talk
24 about that.
25 Q BY MR. BLASI: Okay, and the chef, who was part of the

1 conversation when you were talking to the chef about what was
2 happening with the election?
3 A The prep cook was there, another cook was there, Martin,
4 myself. That was it. we were just talking.
5 Q Uh-huh. And I assume the chef maybe asked you what was
6 going on?
7 MR. PARRY: Speculation, lacks foundation.
8 MR. BLASI: I'm asking a question.
9 HEARING OFFICER TA: Let's -- wait, counsel, can you tell
10 him to stop? Can you just rephrase?
11 MR. BLASI: I am entitled to --
12 HEARING OFFICER TA: You are, but --
13 MR. BLASI: -- have leading questions.
14 HEARING OFFICER TA: But let's not assume --
15 MR. PARRY: It wasn't a question.
16 HEARING OFFICER TA: Yeah, let's rephrase the question.
17 MR. BLASI: Sure.
18 Q BY MR. BLASI: So how did the conversation about this with
19 Shell begin?
20 MR. PARRY: Asked and answered.
21 HEARING OFFICER TA: Sustained. Can you --
22 Q BY MR. BLASI: Do you remember anything else about -- what
23 was the first thing you remember being said in this
24 conversation between you and Shell, and the other employees
25 present?

1 MR. PARRY: Did you say Shell or chef?

2 MR. BLASI: I thought his name was Shell.

3 HEARING OFFICER TA: Yeah, yeah, if you can clarify -- I'm
4 a little confused, too, because I thought he said Shell, also.
5 And then there was a shift to Chef. So you can clarify
6 counsel.

7 MR. BLASI: My understanding is the chef is named Shell.

8 HEARING OFFICER TA: Named Shell, okay.

9 MR. BLASI: It may be clear for the record if I refer to
10 him as Chef?

11 HEARING OFFICER TA: Yeah.

12 MR. PARRY: Yeah, I'm going to -- that's -- I guess it's
13 vague and ambiguous because that's -- I'm not going to provide
14 help, but that's really not the case.

15 HEARING OFFICER TA: Well, so let's -- let's just clarify
16 who he was talking to. We can get actual full names, too, and
17 titles. That would be helpful.

18 MR. PARRY: And it misstates testimony.

19 MR. BLASI: Perhaps the Employer's counsel could give us
20 the full name of the manager name, Shell, so that --

21 MR. PARRY: He just told you --

22 HEARING OFFICER TA: Well, let's, yeah, so let's direct
23 questions at the witness as to who he was talking to --

24 MR. BLASI: Sure, I'm --

25 HEARING OFFICER TA: -- what the --

1 MR. BLASI: I'm trying to --
2 HEARING OFFICER TA: -- full name, title --
3 MR. BLASI: I'm trying to address the Employer's
4 objections. I'm not doing this for my own purposes.
5 HEARING OFFICER TA: Sure.
6 Q BY MR. BLASI: Do you know the full name of this manager
7 named Shell, you described earlier?
8 A Shell, no.
9 Q What is the chef's name you were describing a few minutes
10 ago?
11 A Martin Garcia, yes.
12 Q I see, okay, so you were saying Chef Martin Garcia.
13 HEARING OFFICER TA: Okay.
14 THE WITNESS: Yes, Chef.
15 HEARING OFFICER TA: Okay, wait, hold on. Okay, so is
16 there anyone named Shell?
17 THE WITNESS: No.
18 Q BY MR. BLASI: Okay, so Chef Martin Garcia?
19 A Yes.
20 Q Okay. And can you tell me again what his title is, as far
21 as you understand?
22 A Well, he's the chef. It's called around here kitchen
23 manager.
24 Q Okay, is he the person in charge of managing the kitchen
25 at The Daily Grill?

1 A Yes.
2 MR. PARRY: It calls for speculation.
3 HEARING OFFICER TA: You know, counsel, if you can --
4 managing the kitchen --
5 MR. BLASI: You want me to go through all the factors --
6 HEARING OFFICER TA: Well, you don't have to go through,
7 but if you can --
8 Q BY MR. BLASI: Does that individual assign schedules?
9 A Of course. He's the one that commands there in the
10 kitchen.
11 Q Does he gave assignments on what work need to be done?
12 A Of course.
13 Q Does he interview workers for hiring?
14 A Yes.
15 Q Okay, and as far as you understand, does he have the
16 authority to hire working?
17 MR. PARRY: Calls for speculation, lacks foundation.
18 MR. BLASI: I can ask a different question.
19 HEARING OFFICER TA: Yeah, let's -- let's rephrase.
20 Q BY MR. BLASI: Did Martin Garcia interview you?
21 A Of course, when I started there, yes.
22 Q And did he tell you, you were going to -- that you were
23 getting the job?
24 A He told me I was going to get hired to begin to work, and
25 it was his decision.

1 Q He told you, okay, great. Okay, so now getting back to
2 the conversation with Chef Martin Garcia, what do you remember
3 was the first thing said during this conversation about the
4 union election that you were describing a few minutes ago?
5 MR. PARRY: Asked and answered.
6 HEARING OFFICER TA: Wait, wait --
7 MR. BLASI: I don't believe I was permitted to --
8 HEARING OFFICER TA: Yeah.
9 MR. BLASI: -- voice a response on that.
10 HEARING OFFICER TA: I'm going to overrule. Go ahead.
11 THE WITNESS: Not exactly. We didn't talk about the
12 voting exactly. We just talked about what is your opinion
13 about the Union coming in. That was it.
14 Q BY MR. BLASI: Okay, and did you tell him about what
15 happened with people visiting you at your home? Did you have
16 any conversation with him about that?
17 A I just commented to him what was happening to me.
18 Q And what do you remember telling him?
19 A No, Martin -- he might have spoken with the bosses, or
20 with the managers. But with me, he didn't speak very much
21 about it.
22 Q Okay, did he mention to you that you should write a
23 statement?
24 A I wrote it because they asked me for it, as proof.
25 Q Who asked you for it as proof?

1 A Well, the chef, the chef told me to write down what had
2 happened to me.
3 Q The chef. Was that in the same conversation?
4 A That one that I wrote, that's the one.
5 Q So the same conversation that you're describing that
6 happened in the kitchen, that's when Chef Martin Garcia, told
7 you that you should write a statement, so there would be
8 proof?
9 A That which I wrote is very separate from the conversation
10 in the kitchen. I wrote it because that happened to me.
11 That's the experience I had with them. And the conversation in
12 the kitchen we all talked about the same. What do you think
13 about the Union? Each person had their own opinion and that
14 doesn't go directly to the office for Martin to know. We just
15 spoke that amongst ourselves.
16 Q But a few minutes ago, I believe you testified that you
17 wrote that statement because you were asked to write it as
18 proof. So who asked you to write the statement?
19 A That one?
20 Q This statement, yes.
21 A Martin.
22 Q Okay, when did he ask you to write this statement?
23 A After that happened to me.
24 Q Was it --
25 A That is to prove that yes, it was true what was happening

1 to me.
2 Q Okay, and in the conversation in which Martin Garcia told
3 you to write this statement, was that the same conversation
4 that happened in the kitchen, or a different conversation?
5 A No, no, no. Martin didn't explain to me to wrote that. I
6 did that personally. Martin didn't explain to me what to
7 write. No, no, no.
8 Q I think you maybe misunderstand my question. You've now
9 testified twice that Martin Garcia told you to write a
10 statement so that there would be proof.
11 MR. PARRY: Misstates his testimony.
12 THE WITNESS: Write my experience.
13 HEARING OFFICER TA: Wait. Okay,
14 MR. PARRY: And it's argumentative.
15 HEARING OFFICER TA: Yeah.
16 MR. BLASI: Well, I'm trying to establish the basis of the
17 question.
18 HEARING OFFICER TA: Well, yeah, I know, I believe the
19 testimony wasn't that to write it down as proof. So --
20 MR. BLASI: Or to write statement period.
21 HEARING OFFICER TA: Down, yeah.
22 MR. BLASI: He has testified to that twice, I believe.
23 HEARING OFFICER TA: Okay, so I'll --
24 MR. BLASI: I'm trying to determine when he was told that
25 by Martin Garcia. Whether it was the same conversation he was

1 describing earlier, or some subsequent or other conversation.
2 That's what I'm trying to get at. And if the Hearing Officer
3 has any suggestions about how to make that inquiry --
4 HEARING OFFICER TA: Yeah, I think there might be some
5 confusion going, but I'm going to sustain the objection.
6 Mr. Acosta, so the conversation in the kitchen, when did
7 that happen?
8 THE WITNESS: The conversation in the kitchen, we've
9 always -- while we're working together, we talk about what's
10 going on in the restaurant. We all talk about the same thing.
11 In the kitchen, we talk about what's going on. That's it.
12 It's not that we have a conversation in a private room, or
13 anything, no. We talk exactly there, where we are working.
14 HEARING OFFICER TA: Okay.
15 THE WITNESS: Each person gives their opinion.
16 HEARING OFFICER TA: Okay. Okay. Do you remember when
17 Chef Garcia asked you to write down what had happened to you,
18 with regard to the Union?
19 THE WITNESS: As soon as that happened to me, I talked to
20 them about what had happened to me, and they told me to write
21 it down to have proof about what had happened.
22 HEARING OFFICER TA: Okay, and is your testimony that
23 right after they asked you, you didn't actually write anything
24 down until much later; is that correct?
25 THE WITNESS: When I spoke to them, what had happened to

1 me, it happened the 9th, the last visit I spoke to them and the
2 sheet is signed on the 12th. So it happened after it happened
3 to me.
4 HEARING OFFICER TA: Okay. Counsel go ahead.
5 MR. BLASI: You want me -- I mean, I think you're doing
6 well, if you want to continue. You're better than me, so I
7 don't mind if you want to go ahead.
8 HEARING OFFICER TA: Yeah, I think it's just a little
9 difficult to nail him down to dates, because I think the
10 recollection --
11 MR. BLASI: Right, but at least who was in the room kind
12 of questions he should answer -- be able to answer, I would
13 submit.
14 Q BY MR. BLASI: So you said they a few moments ago. They
15 told you to write this down, so there would be proof, or
16 something like that. Who is they in that sentence?
17 MR. PARRY: Asked and answered. He just answered.
18 HEARING OFFICER TA: I think there's some confusion here
19 about how many times he was asked to write this down.
20 MR. BLASI: Perhaps.
21 HEARING OFFICER TA: I know it sounds like there was at
22 least one time when he testified that it was Chef Garcia, so
23 I'll allow the question as to any other times that he was
24 asked.
25 Q BY MR. BLASI: So there was -- okay, let me try it this

1 way to make sure I understand you right. There was an occasion
2 in which Chef Garcia, Martin Garcia, told you to write a
3 statement. Is that correct?
4 A Yes.
5 Q Okay, and were you in a meeting with just Chef Garcia when
6 he told you that, or were there other people present?
7 A No, we were in the kitchen talking about it. We were
8 each one talking about the experiences we had had. And then it
9 happened to me. I talked to them about that. And then I wrote
10 that. What had happened to me.
11 Q Okay, and do you remember -- this document is dated
12 December 12th. Did that conversation happen that same day?
13 MR. PARRY: Vague and ambiguous.
14 MR. BLASI: December 12th.
15 MR. PARRY: I don't know which document you're talking
16 about.
17 HEARING OFFICER TA: Overruled. Yeah. Overruled.
18 THE WITNESS: On the 9th, on Saturday, that's when it
19 happened to me, that they went to visit me at the mailbox. And
20 that's when I didn't like it anymore. It was a Saturday. So I
21 went back to work, and I told them that I was being pushed.
22 That they were waiting for me. And so then that's why I wrote
23 the note, so there could be proof of what was happening.
24 Q BY MR. BLASI: So you went back to work the following day,
25 or a couple of days later?

1 A Well, I work Saturday, Sunday, Monday, Tuesday. I work
2 all week. My day offs are Wednesday and Thursday.
3 Q Does that mean you went back to work on Sunday in this
4 conversation?
5 A Yes.
6 Q Okay, and you were in a meeting -- or I'm sorry, you were
7 in a conversation in the kitchen with Chef Garcia?
8 MR. PARRY: That misstates testimony.
9 THE WITNESS: No, on Sunday Martin was off. Monday he was
10 off.
11 HEARING OFFICER TA: I'm going to overrule it. Go ahead.
12 Yeah, we just -- let's just be a little bit, let's wait a
13 little -- because I feel like we're talking over each other.
14 MR. BLASI: I apologize for that.
15 HEARING OFFICER TA: Yeah, yeah, yeah.
16 MR. BLASI: I apologize for that.
17 HEARING OFFICER TA: Okay, so continue.
18 Q BY MR. BLASI: Sure, there was a conversation in which
19 Martin Garcia told you to write this statement -- or a
20 statement, correct?
21 A Correct.
22 Q Okay. Now, the statement is dated the 12th of December.
23 Do you remember if you had the conversation with Martin Garcia
24 on December 12th?
25 A Tuesday was the 12th. I went back to work, and I write

1 the note to give it to them as proof. It's not that we hold a
2 meeting just to talk to Martin exactly. I had already told him
3 since Saturday what had happened to me. So when I went back to
4 work, he's off Sunday, Monday. When he comes back on Tuesday,
5 I let him know. And that's when I make the note, which is on
6 the 12th.
7 Q Okay, now in the conversation you had -- you said you
8 talked to him on Saturday, right?
9 A Yes, I commented to them.
10 Q Okay, and this was Chef Garcia was --
11 A No, Saturday that happened to me at 1:30 p.m. I had
12 already left work. How could I talk to Martin about it?
13 Q Well, I'm just trying to understand what you're saying, so
14 I apologize if I'm misunderstanding. It's a little bit hard in
15 the translation.
16 A Okay.
17 Q Okay, so let me put it this way. So when Chef Garcia told
18 you to write this statement, did he tell you about the purpose
19 of this statement?
20 A No, no, no. I gave it to him, so there could be proof
21 about what had happened to me on Saturday. That's it. And
22 they were going to put it there in my file, in the paperwork of
23 the restaurant. What had happened to me on Saturday.
24 Q But the chef had told you to write a statement before you
25 wrote it.

1 A Not exactly. I gave it to them, so they could know what
2 happened to me on Saturday.
3 Q But you did testify he told you, you should write a
4 statement.
5 A No, not exactly.
6 Q You did testify to that several times earlier.
7 A I gave him the sheet for there to be evidence about what
8 had happened to me on Saturday, not that he was pushing me to
9 write a declaration. No, I did it, personally.
10 Q Okay.
11 A Because I didn't like what was done to me on Saturday.
12 For them to be waiting for them --
13 Q Okay, but he did suggest to you to write a statement at
14 some point; is that correct?
15 A Yes.
16 Q At some point, yes.
17 A Yes.
18 Q Correct.
19 MR. PARRY: That's vague, ambiguous, asked and answered.
20 THE WITNESS: Not exactly, he didn't suggest that.
21 HEARING OFFICER TA: I'll allow it.
22 THE WITNESS: I personally made it.
23 THE INTERPRETER: Excuse me, interpreter.
24 HEARING OFFICER TA: Yes.
25 THE INTERPRETER: If I could suggest something. Do we

1 need to be off the record or --

2 MR. BLASI: Are we off the record?

3 THE INTERPRETER: No, should we get off the record, or do

4 you want me to just --

5 HEARING OFFICER TA: I think --

6 MR. PARRY: I think we should go off the record, if we're

7 going to have a discussion that's --

8 HEARING OFFICER TA: Okay, let's go off the record.

9 (Off the record at 11:57 a.m.)

10 HEARING OFFICER TA: Back on the record.

11 Q BY MR. BLASI: When you spoke with Chef Acosta (sic) --

12 I'm sorry, Chef Martin Garcia, after the incident where you

13 were visited at your home, did Chef Garcia tell you that

14 nothing would happen to you, that there would be no retaliation

15 if you gave a statement, or shared information?

16 A No.

17 Q Okay. Did he tell you specifically at any point that the

18 conversation and the information you were sharing was purely on

19 a voluntary basis? Did he say that to you?

20 A No, I simply voluntarily gave it to them.

21 Q Okay, but he never specifically said that to you?

22 MR. PARRY: Asked and answered.

23 THE WITNESS: No.

24 Q BY MR. BLASI: And did he specifically ask you, if you

25 would agree to answer questions or give a statement?

1 A Yes. I told him I was willing.
2 Q Okay.
3 MR. PARRY: I actually will object to this line of
4 questioning. It's just really outside the scope of the Union's
5 conduct?
6 MR. BLASI: It's actually not. This is Johnnie's Poultry.
7 Straight out of Johnnie's Poultry, I'm literally asking
8 questions from that case.
9 HEARING OFFICER TA: Yeah, and I'm going to overrule the
10 objection. I think it --
11 MR. PARRY: But the objection is based upon the Union's
12 conduct. That's what's at issue. I'm making an objection for
13 the record. It's outside of the scope.
14 HEARING OFFICER TA: And I -- yeah, I'm overruling the
15 objection. I think it goes to -- I think if you're submitting
16 as evidence the statement, counsel has a right to ask whether
17 it was somehow coerced or if assurances were made, or what the
18 circumstances were --
19 MR. BLASI: Well, even more specific than that --
20 MR. PARRY: That's like, thank you. Let's --
21 HEARING OFFICER TA: All right. Continue, counsel.
22 Q BY MR. BLASI: Okay, so I just want to make sure we're
23 clear on some facts. You said that there was three visits that
24 occurred at some point during the union organizing. Is that
25 correct?

1 A Correct.
2 Q Okay, and there was a first visit -- how many people
3 participated on that first visit, on the part of the Union?
4 A Two women.
5 Q Okay, and at the conclusion of that meeting, you signed a
6 union authorization card, didn't you?
7 MR. PARRY: Objection, this is -- that's well beyond the
8 scope, and I think it's violative of his confidentiality in a
9 secret ballot election.
10 MR. BLASI: I think it goes --
11 MR. PARRY: I don't see how it has any relevance to this
12 proceeding whatsoever.
13 MR. BLASI: The Employer's entire argument is that somehow
14 visiting people at their home was an inherently -- or in so
15 manner coercive, and if an employee is voluntarily agreeing to
16 signing an authorization card, it speaks to --
17 MR. PARRY: His testimony is that they were unwelcome, and
18 it was coercive, and I think whether he signed a card or not
19 the first time is irrelevant.
20 HEARING OFFICER TA: Yeah, I'm -- I'm going to sustain the
21 objection.
22 MR. BLASI: On what basis? If I may ask.
23 HEARING OFFICER TA: There are certain confidentiality
24 rules around signing authorization cards. It's also not
25 Employer's contention, as I understand it, that the home visits

1 in and of themselves were somehow coercive. It was the conduct
2 during the home visits that were coercive.
3 MR. BLASI: All right.
4 HEARING OFFICER TA: And I think counsel's position that
5 it goes to sort of the home visits in general.
6 MR. BLASI: Well, actually, I think I sort of misstated on
7 that point.
8 HEARING OFFICER TA: Okay, okay.
9 MR. BLASI: I think it's relevant to the extent that if
10 there's some suggestion, which I don't even think Board law
11 supports the theory, but even it did, an unbidden, or as the
12 phrase used by the Employer, an objection visitation to an
13 employee's home is coercive. That's the phrase that's used in
14 the objection. Then the circumstances in which the visit
15 occurred, for example, after the Employer -- employee had
16 indicated interest or support for the Union, that weighs on the
17 circumstances in which subsequent visits would have taken
18 place.
19 MR. PARRY: And he's already testified that he accepted
20 them, and he spoke to them, and he heard them out on the first
21 visit. So whether or not he signed a card is irrelevant. And
22 again, it's violative of the confidentiality of the
23 proceedings. It's as if they asked him how he voted.
24 MR. BLASI: Right.
25 MR. PARRY: And so I think that's -- it's irrelevant, it's

1 unnecessary and it violates his rights under the act of
2 confidentiality.
3 HEARING OFFICER TA: Yeah. I'm going to sustain the
4 objection. So continue, counsel.
5 MR. BLASI: Okay.
6 Q BY MR. BLASI: So during the first visit, you said that
7 they showed you some papers; is that right?
8 A The first visit?
9 Q Is that right? The organizer showed you some papers?
10 MR. PARRY: Misstates testimony.
11 THE WITNESS: No, at the second visit.
12 Q BY MR. BLASI: That was the second visit. Okay, and so --
13 actually, just so the record is clear, how many people do you
14 recall participated in the second visit?
15 A Two women and one man.
16 MR. PARRY: This has all been asked and answered.
17 Q BY MR. BLASI: And you said it was in this visit that you
18 were shown some papers?
19 A Yes.
20 Q Okay, and what did you understand to be the purpose of
21 showing you those papers?
22 A No, the man wanted to show me that if other companies
23 like Daily Grill, they had the Union in other states. But he
24 said that we were the only ones that didn't have it. That we
25 were being robbed and so forth. And I said I was not

1 interested.
2 Q The idea of this man, as far as you understood was to
3 convince you that joining the Union would be a good idea; is
4 that fair to say?
5 MR. PARRY: Speculation.
6 THE WITNESS: That's what he was trying to show --
7 HEARING OFFICER TA: I'm going to overrule.
8 THE WITNESS: -- to me. He wanted to convince me.
9 Showing the other restaurants with the Union.
10 Q BY MR. BLASI: Okay, he's trying to show you the benefits
11 of what it's like to have a union in a restaurant, right?
12 A Correct.
13 Q Trying to convince you?
14 A Uh-huh. But I didn't believe them, so --
15 Q Okay.
16 A -- it was too much that they promised.
17 Q And at some point, during the second visit, let me put it
18 this way. There was no point in this second visit when any of
19 these people who visited you threatened you that something bad
20 would happen to you if you didn't support the Union; is that
21 correct?
22 A No, no. No, they didn't threaten me at all. They just
23 wanted to convince me. That's it.
24 Q Okay. And on the third visit, nobody threatened you at
25 any point that something bad would happen to you, personally,

1 if you didn't support the Union. Is that fair to say?
2 A No, the only thing I didn't like was that they would be
3 waiting for me there, for me to go by, home from work, to open
4 my mail.
5 Q Okay, and how many people were present at the third visit?
6 A The same people. Two women, one man.
7 Q On the third visit?
8 A Also.
9 Q You're saying that on the third visit, there was two women
10 and one man?
11 MR. PARRY: Asked and answered.
12 HEARING OFFICER TA: Yeah, that's --
13 MR. BLASI: This is actually an important point, so I
14 think I want -- I'd like the record to be very clear on what
15 the witness' testimony is.
16 MR. PARRY: He just said it three times.
17 HEARING OFFICER TA: We'll allow it just for
18 clarification.
19 MR. BLASI: Well, and in part because the witness' not
20 been a model of clarity --
21 HEARING OFFICER TA: Continue, counsel.
22 Q BY MR. BLASI: So, you're saying at the third visit there
23 was two women and one man present?
24 MR. PARRY: Asked and answered.
25 THE WITNESS: Yes.

1 Q BY MR. BLASI: Okay, and who did the talking during this
2 visit?
3 A The three of them. The one lady told me to open the card.
4 To open the envelope for the voting. And I said that was
5 personal. To leave me alone. That I didn't want to be visited
6 at my home anymore. I'm not interested. That's it.
7 Q When you encountered these supposed three people, had you
8 gotten the -- had you checked your mail yet?
9 MR. PARRY: It's argumentative.
10 HEARING OFFICER TA: Overruled.
11 THE WITNESS: Not exactly. I was getting off my truck to
12 check, and they were already there waiting for you (sic).
13 Q BY MR. BLASI: All three people were standing there
14 waiting, is that your testimony?
15 A They crossed the street. They were parked in front of my
16 home.
17 Q It's not possible it was just one person who was there?
18 MR. PARRY: Objection. That's incomplete hypothetical,
19 calls for speculation.
20 HEARING OFFICER TA: Yeah, sustained. He already
21 testified.
22 MR. BLASI: Okay, sure. That's fine.
23 HEARING OFFICER TA: Yeah.
24 Q BY MR. BLASI: Did any of the people that visited you,
25 suggest that you check your mail to see whether the ballot had

1 arrived?
2 A They saw when I opened the mail. I took out the letter
3 for the voting. That's when the lady told me to open it. I
4 told her that was personal. That's it.
5 Q The person didn't suggest to you to check to see whether
6 you got your ballot in the mail?
7 A I'm explaining to you. When I opened the mail box, they
8 see that I take out the voting card. That's why the lady asked
9 me to open it.
10 Q Did you actually open the mail card?
11 A No, I said that's personal.
12 Q So --
13 A The lady wanted to help me fill it out. I'm not that
14 delayed to not know --
15 Q How do you know they wanted to help you fill it out?
16 A -- how to fill a voting card.
17 Q I'm sorry. I apologize.
18 HEARING OFFICER TA: That's okay. Continue.
19 Q BY MR. BLASI: How did you know that they wanted to help
20 you fill it out?
21 A Well, the lady told me clearly.
22 Q They didn't tell you can you check your mail to see
23 whether you got your ballot?
24 MR. PARRY: Asked and answered several times.
25 HEARING OFFICER TA: Yeah, yeah, sustained.

1 MR. BLASI: I'm sorry, what was that answer to the
2 question.
3 MR. PARRY: Wait. She sustained the objection.
4 MR. BLASI: Oh, that's true.
5 HEARING OFFICER TA: Yeah, sustained.
6 MR. BLASI: That's fair.
7 Q BY MR. BLASI: Did you tell one of these union
8 representatives that you had a conversation with a lawyer
9 about the Union?
10 A With an attorney, no.
11 Q With an attorney from the Employer. Did you tell any of
12 the union members that you had a conversation with an attorney
13 through the Union? I'm sorry, I misspoke. Let me start again.
14 Did you tell any of the union organizers during one of
15 these visits, that you had had a conversation with an attorney
16 for the Employer, for the company?
17 A Not me.
18 Q All right. Did you have a conversation with an attorney
19 for the Employer?
20 A No.
21 MR. BLASI: Just give me a second and I'll see if there's
22 something else.
23 Okay, the Union has no further questions for this witness.
24 HEARING OFFICER TA: Okay.
25 MR. PARRY: Just really quickly.

1 **REDIRECT EXAMINATION**

2 Q BY MR. PARRY: Mr. Acosta, I'm going to hand you a
3 document. You tell me if you recognize this document, please.
4 A Yes.
5 Q And is that your signature at the bottom?
6 A Yes, that's correct.
7 Q And your initials along the left side?
8 A Everything is fine.
9 Q Did you read that document at the time you signed it
10 initially?
11 A Yes, yes.
12 Q Do you understand what it means?
13 A Yes.
14 Q I'd like to move into evidence this document as Employer's
15 Exhibit 3.
16 MR. BLASI: Objection, lack of foundation as to timing and
17 circumstance.
18 Q BY MR. PARRY: When did you sign it?
19 A The 20th.
20 Q Where?
21 A There at the restaurant.
22 Q Okay.
23 HEARING OFFICER TA: I don't understand what this document
24 is.
25 MR. PARRY: Well, we can do the whole exercise of reading

1 it and translating it.
2 Q BY MR. PARRY: Mr. Acosta, would you please just read the
3 text of the document, so that the interpreter can read it into
4 the record in English?
5 A Yes. All of it?
6 Q Yes, please.
7 A "Acknowledgment of witness. I understand that
8 representatives of Daily Grill want to make questions
9 of me relating to the behavior of Unite Here, Local
10 11, the Union, during the recent elections of the
11 restaurant. I put my initials, I accept. It has
12 been explained to me that this is related to a legal
13 procedure before the National Labor Relations Board
14 that includes allegations of The Daily Grill about
15 the unfair labor practices of the Union during the
16 recent elections.
17 "Number two. I understand that this interview
18 is voluntary. I am not obligated to answer any
19 question and I can end this discussion at any moment.
20 Number three. I have been explained that reprisals
21 about anything that I say or don't say during this
22 interview could be legal, and I've been promised the
23 reprisals will not be taken against me for the
24 answers that I give, or not give during this
25 interview. April the 20th of 2018."

1 HEARING OFFICER TA: Counsel, can you explain? Yeah.
2 Q BY MR. PARRY: And this document refers to an interview.
3 Did you have an interview with someone on April 20th?
4 A Yes.
5 Q With who?
6 A With him. The one that is here present.
7 HEARING OFFICER TA: So is -- so let the record reflect
8 that the witness is referring to Employer's counsel?
9 Q BY MR. PARRY: You had an interview with me, Adam Parry,
10 correct?
11 A Yes.
12 Q Okay. How long did that interview take, if you recall?
13 A I don't know exactly, but about 25 minutes, 20 minutes.
14 Q And did I explain what's in that document to you verbally,
15 before we spoke?
16 A You explained to me.
17 Q And was someone there to translate it in Spanish?
18 A Yes, yes, the manager.
19 Q And you understood the explanation that I and the manager
20 gave you in Spanish?
21 A Yes, correct. That's why I signed it.
22 Q And you participated in that voluntarily?
23 A Yes. No one forced me.
24 MR. PARRY: Thank you, that's all I have.
25 HEARING OFFICER TA: Counsel, what's your position on --

1 MR. BLASI: Well, obviously this document is -- I think
2 the record needs to be clear that he was referring to April
3 20th, 2018, which he said the 20th, I believe.
4 MR. PARRY: Yes.
5 MR. BLASI: So I would ask that that be --
6 Q BY MR. PARRY: You signed this on April 20th, 2018,
7 correct?
8 A Yes.
9 Q Thank you. The document speaks for itself.
10 HEARING OFFICER TA: Okay, I'm unclear why this -- why
11 you're moving to have this admitted, in terms of the relevance.
12 MR. PARRY: Counsel raised the issue of possible coercion
13 and not being given the Johnnie's Poultry warning.
14 HEARING OFFICER TA: Okay, okay, I mean I'll give it due
15 weight. I'm going to mark it as Employer's Exhibit -- are we
16 on 3?
17 MR. PARRY: Yes.
18 HEARING OFFICER TA: Yeah, okay.
19 **(Employer Exhibit Number 3 Marked for Identification)**
20 MR. PARRY: Can I ask one more question?
21 HEARING OFFICER TA: Sure.
22 Q BY MR. PARRY: In the meeting with Chef Martin that
23 counsel spoke of, did you ever give any statement that was not
24 voluntary?
25 A No.

1 Q And so it was all voluntary, your statements and your
2 discussions?
3 A Of course. Yes.
4 Q Thank you.
5 HEARING OFFICER TA: Okay. Counsel before, do you have
6 any objections to moving this into evidence?
7 MR. BLASI: I mean I object to it on relevance since it
8 post-dates by three months the statement that's been offered
9 earlier, and also on the basis that it post-dates by a similar
10 amount of time the objections that were filed on the basis of
11 the earlier given statements. So I don't think it does
12 anything to satisfy the Johnnie's Poultry requirements, as far
13 as the Union's line of inquiry on that issue.
14 MR. PARRY: Let me ask another question then.
15 Q BY MR. PARRY: You have -- we've already submitted into
16 the record, an Exhibit 2, which is the typed statement that has
17 the -- it's signed under penalty of perjury. Now, did you
18 provide that statement after signing the witness
19 acknowledgement?
20 A No.
21 Q Let's clarify. Do you remember when you signed the
22 written -- the typed statement? Exhibit 2? Can you -- do we
23 have that for him to look at?
24 HEARING OFFICER TA: I don't have that. I gave it to --
25 MR. PARRY: I should have a copy.

1 HEARING OFFICER TA: Yeah, you have a copy. Okay, we've
2 got it.
3 MR. PARRY: That statement.
4 Q BY MR. PARRY: And that's dated what date?
5 A April 20th.
6 Q So do you recall signing that statement after our
7 interview?
8 A At that same interview.
9 Q Yes, after you signed the witness acknowledgement?
10 A Yes.
11 Q Thank you. That's all I've got. No more questions.
12 HEARING OFFICER TA: Okay. So I'm going to admit
13 Employer's Exhibit 3 into evidence, over Union counsel's
14 objection.
15 **(Employer Exhibit Number 3 Received into Evidence)**
16 HEARING OFFICER TA: Counsel, do you have anything else on
17 redirect, for redirect?
18 MR. PARRY: That was my redirect.
19 HEARING OFFICER TA: Okay.
20 MR. PARRY: Thank you.
21 HEARING OFFICER TA: Mr. Blasi, do you have anything for
22 recross?
23 MR. BLASI: No.
24 HEARING OFFICER TA: Okay. Okay, so we're done with this
25 witness then?

1 MR. PARRY: Yes, he can be excused.
2 HEARING OFFICER TA: Okay, okay, great. Thank you, very
3 much, Mr. Acosta, you're excused. Just remember that the
4 sequestration order doesn't allow you to speak about your
5 testimony to anyone else until the conclusion of the hearing.
6 THE WITNESS: Okay.
7 HEARING OFFICER TA: All right. Thank you.
8 All right. We're going to take a one-hour break. Or
9 should we do -- yeah, let's come back at, let's says 1:15.
10 MR. BLASI: Can I ask some housekeeping questions?
11 HEARING OFFICER TA: Yeah. Yeah.
12 MR. BLASI: First, could we --
13 HEARING OFFICER TA: Let's go off the record.
14 (Off the record at 12:21 p.m.)
15 HEARING OFFICER TA: Let's go back on the record. At this
16 time I want to admit Board Exhibits 1(a) through 1(e) into
17 evidence, noting that there is a clerical error on Exhibit
18 1(d). It's dated April 11th, 2018, which predates the asserted
19 service date of April 12th, 2018. No objections from counsel,
20 so I am admitting this into evidence.
21 MR. PARRY: Just one -- are we admitting the corrected
22 one?
23 HEARING OFFICER TA: I'm sorry, and the index, yeah, so
24 Board Exhibit 1(e) has been corrected to reflect the accurate
25 dates of Exhibit 1(d). It's originally April 12th, 2015, now

1 it's April 12th, 2018. And I am now admitting the corrected
2 index into evidence. Thank you.
3 **(Board Exhibits Number 1(a) through 1(e) Received into**
4 **Evidence)**
5 HEARING OFFICER TA: Okay, counsel, do you want to call
6 your next witness?
7 MR. PARRY: Yes. Grill Concepts Services will call Lucas
8 Chim.
9 HEARING OFFICER TA: Okay, can you please state your name
10 and spell it for the record?
11 MR. CHIM: Lucas Chim. L-U-C-A-S, Chim, C-H-I-M.
12 HEARING OFFICER TA: Okay, thank you, Mr. Chim. Can you
13 raise your right hand, please?
14 Whereupon,
15 **LUCAS CHIM**
16 having been duly sworn, was called as a witness herein and was
17 examined and testified as follows:
18 HEARING OFFICER TA: Thank you.
19 **DIRECT EXAMINATION**
20 Q BY MR. PARRY: Thank you, Mr. Chim. Thank you for being
21 here today. I'm just going to ask you a few questions.
22 Can you just tell us what you do for a living?
23 A Cook.
24 Q And where at?
25 A On the line.

1 Q And you mean you work for The Daily Grill?
2 A Oh, yes. Uh-huh.
3 Q Is that The Daily Grill on Century Boulevard?
4 A Uh-huh.
5 Q And if you could please make sure that you speak up when
6 you're answering so that the interpreter can hear you? Because
7 and also, we can't interpret head shakes. So they have to be
8 verbal, okay.
9 A Okay.
10 Q Okay. Thank you. How long have you worked for The Daily
11 Grill on Century Boulevard?
12 A Since we opened, like I've been in the company for 12
13 years.
14 Q And did you work for The Daily Grill on Century between
15 about November 2017 until now?
16 A Yes.
17 Q Okay. Are you aware of the union election activities that
18 have been going on there?
19 A Yes, I heard.
20 Q Okay. Since the beginning of November 2017, have you ever
21 been visited at your home by people who you understood to be
22 there representing the Union?
23 A Yes, they've gone twice.
24 Q Okay, well, let's talk about the first time that happened.
25 Do you recall about when that was?

1 A Truthfully, I don't remember. I just know that they went
2 to my house. Well, they went to visit me. I moved in a house
3 that everything is closed, and I have two big dogs. The man
4 came into my home. I don't know how they got in, there was two
5 dogs. And I don't know how they got into the residence, and
6 they told me, my family, that two people were calling me that
7 were co-workers. And my family woke me up, my wife. And I
8 look out the window and I see that it's not them. It's two men
9 from the Union.
10 And they began to tell me that to not go back with what
11 they were doing, that they were going to help me. And all the
12 work that I'm going to pay for insurance, medical insurance for
13 my family, it's cheaper. I'm going to have all of those. That
14 they're going to help me with the work hours, vacation hours,
15 and I said, okay, that's fine. But whether I vote or not for
16 you, it's the same to me. If I don't vote, and the rest vote,
17 and if they have the majority of votes, I'm still there, inside
18 the play. And that's it. That's all I told them. Okay, and
19 that's all I have to say.
20 Q When they got into your residence, had they been invited?
21 A Truthfully, no, I didn't.
22 Q Okay.
23 A I didn't invite them.
24 Q How many people were there? The first time? We're still
25 at the first visit.

1 A Four people.
2 Q So there were three people who were representing the
3 Union, as far as you could tell?
4 A Uh-huh. They told me, and one female co-worker.
5 Q And who was the female co-worker?
6 A Well, I hear that they call her to be the head of
7 everything that started all the -- whatever her name is Sandra.
8 I don't know her last name. But it's Sandra.
9 Q And so there was Sandra and three other people. Is that
10 right?
11 A Yes, one from the Union, and a man who had worked there
12 previously who was fired. And the man from the Union.
13 Q Okay, did you -- other than Sandra and the man who worked
14 there previously and was fired, did you recognize the other
15 two?
16 A It was him, the man. I don't know what his name is.
17 Q Sitting here at the table next to --
18 A Yes, because they had tried to talk to me and with
19 everything that they're doing --
20 HEARING OFFICER TA: Okay, let's let the record reflect
21 that the witness has pointed to the Union representative, and
22 I'm sorry, I don't know his name.
23 MR. BLASI: Sergio Sorza.
24 HEARING OFFICER TA: Sergio Sorza?
25 MR. BLASI: S-O-R-Z-A.

1 HEARING OFFICER TA: S-O-R-Z-O, okay.
2 MR. BLASI: Z-A.
3 HEARING OFFICER TA: Z-A, sorry.
4 THE WITNESS: The other man, I think his name was -- a
5 chubby man, Alex. Something like that. Honestly, I don't know
6 his name.
7 Q BY MR. PARRY: How long were they there for?
8 A Truthfully, about a half an hour. An hour around there.
9 Q Did they make any promises to you? You mentioned that
10 they were telling you about things like health insurance and
11 wages and work hours.
12 A Not a promise, just that they said they were going to help
13 us with that.
14 Q Okay, and I apologize if I already asked this. Do you
15 remember the month that this happened?
16 A No, truthfully, no, not the month.
17 Q Was there anything else that you told them on this visit?
18 A No.
19 Q And did they just leave voluntarily, or did you ask them
20 to leave?
21 A No, they left because I had to go to work, because I have
22 another job. I have two jobs and so I said I have to go to
23 work. And so they left.
24 Q Okay, let's talk about the second visit. Do you recall
25 about when that was?

1 A I don't know the date or the hour, but I was taking my
2 grandson to school and I went out and I saw the two guys that
3 were knocking on the door and I didn't give them any attention
4 because the only thing they asked me, they simply said whether
5 I had received the voting stuff, to vote. And I said no.
6 Because I didn't want to continue with this anymore, to be
7 bothered or for them to be bugging me.
8 Sorry, pardon the word. So that was it. I didn't pay
9 them any attention. I continued walking and they left.
10 Q So they were at your residence, though, on the second
11 visit. Is that right?
12 A Uh-huh, knocking on the door.
13 Q Knocking on your front door?
14 A Yes, because I live in a house where everything is closed
15 off and it's like a small room, but on the back it's free. I
16 came back from work, I mean, excuse me, from taking my child to
17 school. And there was a man that was working on the door and I
18 asked him whether there had been somebody knocking a while ago,
19 and the man told me, yes, a while ago they were working, and
20 they asked for Lucas. But I told them that I don't know
21 anything. And that's all I asked the man and he didn't tell me
22 anything.
23 Q This man you were talking to was not from the Union,
24 correct?
25 A No, he was a worker in the house who was doing a job.

1 Q Okay, and the second time that the Union came and you --
2 so you avoided them, you didn't actually really speak to
3 them?
4 A The second time, in reality, no, I cut them off and said
5 I don't have time. I walked, and they left, and I left. And I
6 don't know what happened after that.
7 Q But just to make it clear, the second time they asked you
8 about whether you received your ballot yet?
9 A Exactly. They asked me whether I had received my ticket.
10 Like all the co-workers had received it the very day that they
11 said. But I didn't get it. So I replied, oh, yes, so they
12 could just leave me alone and not bother me anymore. That was
13 my decision with what I'm going to do with that ticket.
14 Q How many people from the Union came to your house the
15 second time?
16 A Two.
17 Q And do you -- do you know who they were?
18 A The same that was -- I don't know his name, a chubby guy.
19 I think it's Alex. The man must know because he knows his name
20 because he was with me.
21 Q So the second time Mr. -- is it Gorza? Sorza, I'm sorry.
22 A He didn't go. But he knows the name of the man. What's
23 his name?
24 HEARING OFFICER TA: Well, we don't know. Just answer the
25 question, sir.

1 Q BY MR. PARRY: So the second time it was this person who
2 you think his name might be Alex. And who was the other
3 person?
4 A Dark-skinned one that I just saw outside. He's here, too.
5 I don't know his name either.
6 Q It was a man?
7 A Yes.
8 Q Okay. Now do you recall filling out -- writing out a
9 statement about the Union coming to your home?
10 A A statement?
11 Q Well, let me just do this.
12 MR. PARRY: And I recognize we're going to have the same
13 issue.
14 HEARING OFFICER TA: Yeah. Okay.
15 MR. PARRY: But I'll just go through the same process.
16 HEARING OFFICER TA: Okay. Do --
17 Q BY MR. PARRY: Looking at what was just handed to you, is
18 this your handwriting?
19 A Yes, it is.
20 Q And so you wrote this statement, correct?
21 A Exactly.
22 Q And will you please just read what you wrote, out loud so
23 the interpreter can read it into the record?
24 A "I, Lucas, on Monday, December 11th, at 12:30 p.m.,
25 they came to my home, two people from the Union. And

1 they asked me whether I had already received the
2 card. And I said no. Lucas Chim."
3 HEARING OFFICER TA: Okay.
4 Q BY MR. PARRY: And so does this statement -- just let me
5 back up. Down at the bottom it says 12/13/17.
6 MR. BLASI: Objection. That's not what it says.
7 HEARING OFFICER TA: I'm sorry, what was the objection?
8 MR. BLASI: Just misstatement of the date on the document.
9 MR. PARRY: That doesn't say 12/13/17?
10 MR. BLASI: It says 13/12/17. It's fine, it's just --
11 MR. PARRY: You're looking at the translation and not the
12 actual statement.
13 MR. BLASI: Oh, you're right. I apologize. Carry on.
14 HEARING OFFICER TA: That's all right.
15 Q BY MR. PARRY: Did you sign this on December 13th, 2017?
16 A That's my signature.
17 Q And so from your -- from what you said in your statement,
18 looking at this, is this referring to the second visit from the
19 Union?
20 A Yeah -- this, yes.
21 Q Okay. And so having read your statement that you
22 provided, you think they came on December 11th, 2017, for that
23 second visit?
24 A Well, truthfully yes because that's my handwriting. But
25 I'm not going to guess or say. They're going to ask you to

1 come give a declaration so memorize the time and the date. I
2 just simply --
3 Q I understand. So at the time -- but at the time you wrote
4 this that's what you had remembered?
5 A This is my handwriting.
6 Q Okay. Thank you. Were you annoyed that the Union came to
7 your house?
8 A Well, truthfully, it was the same to me. But the only
9 thing I don't like is that they go and bother. That's it.
10 Q You didn't want them to come back?
11 A Truthfully, no. What for? I had already made the
12 decision later.
13 Q Okay. Now, you're handed another document --
14 MR. PARRY: Oh, before I start on this one -- I'm sorry.
15 I'd like to move into evidence as Exhibit 4, I believe.
16 HEARING OFFICER TA: Yeah.
17 MR. PARRY: The --
18 HEARING OFFICER TA: We're on Exhibit 4.
19 MR. PARRY: -- handwritten statement?
20 HEARING OFFICER TA: Okay. Any objection to this from
21 counsel -- Union counsel?
22 MR. BLASI: No.
23 HEARING OFFICER TA: Okay. Employer's Exhibit 4 is
24 admitted into evidence. Can we -- actually, let me mark it.
25 **(Employer Exhibit Number 4 Marked for Identification)**

1 **(Employer Exhibit Number 4 Received into Evidence)**
2 MR. PARRY: I've got sticky notes if you want those.
3 HEARING OFFICER TA: And again, just the same issue, I
4 will -- I'm admitting only the handwritten portion and not the
5 STC interpreting certification.
6 MR. PARRY: Understood.
7 Q BY MR. PARRY: Okay. Now looking at what's been put in
8 front of you, it says (Spanish spoken) on the top of it. Do
9 you recognize this?
10 A Oh, this one? Yes.
11 Q And are those your initials along the -- next to one, two,
12 and three?
13 A Yes.
14 Q Is that your handwriting where the date is?
15 A Yes.
16 Q And is that your signature down on the bottom?
17 A Yes.
18 Q Okay. Will you please -- I understand this is -- can you
19 please read the text of this document into the record, please?
20 A All of it?
21 Q Yes, please.
22 A "I understand that representatives from Daily Grill
23 want to make questions of me related with the
24 behavior of Unite Here Local 11, the Union, during
25 the recent elections at the restaurant. My initials.

1 It's been explained to me that I -- that it is
2 related to a legal procedure before the National
3 Labor -- about unfair labor practices of the Union
4 during the recent elections. I understand that this
5 interview is voluntarily. I am not obligated to
6 reply to any question. And I can end this
7 discussion at any time. I have been explained that
8 reprisals for anything I say or do not say during
9 this interview could be illegal. And I have been
10 given a promise that reprisals will not be taken
11 against me because of the answers that I give or do
12 not give during this interview. This 4/19 day of
13 April of '18. My signature, Lucas Chim."
14 And that's it.
15 Q Now the statement refers to an interview. Do you recall
16 having an interview when you got this statement with somebody?
17 A This one?
18 Q Yes.
19 A Yes.
20 Q And who was the interview with?
21 A With you.
22 Q With me, right. And you're pointing to me, Adam Parry.
23 Was there anyone else present in the interview?
24 A Yes.
25 Q And who was that?

1 A He works there. Like a manager? I don't know what he is.
2 Q Okay. Now when we had the interview, before we started
3 talking about any of these visits, did I explain verbally what
4 the statement meant?
5 A Yes.
6 Q And was it interpreted into Spanish for you?
7 A This one?
8 Q Yes.
9 A Yes.
10 Q Thank you. Okay. I'm going to hand you another document.
11 And do you recognize this document?
12 A Exactly.
13 Q Now this is -- is that your signature down at the bottom?
14 A That's right.
15 Q And your -- is that your handwriting where the typed date
16 is crossed out and the 4/19/18 is written in?
17 A Yes.
18 Q And where it says Los Angeles is your handwriting?
19 A That's right.
20 Q Now do you understand this to be the exact same statement
21 you gave in handwriting just typed out and under oath?
22 A Yes.
23 Q Okay. And do you recall when this was -- when you signed
24 this? Was it in the interview with me?
25 A That's right.

1 Q Was it after you signed the witness acknowledgement that
2 we looked at as Exhibit -- the previous exhibit?
3 A This one?
4 Q Yes. Oh, I'm sorry. I'm sorry, the other one. Yes.
5 Yeah.
6 A This one?
7 Q So did you sign the typed statement after signing the
8 witness acknowledgement?
9 A Oh, yes.
10 Q Okay. Thank you.
11 MR. PARRY: And if I haven't already, I'd like to move the
12 witness acknowledgement in as Exhibit 6? Oh, I'm sorry, 5.
13 MR. BLASI: Did we move --
14 HEARING OFFICER TA: I'm sorry. Yeah, okay. So that's 5,
15 and then 6 is the --
16 MR. PARRY: And I'd move 6 --
17 HEARING OFFICER TA: -- typed statement?
18 MR. PARRY: Yes.
19 HEARING OFFICER TA: Okay. Any objections from Union
20 counsel?
21 MR. BLASI: No.
22 HEARING OFFICER TA: Okay. Employer's Exhibit 5 and 6 are
23 admitted into evidence.
24 **(Employer Exhibits Number 5 and 6 Received into Evidence)**
25 MR. PARRY: And I've got no further questions at this

1 time, subject to redirect.

2 HEARING OFFICER TA: Okay. Let me just mark these.

3 MR. BLASI: I'm sorry, Madam Hearing Officer, are you

4 waiting for me or writing --

5 HEARING OFFICER TA: Oh, no, no, I'm marking exhibits.

6 MR. BLASI: I was just going to ask if I could have two or

7 three minutes just to prepare.

8 HEARING OFFICER TA: Okay. All right. Yeah. Let's go

9 off the record. You said three minutes?

10 MR. BLASI: Three, four minutes. Not long.

11 HEARING OFFICER TA: Okay.

12 (Off the record at 1:43 p.m.)

13 HEARING OFFICER TA: Okay. Are we ready? All right.

14 Let's go back on the record. Counsel, can you begin?

15 MR. BLASI: Sure.

16 **CROSS-EXAMINATION**

17 Q BY MR. BLASI: Mr. Chim, good afternoon.

18 A Good afternoon.

19 Q Okay. I just want to ask you some questions. Okay. You

20 testified earlier about sometimes when co-workers and Union

21 organizers came to your house? Do you remember that?

22 A Yes.

23 Q That wasn't actually the first time you had talked to

24 your co-workers and Union organizers about the election, was

25 it?

1 A Of course.
2 Q You had actually met with some Union organizers and a
3 co-worker prior to their visiting your house?
4 MR. PARRY: Objection. That's irrelevant. That's beyond
5 the scope. We're talking about home visits.
6 HEARING OFFICER TA: I'm going to allow it just --
7 MR. BLASI: I'll be brief.
8 HEARING OFFICER TA: -- to the extent that we need to
9 explore any misconduct on the Employer's side.
10 MR. BLASI: Sure.
11 MR. PARRY: And again, I just -- I appreciate it. I just
12 object that we're --
13 HEARING OFFICER TA: Sure.
14 MR. PARRY: -- not looking at Employer conduct here. This
15 is the charges of the Union's conduct.
16 MR. BLASI: Well, this line of inquiry doesn't even have
17 to do with the Employer's conduct. It's about the context in
18 which the visits at the house occurred.
19 HEARING OFFICER TA: Okay. Go ahead.
20 Q BY MR. BLASI: Okay. So you met at a restaurant with a
21 co-worker and some organizers prior to them coming to your
22 house; isn't that right?
23 A With co-workers? All of them? No. Just with Mr. --
24 the one that they have from the Union and the manager of
25 everything. And let's speak frankly, yes, I spoke with this

1 man and with Alex -- or I don't know. We spoke with them.
2 That's it. But that all the co-workers gathered? No.
3 Q All right. So -- and you said sort of the leader of
4 everything, did you mean -- were you referring to a woman named
5 Sandra Diaz?
6 A I don't know her last name. But I always know her as
7 Sandra, Sandra, Sandra. I don't know what her last name is.
8 Q Sandra is a co-worker of yours?
9 A Yes, a busboy.
10 Q Okay. And you met with Sandra and this man who is
11 Mr. Sergio Sorza?
12 A Yes.
13 Q And maybe somebody else at a Taco Bell at some point; is
14 that correct?
15 A Yes.
16 Q Okay. And you talked to them about the Union?
17 A Uh-huh.
18 Q Okay. And did you have a conversation about the -- where
19 they told you about what they believe are the benefits of
20 having a union?
21 MR. PARRY: I'm going to -- I'm just going to object
22 again. It's irrelevant. Beyond the scope.
23 HEARING OFFICER TA: Counsel, where are you --
24 MR. BLASI: If I could -- the offer of proof is that the
25 Employer's theory seems to be that there was some sort of

1 uninvited presence or unwelcome presence. And to the extent
2 that workers had formally, explicitly, and in various fashions
3 indicated their support for the Union, the idea that they would
4 be visited at some point later on, I think is a perfectly
5 reasonable thing to do and given the background. And I'm
6 simply just trying to establish that background.
7 MR. PARRY: I think along the lines of the card question I
8 had previously. His consent to meet with them once doesn't
9 abrogate him not wanting them there later as he's testified to
10 already.
11 HEARING OFFICER TA: Okay.
12 MR. PARRY: And so I think it's irrelevant.
13 MR. BLASI: I feel the Employer's actually, through this
14 objection, essentially prohibiting the employee from speaking
15 freely about his views on unionization and conveying that --
16 HEARING OFFICER TA: Okay. Well --
17 MR. BLASI: -- that's not appropriate.
18 MR. PARRY: It's not free -- he's not speaking freely when
19 he's being questioned and cross-examined on it. That's a big
20 difference.
21 HEARING OFFICER TA: Okay. I'll allow a short line of
22 inquiry about it.
23 MR. BLASI: Okay.
24 HEARING OFFICER TA: Yeah.
25 Q BY MR. BLASI: So it's -- when you met with your co-worker

1 Sandra and Mr. Sergio Sorza, you conveyed that -- you agreed
2 with them that it would be a good idea to have a union at that
3 meeting, correct?
4 MR. PARRY: Objection. I think this violates his privacy
5 and his right to secret ballot and free choice in the election.
6 That's irrelevant.
7 HEARING OFFICER TA: Yeah, so counsel --
8 MR. BLASI: It doesn't weigh on the --
9 HEARING OFFICER TA: -- if we can --
10 MR. BLASI: -- ballot decision.
11 MR. PARRY: How --
12 MR. BLASI: It's about the interactions that occurred
13 prior to the --
14 HEARING OFFICER TA: Well, if we can --
15 MR. BLASI: -- voting period.
16 HEARING OFFICER TA: -- somehow limit the questioning
17 to --
18 MR. BLASI: I was just about done. I mean, I don't know
19 what the -- he was not permitted to give an answer, but --
20 HEARING OFFICER TA: Well --
21 MR. BLASI: Sorry. Go ahead.
22 MR. PARRY: The objection's pending.
23 HEARING OFFICER TA: -- I was just going to say, yeah. If
24 we can somehow limit the questions to, you know, whether there
25 was an invitation to come to the house or --

1 MR. BLASI: Well, that's --
2 HEARING OFFICER TA: -- the nature of the interaction.
3 MR. BLASI: -- the --
4 HEARING OFFICER TA: But I -- you know, I --
5 MR. BLASI: -- sure.
6 HEARING OFFICER TA: -- I am a little reluctant to have
7 the witness answer, you know, on point about whether he, you
8 know, had wanted to vote a certain way or was supportive in one
9 way or another, and if we can just kind of, you know, keep it
10 to kind of the nature of the interaction --
11 MR. PARRY: In questioning about someone's feelings about
12 the Union, opinions, or how they're leaning, is it's
13 irrelevant, first of all, and it's totally inappropriate. It's
14 an interrogation that's not allowed under the Act. So any
15 questions that ask about how you felt about the Union have no
16 place here.
17 MR. BLASI: There's no prohibition on Unions inquiring
18 workers about their position on unionization. That's --
19 MR. PARRY: It's completely irrelevant to this proceeding.
20 It doesn't matter if someone's --
21 MR. BLASI: That prohibition applies to employers, not to
22 unions.
23 MR. PARRY: Well, if someone is pro-union, it doesn't
24 matter. If there's misconduct going on by the Union --
25 HEARING OFFICER TA: Yeah.

1 MR. PARRY: -- and appearing at their homes it has --
2 whether they're for or against, is really completely
3 irrelevant.
4 HEARING OFFICER TA: Yeah. I think let's just -- let's
5 try to, again, like I said, let's kind of limit it to sort of
6 the nature of the interaction.
7 MR. BLASI: Well, what do you mean by that just so I don't
8 go beyond the bounds of what you're --
9 HEARING OFFICER TA: You know, whether it was -- I
10 think -- because I think what you're trying to get at here is,
11 you know, was this a contentious meeting or was it one where
12 the Union felt free to come visit him? And so, you know, if
13 you want to ask him questions that go to that, you know, you
14 can do that.
15 MR. BLASI: Okay. Let me try and you can tell me if
16 I'm --
17 HEARING OFFICER TA: Sure.
18 MR. BLASI: -- adhering to --
19 HEARING OFFICER TA: Okay.
20 MR. BLASI: -- those guidelines.
21 Q BY MR. BLASI: So when you met with your co-worker and
22 Union at Taco Bell, was that a friendly meeting, would you say?
23 A Well, truthfully, the co-worker told me that she wanted to
24 talk to me. But she didn't tell me that she wanted to talk
25 with the man. And she just simply said she wanted to speak

1 with me. That was it.

2 Once I arrived, I saw the man from the Union that

3 represents them, and that's when they came out with oh, the

4 Union here and there.

5 Q Okay. And how did you feel --

6 MR. BLASI: I don't know. What am I supposed to -- if I

7 can't ask about his views, I'm not sure what I can really ask.

8 Let me think about this for a second.

9 Q BY MR. BLASI: So at that meeting, did Sandra and Sergio

10 say things about the positive aspects of having a union?

11 MR. PARRY: Objection. It's irrelevant. Beyond the

12 scope.

13 HEARING OFFICER TA: Overruled. Go ahead.

14 THE WITNESS: Truthfully, they were simply speaking to me

15 about the benefits we have, the hours of work, about medical

16 insurance, family, and after that -- and then some things that

17 supposedly the government that we have right now is doing

18 things that they shouldn't. And the Union is going to help us

19 with medical insurance, that's it.

20 Q BY MR. BLASI: Okay. So they were trying to convince you

21 about the positive aspects of the Union, right?

22 A Well, truthfully yes because I'm not interested in any of

23 it. I've been working here for a long time and I've worked

24 without the Union and it was the same to me. I work hours;

25 they pay me hours. Exactly. I have family, people in this

1 country. I have Medi-Cal, and that's just it.
2 Q Okay. So let's move on. So you said that the Union
3 organizers tried to visit you at home on two occasions,
4 correct?
5 A Exactly.
6 Q Okay. And on the first occasion, there was Sandra, the
7 co-worker we just discussed a minute ago, correct?
8 A Yes.
9 Q And was there also a co-worker or former co-worker named
10 Gustavo who was there?
11 A Gustavo?
12 Q And is Gustavo somebody you know from work?
13 A Yes. He used to work there, but he was fired.
14 Q Okay. And how -- had you worked with him for some number
15 of years?
16 A Yes. I don't know how many years it had been that he had
17 been fired.
18 Q Okay. He had just been fired last year; isn't that right?
19 MR. PARRY: Objection. It's irrelevant.
20 HEARING OFFICER TA: What's the relevance, counsel?
21 MR. BLASI: I'm just trying to establish this was somebody
22 who he worked with for a long time that was visiting him. It
23 was nothing more than that.
24 HEARING OFFICER TA: Okay. Okay. I mean --
25 MR. BLASI: I can move on. It's not a big deal.

1 HEARING OFFICER TA: Yeah. Okay. Let's move on.
2 Q BY MR. BLASI: Gustavo is someone you worked with for some
3 period of time, correct?
4 A Yes.
5 Q Okay. And then the third person was organizer you
6 described as chubby, who you think is named Alex; is that
7 right?
8 A Uh-huh. Yes.
9 Q Okay. And you spent about 45 minutes speaking with them?
10 A Around there.
11 Q Okay. Where were you located when you had that
12 conversation for 45 minutes?
13 A When they went to my house?
14 Q Yeah, the first time.
15 A In the yard or the garage. I don't know.
16 Q Okay. And at any point during that conversation, did any
17 of those three people threaten you, say something bad would --
18 they would do something bad to you if you didn't support the
19 Union?
20 A No.
21 Q Did they ever say that anybody else would do something bad
22 to you or make any other kind of threat like that?
23 A No.
24 Q Okay. It was just a conversation?
25 A Exactly.

1 Q And in the conversation, they were trying to convince you
2 to support the Union; is that right?
3 A Well, like yeah.
4 Q Were they making arguments about why a union is a good
5 idea; is that fair to say?
6 A Exactly.
7 Q Okay. And when you said you needed to leave, they left,
8 correct?
9 A Uh-huh. Yes.
10 Q Okay. Now I want to move onto the second visit or
11 attempted visit, I should say. Okay. You said that you saw
12 two men, one was the organizer, Alex, right?
13 A Yes.
14 Q And the other was another man whose name you don't know,
15 but I'll represent to the Hearing Officer that his name is
16 William Sanchez, and he's a union organizer.
17 A I don't know.
18 Q Okay.
19 A But it's Alex and the other one.
20 Q Okay. And you didn't really have much of a conversation
21 with them on that occasion, right?
22 A No, not at that time.
23 Q Because you basically said you don't have time to?
24 A Exactly. They just asked me whether I had received the
25 ballot and I said no, and that was it.

1 Q Okay. So you -- is it true that you had not gotten a
2 ballot at that point?
3 A No.
4 Q Okay. And did you know, at that point, what to do if you
5 wanted to vote but hadn't received a ballot?
6 A Oh, yes. I had already taken my decision.
7 Q No, no. I'm sorry. I'm trying to ask a different
8 question. You said at that point you didn't have your ballot;
9 is that right?
10 A No.
11 Q And did you know how to get a ballot mailed to you if you
12 had not received it?
13 A Yes, they told me to call, to say it at work, and call on
14 the phone so they could send a different one.
15 Q Who said that to you?
16 A They told me -- the co-workers, all of them.
17 Q You mean your co-workers at work told you that you could
18 call a phone number to get the ballot sent to you?
19 A Well, I can say the majority of them. I can say their
20 names.
21 Q No, that's fine. You don't need to say their names. Did
22 Alex and Willy (phonetic), did they get a chance to tell you
23 what to do to get your ballot?
24 A Them, no.
25 Q And that's because the conversation was very short and it

1 ended when you said you got to go, right?
2 A Exactly.
3 Q Okay. So this conversation, this brief conversation,
4 those two organizers from the Union, they didn't threaten you
5 in any way, did they?
6 A No.
7 Q They didn't tell you something bad was going to happen to
8 you if you didn't talk to them?
9 A No.
10 Q And they didn't say that -- let me ask this. You didn't
11 feel threatened in any way, did you?
12 A No.
13 Q It was just a brief conversation?
14 A Exactly.
15 Q Okay. Okay. And actually, let me ask about the first
16 occasion where they visited you. Did you feel afraid at any
17 point?
18 A No.
19 Q Because it was just a conversation?
20 A Exactly.
21 Q Yeah. Okay. Just one other quick series of questions.
22 You referred earlier to this document marked exhibit 4 that you
23 said you wrote?
24 A Uh-huh.
25 Q Where did you get the idea that it was a good idea to

1 write a statement like this?
2 A Well, I said I'm going to write it down and turn it into
3 them. And that's it.
4 Q How did you get the idea to write a statement?
5 A Because the co-workers had said if you don't receive it,
6 you have to tell the co-workers, or I don't know. And that's
7 it.
8 Q You mean to receive -- if you hadn't received the ballot?
9 A Uh-huh. Yes.
10 Q So you wrote this statement because your co-workers said
11 if you didn't receive your ballot you should tell someone? Is
12 that what you're saying?
13 A Exactly.
14 Q Oh, okay. Did you have any conversations with a manager
15 around the same time that you wrote this statement about what
16 happened with them visiting you at home?
17 A Well, everybody -- all the co-workers -- I'm not going to
18 say names because they would all say that they're getting
19 visited at home.
20 Q Uh-huh.
21 A And that's it.
22 Q Okay. Is the -- do you work under the chef named Martin
23 Garcia?
24 A That's right.
25 Q Okay. Did you ever have any conversations around the time

1 you wrote this with Martin Garcia about what was going on?
2 Maybe part of a group? One-on-one, either way?
3 A Yes, in group. Yes.
4 Q Okay. Around the same time that signed this document?
5 A Oh, yes.
6 Q Did that conversation happen at work?
7 A Yes, because I told him that the person from the Union was
8 not stopping from bugging me. And that was it.
9 Q And did he suggest well, maybe it's a good idea to write
10 something down so there's some documentation about that?
11 A I just told him I have this person that came to my house
12 and I turned it in.
13 Q Okay. Had you had a conversation with him before you
14 turned it in about them coming to your house?
15 A No.
16 Q So when was the first time you -- well, actually, let me
17 step back for a second. What happened in the conversation
18 where you talked to Martin Garcia? Tell me about that -- if
19 you can describe that conversation that you were just
20 mentioning a minute ago where you talked to Martin Garcia
21 about the organizers coming to your house.
22 MR. PARRY: Asked and answered.
23 THE WITNESS: I don't understand.
24 MR. BLASI: I'm trying to get a description of what the
25 conversation was.

1 HEARING OFFICER TA: Okay. I'm going to overrule. Go
2 ahead and answer the question.
3 MR. BLASI: Do you want me to ask it again? Is it --
4 Q BY MR. BLASI: Okay. So you had a conversation with Chef
5 Martin Garcia where you -- I guess you gave him this statement,
6 right?
7 A Uh-huh. Yes.
8 Q What was the first part of that conversation that you
9 remember?
10 A Well, I told him that they don't stop bugging me, the ones
11 from the Union because they're going to my house. And I made
12 that where I said, I -- the one that I have there and I turned
13 it in and said here you go. You have it and do whatever
14 because I don't want to know anything.
15 Q Okay. Did he ask you any questions about what was going
16 on?
17 A No.
18 Q Okay. And before you gave this to him, did he tell you
19 anything about the purpose of -- well, let me ask you this.
20 MR. BLASI: Strike that.
21 Q BY MR. BLASI: When you had the conversation with him and
22 you gave him this document, did he tell you that there would
23 not be any retaliation against you if you gave him a statement
24 or spoke about what was going on?
25 A No.

1 Q He didn't tell you there will be no retaliation if you
2 give a statement or anything like that?
3 A Exactly. No, nothing.
4 Q Okay. And did he tell you that if you wanted to give a
5 statement like this or otherwise give information that that
6 would be purely voluntary for you?
7 A Well, yes.
8 Q What did he say exactly?
9 A Nothing, just what I -- to say whatever I have to say.
10 You know, what you do it's your decision.
11 Q That's what he said to you?
12 A Yes.
13 Q Okay. But he didn't specifically tell you that if you
14 wanted to speak with him or give him a statement it would be on
15 a purely voluntary basis? He didn't say that to you, did he?
16 MR. PARRY: Asked and answered.
17 HEARING OFFICER TA: Overruled. Just answer the question.
18 THE WITNESS: No, that's it.
19 Q BY MR. BLASI: He didn't say that?
20 MR. PARRY: Asked and answered.
21 HEARING OFFICER TA: Okay. Yeah. Okay.
22 MR. BLASI: That's fine.
23 Q BY MR. BLASI: And did he say anything about the purpose
24 of, like for example what this document would be used for or
25 any information you gave him would be used for by the company?

1 MR. PARRY: I'm going to object to that. It misstates his
2 testimony. It mischaracterizes his testimony as to how this
3 document came to be. He seems to be making the inference that
4 he was asked to give it, and that hasn't been the testimony.
5 MR. BLASI: I mean I think we all heard his testimony.
6 I'm just trying to elicit a question about whether an assurance
7 was given about what the Employer would do with the statement.
8 MR. PARRY: That's not what you just asked.
9 HEARING OFFICER TA: Well, so as I understand the
10 testimony right now it's that Mr. Garcia was aware that a
11 statement had been written or was about to be written or that
12 he could write a statement. And I think counsel is asking --
13 I'm sorry, what was your counsel, again, could you repeat it?
14 MR. BLASI: My question was did Mr. Garcia tell the
15 witness what the --
16 HEARING OFFICER TA: Right. If --
17 MR. BLASI: -- what use the Employer would --
18 HEARING OFFICER TA: -- right.
19 MR. BLASI: -- put of this document or any other
20 information that he provided the Employer.
21 MR. PARRY: That's irrelevant also.
22 HEARING OFFICER TA: I'm going to overrule the objection.
23 Go ahead and answer.
24 MR. BLASI: Do I need to repeat the question for the
25 witness?

1 THE WITNESS: Yes.
2 Q BY MR. BLASI: Okay. Did Mr. Garcia, in the meeting where
3 you gave him this statement or talked about the statement, did
4 he tell you what the Employer was going to do with the
5 statement or what purpose it would be used for?
6 A No, just --
7 Q You can just say no if that's all you want to say.
8 A I already said no.
9 Q Okay. That's fine. I realize it can get kind of
10 complicated when we're asking real specific questions. Okay.
11 MR. BLASI: If you could just give me a second to review
12 my notes, I think I'm probably done with my cross-examination.
13 Okay. I have nothing further for this witness.
14 HEARING OFFICER TA: Okay. Do you want to redirect?
15 MR. PARRY: Yes.
16 **REDIRECT EXAMINATION**
17 Q BY MR. PARRY: Mr. Chim, the written statement that you
18 gave to Chef Martin, did you give him that voluntarily?
19 A Yes.
20 MR. PARRY: Thank you. I have no further questions.
21 HEARING OFFICER TA: Recross?
22 MR. BLASI: No, that's fine.
23 HEARING OFFICER TA: Okay. Mr. Chim, I have a question
24 for you. You had talked about, you know, co-workers talking
25 about their experiences with Union representatives going to

1 their homes. Can you tell me how many co-workers you talked
2 with about Union representatives visiting your home?
3 THE WITNESS: Well, the majority said it. All of them
4 said it because some said that they're not going to vote
5 because they're going -- or that's it.
6 HEARING OFFICER TA: Uh-huh. Okay. So when you say the
7 majority, can you give me a number?
8 THE WITNESS: Maybe 20.
9 HEARING OFFICER TA: 20 people. And were these all
10 co-workers who worked as cooks, also?
11 THE WITNESS: No, the waitresses, the front desk, busboys.
12 HEARING OFFICER TA: Okay. So they were from all
13 different classifications of work?
14 THE WITNESS: Uh-huh.
15 HEARING OFFICER TA: Okay. Okay. Anything else, counsel?
16 MR. BLASI: No, thank you.
17 HEARING OFFICER TA: Thank you very much, Mr. Chim. You
18 are excused. I just want to remind you that a sequestration
19 order is in effect. So please do not talk about your testimony
20 with anyone else until the conclusion of the hearing. Okay.
21 Thank you very much. Thank you.
22 MR. PARRY: Can we go off the record momentarily?
23 HEARING OFFICER TA: Sure. Yeah.
24 (Off the record at 2:14 p.m.)
25 HEARING OFFICER TA: Okay. Are we ready? Okay. Can you

1 please state your name for the record and spell it?
2 THE WITNESS: Kimberly Mendez.
3 HEARING OFFICER TA: Can you speak up a little bit? Yeah.
4 THE WITNESS: Kimberly Mendez.
5 MR. PARRY: Can we -- excuse me. Can I move that?
6 HEARING OFFICER TA: Yeah. It doesn't amplify, but it --
7 you know, but it's for --
8 MR. PARRY: It'll pick up --
9 THE CLERK: It doesn't amplify, it's just recording. But
10 she needs to speak up.
11 HEARING OFFICER TA: Yeah. Yeah. Okay. So go ahead and
12 state your name.
13 THE WITNESS: Kimberly Mendez.
14 HEARING OFFICER TA: And can you spell it, please?
15 THE WITNESS: K-I-M-B-E-R-L-Y, M-E-N-D-E-Z.
16 HEARING OFFICER TA: Okay. And can you raise your right
17 hand, please?
18 Whereupon,
19 **KIMBERLY MENDEZ**
20 having been duly sworn, was called as a witness herein and was
21 examined and testified as follows:
22 HEARING OFFICER TA: And just as a couple of reminders,
23 too. As we said, you're being recorded so make sure to give
24 verbal responses. Like don't shake your head or nod or
25 anything like that because obviously, it doesn't get picked up.

1 And if you don't understand a question, please ask for some
2 clarification if you don't understand the question. And if
3 there's an objection, hold your response until I make a ruling
4 on the objection, and then you can respond or not. Okay. All
5 right. Great. Thank you.
6 Go ahead, counsel.
7 **DIRECT EXAMINATION**
8 Q BY MR. PARRY: Okay, Ms. Mendez. Thank you for being
9 here. Can you just tell us where you work?
10 A The Daily Grill.
11 Q And that's The Daily Grill on Century Boulevard?
12 A On Century, yeah.
13 Q Thank You. How long have you worked there?
14 A For a year-and-a-half.
15 Q And what do you do there?
16 A A host.
17 Q Okay. So were you working as s host at The Daily Grill
18 from let's say November 1st, 2017 until today?
19 A Yes.
20 Q Thank you. And are you aware of the union election
21 procedure that went through The Daily Grill in like
22 November/December of last year, correct? You were aware of
23 that?
24 A Yeah.
25 Q Okay. Was there ever a time when people who you

1 understood to be representing the Union, visited your home?
2 A Yes.
3 Q And when did that happen?
4 A Right -- I don't remember the month.
5 Q Was it sometime near the time that the mail ballots were
6 sent?
7 A Yeah.
8 Q Okay. And if I say that's sometime in December of 2017,
9 does that sound about right to you?
10 A Yeah.
11 Q Okay. Thank you. So how many times did the Union visit
12 your home?
13 A More than three times.
14 Q More than three times. Was it all in December of 2017?
15 A Probably, yeah. December and the month before.
16 Q So November and December of 2017?
17 A Just December probably.
18 Q Okay. You say more than three times, was it maybe three,
19 four or five times, or was it like ten times or more?
20 A It was probably four or five.
21 Q Okay. So somewhere between three and five times the Union
22 visited your home?
23 A Uh-huh.
24 Q Okay. Let's just start with each one, each instance. Do
25 you remember what happened the first time they visited? Let's

1 start with this question, on the first time they visited, how
2 many people were there?
3 A Two.
4 Q Did you recognize those two people?
5 A I recognized one.
6 Q And who was the person that you recognized?
7 A I don't feel comfortable answering that question.
8 Q And why is it that you don't feel comfortable answering
9 the question?
10 A I don't want to say the name of the person.
11 Q Is it a co-worker?
12 A It could be. I'm not going to say.
13 Q Okay. I'm entitled to your best testimony. I respect
14 your concerns and your privacy, okay. Do you recognize the
15 person sitting to the right of me?
16 A Yeah.
17 Q Was -- did this person visit your home at all?
18 A Yes, I think.
19 Q Did this person visit -- and I'm referring to Mr. Souza --
20 did he visit -- was he one of the people that visited your home
21 the first time?
22 A I don't recall.
23 Q Okay. So the first time that people from the Union
24 visited your home there were two, correct. Were they male or
25 female? Or were they both male, both female, some mixture?

1 A It was a female and a male.
2 Q Okay. And how long were they there for?
3 A Probably an hour.
4 Q An hour. What did they say to you when they were there?
5 A They just wanted to explain to me how the Union works
6 because I didn't know anything about it. And I let them inside
7 my house so they can explain to me because I wanted to hear
8 their side, too.
9 Q Okay.
10 A I wasn't going to just -- so I let them sit in my house to
11 explain to me what the Union was because I didn't know what it
12 was.
13 Q Okay. And then after about an hour they left?
14 A Yeah.
15 Q Okay. Let's talk about -- let me ask this. Did you
16 previously -- had you invited them there that time? Or did
17 they just kind of show up?
18 A They just showed up.
19 Q Okay. Now let's talk about the second time that they
20 visited your home. Do you recall how long after the first
21 visit that was?
22 A I wasn't there.
23 Q You weren't there. How do you know that they visited your
24 home?
25 A They spoke to my sister.

1 Q And what did your sister tell you about that?
2 A Well, she just said that they were looking for my other
3 sister.
4 Q For your other sister?
5 A Because I have three sisters.
6 Q Okay. So which sister were they looking for as far as you
7 were told?
8 A Well, the one that works with me.
9 Q Would that be Stephanie?
10 A Yeah.
11 Q Okay. And do you know how long they stayed for the second
12 visit?
13 A (No audible response)
14 Q Okay. And you didn't actually interact with them at all
15 and you weren't home?
16 A No. No.
17 Q Okay. What about the next time they visited? Do you know
18 about when that was?
19 A That's when -- no, I don't -- my sisters just told me that
20 they were there again.
21 Q So the third time they visited you also weren't home?
22 A Uh-uh.
23 Q I'm sorry, you need a yes or a no.
24 A No.
25 Q No, okay. What did your sister tell you about that third

1 visit?
2 A Nothing much, just that they were there.
3 Q Were they asking -- did she say whether they were asking
4 for you?
5 A No, they were asking for Stephanie.
6 Q Okay. And do you know how long they stayed on that time?
7 A No.
8 Q Does Stephanie live with you?
9 A No.
10 Q Okay. Okay. Now let's go to the next -- what's the next
11 visit where you were actually home and they visited your home?
12 A I was outside -- I was outside of my house, and I was just
13 barely walking in and they just wanted to speak to me.
14 Q Okay. Do you recall about what -- when this was? It was
15 in December?
16 A No, it was when -- when the ballots were out.
17 Q So the ballots were out at this point?
18 A Uh-huh.
19 Q Had you received your ballot yet?
20 A It just got there.
21 Q Okay.
22 A I had just checked the mail.
23 Q Oh, so you -- were you outside checking the mail when they
24 showed up?
25 A Yeah.

1 Q Okay. And so this instance, how many people from the
2 Union were there?
3 A Two.
4 Q Was it the same two people that showed up the first time?
5 A No.
6 Q It was different people?
7 A One of them was the same person, the other one wasn't.
8 Q The same person who you don't want to identify?
9 A No.
10 Q Maybe I made that question unclear. So there was -- one
11 of the people on this visit when you had -- when you got your
12 mail, your ballot, one of them was one of the same people who
13 showed up the first time, correct?
14 A It was -- it was a guy that showed up the first time.
15 Q And will you identify him?
16 A I don't recall his name.
17 Q Okay. You don't know his name. Was it the gentleman
18 sitting to the right of me?
19 A No.
20 Q Okay. Who was the other person?
21 A He was a former co-worker.
22 Q Okay. Is this the former co-worker that you don't want to
23 identify?
24 A Yes.
25 Q Have you been intimidated by that former co-worker?

1 A No.
2 Q Okay. What time of day was this, now we're on the fourth
3 visit, just to keep it straight?
4 A It was around probably 1.
5 Q Okay. 1 p.m.?
6 A Uh-huh.
7 Q In the afternoon. And so just to make sure I'm correct
8 in my understanding, they -- you were outside getting your
9 mail and you had just received your mail ballot; is that
10 right?
11 A Yeah.
12 Q Okay. And did they approach you to come talk to you?
13 A Yeah. They were offering to help me vote.
14 Q Did they say anything more about what they meant by
15 helping you vote?
16 A They said that they didn't think that I was going to vote.
17 And I told them I'm pretty sure I'm not a child. I know how to
18 vote. And I don't need your help.
19 Q And then what did they say?
20 A They just said they think that I didn't -- I wasn't going
21 to do it right and they offered to like take me to the post
22 office. But I was like, no, I know how to.
23 Q Did they pressure you in anyway?
24 A I didn't feel pressured. I -- they were -- I felt like
25 they were trying to offer me, and I was just like no, I'm

1 sorry. Like I don't need your help.
2 Q Did they ask you to show them your vote?
3 A They wouldn't ask me to show my -- what do you mean?
4 Q Well, did they ask you to like open your ballot and fill
5 it out in front of them?
6 A Well, yeah, pretty much, since they were telling me that
7 they wanted to help me.
8 Q Did they offer to mail it for you?
9 A They offered -- yeah, they did, actually.
10 Q So they said, we can mail it for you?
11 A Well, no, they didn't say it like that.
12 Q How did they say it?
13 A They just said -- they said that they can tell -- take me
14 to put postage if I wanted to. And I said, no, it's okay. Me
15 and my sister are going to go right now.
16 Q Okay. Did they ever tell you they wanted you to vote in
17 front of them so they can make sure you were voting yes?
18 A They asked me if I was onboard with them, and they
19 believed that I wasn't going to be onboard with them. And I
20 told them I don't think I'm onboard with you.
21 Q And did they keep pressuring you to vote a certain way at
22 that point?
23 MR. BLASI: Objection. Lacks foundation. Misstates
24 testimony.
25 HEARING OFFICER TA: Counsel, can you rephrase?

1 Q BY MR. PARRY: Once you told them you weren't onboard with
2 them did they keep asking you questions about your vote?
3 A Well, no, I just walked away. I just, at that point, I
4 was with my sisters and we had to be somewhere, so I just left.
5 Q Okay. Did you feel uncomfortable at all in that
6 interaction?
7 A I felt kind of uncomfortable just that I was put in that
8 situation.
9 Q Do you feel like they were being pushy with you?
10 A Maybe a little.
11 Q Was there any other time after that that the Union came
12 to your home?
13 A No.
14 Q So that's four times that you remember. Any times that
15 you can recall now that they came to your home when -- that you
16 heard of when you weren't home?
17 A What do you mean?
18 Q So we discussed at least two times when you heard from one
19 of your sisters that they had come to your home but you weren't
20 home, right?
21 A Yeah.
22 Q So that was two times that you weren't home, and then you
23 described two times when they came and you were home, right?
24 A Uh-huh.
25 Q Were there any other times that you know of that the Union

1 came to your home?
2 A No.
3 Q I'm sorry?
4 A No.
5 Q Okay. Other than your sister, do you -- have you spoken
6 with any co-workers who have complained of the Union coming to
7 their homes? You don't have to name their names, but if you
8 have.
9 A Yeah.
10 Q And about how many, if you can recall?
11 A More than five.
12 Q More than five, okay. Is it more than ten?
13 A I'm not sure.
14 Q Okay. I believe you said that one of the people that had
15 come to your home at least once was a woman; is that right?
16 A Yes.
17 Q Was the woman a co-worker?
18 A I don't recall. Well, I don't want to answer that.
19 Q This is the person who you don't want to identify? The
20 female co-worker -- or I'm sorry, the female Union person or?
21 A Do I have to identify her or?
22 Q Is this the person that you don't want to identify? The
23 female?
24 A I don't want to identify her.
25 Q Okay.

1 MR. BLASI: I'm sorry, I didn't hear the answer.
2 THE WITNESS: I don't want to identify her.
3 Q BY MR. PARRY: Is this a person -- has this person
4 threatened retaliation against you?
5 A No.
6 Q Is that the reason why you don't want to identify her?
7 A No.
8 Q Okay.
9 MR. PARRY: I have no more questions for you right now.
10 Thank you. I'll reserve for redirect.
11 HEARING OFFICER TA: Okay.
12 Counsel, go ahead.
13 MR. BLASI: If I could just have maybe five or ten minutes
14 to prepare cross?
15 MR. PARRY: Ten minutes seems excessive.
16 HEARING OFFICER TA: Let's do five. Yeah, let's do five
17 minutes. Okay. So we'll go off the record.
18 (Off the record at 2:37 p.m.)
19 HEARING OFFICER TA: Okay. Are we ready, counsel?
20 MR. BLASI: Yeah. I guess so.
21 HEARING OFFICER TA: Okay. Back on the record. Go ahead.
22 MR. BLASI: I may just pause as I'm going to consult my
23 notes.
24 **CROSS-EXAMINATION**
25 Q BY MR. BLASI: Good afternoon, Ms. Mendez.

1 A Good afternoon.
2 Q So I want to just kind of go over some of the same things
3 you talked about earlier, but just try to get a little more
4 information about them. So you said that the first time that
5 there was some people came to talk to you about the Union there
6 was -- one of them was a co-worker and one of them was somebody
7 who was like a union staff person; is that right?
8 A Uh-huh.
9 Q Okay. The co-worker was somebody you had worked with for
10 some period of time --
11 A Yeah.
12 Q -- that you knew from work? And did -- during that
13 meeting that you had with them, I think you said it lasted
14 about an hour; is that right?
15 A Yeah, about. Maybe a little bit less.
16 Q Okay. What were just some of the things you talked about
17 during that meeting?
18 A Like I said, he was just explaining to me why they were
19 reaching out to me, why they wanted to bring the Union into The
20 Daily Grill, and all that stuff.
21 Q Uh-huh. Were they saying some things about why a union's
22 a good idea for workers to have?
23 A Yeah. They were pointing out some points.
24 Q What were some of the things that they said about why a
25 union is beneficial?

1 A Well, the main -- I feel like the main reason they were
2 there was because they -- because of the whole incident that
3 had happened with the managers and everything. So -- and they
4 were talking about pretty much that.
5 Q What do you mean things happening with managers? What do
6 you mean by that?
7 MR. PARRY: I'm going to object. This is beyond the
8 scope. It's irrelevant.
9 MR. BLASI: I think what was discussed at the meetings is
10 relevant to the claims.
11 HEARING OFFICER TA: Yeah, and I think it goes to why they
12 were at her house and what was said when they were there. So
13 I'm going to overrule the objection. Go ahead and answer.
14 Q BY MR. BLASI: So the question was, you had said something
15 about things happening with managers. I didn't understand what
16 you meant by that. Could you --
17 A Yeah, just when one co-worker was getting mistreated, and
18 then a lot of co-workers felt the same way. And they were
19 saying like, with the Union, like we would be able to change a
20 lot of stuff. And that we have -- they were just pointing a
21 lot of points.
22 Q Uh-huh. And you said a worker was mistreated. Did that
23 have to do with a worker being fired?
24 A Yeah.
25 Q Okay. And did you agree with them or express your

1 agreement with them that it wasn't okay that that guy was
2 fired?
3 A Well, I --
4 MR. PARRY: Wait, hold on a second. Objection. That's
5 irrelevant. Beyond the scope. Whether she agreed with that,
6 I mean, it's not relevant.
7 MR. BLASI: The -- I can't imagine that the Region's
8 position is that the Union can't ask any questions about what
9 a worker expressed relative to issues at the workplace that
10 concerned, you know, the subject they were discussing. That
11 just seems odd to me that they would be a --
12 HEARING OFFICER TA: Well, can you -- what would be the
13 relevance of her opinion --
14 MR. BLASI: It will become evident extremely soon in my
15 line of questioning.
16 MR. PARRY: Well, I think we need an offer of proof as to
17 what the relevance is, and not say you'll find out later when
18 we're objecting on relevance to this question because it may
19 not be relevant based on what comes out later.
20 HEARING OFFICER TA: Counsel?
21 MR. BLASI: Sure. The individual who was there, I will
22 represent to the Hearing Officer -- who is referred to in this
23 conversation, I believe --
24 HEARING OFFICER TA: Uh-huh.
25 MR. BLASI: -- is the same person who came back later as

1 part of a house visit to talk about the injustice --
2 HEARING OFFICER TA: Uh-huh.
3 MR. BLASI: -- that he experienced being fired from the --
4 by The Daily Grill.
5 HEARING OFFICER TA: Okay. But --
6 MR. BLASI: So that's all I'm trying to establish.
7 HEARING OFFICER TA: -- what would -- yeah, but what would
8 Ms. Mendez's opinion as to that? I don't know --
9 MR. BLASI: Because it --
10 HEARING OFFICER TA: -- how is it relevant to --
11 MR. BLASI: -- explains -- it's relevant because the
12 reason he was there was because Ms. Mendez had previously
13 expressed her concern about that firing and that worker coming
14 to -- on a house visit, you know, fit into that whole sequence
15 of discussions about problems at the workplace. That's all.
16 MR. PARRY: And she's testified that it was an uninvited
17 visit. Whether or not she accepted it is one thing, but to try
18 to now delve into all her opinions about these things is
19 totally irrelevant. And just because one visit may have not
20 been unwelcome, necessarily, even if it was uninvited, it
21 doesn't mean alter visits are welcome. It's -- you know,
22 that's like saying, you know --
23 HEARING OFFICER TA: Yeah.
24 MR. PARRY: -- that consent doesn't always carry over each
25 subsequent visit as --

1 MR. BLASI: Well, that's not what the Union's --
2 MR. PARRY: -- as we've gone into earlier today.
3 MR. BLASI: -- that's not what the Union's asserting.
4 HEARING OFFICER TA: I'm going to sustain the objection.
5 I just -- I think you can talk about what was discussed, but I
6 think --
7 MR. BLASI: Sure.
8 HEARING OFFICER TA: -- soliciting her opinion right
9 now --
10 MR. BLASI: Well, I'm not soliciting her opinion now.
11 HEARING OFFICER TA: -- or whether --
12 MR. BLASI: I'm just saying -- I'm asking what she said
13 during the meeting. And what it sounds like the Hearing
14 Officer's view is that the Union can only illicit testimony
15 regarding things that the Union said at these sorts of
16 encounters --
17 HEARING OFFICER TA: Well, you can --
18 MR. BLASI: -- and not what the workers said, and I don't
19 believe that's consistent with Board law.
20 HEARING OFFICER TA: -- I think you -- well, you can ask
21 her -- I think you can ask her what they said to her and what
22 she said in response.
23 MR. BLASI: Okay.
24 HEARING OFFICER TA: Yeah.
25 MR. BLASI: So that's all I'm seeking to do.

1 HEARING OFFICER TA: Okay. Okay.
2 Q BY MR. BLASI: So just on this question about the employee
3 who was fired, do you remember what you said in response when
4 you talked about that subject with them?
5 A No, I don't. Like what do you mean?
6 A Do you remember what you said when -- it sounds from your
7 testimony like they brought up the fact that there was a worker
8 who was fired; is that right?
9 A Yeah.
10 Q And do you remember what you said in regards to that issue
11 of the worker being fired?
12 A I remember just listening to them and agreeing like what
13 happened with the co-worker was wrong. And they were just
14 bringing that point. And then they were saying just that if
15 the Union was there -- they were just pointing out points that
16 like if the Union was there, it could protect our rights as
17 workers there. They were just saying that since I worked with
18 the company longer they could -- longer than a lot of people
19 have, that they could bring a lot of benefits to me. And they
20 were just pointing points of how it could benefit me. That's
21 pretty much it.
22 Q So they were making -- giving reasons why it's a good idea
23 to have a union, basically, right?
24 A Yes.
25 Q Okay. And did you -- did they -- did any of the -- either

1 of the two people, the co-worker or the Union organizer, did
2 they threaten you at any time during that meeting?
3 A No.
4 Q And at no point during the hour, or around hour, they
5 didn't say anything threatening to you?
6 A No.
7 Q Did you feel afraid or anything like that?
8 A No.
9 Q Okay. So there was a second visit you talked about, and
10 forgive me if I don't have all of the details here because I'm
11 still trying to go through my notes as we speak. I think you
12 said the second time you weren't there, right?
13 A Yeah.
14 Q And the reason they came is they were looking for your
15 sister, Stephanie; is that right?
16 A Yeah.
17 Q And did you tell them at some point in the first meeting
18 that Stephanie sometimes spends time at your house?
19 A Yeah, at the first meeting they asked me if Stephanie
20 lived there, and I said no. And then they asked like where
21 does she live, and I was like, well, I'm not going to tell you
22 where she lives. But if you want to find her she comes here
23 sometimes.
24 Q Okay.
25 A She comes in the morning sometimes. And they were just

1 like okay.
2 Q So they could come back in a morning sometime maybe try
3 and speak to her was the idea?
4 A Yeah.
5 Q Is that right?
6 A Yeah.
7 Q Okay. Okay. So then the next time they visited again,
8 you weren't there; is that right?
9 A No.
10 Q And your sister told you that they were looking for
11 Stephanie, was that your testimony?
12 A Yeah.
13 Q And that -- was there anything else to that interaction
14 that your sister told you about?
15 A No. They thought that she was Stephanie. And they were
16 like, "are you sure you're not Stephanie" to her. And then she
17 was like, yeah, I'm sure I'm not Stephanie. Like so that's
18 just what happened, but.
19 Q Okay. So then the next time, at least that you can
20 recall that they came back was -- it was -- the people present
21 were the former co-worker who had been fired, he was there,
22 right?
23 A Yeah, when the ballots brought.
24 Q Right. So then on that occasion -- so I'm just -- want to
25 clarify who was there. So it was that former co-worker who

1 it's fine if you don't want to mention his name, but the person
2 you -- who had been fired and you had a conversation with about
3 hem earlier, he was there, right?
4 A Yeah.
5 Q Okay. And then in addition to that, there was a union
6 organizer with him?
7 A Uh-huh.
8 Q And -- sorry, and you may have said this before, was there
9 a third person or was it just the two of them?
10 A It was just two.
11 Q Just the former co-worker and the organizer. Okay. And
12 when you arrived -- when they arrived, do you remember what the
13 first thing happened in that conversation?
14 A No, I don't.
15 Q Do you remember saying hi to the former co-worker?
16 A Yeah, just saying hi, like how are you. How have you
17 been?
18 Q So you had sort of friendly chat with him?
19 A Yeah, like the usual.
20 Q Uh-huh. And then do you remember the -- one of those two
21 people saying -- asking you whether the ballots had been
22 mailed?
23 A Yeah.
24 Q Or sorry, whether you had received the ballot -- telling
25 you the ballots had been mailed and asking whether you received

1 the ballot?
2 A They asked me if I received the ballot and I said, well,
3 that's what I came out here to check for, actually. And then I
4 pulled out the ballot. And I was like, yeah, actually I just
5 got it.
6 Q Uh-huh. Okay. And did they tell you that they were
7 there, wanted to make sure that you had gotten the ballot?
8 A Yeah, they said they were there to see if I was going to
9 vote because they didn't think I was going to vote. And I was
10 like, well, I'm going to vote. You know, like -- and then I
11 was just telling them like -- they were just trying to ask me
12 if I needed help with the ballot and I said, no. I know how
13 to -- like I'm old enough to know like how to do this. Like
14 I'm not a child.
15 Q And did they explain to you some of the details about
16 making sure that your vote is counted?
17 A They just said like, you know, you have to sign it. And I
18 was like, yeah, I know I have to sign it.
19 Q They told you that you have to sign the ballot in order
20 for it to be counted?
21 A Uh-huh. Yeah.
22 Q So when they were offering to tell you about voting that's
23 the sort of information they were trying to give you was to
24 sign?
25 A Well, they were saying that. And they were just like

1 trying to say that they didn't think I was going to vote. And
2 they were saying like -- they were asking me like I was onboard
3 with them. And I just said like I don't think I am. Like and
4 they were trying to offer to take me to the post office, and I
5 said no.
6 Q They were offering to take you to the post office so you
7 could deliver your own ballot to the post office?
8 A Uh-huh.
9 Q Okay. But they didn't actually ask you to give them your
10 ballot, right?
11 A No.
12 Q Okay. And they didn't ask you to take out the ballot and
13 fill it out in front of them? They didn't specifically ask
14 that, did they?
15 A Well, they asked like if I wanted to like show them. Like
16 if I wanted to, like so I could help them -- so they could help
17 me like --
18 Q They wanted -- so they could show you that you --
19 A How to do it, yeah.
20 Q -- what the ballot looks like and how to sign or
21 something?
22 A And how to do it.
23 MR. PARRY: Hold on.
24 HEARING OFFICER TA: Yeah, let's --
25 MR. BLASI: Sure.

1 MR. PARRY: That's like talking over each other.
2 MR. BLASI: That's fine. That's fine.
3 MR. PARRY: I think she was in the middle of answering.
4 HEARING OFFICER TA: Yeah.
5 MR. BLASI: That's fine. Yeah.
6 Q BY MR. BLASI: So they were asking -- they were trying --
7 they wanted to make sure that you knew how to sign the ballot
8 so that it would be counted?
9 A How do I -- yeah.
10 Q Was that the basic idea?
11 A Uh-huh. Yeah.
12 Q Okay. But you didn't actually open the ballot in front of
13 them, did you?
14 A No, I didn't.
15 Q And you didn't -- so you didn't vote in front of them?
16 A No.
17 Q Okay. And during this meeting, I asked you this about the
18 earlier one, neither of the two people threatened you in any
19 way, did they?
20 A No.
21 Q Did they -- they didn't say that, you know, something bad
22 was going to happen to you if you didn't agree to vote for the
23 Union? Like they were going to do something bad to you?
24 A No.
25 Q Nothing like that?

1 A No.
2 Q Did you feel afraid for your safety during that
3 interaction?
4 A No, I didn't feel afraid.
5 Q There were other people around, weren't there?
6 A Well, my sisters were with me.
7 Q Your sisters were standing right alongside you?
8 A Yeah, they were right next to me.
9 Q And this took place outside of your house; is that right?
10 A Uh-huh. Outside of my house.
11 Q Like sort of on the patio or?
12 A In the front yard.
13 Q Front yard.
14 A Uh-huh.
15 Q Okay. And at a certain point you said that you wanted
16 to -- that you got to go; is that right?
17 A Yeah.
18 Q And did they leave when you said that?
19 A Yeah.
20 Q So did you even need to ask them to leave? Or did you
21 just say I'm going to go?
22 A Well, once I made the announcement saying that I had to
23 leave and I had to be somewhere, they left.
24 Q They just -- they left.
25 A Uh-huh. Well, we both walked back.

1 Q Right, so they didn't stay on your property despite your
2 asking them to leave or something like that?
3 A Uh-uh. No.
4 Q Okay. And do you remember giving a hug to the former
5 co-worker when you first saw him?
6 A I don't know. I don't know if I hugged him.
7 Q Do you remember giving a hug to him when you said goodbye
8 or at the end of the conversation?
9 A No, I went "bye." Like --
10 Q I'm sorry, I didn't understand the answer.
11 A I went like -- I waved, I said bye.
12 Q You waved and said goodbye?
13 A Because I had to go.
14 Q Okay. Okay. And after this interaction happened, did you
15 have any conversations with members of the management of the
16 restaurant?
17 A No, I never had a conversation with them about that.
18 Q About the organizers or the co-workers coming to your
19 house?
20 A No, I didn't.
21 Q Did you talk to co-workers about that subject?
22 A I only spoke to my sister about it.
23 Q About what happened with the Union coming?
24 A Yeah.
25 Q Okay. Did managers ever say they wanted to talk to you

1 about it to find out what happened or anything like that?
2 A No.
3 Q What about lawyers for the company, did they ever say they
4 wanted to interview you to find out what happened?
5 A Well, they told me to fill out a statement but I never
6 did. And I know my sister did fill out a statement because she
7 was -- she wasn't there but she was inside the kitchen while I
8 was outside.
9 Q She wasn't with you guys but she was inside the house.
10 A Yeah. So two of my sisters were with me but the one that
11 works with me, she was in the kitchen while it was happening.
12 Q Stephanie.
13 A Yeah.
14 Q She was inside.
15 So you're saying that management asked you to sign a
16 statement?
17 A Just to fill out a statement about what happened.
18 Q Who asked you to do that?
19 A The managers.
20 Q Which managers?
21 A The general manager.
22 Q Do you remember --
23 A Mary.
24 Q I'm sorry?
25 A Mary.

1 Q Mary. She asked you to fill out a statement?
2 A Uh-huh.
3 Q And do you remember how that conversation started when you
4 talked to Mary about that?
5 A Well, yeah, because right when the Union came to the
6 house, my sister was upset about it that they came and tried to
7 just like help me out with the ballot. And she called Mary and
8 she told them like the Union people were here. So she was the
9 one that filled out the statement. I didn't.
10 Q But you said that Mary asked you to fill out a statement
11 even though you didn't fill it out; is that right?
12 A Well, she just said that -- she said, hey, I know what
13 happened, you don't have to fill out the statement if you
14 don't want to but, you know, if you do then you can; if you
15 want to and you can. And I said, oh, okay. And I didn't.
16 My sister did fill it out.
17 Q Sure.
18 A But I didn't. She gave me the option of not filling it
19 out so I didn't.
20 Q Sure. Did she, specifically, tell you that there wouldn't
21 be any retaliation against you if you chose not to fill out the
22 statement?
23 A Yeah, she did.
24 Q What did she say exactly, do you remember?
25 A She said nothing bad is going to happen to you if you

1 don't fill out the statement. You know, you may and you may
2 not. If you want, it's up to you if you want to.
3 Q And did she explain to you what the purpose of the
4 statement would be?
5 A Yeah, she explained everything to me.
6 Q What did she say about what the purpose of it was?
7 A I don't recall the whole conversation.
8 Q So you don't actually remember her saying what the purpose
9 of the statement would be?
10 A No, I --
11 MR. PARRY: Misstates her testimony.
12 THE WITNESS: Yeah.
13 MR. BLASI: Well, I'm trying to clarify her --
14 HEARING OFFICER TA: Okay. Yeah, just rephrase and
15 clarify. Yeah.
16 MR. BLASI: All right.
17 Q BY MR. BLASI: Do you remember specifically what the
18 manager, Mary, said in regards to the purpose of filling out a
19 statement?
20 MR. PARRY: Asked and answered.
21 HEARING OFFICER TA: I'll allow it. Just go ahead and
22 answer.
23 THE WITNESS: Well, I don't remember exactly how the
24 conversation went but she just explained to me about how I
25 didn't have to fill it out if I didn't want to, that I wasn't

1 going to be held accountable and that I wasn't going to be
2 treated differently if I didn't -- if I didn't want to fill it
3 out, that it was just there if I wanted to.
4 Q BY MR. BLASI: Okay.
5 A And she explained to me about the process and I told her
6 okay, I'll think about it and I took the paper but I didn't.
7 Q When she said the -- explaining to you about the process,
8 what did you understand that to mean? Or what do you mean by
9 the process?
10 A What do you mean?
11 Q You said, I think, that she explained to you about the
12 process. I'm trying to get a little more information from you
13 about what that means.
14 A That if -- she said that it might not be -- get sent to
15 court, but if it was going to -- if it was going to end up like
16 that, that she couldn't promise me. She couldn't promise me
17 what was going -- like if it was going to be brought to court
18 and how far it would go, but. That she couldn't promise me
19 like that, but that it was just there if I wanted to.
20 Q I see. Okay. Did you have any, you know, or interactions
21 with managers about the same issue later on besides that
22 conversation?
23 A With the same manager or?
24 Q Any of the managers.
25 A No, she was the only person I spoke to about it.

1 Q Okay. But just to follow-up on just what you said a
2 second ago. Did she explain to you like why it would be
3 going to court? You said something about it going to court?
4 Did she explain to you what the -- how it would somehow be an
5 issue in court? You just testified a second ago, as I
6 understood you, was she said it may, I can't promise you, it
7 may or may not -- the statement that it may or may not be used
8 in court, something like that? Is that what you said?
9 A Well, yeah, because they were fighting with the Union to
10 see if we were going to become union.
11 Q Okay.
12 A So that's what she said. Like we're fighting with the
13 Union to see if we were going to become union or not.
14 Q I see. Okay.
15 MR. BLASI: If you could just give me a second to confer.
16 Okay. I think the Union has no further questions for this
17 witness.
18 HEARING OFFICER TA: Okay. Counsel.
19 MR. PARRY: Yes. I'll just put into the record this
20 document. Are we on 6 or 7?
21 UNIDENTIFIED SPEAKER: We're on 7.
22 **(Employer Exhibit Number 7 Marked for Identification)**
23 **REDIRECT EXAMINATION**
24 Q BY MR. PARRY: Ms. Mendez, can you tell me if you
25 recognize that as your signature and initials?

1 A Yeah.
2 Q Okay. And then you signed that on April -- I gave my copy
3 away; sorry. April 20th?
4 HEARING OFFICER TA: This one is not dated.
5 MR. PARRY: Oh, it's not dated.
6 Q BY MR. PARRY: Do you recall about when you filled this
7 out?
8 A Yeah, it was like a few days ago.
9 Q Okay. Friday --
10 A Three or four --
11 Q -- whatever that date was?
12 A Thursday? Friday? Thursday.
13 Q One of those days? Okay.
14 A Thursday.
15 Q So just reading through that, was that information in
16 numbers 1, 2 and 3 on the document explained to you verbally?
17 A Yeah.
18 Q And who explained that to you?
19 A You.
20 Q Okay. Thank you.
21 MR. PARRY: I'd like to move that into evidence as Exhibit
22 7.
23 HEARING OFFICER TA: Counsel, any objections?
24 MR. BLASI: No.
25 HEARING OFFICER TA: Was that a no?

1 MR. BLASI: That was a no.
2 HEARING OFFICER TA: Okay. All right. Employer's Exhibit
3 7 is admitted into evidence.
4 **(Employer Exhibit Number 7 Received into Evidence)**
5 Q BY MR. PARRY: I just have a few more questions.
6 HEARING OFFICER TA: Yes, go ahead.
7 MR. PARRY: Oh, I'm sorry.
8 HEARING OFFICER TA: No, go ahead.
9 Q BY MR. PARRY: Just talking about the fourth visit when
10 you had your ballot in the mail. You didn't invite anyone from
11 the Union to your home that day, correct?
12 A No.
13 Q Okay. And I think you said it made you feel a little bit
14 uncomfortable, them being there, what they were doing; is that
15 right?
16 A Well, after like them coming, like the second time I
17 invited, I felt like a little, like uncomfortable.
18 Q Did you feel pressured?
19 A Not pressured, but it's just like kind of like odd.
20 Q Okay. Did having the Union show up at your home those
21 four times that we discussed -- in particular the fourth
22 time -- make you concerned about making sure that your vote
23 was anonymous?
24 A Well, there was concerns about it being anonymous.
25 Q You didn't want anyone to know how you were voting and

1 you didn't want to show anyone your vote, correct?
2 A No, of course not.
3 Q Okay.
4 MR. PARRY: Thank you. I have no further questions.
5 HEARING OFFICER TA: Okay. Counsel, recross?
6 MR. BLASI: (No audible response)
7 HEARING OFFICER TA: I'm sorry, say that again?
8 MR. BLASI: We have nothing further.
9 HEARING OFFICER TA: Nothing further. Okay.
10 Okay. If there is not anything else for this witness,
11 you're excused. Please remember that a sequestration order is
12 in effect which means that you cannot talk about your testimony
13 with anyone else until the conclusion of the hearing. Okay?
14 Thank you very much for your time.
15 THE WITNESS: Thank you.
16 HEARING OFFICER TA: And counsel, do we need to go off the
17 record for you to call your --
18 MR. PARRY: Sure.
19 HEARING OFFICER TA: -- next witness.
20 MR. PARRY: Just for a minute.
21 HEARING OFFICER TA: Okay. So let's go off record.
22 (Off the record at 3:11 p.m.)
23 HEARING OFFICER TA: Okay. Can you please state your name
24 and spell it for the record, please?
25 MS. CAMBEROS: Ashlynn Camberos, A-S-H-L-Y-N-N,

1 C-A-M-B as in boy, E-R-O-S.

2 HEARING OFFICER TA: Okay. And can you raise your right

3 hand, please.

4 Whereupon,

5 **ASHLYNN CAMBEROS**

6 having been duly sworn, was called as a witness herein and was

7 examined and testified as follows:

8 HEARING OFFICER TA: And just a couple of reminders about

9 giving your testimony. Your testimony is being recorded so

10 that mike doesn't amplify but it does record everything you say

11 so make sure that all your responses are verbal so you're not

12 like shaking your head or nodding or anything --

13 THE WITNESS: Okay.

14 HEARING OFFICER TA: -- like that. And then -- because,

15 obviously, it won't pick it up. And then if there's a question

16 that you don't understand, feel free to ask for clarification

17 on it.

18 And if there is an objection to a question that's being

19 asked of you, hold your response until I make a ruling on the

20 objection. Okay?

21 THE WITNESS: Okay.

22 HEARING OFFICER TA: All right. Great.

23 All right. Counsel, go ahead.

24 **DIRECT EXAMINATION**

25 Q BY MR. PARRY: Ms. Camberos, thank you for being here

1 today. Can you just tell us what you -- you work for The Daily
2 Grill on Century Boulevard, correct?
3 A Yes, correct.
4 Q And what do you do there?
5 A I am a server.
6 Q How long have you worked there?
7 A Five to six years.
8 Q Okay. So in the time period between let's say the start
9 of November of 2017 through today, have you worked there
10 continuously?
11 A Yes.
12 Q Okay. And are you aware of the Union organization
13 proceedings that have occurred over the last -- since,
14 basically, the beginning of November 2017?
15 A Yes.
16 Q Okay. Have there ever been times when people who you
17 understood to be representatives of the Union that came to
18 your home to visit you?
19 A Yes.
20 Q Okay. And how many times has that happened?
21 A Five.
22 Q Five times. And when did they start, as best you can
23 recall? If it's by the month. It doesn't have to be a
24 specific date.
25 A I know it was last year, but I'm not sure exactly the

1 months.
2 Q Well, let's just start with describing the time. So do
3 you remember the first, specifically what happened the first
4 time they visited? How many people was it that came?
5 A It happened numerous times, but at certain times I wasn't
6 coming outside of my house. I would be in my restroom and then
7 someone would text me and say are you home, and someone would
8 ring my doorbell, so I knew someone was outside. It had to do
9 with that.
10 Q So let's just go time by time. So do you specifically
11 remember the first time that they came to your home?
12 A That actually is on a face to face? Yes.
13 Q Well, so I guess there's a difference between the first
14 time you see them face to face versus the first time they try
15 to contact you --
16 A Yes.
17 Q -- at your home. So did you see them face to face at your
18 home five times or was it they tried to contact you at your
19 home five times?
20 A They tried to contact me at home five times.
21 Q So in the times they tried to contact you -- well, let me
22 ask it this way. The first visit from the Union that you know
23 of, whether or not they actually made contact with you, do you
24 recall specifically that incident?
25 A It was my co-worker, but it wasn't -- she wanted to talk

1 to me about the Union. That was the first time.
2 Q And this was --
3 A I was in the restroom. I told her that I wasn't home,
4 but.
5 Q This was at your home?
6 A Yeah.
7 Q And so --
8 A But that was because I didn't want to speak to anyone.
9 Q Okay. So she came to your door?
10 A Yes.
11 Q And as far as you know, was she alone or was she with
12 anybody?
13 A I wasn't sure because I was in the restroom.
14 Q Okay. And so she came to your door, and then did she
15 text message you?
16 A Yes.
17 Q What did she text you?
18 A That if I was home.
19 Q And that's all she asked. And then what did you say?
20 A I didn't text back.
21 Q Oh, you didn't text back, at all.
22 Did someone answer the door?
23 A Not that time.
24 Q Okay. So --
25 A The second time --

1 Q So do you know what happened with that? Did she just
2 leave after a while, or?
3 A Yeah.
4 Q Okay. So the next time that anyone from the Union tried
5 to contact you at your home, what happened?
6 A They were -- I was leaving work about 11:30. I got home
7 like at 12 and they're waiting for me outside of my -- where my
8 driveway is.
9 Q When you say -- are we talking about 11:30 a.m.?
10 A To 12 p.m.
11 Q And so like noon, basically?
12 A Yeah, noon. Sorry.
13 Q Okay.
14 A That is not p.m., yeah.
15 Q That's okay.
16 So this time they were waiting for you at your home when
17 you got there?
18 A Yes.
19 Q And who was there waiting for you?
20 A Gustavo which was an old co-worker that they -- he doesn't
21 work with us anymore; Sandra, and I believe his name is Alex.
22 Q And did they confront you like outside of your home --
23 A Yes.
24 Q -- before you were able to get inside? And what did they
25 say to you?

1 A They brought me a packet of a contract from the west -- I
2 believe it was the west -- a contract that they have of the
3 Union, what would be my benefits, what I'd get from the Union,
4 things like that.
5 Q And what did you say to them?
6 A Because I was reading the information.
7 Q I'm sorry?
8 A I was reading the information that they --
9 Q And so they were just --
10 A The packet that they were showing me.
11 Q They were just talking to you and you were reading the
12 packet?
13 And how long were they there for?
14 A They were there for about 45 minutes.
15 Q And does this all occur outside of your home?
16 A Yes, my driveway.
17 Q Had you invited them over to talk to you?
18 A No.
19 Q Okay. Let's talk about the next time that they came to
20 your home. Do you remember what happened the next time?
21 A The following time. I didn't answer the door. I was
22 asleep. My fiancé, at the time, he opened the door and he told
23 them I was asleep.
24 Q And did you hear this happening?
25 A No.

1 Q So your fiancé told you about it?
2 A Yes.
3 Q And what did he tell you about what they said?
4 A They asked him to wake me up and he said no, that I get
5 mad when I wake up from a nap so that he wasn't going to wake
6 me up. And they said -- he told them just text her, she'll get
7 back to you. And then so they said okay; they left. They
8 returned back in an hour, I believe it was, and they told him
9 they saw me from the outside window; that, oh, we saw her. And
10 he said no, she's asleep and that was my mom.
11 Q I'm sorry. You said --
12 A My fiancé told them --
13 Q -- they said that was your mom that was sleeping or
14 something?
15 A No. They said they saw me through the window.
16 Q Right.
17 A Because my kitchen windows are always open. And then my
18 fiancé told them, no, that's my mom, which is my mother-in-law.
19 Q Oh, I see.
20 A That was at the house.
21 Q So your fiancé said it was his mom.
22 A Yes.
23 Q Got it. So and this is the time when someone -- they
24 actually asked your fiancé to wake you up from a nap --
25 A Yeah.

1 Q -- so they could speak with you? Okay. Do you know who
2 was there that time?
3 A Sandra and I don't know who else at that time.
4 Q Do you know how many people were there?
5 A No, I didn't ask him.
6 Q Were you annoyed by the fact that they wanted you to be
7 woken up from your nap?
8 A Yeah, I didn't think it was necessary to come to my house
9 on something they could talk to me through the phone, or.
10 Q Okay. And so did you speak to them, at all, on that
11 visit?
12 A No.
13 Q What was the next time they came to your house?
14 A It was the week after that and I think the exact same
15 thing did happen. I was asleep. I remember she left, came
16 back and then I opened the door after that.
17 Q So this is a different date.
18 A This is a different date. This was the following week.
19 Q So this next week they came -- they came once and you were
20 asleep, and then they came back again after you had woken up?
21 A It's funny, 'cause when I had saw her at work she had told
22 me, I think your fiancé got mad that we went to your house. I
23 think he was mad at us that we went to your house.
24 Q Was your fiancé mad that they were at your house?
25 A Well, he was just bothered by it.

1 Q So are these all happening around --
2 A The same month.
3 Q -- like noon?
4 A Yeah, like --
5 Q And around noon?
6 A Yeah.
7 Q Do you work early shifts?
8 A Yes.
9 Q What time do you usually start work?
10 A 5.
11 Q 5 in the morning?
12 A 5:30, but I'm always -- I always leave early in general,
13 anywhere, when it comes to my shifts.
14 Q Okay. So you're at work around 5 until what time until --
15 A Until they clock in. I'll clock in at 5:25 and then --
16 Q And then you work until something like 11:30 or --
17 A Yeah.
18 Q Okay. So you're tired when you get home?
19 A Yeah. And then I have a baby, so.
20 Q Oh, you have a baby.
21 A At that time, she was little, so yeah.
22 Q She was little. How little was she at the time?
23 A She wasn't -- really even be a year, so.
24 Q So you had a year --
25 A She wasn't that little, but I mean, you know.

1 Q So you had --
2 A It's hard when you're a new mom, you don't know --
3 Q And you had an infant and you had a early shift, so you
4 want to come home and --
5 A Yeah --
6 Q -- get some sleep.
7 A I take advantage if he -- someone to watch her while I
8 nap. I nap.
9 Q Got it. And was your fiancé there to watch her while you
10 napped?
11 A Yes, or his mom.
12 Q Or his mom. Okay. And Sandra was -- and you were talking
13 about Sandra Diaz, correct?
14 A Yes.
15 Q And you work with her, right?
16 A Yes.
17 Q Did she know you have a one-year-old baby?
18 A Yes.
19 Q How do you know that she knows?
20 A She went to my daughter's birthday party. I believe
21 that's how they know my address.
22 Q Okay.
23 A Because I don't have that address on my Daily Grill.
24 Q So as far as you know, Sandra knows your work schedule and
25 Sandra knows that you have a one-year-old?

1 A Yeah.
2 Q And do you know if it was Sandra that asked that you be
3 woken up from a nap?
4 A I honestly do not know --
5 Q But she was there each time, as far as you know.
6 A Yes.
7 Q Okay. So now we're talking about this third time when you
8 actually did answer the door.
9 A Yes.
10 Q Okay. And so what did they say to you when you answered
11 the door?
12 A It was Sandra and another lady. I think it's the lady
13 that was following us earlier.
14 Q Okay. Tell me about that. Who was following you earlier?
15 A The lady with the short hair.
16 Q Are you talking about in the building here today?
17 A Yes, today.
18 Q Do you know her name?
19 A No.
20 Q And when did she start following you this morning?
21 A Well, I didn't know about it till she followed us to go
22 downstairs to go get water. And then that's when I asked, oh,
23 is she part of The Daily Grill and my other co-worker said no.
24 Q Okay. So was she in the witness -- you're over in the
25 witness room, correct?

1 A Yes.
2 Q Was she in the witness room with you?
3 A In the beginning, yes.
4 Q Okay. And then she followed you downstairs to get water?
5 And then she followed you back upstairs?
6 A Yes. And then from there, she just left after we went to
7 go on a break.
8 Q Did she say anything to you?
9 A No.
10 Q Did you hear her say anything to anybody in there?
11 A No.
12 Q Did you ever see her talking to anybody -- not even from
13 The Daily Grill? Did you ever see her talking to anybody --
14 A In general, no.
15 Q -- in the building?
16 A No.
17 Q So she just sat there silently?
18 A Yes.
19 Q Okay. Did anyone speak to her?
20 A No.
21 Q Okay.
22 A To be honest, I thought she was Lucas' or someone's wife.
23 Q Okay. But this is someone you --
24 A That went to my house.
25 Q You believe you -- she's a person that went to your house.

1 A With Sandra.
2 Q So you --
3 A I think it was her.
4 Q So you understand that she's a representative of someone
5 working with the Union?
6 A (No verbal response)
7 Q Okay. Thank you.
8 Okay. So now we're still talking about that third time
9 when you answered the door. And what did they say to you?
10 A That, have I received my ballot.
11 Q Okay. And what did you say to that?
12 A No.
13 Q Had you received your ballot?
14 A I wasn't sure because I had my address from The Daily
15 Grill at my mom's house.
16 Q Okay.
17 A It's a complete different address.
18 Q Did you have the ballot mailed to your mom's house then?
19 A Yes.
20 Q Was there a reason for that?
21 A Just in case of -- because they were coming to my house.
22 You never know.
23 Q So you wanted the ballot mailed to your mom's house
24 because?
25 A She has a gate and everything, so.

1 Q Because you didn't want, potentially, someone that you
2 didn't want to have your ballot --
3 A Exactly.
4 Q -- being able to get to your ballot.
5 Based on the fact that the Union was coming to your home,
6 were you concerned about the Union getting access to your
7 ballot?
8 A Only because I heard rumors in the restaurant, other
9 people saying that they were telling us to sign it in front of
10 them.
11 Q So when they asked you if you had your ballot, what did
12 you tell them?
13 A "No." I told them the truth.
14 Q Okay. Did they ask you anything else about your ballot?
15 A If I knew how to sign it and I said yeah, and she was like
16 okay.
17 Q And what else did they say to you that visit?
18 A That was it.
19 Q How long were they there?
20 A That one was fast. It was just those questions and then
21 she left. So about five to six minutes.
22 Q Okay. Thank you.
23 Any other times that the Union has come to your house to
24 visit you?
25 A No. But I would just see them around work and that was

1 it.
2 Q Okay. Was there a time when they came and like walked to
3 your driveway?
4 A That was the time they -- because I live in a dead-end so
5 that was the time where --
6 Q A cul-de-sac?
7 A Yeah.
8 Q And so they -- did they have their car blocking your
9 driveway?
10 A Yeah, that's where, when I saw Gustavo and Sandra and
11 Alex --
12 Q And how did you feel about them blocking your
13 driveway with their car?
14 A I honestly was coming back from a shift. I didn't want to
15 talk to anyone --
16 Q I'm sorry?
17 A I don't want to talk to anyone. I didn't -- I was coming
18 back from a shift. I didn't -- and then --
19 Q Were you annoyed?
20 A Yeah. I didn't want to speak to anyone at that time.
21 Q Did the fact that they're -- and it sounds like the fact
22 that they showed up to your home made you concerned with the
23 sort of security of your ballot; is that fair?
24 A Yes.
25 MR. BLASI: I would say that's a leading question.

1 Objection.

2 HEARING OFFICER TA: Yeah, can you rephrase, counsel?

3 Q BY MR. PARRY: Is it fair to say that you were concerned

4 with the security of your ballot given the Union showing up at

5 your home?

6 A Sorry --

7 Q I know. Sometimes it gets difficult with how it's worded.

8 Were you concerned about your ballot --

9 A Yes.

10 Q -- being secure?

11 A Okay.

12 Q Were you concerned, at all, about making sure your ballot

13 stayed anonymous?

14 A Yes, definitely.

15 Q Okay. Was that a result of the Union showing up at your

16 home, or at least in part of that?

17 A Part of it, yes.

18 **(Employer Exhibit Number 8 Marked for Identification)**

19 Q Okay. I'm going to show you a document --

20 UNIDENTIFIED SPEAKER: 8.

21 Q BY MR. PARRY: And can you just take a look at that and

22 tell me if you recognize it?

23 A Uh-huh, I do. Yes.

24 Q Is this --

25 A Sorry.

1 Q Okay. Thank you.
2 A I --
3 Q And that's your handwriting?
4 A Yes, it is.
5 Q Is that your signature at the bottom?
6 A Yes, it is.
7 Q Okay. Can you -- just because sometimes -- and you have
8 really good handwriting but I can't always read cursive that
9 well. Can you just read the statement that you wrote, out
10 loud.
11 A "December 9th, 2017, Sandra Diaz and a lady came to
12 my house; asked that -- my fiancé said I was asleep;
13 she came back again less than an hour later saying
14 she saw me through the window; he said no, it wasn't
15 -- his mom" -- sorry, I wrote it fast -- "to text me;
16 she left, came back next Sunday, I opened the door
17 and she asked me have I received a ballot and I say
18 yes."
19 Q Okay. And so this is the -- is this the third time that
20 you're referring to here that they visited you or the last time
21 that they came back to visit you?
22 A This was the second to last time. So the first time
23 was -- I mean the third time. The time before the last one was
24 when she came and my fiancé opened the door and then he talks
25 about his mom and all that. And the last time was the time I

1 spoke to Sandra.
2 Q Okay.
3 A When she went to my house.
4 Q And now this says "Sandra Diaz and a lady." Is the lady
5 the one you referred to that, the one that was following you
6 around the building today?
7 A She looks familiar. I'm not saying exactly it is her but
8 she looks like her.
9 Q To the best of your --
10 A I don't remember who in December like -- I'll just say I
11 don't remember.
12 Q To the best of your recollection --
13 A Yes.
14 Q -- would you say that's her? Yes?
15 A Yes.
16 MR. BLASI: Wait. Objection. It's vague. And who are we
17 referring to?
18 HEARING OFFICER TA: Well, so I think it was alluded to
19 that there was a woman who was essentially following you around
20 here, right?
21 THE WITNESS: Here.
22 HEARING OFFICER TA: Yeah. And so I think counsel is
23 asking her if the woman who showed up on, I believe it was
24 December 9th; is that --
25 THE WITNESS: Yes.

1 HEARING OFFICER TA: -- what the statement says? Whether
2 this person was the same person as the woman who was allegedly
3 following her around in the building today. And I believe the
4 witness' testimony is that it looks like the same woman but
5 she's not certain; is that correct?
6 THE WITNESS: Yes.
7 HEARING OFFICER TA: Okay.
8 Q BY MR. PARRY: Do you believe it's the same person?
9 A I believe so, yes.
10 Q Thank you.
11 MR. PARRY: I'd like to move this into evidence as Exhibit
12 Number 8.
13 HEARING OFFICER TA: Before you do that, I just wanted to
14 clarify with the witness. This is an undated document. Do you
15 remember when you wrote this?
16 THE WITNESS: This is when I went back to work, so I
17 worked Monday through Friday at this time so it would be a
18 Monday of December. Sorry, I don't have a calendar.
19 MR. PARRY: Huh? I'm sorry.
20 HEARING OFFICER TA: She needs a calendar --
21 MR. PARRY: Yeah.
22 THE WITNESS: It would be the Monday of that --
23 MR. PARRY: Do you have a calendar like on your phone or
24 something.
25 Q BY MR. PARRY: Well, I'll represent to you that December

1 9th was a Saturday.

2 A Uh-huh, so it'd be the Monday of --

3 Q So would that be the 11th then?

4 A Yes.

5 Q And you specifically recall filling it out on the Monday

6 when you went back to work?

7 A Yes.

8 HEARING OFFICER TA: Counsel, any objections?

9 MR. BLASI: I'm not sure we object to this document, but I

10 do object to the suggestion that there's some kind of stalking

11 going on. I mean, it's a pretty aggressive suggestion and I

12 don't think that the foundation for establishing that something

13 improper has occurred. I mean, the Union takes umbrage the

14 suggestion it would engage or support anything like that. And

15 I can represent to the Region that nothing like that has

16 occurred today nor would it occur with the Union sanction, and

17 I think that the implication that the -- so I guess I object to

18 the extent that the witness has not properly laid a foundation

19 to establish that she was followed by some person who she

20 vaguely asserts is the same person on this document.

21 HEARING OFFICER TA: Well, I don't think this document

22 alludes to the woman referenced --

23 MR. BLASI: Well, it does say "a lady."

24 HEARING OFFICER TA: Yeah, a lady. But I think that was

25 part of counsel's question just to clarify. So I think the

1 document alone is sort of separate from --

2 MR. BLASI: I agree.

3 HEARING OFFICER TA: -- you know, from -- and I think if

4 you want to follow-up on counsel's, you know, characterization

5 of the woman who was following her, you know, you're entitled

6 to do that on cross.

7 But I think, as it relates to this document, I don't

8 think -- I feel like that's a separate issue from this, from

9 this here, this characterization. It's just "a lady" in here,

10 so.

11 So is that something that you want to -- you can follow-up

12 on, on cross or you're --

13 MR. BLASI: I guess so, yeah.

14 HEARING OFFICER TA: Okay --

15 MR. PARRY: And I was just going to say. She testified as

16 to someone following her spontaneously without any question by

17 me. And I followed up on it, so.

18 HEARING OFFICER TA: Yeah.

19 MR. PARRY: It's testimony. It's not an insinuation.

20 HEARING OFFICER TA: Okay. So we're at Employer's Exhibit

21 8; is that right?

22 UNIDENTIFIED SPEAKER: Yes.

23 HEARING OFFICER TA: Okay, thank you.

24 Okay. So Employer's Exhibit 8 is admitted into evidence.

25 **(Employer Exhibit Number 8 Received into Evidence)**

1 Q BY MR. PARRY: And so how did you come to provide this
2 statement on the Monday when you went back to work? How did
3 that come about?
4 A I let them know that they went to my house again and
5 again.
6 Q So did you report that voluntarily to someone at work?
7 A Yeah.
8 Q No one came in and like interrogated you whether they came
9 to your home. You went and reported it.
10 A No one interrogated me.
11 Q And then what? Then how did you come to prepare this
12 statement?
13 A Because I was able to write down what happened.
14 Q Okay.
15 A Because our employers already knew that they were outside
16 when we would leave work, to the parking lot and follow us
17 there.
18 Q And did you give this statement voluntarily?
19 A Yes.
20 Q Did anyone tell you, you had to give it?
21 A Nobody told me I had to give it.
22 Q And did you understand what it was about with the
23 proceeding with the Union?
24 MR. BLASI: Vague.
25 THE WITNESS: Yes.

1 MR. BLASI: Objection. Vague.
2 HEARING OFFICER TA: Can you just clarify, counsel?
3 Q BY MR. PARRY: Did you understand that there was, I guess
4 at that point -- well, actually, I'm going to strike that.
5 Did you understand that The Daily Grill believed that that
6 was not right to be doing by the Union?
7 A Following us at home, yes.
8 Q Okay. Thank you.
9 MR. PARRY: Okay. And I have just a couple more things
10 here.
11 **(Employer Exhibit Number 9 Marked for Identification)**
12 Q BY MR. PARRY: And this document says "witness
13 acknowledgement" on the top. Do you recognize that?
14 A Yes, I do.
15 Q And did you read this -- let me just ask. Are these your
16 initials and your signature at the bottom?
17 A Yes, they are.
18 Q And did you read this document?
19 A Yes, I did.
20 Q When did you do that?
21 A This last Thursday.
22 Q That'd be April 19th.
23 A Yes, April 19th.
24 Q And was it explained to you what all this meant?
25 A Yes, it was.

1 Q By who?
2 A By --
3 Q By me?
4 A You.
5 Q Okay.
6 A Sorry. I don't know your full name.
7 Q Okay. That's okay. Okay. And so we had a -- and this
8 refers to an interview and so we had an interview about some of
9 the things we've talked about today; is that right?
10 A Yes.
11 Q Okay. And you did that voluntarily?
12 A Yes, I did.
13 Q Okay. Thank you.
14 MR. PARRY: I'd like to move into evidence this witness
15 acknowledgement as Exhibit 9, I believe.
16 UNIDENTIFIED SPEAKER: Yes, it's 9.
17 HEARING OFFICER TA: Counsel, any objections?
18 MR. BLASI: No objection.
19 HEARING OFFICER TA: Okay. Employer's Exhibit 9 admitted
20 into evidence.
21 **(Employer Exhibit Number 9 Received into Evidence)**
22 **(Employer Exhibit Number 10 Marked for Identification)**
23 Q BY MR. PARRY: Okay. Do you recognize the document that's
24 been handed to you?
25 A Yes.

1 Q Okay. What do you understand this to be?
2 A This is -- was my statement here.
3 Q So when you said --
4 A Just written --
5 Q So you say statement here. This is the sort of like a
6 typed transcription of your handwritten statement that I think
7 we entered as Exhibit Number 9.
8 HEARING OFFICER TA: 8.
9 MR. PARRY: 8.
10 THE WITNESS: 8, yes.
11 Q BY MR. PARRY: Okay. And there's, on the third line down,
12 there's some blue pen handwriting; do you see that?
13 A That's my writing.
14 Q That's your writing?
15 A Yes.
16 Q Okay. And what was the reason for that?
17 A Because when I wrote "in the window, he said no it was his
18 mom." I had to fix that.
19 Q Just to correct --
20 A Just to make it more clarification.
21 Q Okay.
22 A What I had wrote here.
23 Q Okay. So and then this statement here, again, refers to
24 the incident on December 9, the same one --
25 A Yes.

1 Q -- with the handwritten statement, correct?
2 A The exact same one.
3 Q Okay. And then you signed under penalty of perjury, and
4 you understood what that means?
5 A Yes, I understood.
6 MR. PARRY: And I'll move this declaration into evidence
7 as Exhibit Number 10.
8 HEARING OFFICER TA: Okay. Any objection, counsel?
9 MR. BLASI: The Union has a version -- has, I think
10 probably different handwritten -- ink than the -- whatever.
11 It's a color copy. Okay. So I'm -- I don't -- it would be
12 helpful if the witness could read how this should read.
13 MR. PARRY: The document speaks for itself. She made a
14 correction and it reads it how it reads. We have the same one.
15 MR. BLASI: I'm just not clear on what it says.
16 MR. PARRY: Well, you can ask her when you question.
17 HEARING OFFICER TA: Let's just clear it up now. Okay,
18 it's a short statement. If you want to just clarify. Just can
19 you read the sentence with that --
20 THE WITNESS: Same?
21 HEARING OFFICER TA: Yeah.
22 THE WITNESS: Okay. "Again, less than an hour later
23 saying she saw me through the window." He said, "No, it was
24 his mom and to text me."
25 Q BY MR. PARRY: And that's what you intended to say there?

1 That's what it's meant to mean?

2 A Yeah.

3 Q Supposed to mean? Okay. I see. It was. Okay. I see.

4 And I think maybe it'd be clear, did you mean to sort of

5 replace the "Mom to text me" that's typed? "It was his mom,

6 and to text me"? That's how it should read?

7 A (No audible response)

8 Q Okay.

9 A Yes.

10 Q Thank you.

11 HEARING OFFICER TA: I see.

12 Q BY MR. PARRY: And again, this refers to that incident

13 that you explained much more thoroughly orally on the record

14 today --

15 A Yes.

16 Q -- correct?

17 A Correct.

18 Q Thank you.

19 HEARING OFFICER TA: So I'm moving Employer's Exhibit 10

20 into evidence, admitting it into evidence.

21 **(Employer Exhibit Number 10 Received into Evidence)**

22 HEARING OFFICER TA: Counsel, any --

23 MR. PARRY: No further questions right now, subject to

24 redirect.

25 MR. BLASI: The Union needs a little time to process

1 the --

2 HEARING OFFICER TA: Okay.

3 MR. BLASI: -- large amount of information that was

4 just --

5 HEARING OFFICER TA: Okay. Can we do -- how long do you

6 need?

7 MR. BLASI: I'd like ten minutes so I could actually read

8 what I took notes on.

9 HEARING OFFICER TA: Can we do five?

10 MR. BLASI: I mean, I feel like I would be hard-pressed to

11 really put on a, you know, effective cross-examination in that

12 time frame, but if that's what the --

13 HEARING OFFICER TA: Oh.

14 MR. BLASI: -- Region wants, that's fine.

15 HEARING OFFICER TA: I'll give you eight.

16 MR. PARRY: I feel like these are the same questions that

17 every witness are being asked. It's not a surprise at this

18 point.

19 MR. BLASI: The facts are actually different in every

20 case.

21 HEARING OFFICER TA: Okay. We'll take an eight-minute

22 break. Go off the record.

23 (Off the record at 3:46 p.m.)

24 HEARING OFFICER TA: Okay. Back on the record. Counsel,

25 you want to start your cross?

1 MR. BLASI: Sure.

2 **CROSS-EXAMINATION**

3 Q BY MR. BLASI: Good afternoon, Ms. Camberos; is that
4 right?
5 A Uh-huh.
6 Q So I want to ask you some questions, mostly to -- just to
7 get more information about some of the things you said earlier?
8 A Uh-huh.
9 Q So first of all, you mentioned that there were some times
10 when co-workers or union organizers or former co-workers
11 visited you at your house.
12 A Yes.
13 Q Before any of those visits happened, though, you had
14 actually had some -- at least one previous meeting with --
15 where you talked about the Union with co-workers outside of
16 work; isn't that right?
17 A Yes, in the parking lot.
18 Q In the parking lot. And do you know that the -- your
19 colleague that was whom you spoke to?
20 MR. PARRY: I'm just going to object as this is
21 irrelevant and is unduly time consuming. We've gone through
22 this in all -- pretty much every witness.
23 HEARING OFFICER TA: Yeah, I'm going to overrule the
24 objection.
25 Q BY MR. BLASI: Do you recall who you spoke to?

1 A Alex.
2 Q Okay. Was there anybody else?
3 A I forgot your name. The gentleman in front of me. Sorry.
4 I forgot his name.
5 Q When you met in the parking lot you mean?
6 A Yes. Yeah.
7 Q Okay. Was there also a co-worker named --
8 A And --
9 Q -- Sandra there?
10 A Yes, Sandra.
11 HEARING OFFICER TA: So I'm sorry. Did you indicate
12 Mr. Sorza?
13 THE WITNESS: Yes.
14 MR. BLASI: I'm sorry. I'm sorry. I should --
15 THE WITNESS: Sorry. Forgot his name.
16 Q BY MR. BLASI: Okay. And you had a conversation with him
17 about the union campaign.
18 A Yes.
19 Q Okay. Okay. And just generally speaking, can you say
20 what the substance of that conversation was about?
21 MR. PARRY: Again, I want to state objections already.
22 This is outside the scope. We're talking about the home
23 visits. This has nothing to do with the home visits. This is
24 has nothing to do with a home visit. It was at work and it's
25 irrelevant, and it's unduly time consuming.

1 MR. BLASI: Madam Hearing Officer, it's only unduly
2 time consuming because the -- counsel for the Employer objects
3 at every question on this of inquiry, and I'm simply trying to
4 establish some very simple background information that the
5 witness had previous positive interactions with the Union prior
6 to the home visits.
7 MR. PARRY: And again, that has nothing to do with whether
8 she had a positive or whatever interaction with them outside,
9 not in her home visit. Doesn't mean that it makes the home
10 visits positive or welcome or invited. It hasn't -- it has
11 nothing to do nothing with that.
12 THE WITNESS: I'm sorry.
13 MR. PARRY: It's entirely irrelevant. It's akin to saying
14 you give consent once and you have it forever, and that's just
15 not --
16 MR. BLASI: It's not akin to that at all, and the Union
17 doesn't represent that it is, but it is relevant background
18 to --
19 HEARING OFFICER TA: Yeah, I mean, I --
20 MR. BLASI: -- what the context of these interactions
21 were. And --
22 HEARING OFFICER TA: Yeah.
23 MR. BLASI: -- it's important that it be on the record so
24 that the Region has a full picture of what was going on here.
25 HEARING OFFICER TA: Yeah. I think if the witness had

1 met with the Union prior to these home visits and, you know,
2 the interactions were positive, you know, it might explain why
3 the Union then felt it was okay to come back numerous times. I
4 think it could potentially set the background for that. So
5 I'll allow just a short line of questioning about that.
6 MR. BLASI: Right, and it -- that's all we're all seeking
7 to do. Not that, again, to -- acknowledging there's anything
8 wrong with visiting workers at their homes. It's just -- the
9 Court has long recognized that's fine for a union to do, to be
10 clear.
11 HEARING OFFICER TA: Okay.
12 Q BY MR. BLASI: So generally speaking, can you talk about
13 the substance of the conversation you had with your co-worker
14 Sandra and the other two individuals that were with you when
15 you talked with the Union before anyone visited your home?
16 A That was way before they started coming to my house.
17 Q All right. Can you talk about generally what the
18 conversation consisted of?
19 A It was about giving the information about what the Union
20 wanted to provide me with.
21 Q Okay. It was a friendly conversation?
22 A Yes.
23 Q And the Union made arguments for why they believed it was
24 a good idea to --
25 A Go union?

1 Q -- have a union?
2 A Yes.
3 Q Okay. And do you remember anything you said to them in
4 response to those arguments about why it's a good idea to have
5 a union at the workplace?
6 A If I remember what I said?
7 Q Do you remember anything that you said in that --
8 A No.
9 Q -- conversation? Do you remember anything you did in that
10 conversation?
11 A Yeah, they took a picture of me.
12 Q Okay. And you agreed to do that at the time, right?
13 A Yes.
14 Q Okay. And at that point -- well, I'll just leave it there
15 since I'm trying to belabor the point. So and that was Sandra
16 and Alex, the union organizer, and this man Sergio Sorza who
17 were with you on that prior occasion --
18 A Yes.
19 Q -- when you had the -- would you say -- describe it as a
20 positive interaction? It wasn't -- would it be fair to say you
21 weren't arguing with them or anything like in that --
22 A No.
23 Q -- conversation? It was a positive, amicable
24 conversation?
25 A Well, it wasn't just that it's positive, it was the point

1 that they were speaking to me and I was talking to them out of
2 respect. I've always had respect for my co-workers and I
3 listen to them, of course, but it wasn't like, oh, my God, a
4 positive thing.
5 Q Sure, but it wasn't contentious or, you know,
6 argumentative or anything like that.
7 A No. It wasn't.
8 Q Okay. All right. So now you talked about a series of
9 home visits and I want to kind of briefly touch on each of
10 those just to make sure --
11 A Yes.
12 Q -- that the information is accurate in the record. So you
13 said there was a first visit when -- I believe you said
14 Sandra -- you're referring to Sandra Diaz your co-worker?
15 A Yes.
16 Q -- attempted to visit your home, but you weren't home --
17 you were in the bathroom I think you said, right?
18 A Yes.
19 Q Okay. And you didn't respond to her texts you said.
20 A No, I didn't.
21 Q And she left on her own accord.
22 A Yes.
23 Q Okay. Did somebody answer the door on that occasion?
24 A No, I was home alone.
25 Q You were home alone and she left.

1 A Yes.
2 Q That was all there is to that interaction.
3 A Yes.
4 Q There wasn't even an interaction. She just texted you,
5 you didn't respond, and she left.
6 A Yes.
7 Q That's all, right? And this happened before the union
8 election ballots were mailed; isn't that right?
9 A Yes.
10 Q Like some weeks before would you say?
11 A I'm not exactly sure when like exactly when it was.
12 Q Okay, but it was --
13 A It was before the --
14 Q -- before the --
15 A -- ballots came out.
16 Q Right. Okay. And Sandra -- just to be clear, you
17 mentioned earlier that she was somebody -- she had come to a
18 birthday party for your child?
19 A Yes.
20 Q So you were --
21 A She came to my baby shower, she came to my party, yes.
22 Q So you were on relatively friendly terms with her for that
23 time --
24 A Yes.
25 Q -- had been the case. Okay. And so the second time it

1 was Sandra, same person, Gustavo, former co-worker, and Alex?
2 Is that --
3 A Yes.
4 Q -- what you testified to earlier? Okay. And on this
5 occasion you had a longer conversation with them, right?
6 A Yes.
7 Q And it was out in the parking area or something?
8 A No, in my front of my house.
9 Q In front of your house.
10 A Yes.
11 Q And you said you talked to her about 45 minutes?
12 A Yes.
13 Q And you showed you union contracts?
14 A Yes.
15 Q Were they -- I assume they were making arguments about why
16 it's a good idea to have a union, how it would benefit you? Is
17 that accurate to say?
18 A Yes, sir.
19 Q And during the course of that interaction, did any of the
20 three of those individuals threaten you in any way?
21 A No.
22 Q Okay. And did they tell you that something bad was going
23 to happen to you if you didn't support the Union?
24 A No.
25 Q Okay. Did you feel afraid in any moment?

1 A Not that I felt afraid, but I knew if I wouldn't speak to
2 them, things would be different at work.
3 Q Because you might not get along as well with Sandra --
4 A Exactly.
5 Q -- or something like that?
6 A Exactly.
7 Q But you weren't afraid for your personal safety or
8 anything like that.
9 A Not my safety.
10 Q Not your safety, okay.
11 A Just the work habit.
12 Q Your interactions at work.
13 A Interaction at work.
14 Q Sure. Okay. And this visit also happened well before, or
15 at least before the union ballots were mailed; isn't that
16 right?
17 A Yes.
18 Q Okay. And how did the conversation end? Did they -- did
19 you ask them to leave or did they just finish the conversation
20 and they left?
21 A I don't remember.
22 Q Do you remember?
23 A I'm trying to remember.
24 Q Okay. But there -- take your time if you want to.
25 A No, it was just getting hot. And we were like getting

1 hot, I'm just going to go inside. And they were like, okay,
2 we'll -- I'll see you at work.
3 Q Okay. So they left.
4 A So they just left.
5 Q You didn't need to say like I need you to leave right now?
6 A No.
7 Q Nothing like that?
8 A I'm not rude like that. Sorry.
9 Q Okay. So then there was a third visit, right? And again
10 with Sandra your co-worker --
11 A Yes.
12 Q -- who was there. And there was another person along with
13 her, a woman, right?
14 A Yes.
15 Q Do you remember that person's name?
16 A No.
17 Q Do you remember if she introduced herself as Lupe Luna
18 (phonetic)?
19 A I don't remember honestly.
20 Q Could you describe what she looked like?
21 A She had short hair. I know that for a fact. She was an
22 olderly (sic) woman. She looked somewhat of the woman that I
23 saw earlier, but I'm not exactly sure, to be honest.
24 Q Okay. Could you describe her features?
25 A She was tan like as I am.

1 Q She was a Latino?
2 A And Mexican. Yeah, Hispanic.
3 Q Uh-huh. Anything else you could say to describe how she
4 appeared?
5 A No, but she spoke Spanish.
6 Q She spoke Spanish. And did she talk about her experiences
7 working in the hotel industry or something like that?
8 A No.
9 Q Okay. And you believe that that person was here today?
10 A I believe so.
11 Q You're certain about that? That --
12 MR. PARRY: Objection. It's asked and answered. It's
13 argumentative to ask it another way.
14 MR. BLASI: I was invited to ask questions on cross.
15 MR. PARRY: Prodding her.
16 HEARING OFFICER TA: Well, they just -- I think she
17 answered and that's --
18 MR. BLASI: I --
19 HEARING OFFICER TA: -- yeah.
20 MR. BLASI: I don't think she answered the question --
21 HEARING OFFICER TA: Okay.
22 MR. BLASI: -- I just asked.
23 HEARING OFFICER TA: Okay. Let's start over.
24 Q BY MR. BLASI: Are you certain that the person that
25 visited you, the elderly Latino woman who you just described a

1 minute ago, was here today in this building?

2 MR. PARRY: That's asked and answered, and it's getting

3 harassing and argumentative.

4 HEARING OFFICER TA: Well, I asked him to reset and ask

5 the question. So let's -- can you answer his question?

6 A Believe so. Not a yes or no. I'm not sure.

7 Q BY MR. BLASI: You're not sure whether --

8 A I'm not sure.

9 Q -- it was the same person. Okay. So it wouldn't surprise

10 you if it turned out it was actually not the same person?

11 A I'm not sure.

12 Q Okay. You're not sure.

13 A I'm not sure.

14 Q Okay. So this was an occasion where you were sleeping and

15 then they came back and talked to you later? Is that -- is

16 that what happened on this same occasion when --

17 A When I failed to open the door, yes.

18 Q Yeah. And you did end up having a conversation with them,

19 or you --

20 A The following week.

21 Q So but not in this case.

22 A Not on that case.

23 Q So the third visit that you didn't even interact with them

24 at all.

25 A No.

1 Q You just heard about it from your fiancé.
2 A Yes. From him and his mom. They both told me.
3 Q Okay. So you didn't actually -- so this person who we
4 just were talking of a conversation about, you didn't actually
5 see her on this occasion, right?
6 A No.
7 Q So --
8 A She showed up the following Sunday.
9 Q I see. So that was the fourth one, not --
10 A Saturday following -- with that weekend.
11 Q -- the -- I see.
12 A The following weekend.
13 Q Okay. So we're talking -- so the third one, the third
14 visit wasn't actually a visit. You didn't interact with
15 anybody.
16 A Well, it was a visit because they showed up to my house.
17 Q Sure, that's right, but you didn't interact with them.
18 A No, I didn't interact with them.
19 Q Okay. And this occasion also occurred before the ballots
20 were mailed, didn't it?
21 A Yes.
22 Q Like some weeks before? Do you recall?
23 A Yes.
24 Q Okay. And -- okay. And you didn't get a report about
25 anybody being threatened or anything like that by the people

1 that visited on that --
2 A No --
3 Q -- third occasion?
4 A No, he just said it was annoying.
5 Q Said it was annoying.
6 A Yes.
7 Q They were annoyed that they -- your fiancé was annoyed
8 that they were?
9 A Yeah because he knew that they had came prior to that and
10 I was outside talking to them for about an hour. So yeah, he
11 was annoyed.
12 HEARING OFFICER TA: I'm just going to interrupt. I do
13 want to clarify because I think there's some confusion about
14 the number of visits.
15 MR. BLASI: Uh-huh.
16 HEARING OFFICER TA: There -- it sounds like there was the
17 first visit when you were in the bathroom. The second visit
18 where you actually spoke to the three --
19 THE WITNESS: The three union reps.
20 HEARING OFFICER TA: -- union representatives. And then
21 there was a third and a fourth visit where you were asleep.
22 THE WITNESS: Yes.
23 HEARING OFFICER TA: So the third visit was you were
24 asleep --
25 THE WITNESS: Yes.

1 HEARING OFFICER TA: -- and then they came back later.
2 THE WITNESS: And said they saw me through the window in
3 the kitchen.
4 HEARING OFFICER TA: Yeah, that was an hour later.
5 THE WITNESS: Yes.
6 HEARING OFFICER TA: So that would be the fourth visit.
7 THE WITNESS: And then the fifth.
8 HEARING OFFICER TA: And then the fifth visit, which I
9 think counsel referred to at one point as the third visit
10 because it was the third time she interacted.
11 MR. BLASI: Yes.
12 HEARING OFFICER TA: Yeah.
13 MR. BLASI: That's correct.
14 HEARING OFFICER TA: So the fifth visit would be then --
15 THE WITNESS: I opened the door.
16 HEARING OFFICER TA: -- you actually spoke to --
17 THE WITNESS: Yes.
18 HEARING OFFICER TA: -- Sandra. Okay. So I just wanted
19 to clarify, because I think there was some confusion about the
20 third and the fifth -- and the fifth visit. But there --
21 sounds like there are five visits.
22 THE WITNESS: Yes.
23 HEARING OFFICER TA: The third and fourth of which you did
24 not actually --
25 THE WITNESS: Speak to them.

1 HEARING OFFICER TA: -- communicate with any. Okay.
2 MR. BLASI: Well, the first either because the first --
3 HEARING OFFICER TA: Oh, yeah, the first --
4 THE WITNESS: Yeah.
5 MR. BLASI: -- she got a text message that she had been --
6 HEARING OFFICER TA: -- she was in the bathroom.
7 THE WITNESS: I was in the bathroom.
8 HEARING OFFICER TA: Okay.
9 Q BY MR. BLASI: So there are actually only two occasions --
10 HEARING OFFICER TA: Two visits.
11 Q BY MR. BLASI: -- when you actually spoke with anybody?
12 A Well, three when I saw them in front of the hotel. Not
13 the front of the hotel --
14 Q Right.
15 A -- it was my parking lot into my structure of my job.
16 Q Okay. Right, but --
17 A So that's the first --
18 Q -- at your house there's two.
19 A At my home, yes. Two.
20 Q Right. Okay, which we're -- in our -- in the scheme of
21 the Hearing Officer just put out was the second and the fifth
22 times I think, right?
23 A Yes, the second and the fifth times. That's right.
24 Q Okay. The other three just you weren't there or you
25 weren't -- you didn't attend to them, right?

1 A (No audible response)
2 Q Okay. So -- okay. So the -- at least the first four
3 occasions then that somebody attempted to visit you, those all
4 happened before the ballots were mailed, is that accurate?
5 A Yes.
6 Q Okay. And on each of those occasions, you heard it was
7 your co-worker Sandra who attempted to visit you or did visit
8 you?
9 A Yes.
10 Q Although on some times it was somebody else?
11 A Yes.
12 Q Yeah, okay. Okay. So then the -- I guess what we're
13 calling the fifth visit, it was also Sandra coming to visit
14 you, right? And was she with somebody else on that occasion?
15 A She was with the lady that I explained to you about
16 earlier.
17 Q Right. So that's -- right, okay. The person -- yes,
18 okay. Got it. And I think you testified earlier that they
19 asked you if you had gotten your ballot; is that right?
20 A Yes.
21 Q Okay. And had you gotten your ballot at that point?
22 A Honestly, I don't remember if I did or I didn't, because I
23 had it mailed to my mom's house.
24 Q Right, okay.
25 A Because my address for The Daily Grill was my mother's

1 address.
2 Q Okay.
3 A And I had just moved to this house.
4 Q Okay. And what -- did you answer the question when they
5 asked you?
6 A I don't remember if I said yes or no honestly. I don't
7 remember. I don't remember if I told her yes or no.
8 Q Okay.
9 A I just remember I told her the same thing. I don't have
10 it here. That was it.
11 Q You said you don't have it here?
12 A I don't have it, no.
13 Q All right.
14 A I don't have it.
15 Q Was that the only question that they asked you?
16 A Yeah, if I had just received it, that I knew how to fill
17 it out, and then that was it.
18 Q They asked you if you knew how to fill it out?
19 A And she had just told me that she went to the restaurant
20 that I had told you about my house. That was it.
21 Q Uh-huh.
22 A So it wasn't even like just --
23 Q It was a very short conversation sounds like?
24 A Yes, and then she just left.
25 Q Okay. And when she asked you if you knew how to fill it

1 out, what -- did she specify what she meant by that?
2 A That I knew -- just if I knew how to fill it out. That
3 was it.
4 Q Did you have any information at that point about how to
5 fill it out?
6 A No. No, I knew how to fill it out, yes.
7 Q How did --
8 A But I didn't --
9 Q How did you know how to fill it out?
10 A Because we had had samples.
11 Q Where were the samples?
12 A In the workplace.
13 Q That they were posted in the workplace?
14 A Yeah.
15 Q Okay. Did you -- what was the -- were there particular
16 things you knew about how to fill it out that you --
17 A It just said --
18 Q -- learned from looking at it?
19 A -- signature, yes, no. Your choice.
20 Q What was the signature that you had to sign?
21 A Yeah.
22 Q Where did you have to sign the signature? Did you
23 notice -- do you remember anything about that?
24 A I don't remember if we did or didn't. I just know it
25 said -- it showed an example of how it looked.

1 Q Uh-huh. Okay.
2 A That was it.
3 Q Okay. And did -- were you aware of how you might get a
4 ballot if you did not receive one?
5 A No.
6 Q So were you aware at that point that you saw these two,
7 you know, your co-worker and the other woman, that there was a
8 phone number you could call to get a ballot if one didn't
9 arrive? Did you know that?
10 A I didn't pay attention to all of that. I knew I could
11 just ask if I needed one, oh, they didn't send it to me, and
12 then anyone would tell me.
13 Q You could ask a -- the management of the hotel -- of the
14 restaurant, you mean?
15 A Or the Union.
16 Q Or the Union. So you -- okay. Okay. So and during this
17 visit, did this -- it sounds -- because -- how long would you
18 say the conversation lasted?
19 A Five, six minutes.
20 Q Okay. And during --
21 A Short.
22 Q During that period of time, did either of those women
23 threaten you in any way?
24 A No. Me and Sandra don't have that type of relationship.
25 Q Okay. They didn't -- did you feel that your safety was

1 in danger in some way?
2 A No.
3 Q I'm not going to ask you how you voted so don't worry
4 about that, but did you ever actually get the ballot?
5 A Yes.
6 Q It arrived at your mom's house I guess?
7 A Yes.
8 Q Okay. So you were able to vote eventually?
9 A Yes.
10 Q Or choose to vote if you wanted to vote? You mentioned
11 earlier there were some rumors you heard.
12 A Yes.
13 Q And they had to do with something about the Union asking
14 people to fill out ballots?
15 A Yes.
16 Q Or --
17 A In front of them.
18 Q -- have the -- have workers fill it out?
19 A And have them sign it in front of them.
20 Q So were there some specific examples that you were --
21 heard about of that happening?
22 A All I heard was that they went to so-and-so's house and
23 told them to fill it out in front of them. And then even said
24 thugs.
25 Q Was it the Employer that you heard that rumor from?

1 A No, from my co-worker.
2 Q Okay. Where your employer threw out -- sent an email to
3 co-workers calling the union thugs?
4 A Yeah.
5 Q You were aware of that?
6 A I was aware of that, yeah.
7 Q You received that email as well?
8 A Yeah. Yes. Sorry.
9 Q Okay, but you didn't actually hear of any specific
10 examples of that happening.
11 A Yes, I did.
12 Q You heard of some specific example of --
13 A Of a co-worker, yes.
14 Q -- a co-worker?
15 A I did hear it, yeah.
16 Q But from the co-worker who experienced it?
17 A Yes.
18 Q And who is that?
19 A Do I have to say names?
20 THE WITNESS: I don't know if she doesn't want --
21 HEARING OFFICER TA: Yeah, I -- I'm --
22 THE WITNESS: I don't know if she's --
23 HEARING OFFICER TA: I mean, I don't know if counsel wants
24 to call this witness to testify, but I -- I'm --
25 MR. BLASI: Well, we don't know who the witness is, right?

1 HEARING OFFICER TA: I mean --
2 THE WITNESS: A lot of people want --
3 HEARING OFFICER TA: -- if you're not comfortable sharing
4 the individual's identity, then you don't have to answer.
5 THE WITNESS: Okay.
6 Q BY MR. BLASI: Can I ask, without identifying the person,
7 you spoke with that person about the specific experience of
8 that person?
9 A Yes.
10 Q But you're not willing to testify today about who that
11 was?
12 A No, they're --
13 THE WITNESS: Can I say why?
14 HEARING OFFICER TA: Well, I don't think there's a
15 question before you. Counsel, do you want to ask her?
16 MR. BLASI: No. It's fine.
17 Q BY MR. BLASI: So it's safe to say that you were annoyed
18 by your co-workers or the union organizers coming to your
19 house? Is that --
20 A Yes.
21 Q -- accurate?
22 A Because we had already talked about it at work.
23 Q You talked about it at work with whom?
24 A Sandra.
25 Q You talked to her about the issue of her coming to your

1 house?
2 A About the whole union, the giving us information.
3 Q Uh-huh. Did the Employer -- you mean you had already
4 talked about the issue so you didn't feel like it was --
5 A Yes.
6 Q -- necessary to have more conversations?
7 A Exactly.
8 Q I see. Did the Employer -- did your managers ever say
9 anything to you to the effect that it was wrong for organizers
10 or workers to visit you at home?
11 A If I felt uncomfortable, yes, that it was wrong.
12 Q Managers told you that it was wrong if --
13 A No, they asked me if I felt uncomfortable with it.
14 Q Who asked you if you felt uncomfortable?
15 A I'm trying to think of the manager at the time. I think
16 it was Eric.
17 Q Who's Eric?
18 A He was a manager at our job.
19 Q What position does he have?
20 A He was a manager.
21 Q Okay. What position did he have?
22 A Managing.
23 Q Like the general manager?
24 A No, just a manager.
25 Q Like a restaurant --

1 A Yes.
2 Q -- manager or something? And he asked you if you felt
3 uncomfortable about the Union. When did that conversation
4 happen more or less?
5 A I think the third time they went to my house.
6 Q Uh-huh. And did he -- how did that conversation start?
7 A Everyone was talking about -- everyone of my co-workers
8 were speaking about how -- everyone's like, oh, they came to my
9 house, they came to my house, they came house. Oh, did they
10 come to your house, like as a joke. And then everyone was just
11 like, yeah, they came to mine too.
12 Q Sure. And he asked you --
13 A And then --
14 Q -- a question --
15 A Yeah.
16 Q -- about whether you felt uncomfortable?
17 A No, that he just told me do you feel uncomfortable about
18 that. And I go, yeah, it's annoying.
19 Q Uh-huh. Was that a one-on-one conversation or this was in
20 a group?
21 A This was in a group.
22 Q Okay. And did he say anything before he asked you that
23 question --
24 A No.
25 Q -- whether you felt uncomfortable? Did he give you any

1 assurance that you wouldn't be subject to retaliation if you
2 gave him some information in response? No, you -- I need you
3 to --
4 A No.
5 Q -- say the answer. He didn't say that? He --
6 A That I'd ultimately get fired if what?
7 Q If you would be subject to retaliation, something bad
8 would happen. The Employer would do something to you if you,
9 you know, chose not to answer his question, for example.
10 A My job has never been -- no one's ever told me they were
11 going to fire me for any of that --
12 Q I'm asking a much --
13 A -- or anything.
14 Q -- more specific question than that. When the manager
15 Eric asked you whether you felt uncomfortable with people
16 visiting your home, did -- before he asked you that question,
17 did he ask you -- did he tell you that you -- that you could
18 answer the question without facing any kind of retaliation
19 regardless of the answer you gave?
20 A No, it was --
21 Q Did he give you any --
22 A -- just a conversation. It wasn't --
23 Q Did he provide you with any assurances of any kind before
24 he asked you --
25 A No.

1 Q -- that question? He didn't say that you could choose to
2 answer and it's a -- it would be voluntary if you answered the
3 question?
4 A It was just a conversation.
5 Q Right, but before he asked you that question, did he give
6 you an assurances of any kind that you would -- it was fine for
7 you to answer and voluntary for you to answer?
8 A I don't remember.
9 Q You don't remember him saying anything like that?
10 A No. I don't remember if he did say or he didn't --
11 Q Okay.
12 A -- to be honest.
13 Q Did he explain the purpose of why he was asking you that
14 question?
15 A No.
16 Q He didn't. Okay. And that conversation took place
17 where?
18 A Like where inside the building or where --
19 Q Yeah, where inside? Like where specifically was that
20 conversation?
21 A The bar, cocktail bar.
22 Q The cocktail bar? So that's at The Daily Grill bar?
23 A Yes.
24 Q Okay. You were working at that point?
25 A No, I think I had been off the clock.

1 Q So it's --

2 A Or I was working. I don't remember, honestly.

3 Q Okay. Just one more second.

4 MR. BLASI: Okay. We have nothing further at time.

5 HEARING OFFICER TA: Any redirect?

6 MR. PARRY: Yes, thank you.

7 **REDIRECT EXAMINATION**

8 Q BY MR. PARRY: Ms. Camberos, about that conversation with
9 Eric the manager, when he asked you if you felt uncomfortable
10 about the Union coming to your house, is that a situation where
11 he said, hey -- pulled you aside and said, hey, I want to talk
12 to you about something? Or was it just in passing you made a
13 comment and he asked you about it?

14 MR. BLASI: Objection. Improper form of an answer -- of a
15 question.

16 HEARING OFFICER TA: I'll allow it. Go ahead and answer.

17 THE WITNESS: Sorry?

18 Q BY MR. PARRY: Let me just ask it differently. When you
19 made the comment -- when Eric asked if it made you feel
20 uncomfortable having the Union show up at your house, did he
21 like pull you aside to talk to you about it, or was it more of
22 an in-passing you made a comment and he asked about it?

23 A It was in passing and we were all making comments. And he
24 just asked, and I said, yeah, it was annoying.

25 Q He didn't pull you in --

1 A And then we just said the same thing.
2 Q He didn't pull you into the office?
3 A No.
4 Q He didn't interview you?
5 A No.
6 Q Did he -- did you feel like he was -- you were forced to
7 respond to him?
8 A No, not at all.
9 Q Was it voluntary?
10 A It was voluntary.
11 Q By you?
12 A Yes, by me.
13 Q Thank you. You had mentioned that you heard rumors --
14 you had heard rumors from co-workers about union -- the Union
15 visiting homes and trying to get people to show them -- or
16 complete their ballots in front of them? Is that right?
17 A Yes.
18 Q Okay. And someone referred to them as thugs, is that
19 right, an employee?
20 A Yes.
21 Q Okay. And you were asked -- you said you didn't want to
22 disclose who specifically reported that to you, correct?
23 A Correct.
24 Q And then you asked if you could explain why.
25 A Yes.

1 Q Why is that? Why did you not want to -- why do you not
2 want to disclose who reported it to you?
3 A Because when all of the ballots and everything was
4 going -- happening and things like that, it felt like there was
5 a lot of tension at work with certain people, where they
6 weren't doing certain things of their job and that would affect
7 me, because they were backing up from helping me with my tables
8 when they had to do their job and things like that. And I
9 don't want tension anymore at my job. That's why, because it's
10 getting out of hand.
11 Q Do you feel like some co-workers were sort of retaliating
12 against you?
13 A Yes, and I know it's going to happen now, especially when
14 I go back to work.
15 Q Did you ever invite union representatives to come to your
16 home and talk to you about the Union?
17 A Invite them?
18 Q Yes.
19 A No.
20 Q You were annoyed by that?
21 A Yes. I spoke to them at work, for work at work, because
22 it had to do with work, not at my home.
23 Q Thank you.
24 MR. PARRY: I have no further questions.
25 HEARING OFFICER TA: Recross?

1 MR. BLASI: Just have a second.
2 Yeah, the Union has nothing further.
3 HEARING OFFICER TA: I do have a -- some follow-up
4 questions. When you talk about -- you mentioned a conversation
5 where everyone was chiming in and saying, oh, the Union visited
6 me and they visited me. How many people would you say said
7 that?
8 THE WITNESS: Wow. It was a while back. More than four.
9 HEARING OFFICER TA: Okay. Would you -- more than four.
10 Would you say less than ten?
11 THE WITNESS: More than four on my shift at that day, that
12 time when we were speaking about it. I don't know --
13 HEARING OFFICER TA: Well, in that specific --
14 THE WITNESS: -- about anyone else.
15 HEARING OFFICER TA: -- incident.
16 THE WITNESS: In that specific time when we were talking
17 about it at that time.
18 HEARING OFFICER TA: Okay. More than four people, but are
19 we talking like four to ten people, or four to 20 people who
20 said that? Or four to six people?
21 MR. BLASI: Can I just object to the question on
22 vagueness? I think "said that" is unclear.
23 HEARING OFFICER TA: That said that the Union had come to
24 visit.
25 THE WITNESS: Yes.

1 HEARING OFFICER TA: Okay. So how many people would you
2 say said that, said that the Union --
3 THE WITNESS: Oh, in front of me?
4 HEARING OFFICER TA: Yes, in that --
5 THE WITNESS: At that moment?
6 HEARING OFFICER TA: -- moment, yeah.
7 THE WITNESS: When -- there were four.
8 HEARING OFFICER TA: Four people. Okay. Beyond this
9 moment, in the weeks sort of leading up to the mail-in ballot
10 election, were there other co-workers who talked to you about
11 home visits that happened to them?
12 THE WITNESS: Yes.
13 HEARING OFFICER TA: And how many co-workers would you say
14 talked to you about it?
15 THE WITNESS: It's because we all have breakfast together
16 in the morning. And it's like we all -- we're Mexican. We all
17 talk like, oh, guess what happened. The -- you know, so --
18 HEARING OFFICER TA: Uh-huh.
19 THE WITNESS: -- I would have to say about three --
20 HEARING OFFICER TA: Three. Okay.
21 THE WITNESS: -- in my shift for the morning.
22 HEARING OFFICER TA: Okay.
23 MR. PARRY: Was that three or 30?
24 HEARING OFFICER TA: She said --
25 THE WITNESS: Three.

1 HEARING OFFICER TA: -- three.

2 MR. PARRY: Three. Okay.

3 THE WITNESS: Three.

4 MR. PARRY: Sorry.

5 THE WITNESS: Yeah, I think that's all the employees we

6 have in general. I'm just kidding.

7 HEARING OFFICER TA: And then since the election happened,

8 is it your experience that your co-workers continued to talk

9 about what happened with the home visits? Or is it just a

10 topic that no one brings up anymore?

11 THE WITNESS: It's a topic -- we thought it was done.

12 Yeah.

13 HEARING OFFICER TA: And when people -- during the -- when

14 the election was happening and during the campaign, when people

15 talked about the home -- when your co-workers talked about the

16 home visits, would you say they were kind of just bringing it

17 up to say, oh, yes, I was -- someone visited me also? Or would

18 you say it was sort of like a complaint?

19 THE WITNESS: It was a complaint because they were

20 annoyed. Everyone started seeing it as something annoying that

21 as something --

22 HEARING OFFICER TA: Okay. I don't have any other

23 questions. Do you have any other questions?

24 MR. PARRY: Just a really quick one.

25 Q BY MR. PARRY: The time when you spoke to -- there were

1 four employees that also said the Union visited their homes,
2 and I think you said that there were four of them, and you were
3 in the bar area? Is that right?
4 A Uh-huh.
5 Q Okay. Were any of those four kitchen employees, like
6 cooks or --
7 A No.
8 Q Okay. So it was --
9 A Just the front of the house.
10 Q It was all front of the house?
11 A Those -- they were in back -- the kitchen stays with the
12 kitchen, and the front stays in the front of the house.
13 Q So the --
14 A Which would be the hosts and servers and --
15 Q Of the four people that you heard also complain about the
16 Union visiting their homes that time --
17 A Yes.
18 Q -- none of those were kitchen employees. None of them
19 were back-of-the house employees.
20 A No. It was like bussers and --
21 Q Okay. Thank you.
22 HEARING OFFICER TA: Okay. Great. So you're excused.
23 THE WITNESS: Thank you.
24 HEARING OFFICER TA: I just wanted to remind you that a
25 sequestration order is in effect. So that means that you can't

1 talk about your testimony to anyone else until after the
2 conclusion of the hearing.
3 THE WITNESS: Okay. Thank you.
4 HEARING OFFICER TA: Thank you so much.
5 THE WITNESS: Thank you.
6 MR. PARRY: If would have like two minutes.
7 HEARING OFFICER TA: Yeah, yeah.
8 MR. PARRY: I'm going to do it really fast.
9 HEARING OFFICER TA: Yeah, let's go off the record.
10 (Off the record at 4:33 p.m.)
11 HEARING OFICER TA: Okay. Back on the record.
12 Can you please state your name and spell it for the record
13 please?
14 MR. MANN: Kurt Mann, K-U-R-T, M-A-N-N.
15 HEARING OFFICER TA: And can you raise your right hand?
16 Whereupon,
17 **KURT MANN**
18 having been duly sworn, was called as a witness herein and was
19 examined and testified as follows:
20 HEARING OFFICER TA: Just a couple of reminders. There's
21 a microphone in front of you, but it doesn't amplify your
22 voice, it just records it. So any responses you give make sure
23 it's a verbal response. Don't nod or shake your head. And if
24 you don't understand a question that's being asked of you, just
25 ask for it to be restated or rephrased. And if there is a

1 party that objects to -- if there is an objection that's being
2 asked of you, don't respond until I make a ruling on the
3 objection, okay. Great, thank you.
4 Go ahead, counsel.
5 MR. PARRY: Thank you.
6 **DIRECT EXAMINATION**
7 Q BY MR. PARRY: Mr. Mann, can you tell us where you work?
8 A The Daily Grill on Century Boulevard.
9 Q And what do you do there?
10 A I'm a bartender.
11 Q How long have you worked at The Daily Grill on Century?
12 A Eight years.
13 Q And so from the period beginning around beginning of
14 November 2017 until now have you worked there continuously?
15 A Yes.
16 Q And you're aware of the ongoing union organization efforts
17 at the restaurant?
18 A Yes.
19 Q Okay. Have you ever been visited at your home by people
20 who you understood to be representing the Union?
21 A Several times.
22 Q Okay. How many times total if you can remember?
23 A Two that I know of, but that doesn't necessarily mean that
24 they didn't come another day that I wasn't there, but two for
25 sure.

1 Q Okay. Let's talk about that first time. Do you remember
2 when that was?
3 A No, I don't recall exactly, but it was before we had
4 started the voting process.
5 Q So before the mail ballots were supposed to be mailed
6 out?
7 A Right, exactly.
8 Q Okay. And that first time, how many people showed up to
9 your home?
10 A It was two.
11 Q Okay. Did you recognize them?
12 A Yeah.
13 Q Who were they?
14 A My boy right here.
15 Q And you're --
16 HEARING OFFICER TA: Let the record the witness is
17 pointing to Mr. Sorza.
18 THE WITNESS: Yeah, the gentleman right here and I think
19 the other gentleman, Alex.
20 Q BY MR. PARRY: And you recognize them from seeing them
21 before on the property or --
22 A Yeah, they've came -- they've came and talked to me in the
23 parking lot, waited by my car to ask me questions in the
24 parking lot of my work.
25 Q So what time of day or night was it the first visit?

1 A It was in the afternoon.
2 Q Okay. What time do you usually work?
3 A In the evenings, closer around 5.
4 Q And so what did they say to you that first visit?
5 A They just asked me if I had time to talk and I told them I
6 didn't, and that I wasn't going to be able to help them or talk
7 to them at the moment, so I just kind of closed the door on
8 them. It was a quick thing. I just told them I didn't have
9 time for them. I had stuff to do.
10 Q Okay. And that was the extent of that --
11 A Of that first one, yeah.
12 Q -- interaction? Okay. Now, do you live in a house or is
13 it an apartment?
14 A It's an apartment building, a gated apartment building.
15 Q Okay. It's gated.
16 A Yeah.
17 Q Did you buzz them in?
18 A Absolutely not.
19 Q Is there -- are the gates on the apartment complex locked?
20 A Yeah.
21 Q So in general, people that aren't either buzzed in or have
22 a key or an access code can't get into your building; is that
23 right?
24 A Correct.
25 Q Do you know how they got into your apartment building?

1 A Not for sure, no. I mean, I can imagine, but they must
2 have waited for someone to leave or something, but no, it was
3 not -- you know, not me buzzing them in.
4 Q Did you invite them to come visit you at your home?
5 A No.
6 Q Was it a welcome visit?
7 A Not really.
8 Q Let's talk about the second time. How many people showed
9 up the second time?
10 A It was two again.
11 Q Was it the same two people?
12 A No, it was another gentleman, not Alex. It was the
13 gentleman here and then one other guy.
14 Q So it was Mr. Sorza and one other person?
15 A Yeah.
16 Q Did you recognize the other person?
17 A I have seen him, but I didn't recognize -- I mean, I don't
18 know him, but I've seen him from the other union things that
19 I've -- at the restaurant.
20 Q Have you seen him in the building today?
21 A Yes.
22 Q What does he look like? Is he tall, short?
23 A Yeah, he's a taller gentleman.
24 Q Is he taller than you?
25 A Yeah.

1 Q How tall are you?
2 A About six foot.
3 Q Has he spoken to you today?
4 A No.
5 Q And what time of day was the second visit?
6 A Afternoon as well. Just a little bit before going to
7 work, so like maybe 2 or 3.
8 Q Did you buzz them into the building?
9 A No.
10 Q So do you know how they got in through the locked gates?
11 A No.
12 Q Do you recall the day that this happened?
13 A Like the actual day or the date?
14 Q The date?
15 A I cannot recall, no.
16 Q Do you recall if the mail ballots had been --
17 A They had already --
18 Q -- was it around the time they went out?
19 A -- come out. They had already been sent, yeah.
20 Q So had you received your ballot?
21 A Yeah.
22 Q And so what did these two men say to you when they visited
23 you?
24 A They had asked me if I received my ballot, asked me if I
25 needed help filling it out or I needed help taking it to the

1 post office to mail, or help getting it all filled out and
2 everything sent. They told me certain things about what they
3 were -- promised me certain things about what they were going
4 to be getting us as a deal with the Union.
5 Q And what did they promise you specifically, as best you
6 can recall?
7 A It wasn't so much specifics, as much as it was in
8 comparison to another deal that they got at a different hotel.
9 They were just telling us, or telling me the things that they
10 had received for this hotel and they could get us the same
11 thing or better. It was mostly, you know, insurance, wages,
12 protection, stuff like that.
13 Q So when you say insurance, are you talking about like
14 health insurance?
15 A Health insurance, correct.
16 Q So they're telling you -- they're making you promises that
17 we can get you this type of health insurance like what we got
18 in another property?
19 A Yes.
20 Q Okay. And as far as wages, did they promise you that they
21 can get you higher wages like they had at some other property?
22 A I don't recall.
23 Q Okay. How was their demeanor? Were they aggressive or
24 pushy?
25 A They're always a little intimidating, kind of; not mean,

1 but definitely forceful, for sure.
2 Q Did you feel like they were being a little coercive at
3 all?
4 A Absolutely.
5 Q Okay.
6 MR. BLASI: I would just object that's a conclusory
7 statement on a legal question.
8 HEARING OFFICER TA: Yeah. Yeah. Counsel, can you --
9 MR. PARRY: What's the objection?
10 HEARING OFFICER TA: To the use of the word coercive? I
11 think it is -- it is conclusory. Can you --
12 MR. PARRY: Sure, I can --
13 HEARING OFFICER TA: -- I mean, to get at the same point,
14 can you ask him questions about their conduct?
15 MR. PARRY: Yes.
16 Q BY MR. PARRY: So what -- I think you also said they are
17 being pushy or aggressive. And what type of things were they
18 doing that made them seem to you as pushy or aggressive?
19 A Insisting upon not leaving until I can help them, or they
20 were pretty forceful in telling me, like, hey we want to make
21 sure this happens, can you -- can we do it, can we do it now,
22 can we -- you know, it was pretty forced. It was tough to not
23 notice the -- they were trying to be nice about it, but at the
24 same time, like, you could tell they weren't going to take no
25 really, for an answer.

1 Q And what did you say to them?
2 A I told them I didn't have time and I kind of heard them
3 out for a second and just told them I was getting ready for
4 work and I wasn't going to, you know, I could take care of
5 stuff like that myself and I didn't need someone to help me.
6 And also I was concerned about the anonymity of it, especially
7 since it's supposed to be anonymous, like, taking my envelope
8 with my signed signature on it and giving it to them or, you
9 know, having them take me somewhere to take it. I kind of
10 felt like that defeats the purpose of the anonymous part of
11 it.
12 Q And so when you told them that, I think you said you had
13 work to go to and you could do it yourself, did they persist?
14 A A little bit, yeah.
15 Q And continuing to ask you to let them help you, as they
16 called it?
17 A Yes.
18 Q And were you concerned about making sure that your vote
19 was your own and anonymous and --
20 A Definitely.
21 Q -- known to you only?
22 A Yeah.
23 Q I'm going to hand you a -- she'll hand them to you when
24 she's finished looking at it. Do you have that in front of you
25 now?

1 A Yeah.
2 Q Okay. Do you recognize this document?
3 A Yeah.
4 Q What is it?
5 A It's a document that I signed saying that -- saying what
6 happened with them coming to my apartment.
7 Q So this is in your handwriting?
8 A Yes.
9 Q Okay. And that's your signature at the bottom?
10 A Yeah.
11 Q And did you write this -- it has a date at the bottom that
12 says 12/12/17; is that the date you wrote it?
13 A That would be the date I wrote it, yeah.
14 Q And so where it says on 12/9/17 and there's a comma,
15 that's the date that -- the visit that you were just
16 describing, the second visit?
17 A The second visit, yeah.
18 Q Okay.
19 MR. PARRY: I'd like to move this into evidence as Exhibit
20 11.
21 HEARING OFFICER TA: Objection, Mr. Blasi?
22 MR. BLASI: No objection. Are we sure we're on 11?
23 HEARING OFFICER TA: Yeah, we're on 11. I have 10 as --
24 MR. BLASI: The Ashlynn statement was --
25 HEARING OFFICER TA: Was the typed statement of

1 Ms. Camberos.

2 MR. BLASI: The Union does not object.

3 HEARING OFFICER TA: So I'm going to -- Employer's Exhibit

4 11 is admitted into evidence.

5 **(Employer Exhibit Number 11 Received into Evidence)**

6 MR. PARRY: Thank you.

7 Q BY MR. PARRY: And how did you come to provide this

8 statement?

9 A I willingly came and said something, because I heard that

10 that's -- they weren't supposed to come talk to us after the

11 ballots had come out, and I knew that that was probably

12 something I should let someone know.

13 Q Did you provide it because you were upset about that?

14 A Yeah, absolutely, yeah.

15 Q At that point, had you heard of other employees talk about

16 being visited by the Union?

17 A Yes.

18 Q And so did you provide this voluntarily?

19 A Yes.

20 Q And who did you provide it to?

21 A Whoever the -- one of the managers or one of the managers

22 at the -- at the restaurant.

23 Q Did anyone stop you and say, hey, I need to talk to you

24 about this?

25 A No.

1 Q Did anyone pull you aside and interview about what
2 happened at that point?
3 A No.
4 Q So you gave this voluntarily to notify the Employer?
5 A Yes.
6 HEARING OFFICER TA: I'm sorry, did you say that other --
7 you had heard about other co-workers doing the same thing,
8 providing a statement? Was that your testimony?
9 THE WITNESS: No. I had heard about other co-workers
10 having been visited.
11 Q BY MR. PARRY: And how many other co-workers had you heard
12 had been visited already?
13 A Several.
14 Q Like five or more or less than five?
15 A Yeah, around or more.
16 Q And can you recall any specifics of what any of those
17 co-workers said?
18 A A lot of the same stuff, just that they had been visited
19 multiple times and either people were, like, waiting at their
20 house or they had come at hours and had been pretty forceful
21 about either, you know, having them promise or sign or say
22 something.
23 Q And when they discussed that, were they saying it in a way
24 that was like they were kind of complaining about it?
25 A Yeah. I mean, nobody wants to be visited, especially

1 about something like this, out of work or at home. A lot of us
2 have things that we're doing and don't have time for stuff like
3 that.
4 Q Did you get the impression that anyone you heard
5 mentioning that, that they were happy about being visited?
6 A No.
7 Q They were maybe annoyed?
8 A It was in a negative light for sure.
9 Q Okay. Do you recall the names of anyone who told you
10 that?
11 A It was mostly a lot of the people that are here now.
12 Nobody offhand that I wouldn't -- that wouldn't have come
13 forward that I know of. Most of the people that I've talked to
14 had already said something or were going to say something.
15 Q Okay. Let me give you this document. Do you recognize
16 this document?
17 A Yes.
18 Q Are those your initials along the -- next the numbered
19 paragraphs?
20 A Yeah.
21 Q Is that your signature at the bottom?
22 A Yes.
23 Q Is that your handwriting on the date?
24 A Yes.
25 Q And can you tell us what you understand this to be?

1 A It's a statement saying that I wasn't told to bring the
2 statement and that I was giving it voluntarily and there's no
3 retaliation and stuff like that, for signing anything.
4 Q And what date did you sign that? I'm sorry, I don't have
5 that in front of me.
6 A The 19th.
7 Q The 19th.
8 MR. PARRY: I'd like to move this into evidence as Exhibit
9 Number 12.
10 HEARING OFFICER TA: Any objections, counsel?
11 MR. BLASI: No.
12 HEARING OFFICER TA: Employer's Exhibit 12 is admitted
13 into evidence.
14 **(Employer Exhibit Number 12 Received into Evidence)**
15 Q BY MR. PARRY: And was the general content of this
16 acknowledgement, was it explained to you verbally also?
17 A Yes.
18 Q And was that done at the same time you signed it,
19 essentially?
20 A Yes.
21 Q By who?
22 A By you.
23 Q Okay. And so on the interview that was referred -- is
24 referring to me. Do you recall that?
25 A Yes.

1 Q Okay. And at the time we had an interview, you understood
2 what all that meant?
3 A Yes.
4 Q And did you sit in an interview voluntarily?
5 A Yes.
6 Q Okay. I'm going to hand you another document and can you
7 tell me if you recognize this document?
8 A Yes.
9 Q Is that your signature on the bottom?
10 A Yes.
11 Q Did you fill this out at the end of our interview?
12 A Yes.
13 Q And that was on the 19th, right?
14 A Yes.
15 Q Now, looking at that document, and the one I gave -- I'm
16 sorry, that would have been Exhibit Number 11, do you have an
17 understanding as to if they're the same thing?
18 A Yeah, they're the same.
19 Q And Exhibit Number 13 just adds the declaration under
20 penalty of perjury?
21 A Correct.
22 Q And Exhibit 13, you -- I may have already asked you this,
23 you signed this on the 19th?
24 A Yes.
25 MR. PARRY: I'd like to move Exhibit Number 13 into

1 evidence.

2 HEARING OFFICER TA: Any objections, counsel?

3 MR. BLASI: No.

4 HEARING OFFICER TA: Employer's Exhibit 13 is admitted

5 into evidence.

6 **(Employer Exhibit Number 13 Received into Evidence)**

7 MR. PARRY: I have no further questions at this time,

8 subject to redirect.

9 HEARING OFFICER TA: Okay.

10 MR. BLASI: I'd like a few minutes to prepare.

11 HEARING OFFICER TA: Sure.

12 MR. BLASI: I don't think it'll be a long cross.

13 HEARING OFFICER TA: Okay, yeah. It's getting a little

14 late, so let's do five minutes. Is that --

15 MR. BLASI: I'll try. I mean, it's a lot to get through,

16 but I'll -- five, six minutes --

17 HEARING OFFICER TA: Okay, let's try hard.

18 MR. BLASI: I -- I mean, I --

19 HEARING OFFICER TA: Okay. Let's go off the record.

20 MR. BLASI: I mean, I don't want to lose the chance to ask

21 the witness questions --

22 HEARING OFFICER TA: Sure.

23 MR. BLASI: -- because it's the end of the day.

24 (Off the record at 4:53 p.m.)

25 HEARING OFFICER TA: Okay. We are back on the record.

1 Counsel, you want to begin your cross-examination?
2 MR. BLASI: Sure.
3 **CROSS-EXAMINATION**
4 Q BY MR. BLASI: Mr. Mann, good afternoon. I just want to
5 ask you some follow-up questions on some of the things you said
6 earlier.
7 So first of all, you described a couple of occasions when
8 some representatives of the Union came to visit you at your
9 house. You had previously had some interactions with those
10 same organizers or others before those visits; isn't that
11 right?
12 A Yeah.
13 Q And you had had conversations about the subject of Union
14 organizing?
15 A Yes.
16 Q And was it the same two individuals or was it other people
17 who --
18 A It was always a mix of three or four people, depending on
19 what occasion.
20 Q Was there an occasion where you met with a co-worker
21 named -- was there an occasion where you met with a co-worker
22 named Salvador Telly (phonetic)?
23 MR. PARRY: I really object again that this is outside the
24 scope, it's irrelevant, it's really time consuming. He's not
25 talking about home visits.

1 HEARING OFFICER TA: And I'm going to again, overrule the
2 objection and just --
3 MR. BLASI: I'm trying to keep it short and it wouldn't
4 be --
5 HEARING OFFICER TA: Sure.
6 Q BY MR. BLASI: Do you recall -- do you remember the
7 question I just asked you?
8 A I don't recall offhand, but it's possible. I work with
9 him, so I'm sure he -- I might have met with him, but I'm not
10 100 percent sure.
11 Q That's okay. So it's possible you had a meeting with
12 Salvador Telly, your co-worker and another union organizer
13 named Alex? Does that sound --
14 A Yeah.
15 Q -- ring bell?
16 A That sounds possible, yeah.
17 Q Okay. And did you recall discussing the benefits of
18 unionization with those two gentlemen at some point prior to
19 these home visits?
20 A Yeah, that sounds right.
21 Q Okay. And do you recall it being a positive conversation
22 in the sense that it wasn't -- let me ask a more specific
23 question.
24 On that occasion, did those two individuals make arguments
25 about why they thought it was a good idea for there to be a

1 union at the restaurant?
2 A Yeah.
3 Q Okay. Did they talk about things like health insurance
4 and that sort of thing?
5 A Yeah.
6 Q Did you ask them questions about those things?
7 A Kind of. I didn't go too far into it. Again, it felt
8 like I was being kind of forced into talking to them, because
9 I had been trying to avoid that and then it kind of was sprung
10 on me.
11 Q Okay. So after that conversation you had with your
12 co-worker, and the organizer, there was two occasions where you
13 were visited at home; is that right?
14 A Yeah.
15 Q So on the first occasion I think you said that the two
16 people that visited you were named Sergio and Alex; does that
17 sound right?
18 A Yeah.
19 Q And on that occasion, did those individuals again make
20 arguments about why they thought it was a good idea to have a
21 union at the hotel -- at the restaurant, I'm sorry?
22 A At that time, I didn't have time to talk to them, even for
23 a moment, so I kind of just told them I had no time and I had
24 to go. So the first one I didn't really talk to them very much
25 at all. I just kind of closed the door and said I didn't have

1 time.
2 Q And they left at that point?
3 A Yes.
4 Q So it sounds like it was a pretty short conversation?
5 A Yes.
6 Q How long would you say?
7 A A minute.
8 Q Literally just a minute.
9 A I opened the door, I told them you know what I don't have
10 time to do this today with you guys.
11 Q Okay. And they left and that was it?
12 A Yes.
13 Q Okay. So then there was a second occasion where again,
14 two guys from the Union came to talk to you?
15 A Yeah.
16 Q And you don't recall their names, I imagine?
17 A I don't think I knew the other gentlemen's name.
18 Q What was the name you recall?
19 A Sergio. Sergio, or I don't know.
20 HEARING OFFICER TA: It was Mr. Sorza, right?
21 THE WITNESS: Sure.
22 Q BY MR. BLASI: The individual sitting next to me?
23 A Yeah. I'm not sure of the names, yeah.
24 Q That's who you believe visited you the second time?
25 A Correct.

1 Q Okay, and on this occasion did they also make arguments
2 about why it was a good idea to have a union from their
3 perspective?
4 A Yes.
5 Q Okay. Did they say things about how you would have better
6 health insurance, more affordable health insurance?
7 A Yeah.
8 Q Did they say that your wages -- they thought it would be
9 better for workers' wages if they had a union at The Daily
10 Grill?
11 A Yeah.
12 Q Okay. Did they say you'd have more job protection or they
13 believed you'd have more job protection?
14 A Yeah, that was all pretty much in the same scope, same
15 scope.
16 Q Same vein of sort of making a case for why the Union is
17 trying to convince you, right --
18 A Exactly, correct.
19 Q -- the Union is a good idea. Is that fair to say --
20 A Correct.
21 Q -- that's what they were doing? Okay. Did they threaten
22 you at any point, saying that they would retaliate against you
23 if you didn't support the Union?
24 A No.
25 Q And I want you to just answer the question I'm asking you

1 if that's okay.
2 A Okay, yeah, no.
3 Q Did they specifically threaten you that if you didn't --
4 A Not with any retaliation or anything like that, no.
5 Q They didn't suggest there would be any kind of retaliation
6 or anything like that?
7 A No.
8 Q Okay. And you said earlier, I think they asked you if you
9 had gotten your ballot at that point?
10 A Yeah.
11 Q Is that right?
12 A Uh-huh.
13 Q So they wanted to check to make sure that you had your
14 ballot?
15 A Uh-huh.
16 Q Okay. And they also offered to -- you testified they
17 offered to take you to the post office if you wanted their help
18 in --
19 A Help me mail it, help me fill it out, help me take it to
20 the post office.
21 Q Let me just ask one question at a time. So to the extent
22 they were offering to help you put it in the mail --
23 A Correct.
24 Q -- what they were offering was to take you to the post
25 office and you could drop it in the mail yourself; is that

1 right?
2 A I assume.
3 MR. PARRY: Calls for speculation, lacks foundation.
4 HEARING OFFICER TA: Yes.
5 MR. BLASI: Actually I think that's what the witness
6 testified to earlier and I'm just confirming it.
7 HEARING OFFICER TA: Can you rephrase the question.
8 Q BY MR. BLASI: The specific offer the Union organizers
9 made was in regards to mailing was that they could take you to
10 the post office if you'd like so that you could put it in the
11 mail. Is that correct?
12 A Yes.
13 Q Okay. So they didn't ask for you to give them the ballot,
14 did they?
15 A Not --
16 Q Specifically -- they didn't specifically offer or ask
17 you -- invite you to give them the ballot, did they?
18 A No.
19 Q They didn't?
20 A But it felt like they were trying to sway me into taking
21 the ballot in even though --
22 Q Dropping it at the post office yourself?
23 A Yes.
24 Q Okay. And did they give you any information about how to
25 make sure your ballot counted?

1 A They just told me that it had to be signed and stuff like
2 that, obviously.
3 Q So they're offering to give you information or they were
4 giving you information about the process for filling out the
5 form to make sure the things actually counted; is that fair to
6 say?
7 A Yeah.
8 Q And that included signing the outside of the envelope so
9 the --
10 A So it counted.
11 Q So it counted?
12 A Yeah.
13 Q And that was the information they were giving you?
14 A Yeah.
15 Q Is that fair to say? Okay. But you didn't -- at that
16 point, you had received the ballot, right?
17 A Yes.
18 Q But you didn't open it or anything while you were with
19 them, did you?
20 A No. I didn't even tell them I had it.
21 Q You didn't even tell you had the ballot?
22 A No.
23 Q So the ballot was not in front of you or anything like
24 that during this conversation?
25 A They wanted to know if I had it and I didn't want to

1 really go too far into it with them.
2 Q Sure. Okay, but the ballot was not like, you weren't
3 holding the ballot while you were talking to them or anything?
4 A No.
5 Q And so you subsequently were able to vote, I assume, or
6 chose whether to vote or not?
7 A Yes.
8 Q Is that fair to say?
9 A Yes.
10 Q Okay. You were working as a bartender previously at The
11 Daily Grill; is that right?
12 A Yes.
13 Q But you're now in training to be a manager; is that
14 right?
15 A An hourly manager, yeah.
16 Q An hourly manager. And when did you begin that training?
17 A A couple weeks ago.
18 Q So you're presently in training to become a manager?
19 A Yeah. Okay.
20 MR. BLASI: Just give me on moment. I think we might be
21 done.
22 I think the Union is all set. No further questions.
23 **REDIRECT EXAMINATION**
24 Q BY MR. PARRY: On December 11th when you signed that
25 handwritten statement, were you in training to become a

1 manager?
2 A No.
3 Q Okay. You were asked if the Union people, the second
4 time they were at your home, made any explicit threats of
5 retaliation. I think your answer was no, they did not,
6 correct? No explicit threats. And you said no, but -- you got
7 cut off. Was there any that you felt were like implied threats
8 of retaliation made?
9 A It did feel like I was being kind of given not too many
10 options whether -- you know what I mean -- like, to take it or
11 not. I wasn't really given -- it did feel a little pressured
12 and like they wouldn't leave if I didn't give them the ballot
13 or take the ballot with them or have them help me fill it out.
14 They definitely were insisting and making it seem like they
15 weren't going to take no for an answer almost.
16 Q And when they were talking to you about it, did they get
17 the impression that they just wanted to make sure you voted at
18 all or voted a certain way?
19 A No, yeah, it definitely felt geared towards going one way,
20 for sure.
21 Q And which way was that?
22 A Towards for them. Yeah.
23 MR. PARRY: Thank you. I have no further questions.
24 **RECROSS-EXAMINATION**
25 Q BY MR. BLASI: Just to be clear, it felt like they were

1 giving the impression that they wanted you to vote for the
2 Union, right?
3 A Yeah.
4 Q And you got that impression because they were making
5 arguments about why it was a good idea to support having a
6 union at the restaurant?
7 A Yeah.
8 Q Right?
9 A Yeah.
10 Q All the stuff you talked about earlier, like better health
11 insurance and that sort of thing.
12 A Yeah.
13 Q So that was why you got the impression that they
14 thought -- they were encouraging you to vote for the Union,
15 accurate to say that?
16 A Yeah.
17 Q Okay. And at some point those guys left, right?
18 A Yes.
19 Q Okay. Did you have to ask them to leave, or did they
20 leave on their --
21 A Yes.
22 Q -- own?
23 A I had to ask them to leave.
24 Q You asked them to leave and when you asked them to leave,
25 they left?

1 A Yeah. With that -- I mean, they wanted to continue
2 talking and have me have for sure, a defined answer for me, but
3 I didn't really -- like I said, I didn't have time or --
4 Q Right.
5 A -- or the patience to deal with it.
6 Q Sure. So when you made that clear, they left?
7 A Yeah.
8 MR. BLASI: Okay. No further questions.
9 **FURTHER REDIRECT EXAMINATION**
10 Q BY MR. PARRY: How many times did you have to ask them to
11 leave?
12 A I mean, I was pretty straightforward with them about not
13 having time to talk to them and wanting to take care of it on
14 my own, and it was definitely, you know, a couple times where I
15 said, you know, can I just take care of this myself, I'm just
16 going to do this myself, I gotta go, I don't have time, and
17 they kept interjecting with new pieces of information or new
18 things that they could help me with.
19 MR. PARRY: Thank you very much. I have no further
20 questions.
21 **RECROSS-EXAMINATION**
22 Q BY MR. BLASI: When you say pieces of information, I
23 assume what you mean is arguments for --
24 A Yeah, some --
25 Q -- why the Union is a good thing?

1 A Yeah, another -- a new --
2 Q They're making the case for why the Union is a good idea?
3 A Sure.
4 Q Basically. Right?
5 A Sure.
6 Q Okay. Trying to convince you?
7 A Sure.
8 Q All right.
9 MR. BLASI: Nothing further.
10 HEARING OFFICER TA: I have a couple questions. Did you
11 ever talk to any co-workers about these home visits?
12 THE WITNESS: Yes.
13 HEARING OFFICER TA: And how many co-workers would you say
14 you talked to?
15 THE WITNESS: Several, maybe four or five, a couple.
16 HEARING OFFICER TA: And were these co-workers also other
17 bartenders or --
18 THE WITNESS: In various positions at the restaurant,
19 yeah.
20 HEARING OFFICER TA: When you told them about the home
21 visits, did they indicate that they had also been visited at
22 home also?
23 THE WITNESS: Yes.
24 HEARING OFFICER TA: Okay. All of them or --
25 THE WITNESS: Pretty much a good amount -- definitely of

1 all the people I talked to, but I knew that they were
2 definitely more than just even that.
3 HEARING OFFICER TA: Okay. So of the four or five
4 co-workers that you talked to about the home visits, how many
5 of them said that they had also been -- had been visited by the
6 Union?
7 THE WITNESS: All of those ones, yeah.
8 HEARING OFFICER TA: And when you just said that -- and
9 correct me if I'm wrong -- you had mentioned that you had heard
10 about other people who had received home visits; is that
11 correct?
12 THE WITNESS: Just from talking with other employees, just
13 from, you know, casual conversation, just about the situation.
14 HEARING OFFICER TA: And how many people would you say
15 that in your experience that you heard about had been visited
16 by the Union?
17 THE WITNESS: At least 10, 15, a good amount.
18 HEARING OFFICER TA: Okay. And these 10 to 15 people, did
19 they tell you this directly?
20 THE WITNESS: Yes.
21 HEARING OFFICER TA: Okay. And were these 10 to 15 people
22 also in various positions throughout the restaurant?
23 THE WITNESS: Yes.
24 HEARING OFFICER TA: Since the election -- since the
25 union election ended, has it been your experience that your

1 co-workers continue to talk about these home visits or it
2 something that it's a topic that they just dropped?
3 THE WITNESS: No, it was something that, you know,
4 everyone was a little worried about or concerned about even
5 afterwards.
6 HEARING OFFICER TA: Okay. So afterwards, so let's say
7 were they still talking about it in January or in February of
8 this year?
9 THE WITNESS: Sure, yeah.
10 HEARING OFFICER TA: Okay. And how many people would you
11 say, were talking about it?
12 THE WITNESS: I can't be sure. Just probably most of the
13 four or the five, six people that I talked to about it more
14 than the others, but I had known of other people, but I might
15 not have talked to them about it directly, but I definitely
16 talked to certain group of people about it.
17 HEARING OFFICER TA: Okay. So you and four to five
18 co-workers continued to talk about it. Would you say it was
19 like a daily conversation?
20 THE WITNESS: No, maybe once every couple days or just in
21 passing, talking -- normally when we would talk about this
22 situation is when it would come up.
23 HEARING OFFICER TA: Okay. And how about for March and
24 April, would you say that you and these four to five co-workers
25 continue to talk about the home visits, or has sort of talk

1 about it kind of dissipated a little bit?
2 THE WITNESS: Yeah, I mean, probably less than right after
3 it happened. As it got closer to now, it's probably been going
4 downhill a lot.
5 HEARING OFFICER TA: Okay. So you talk about it, like,
6 weekly, every other week?
7 THE WITNESS: Yeah. Just whenever the -- talking about
8 this situation --
9 HEARING OFFICER TA: Whenever it comes up?
10 THE WITNESS: Right.
11 HEARING OFFICER TA: Okay. All right. I don't have any
12 other questions.
13 MR. BLASI: Just a couple quick follow ups.
14 Q BY MR. BLASI: The subject of house visits, that's
15 something that managers were also part of conversations about,
16 is that fair to say?
17 A Not necessarily. Most of the conversations were just
18 usually between co-worker to co-worker.
19 Q But there were occasions where managers said things about
20 house visits?
21 A They, at one point, knew about them and had asked us if
22 that had happened, but it wasn't like they were in part of the
23 conversations. It was just they had heard and wanted to
24 clarify and see what had happened.
25 Q Who asked -- who wanted to clarify what had happened?

1 A It's not specific thing, I'm just saying, not to me, at
2 least specifically, but maybe to one -- some of the other
3 people, but not to me specifically.
4 Q Do you recall receiving email where management said
5 negative or basically said something about house visits to the
6 effect that it's not right for the Union to house visits or
7 something like that?
8 A Possibly. I can't be sure, but that does sound like that
9 might have happened.
10 Q Did you get the impression that management thought there
11 was something illegitimate about conducting house visits or
12 inappropriate about conducting house visits?
13 A Sure, yeah.
14 Q The company's position was that house visits were not
15 something that they agreed that the Union should be doing?
16 A Yes.
17 Q That was the sense you got from the interactions with
18 managers?
19 A Yeah.
20 Q Or maybe from the email also?
21 A Yeah.
22 Q So management had the view that the Union should not be
23 talking to workers --
24 A I think they were just --
25 MR. PARRY: Objection that calls for speculation, lacks

1 foundation of what management's view is.

2 MR. BLASI: Well, the question was actually got the

3 impression.

4 MR. PARRY: That was before, I think you asked what the

5 view was.

6 HEARING OFFICER TA: I lost track of the order.

7 MR. PARRY: You asked about four different times and four

8 different ways, but --

9 HEARING OFFICER TA: Can you just rephrase, counsel?

10 MR. BLASI: I think the point is clear.

11 HEARING OFFICER TA: Okay.

12 MR. BLASI: I think it's fine.

13 HEARING OFFICER TA: Any other questions?

14 **FURTHER REDIRECT EXAMINATION**

15 Q BY MR. PARRY: Did you feel like these home visits were

16 inappropriate, independent of what management may or may have

17 thought?

18 A Yes. Definitely.

19 Q So you came to that conclusion by yourself?

20 A Yeah.

21 Q Thank you.

22 MR. PARRY: That's all I have.

23 HEARING OFFICER TA: Any other questions?

24 MR. BLASI: No.

25 HEARING OFFICER TA: You're excused. Remember that a

1 sequestration order is in effect, so that means you cannot
2 talk about your testimony with anyone until the conclusion of
3 the hearing. Thank you very much for your time.
4 Do we have another witness today but we're not going for
5 it, right?
6 MR. PARRY: No, no, that's the last -- it's 5:20 and that
7 was the last witness for today.
8 HEARING OFFICER TA: Okay.
9 MR. PARRY: Are we off the record or are we still on?
10 HEARING OFFICER TA: I'm sorry, off the record. Yeah.
11 **(Whereupon, the hearing in the above-entitled matter was**
12 **recessed at 5:20 p.m. until Tuesday, April 24, 2019 at 9:00**
13 **a.m.)**
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1 **CERTIFICATION**

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 31, Case Number
4 31-RC-209589, Grill Concepts Services, Inc. d/b/a The Daily
5 Grill, and Unite Here Local 11, at the National Labor Relations
6 Board, Region 31, 11500 West Olympic Boulevard, 6th Floor, Los
7 Angeles, California 90017, on Monday, April 23, 2018, 9:24
8 a.m., was held according to the record, and that this is the
9 original, complete, and true and accurate transcript that has
10 been compared to the reporting or recording, accomplished at
11 the hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing.
14
15
16
17 _____
18 TROY A. RAY
19 Official Reporter
20
21
22
23
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25

OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

Grill Concepts Services, Inc. d/b/a The Daily Grill, Case No. 31-RC-209589

Employer,

and

Unite Here Local 11,

Petitioner.

_____

_____

Place: Los Angeles, California

Dates: April 24, 2018

Pages: 253 through 566

Volume: 2

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1 **UNITED STATES OF AMERICA**

2 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

3 **REGION 31**

4

In the Matter of: GRILL CONCEPTS SERVICES, INC. D/B/A THE DAILY GRILL, Employer, and UNITE HERE LOCAL 11, Petitioner.	Case No. 31-RC-209589

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12 The above-entitled matter came on for hearing, pursuant to
13 notice, before **LYNN TA**, Hearing Officer, at the National Labor
14 Relations Board, Region 31, 11500 West Olympic Boulevard, 6th
15 Floor, Los Angeles, California 90017, on **Tuesday, April 24,**
16 **2018, 9:05 a.m.**

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1 **A P P E A R A N C E S**

2

On behalf of the Employer:

3

ADAM L. PARRY, ESQ.
4 STOKES WAGNER
600 West Broadway, Suite 910
5 San Diego, CA 92101
Tel. 619-232-4261

6

On behalf of the Petitioner:

7

JEREMY BLASI, ESQ.
8 UNITE HERE LOCAL 11
464 South Lucas Avenue, Suite 201
9 Los Angeles, CA 90017
Tel. 213-481-8530

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1 **I N D E X**

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3 WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
4 Jose Palacios	258	277			
5 Robin Gunn	288	305			
6 Macey Sheets	311	337	352		
7 Stephanie Mendez	358	401			
8 Sergio Sorza	436	468	475/485	481	
9 Martha Santamaria	492	537			

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1 **E X H I B I T S**

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3 EXHIBIT	IDENTIFIED	IN EVIDENCE
4 **Employer:**		
5 E-14	272	272
6 E-15	275	275
7 E-16	276	276
8 E-17	324	324
9 E-18	327	327
10 E-19	329	329
11 E-20	335	335
12 E-21	336	336
13 E-22	392	392
14 E-23	399	399
15 E-24	401	401

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1 **P R O C E E D I N G S**

2 HEARING OFFICER TA: Let's open the record. Counsel do
3 you want to start with your first witness for the day?
4 MR. PARRY: Yes.
5 HEARING OFFICER TA: Okay. I'm just going to swear the
6 witness. Sir, can you state your name and spell it for the
7 record, please?
8 MR. PALACIOS: Jose Palacios, J-O-S-E, P-A-L-A-C-I-O-S.
9 HEARING OFFICER TA: Raise your right hand, please.
10 Whereupon,
11 **JOSE PALACIOS**
12 having been duly sworn, was called as a witness herein and was
13 examined and testified, by and through an interpreter as
14 follows:
15 HEARING OFFICER TA: Okay. I'll swear you in just for
16 good measure.
17 Whereupon,
18 **KEILA RODRIGUEZ-GRANADOS**
19 the interpreter, having been duly sworn, translated from
20 Spanish to English and English to Spanish, as follows:
21 HEARING OFFICER TA: Just a couple of reminders. You have
22 a microphone in front of you. It's recording what you say but
23 it doesn't make your voice louder. So when you give your
24 responses make sure that your responses are verbal and that you
25 don't nod or shake your head to indicate an answer. If at any

1 point you don't understand a question that's asked of you
2 please feel free to ask for clarification. Please also make
3 sure that the question is asked completely before you answer.
4 Try not to cut off one of the attorneys when they're asking you
5 a question. If there is an objection to a particular question
6 hold your response until I make a ruling on the objection.
7 Do you understand all that?
8 THE WITNESS: Yes.
9 HEARING OFFICER TA: Okay. Thank you. Go ahead, Counsel.
10 MR. PARRY: Thank you.
11 **DIRECT EXAMINATION**
12 Q BY MR. PARRY: Good morning, Mr. Palacios. Thank you for
13 being here. Will you just tell us where you work?
14 A Daily Grill.
15 Q And what do you do at the Daily Grill?
16 A I work in the pantry area.
17 Q And what does that entail in the pantry area?
18 A I prepare the dressings, I cut lettuce, and I work making
19 dishes of salads.
20 Q So you're in the kitchen or the back of the house?
21 A Yes.
22 Q Thank you. How long have you worked at the Daily Grill?
23 A About 16 years.
24 Q And around November 1, 2017, until today have you been
25 continuously employed there?

1 A Yes.
2 Q As an hourly employee?
3 A Yes.
4 Q And during that period starting about the beginning of
5 November of 2017 through right around the end of 2017 were you
6 aware of the union organization efforts at the Daily Grill?
7 A I heard rumors.
8 Q Well, you were -- did you know of the union election that
9 took place?
10 A Yes.
11 Q Now, during that period, November, December of 2017 were
12 you ever visited at your home by people who you understood to
13 be representatives of the Union?
14 A Yes.
15 Q How many times?
16 A Twice.
17 Q Okay. Let's talk about the first time. So the first time
18 you were visited at home by union representatives do you recall
19 about when that happened? Even if it's just the month.
20 A I don't remember exactly.
21 Q Do you remember if it was before the mail ballots went
22 out?
23 A Yes, it was before they sent it.
24 Q And the first time they visited you do you remember what
25 time of day it was?

1 A It was in the afternoon at about 4:00 or 5:00 around
2 there.
3 Q And how many people visited you that time?
4 A Two people.
5 Q Were they -- was it two ladies, two men, or a man and a
6 woman?
7 A Two women.
8 Q And did you recognize those two women?
9 A No.
10 Q Did they identify themselves as being there as part of the
11 Union?
12 A Yes.
13 Q Okay. What did they say to you?
14 A That they were coming on behalf of the Union and they came
15 to explain to me how they worked and to offer all the benefits
16 that the Union gives, but I said to them that I was not
17 interested. That I already knew my decision that I was going
18 to take, and they began to like -- they wanted to come in to
19 the house but I stopped the door so they couldn't come in and
20 they were explaining to me all the benefits but I told them I
21 wasn't interested and one of them kind of got upset and I said,
22 well, if you wanted for me to vote for you, you should have a
23 meeting where we could all be, all the employees be there, and
24 for you to explain things well to us. She said to me that
25 there was a place that we could go but not there at the hotel.

1 Q And just to be clear I'm not going to ask you how you
2 voted or what your opinion of the Union is. You're entitled to
3 keep that to yourself, and I appreciate your straightforward
4 and honest responses but I just know that I'm never in my
5 questions going to ask you how you voted. Okay?
6 So when the -- when you told the Union that you weren't
7 interested after you told them that did they continue to try to
8 convince you to let them in the house and continue talking to
9 you?
10 A No, not anymore.
11 Q So once you told them you're not interested did they
12 leave?
13 A Yes.
14 Q Were they -- did you invite them to your home?
15 A No.
16 Q So was those two union representatives showing up at your
17 home, that was a surprise to you?
18 A Yes.
19 Q Okay. How did you feel about them visiting you at your
20 home?
21 A A little bit uncomfortable.
22 Q Were they pushy or aggressive?
23 A No.
24 Q Let's talk about the second time they visited your home.
25 Do you recall when that was?

1 A It was on Saturday when the ballot, when the voting ballot
2 arrived.
3 Q So you received your ballot at that time?
4 A Yes, in the morning.
5 Q And what time of day was it on this Saturday?
6 A It was about five more or less.
7 Q 5 p.m.?
8 A At p.m.
9 Q Was it getting dark or was it already dark?
10 A No, not yet.
11 Q And can you describe the person or people that showed up
12 at your house on the second time?
13 A It was two women also. It wasn't the same ones but one of
14 them is one that works at the restaurant with us.
15 Q And who is that?
16 A Sandra.
17 Q So you know Sandra?
18 A Yes.
19 Q Did you recognize the other one?
20 A No.
21 Q Was the other one -- did the one who you don't know did
22 she show up at the first occasion also?
23 A No.
24 Q Two entirely different people then on the second time?
25 A Yes.

1 Q And what did they say to you on the second occasion?
2 A When I went in to my home I arrived driving in my car
3 through the driveway and I saw them that they were standing
4 there at the door. So when I came back to the front area after
5 I parked my truck in the back then I didn't give them any
6 chance to say anything to me. I just said to them, I didn't
7 have time right now and I was too rushed to get to my other
8 job.
9 Q So you had another job that you had to be at that night?
10 A Yes, I have another job, but I wasn't going to go to work,
11 it was just an excuse to not tend to them.
12 Q Because you didn't want to speak to them; is that right?
13 A Of course.
14 Q And had you invited the Union to come to your home on this
15 occasion?
16 A No.
17 Q So as far as you know they were just waiting for you when
18 you got home from work?
19 A Yes.
20 Q You said that you had told the union representatives on
21 the first visit that if they wanted to speak to you they should
22 do so in a meeting with everybody; is that right?
23 A True.
24 Q And did they ever do that?
25 A No.

1 Q And how did you feel about the second visit?
2 A Well, I felt uncomfortable because it was also a coworker
3 that was out there.
4 Q Now, have you ever spoken to any of your coworkers about
5 being visited in your home?
6 A Yes.
7 Q Have other coworkers told you that they've been visited at
8 their homes by union representatives?
9 A Yes, several of them.
10 Q How many would you estimate?
11 A Approximately six, or seven, or eight.
12 Q And were these also employees that work in the back of the
13 house or was it a mixture of back and front of the house?
14 A From both, a mix.
15 Q And who are some of the people that have, as best you can
16 remember, that have told you about being visited in their
17 homes?
18 A One of them is Daniel, Lucas, Benjamin. I don't remember
19 who else.
20 Q But you said those others maybe seven or eight?
21 A Yes.
22 Q Thank you. And do you recall what any of them said about
23 the union coming to their homes?
24 A That many had come to tell them how to fill out the
25 ballot, others were outside waiting for them also. Basically,

1 that they went to visit them for them to vote for the union.
2 Q When these coworkers told you about being visited in their
3 homes by the Union were they doing so in a way that sounded
4 like they were upset about it or annoyed about it?
5 A Yes, some of them were upset, angry.
6 Q Were any of them talking about it like it was okay and
7 they were happy about it?
8 A No, they were not happy.
9 MR. BLASI: Objection. Just this whole line of inquiry is
10 pure hearsay. It seems to be offered for the truth of the
11 matter asserted.
12 HEARING OFFICER TA: Yeah, I --
13 MR. BLASI: It's not under any of the exceptions, as far
14 as I can tell.
15 HEARING OFFICER TA: I mean are you offering it for the
16 truth of the matter asserted?
17 MR. PARRY: I mean this is, with respect, this is some of
18 the lines of questioning that we've been going through in both
19 the Hearing Officer and myself as far as possibly identifying
20 other witnesses and just it's really, you know, we've presented
21 testimony, direct testimony, from some of those people and to
22 establish the overall atmosphere in the restaurant as a result
23 of the -- it's really effect on the listener.
24 HEARING OFFICER TA: Yeah, I mean I've been asking about
25 it to the extent that there's been discussion about it, but in

1 terms of the content of the discussion I think we want to be
2 just a little careful in limiting it. I think if you're
3 offering it for a sort of his state or mind in terms of, you
4 know, whether it impacted his impression of what the Union --
5 MR. PARRY: Certainly.
6 HEARING OFFICER TA: -- but we can -- it does kind of, you
7 know, border on hearsay. So just be very careful.
8 MR. PARRY: I understand and it's for his state of mind
9 and as for sort of the atmosphere of the restaurant between his
10 coworkers and how it collectively was influencing them at work.
11 HEARING OFFICER TA: Okay.
12 MR. BLASI: Again, that is not a hearsay exception. How
13 it is influencing other people relates to the state of mind of
14 others and not of the --
15 HEARING OFFICER TA: Well, yeah, again, if you can --
16 MR. BLASI: -- person testifying.
17 HEARING OFFICER TA: -- kind of limit it a little bit.
18 MR. PARRY: My line of questioning with him on that is
19 done.
20 HEARING OFFICER TA: Okay. Yeah.
21 Q BY MR. PARRY: Mr. Palacios, I will show you -- the
22 Hearing Officer will hand you this piece of paper in a second.
23 Just looking at the first page of what I've -- what's been
24 handed to you, do you recognize this?
25 A Yes.

1 Q And is this your handwriting?
2 A Yes, it's mine.
3 Q And is that how you write your signature there at the
4 bottom where it says Jose Palacios?
5 A Yes.
6 Q Thank you. And did you sign this at the bottom there on
7 December 13, 2017?
8 A Yes.
9 Q And can I just have you please read this aloud?
10 A "I, Jose Palacios, on Saturday, 9th of the month of
11 December, approximately at 4:30 p.m. they were waiting for me,
12 two persons from the Union to tell me to not forget to support
13 them."
14 Q Okay. Now does this statement refer to the second visit
15 that we discussed earlier?
16 A Yes, the second.
17 Q And did you -- well, let me back up. How did you come to
18 prepare this statement?
19 A I mentioned it to my chef and he recommended to me to make
20 this letter to show that I was discontented.
21 Q And did you -- did the chef require you to write this
22 statement?
23 A No, I wrote it to show how things had happened.
24 Q And did you write this because you wanted to make sure
25 that you made a record of what had happened?

1 MR. BLASI: Objection, leading question.
2 HEARING OFFICER TA: Can you rephrase, Counsel?
3 MR. PARRY: Sure.
4 Q BY MR. PARRY: Let me ask this, did you write this
5 voluntarily?
6 A Yes.
7 Q Did you feel it was necessary to write this?
8 A Yes.
9 Q And why did you think it was necessary?
10 A Because I think that it needed for us that were not in
11 agreement, we all needed to be taken in to account.
12 Q Thank you.
13 MR. PARRY: I'd like to move in to evidence this
14 handwritten statement as Exhibit Number 14.
15 HEARING OFFICER TA: Okay.
16 MR. PARRY: Employer's Exhibit 14.
17 HEARING OFFICER TA: Okay. And Counsel do you have any
18 objections?
19 MR. BLASI: I object on the grounds that proper assurances
20 were not provided to this witness.
21 HEARING OFFICER TA: Do you want to --
22 MR. PARRY: Do you want me to respond to that?
23 HEARING OFFICER TA: Yeah, do you want to --
24 MR. PARRY: I don't think it's a basis -- I've provided
25 the foundation for it. We can discuss that stuff but it's not

1 a reason for not accepting it.

2 HEARING OFFICER TA: Do you want to ask him about --

3 MR. PARRY: Sure I can.

4 HEARING OFFICER TA: -- yeah.

5 Q BY MR. PARRY: Mr. Palacios, at the time you wrote this

6 statement did anyone from the Daily Grill require that you

7 write it?

8 MR. BLASI: Objection, asked and answered.

9 HEARING OFFICER TA: Yeah, can you ask -- just go to the

10 assurances.

11 MR. PARRY: Okay.

12 Q BY MR. PARRY: Let me --

13 MR. BLASI: You know what, we'll just withdraw this

14 objection and deal with it on cross. I don't think it's

15 appropriate for the Employer to be asking these questions in

16 this context.

17 HEARING OFFICER TA: Okay.

18 MR. PARRY: It's not appropriate? I can ask the questions

19 and I think I will.

20 HEARING OFFICER TA: Are you going to continue the line of

21 questions?

22 MR. PARRY: Yes.

23 Q BY MR. PARRY: Mr. Palacios, at the time you signed

24 this --

25 MR. BLASI: Then we withdrawal our withdrawal.

1 HEARING OFFICER TA: Okay.
2 MR. PARRY: Let's just do it. It's the same thing we've
3 been doing for all the witnesses so far so.
4 HEARING OFFICER TA: Go. Okay, okay, go.
5 Q BY MR. PARRY: At the time you wrote this did you
6 understand that this was done in connection with the Union's
7 efforts in relation to the union election?
8 A I don't understand the question well.
9 Q That was probably not the best question. At the time you
10 wrote this did you understand that there was the union election
11 proceeding happening at the restaurant?
12 A Yes.
13 Q At the time you wrote this did anyone from the Daily Grill
14 pull you aside and ask you to sit down for an interview?
15 A No.
16 Q Did Chef Martin approach you and ask you to sit down with
17 him to talk about union visits to your home?
18 A No.
19 Q Did he question you about union visits to your home?
20 A No.
21 Q Was this something that you came to him and reported to
22 him voluntarily?
23 A Yes.
24 Q And were you told that it was voluntary to write a
25 statement if you wanted to?

1 A Yes.
2 Q Did you have the understanding that you wouldn’t have any
3 retaliation against you if you provided a statement or didn't
4 provide a statement?
5 A Again the question?
6 Q Did you write this statement with the understanding that
7 the Daily Grill wasn't going to retaliate against you for
8 providing a statement or for deciding not to provide a
9 statement?
10 A Yes.
11 Q Thank you.
12 MR. PARRY: Now I'd like to move it in to the record,
13 please.
14 HEARING OFFICER TA: Yeah, and Counsel just to clarify I'm
15 going to admit the handwritten portion.
16 MR. PARRY: Understood.
17 HEARING OFFICER TA: I'm assuming you're not moving for
18 the -- are you moving for these also?
19 MR. PARRY: Well, I've been moving for the entire thing
20 and I understand that --
21 HEARING OFFICER TA: Right.
22 MR. PARRY: -- just for the record we'll move the entire
23 exhibit in but --
24 HEARING OFFICER TA: Yeah, and I'm admitting only the
25 first page, the handwritten statement. Employer's Exhibit 14

1 is admitted in to evidence.

2 **(Employer Exhibit Number 14 Received into Evidence)**

3 MR. PARRY: Thank you.

4 Q BY MR. PARRY: You are going to be handed another

5 document. Do you recognize this one?

6 A Yes.

7 Q And paragraphs one, two, and three, and they've got

8 initials written next to them; do you see that?

9 A Yes.

10 Q Are those your initials?

11 A Yes.

12 Q And at the bottom there it says -- there's a signature, is

13 that your signature?

14 A Yes.

15 Q And your handwriting on the date?

16 A Yes.

17 Q Did you review this document before you initialed and

18 signed it?

19 A Yes.

20 Q And you signed it on April 19th?

21 A Yes.

22 Q Was this explained to you verbally as well?

23 A Yes.

24 Q And who explained it to you?

25 A The attorney.

1 Q Are you referring to me?
2 A Yes.
3 Q Thank you. And at the time I explained it to you was
4 there someone there to interpret it in to Spanish for you?
5 A Yes.
6 Q Okay. So when you signed this and initialed this document
7 did you understand its contents?
8 A Yes.
9 Q Did you understand that there is a current, in looking at
10 paragraph 1, there is a current proceeding before the National
11 Labor Relations Board where the Daily Grill charges that the
12 Union engaged in unfair practices?
13 A Yes.
14 Q And you understood that speaking to me in this interview
15 that is referred to was voluntary?
16 A Yes.
17 Q And then it was explained to that there would be no
18 retaliation whatsoever by the Daily Grill for participating or
19 for choosing not to participate in an interview, correct?
20 A Yes.
21 Q Thank you.
22 MR. PARRY: I'd like to move in to evidence this
23 witness -- actually I think we've been having the witness read
24 in to the record because it's in Spanish.
25 HEARING OFFICER TA: Yeah, it's in Spanish, yes. So if

1 you could --
2 Q BY MR. PARRY: So because this is in Spanish and we need
3 the record to be in English, would you please just read this
4 entire document for us so it can be interpreted in English?
5 A "I understand that representatives from Daily Grill would
6 like to ask me questions relating with the behavior of Unite
7 Here Local 11, the Union, during recent elections at the
8 restaurant. Number 1, I have been explained that this is
9 related with a legal procedure before the National Labor
10 Relations Board that includes accusations from the Daily Grill
11 about the unfair labor practices from the Union during the
12 recent elections. Number 2, I understand that this interview
13 is voluntary. I am not obligated to respond to any question
14 and I can end this discussion at any time. Number 3, I have
15 been explained that there is a reprisal for anything I say or
16 don't say during this interview could be illegal and if a
17 promise has been given that reprisals will not be taken against
18 me for the answers I give or don't give during this interview.
19 This 19th day of April 2018."
20 Q Thank you.
21 MR. PARRY: And now I'd like to move this into evidence as
22 Exhibit --
23 HEARING OFFICER TA: We're on 15, yeah.
24 MR. PARRY: 15.
25 HEARING OFFICER TA: Objections, Counsel?

1 MR. BLASI: No.

2 HEARING OFFICER TA: Okay. Employer's Exhibit 15 is

3 admitted in to evidence.

4 **(Employer Exhibit Number 15 Received into Evidence)**

5 Q BY MR. PARRY: Mr. Palacios, there's another document been

6 handed to you. Do you recognize this document?

7 A Yes.

8 Q And is this your signature down at the bottom there

9 beneath the text?

10 A Yes.

11 Q What do you understand this document to be?

12 A Oh, my declaration about what I'm saying.

13 Q And is this the same statement that you made in the

14 handwritten statement that we discussed earlier? And that was

15 Exhibit 14.

16 A Yes.

17 Q And did you execute this on April 19th?

18 A Yes.

19 Q Okay. And did you execute this declaration after signing

20 the witness acknowledgement that we just went over?

21 A Yes.

22 MR. PARRY: Okay. I'd like to move this declaration into

23 evidence as Exhibit 16.

24 HEARING OFFICER TA: Have we been having them read this

25 type of statement? I can't remember.

1 MR. PARRY: Yes. We probably should.
2 HEARING OFFICER TA: Yeah. Because this is in --
3 MR. PARRY: Let's --
4 HEARING OFFICER TA: Well, yeah, this is in Spanish also.
5 So --
6 Q BY MR. PARRY: Will you please read that into the record
7 as well?
8 A I, Jose Palacios, declare the following. Saturday the 9th
9 of the month of December, approximately at 4:30 p.m., they were
10 waiting for me, two persons from the union, to tell me not to
11 forget to support them. I declare under penalty of perjury
12 under the laws of the State of California that the
13 aforementioned is true and correct. Executed 19th of April of
14 2018 in Los Angeles, California.
15 MR. PARRY: Thank you, very much.
16 HEARING OFFICER TA: Any objections, counsel?
17 MR. BLASI: No.
18 HEARING OFFICER TA: I'm sorry, what was that?
19 MR. BLASI: No.
20 HEARING OFFICER TA: No? Okay. So Employer's Exhibit 16
21 is admitted into evidence.
22 **(Employer Exhibit Number 16 Received into Evidence)**
23 MR. PARRY: And I have no further questions at this time
24 for Mr. Palacios, subject to redirect.
25 HEARING OFFICER TA: Okay. Counsel, your cross?

1 MR. BLASI: Sure.

2 **CROSS-EXAMINATION**

3 Q BY MR. BLASI: Mr. Palacios, good morning.

4 A Good morning.

5 Q Just a few follow up questions on your testimony this

6 morning. So the first visit that you described, it sounded

7 like you had a conversation with them where the organizers

8 tried to convince you of the benefits of having a union; is

9 that fair to say?

10 A Yes.

11 Q Okay. And some of the arguments that they were making to

12 you had to do with -- well, actually, why don't you tell me,

13 what do you recall were some of the arguments that the two

14 women made about why it was a good idea to have a union?

15 A That I was going to have paid vacations. They were going

16 to give me more priority for the seniority I had at the

17 restaurant. Medical insurance. Those were basically the

18 things they said to me.

19 Q Okay. And at the end of the conversation, you said that

20 you had to leave, and they left at that point; is that

21 accurate?

22 A Yes.

23 Q Okay. And so at no point during this conversation did

24 either of those women threaten you in any way, did they?

25 A No.

1 Q Okay. It was just a conversation about whether
2 unionization is good; is that accurate?
3 A Yes.
4 Q Now, on the second visit you described, do you recall --
5 actually, give me a second to review my notes. Okay. It
6 sounds like that was a very brief conversation?
7 A Yes.
8 Q Like how many minutes would you estimate that that
9 conversation lasted?
10 A From one to two minutes.
11 Q Okay. And you told them that you were not in a position
12 to talk to them because you had another job; is that right?
13 A True.
14 Q And when you didn't agree to talk to them, you were able
15 to go into your house and they left; is that accurate?
16 A Yes.
17 Q Okay. So at no point during this conversation did either
18 of these women threaten you in any way, did they?
19 A No.
20 Q Okay. You were free to go into your house and carry on
21 with your day, correct?
22 A Yes.
23 Q And during this second conversation, you didn't have your
24 mail ballot election -- your mail ballot in your hand, did you?
25 A No.

1 Q Okay. If you received it and filled it out, you did that
2 at some other time; is that right?
3 A True.
4 Q Okay. So there was nothing that either of these women did
5 that interfered with your ability to fill out the ballot and
6 send it in; isn't that right?
7 MR. PARRY: Objection. It's vague, ambiguous, and
8 overbroad.
9 MR. BLASI: Well, I'm trying not to interfere with the
10 boundaries that the Hearing Officer has sort of indicated about
11 people indicating their preferences.
12 MR. PARRY: It's also -- go ahead.
13 HEARING OFFICER TA: I'm going to overrule the objection.
14 Go ahead and answer.
15 Q BY MR. BLASI: Okay. So you were able to decide of your
16 own accord whether you wanted to fill out the ballot at some
17 point later on; isn't that right?
18 A True.
19 Q And you were able to make a free decision about who to
20 vote for? Whatever your decision was.
21 MR. PARRY: Objection. That's --
22 HEARING OFFICER TA: Okay.
23 MR. PARRY: That's conclusory.
24 HEARING OFFICER TA: Yeah. Let's --
25 MR. BLASI: Let me be clear. I'm not asking the witness

1 to indicate their --

2 HEARING OFFICER TA: No, I understand. But I think it's a

3 little conclusory to say, did you -- were you free to --

4 MR. BLASI: Oh, I see what you're saying.

5 HEARING OFFICER TA: Can you ask him if he --

6 MR. BLASI: That's fine.

7 Q BY MR. BLASI: Were you able to --

8 HEARING OFFICER TA: -- felt free to --

9 MR. BLASI: Did you feel free. Okay. Sure.

10 HEARING OFFICER TA: Yeah.

11 MR. BLASI: That's fine.

12 Q BY MR. BLASI: Did you feel free to make a decision about

13 how to vote in the election based on your own desires?

14 MR. PARRY: Same objection. It's conclusory, vague, and

15 ambiguous.

16 HEARING OFFICER TA: I'm going to overrule. Go ahead and

17 answer.

18 THE WITNESS: Yes.

19 Q BY MR. BLASI: Okay. So there was nothing that either of

20 these women did that interfered with your ability to cast your

21 ballot if that's what you chose to do?

22 MR. PARRY: It's asked and answered and it's conclusory.

23 MR. BLASI: I --

24 HEARING OFFICER TA: All right. I'll sustain the

25 objection.

1 MR. BLASI: I think the record is clear enough on this
2 point. Give me a second to just review my notes and see if I
3 have anything further.
4 Q BY MR. BLASI: Oh, I do want to ask a couple questions
5 about this document that you wrote that's dated December 13.
6 So I think you testified earlier that you had a conversation
7 with the chef. Was it Chef Martin (phonetic); is that right?
8 A True.
9 Q Okay. And he suggested to you that you write a statement;
10 is that right?
11 A True.
12 Q Okay. And do you remember the specific words that he used
13 when he made that suggestion to you?
14 A I don't remember.
15 Q Okay. Do you specifically recall him saying to you
16 that -- what this document would be used for?
17 A No.
18 Q And do you specifically recall him telling you that you
19 would not be retaliated against if you chose to write a
20 statement? Did he specifically say that to you?
21 MR. PARRY: I'm going to object. Lack of foundation.
22 He's already testified he doesn't recall exactly what was said.
23 MR. BLASI: He can still make an assertion about what was
24 not said.
25 HEARING OFFICER TA: Well, he said he didn't remember

1 exact words and if the chef had indicated what the document
2 would be used for. I think this question is different. So I'm
3 going to overrule the objection. Go ahead and answer.
4 THE WITNESS: Can you do the question again?
5 Q BY MR. BLASI: Okay. Did Chef Martin specifically say to
6 you that if you chose to write a statement, you would not be
7 subject to retaliation? Did he say that explicitly to you?
8 A No.
9 Q Okay. And did he specifically tell you that if you chose
10 to write a statement, it would be a voluntary choice on your
11 part?
12 A Yes.
13 Q Okay. And at some point, did Chef Martin or any other
14 manager give you the idea that it was somehow wrong for the
15 union to be visiting workers at their homes --
16 MR. PARRY: It's vague and ambiguous. Overboard.
17 Q BY MR. BLASI: -- during the time period of the election
18 in November and December of 2017?
19 HEARING OFFICER TA: Okay. Wait. Okay. I'm not sure the
20 witness is hearing. Okay. So counsel, rephrase.
21 MR. BLASI: Sure.
22 HEARING OFFICER TA: Yeah.
23 Q BY MR. BLASI: During the period around the time the
24 election was going on, or in maybe the weeks preceding it at
25 the end of 2017, did Chef Martin ever make any comments to you

1 or in your presence to the effect that it was somehow not okay
2 for union supporters to visit you at your home?
3 A No.
4 Q Did any other manager give you that idea that it was not
5 okay for the union to visit you at your home, or union
6 supporters?
7 A No.
8 Q Do you recall receiving an email from management regarding
9 union house visits?
10 A No.
11 MR. BLASI: Okay. Just give me one second.
12 HEARING OFFICER TA: Sure.
13 MR. BLASI: Okay. The Union doesn't have anything further
14 for this witness.
15 HEARING OFFICER TA: Okay.
16 MR. PARRY: I have no further questions.
17 HEARING OFFICER TA: No further questions. Let's see. I
18 just have a few follow up questions.
19 So Mr. Palacios, you had mentioned that seven to eight
20 coworkers had told you that they had been visited by the union.
21 Did you share in return with these seven to eight coworkers
22 about your home visits?
23 THE WITNESS: About two or three people only.
24 HEARING OFFICER TA: When those seven to eight coworkers
25 told you about the union visiting them, did they appear fearful

1 to you?

2 THE WITNESS: Not fear, but a little bit upset.

3 HEARING OFFICER TA: Upset. Okay. And since the time of

4 the election, have your coworkers in your experience, continued

5 to talk about the home visits?

6 THE WITNESS: Yes.

7 HEARING OFFICER TA: Okay. Do they talk about it daily?

8 THE WITNESS: Not anymore. But the first days, yes.

9 HEARING OFFICER TA: Okay. What about in the last four

10 months, have they talked about it?

11 THE WITNESS: No.

12 HEARING OFFICER TA: Okay. Any other questions, counsel?

13 MR. BLASI: Yeah. I do want to ask some questions.

14 Q BY MR. BLASI: You said that the workers who talked to you

15 about these house visits did not appear to be afraid. Would it

16 be fair to say that they seemed annoyed?

17 A One of them was upset when I told him that I had already

18 made my decision.

19 Q They were responding to something you said?

20 A Yes.

21 Q Okay. But did any of the workers that you talked to about

22 this issue, did they give you the idea that they were sort of

23 irritated by being visited at home?

24 MR. PARRY: This is asked and answered.

25 HEARING OFFICER TA: I don't think he's asked about

1 irritated.

2 MR. PARRY: I just feel like asking different adjectives

3 that are essentially synonyms are trying to confuse the

4 witness.

5 MR. BLASI: Well --

6 HEARING OFFICER TA: Okay. Let's just --

7 MR. PARRY: That's why it is being asked.

8 MR. BLASI: I disagree. I think that there's an important

9 legal distinction between --

10 MR. PARRY: Irritated and annoyed?

11 MR. BLASI: No. Between upset, which he --

12 HEARING OFFICER TA: Yeah. I think he --

13 MR. BLASI: -- said that they were.

14 HEARING OFFICER TA: -- answered to upset and fearful, but

15 not irritated.

16 MR. BLASI: And I think upset is vague.

17 HEARING OFFICER TA: So I'm going to overrule the

18 objection. Go ahead and answer.

19 MR. BLASI: Maybe I should ask it this way.

20 Q BY MR. BLASI: You know, what kind of sentiment did you

21 feel that these workers were expressing to you about these home

22 visits?

23 MR. PARRY: That calls for speculation.

24 THE WITNESS: Upset. Not comfortable.

25 HEARING OFFICER TA: Okay.

1 MR. BLASI: I just have a -- I'm sorry, two things. One,
2 could I ask the interpreter to just repeat the interpretation
3 of that answer?
4 THE INTERPRETER: Excuse the interpreter. Upset,
5 uncomfortable.
6 MR. BLASI: Okay. Can I -- I would like to state for the
7 record that I think that the word "molestos" is better
8 translated as bothered than upset.
9 MR. PARRY: I would object to that.
10 HEARING OFFICER TA: Okay. Yeah. Let's --
11 MR. PARRY: You can't question the official --
12 HEARING OFFICER TA: Yeah.
13 MR. BLASI: Well, I would --
14 MR. PARRY: -- interpretation.
15 HEARING OFFICER TA: Okay.
16 MR. PARRY: That's not appropriate to do that. Especially
17 at this point. It's --
18 HEARING OFFICER TA: Yeah. I sustain that objection.
19 MR. PARRY: It's an improper influence.
20 HEARING OFFICER TA: Yeah. Sustained. So she had said
21 uncomfortable, right, was the --
22 THE INTERPRETER: Excuse the interpreter. The second word
23 he said was not comfortable or uncomfortable.
24 HEARING OFFICER TA: Uncomfortable. Okay.
25 MR. BLASI: That's fine. We can leave this here.

1 HEARING OFFICER TA: Did you have another question,
2 counsel?
3 MR. BLASI: No. We'll just leave it at that.
4 HEARING OFFICER TA: Okay. All right. If there are no
5 other questions --
6 MR. PARRY: No other questions.
7 HEARING OFFICER TA: Okay. You're excused. I do want to
8 remind you that a sequestration order is in effect, which means
9 that you cannot talk about your testimony with anyone else
10 until the conclusion of the hearing. Okay?
11 THE WITNESS: Okay.
12 HEARING OFFICER TA: All right. Thank you very much for
13 your time. Thank you.
14 MR. PARRY: And may we have just a couple minutes to --
15 HEARING OFFICER TA: Sure.
16 MR. PARRY: -- figure out which witness we want to do
17 next?
18 HEARING OFFICER TA: Yeah. Let's -- is five okay? Two?
19 MR. PARRY: Two.
20 HEARING OFFICER TA: Okay. Two.
21 MR. PARRY: Two's fine.
22 (Off the record at 9:51 a.m.)
23 HEARING OFFICER TA: Okay. Can you please state your name
24 and spell it for the record, please?
25 MS. GUNN: Yeah, of course. Robin Gunn, R-O-B-I-N,

1 G-U-N-N.

2 HEARING OFFICER TA: Great. And can you please raise your

3 right hand, please?

4 Whereupon,

5 **ROBIN GUNN**

6 having been duly sworn, was called as a witness herein and was

7 examined and testified as follows:

8 HEARING OFFICER TA: Great. Thank you. A couple of

9 reminders before we begin. So there's a microphone in front of

10 you. It is recording you, but it doesn't amplify your voice.

11 So make sure you speak clearly and give verbal responses. So

12 if, you know, you like shake your head or nod, it's obviously

13 not going to be recorded. So make sure your responses are

14 verbal. If you don't understand a question, feel free to ask

15 for clarification. Please also make sure that the attorney has

16 finished asking their question before you answer, to avoid

17 talking over each other. And then, if there is an objection to

18 a question, hold your response until I've made a ruling on the

19 objection. Okay?

20 THE WITNESS: Okay.

21 HEARING OFFICER TA: All right. Thank you.

22 Go ahead, counsel.

23 MR. PARRY: Thank you.

24 **DIRECT EXAMINATION**

25 Q BY MR. PARRY: Thank you for being here, Ms. Gunn, and

1 good morning. Can you tell us where you work?
2 A Daily Grill at the Westin Hotel on Century Boulevard.
3 Q Thank you. And how long have you worked there?
4 A I've been with the company probably -- I think it will be
5 ten years this August.
6 Q Have you always been at the Century Boulevard location?
7 A Yes. So it's been over eight years at that location.
8 Q Okay. And what do you do there?
9 A I am a bartender.
10 Q Thank you. From the time period starting around November
11 1st of last year, 2017, have you worked there continuously
12 until now?
13 A Yes.
14 Q Okay. And now, during around November and December of
15 2017, were you aware of the union organization efforts and
16 union election at The Daily Grill on Century?
17 A Talks about it, yeah. People were discussing about the
18 union and wanting to unionize. Correct.
19 Q And did you understand that there was an election that was
20 happening and that you'd be given an opportunity to vote?
21 A Yes.
22 Q Okay. And during that time period of November and
23 December of 2017, were you ever -- do you know if the union, or
24 people who you understood to be representatives of the union,
25 ever visited your home?

1 A Yes.
2 Q How many times?
3 A Once while I was actually there. And another time that I
4 wasn't there.
5 Q So which time occurred first, when you were there or when
6 you weren't there?
7 A The time that I was there. Correct.
8 Q The time you were there?
9 A Yes.
10 Q Okay. So let's talk about that. About when did that
11 happen, if you can recall?
12 A I really don't recall the exact time. I'm sorry.
13 Q At the time when they visited your home and you were
14 there, do you know whether the mail ballots had already been
15 sent out?
16 A It was before this.
17 Q Okay.
18 A Yes. I believe it was the time when they were to get --
19 to try to get enough signatures to get the vote in progress.
20 Q I see. And how many people from the union came to visit
21 you?
22 A I believe it was two people. And there was also a fellow
23 coworker that was with them as well.
24 Q Was it a current coworker or a past coworker?
25 A To me at that time, my knowledge, it would be a current

1 because he would work lunches, where I work nights. So --
2 Q And who was that?
3 A Sal.
4 Q Sal. And do you know Sal's full name?
5 A No.
6 Q Do you know Sal's last name?
7 A No.
8 Q Is Sal -- do you know what Sal's --
9 A He was a busser.
10 Q Sal, you think he was a busser? Okay.
11 A Yeah. And work lunches.
12 Q Is Sal his first name?
13 A Yes.
14 Q Was it --
15 A Salvador probably.
16 Q -- Salvador?
17 A Yeah.
18 Q Okay. So it was Sal and two other people?
19 A Correct.
20 Q And did you recognize either of the two other people?
21 A The one in front of me, Sergio was there.
22 Q So you're referring to Sergio sitting at the table --
23 A Correct.
24 Q -- next to --
25 A Yes.

1 Q -- the Union's counsel?
2 A Yes.
3 Q How about the other person?
4 A She was a female. A Latina female, dark hair. I don't
5 recall her name.
6 Q Okay. Have you seen her -- that person, since she visited
7 you that first time?
8 A No.
9 Q Okay. And what time of day was it that they visited you?
10 A It was in the afternoon. It was before my work shift. I
11 was just doing stuff at the house about to get ready for my
12 shift.
13 Q And had you invited people from the union to come visit
14 your home?
15 A No.
16 Q And what did they say to you when they were there?
17 A They just wanted to talk to me about what they were --
18 their process of what they were trying to do. And they
19 discussed to me about the union. And I told them that as long
20 as Daily Grill was at the Westin Hotel, I didn't really want to
21 discuss anything against The Daily Grill. And then that's when
22 I was informed that The Daily Grill's contract was going to be
23 up, and that the Marriott was taking over, and Marriott was a
24 union. And for me to, in a sense secure my position and my
25 schedule, that it probably would be good to unionize. And they

1 also just discussed other things about the union.
2 Q So did the union people tell you that if you didn't go
3 union that you might -- that you'd lose your job at The Daily
4 Grill?
5 A No. I don't recall them like actually specifically saying
6 that. I think more how I took it was just to guarantee my
7 position and maybe my schedule and my seniority and stuff like
8 that.
9 Q I see. Did they say anything else to you?
10 A The other lady that I can't recall her name, I believe
11 just discussed how like a place down in Los Angeles, how they
12 were unionized recently. So they were just, you know, talking
13 about the good stuff basically.
14 Q And what did you say to them, if you can recall?
15 A Again, I think I brought up again just about that, you
16 know, I don't really want to go against anything of The Daily
17 Grill. And they were like, no, you're not. And then there was
18 the talk about filling out a did (phonetic) sign, you know what
19 I mean, to go --
20 Q Well, let's -- I'm sorry to cut you off.
21 A Sorry.
22 Q You're entitled to keep those issues to yourself. You
23 have -- you know, you're entitled to a secret ballot and
24 anonymity in that. And I don't want -- I'm not going to ask
25 you about anything that you, you know -- how you voted, your

1 opinions.
2 A No, no, no. I'm not --
3 Q And any of the card --
4 A Sorry.
5 Q -- things. You're entitled to keep that to yourself and
6 I'm not going to ask you for that. So just if you could keep
7 that in mind. Okay.
8 A Okay. This thing that I signed, and they also took a
9 photo of me, had nothing to do with the actual ballot that was
10 sent to my house.
11 Q Okay. Thank you. How would you describe their sort of
12 demeanor or their approach to this with you when they visited
13 you?
14 A They were friendly. But they were -- had an initiative.
15 They obviously had a purpose being there, you know. But they
16 were friendly.
17 Q Did you feel -- even though they were friendly, did you
18 feel like they were -- it was like pressured?
19 A Not maybe like pressured. But, you know, the sense that I
20 kind of wanted it to be over with, you know, and to get on with
21 my day. Yes.
22 Q Were they pushy with you?
23 A It's kind of hard for me to answer that. I don't
24 really -- like at that moment, no.
25 Q Okay. Let's talk about the second time. And I believe

1 you said that the second time you weren't home, or you didn't
2 actually speak to them; is that right?
3 A Correct.
4 Q So what happened in the second --
5 A I was informed by my father. My father contacted me and
6 told me that they showed up again looking for me.
7 Q So do you live with your father?
8 A I live with my parents. Correct.
9 Q Okay.
10 A Yes.
11 Q And what did your father tell you about when they showed
12 up that time looking for you?
13 A Just that they were looking for me. So they just -- he
14 just wanted me to be informed because he didn't know what was
15 going on. The situation. So he just wanted to make sure since
16 they were there previously, and he's seen them, just to make
17 sure if I needed to be informed or wanted to know.
18 Q And had they been invited to come that second time?
19 A No.
20 Q Do you know how many people came the second time?
21 A That I do not know.
22 Q Do you know how long they were there for?
23 A I do not.
24 Q Okay. Do you know the identity of any of the people that
25 showed up the second time?

1 A Not the identity. But I did have a text conversation with
2 Sergio. And he -- in that text, he did confirm -- he did tell
3 me one of the gentlemen. It was someone that I haven't met or
4 seen before, but I know is part of the union.
5 Q And when did Sergio text you?
6 A I texted him actually when my father contacted me about
7 them coming. And then that's when I just informed them that I
8 already voted, so please do not continue coming to my house
9 because it's not my house, it's my father's house.
10 Q So what did you say in the text message to him?
11 A Just basically that. That --
12 Q So you didn't want the union coming to your house anymore?
13 A Correct.
14 Q Was it unwelcome for them coming to your home?
15 A Yes.
16 Q Okay. Do you still have the text message?
17 A I do not.
18 Q Did Sergio respond to it?
19 A He did.
20 Q And it was on the same day of the visit or shortly after?
21 A Correct. If it wasn't the same day -- because I don't
22 remember exactly what time I got home that day, it was
23 definitely the following day.
24 Q Okay. And what did he say in response?
25 A He apologized, and he just told me that they were there

1 just to make sure that I knew how to -- make sure I knew all
2 the process of the voting. Like if I understood how to vote.
3 Q Have you had any other text messages with Sergio since
4 then?
5 A No.
6 Q And has any -- how did you come to have Sergio's phone
7 number?
8 A He actually contacted me the very first time. He got my
9 number.
10 Q Do you know how he got your number?
11 A I do not.
12 Q You didn't give him your number?
13 A I did not.
14 Q And so when was the first contact from him?
15 A It had to have been last year. Possibly if not in
16 November, maybe a little before November. But yeah, it was
17 last year. It was in the beginning of the process of them
18 trying to unionize us.
19 Q And the first time he contacted you, was it by phone?
20 A Yes. It was by phone.
21 Q And was it a telephone call or was it a text message?
22 A If I remember correctly, I believe it was phone calls at
23 first. And then my response was through text.
24 Q So do you recall what was said in the first phone call?
25 A I think it was just -- they were just trying to discuss

1 what the situation was going on as with like, the union. Like
2 he wanted to speak to me to give me information about what he
3 was trying to do.
4 Q And do you recall what you said in response via text?
5 A I believe if I remember correctly, I told him that if I
6 had any questions that I would contact him.
7 Q And did you ever contact him with questions?
8 A I did not.
9 Q Okay. And did that exchange happen before the first visit
10 to your home?
11 A Yes. And I believe there was also exchanges in the
12 parking lot of the Westin Hotel as well before.
13 Q And is that where the union confronted you in the parking
14 lot?
15 A Yes.
16 Q And had you asked them to speak to you in the parking lot?
17 MR. BLASI: Objection. That's a loaded question.
18 HEARING OFFICER TA: What's the objection to?
19 MR. BLASI: The term confronted lacks foundation and
20 implies there's some sort of --
21 HEARING OFFICER TA: Okay.
22 MR. BLASI: -- accosting or something.
23 HEARING OFFICER TA: Can you rephrase?
24 MR. PARRY: Well, she already answered.
25 HEARING OFFICER TA: Can you rephrase?

1 Q BY MR. PARRY: Did the union approach you in the parking
2 lot?
3 A Yes.
4 Q Did you ask them to meet with you in the parking lot to
5 discuss any of these union matters?
6 A No.
7 Q What time do you usually work your shift?
8 A I have a 3:45 shift sometimes and a 5:00 shift.
9 Q And what time do those usually end?
10 A Between 9 and 10 p.m. Sometimes a little bit later.
11 Q And when did the union approach you in the parking lot?
12 A Always in the afternoon.
13 Q In the afternoon on your way in to work?
14 A Correct.
15 Q Okay. In between the two visits that you discussed -- do
16 you have a sense of how much time elapsed between the first
17 visit to your home when you were there, and the second visit
18 when you weren't there?
19 A Possibly a month maybe. I wouldn't say maybe more than a
20 month.
21 Q And in that time -- in between that time, did you have any
22 text or phone communications with Sergio or anyone else from
23 the union?
24 A No. None that I recall.
25 Q Have you had any discussions with coworkers about home

1 visits, whether it's you being visited or them being visited?
2 A Yes.
3 Q How many coworkers have you discussed that with?
4 A Possibly half a dozen. Maybe a little bit more.
5 Q Okay. And what have any of those coworkers told you about
6 the visits?
7 A Some of them have said that they have been visited as
8 well. And some said that they haven't or weren't aware of if
9 they were because either not being home or that type of
10 situation.
11 Q The coworkers that said they had been visited, when they
12 were discussing this with you, did they seem to be -- what was
13 their sort of -- the sense of how they received those visits?
14 A I can't really speak on their behalf on that. I think it
15 was in the contrast of me and having conversations, it was just
16 like, oh, yeah, they came to my house too. That kind of
17 discussion and talk.
18 MR. PARRY: Okay. I don't have any more questions at this
19 time subject to redirect.
20 HEARING OFFICER TA: Okay.
21 MR. BLASI: I'd just like to take a few minutes to confer.
22 HEARING OFFICER TA: Okay. Yeah. So let's do -- how long
23 do you think?
24 MR. BLASI: Around seven minutes.
25 MR. PARRY: I would just like to state an objection on the

1 record. These breaks with almost every witness are becoming
2 extremely time consuming. We lost probably over an hour
3 yesterday. And there is no entitlement to a break between
4 every witness. The testimony and just the type of questions
5 have all been the same. There's no secret. And there's
6 actually no secret as to who's coming in to testify because
7 they've seen these people in the building for now two days. To
8 say they don't know who's going to be testifying is just not
9 true because they obviously know who these people are because
10 they've been visiting them in their homes. And that's the
11 testimony.
12 So taking seven minutes in between a witness that's --
13 HEARING OFFICER TA: Okay.
14 MR. PARRY: -- that is going to go into ten, is -- it's
15 just --
16 MR. BLASI: Can I --
17 MR. PARRY: We need to get this done.
18 HEARING OFFICER TA: Go ahead, counsel.
19 MR. BLASI: May I respond to that?
20 HEARING OFFICER TA: Yes.
21 MR. BLASI: The Employer's had, what, five months to
22 prepare its case for today? Or four months? Something of that
23 order. It for whatever reason chose not to put on any
24 witnesses in support of its unfair labor practice charge.
25 MR. PARRY: That has nothing to do with anything.

1 HEARING OFFICER TA: Okay. Let's --
2 MR. BLASI: Well, it does have something to do with it
3 because it means the Union was never provided with any notice
4 about what the substance of the charges were, which would have
5 given it some basis to --
6 MR. PARRY: The Union's not entitled to notice by the
7 rules.
8 MR. BLASI: May I just --
9 HEARING OFFICER TA: Okay. Let's let him finish.
10 MR. BLASI: No. In the course of a normal ULP hearing,
11 the union is given information about what the subject matter of
12 the allegations are.
13 MR. PARRY: We're not here on a ULP hearing.
14 MR. BLASI: I'm not being permitted an opportunity to
15 speak here. So I'm --
16 HEARING OFFICER TA: Yeah. Let's let him -- just let him
17 finish. Go ahead.
18 MR. BLASI: The idea that a few minutes to confer and
19 prepare cross-examination of a witness about whom I know
20 nothing and have had no information to prepare is hardly an
21 unreasonable request, given, as I just said, that the employer
22 has had months and months to prepare for its case and the union
23 is literally learning of who its witnesses are and what the
24 subject matter of their testimony is on the spot with zero
25 opportunity to prepare. I'm sitting here in this room with you

1 all, learning at the moment you are about who their witnesses
2 are and what they're saying. It seems absurd to me that I
3 cannot have, you know, a basic opportunity to make some
4 investigation about what the facts are.
5 HEARING OFFICER TA: Okay.
6 MR. PARRY: We're not here on a ULP hearing. We're here
7 on election objections that have proceeded in accordance with
8 the rules and the required disclosures. The Union's not
9 learning of who the witnesses are on the spot. The Union
10 obviously has information because counsel has been able to ask
11 questions that are loaded with information that they already
12 know about. And they've seen these witnesses in the building
13 now yesterday -- all day yesterday and had the opportunity to
14 confer and prepare. So to say you need ten minutes between
15 every witness when the contents of the testimony, the scope of
16 the questioning, has been the same for every single witness, is
17 just absurd. And it's been a complete waste of time. We've
18 lost time for -- we could have gotten one to two more witnesses
19 done yesterday if we didn't have to have these breaks with
20 every witness.
21 MR. BLASI: I would just say if the employer didn't object
22 every time I objected to speak, we probably would be further
23 along as well.
24 HEARING OFFICER TA: Okay. We do want the hearing to move
25 along expeditiously. I don't think it's fair to say that

1 seeing individuals in the building, you know, is tantamount to
2 having some sort of preparation or notice, you know. So I'm
3 going to allow some time, but not too much time. So let's try
4 to just strike a compromise on that. And you know, we'll do, I
5 don't know, three, four minutes to prepare. And then just
6 continue. Because we do have -- I think in total, we covered
7 five witnesses yesterday.
8 MR. BLASI: Which by the way is a lot by Board standards.
9 HEARING OFFICER TA: Yeah, yeah. It was a lot.
10 Especially considering we had a little bit of a hiccup in the
11 beginning with the interpreter.
12 MR. BLASI: And there's just one more employer witness
13 that I understand from yesterday; is that right?
14 MR. PARRY: I had two in there.
15 HEARING OFFICER TA: You have two more?
16 MR. PARRY: Yes.
17 HEARING OFFICER TA: Okay. And then I know the union has
18 about six. So we've got --
19 MR. BLASI: At least. Yeah.
20 HEARING OFFICER TA: Yeah. We've got lots to go through.
21 So we do want to move this along quickly. And for the record,
22 counsel didn't take a break with the last witness. So --
23 MR. PARRY: Which demonstrates that I don't think he needs
24 one with every witness.
25 MR. BLASI: I'd like to prepare my case and represent my

1 client to the best I can --

2 HEARING OFFICER TA: Sure.

3 MR. BLASI: -- without the employer's counsel directing me

4 how to do that.

5 HEARING OFFICER TA: Right. Okay. So let's try to be

6 fair and just compromise on this and do a short break. Okay.

7 So let's go off the record.

8 MR. BLASI: Thank you.

9 (Off the record at 10:14 a.m.)

10 HEARING OFFICER TA: All right. Are we ready? Let's go

11 back on the record.

12 Counsel, your cross?

13 **CROSS-EXAMINATION**

14 Q BY MR. BLASI: Okay. Ms. Gunn, good morning. How are

15 you?

16 A Hi.

17 Q Just a few questions in follow up to what you said a few

18 minutes ago. So just to make sure I'm clear, you mentioned one

19 occasion in which I think you said a coworker named Sal and a

20 couple other people visited you?

21 A Correct.

22 Q For the record --

23 A Yes. Sergio, Sal, and then a female that I do not recall

24 her name.

25 Q Okay. And was the female someone that you worked with

1 also, or no?
2 A No.
3 Q Okay. And the person you referred to as Sal, is that
4 Salvador Tello?
5 A I think so.
6 Q Okay.
7 A An older gentleman.
8 Q And is that a person that you've worked with for many
9 years?
10 A Yes.
11 Q Okay. He works as a busser you said?
12 A Yes.
13 Q Okay. And during the conversation with those three
14 people, Salvador, Sergio, and the third person, it sounded to
15 me like you were basically describing a meeting where they were
16 making arguments for why unionization would be a good idea; is
17 that fair to say?
18 A Yes. But they also were there to -- my understanding was
19 to inform that yes, that Daily Grill was no longer going to be
20 there because their contract was up, and that the Marriott was
21 taking over. And the Marriott would be -- is union. So if --
22 Daily Grill did not want to unionize. For me to be secure in
23 my position, my schedule, that kind of stuff, that it would be
24 best for me to go unionize.
25 Q All right. So they were saying that you would have more

1 job security if the workers at Daily Grill had a union
2 basically, right?
3 A Well, if --
4 Q Job security, protection?
5 A Job security if Daily Grill wasn't going to be there.
6 Correct.
7 Q Right. And that -- you mentioned your schedules. You
8 would have more security as far as your seniority for
9 scheduling?
10 A Yes.
11 Q Okay. So these -- all right. So I won't belabor some of
12 the other points that you made earlier. But just to state what
13 I think is obvious, there was no threats that these workers
14 made to you that they would do something to you if you didn't
15 agree to support the union; is that fair to say?
16 A Yes. No threats.
17 Q And this was the only occasion when you actually spoke
18 with anyone who was visiting you in your home; is that right?
19 A Yes.
20 Q And the second time you only learned about that because
21 your father told you about it?
22 A Yes.
23 Q Okay. And you subsequently had a text conversation with
24 Sergio in which you conveyed that you had already made up your
25 mind -- or you had already voted I think is what you said; is

1 that right?
2 A I already voted. Correct.
3 Q Okay. So there was no way in which -- and the first
4 visit, that happened well before the ballots were mailed; is
5 that your testimony?
6 A Correct. Yes.
7 Q Okay. So is it fair to say that you were able to cast
8 your election ballot in whatever way you chose was -- you felt
9 was appropriate? I'm not asking you to state what position you
10 took in the ballot. But that you were able to make a decision
11 about what you wanted to do?
12 MR. PARRY: Objection. The same objection.
13 HEARING OFFICER TA: Yeah.
14 MR. PARRY: It's conclusory and it's actually irrelevant.
15 HEARING OFFICER TA: Can I rephrase?
16 MR. BLASI: Sure. Please, go ahead.
17 HEARING OFFICER TA: When you voted in the election, did
18 you feel free to vote how you wanted to? Did you feel
19 pressured to vote a certain way?
20 THE WITNESS: No, I didn't feel pressured to vote a
21 certain way on the day that I voted. Correct.
22 HEARING OFFICER TA: Okay.
23 THE WITNESS: That I mailed out the ballot.
24 HEARING OFFICER TA: Okay. Thank you.
25 THE WITNESS: Um-hum.

1 MR. BLASI: No further questions for this witness.
2 HEARING OFFICER TA: Okay. Redirect?
3 MR. PARRY: I have no further questions.
4 HEARING OFFICER TA: All right. I'm going to ask some
5 follow up questions. You said you discussed home visits with
6 about half a dozen coworkers; is that correct?
7 THE WITNESS: Yeah. Meaning also I talked about my visits
8 to people.
9 HEARING OFFICER TA: To about half a dozen people?
10 THE WITNESS: Yeah. I would say about half a dozen
11 people.
12 HEARING OFFICER TA: And did they tell -- did anyone at
13 work -- did any of your coworkers tell you about being visited
14 at home by the union?
15 THE WITNESS: I believe a few have. Yes.
16 HEARING OFFICER TA: Okay. And how many would you say?
17 THE WITNESS: Well, without saying names?
18 HEARING OFFICER TA: You don't have to say names. Yeah.
19 THE WITNESS: Okay.
20 HEARING OFFICER TA: You can just give a number.
21 THE WITNESS: Yeah. Probably about three or four.
22 HEARING OFFICER TA: Three or four?
23 THE WITNESS: Yeah.
24 HEARING OFFICER TA: Okay. And in the time since the
25 election, have your coworkers continued -- have they talked at

1 all about the home visits?

2 THE WITNESS: Not with me. No.

3 HEARING OFFICER TA: Okay. So you haven't heard anything

4 at work about it?

5 THE WITNESS: I have not.

6 HEARING OFFICER TA: Okay. Any other questions, counsel?

7 MR. BLASI: No.

8 MR. PARRY: No.

9 HEARING OFFICER TA: Okay. So you're excused. Just a

10 reminder that a sequestration order is in effect, which means

11 that you can't talk to anyone about your testimony until the

12 conclusion of the hearing.

13 THE WITNESS: No problem.

14 HEARING OFFICER TA: Okay. Thank you so much.

15 THE WITNESS: Thank you.

16 HEARING OFFICER TA: Okay. Counsel, your next witness?

17 THE WITNESS: You guys have a great day.

18 HEARING OFFICER TA: Thanks.

19 MR. PARRY: You too.

20 HEARING OFFICER TA: Sorry, we can go off the record.

21 (Off the record at 10:24 a.m.)

22 HEARING OFFICER TA: Let's go back on the record.

23 Can you please state your name and spell it for the

24 record, please?

25 MS. SHEETS: Macey Sheets, M-A-C-E-Y, S-H-E-E-T-S.

1 HEARING OFFICER TA: Great. And can you please raise your
2 right hand?
3 Whereupon,
4 **MACEY SHEETS**
5 having been duly sworn, was called as a witness herein and was
6 examined and testified as follows:
7 HEARING OFFICER TA: Okay. A couple of reminders before
8 we begin. There's a microphone in front of you. It doesn't
9 amplify your voice, but it does record everything you say. So
10 make sure that when you give your responses, they're clear
11 responses. Make sure they're verbal responses. So shaking
12 your head, nodding, obviously won't get recorded. So make sure
13 you're answering verbally. If at any point you don't
14 understand a question, feel free to ask for clarification. And
15 make sure the question is asked in its entirety before you
16 answer just to avoid talking over each other. And if there is
17 an objection to a question, hold your response until I make a
18 ruling on the objection. Okay. Great. Thank you.
19 Counsel, your witness.
20 MR. PARRY: Thank you.
21 **DIRECT EXAMINATION**
22 Q BY MR. PARRY: Thanks for being here, Ms. Sheets. Can you
23 tell us where you work?
24 A The Daily Grill in the Westin Hotel.
25 Q And that's on Century Boulevard?

1 A Yes.
2 Q How long have you worked there?
3 A It will be a year in a week.
4 Q And what do you do there?
5 A I am a hostess. But I just got promoted to lobby bar
6 cocktail.
7 Q Awesome. Congratulations. Between around the beginning
8 of November 2017 until now, have you worked there continuously?
9 A Yes.
10 Q Okay. And around the time of November and December of
11 2017, were you aware of the union campaign and election
12 proceeding that happened?
13 A Not until I was approached. So --
14 Q Well, just as you sit here right now, are you aware that
15 the union election took place --
16 A Yes.
17 Q -- at the restaurant? Okay. And I think you may have
18 anticipated my line of questioning. But during November and
19 December or any time around there, even in the preceding months
20 maybe, have you ever been visited at your home by people who
21 you understood to be representing the union?
22 A Yes.
23 Q And how many times has that happened?
24 A Twice.
25 Q I'm sorry?

1 A Twice.
2 Q Twice?
3 A Um-hum.
4 Q Well, let's talk about the first time. When did that
5 happen?
6 A Before the election started. They came to my house to
7 kind of reassure what the union was. And they wanted to talk
8 to me pretty much just about the same thing the first time they
9 spoke to me about what it was and pretty much like just
10 explaining everything all over again. And if I needed any
11 help. If I need more clarification on things. Just basically
12 that.
13 Q And how many people came on that first occasion?
14 A Two.
15 Q Did you recognize them?
16 A I recognized the first one.
17 Q And who --
18 A But then the lady that came as well, I didn't recognize
19 her.
20 Q Okay. So who was the -- was it one lady and one man? Or
21 was it --
22 A Yes.
23 Q Okay. And you recognized the man?
24 A Yes.
25 Q Who was that?

1 A It was this gentleman, Sergio.
2 Q Sergio. Okay. And do you recall about what time of day
3 they arrived?
4 A In the middle of the afternoon because it was during my
5 fiancé's lunch break, so I remember them coming.
6 Q And did you invite the union to come to your home to talk
7 to you about --
8 A No.
9 Q -- their cause?
10 A No.
11 Q Okay. Thank you. So was it a surprise, them showing up
12 to your home?
13 A Yes.
14 Q And who else lives at your home?
15 A Me, him, and my daughter.
16 Q And how old's your daughter?
17 A She will be two at the end of this week.
18 Q Thank you. And did you say anything to them when they
19 were there for the first visit?
20 A I just kind of listened to what they had to say.
21 Q Okay. Now, the woman that you didn't recognize, have you
22 seen her since then?
23 A No.
24 Q Okay. She wasn't an employee of The Daily Grill as far as
25 you know?

1 A No. She was an employee somewhere else. I know that she
2 just wanted to kind of state her statement saying that her
3 company she worked with joined the union. And she just wanted
4 to kind of iterate how the union benefited her.
5 Q Okay. And how long were they there for?
6 A The first time probably like 20 minutes or so.
7 Q Okay. And how did you feel about them coming to your home
8 that first time?
9 A I actually didn't want to open the door. My fiancé opened
10 up the door and then kind of alerted me that it was for me.
11 And then once I saw who it was, I kind of just like shook my
12 head and I was like, no, don't.
13 Q So as they were speaking you were shaking your head?
14 A Yeah. I was kind of like hinting to him I didn't want to
15 go to the door.
16 Q Oh, to your fiancé?
17 A Yeah. I was --
18 Q Okay.
19 A -- hinting to him that I didn't want to go talk to them
20 because I already had talked to them about what the union was
21 when they confronted me the first time at work.
22 Q And when at work did they confront you the first time?
23 A Probably sometime in November I think.
24 Q And where did that happen at work?
25 A In the parking garage.

1 Q Were you on your way in to work or on your way out?
2 A On my out of work.
3 Q And what time was that, if you recall?
4 A Probably around 11:30 or 12:00.
5 Q A.m. or p.m.?
6 A P.m.
7 Q So at night? I guess it would be like 12 p.m.
8 A It'd be like --
9 Q So around noon?
10 A Noon.
11 Q Okay.
12 A Yes.
13 Q Thank you. And what did they say to you when they
14 confronted you on your way out of work that time?
15 A So I didn't know what it was about at first. And so I
16 kind of tried to avoid people as I'm trying to go home. But
17 then I did see Sergio with one of our coworkers. And so that's
18 when I kind of like got the hint of what it was about. So I
19 did stop by and speak to them.
20 Q Did you already know Sergio?
21 A No.
22 Q Have you ever been contacted by text message or by phone
23 from anyone?
24 A Yes.
25 Q And by who?

1 A I'm not too sure. It just came from a number just saying
2 like -- I would assume it's from like union stuff because it
3 would say like union and then kind of like promote more things
4 for them.
5 Q Did you ever give the union your phone number?
6 A I believe I did.
7 Q Okay. Any other communications from the union that you
8 received on your phone, or -- well, let's just start with
9 phone?
10 A No.
11 Q Okay.
12 A Just texts that -- kind of promoting the union and what
13 they were trying to do.
14 Q Okay. And were there any other times you were confronted
15 in the parking garage at work?
16 A No.
17 Q Okay. And that confrontation occurred before the first
18 home visit, correct?
19 A Yes.
20 Q Let's talk about the second home visit. Do you recall
21 when that occurred?
22 A It was right when the ballots were sent out. And the
23 occurrence happened in like the middle of the day. And they
24 just wanted to confront like, did you get the ballot, do you
25 need help with the ballot, do you need us to take it to the

1 post office for you. And just incidents like that. But I was
2 a little annoyed at that point just because I already knew when
3 the ballots were being sent out. I'm pretty sure I can read.
4 I know how to fill something out. They gave us examples at
5 work to how to fill it out. And then it was just the time of
6 the day. It was during the middle of the day. I was just
7 putting my daughter down for a nap. And any of you know if you
8 have kids, that time is your time to relax as well. So it was
9 just on my day off where I wanted to relax. And I didn't get
10 that opportunity. And --
11 Q How long were you there for?
12 A What do you mean?
13 Q I'm sorry, how long was the union there for on that --
14 A On that occasion? I shut the door in their face, so maybe
15 less than five minutes.
16 Q Okay. Did you recognize the people that showed up from
17 the union?
18 A It was the same two people that came the first time.
19 Q Okay. So it was Sergio and then a woman that you didn't
20 recognize?
21 A Um-hum.
22 Q Is that a yes?
23 A Yes.
24 Q Thank you. And do you recall like what exactly they said?
25 A They just wanted to make sure that I got the ballot. And

1 they wanted to -- they asked me if I needed help filling it
2 out. And I just told them no, I'm okay. And then they're
3 like, well, if you do need rides to the post office, let me
4 know. And I told them no, I live walking distance to it, I can
5 drop it off myself. But I did end up just taking my own ballot
6 to work because they told me to take it to the Westin Hotel
7 because they have their own drop off. And it would be
8 confidential that no one saw me put my ballot in the post
9 office.
10 Q How would you describe those two union people's sort of
11 demeanor as they presented to you on that second visit? Were
12 they -- let me ask a better question actually. Did you feel
13 like they were being pushy with you?
14 A They definitely just wanted to really make sure that I
15 would get my vote in. And I understood that my vote may or may
16 have not counted depending on how many people voted yes or no.
17 But they were just really wanting to make sure I voted, I
18 voted. And I was like, I know.
19 Q They were being persistent?
20 A Yes.
21 Q And you said you slammed the door in their face. Did you
22 like actually --
23 A Not full blown slammed the door. But I definitely was
24 like shutting it more and more just trying to end the
25 conversation because I didn't want to speak to them anymore.

1 Q And ultimately, did you have to just close the door to end
2 the conversation?
3 A It kind of felt like I did. Yes.
4 Q Okay. Now, were you concerned with making sure your vote
5 was anonymous?
6 A Yes.
7 Q Did the union visiting your home have an effect on that?
8 A When they were asking for me to make sure I fill it out
9 and sign it, then I would say yes. But I was more concerned
10 about having like my coworkers know what I voted, yes or no.
11 And so that's why I just kept it -- I put myself on sending it
12 not in the post office, but went to work, so it looked like I
13 was just heading to work.
14 Q Okay. Is there a reason why you were so concerned with
15 making sure it was anonymous?
16 A At the time, I was like fairly new at the company I would
17 say. And I just didn't want to have like any like problems
18 with any coworkers. So like I just -- if anyone would say
19 anything or talk about it, I just kept my mouth shut. And I
20 didn't want anyone to know what I voted.
21 Q Have you --
22 A Or if I was voting.
23 Q Have you had any problems with coworkers?
24 A Not personally with me. But it does affect my job because
25 another coworker knows what another coworker voted for. And

1 now him or her does not help the other coworker as much.
2 Q And from what you observed, that's based on how a given
3 person voted in the election?
4 A Yes. And that's causing me to go out of my way to work
5 extra. Which I don't mind helping. But that's causing me to
6 go out of my way to work and do another coworker's job to help
7 out the restaurant.
8 Q Thank you. I want to show you some documents. Just tell
9 me if you recognize this document. It's two pages that has
10 been put in front of you.
11 A Yes. I recognize them.
12 Q And what is this?
13 A It's just kind of a statement about the second encounter
14 that I had with the union and how I was pretty upset with them
15 coming to my door on my day off and kind of just reassuring,
16 did you get the ballot, did you get it. I was like yes, I got
17 it, thanks, but I'm a grown woman, I think I can handle it.
18 Q Okay. You make a comment in your statement where it says
19 -- and this is about halfway down the first page. It starts
20 with, I answered yes, and that I already filled it out and sent
21 it in. Oh, I'm sorry, wrong sentence. It says, then they
22 tried to assume I was tired because I go out. I got even more
23 annoyed with that comment. Can you explain what annoyed you
24 about that comment?
25 A Just because like it felt like to me that they assumed

1 that I probably went out the night before and that's why I'm
2 tired. And it's not like that at all. I have a child. Being
3 a mom is a full-time job. And like I said, if -- when they are
4 napping, that is your time to get yourself back in control of
5 yourself.
6 Q Understood. Do you feel like they were being rude in that
7 regard?
8 A I think they were trying to be funny at the time. But it
9 was just like one of those comments like, you don't know what
10 type of person I am, so why -- I'm not that close to you for
11 you to make a comment like that to me.
12 Q Okay. And the second page, it says -- the first full
13 sentence starts, I may have been rude, but I just said bye and
14 shut the door in their faces. I was not happy with getting
15 woken up by people I didn't care to see. When it says, I just
16 said bye and shut the door in their faces, is it the case that
17 -- let me ask it this way. Did the union people voluntarily
18 end their side of the conversation and go away when you wanted
19 them to?
20 A Can you --
21 Q Okay.
22 A -- maybe resay it again?
23 Q So did it take -- did it require you shutting the door on
24 them to end the conversation?
25 A Yes.

1 Q So they didn't go away recognizing that you didn't want to
2 talk to them?
3 A No. They like would even try to start up conversations
4 about like what's on my walls or what's in my house. And it's
5 like, I don't want to talk to you, I'm done with this.
6 Q Okay. And again, I may have asked you this and I
7 apologize, but did you invite them to come visit you at your
8 home?
9 A No.
10 Q Was that visit welcomed?
11 A It was an unwelcomed visit.
12 Q Okay. Do you remember about when -- on the second page it
13 says Sunday, December 10th. Is that the date you wrote this?
14 A Yes.
15 Q And --
16 A No. I may have wroten (sic) it the day after.
17 Q Okay. And so it says on December 10th. So this refers to
18 that second visit, correct?
19 A Yes.
20 Q And then that's your signature at the bottom of page two?
21 A Yes?
22 Q And this is your handwriting?
23 A Yes.
24 MR. PARRY: Okay. I move to -- this is Exhibit 17, into
25 evidence.

1 HEARING OFFICER TA: I just want to clarify. I know
2 there's a date on there, but there's no actual year. I'm
3 assuming that's 2017; is that correct?
4 THE WITNESS: Yes.
5 HEARING OFFICER TA: Okay. Any objections, counsel?
6 MR. BLASI: No.
7 HEARING OFFICER TA: Okay. If you can hand it to me, I'm
8 going to mark it. So Employer's Exhibit 17 is admitted into
9 evidence.
10 **(Employer Exhibit Number 17 Received into Evidence)**
11 Q BY MR. PARRY: And now, with regard to the statement, how
12 did you come to prepare this statement?
13 A Can you restate the question?
14 Q Yes. I can ask it better. Whose idea was it to fill out
15 this statement?
16 A I guess my own because I did see you around. You were
17 just making sure like the union people weren't bothering us at
18 work and stuff like that. And I mean, I knew I could have
19 easily just like told it to anyone. But because I knew with
20 you being our side, that I should probably inform you about the
21 situation.
22 Q And did you understand that I represent The Daily Grill?
23 A Yes.
24 Q Okay. Did you -- when you filled this out, did you have
25 the understanding that it was entirely voluntary on your part?

1 A Yes.
2 Q Did I explain to you what was kind of going on in terms of
3 the union proceedings?
4 A Say that --
5 Q Did I explain to you what was going on in terms of the
6 union and The Daily Grill being involved in these sort of
7 election proceedings? Were you aware of that?
8 A Yes.
9 MR. BLASI: Objection. There was two different questions
10 that were asked in that.
11 HEARING OFFICER TA: Can you --
12 Q BY MR. PARRY: Did I explain to you what was going on in
13 terms of the union proceedings and The Daily Grill?
14 A Yes.
15 Q Okay. And you understood that -- and did I explain to you
16 that providing a statement is voluntary?
17 A Yes.
18 Q And did I explain to you that you wouldn't be retaliated
19 against by The Daily Grill for either providing a statement or
20 not providing a statement?
21 A Yes.
22 Q Okay. Thank you. And do you recall where you filled this
23 out?
24 A At work at The Daily Grill.
25 Q Was that after I discussed those things with you and told

1 you all the things we just covered?
2 A Yes.
3 Q Thank you. So we covered two times that the Union visited
4 you at your home. As you sit here, and we discuss these
5 things, do you know whether there was any other times that the
6 Union attempted to visit you at home, and maybe you weren't
7 there or --
8 A No.
9 Q Okay. I'd like to -- so I'm -- you'll see another
10 document put in front of you. And can you just tell me whether
11 you recognize this document?
12 A Yes.
13 Q And are those your initials next to one, two, and three?
14 A Yes.
15 Q And is that your handwriting where the date is written?
16 A Yes.
17 Q And your signature at the bottom?
18 A Yes.
19 Q Okay. Do you understand what this witness acknowledgment
20 is?
21 A Yes.
22 Q Okay. And so this goes through, the statement has been
23 explained to you about the proceedings, and essentially this is
24 the same things that I discussed with you when filled out your
25 statement in the first place, right?

1 A (No verbal response).
2 Q And you signed -- you filled this out on April 19th,
3 correct?
4 A Yes.
5 Q Okay. And on April 19th, were the items in number one,
6 two, and three explained to you verbally?
7 A Yes.
8 Q By who?
9 A By you.
10 Q Thank you.
11 MR. PARRY: I move into evidence this witness
12 acknowledgment as Exhibit Number 18.
13 HEARING OFFICER TA: Any objections, counsel?
14 MR. BLASI: No.
15 HEARING OFFICER TA: Employer's Exhibit 18 is admitted into
16 evidence.
17 **(Employer Exhibit Number 18 Received into Evidence)**
18 MR. PARRY: Okay. Oh, I'm sorry.
19 HEARING OFFICER TA: It's fine.
20 MR. PARRY: It's the --
21 HEARING OFFICER TA: It's on the -- yeah, on the --
22 MR. PARRY: -- exhibit and declaration.
23 Q BY MR. PARRY: Okay. This document that's been handed to
24 you, do you recognize this?
25 A Yes.

1 MR. PARRY: And I think I gave you -- okay.
2 Q BY MR. PARRY: And what do you understand this document to
3 be?
4 A This document is just a printed out version of what I
5 wrote down on --
6 Q That --
7 A -- the paper. The first --
8 Q The December --
9 A -- paper.
10 Q -- 10th statement?
11 A Um-hum.
12 Q Okay. That's been evidenced as Exhibit 17, correct?
13 A Yeah.
14 Q Okay. And you -- did you sign this declaration on
15 April 19th?
16 A Yes.
17 Q Of this year?
18 A Yes.
19 Q And that's your signature on it?
20 A Yes.
21 Q Okay. And did you sign this after signing the witness
22 acknowledgment?
23 A Yes.
24 Q Okay. And you understand that it was submitted under
25 penalty of perjury?

1 A Um-hum.

2 Q And you understand what that means?

3 A Yes.

4 Q Thank you.

5 MR. PARRY: Okay. I'd move into evidence this typed

6 declaration of Macey Sheets as Exhibit 19.

7 HEARING OFFICER TA: Okay. Objections, counsel?

8 MR. BLASI: No.

9 HEARING OFFICER TA: Okay. Can you -- so Employer's

10 Exhibit 19 admitted into evidence.

11 **(Employer Exhibit Number 19 Received into Evidence)**

12 Q BY MR. PARRY: Okay. I want to -- just a couple more.

13 MR. BLASI: I'm just going to object anticpatorially about

14 the line of inquiry here since this is a matter that the

15 Regional Director has already made an explicit finding about.

16 HEARING OFFICER TA: Okay.

17 MR. PARRY: May I give an offer of proof?

18 HEARING OFFICER TA: Yes --

19 MR. PARRY: Yeah?

20 HEARING OFFICER TA: -- please.

21 MR. PARRY: This has to do with the affect that all this

22 has on her. She has already testified that she was concerned

23 with the anonymity of her vote after being visited by the

24 Union. And since the Union's counsel was allowed -- has been

25 allowed to ask questions and elicit testimony as to the effect

1 of all of this Union conduct, I should be allowed to as well.
2 MR. BLASI: I'm not sure what counsel's referring to. I've
3 not been permitted to elicit --
4 MR. PARRY: And I --
5 MR. BLASI: -- testimony on the subject.
6 MR. PARRY: -- don't want to discuss this in front of the
7 witness that's on the stand right now, but I'm happy to do so.
8 But this goes to the potential effect that this conduct had on
9 the vote.
10 MR. BLASI: I would just say again that the Regional
11 Director's decision on this matter was clear and unequivocal,
12 and it already addressed this subject.
13 MR. PARRY: No. This is on -- I mean, this is on a
14 corollary issue, but it's got different purposes. It has an
15 effect. And in and of itself, the issue that's discussed here,
16 it's been dealt with by the Regional Director, but the affect
17 that it has as it relates to the conduct has not been.
18 HEARING OFFICER TA: So essentially what you're saying is
19 that the voided ballot is a result of the home visit?
20 MR. PARRY: Yeah. I'm -- yes. And --
21 HEARING OFFICER TA: Okay.
22 MR. PARRY: -- and it's showing that the home visit,
23 that -- the affect, and it's making a link between those
24 things.
25 HEARING OFFICER TA: All right. I'm going to go off the

1 record.

2 MR. PARRY: Can we not discuss this in front of the

3 witness? I don't want --

4 HEARING OFFICER TA: Yeah.

5 MR. PARRY: -- her to be influenced.

6 HEARING OFFICER TA: Yeah, yeah. I'm going to go off the

7 record and actually take a break to decide on this. Okay? So

8 let's take five minutes.

9 (Off the record at 10:52 a.m.)

10 HEARING OFFICER TA: Okay. Let's go back on the record.

11 Okay. So I do want to be very clear that we are not going

12 to be litigating this issue of the voided ballots. And given

13 that it's an objective standard as to the home visits, I don't

14 know how relevant it is to -- you know, to go into a line of

15 questioning about, you know, whether the witness felt -- what

16 her subjective experience was in terms of, you know, how she

17 filled out the ballot.

18 That being said, though, I will allow a very limited line

19 of questioning to it, but I do want to reiterate we're not

20 getting into the voided ballot issue. Okay?

21 MR. PARRY: Understood. And I appreciate that ruling,

22 because I do agree that the -- I'm presenting this because

23 Union's counsel was allowed to ask previous witnesses whether

24 it had an affect --

25 HEARING OFFICER TA: Right.

1 MR. PARRY: -- on their ultimate vote.
2 HEARING OFFICER TA: Um-hum.
3 MR. PARRY: And I agree that that issue is not what should
4 be considered on this. But since that's been -- that's been --
5 HEARING OFFICER TA: Right.
6 MR. PARRY: -- brought into evidence by Union's counsel,
7 should have an opportunity to do the same. And I -- and I will
8 reiterate, when it comes time, my objection to furthering that
9 line of questioning by the Union as well.
10 HEARING OFFICER TA: Okay.
11 MR. PARRY: So -- oh, I believe you have the exhibits now.
12 HEARING OFFICER TA: I do have --
13 MR. PARRY: This is the written statement.
14 HEARING OFFICER TA: This is the written statement --
15 MR. PARRY: Yes.
16 HEARING OFFICER TA: -- about the ballot. And so I'll
17 return it to the witness.
18 Q BY MR. PARRY: Now, Ms. Sheets, you've previously
19 testified that you were concerned with the anonymity of your
20 vote, correct?
21 A Yes.
22 Q And is it true that -- let me ask it in a better way
23 that's -- were you concerned with keeping your opinions on
24 whether you were for or against the Union to yourself?
25 A Yes.

1 Q Did you want anyone to know how you actually felt about
2 the Union?
3 A No.
4 Q Okay. This -- the statement that's in front of you, can
5 you tell me about when you -- well, actually, let me -- there's
6 a vertically written portion to December 27th, 2017. Do you
7 see that?
8 A Um-hum. Yes.
9 Q Let me back up. Can you -- do you recognize this
10 document?
11 A Yes.
12 Q And can you tell me what it is?
13 A It's my statement saying that my ballot was returned back
14 to my house. And with my understanding, it was supposed to be
15 confidential. And so, first off, how do you know it was my
16 ballot that had to be returned back?
17 Q Okay.
18 A So that's why I didn't want to sign the back.
19 Q So does this statement represent your feeling that you
20 didn't want to sign the ballot because you were concerned that
21 it wouldn't be anonymous?
22 A Yes.
23 Q Okay. Thank you. And how did you come to provide this
24 statement?
25 A While we were at work, I knew that the process was over --

1 and I believe you weren't there -- and wanted to make sure like
2 did everyone get a chance to do it, fill it out. And I did
3 inform you that my ballot was returned.
4 Q Okay. Now, did you come to me voluntarily?
5 A Yes.
6 Q Okay. Did I explain to you the disclosures previously,
7 that you -- it was voluntary?
8 A Yes.
9 Q And that there would be no retaliation for whether or not
10 you provided a statement?
11 A Yes.
12 Q And at the time I'd already given you those disclosures
13 previously, correct?
14 A Yes.
15 Q And did you understand as well that it was -- had to do
16 with the proceedings involving the Union and the Daily Grill?
17 A Yes.
18 Q Thank you.
19 MR. PARRY: I'd like to move into the record this written
20 statement as Exhibit Number 20.
21 HEARING OFFICER TA: Objections, counsel?
22 MR. BLASI: I mean, the Hearing Officer's already ruled on
23 the Union's objection as to this matter.
24 HEARING OFFICER TA: Okay. I'm going to admit this into
25 evidence, giving it the due -- it's due weight. And I'm

1 admitting it over Union counsel's objection.
2 So Employer's Exhibit 20 admitted into evidence.
3 **(Employer Exhibit Number 20 Received into Evidence)**
4 Q BY MR. PARRY: Do you recognize the document that's in
5 front of you now?
6 A Yes.
7 Q And can you tell me what that is?
8 A The same document but in a printed out version.
9 Q So this is the same handwritten statement regarding the
10 not signing your ballot?
11 A Yes.
12 Q Okay. And is this your signature at the bottom?
13 A Yes.
14 Q And did you execute it on April 19th?
15 A Yes.
16 Q And did you execute that after the -- receiving the
17 written disclosure where it was numbered one, two, three that
18 we discussed earlier?
19 A Yes.
20 Q And I believe that was Exhibit Number 18?
21 A Yes.
22 Q Okay. And that was the disclosure that was given to you
23 before speaking with me on April 19th?
24 A Yes.
25 Q Thank you.

1 MR. PARRY: I'd like to move this typed declaration into
2 evidence as Exhibit 21.
3 HEARING OFFICER TA: Objections, counsel?
4 MR. BLASI: The Union renews its objection as to the
5 same -- or that -- regarding the same issue raised as to
6 Exhibit 20.
7 HEARING OFFICER TA: Okay. So this is -- I'm, again,
8 giving it -- I'll give it its due weight. And I'm admitting
9 Employer's Exhibit 21; is that right?
10 UNIDENTIFIED SPEAKER: Yes.
11 MR. PARRY: Yes.
12 HEARING OFFICER TA: 21 over Union counsel's objection.
13 **(Employer Exhibit Number 21 Received into Evidence)**
14 MR. PARRY: Thank you. I have no further questions subject
15 to redirect.
16 HEARING OFFICER TA: Okay. Counsel, your cross.
17 MR. BLASI: Yeah. I'm going to need a minute to read over
18 my notes from his examination.
19 HEARING OFFICER TA: Counsel, do you need to -- do you need
20 some more time --
21 MR. BLASI: Yeah.
22 HEARING OFFICER TA: -- to be ready?
23 MR. BLASI: I mean, I'm trying to process a lot of
24 information. So I'd like another minute, if I could.
25 HEARING OFFICER TA: Okay. Do we need to go off the

1 record?

2 MR. BLASI: I mean, it's up to you. I don't know that it

3 matters. But I would like at least a moment to review my

4 notes.

5 HEARING OFFICER TA: Okay.

6 MR. BLASI: Why don't we go off the record for a minute --

7 HEARING OFFICER TA: Okay.

8 MR. BLASI: -- two minutes --

9 HEARING OFFICER TA: Okay.

10 MR. BLASI: -- or something.

11 HEARING OFFICER TA: Okay.

12 MR. BLASI: All right. I'm just going to step outside for

13 a second.

14 HEARING OFFICER TA: Off the record.

15 (Off the record at 11:10 a.m.)

16 HEARING OFFICER TA: Okay. Let's go back on the record.

17 Go ahead, counsel.

18 **CROSS-EXAMINATION**

19 Q BY MR. BLASI: Ms. Sheets, good morning?

20 A Good morning.

21 Q I just want to ask you a few questions in follow-up to

22 your earlier testimony. So you discussed a couple of different

23 occasions when organizers or workers from the restaurant came

24 to visit you at home?

25 A Only one like co-worker that I knew.

1 Q One co-worker. And which co-worker was that?
2 A He doesn't -- he doesn't employ -- I believe he doesn't
3 work with us anymore.
4 Q Do you remember what his name was?
5 A I think it was Salvador.
6 Q Salvador?
7 A Um-hum.
8 Q Is that Salvador Tello?
9 A I -- I was fairly new at the time. I was just starting to
10 get to know people.
11 Q Okay. Anyway, so leaving all that background aside --
12 A Um-hum.
13 Q -- there was an occasion when you were visited by
14 Mr. Sorza, sitting next to me, and a woman whose name you don't
15 recall at your home sometime before the election ballots were
16 mailed; is that right?
17 A Yes.
18 Q Okay. And you had a conversation with them about the
19 subject of Union organizing and prospects of a union at the
20 hotel; is that --
21 A Yes.
22 Q -- right? And is it fair to say during the course of that
23 conversation, Mr. Sorza and the woman who was there made
24 arguments in favor of unionization?
25 A They weren't arguing; they were just trying to state what

1 the Union could do to benefit me. And everything they stated
2 kind of really doesn't benefit me at all.
3 Q Okay. But they were trying to give you information about
4 why the Union would benefit you?
5 A Yes.
6 Q That they thought you would be convinced by?
7 A Yes.
8 Q Okay. Or at least that was the perception that you had,
9 right?
10 A Yes.
11 Q Okay. And you said that conversation lasted about
12 20 minutes, right?
13 A Probably. I --
14 Q Something like that?
15 A -- don't recall. Yeah.
16 Q That's fine. Yeah. So at no point during this
17 conversation did either of those two individuals threaten you,
18 did they?
19 A No.
20 Q Okay. And you didn't feel concerned about your physical
21 safety during that conversation, did you?
22 A No.
23 Q Okay. So then you testified about a second occasion when
24 you were visited at home, and I think you testified that
25 Mr. Sorza was there again and -- but it was with a different

1 woman; is that right?
2 A No. It was the same woman.
3 Q Oh. So the same woman?
4 A Um-hum.
5 Q Okay. And you said -- I believe you testified that they
6 wanted to make sure that you had received your ballot; is that
7 right?
8 A Yes.
9 Q Okay. And so if I could call your attention to the
10 statement that's dated December 10. It's marked Employer's
11 Exhibit 17. Do you have that document in front of you? See
12 you -- it says here that you -- it says, "It was the Union" --
13 I'm reading sort of towards the middle of the page. It said,
14 "It was the Union. They wanted to confirm I got my ballot. I
15 answered yes, and had already filled it out and sent it in" is
16 that an accurate description of what you told them at the time?
17 A At the time, I did tell them that.
18 Q Okay. So you didn't have the ballot with you as you were
19 speaking to them then since you had already --
20 A I --
21 Q -- mailed it in?
22 A I actually had the ballot at my home. But I'd said I
23 mailed it in so they could stop talking to me.
24 Q I see. It was to sort of get rid of them?
25 A Yes.

1 Q I see. But you weren't standing there with the ballot
2 and --
3 A No.
4 Q -- as you were talking to them or anything like that?
5 A No.
6 Q Okay. And at some point they offered to give you a ride
7 to the post office, if you needed one; is that right?
8 A Yes.
9 Q That must have -- when did that happen in the
10 conversation?
11 A Probably right before the conversation I had that I
12 already filled it out. Like right after he probably asked if I
13 needed help with filling it out or anything like that, if I
14 needed a ride or something like that.
15 Q Okay. Do you remember specifically what he said at this
16 point?
17 A "Would you like" -- "Do you need a ride to the post
18 office? Or do you want me to drop it off for you?" And I told
19 him no.
20 Q He offered to drop it off for -- well, let me -- strike
21 that. The specific offer to you was to give you a ride to the
22 post office, right?
23 MR. PARRY: Misstates her testimony.
24 THE WITNESS: And --
25 HEARING OFFICER TA: Wait. I mean, that was part of her

1 testimony. So I'm going to overrule the objection.
2 Go ahead and answer.
3 Q BY MR. BLASI: The offer to you was to give you a ride to
4 the post office if you needed one; is that right?
5 A Yes. As well as if I needed pretty much help dropping it
6 off, which I don't need someone else to take my mail. That's
7 mine to put it in a post office.
8 Q And did Mr. Sorza or anybody else give you information
9 about -- or impress upon you the need to follow the
10 instructions as far as filling out the ballot?
11 A They explained how to fill it out, yes.
12 Q Did --
13 A And I kind of just blew is off because I knew how to fill
14 it out. They informed us before the ballots were given to us
15 how to fill out yes in a no box.
16 Q "They" being who?
17 A The Daily Grill.
18 Q You mean management for the Company?
19 A Yeah. They explained what the ballot would be like,
20 and --
21 Q So they also -- so the Daily Grill had already given you
22 information to --
23 A Yes.
24 Q -- try to explain to you how to fill out the ballot; is
25 that right?

1 A Not exactly how to fill it out, but, I mean, they showed
2 us an example of what a ballot could look like so we didn't --
3 we weren't surprised when we got it in the mail.
4 Q All right. They gave you information on what it was --
5 what was involved in filling out the ballot?
6 A Yes.
7 Q Okay. And they -- I think you testified earlier that they
8 invited -- the management, I guess, invited you to come to the
9 hotel to drop it off?
10 A They just informed --
11 MR. PARRY: I'm going to -- sorry.
12 Objection, and misstates her testimony.
13 HEARING OFFICER TA: Counsel, can you rephrase?
14 Q BY MR. BLASI: Did someone at the hotel -- management of
15 the hotel invite you to come to the hotel or suggest that you
16 could come to the hotel and drop off the ballot at some
17 location at the hotel?
18 A The hotel didn't inform me --
19 HEARING OFFICER TA: Hang on. Wait.
20 MR. BLASI: I'm sorry. I'm sorry.
21 HEARING OFFICER TA: Are you object --
22 MR. PARRY: I'm objecting.
23 MR. BLASI: I'm misspeak --
24 HEARING OFFICER TA: Is there --
25 MR. PARRY: I would object.

1 No. That's okay. You can --
2 HEARING OFFICER TA: Is there an objection?
3 MR. PARRY: -- ask the question.
4 MR. BLASI: I'm misspeaking because I'm afraid of the
5 hotel. It's, you know, a hotel. It's not the hotel.
6 HEARING OFFICER TA: Okay.
7 Q BY MR. BLASI: Did someone for the Daily Grill at some
8 point suggest that you bring your ballot to the restaurant so
9 you could drop it off at some location at the restaurant?
10 A They offered that, "If you need a spot to drop off the
11 ballot, there was a drop-off mailing spot in the hotel right
12 when you walk in the door."
13 Q Got it. Okay.
14 A "So it would be fairly easy for you to just bring it with
15 you to work and drop it off."
16 Q Got it. Okay. You mentioned earlier in your testimony
17 that you had gotten a promotion recently; is that right?
18 A Yes.
19 Q And what was the promotion that you got? From what
20 position to what position?
21 A A host to a server.
22 Q And is that a position that you find preferable for some
23 reason?
24 A Yes.
25 Q Why? Is it a better job?

1 A I'm going to make more money.
2 Q You're going to make more money. Okay. And when were you
3 given that promotion?
4 MR. PARRY: I'm going to object. This is irrelevant.
5 HEARING OFFICER TA: Yeah. Counsel, what's the relevance?
6 MR. BLASI: Well, I think it's relevant about the --
7 actually, I'm not going to -- I would have this conversation,
8 but not in the presence of the witness.
9 MR. PARRY: And I think it --
10 MR. BLASI: I think it's --
11 MR. PARRY: -- was noted --
12 MR. BLASI: I think it's -- there's --
13 MR. PARRY: -- and it's not at issue.
14 MR. BLASI: I think there's no question that this is --
15 HEARING OFFICER TA: Okay.
16 MR. BLASI: -- relevant. But I --
17 HEARING OFFICER TA: Okay.
18 MR. BLASI: I think that it's a question that needs to be
19 discussed outside the presence of the witness.
20 HEARING OFFICER TA: Okay. Let's go off the record.
21 Could you step outside?
22 THE WITNESS: Of course.
23 (Off the record at 11:23 a.m.)
24 HEARING OFFICER TA: Okay. Go ahead, counsel.
25 MR. BLASI: I think it's quite self-evidently relevant that

1 a witness that the Employer is putting on was recently given a
2 promotion, because that could affect their interests, and,
3 therefore, the substance of their testimony. I think that this
4 is the sort of inquiry that is regularly pursued in Board
5 hearings and other context in which the credibility of a
6 witness is at issue --
7 HEARING OFFICER TA: Um-hum.
8 MR. BLASI: -- and factors that relate to favoritism they
9 may have benefited from are certainly relevant in weighing the
10 credibility of a witness' testimony.
11 HEARING OFFICER TA: Okay.
12 MR. PARRY: It's totally irrelevant. It's not at issue.
13 The idea that the Employer cannot continue in the normal course
14 of business in managing its staff and filling the positions it
15 needs to fill is ludicrous. She's not testified that she's
16 been promoted into management or in -- and anywhere even close
17 to management. She's still an hourly employee. I don't want
18 to get into a line of inquiry we have to now scrutinize every
19 single hiring and promotion practice that the business has.
20 I think it should be self-evident and obvious that in a
21 restaurant, people come in at an entry-level position, like a
22 hostess, with -- and then people get promoted because some
23 people believe they have openings in other areas. And after
24 someone has a certain amount of experience, it's natural to go
25 there. And there's been no -- there's no evidence, there's no

1 charge whatsoever. It's not at issue as to whether they're
2 doing anything out of the ordinary or illegal by managing their
3 staff in the way that they need to do it to operate the
4 restaurant.
5 MR. BLASI: Well, if I --
6 MR. PARRY: And it's -- go ahead.
7 MR. BLASI: If I can be permitted.
8 Well, first of all, I haven't been permitted the
9 opportunity to ask any questions about those issues that the
10 Employer just asserted there's no evidence for. Second, I
11 would just point out that it's relevant evidence. What weight
12 the Hearing Officer determines is appropriate to give it is a
13 question for the Hearing Officer and the Region to determine.
14 But I don't think that there would be any question under
15 standard assessment of witness credibility that the possibility
16 that a witness has been induced to give certain testimony or
17 color their testimony in a certain way to the benefit of a
18 party that has recently provided a favor or a economic benefit
19 to them, you know, I don't think there's any question that that
20 would be a relevant consideration. I think it's up to the
21 Hearing Officer what value to -- or what weight to place on it.
22 But it's certainly relevant.
23 MR. PARRY: I'd like to point out the irony of an
24 organization that purports to promote working conditions and
25 better wages for these employees, and that's what they're out

1 to get, as an issue now with an employee whose bettered her
2 circumstances by --
3 MR. BLASI: Well --
4 MR. PARRY: -- getting a little bit better --
5 HEARING OFFICER TA: Well --
6 MR. PARRY: -- job --
7 HEARING OFFICER TA: Okay.
8 MR. PARRY: -- with some better wages --
9 HEARING OFFICER TA: That's --
10 MR. PARRY: -- that just is --
11 HEARING OFFICER TA: Okay. Yeah. That's not quite the
12 issue. But I think because this is a post-election hearing
13 and, you know, the Hearing Officer does make credibility
14 determinations in a post-election hearing, I'm going to -- I'm
15 going to allow the line of inquiry, but let's keep it tight
16 and -- you know, I don't want to spend too long on it.
17 MR. BLASI: I wasn't intending to, and --
18 HEARING OFFICER TA: Yeah.
19 MR. BLASI: -- we probably would be done by now but for
20 the --
21 HEARING OFFICER TA: Right.
22 MR. BLASI: -- objection.
23 HEARING OFFICER TA: Right. Okay. So I'm going to
24 overrule the objection. Can somebody grab our witness?
25 All right. Thank you.

1 Okay. Go ahead, counsel.
2 MR. BLASI: Okay.
3 Q BY MR. BLASI: I don't recall exactly where we left off,
4 but I think you had testified that you were recently given a
5 promotion. And so could you just repeat again, just because my
6 recollection is not as good as I would hope it would be -- what
7 position you were promoted from and what position you were
8 promoted into?
9 A I was promoted from being a host into becoming a lobby bar
10 server --
11 Q Okay.
12 A -- which is known as a cocktail server.
13 Q A cocktail server. And you'd mentioned earlier that there
14 was better pay for the latter position; is that right?
15 A Not a -- I would not say a better pay. I still get paid
16 hourly the same, but I get to interact with guests. And if
17 they tip me, I get more money.
18 Q So you have more opportunity for tips?
19 A Yeah.
20 Q Okay.
21 A Yes.
22 Q And when were you given this promotion?
23 A Like last week, two weeks ago.
24 Q Just in the last two weeks?
25 A Yes.

1 Q Okay. And how long have you been employed at the Daily
2 Grill?
3 A Almost a year.
4 Q Almost a year. So not all that long. The other --
5 MR. PARRY: Objection. It's argumentative. There's no
6 question.
7 MR. BLASI: That's fine.
8 HEARING OFFICER TA: So let's -- yeah. That's --
9 MR. BLASI: That's -- that's --
10 HEARING OFFICER TA: -- sustained.
11 MR. BLASI: It's a straight comment.
12 Q BY MR. BLASI: Are you familiar with the other workers who
13 work as hosts at the Daily Grill?
14 A Yes.
15 Q And who are some of those individuals?
16 MR. PARRY: I would object --
17 THE WITNESS: I don't want to --
18 MR. PARRY: -- as to going into other --
19 HEARING OFFICER TA: Yeah.
20 MR. BLASI: But it's --
21 MR. PARRY: It's irrelevant. Again, it's kind of beyond
22 the scope that we just discussed.
23 MR. BLASI: It is relevant --
24 HEARING OFFICER TA: Can you.
25 MR. BLASI: -- and it's specifically related to the scope

1 we just discussed.

2 HEARING OFFICER TA: Can you narrow the question? It seems

3 a little broad.

4 MR. BLASI: Perhaps.

5 HEARING OFFICER TA: Okay.

6 MR. BLASI: Let me think about it for a second.

7 HEARING OFFICER TA: Okay.

8 Q BY MR. BLASI: Do you know how many hosts there are

9 employed at the Daily Grill?

10 A As of right now, five.

11 Q There are five. Were there six before you --

12 A No.

13 Q -- were promoted?

14 A I'm -- I'm the fifth. I'm still a host. I got promoted

15 as a server, but I will still be hosting and serving.

16 Q I see. So now you're doing both roles?

17 A Yes.

18 Q Okay.

19 A If they need me out in the lobby, I will work the lobby.

20 If they need me as a host, I will work as a --

21 Q Sure.

22 A -- host.

23 Q Sure. And of the five individuals who work as hosts, do

24 you have the most seniority of those five persons?

25 A No. But if management sees me doing a good job, and

1 knowing I'm good at my job and I can take on more
2 responsibility, I don't see why not they don't promote me.
3 Q Sure.
4 MR. BLASI: No further questions on that issue --
5 HEARING OFFICER TA: Okay.
6 MR. BLASI: -- but I do want to take a moment to see if I
7 have questions I might want to ask on other issues.
8 I think that the Union has no further questions for this
9 witness. Thank you.
10 HEARING OFFICER TA: Okay.
11 **REDIRECT EXAMINATION**
12 Q BY MR. PARRY: Ms. Sheets --
13 HEARING OFFICER TA: Redirect. Yeah.
14 MR. PARRY: Thank you.
15 Q BY MR. PARRY: Ms. Sheets, we marked -- Exhibit 17 was
16 your December 10th handwritten statement. Do you recall --
17 A Yes.
18 Q -- that? At the time you wrote this statement, had you
19 been given any sort of promotion?
20 A No.
21 Q Okay. You were working as a host?
22 A Yes.
23 Q And looking at what we've marked as -- the other
24 handwritten statement -- and I can give you the number in just
25 a moment here -- Exhibit 21, that's the handwritten statement

1 regarding signing the mail ballot?
2 HEARING OFFICER TA: I'm sorry. I have -- I have
3 different --
4 MR. PARRY: Oh, let's work that out.
5 HEARING OFFICER TA: Yeah. Exhibit 17 I have as the
6 handwritten statement dated December 10th. Is that correct?
7 MR. PARRY: No -- yes. That's --
8 HEARING OFFICER TA: Okay.
9 MR. PARRY: Yes.
10 HEARING OFFICER TA: Okay. And then Exhibit 18 I have as
11 the witness acknowledgment.
12 MR. PARRY: Yes.
13 UNIDENTIFIED SPEAKER: Yes.
14 HEARING OFFICER TA: 19 is the typed out statement of the
15 December 10th statement.
16 MR. PARRY: Right.
17 HEARING OFFICER TA: And then Exhibit 20 is the
18 handwritten --
19 MR. PARRY: Oh, yes, yes, yes. That's --
20 HEARING OFFICER TA: Is the handwritten statement --
21 MR. PARRY: Yes. I'm sorry. I'm talking about Exhibit 20.
22 HEARING OFFICER TA: Okay.
23 MR. PARRY: You're right.
24 HEARING OFFICER TA: Okay.
25 MR. PARRY: You're right. And the typed version of that is

1 21.

2 HEARING OFFICER TA: Right. Okay.

3 MR. PARRY: Okay.

4 HEARING OFFICER TA: Great.

5 Q BY MR. PARRY: So looking at Exhibit Number 20, which is

6 the handwritten statement about the -- signing the mail ballot,

7 at the time you wrote this statement, had you been given a

8 promotion by the Daily Grill?

9 A No.

10 Q Okay. And is the fact that you've been promoted and are

11 now working sort of splitting time as a host and a cocktail

12 server in the lobby bar, has that affected your feelings as to

13 how the -- as to the Union's conduct?

14 A Can you restate that?

15 Q The fact that you've been promoted -- does -- the

16 promotion that you got, did that have any effect on your

17 testimony today?

18 A No.

19 Q Thank you.

20 MR. PARRY: No further questions.

21 MR. BLASI: No further questions for this witness.

22 HEARING OFFICER TA: Okay. Just a few follow-ups.

23 Ms. Sheets, did you tell any co-workers about the home

24 visits?

25 THE WITNESS: No.

1 HEARING OFFICER TA: Okay. So you didn't talk to any co-
2 workers about either your home visits -- well, let's just -- so
3 to clarify, you did not talk to any co-workers about the home
4 visits from the Union?
5 THE WITNESS: No.
6 HEARING OFFICER TA: Okay. Did any co-workers tell you
7 about the home visits they received from the Union?
8 THE WITNESS: No.
9 HEARING OFFICER TA: Okay. In your experience working
10 since the Union election, have you heard discussions about the
11 home visits?
12 THE WITNESS: They were discussed throughout, but not
13 strictly to me.
14 HEARING OFFICER TA: Okay. And would you say they were
15 discussed in the last four months?
16 THE WITNESS: Yes.
17 HEARING OFFICER TA: Okay. And with what regularity are --
18 did your co-workers talk -- did you hear your co-workers
19 talking about it on a daily basis?
20 THE WITNESS: Yes. And how like frustrating and annoying
21 it was for them to have to go through it, and for them not only
22 going to talk to them but to talk to other like members of the
23 family and stuff like that.
24 HEARING OFFICER TA: Okay. And would you say you have
25 heard them talk about it on a daily basis in the last month?

1 THE WITNESS: I've probably -- not on a daily basis, but
2 I've definitely heard it in the past month a few times, yes.
3 HEARING OFFICER TA: Okay. Would you say weekly or a
4 couple of times a month?
5 THE WITNESS: I would probably say -- probably just a
6 couple of times a month, because not a lot of people -- they
7 want to just drop it. So they don't want to keep talking about
8 something that is the same thing over and over.
9 HEARING OFFICER TA: Okay. And would you say that as more
10 time passes from the time of election, that there's been less
11 discussion about the home visits?
12 THE WITNESS: Everyone just kind of like brings it up here
13 and there, so I wouldn't consider it's less. It's still just
14 like frustrating to them that it had to happen.
15 HEARING OFFICER TA: So in your experience, the discussion
16 about the home visits hasn't increased or decreased, it's just
17 sort of stayed the same?
18 THE WITNESS: Yes.
19 HEARING OFFICER TA: Okay. Great.
20 Any other questions, counsel?
21 MR. PARRY: None from me.
22 HEARING OFFICER TA: Okay. All right. So you're excused.
23 I do want to remind you that a sequestration order is in
24 effect, which means that you cannot discuss your testimony with
25 anyone until the conclusion of the hearing. Okay?

1 THE WITNESS: Yes.
2 HEARING OFFICER TA: Thank you very much.
3 THE WITNESS: Um-hum. Thank you so much.
4 HEARING OFFICER TA: All right. Counsel, how many more
5 witnesses do you have?
6 MR. PARRY: Just one.
7 HEARING OFFICER TA: Just one more. Okay.
8 MR. PARRY: And we're hoping we can get her done before we
9 break for lunch.
10 HEARING OFFICER TA: Yeah. Let's see if we can do it.
11 MR. PARRY: Okay.
12 HEARING OFFICER TA: Thank you.
13 Okay. Let's go back on the record.
14 Can you please state your name and spell it for the record?
15 MS. MENDEZ: Stephanie Mendez. S-T-E-P-H-A-N-I-E,
16 M-E-N-D-E-Z.
17 HEARING OFFICER TA: Okay. And can you please raise your
18 right hand?
19 Whereupon,
20 **STEPHANIE MENDEZ**
21 having been duly sworn, was called as a witness herein and was
22 examined and testified as follows:
23 HEARING OFFICER TA: Okay. Great. Just a couple of
24 reminders before we begin. There's a microphone in front of
25 you. It does not amplify your voice --

1 THE WITNESS: Okay.
2 HEARING OFFICER TA: -- but it does record everything you
3 say.
4 THE WITNESS: Okay.
5 HEARING OFFICER TA: So please make sure that all your
6 responses are verbal. So no nodding --
7 THE WITNESS: Okay.
8 HEARING OFFICER TA: -- your head or shaking --
9 THE WITNESS: Yeah.
10 HEARING OFFICER TA: -- your head.
11 If you don't understand a question that's asked of you,
12 feel free to ask for clarification. And also please let the
13 attorneys finish asking their question before you respond so
14 that we avoid talking over each other.
15 THE WITNESS: Okay.
16 HEARING OFFICER TA: And if there's an objection to a
17 question that's being asked, please hold your response until I
18 make a ruling on the objection.
19 THE WITNESS: Okay.
20 HEARING OFFICER TA: Okay. Great. Thank you.
21 Counsel.
22 MR. PARRY: Thank you.
23 **DIRECT EXAMINATION**
24 Q BY MR. PARRY: Hello, Ms. Mendez. Thank you --
25 A Hi.

1 Q -- for being here. Can you tell us where you work?
2 A I work at the Daily Grill on Century Boulevard.
3 Q And I apologize. You might have to speak up a little
4 bit --
5 A Oh.
6 Q -- so the court reporter can hear.
7 A Okay. I work at the Daily Grill on Century.
8 Q Okay. How long have you worked at the Daily Grill on
9 Century?
10 A Two-and-a-half years.
11 Q What do you do there?
12 A I'm the lead host.
13 Q Okay. And as the lead host, are you an hourly employee?
14 A Yeah.
15 Q Okay. Have you worked continuously at the Daily Grill on
16 Century from November -- around November 1st of 2017 until
17 today?
18 A Yes.
19 Q Okay. And in that time period, are you aware of the Union
20 election that took place?
21 A Yes.
22 Q Okay. And focusing on times around the November and
23 December of 2017 --
24 A Um-hum.
25 Q -- or anything close to that, maybe even a little bit

1 before, was there ever a time when people who you understood to
2 be representatives of the Union came to visit you at your home?
3 A Yes.
4 Q And when did that happen? How many times did that happen?
5 A I believe three or four times.
6 Q Okay. Let's talk about the first time.
7 A Okay.
8 Q What -- when did the first incident happen?
9 A The first incident happened before there was an election
10 to become union. It was when they were getting votes to -- to
11 get the -- to get an election for a -- a union. And I wasn't
12 home, but I kept getting messages from the people that I lived
13 with that they were constantly coming over.
14 Q Okay. And I just want to make a clarification that -- as
15 for that process and whether you signed anything --
16 A Yeah.
17 Q -- and/or -- or voted a certain way. I don't want to know
18 that information.
19 A Okay.
20 Q You're entitled to keep that to yourself.
21 A Okay.
22 Q And so I won't be asking for that.
23 A Okay.
24 Q So the first time was at your home?
25 A Yes.

1 Q And you weren't home?
2 A Yes.
3 Q And who were the people that you live with? They're
4 roommates or --
5 A My parents.
6 Q -- family?
7 A My --
8 Q Okay.
9 A Yeah, my parents, family.
10 Q And what did your family tell you about that first visit?
11 A They just told me that some people were looking for me
12 from work, and to just get back to them or find out who they
13 were or whatever. And I believe they talked to my sister.
14 Q Which sister is that?
15 A Melissa.
16 Q Okay. Is she older, younger?
17 A She's younger than me.
18 Q Okay. And you -- and Kimberly is also your sister, right?
19 A Yes, Kimberly's --
20 Q Kimberly --
21 A -- also my --
22 Q -- Mendez?
23 A -- sister.
24 Q And she works at Daily Grill as well?
25 A Yes.

1 Q Okay. Is Melissa younger than Kimberly?
2 A Yes.
3 Q Okay. Does she work at the Daily Grill?
4 A No.
5 Q Okay. Do you know on that first visit who the individuals
6 were from the Union?
7 A No, I don't know.
8 Q Do you know how many came?
9 A I know two came.
10 Q Do you know whether they were men or women or a man --
11 A Huh-uh.
12 Q -- and a woman?
13 A I don't know.
14 Q Okay. Thank you. Did your parents tell you anything else
15 about what the Union people said to them?
16 A Huh-uh. No.
17 Q Did your parents tell you what they said to the Union?
18 A No.
19 Q Okay. And you believe -- you said that you began
20 receiving messages from the Union; is that correct?
21 A Yes. On the second or third visit when they came, I think
22 that's when they got Kimberly, they -- they talked to Kimberly,
23 and Kimberly gave them my phone number, and they texted me to
24 come up with a day where we can meet and like they could speak
25 to me. And I just told them I was really busy and I wasn't

1 sure when I would be able to.
2 Q Did you ever agree to meet with them in response to those
3 text messages?
4 A Not that I can remember, no, because --
5 Q Did you ever -- I'm sorry.
6 A Sorry. It's because I was at school at the time, and
7 doing work. And like I just had a lot going on. So I -- I
8 just told them that.
9 Q Okay. Did you ever invite them -- so let me back up. So
10 did you do this via text message or a phone call?
11 A Text message.
12 Q Do you still have the text messages?
13 A No, I don't.
14 Q Okay. So you told them that you basically don't have
15 time --
16 A Yeah.
17 Q -- to meet with them?
18 A Um-hum.
19 Q Did you ever invite them to come to your home?
20 A No.
21 Q Okay. What was the second -- and who was the person you
22 were texting with?
23 A I believe it was Alex, who is a Union representative.
24 Q And this is -- and, as far as you know, the only way they
25 got your phone number is through your sister?

1 A Yes, that's --
2 Q Okay.
3 A -- as far as I know.
4 Q What was the second time they came to visit you at your
5 home?
6 A They -- they just showed up and I happened to be home.
7 And when I talked to them, I was a little upset with them
8 because I had heard rumors going around work that they spoke to
9 my sister and they thought my sister was me. So they were
10 telling my co-workers that I was pretending not to be myself,
11 and I was pretending like I was someone else so I wouldn't have
12 to speak to them. So I told them that I didn't appreciate that
13 and that I was upset with them. And they were like, oh, I'm
14 sorry about that. We didn't mean to make you upset, but we
15 didn't know. But I still didn't -- I didn't like that at all.
16 Q When you -- which sister did they --
17 A Melissa.
18 Q -- speak to?
19 A Melissa.
20 Q Okay. And when you spoke to them and said you didn't
21 appreciate that, or whatever, to the effect --
22 A Yeah.
23 Q -- that you just told me, who was it that you spoke to?
24 A Alex.
25 Q And how did you tell him? Is it -- was it via a personal

1 discussion?
2 A Yeah, personal. I told him --
3 Q Where did you see him?
4 A He came to my house, and that's when I told him.
5 Q Oh, so this -- he came to your house again then?
6 A Yes.
7 Q Okay. So the second visit is when he came and your sister
8 Melissa answered the door?
9 A Yeah.
10 Q You weren't home?
11 A No, I wasn't home.
12 Q You didn't speak to them?
13 A No.
14 Q But out of that one, you heard the rumor that they were
15 saying -- the Union was saying that you were pretending to not
16 be yourself?
17 A Yes.
18 Q Okay. Do you know what they said to Melissa in that --
19 A They actually --
20 Q -- instance?
21 A Yeah. She told me that they told her that she fit the
22 description of what my co-workers were telling them that I look
23 like. She was like, oh, yeah, we'll we're sisters. And, I
24 guess, they thought that it was me, and they were like trying
25 to get it out of her, like saying, are you sure? Like we've

1 seen you at the hotel. And she was like, no, I've never been
2 to the Daily Grill. I've never been to The Westin. And they
3 were like, oh, okay. And then that's when I went back to work.
4 My co-workers were telling me like, oh, yeah, they said they
5 went to your house and you were -- you answered the door and
6 you said you weren't Stephanie. And I was like, I haven't even
7 been home. Like, I don't know what you're talking about. And
8 that's when I asked my sister, and she told me.
9 Q And do you know who it was that visited your home on that
10 instance when they talked to your sister?
11 A No, I don't know who it was.
12 Q Okay. Do you know how many people it was?
13 A I just know it was two.
14 Q Okay. Do you know if it was -- if they were men, women or
15 a man --
16 A Men.
17 Q -- and a woman?
18 A It was two men.
19 Q Two men?
20 A Yes.
21 Q How old is your sister Melissa?
22 A She's 19 right now.
23 Q Okay.
24 A She was 18.
25 Q So she was 18?

1 A Yeah.
2 Q Do you know if she was home by herself?
3 A Yes, she was.
4 Q She was home by herself?
5 A Yeah.
6 Q Did she -- did she tell you how she felt about these two
7 men coming to your home and sort of questioning her on --
8 A Yeah.
9 Q -- who she was?
10 A She -- she felt uncomfortable just because she felt like
11 they were assuming like she was like lying about something.
12 And she was like, no, like, I've never even been to the hotel.
13 Like, I don't know what you're talking about. But, I don't
14 know, she didn't really care too much. She was just like, who
15 are these people that keep coming? And I was like, I have no
16 idea.
17 Q So as far as you know, did Melissa have any idea who those
18 people were?
19 A No. She didn't know.
20 Q She just saw two strange men show up at her home?
21 A Yeah.
22 Q Okay. And, again, do you know if anyone invited them to
23 your home that day?
24 A No.
25 Q What -- do you know about when this was? Like maybe even

1 just a month?
2 A No. It was before the election, though. It was way
3 before the election.
4 Q Before the ballots went out?
5 A Before the ballots went out, yeah.
6 Q Okay. Do you know what time of day it was?
7 A Yes. I believe it was around the afternoon, because I was
8 at school.
9 Q Okay. Now, let's talk about the -- that was the second
10 time?
11 A Um-hum.
12 Q Let's talk about the third time.
13 A Um-hum.
14 Q When, if you can recall, was the third visit?
15 A It was, again, before they -- before they sent out the
16 request to have an election for the Union.
17 Q Okay.
18 A And --
19 Q Can I -- was it before they sent the ballots out?
20 A No, no, no. It was before -- oh, no, no, no. Yeah.
21 There was -- there was another time before the -- before the --
22 I mean, the last time that I spoke to them was that third time
23 when -- it was before we even got the request to have an
24 election for a union at the Daily Grill.
25 Q Okay.

1 A And they came to my house one more time after that, but I
2 didn't see them.
3 Q Okay.
4 A I just was home.
5 Q So the -- so we're still talking about the third time --
6 A Um-hum.
7 Q -- right?
8 A Yeah.
9 Q And was -- do you know whether this was in November or
10 December?
11 A November.
12 Q Okay. And how many people showed up that time?
13 A Two people.
14 Q And you spoke to them this time, correct?
15 A Yes.
16 Q And do you -- did you recognize the two people?
17 A Yes. It was Alex and him.
18 Q And when you say, "him," are you -- you're pointing at --
19 A Sergio I think.
20 Q -- Mr. Sorza?
21 A Yeah.
22 MR. PARRY: Is that right? Did I get that right? Okay.
23 Q BY MR. PARRY: And what did Alex and Mr. Sorza say to you
24 that time?
25 A They were just talking to me about the Union. And then

1 that's when I confronted them about what they had said to my
2 sister and what they were saying to my co-workers. And then
3 they apologized for that. And then they were just talking to
4 me about how the Union would benefit me and stuff like that.
5 Q Okay. Then what did you say to them in response to that,
6 if anything?
7 A I was just -- well, at first, I was just talking to them
8 about how I didn't -- I didn't really want to talk about that
9 in that moment just because I was upset about what they were
10 saying about me at work.
11 Q And how did all that make you feel, those kind of --
12 A I was really upset. I was extremely upset. That's why
13 like when they did come to my house, I didn't even want to see
14 them.
15 Q Okay. So they -- you didn't invite them to your house?
16 A No, I didn't.
17 Q And it wasn't a welcomed visit?
18 A No.
19 Q Okay. And how long did that visit last?
20 A About like five minutes.
21 Q And how did it end?
22 A They just left.
23 Q Did you tell them you didn't want to talk about it, and
24 they left?
25 A They talked to me about it a little bit, and then they

1 left.
2 Q Well, how were they -- how was their demeanor? Like were
3 they being pushy or persistent?
4 A A little bit, yes, because I had told them that I was
5 upset with them, and they were like, oh, well, we're sorry,
6 but, and then they just kept on talking about it.
7 Q Okay. Now, was -- were there any -- I think you said
8 there were like four or five visits. So moving on to the next
9 one, when was the next visit to your home?
10 A The next visit to my home was in December when the ballots
11 had already been sent out. And I was home with Kimberly, my
12 sister. And I believe Kimberly -- and my sisters were on their
13 way to Universal Studios when the Union came, because we
14 recognized their cars outside because they had come so many
15 times, and we stayed inside. And I was like, I don't want to
16 go outside and talk to them. And she's like, I don't want to
17 go outside either.
18 But I remember as I was coming into the house, I saw two
19 envelopes in our mail, but I didn't grab them. I don't know
20 why. And I was like, I think our ballots are outside, Kim.
21 And she's like, are -- are you serious? And I was like, yeah,
22 go get them. She's like, I don't want to see them, though.
23 And I was like, just run outside and grab them and then come
24 back inside. And Kimberly ran out, and then that's when they
25 came up to her and started talking to her about the election.

1 Q Can I ask, why did the -- the Union being there, and you
2 saw them, why did that make you want to go grab your ballots?
3 A Because when we had the meeting about the election, we
4 were told that we weren't allowed to talk to anyone about our
5 votes, and to make sure that nobody knew when we were going to
6 send them out and nobody tried to send them out for us. And
7 just because I didn't really like trust them in a way. So I
8 told them -- told her to go grab them really quick.
9 Q Okay.
10 A So she did.
11 Q And when you said -- I think you identified that it was
12 Kimberly, who's your sister, and --
13 A Yes.
14 Q -- you just said my sister ended up -- and is that
15 Melissa? So was it you, Kimberly, and Melissa?
16 A Me, Kimberly, Melissa, and then I have one other sister.
17 Q Okay. And what's your other sister's --
18 A Jacqueline.
19 Q Jacqueline. Okay?
20 A Yeah.
21 Q So all four of you were there?
22 A Um-hum.
23 Q And did you speak at all to the Union people?
24 A No. I didn't want to.
25 Q And who were the individuals from the Union then that

1 showed up?
2 A It was Alex and Gustavo, but he's not in the Union. He
3 was just one of our old employees -- or --
4 Q And --
5 A -- old co-workers.
6 Q And do you have any understanding as to why Gustavo was
7 with them?
8 A Just because one of the main reasons why the -- the Union
9 felt like we should have a union was because of an incident
10 that happened with Gustavo. And I feel like it was just to
11 like basically get like sentiment from people and like make
12 people feel like it was for a good cause or something like
13 that, because that's what they were apparently telling
14 Kimberly.
15 Q And did you have an understanding that Gustavo was there
16 on behalf of the Union?
17 A Yes.
18 Q Okay.
19 A Um-hum.
20 Q And did you -- okay. So I'm sorry. When you said that --
21 you said that it was Gustavo and?
22 A Alex.
23 Q Alex?
24 A Um-hum.
25 Q Was there anyone else there from the Union on that visit?

1 A No, not that I saw.
2 Q And did any of your sisters speak to any of those people?
3 A No --
4 Q Okay.
5 A -- they didn't.
6 Q Did they say anything? Did you -- was there any sort
7 of -- is there anything said by the Union people?
8 A Yeah. Well, when Kimberly went outside, I saw that they
9 came up to her. So I looked over at my younger sisters,
10 Melissa and Jackie (phonetic), and I was like, you guys should
11 like go out there and like make it seem like you guys have to
12 go, because they did have to go -- they were on their way to an
13 amusement park -- and like try to get them to like leave and
14 like leave her alone, and like shorten the period of like
15 communication, I guess.
16 And so I opened the door to let them out, and I heard them
17 talking to Kimberly about how important it was for her to vote
18 yes with the Union. And that's when I was like, you guys
19 should really go out there. Like, I don't think Kimberly
20 should be talking to them about that. And then they did; they
21 went out there. And then she was like, well, we really have to
22 go. And I was still at the door. And they were like, oh,
23 okay. Well, do you know where you're going to mail it? She's
24 like, yes, I know. And he's like, okay. Well -- all right.
25 Well, do you need any help? And she's like, no, I'm okay. And

1 then they left. And then Kimberly -- I walked Kimberly inside.
2 And she said that they were trying to help her, I guess, with
3 her ballot and trying to help her fill it out, or something
4 like -- along those lines. And then that's when I called Mary
5 and I told her what had happened, because I didn't really
6 appreciate it at all.
7 Q Okay. So you just kind of on your own voluntarily called
8 Mary?
9 A Yeah.
10 Q And who's Mary?
11 A Mary's my general manager.
12 Q Okay. And you -- did you -- you reported what had
13 happened to you?
14 A Yes.
15 Q Okay. Was there any -- can you recall anything else that
16 you -- that the Union people said at the time?
17 A They -- just that. Just like explaining to her how
18 important it was for her to vote yes. And they were kind of at
19 some point a little upset when Kimberly didn't really want them
20 to help her. And that's the only thing I remember.
21 Q Okay. I'm going to hand some documents to you -- a
22 document. So do you recognize that document that's been handed
23 to you?
24 A Yes.
25 Q What is that?

1 A That is my statement.
2 Q So is this your handwriting?
3 A Yes, it is.
4 Q And where it says 12/9/17 across the top --
5 A Yes.
6 Q -- is that the date you --
7 A Wrote it.
8 Q -- completed it?
9 A Yes.
10 Q Okay. Is that your signature at the bottom?
11 A Um-hum.
12 Q Okay. And now does this statement describe what occurred
13 on that visit we just discussed, which I believe was the fourth
14 visit, correct?
15 A Yeah. Yeah. It was the last time I saw them, yeah.
16 Q So this is the last time you saw them? And this is the
17 event we --
18 A Um-hum.
19 Q -- just described?
20 A Yeah.
21 Q Okay. You say, "I personally didn't want to talk to them
22 and neither did my sisters. So we tried to ignore them, but
23 they wouldn't go away?"
24 A Yeah.
25 Q Do you see that?

1 A Yes.
2 Q Now, when you said -- why did you say they wouldn't go
3 away?
4 A Because they -- they had their car parked in front of the
5 house, and that's when I said that I noticed them, that they
6 were outside. And then we tried to stay inside the house, but
7 they wouldn't leave. And then that's when I remembered about
8 the ballots being outside. And that's when I sent Kimberly
9 outside. But that didn't happen like immediately. We were
10 in -- sitting inside the house for like five minutes, hoping
11 that they would just leave.
12 And then I was like, well, shoot, Kim, our ballots are
13 outside. And then I sent her to go get them, but she didn't
14 want to because she didn't want to see them. But I didn't want
15 them to like -- I don't know. I don't know what I thought they
16 were going to do with them. But I just sent her out there.
17 Q So they were outside for about five minutes?
18 A Yes.
19 Q And were they knocking on the door or ringing the
20 doorbell?
21 A No. They were -- they were outside on the -- on the
22 street. They were like standing outside their car, I don't
23 know, like waiting for somebody to come outside. Because I had
24 just come -- came inside. I -- right before they got there, I
25 came inside the house.

1 Q Okay. And how long were they there for that entire event?
2 A Like, I want to say, ten minutes. Yeah.
3 Q Okay. Now, later down in the statement it says, "I stood
4 by the door listening, and heard them say in an upset way,
5 'Well, you're going to be hurting other people by doing that.'"
6 A Yeah.
7 Q Do you see that?
8 A Yeah.
9 Q And now --
10 A I remember that.
11 Q -- having read this, does -- do you recall that having --
12 A Yeah, I do.
13 Q -- been said?
14 A Yeah.
15 Q And who -- do you recall who said that?
16 A I don't. I didn't see anything. I just heard. So I
17 was -- the way our house is set up, like this little thing
18 right here would be the doorway, and then there's a section
19 that's like that, and that's where the kitchen is.
20 HEARING OFFICER TA: Okay.
21 MR. PARRY: Yeah.
22 HEARING OFFICER TA: Yeah. So when you say, "like that" --
23 THE WITNESS: Oh, sorry.
24 HEARING OFFICER TA: -- we don't know.
25 THE WITNESS: It's --

1 HEARING OFFICER TA: So if you can describe --
2 THE WITNESS: Yeah.
3 HEARING OFFICER TA: -- more --
4 THE WITNESS: So like --
5 HEARING OFFICER TA: -- accurately.
6 THE WITNESS: -- the -- how the house is, there's an
7 indentation where the door is and like steps.
8 Q BY MR. PARRY: The front door?
9 A Yeah, the front door. So then you would have to go
10 outside, turn a tiny little corner, and then that's where our
11 mailbox is, on the side where the driveway is. So I was in the
12 indentation where the door is, and Kimberly was by the mailbox
13 with -- with them. So I didn't see anybody -- who said it, but
14 I heard it because --
15 Q And you were --
16 A -- I was --
17 Q Were you --
18 A -- right there.
19 Q -- outside at the time?
20 A Yes, I was outside.
21 Q Okay. And -- but you did hear -- was it a man's voice
22 that --
23 A Yeah --
24 Q -- said that?
25 A -- it was a man's voice.

1 Q And when you were home at the time, you were home with
2 your three sisters, correct?
3 A Yes. That was right before I sent them to go grab her,
4 because, like I said, they were -- they were telling her about
5 how much it would mean to everybody for her to vote yes on the
6 Union, and I didn't think they should be having that
7 conversation with her while she had the ballots in her hand.
8 So I sent my sisters to go imply that we were leaving so that
9 they could maybe like get a cue that we -- that they should
10 like leave. And then Kimberly told me them -- Kimberly told
11 them something along the lines of that she's a grown woman and
12 she can do whatever she wants. And then they said, well,
13 you're going to be hurting other people by doing that. And
14 then that's when I sent my sisters. And then she just came
15 inside, and she told me what had happened.
16 Q Other than you and your sisters, was there anyone home at
17 the time?
18 A No. My parents weren't home. They were both working.
19 Q And then you say -- the sentence is, "So I went out to see
20 what was going on, and they were leaving?"
21 A Um-hum.
22 Q "Kim came back inside and told me they were trying to make
23 her vote in front of them?"
24 A Um-hum.
25 MR. BLASI: I'm going to object. This is hearsay, and it's

1 offered for the truth.

2 HEARING OFFICER TA: I'm -- yeah. I'm going to sustain the

3 objection.

4 MR. PARRY: Okay. I can ask a question that won't be a

5 hearsay question. But it also is -- has an effect on her. So

6 effect on the listener. She's testified that she was concerned

7 about them (sic) having the ballots in her hand while -- and

8 being spoken to by the Union. And the testimony that's coming

9 from her is as to her experience and how it --

10 HEARING OFFICER TA: But the --

11 MR. PARRY: -- affected her.

12 HEARING OFFICER TA: Yeah. But the statement was made

13 after, right? So the statement -- the statement was made after

14 she, you know, sent her sister out to get the ballots. So it

15 doesn't have -- it doesn't have an effect on her --

16 MR. PARRY: Well --

17 HEARING OFFICER TA: -- getting -- like in terms of sending

18 her sister out to grab the ballot. I mean, this was -- the

19 statement was made to her after the Union -- the people from

20 the Union had left. Is that correct?

21 MR. PARRY: Well, I don't know. I guess I can ask that

22 question. I mean, that's --

23 HEARING OFFICER TA: Okay.

24 MR. PARRY: -- a good question to ask.

25 HEARING OFFICER TA: But, again, let's -- okay. Let's go

1 ahead and ask that question.
2 Q BY MR. PARRY: Where you say that your sister, "told me
3 they were trying to make her vote in front of them," did she
4 tell you that while the Union was still there or were -- had
5 they left?
6 A They were outside in -- by their car.
7 Q They were outside by their car --
8 A Um-hum.
9 Q -- at the time that your --
10 A But they were --
11 Q -- sister --
12 A -- outside of our house.
13 Q Outside of your house at the time your sister told you
14 that they tried to make her vote in front of them?
15 A Yes.
16 MR. PARRY: And can you -- I'm sorry. I don't know if you
17 can hear that.
18 THE WITNESS: Oh, yeah. Yes.
19 MR. PARRY: Thank you.
20 MR. BLASI: I'm going to reiterate that this is hearsay,
21 and it seems to be offered --
22 HEARING OFFICER TA: Yeah.
23 MR. BLASI: -- for the truth. There's no --
24 HEARING OFFICER TA: I --
25 MR. BLASI: -- offer of proffer of proof related to effect

1 on the listener.

2 HEARING OFFICER TA: What's -- do you have an offer of

3 proof?

4 MR. PARRY: Yes. And it has an effect -- the Union's

5 still, outside,. And now she has information that they're

6 trying to get them to vote in front of them when she's already

7 concerned about the security of her ballot being out there.

8 And I think it -- that is the misconduct that we're talking

9 about that shows that, you know -- it shows precisely what they

10 were doing and the affect it has on the voters.

11 HEARING OFFICER TA: I guess I'm a little confused by the

12 sequence of events right now, because it -- it sounds like

13 she's -- she saw the Union people, sent her sister out, sister

14 had a conversation with the Union, came back in and said, "They

15 tried to get me to vote." So I don't -- I'm still unclear as

16 to, you know what affect it --

17 MR. PARRY: Can I --

18 HEARING OFFICER TA: What's the -- yeah.

19 MR. PARRY: -- ask another --

20 HEARING OFFICER TA: What --

21 MR. PARRY: -- question that will --

22 HEARING OFFICER TA: What's the affect I guess?

23 MR. PARRY: The affect --

24 Q BY MR. PARRY: Now --

25 MR. BLASI: Well, I --

1 Q BY MR. PARRY: -- were you --
2 MR. BLASI: I mean, I'm --
3 MR. PARRY: The affect is whether she was --
4 MR. BLASI: I'm --
5 MR. PARRY: -- intimidated.
6 MR. BLASI: I'm sorry. I need to object that we're having
7 this conversation in the presence of the witness.
8 HEARING OFFICER TA: Yeah.
9 MR. BLASI: And the Employer's --
10 HEARING OFFICER TA: Um-hum.
11 MR. BLASI: -- counsel is essentially telling the witness
12 what to say. And I think that this -- to the extent we're
13 going to continue to discuss this, this can't happen in the
14 presence of the witness.
15 HEARING OFFICER TA: I think I'm going to sustain the
16 objection. I -- yeah. It's -- I think it's -- at this point,
17 it's hearsay.
18 Q BY MR. PARRY: Okay. Moving on then, did you hear -- did
19 you hear anyone from the Union say that -- ask you or your
20 sister to vote in front of them, fill out the ballot in front
21 of them?
22 A No.
23 Q Okay. In the last sentence of your statement, it says --
24 well, and we just talked about it, "When she said no, that she
25 was probably not going to vote yes, they got mad and said what

1 I heard and left. When you refer to what I heard, what does
2 that refer to?
3 A The well, you're going to be hurting other people by doing
4 that.
5 Q Okay. And when they said you're going to be hurting other
6 people by doing that, what was the tone of voice that you
7 heard?
8 A It was upset. It was upset with Kimberly.
9 Q Was it like angry?
10 A Uh-huh.
11 Q Was it forceful?
12 MR. BLASI: I'm sorry. These are -- adjectives are
13 leading. Objection.
14 HEARING OFFICER TA: I'm going to overrule the objection.
15 Go ahead. Go ahead and answer.
16 THE WITNESS: It was a little bit, just because I felt
17 like it was like a last little thing to try to manipulate her
18 vote.
19 Q BY MR. PARRY: Okay. Thank you. Now, as far as the
20 statement, I believe you said that when -- after this happened,
21 you called Mary, who is the general manager and --
22 A Uh-huh.
23 Q -- told her what happened, right?
24 A Yes.
25 Q And how did you come to write this statement?

1 A Well, I told Mary exactly what I wrote down and she asked
2 me if I would be willing to put it in writing and I said yes.
3 Q So when you called her to tell her, had she ever asked
4 you -- had anyone asked you to call her and say this is what --
5 A No.
6 Q -- happened to me?
7 A No.
8 Q When you called her and asked, was it totally what -- you
9 did it on your own initiative, essentially?
10 A Yeah. It was --
11 Q Okay.
12 A -- just because we had had the meeting about how the
13 ballots were going to work, how the voting was going to work,
14 what we should do when we get it and how we should mail it.
15 Well, not how we should mail it, but like just certain
16 precautions to take, not to talk to people about it, not to do
17 it in front of other people. And I felt like it wasn't right
18 for them to be there while she was holding the ballots. And I
19 told her just because I felt like they were going to be going
20 to my other coworkers' houses. And that's why.
21 Q Okay. And so when you provided this statement, did anyone
22 at the Daily Grill require you to write it?
23 A No.
24 Q Did anyone tell you that it was voluntary, if you wanted
25 to write it?

1 A Yes.
2 Q Did anyone tell you at the Daily Grill that you're not
3 going to be retaliated against, whether or not you write a
4 statement?
5 A Yep.
6 Q Okay. Thank you. And so this is 12/9, so you provided
7 this statement on the same day that it happened. Is that
8 right?
9 A No. I didn't go into work that exact day. I did it --
10 no, actually, yes, I did. I went that night. I'm sorry.
11 Q And so did you write this at home or did you write this
12 at --
13 A No, I wrote it at the Daily Grill.
14 Q Okay. And when you wrote it at the Daily Grill, did
15 anyone like interview you that day?
16 A No.
17 Q Okay.
18 A They left me alone with the paper in an office and I just
19 did it myself.
20 Q Okay.
21 MR. PARRY: I'd like to move into evidence the statement
22 that it's in front of Ms. Mendez as Exhibit Number 22.
23 MR. BLASI: The Union objects on the grounds that the
24 statement contains hearsay, in which the Hearing Officer has
25 already indicated --

1 HEARING OFFICER TA: Uh-huh.

2 MR. BLASI: -- is not admissible. And I would just point
3 out that it appears -- although it's a little hard to decipher
4 exactly what is being said here, that there's additional
5 hearsay in the latter part of the document, where there's
6 reference made to --

7 HEARING OFFICER TA: Could you hand me the document?

8 THE WITNESS: Yeah.

9 MR. BLASI: -- the Union people getting mad or something
10 to that effect. So the Union objects to the admission of those
11 parts of the document that are hearsay and I guess I would
12 invite inquiry from the Hearing Officer, if she's disposed to,
13 to better understand what's being said at the -- in the very
14 last part of the document.

15 MR. PARRY: And again, this all has an effect on her and
16 it was contemporaneous at the time when the Union
17 representatives were still sitting outside of her home, so it
18 does have an effect on the listener being her. And in any
19 event, the fact that or the argument that there may be hearsay
20 contained within this doesn't necessitate exclusion of the
21 exhibit from the record. The Hearing Officer is fully equipped
22 to consider those parts that are --

23 HEARING OFFICER TA: Uh-huh.

24 MR. PARRY: -- deemed admissible and then not consider the
25 parts that are not deemed admissible.

1 HEARING OFFICER TA: I'm sorry. Could you repeat that
2 again?
3 MR. PARRY: The entire thing?
4 HEARING OFFICER TA: Yes, sorry. I'm trying to half read
5 and see which --
6 MR. PARRY: I'm sorry.
7 HEARING OFFICER TA: -- part -- yeah, so --
8 MR. PARRY: I can wait until you're done reading.
9 HEARING OFFICER TA: Yeah. I'm just trying to figure out
10 what other part counsel had said was potentially hearsay.
11 MR. BLASI: Okay. So it says, "And told me they were
12 trying to make her vote in front of them and when she said no,
13 that she was probably not going to vote yes, they got mad and
14 said what I heard and left."
15 HEARING OFFICER TA: Okay.
16 MR. BLASI: That's all, I think, attributed to the
17 sister --
18 HEARING OFFICER TA: Okay. Right.
19 MR. BLASI: -- and the -- and the sister then attributing
20 sentiments or statements to other people. And those were
21 statements which the witness has already said that were not
22 made in the presence of the witness.
23 MR. PARRY: And he's assuming that, because she said --
24 the said what I heard and left is she's talking about what she
25 heard.

1 HEARING OFFICER TA: Yeah. I think she's -- that's in
2 reference to what the witness heard.
3 MR. PARRY: Correct.
4 MR. BLASI: Well, I don't think so. I think it's saying
5 when she said no that she was probably not going to vote yes,
6 they got mad. That's a statement attributed to the sister as
7 far as I can understand.
8 MR. PARRY: She's testified that she heard them get mad
9 and said, "Well, you're going to be hurting other people by
10 doing that."
11 MR. BLASI: That may be the case, but what's in this
12 document is a statement attributed to the sister, not something
13 that she is testifying about herself from percipient witness
14 experience.
15 HEARING OFFICER TA: Okay. And I'm sorry. Counsel, you
16 were making an argument about --
17 MR. PARRY: This --
18 HEARING OFFICER TA: -- the partial admission of the
19 statement.
20 MR. PARRY: Well, first of all, I think the entire
21 statement should be admitted, because it shows the effect on
22 the listener, being her, and that this is all occurring, the
23 statements made to her by her sister while the Union is outside
24 of her home still. And she testified to that clearly, that
25 they were waiting outside of her home. She has -- this whole

1 incident has come about essentially and the contact with the
2 sister, because they were concerned about the security of their
3 ballots.
4 So at the time, they have the ballots on them that they
5 just received from the mail. Meanwhile, the Union is outside,
6 having just spoken to them and getting mad and she said being
7 upset with them and waiting -- and while this is being said to
8 her, this purportedly hearsay statement is being said to the
9 witness, Ms. Mendez, the Union is still outside of her home.
10 And that has a direct effect. And that shows the impropriety
11 of this conduct. And that is -- it's not hearsay for that
12 purpose.
13 HEARING OFFICER TA: Wait, I just -- let me just clarify.
14 Ms. Mendez, did the Union -- were the people from the Union
15 make (sic) these statements directly to you or were they things
16 that you either overheard or were told by your sister?
17 THE WITNESS: I overheard what they said to her in that
18 first sentence that I put on there.
19 HEARING OFFICER TA: About that they were --
20 THE WITNESS: It would hurt other people --
21 HEARING OFFICER TA: -- going -- hurt other people.
22 THE WITNESS: -- and then the other things she said to me.
23 HEARING OFFICER TA: Okay. But they never spoke directly
24 to you?
25 THE WITNESS: No. I didn't --

1 HEARING OFFICER TA: Okay.
2 THE WITNESS: -- want to speak to them.
3 MR. PARRY: And if I can elaborate.
4 HEARING OFFICER TA: Uh-huh.
5 MR. PARRY: Whether or not -- well, I've made the record
6 on that.
7 HEARING OFFICER TA: Okay. Yeah. So I'm going to --
8 there's --
9 MR. PARRY: And I can address the second part of what I'd
10 said before that.
11 HEARING OFFICER TA: I'm just trying to clarify the last
12 four sentences, because it's a little confusing here. Okay.
13 So think I'm going to -- I'm not going to admit this document
14 in its entirety. I think the last four lines of the statement
15 are hearsay and so I'm going to admit this as Employer's
16 Exhibit 22, except for the last four lines of the statement.
17 **(Employer Exhibit Number 22 Received into Evidence)**
18 MR. PARRY: And I'd like to just -- the second part of the
19 argument that I put on the record earlier --
20 HEARING OFFICER TA: Uh-huh.
21 MR. PARRY: -- is that -- and I appreciate that it's not
22 entirely excluded --
23 HEARING OFFICER TA: Uh-huh.
24 MR. PARRY: -- and that I think it's a matter of -- since
25 the Hearing Officer alone who's going to be looking at this --

1 HEARING OFFICER TA: Uh-huh.

2 MR. PARRY: -- you're entirely equipped to consider the
3 parts that you deem admissible and not consider the other parts
4 that you do not deem admissible or give them the appropriate
5 weight. And I -- but I do -- as far as the part that's not
6 going to be admitted, I want to read it into the record, so we
7 have a record of -- because we need a record of what is
8 actually being admitted and what's not being admitted. And I
9 don't think we've ever had it --

10 HEARING OFFICER TA: You don't think the last four
11 sentences is sufficient for --

12 MR. PARRY: I would like to read that into the record, so
13 we know what's being excluded. And -- as just as part of the
14 offer of proof, to which we're entitled to give. And I want to
15 make sure that I'm understanding the last four sentences,
16 because --

17 HEARING OFFICER TA: Okay.

18 MR. PARRY: -- sometimes the punctuation is not entirely
19 clear.

20 HEARING OFFICER TA: Okay. That's fine. Go ahead and
21 clarify. Yeah.

22 MR. PARRY: And I'm actually trying to count back four
23 sentences and I'm -- I would like to read the entire statement
24 into the record and we can set it out that way.

25 MR. BLASI: I don't see --

1 MR. PARRY: And --

2 MR. BLASI: -- the purpose of that, since the document

3 will be in the record.

4 HEARING OFFICER TA: Yeah. Can we just --

5 MR. PARRY: Okay.

6 HEARING OFFICER TA: -- can we just read the last four?

7 MR. PARRY: I'm trying to find where that is, because --

8 and I'm looking back and I'm just looking for four periods and

9 I -- and it's --

10 HEARING OFFICER TA: Well, it's four lines, so count four

11 lines up.

12 MR. PARRY: Four lines. Okay.

13 HEARING OFFICER TA: Yeah.

14 MR. PARRY: So then the portion that would start would be

15 where it says, "And told me they were trying to make her vote

16 in front of them and when she said no, that she was probably

17 not going to vote yes, they got mad and said what I heard and

18 left."

19 HEARING OFFICER TA: That's correct.

20 MR. PARRY: Is that the correct -- that's --

21 HEARING OFFICER TA: Yeah.

22 MR. PARRY: -- the portion is being not admitted as

23 hearsay?

24 HEARING OFFICER TA: Right.

25 MR. PARRY: And the rest of the statement is --

1 HEARING OFFICER TA: Yes.
2 MR. PARRY: -- admitted?
3 HEARING OFFICER TA: That's right.
4 MR. PARRY: Thank you.
5 Q BY MR. PARRY: Oh you know what, you can have that -- hang
6 on to that for now, but before you get to that, that you said
7 was I think the fourth visit. Is that correct?
8 A Yeah.
9 Q And was there a fifth visit?
10 A No.
11 Q That was the last time --
12 A That was the last --
13 Q -- that you're aware of that the Union representatives
14 visited your home?
15 A That I know of, yes.
16 Q Okay. Thank you. I'm going to put another document in
17 front of you. And do you recognize that document?
18 A Yes.
19 Q What is it?
20 A It's witness acknowledgement acknowledging what my --
21 Q And could you speak up a little bit?
22 A Oh. A witness acknowledgement like acknowledging that I'm
23 representing you guys and that I made that statement.
24 Q Okay. So those are your initials along the left side
25 there?

1 A Yeah.
2 Q And is that your handwriting where the date's written?
3 A Yes.
4 Q And is that your signature at the bottom?
5 A Yes.
6 Q Okay. And did you understand in signing this -- did you
7 read this before you signed it?
8 A Yes.
9 Q Was the contents of this explained to you verbally?
10 A Yes.
11 Q By who?
12 A You.
13 Q Okay. So at the time you signed this, it had been
14 explained to you that there was a proceeding before the
15 National Labor Relations Board?
16 A Uh-huh.
17 Q Involving the Union's conduct?
18 A Yeah.
19 Q And that it was entirely voluntary for you to sit and
20 interview with me?
21 A Yes.
22 Q And that you were promised there would be no retaliation
23 by the Daily Grill, regardless of whether you participated or
24 didn't participate in an interview, correct?
25 A Yes.

1 Q Okay. And I'm putting another document in front of you.
2 And do you recognize this one?
3 A Yes.
4 Q What do you understand this to be?
5 A My statement.
6 Q I'm sorry?
7 A My statement.
8 Q Your statement.
9 A Or the statement I gave.
10 Q So do you understand this to be with an ex -- one little
11 exception that I'll -- we'll get to, the same statement you
12 provided that was the handwritten statement --
13 A Uh-huh.
14 Q -- that we discussed?
15 A Yes.
16 Q Okay. And the very first line, there's a cross out. The
17 word today is crossed out. And on December 9th, 2017 is
18 written in pen. Do you see that?
19 A Yes.
20 Q Is that your handwriting?
21 A Yes.
22 Q Okay. And when did you sign this?
23 A The 20th of April.
24 Q Okay. Is that your handwriting on the date there?
25 A Yes.

1 Q Did you sign this after signing the witness
2 acknowledgement?
3 A Yes.
4 Q Okay. And I already asked. That's your signature,
5 correct?
6 A Uh-huh.
7 Q Okay. And it is?
8 A Yes, it is.
9 Q Thank you.
10 MR. PARRY: I would like to -- this is going to have the
11 same issue with the last four lines.
12 HEARING OFFICER TA: Uh-huh.
13 MR. PARRY: But I would move into evidence the entire
14 exhibit, based on the same discussion we've had previously.
15 MR. BLASI: The Union objects to admission of the entire
16 exhibit for the same reasons as the --
17 HEARING OFFICER TA: Okay.
18 MR. PARRY: -- previous exhibit was not admitted in its
19 entirety.
20 HEARING OFFICER TA: Okay. Could you hand me those
21 documents?
22 THE WITNESS: Yeah.
23 HEARING OFFICER TA: Counsel, are you moving to admit the
24 witness acknowledgement also?
25 MR. BLASI: Oh, yes. I'm sorry.

1 HEARING OFFICER TA: Okay.
2 MR. PARRY: I'll --
3 HEARING OFFICER TA: okay.
4 MR. PARRY: -- the witness acknowledgement would be
5 Exhibit Number 23.
6 HEARING OFFICER TA: Okay. So I'm admitted Employer's
7 Exhibit 23. Oh, I'm sorry, counsel. Any objection? To 23.
8 MR. BLASI: To 23, no.
9 HEARING OFFICER TA: To 23. This is the witness
10 acknowledgement.
11 MR. BLASI: No.
12 HEARING OFFICER TA: Okay. I'm admitting Employer's
13 Exhibit 23 into evidence and --
14 **(Employer Exhibit Number 23 Received into Evidence)**
15 MR. PARRY: And I think the last time it was -- the
16 portion that was not admitted -- that was -- we were talking
17 about 24, would start with the, "And told me they were trying,"
18 until the end, or until the sentence -- the period at the end
19 of that sentence.
20 HEARING OFFICER TA: Okay. So we -- I'm partially
21 admitting Employer's Exhibit 24. I'm excluding the portion
22 that counsel previously read into the record for hearsay. And
23 given that this is a transcription of the handwriting, you
24 know, it's the same -- the same parts are being excluded, so --
25 okay.

1 **(Employer Exhibit Number 24 Received into Evidence)**
2 MR. PARRY: Okay. I have no further questions at this
3 point, subject to redirect.
4 HEARING OFFICER TA: Okay.
5 MR. BLASI: Yeah, I may need a few minutes. This was a
6 long, complicated direct and I appreciate I'm the only thing
7 standing between everyone and lunch and I'm very hungry myself
8 and also very thirsty, but I can't put on cross without some
9 time to think about what the issues are.
10 HEARING OFFICER TA: Okay. How long do you think you're
11 going to need, counsel?
12 MR. BLASI: Or I'm happy to also do this after lunch, if
13 we -- people don't feel like they need -- you know, can't
14 tolerate, you know, 15, 20 more minutes of testimony after five
15 or ten minutes of prep.
16 HEARING OFFICER TA: How do we feel about waiting until
17 after lunch or is --
18 MR. PARRY: I --
19 HEARING OFFICER TA: -- you want to power through?
20 MR. PARRY: I want to power through. I'm going to state
21 the same objections about taking breaks and --
22 HEARING OFFICER TA: Uh-huh.
23 MR. PARRY: -- all that stuff in between.
24 HEARING OFFICER TA: Okay.
25 MR. PARRY: But I know Ms. Mendez needs to -- wants -- is

1 working today and --

2 HEARING OFFICER TA: Okay.

3 MR. PARRY: -- wanted to get done before lunch, if

4 possible, so --

5 HEARING OFFICER TA: Okay.

6 MR. PARRY: -- if we could do that, that would be my

7 preference. And I would actually -- maybe we do this off the

8 record, but ask what Ms. Mendez would like to do.

9 HEARING OFFICER TA: Okay. Yeah. Let's go off the

10 record.

11 (Off the record at 12:19 p.m.)

12 HEARING OFFICER TA: Okay. Let's get back on the record.

13 Counsel, your cross?

14 MR. BLASI: Yes.

15 **CROSS-EXAMINATION**

16 Q BY MR. BLASI: Ms. Mendez, good afternoon. I will try and

17 keep this mercifully short, so you can go home and I can have

18 lunch. So just a few questions.

19 A Yeah.

20 Q So you testified about a few different occasions when

21 folks from the Union or coworkers or maybe former coworkers

22 tried to visit you at home.

23 A Uh-huh.

24 Q It was actually not your home. It was your sister's home.

25 Is that right?

1 A No, it's my home.
2 Q You did live there?
3 A Yes, I do live there.
4 Q And you lived there at the time?
5 A Uh-huh.
6 Q Okay.
7 THE COURT REPORTER: I'm sorry. Was that a yes?
8 THE WITNESS: Yes.
9 THE REPORTER: Thank you.
10 Q BY MR. BLASI: Okay. So there were two -- I think there
11 were four different occasions that you talked about in your
12 testimony earlier. Does that sound right?
13 A Yes.
14 Q Okay. And the first two occasions when someone tried to
15 visit you on behalf of the Union, you weren't there --
16 A Yes.
17 Q -- right, so you didn't have any interaction with
18 anybody --
19 A Uh-huh.
20 Q -- on those occasions?
21 A Yeah.
22 Q The third visit was attended by, I think you said it was
23 Mr. Sorza, Sergio Sorza next to me and the organizer, Alex?
24 A Yes.
25 Q Is that right? And on that occasion, the -- it sounded to

1 me like the substance of the conversation was about why they
2 thought the Union was a good idea for the employees. Is that
3 fair to say?
4 A What do you mean by substance?
5 Q The things that you talked about in that conversation with
6 them.
7 A Some. Some, yeah.
8 Q It was about why they thought it would be good for you to
9 support the Union and it would benefit you. Is that fair to
10 say?
11 A Yeah.
12 Q Do you remember some of the points that they made in
13 explaining why they believe that unionization was good for
14 employees at the Daily Grill?
15 A I don't remember exactly what they said.
16 Q Do you remember anything about what they said?
17 A They said that they would try to make it so that the
18 hostesses make more money, so that they would -- and that they
19 would be tipped out by the servers and something like that they
20 would raise our pay, something like that. That was one thing I
21 remember that they said. Other than that, I don't remember.
22 Q That was the only thing you remember from that
23 conversation?
24 A No.
25 Q That the servers -- that the Union would do something to

1 sort of improve the pay of the --
2 A Of the hostesses.
3 Q -- hostesses?
4 A Yes.
5 Q And that that could happen, if the Union came in?
6 A Yes.
7 Q Okay. Okay. And during the course of that conversation,
8 neither the two folks who visited you threatened you, did they?
9 A No.
10 Q And they didn't give you the idea that they would do
11 something to you if you didn't agree with their view on the
12 Union, did -- is that correct?
13 A Yeah, no. They didn't.
14 Q That's correct?
15 A Yeah.
16 Q Okay. And that conversation happened before the election
17 ballots were mailed. Is that right?
18 A Yeah.
19 Q Okay. So then the fourth visit, although just the second
20 time, you actually spoke to them or were present -- well
21 actually, let me back up a minute. There was an additional
22 occasion that happened once the ballots had been mailed. Is
23 that right?
24 A Yes.
25 Q So you weren't actually part of that conversation, though,

1 right?

2 A No.

3 Q You were still in the house?

4 A Uh-huh.

5 Q And meanwhile your sister Kimberly was outside talking to

6 the folks who were supporting the Union, right?

7 A Yes.

8 Q And you say in your written statement that you heard them

9 say that -- and I'm going to quote the statement that you

10 wrote. This is exhibit --

11 MR. BLASI: What did we say, this is exhibit -- the

12 printed --

13 HEARING OFFICER TA: I think it --

14 MR. BLASI: -- one I guess would be 23. Is that right?

15 The --

16 HEARING OFFICER TA: The printed one -- oh, no, no, no.

17 MR. BLASI: Twe --

18 HEARING OFFICER TA: So the handwritten statement is --

19 MR. BLASI: -- 22.

20 HEARING OFFICER TA: -- 22. The witness acknowledgement

21 is 23.

22 MR. BLASI: Oh, so this would be 24.

23 HEARING OFFICER TA: And then the typed statement is --

24 MR. BLASI: Twenty-four.

25 HEARING OFFICER TA: -- 24, yeah.

1 Q BY MR. BLASI: Okay. So referring to that statement --
2 A Uh-huh.
3 Q -- that you talked about earlier --
4 A Yeah.
5 MR. PARRY: Which one? I'm sorry. I'm confused. Twenty-
6 four or --
7 MR. BLASI: The same document and substance, but either 22
8 or 24. It's the same statement. I'll refer to 22 for clarity
9 sake, I guess.
10 HEARING OFFICER TA: Okay.
11 Q BY MR. BLASI: You said that you overheard them saying,
12 you're going to be hurting other people by doing that.
13 A Yes.
14 Q You heard that from where we --
15 A From one of the Union representatives, whoever --
16 Q How were you able to hear that, since you were indoors?
17 A I wasn't indoors, I was standing outside of the door --
18 Q So you came out --
19 A -- in the indentation.
20 Q You came out for the last part of the conversation or --
21 A Yeah, because I was opening the door to let my sisters
22 out, so that they could go make it seem like we were about to
23 leave --
24 Q Uh-huh.
25 A -- so that they would leave.

1 Q I see.
2 A So I opened the door to let my sisters out and then I was
3 standing on the steps of the like doorway, where the
4 indentation is. And then that's when I heard what they said.
5 Q I see. So that was sort of like the tail end of the
6 conversation.
7 A Yeah.
8 Q Is that right?
9 A Uh-huh.
10 Q Okay. And did you understand that comment to mean that it
11 would be somehow making things worse for other workers, if they
12 didn't support the Union? Is that sort of in substance what
13 they were saying?
14 A Yes.
15 Q Okay.
16 A Well, I'm sorry. Wait. What was the question?
17 Q Did you understand -- when you say that you heard them
18 say, well, you're going to be hurting other people by doing
19 that, that the implication was that if you didn't support the
20 Union, other workers would suffer. Is that a fair --
21 A Yes.
22 Q -- characterization of --
23 A Yes.
24 Q -- how you understood --
25 A Yeah.

1 Q -- the comment?
2 A Uh-huh.
3 Q Because they wouldn't get the same benefits that they
4 would -- that the Union believed that they would get, if they
5 supported the Union? Something like that, right?
6 MR. PARRY: That lacks foundation and calls for
7 speculation.
8 HEARING OFFICER TA: Can you rephrase, counsel?
9 MR. BLASI: I'm not even sure I need to.
10 Q BY MR. BLASI: They would -- as I understand your
11 testimony and tell me if this is a fair, accurate
12 characterization that you understand that they were saying that
13 if the Union didn't come in, other workers wouldn't get the
14 benefits, that they would -- if the Union did come in and
15 therefore by not supporting the Union, you would be depriving
16 these other workers of these benefits. Is that fair to say?
17 MR. PARRY: Misstates her testimony and calls for
18 speculation.
19 MR. BLASI: Well, I'm asking her --
20 MR. PARRY: Lacks foundation.
21 HEARING OFFICER TA: Well --
22 MR. BLASI: -- to confirm my understanding --
23 HEARING OFFICER TA: Yeah, he's --
24 MR. BLASI: -- so I'm not just --
25 HEARING OFFICER TA: -- yeah, so overruled. Go ahead and

1 answer the question.

2 THE WITNESS: I'm sorry. Can you repeat it one more time?

3 MR. PARRY: Subject to the same objections, I won't repeat

4 it --

5 HEARING OFFICER TA: Okay.

6 MR. PARRY: -- if the question's the same.

7 HEARING OFFICER TA: And he's just clarif -- I mean, he's

8 trying to clarify her testimony, so --

9 MR. BLASI: Yeah. And maybe her testimony is clear. At

10 this point, I can't remember what she said.

11 HEARING OFFICER TA: Okay.

12 MR. PARRY: I mean, I think he's starting to put words in

13 her mouth that she never said, but --

14 HEARING OFFICER TA: Okay. Okay. Counsel, is there a

15 question before the witness?

16 MR. BLASI: Sure. Okay. Let me try again.

17 Q BY MR. BLASI: So when you said -- when you wrote that you

18 said you overheard them saying, well, you're going to be

19 hurting other people by doing that --

20 A Yeah.

21 Q -- is it fair to say that what you understood that they

22 were suggesting was that if you don't support the Union, other

23 workers won't. The Union won't come in and other workers won't

24 get the benefits that the Union was saying that the workers

25 would get if the Union did come in?

1 MR. PARRY: Same objections.
2 Q BY MR. BLASI: Is that an accurate description of how you
3 understood their comment?
4 A In a way, yeah.
5 Q Okay.
6 MR. BLASI: And I don't think we need to belabor this
7 point any further.
8 HEARING OFFICER TA: Yeah.
9 Q BY MR. BLASI: And on that occasion, you didn't open your
10 ballots in front of the -- any of the Union folks, did you?
11 A No. Kimberly didn't want to.
12 Q And Kimberly didn't open her ballots in front of --
13 A No.
14 Q -- them, either. The ballots remained intact and --
15 A Uh-huh.
16 Q -- you were able to cast your ballot as you saw fit at
17 some later point. Is that accurate?
18 MR. PARRY: Objection. I think this goes to the issue we
19 discussed earlier that's irrelevant.
20 HEARING OFFICER TA: I understand what counsel's trying to
21 get at. Can you rephrase?
22 MR. BLASI: Let's try.
23 HEARING OFFICER TA: Yeah.
24 MR. BLASI: Let's -- sure. I can appreciate that was a
25 little conclusory.

1 Q BY MR. BLASI: The ballots remained in your position after
2 the Union folks left. Is that accurate?
3 A Yes.
4 Q Okay. So at some point later, you had the opportunity to
5 decide whether or not you were going to vote. Is that correct?
6 A Yes.
7 Q And you were able to make the decision without anyone
8 being present, apart from people you wanted to be present.
9 A Yes.
10 Q Is that accurate?
11 A Yeah.
12 HEARING OFFICER TA: Okay.
13 Q BY MR. BLASI: Okay. Earlier on, you testified that you
14 had -- I believe you testified that there was some sort of
15 meeting with managers where they --
16 A Uh-huh.
17 Q -- gave you some information?
18 A Yes.
19 Q Okay. Who were the managers who led that meeting?
20 A It was --
21 MR. PARRY: Can I -- I'm going to object that this may be
22 beyond the scope. We don't -- it's vague and ambiguous as to
23 the time and --
24 MR. BLASI: Well, I'm going to establish --
25 HEARING OFFICER TA: Well, it --

1 MR. BLASI: -- the time --
2 MR. PARRY: -- it's --
3 MR. BLASI: -- so --
4 HEARING OFFICER TA: Yeah. And it's --
5 MR. PARRY: Well, we can --
6 HEARING OFFICER TA: -- I mean, it was -- I believe it --
7 yeah, it was asked on direct, so I think it's --
8 MR. PARRY: I'm unclear. Is it -- some meeting with
9 managers. I mean, this is --
10 HEARING OFFICER TA: Okay.
11 MR. PARRY: -- it's like in history and --
12 HEARING OFFICER TA: Okay. Okay.
13 MR. BLASI: Well, and she testified about a meeting and
14 I'm going to ask about that meeting.
15 HEARING OFFICER TA: Okay. Yeah. Go ahead.
16 MR. BLASI: Okay.
17 HEARING OFFICER TA: Overruled.
18 Q BY MR. BLASI: You testified about a --
19 HEARING OFFICER TA: Okay.
20 Q BY MR. BLASI: -- meeting with management about --
21 A Uh-huh.
22 Q The Union election, right?
23 A Yes.
24 Q When did that meeting happen, as best you can recall?
25 A That I can remember, I believe it was in November.

1 Q November.
2 A Yeah, it was in November.
3 Q It was around the same time that the election was taking
4 place?
5 A It was before the election.
6 Q Shortly before, like in --
7 MR. PARRY: Vague and ambiguous.
8 THE WITNESS: Like two or three weeks before.
9 Q BY MR. BLASI: Okay. And you testified earlier that
10 managers made some --
11 MR. BLASI: Did you need to rule on that objection?
12 HEARING OFFICER TA: I mean, she answered the question, so
13 that's fine.
14 MR. BLASI: Okay. I just wanted to permit --
15 HEARING OFFICER TA: Yeah. Yeah.
16 MR. BLASI: -- my co-counsel over here -- or not co-
17 counsel.
18 HEARING OFFICER TA: Yeah. It's -- sorry. There's a lot
19 of talking --
20 MR. PARRY: Appreciate it. Thank you.
21 HEARING OFFICER TA: -- simultaneous talking. So -- but
22 yeah, so she answered the question.
23 MR. BLASI: Sure.
24 HEARING OFFICER TA: That's fine. Yeah.
25 MR. BLASI: Okay.

1 Q BY MR. BLASI: Now, you said something earlier to the
2 effect that the managers said that you shouldn't talk to other
3 people about your views about the Union. Is that accurate?
4 A No. They said we shouldn't talk about how we were going
5 to vote and we shouldn't tell other people how to vote. That's
6 what they said.
7 Q And who said that?
8 A Our area director.
9 Q What's that person's name?
10 A Michael B.
11 Q I'm --
12 A Michael Burnett. Sorry.
13 Q Michael Burnett?
14 A Yes.
15 Q He said that you should not talk to other people about how
16 you intend to vote?
17 A Yeah, to not, I guess, like -- I don't know how to word
18 it, but like to not affect how other people were going to vote,
19 I guess --
20 Q Uh-huh.
21 A -- if I could say that.
22 Q Is -- like that you shouldn't have a conversation with
23 another person about --
24 A No, you can have a conversation with other people about
25 how you feel. You just shouldn't like, I guess, make another

1 person change their -- like not change their mind but like -- I
2 am -- like not force another person to vote a certain way, just
3 because you want them to.
4 MR. PARRY: And I'm --
5 THE WITNESS: That was more the feel of it. Not really
6 like oh, you can't talk about this at work. That wasn't what
7 it was. It was you shouldn't tell other people how to vote.
8 Q BY MR. BLASI: You shouldn't communicate --
9 MR. PARRY: And I'm going to -- I'm sorry. Let me -- I'm
10 going to object to this line of questioning and move to strike.
11 It's not relevant to the issues that are -- to the matters at
12 issue as to the home visits. I don't see any relevance of what
13 the meetings that were taking place during the process that are
14 unrelated to the -- it's not related to a statement that's been
15 given. It's not related to anything that has to do with the
16 Johnnie's Poultry. It doesn't seem to be related at all to the
17 home visits.
18 MR. BLASI: It -- I'm happy to proffer an offer of proof
19 and we can do that outside the presence of the witness, if
20 that's helpful, but I absolutely believe it's relevant to the
21 testimony that's been given.
22 HEARING OFFICER TA: Okay. So can you step outside?
23 THE WITNESS: Yeah. Thank you.
24 HEARING OFFICER TA: Okay.
25 MR. BLASI: Okay. The Employer's entire case, it seems to

1 me, or at least a large part of it, is that it was somehow
2 improper for workers and Union representatives to visit workers
3 at their home and talk to them about the Union election without
4 being invited.
5 HEARING OFFICER TA: Uh-huh.
6 MR. BLASI: That's an essential part of their written
7 objections and to the case that they've put on. It's
8 absolutely relevant to that case that the Employer itself was
9 apparently telling workers not to communicate at least in some
10 fashion with one another and I'd like to elicit more testimony
11 exactly what was said, and essentially prohibiting the same
12 sorts of message giving that the -- or discouraging, for sure,
13 that the Union was itself attempting to give.
14 The Union's opportunities to communicate workers (sic) are
15 different from the Employer's. The Employer has -- can conduct
16 captive audience meetings, like I suspect that was. It has
17 access to workers throughout the entire day and can coerce
18 workers to participate in paid time to -- meetings in which the
19 management lectures workers about subjective unionization.
20 The Union has no such parallel opportunity, which is why
21 Board law has recognized for an eternity that it's appropriate
22 for unions to communicate with workers in other locations, such
23 as their home, whether they're solicited or not, because of the
24 imbalance in access to workers. So it's relevant to the case
25 by situating the experiences of workers in experiencing those

1 house visits.

2 Let me step back and try and rephrase. The context in

3 which workers experience house visits matters to the Employer's

4 argument, because the Employer's argument is that an uninvited

5 or maybe an invited house visit is not -- is somehow

6 misconduct. And when the Employer itself is telling workers

7 that they shouldn't be communicating, that colors workers'

8 experiences and it colors the -- all of the testimony that

9 we've heard today.

10 The Employer was running an anti-union campaign all the

11 while this was going on, which the -- you know, we've not been

12 able to hear any testimony about, but the impression one might

13 get from the testimony so far is that somehow only the Union

14 was talking to workers, where in fact, the Employer was

15 constantly talking to workers in the workplace in a manner in

16 which workers had no opportunity but to listen to the

17 Employer's perspective.

18 And hearing a little bit about what the Employer was

19 saying to workers is appropriate context to appreciate the

20 context in which the Union was trying to talk to workers in the

21 much more limited opportunities it had.

22 HEARING OFFICER TA: Uh-huh. Okay. Counsel, you want

23 to --

24 MR. PARRY: The question at issue here is whether the

25 Union's conduct in showing up uninvited at the homes and

1 particularly during the voting period, after the ballots had
2 gone out, which constitutes essentially campaigning in their
3 homes -- or I'm sorry -- campaigning in the voting place, in
4 the polling place, which is -- was their home, because that's
5 where they got their ballots. That -- whether that was an
6 unfair practice that merits directing a new election.
7 What the Union is proposing to do is to open up this
8 entire thing to the inquiry about every meeting that management
9 had with witnesses, and that's not at issue. That doesn't
10 affect what the Union did at the witnesses and the -- and I'm
11 sorry -- the employees' homes at the time the ballots were out.
12 Has nothing to do with that.
13 If they're going to go down that path and open up every
14 single meeting, so we can ask what did management say to you,
15 what did they ask you, at every single meeting leading up to
16 the election period, then we need to bring in every single
17 employee that was in those meetings, so they can say this is
18 what management said, because they're going go with one witness
19 and say this is what she remembers from that.
20 So if we're going to litigate this entire matter, we have
21 an opportunity now to bring in every single employee that was
22 sitting in one of those meetings and all of her management and
23 we can say what did they actually say to you? And I don't --
24 that's not at issue. I'm certainly not proposing we do that,
25 but if that's what it's going to take, if that's what the

1 Union's counsel proposes, that all that stuff is fair game now.
2 We're looking at a narrow issue.
3 And I think at the start of this hearing, we discussed --
4 and I believe the parties even agreed that this is a narrow
5 issue focusing on the Union's visits to employees' homes. And
6 that's what we're focusing on. And now what they're going to
7 do -- they want to do is open it up to the entire process in
8 every meeting that management had with an employee. And that's
9 simply not at issue. It's not relevant.
10 HEARING OFFICER TA: Uh-huh.
11 MR. BLASI: Well, I mean, the -- it --
12 MR. PARRY: And it should not even -- it shouldn't be gone
13 into. I can understand asking about meeting with employees
14 maybe on an individual basis when we have a statement and
15 there's a question as to whether the proper disclosures was
16 made -- were made. And whether I agree with that is
17 irrelevant. I can understand the relationship to it as it
18 relates to statements talking about those home visits.
19 But to say now we're going to go all the way back in time
20 to the time the RC petition was filed and we're going to talk
21 about every time a manager or an agent of the Employer has
22 spoken to each employee about what they can and cannot say, the
23 content of a meeting, whether they were required to sit in a
24 meeting, whether they were told the Union should or shouldn't
25 be telling you this, we're going to be here for about four or

1 five more weeks.

2 MR. BLASI: Well, if I may respond.

3 HEARING OFFICER TA: Uh-huh.

4 MR. BLASI: The Union is not proposing that. The Union
5 appreciates that the scope of a cross-examination is limited to
6 the scope of the direct. And the Union is simply asking very
7 narrow questions about this witness' experience on a -- with
8 respect to a meeting that this witness itself brought up. And
9 it's relevant to this witness' understanding of what was
10 appropriate conduct on any party's part.

11 So the idea that this is -- I certainly understand why the
12 Employer doesn't want the Hearing Officer to hear about all of
13 the anti-union campaigning that the Employer was conducting
14 during this entire period, including during the election. But
15 that should not negate the opportunity for at least this one
16 witness to answer a couple of questions about one particular
17 meeting that she herself brought up.

18 MR. PARRY: What's clear is that the Union is now
19 attempting to use this proceeding to get discovery as to some
20 other affirmative charge they may be thinking about bringing
21 and that's simply not what this is for. We're here to talk
22 about the Employer's election objections, which the Regional
23 Director invited hearing on for this particular issue. And
24 what the Union now wants is to say well, we can ask about this
25 thing that's outside of the scope. And because it was maybe

1 alluded to her in her testimony, but you, the Employer, now
2 can't bring in other evidence that has to do with that same
3 issue. So that's --
4 HEARING OFFICER TA: Uh-huh.
5 MR. PARRY: -- apparently what they're asking for. It is
6 entirely irrelevant. It has nothing to do with the home
7 visits. It has to be excluded, or else we -- this hearing will
8 have to allow the Employer the opportunity to present its own
9 witnesses and evidence on that. And whether it's related to
10 that single meeting or all the meetings, it's going to take
11 much more than the witnesses that have been here already.
12 HEARING OFFICER TA: Counsel, I mean, how many questions
13 do you have about this? I don't --
14 MR. BLASI: I was probably about done. We'd be done by
15 now and eating.
16 HEARING OFFICER TA: I agree. We -- this hearing is to
17 litigate the issue of the home visits and the conduct of the
18 Union.
19 MR. BLASI: Well --
20 HEARING OFFICER TA: And to gather information about that.
21 And so I am -- I --
22 MR. BLASI: I think that --
23 HEARING OFFICER TA: -- I don't -- the relevance --
24 MR. BLASI: I --
25 HEARING OFFICER TA: -- of this line of questioning as to

1 what -- as to the Employer's conduct in this situation, I --
2 you know, I -- I'm just -- I'm not seeing the relevance and I
3 do think it might take us down, you know, a line of questioning
4 that you know, may not be necessary in assessing what the Union
5 conduct was during the home visits.
6 MR. BLASI: Okay. I mean, I -- the Union obviously
7 respects the Hearing Officer's conclusion on this matter. I
8 would just say that I think that this little window into what
9 was actually going on in the hotel -- in the restaurant during
10 that period is important, because it gives some sense of the
11 context in which these house visits were taking place.
12 I mean, union house visits -- it's the standard operating
13 procedure of every union in the country that organizes workers
14 is to visit workers at their home. No other union does it any
15 other way. That's how it works. And the reason it works that
16 way is because you can't talk to workers at work. And --
17 HEARING OFFICER TA: Right.
18 MR. BLASI: -- I appreciate that -- if the Hearing
19 Officer's made its determination, her determination, I'll
20 respect it, but I do want to be on the record that you know,
21 not having access to the context or information concerning the
22 context in which these visits were taking place, I think gives
23 a poor perspective overall about what was going on at this
24 particular worksite and the context in which these house visits
25 were taking place.

1 HEARING OFFICER TA: Right. I'm just worried about you
2 know, trying to establish that context could -- you know, this
3 could go on for a long time, if we were to fully establish the,
4 you know, the context of the campaign and everything that was
5 going on. So I think --
6 MR. BLASI: I respect the decision --
7 HEARING OFFICER TA: Yeah.
8 MR. BLASI: -- if that's where --
9 HEARING OFFICER TA: Yeah.
10 MR. BLASI: -- you are.
11 HEARING OFFICER TA: So I think I'm going to sustain the
12 objection. If we can get our witness back in.
13 MR. BLASI: Yes. Thank you.
14 HEARING OFFICER TA: Okay. Thank you.
15 MR. PARRY: And also one more thing. It's not getting
16 into the substance --
17 HEARING OFFICER TA: Uh-huh.
18 MR. PARRY: -- but there was also a motion to strike the
19 prior testimony in response to the last -- previous question on
20 the same grounds.
21 HEARING OFFICER TA: Okay. I am going to --
22 MR. BLASI: I --
23 HEARING OFFICER TA: I'm going to deny the motion. I
24 think it's -- I mean, I don't think the information, the
25 testimony elicited was --

1 MR. PARRY: Understood.

2 HEARING OFFICER TA: -- I think it's harmless. It's --

3 you know --

4 MR. PARRY: Yeah.

5 HEARING OFFICER TA: Yeah.

6 MR. BLASI: The Union actually -- given the Hearing

7 Officer's decision on that issue, the Union doesn't have

8 further questions --

9 HEARING OFFICER TA: Okay.

10 MR. BLASI: -- for this witness.

11 HEARING OFFICER TA: Okay. Redirect.

12 MR. BLASI: Actually, if I -- can I just ask --

13 HEARING OFFICER TA: Uh-huh.

14 MR. BLASI: -- one question that I didn't ask before I

15 hand over --

16 HEARING OFFICER TA: To the witness?

17 MR. BLASI: To the witness, yeah.

18 HEARING OFFICER TA: Yes. Go ahead.

19 Q BY MR. BLASI: Okay. Just one last thing. For the very

20 last portion of that last meeting that you -- or last

21 interaction to -- we've been talking about, that you were

22 present for --

23 HEARING OFFICER TA: He's -- I don't think -- are -- can

24 you clarify? You're talking about the --

25 MR. BLASI: I'm talking about the incident on -- I guess

1 it was on December 9th.

2 HEARING OFFICER TA: With the Union, the home visit?

3 MR. BLASI: The home visit, right.

4 HEARING OFFICER TA: Okay. Go ahead.

5 Q BY MR. BLASI: You did -- you were present for a portion

6 of the interaction at the end of it, I guess, right?

7 A Yeah.

8 Q Okay. And during that portion, you did not hear anyone

9 from the Union make any threats against any of the persons who

10 were present. Isn't that right?

11 A No. Yeah.

12 Q Okay.

13 A They did -- didn't.

14 Q Did not?

15 A Yeah. They didn't.

16 Q Okay.

17 MR. BLASI: Nothing further of the witness.

18 HEARING OFFICER TA: Okay. Redirect.

19 MR. PARRY: I've got no further questions.

20 HEARING OFFICER TA: Okay. Recross?

21 MR. BLASI: No further questions.

22 HEARING OFFICER TA: I'm going to do my follow up

23 questions. Okay. Ms. Mendez, did you talk to any coworkers

24 about the home visits that you received? That -- the Union

25 visiting you at home?

1 THE WITNESS: The only time I ever spoke to them about
2 that was when they told me about what they had heard that I did
3 during home visit, which was when I pretended to not be myself.
4 That's the only time I ever talked about it.
5 HEARING OFFICER TA: Okay. And who did -- how many people
6 did you talk to about it?
7 THE WITNESS: About two people talked to me about that.
8 HEARING OFFICER TA: Okay. And did any coworkers talk to
9 you about the Union visiting them?
10 THE WITNESS: Yes.
11 HEARING OFFICER TA: How many?
12 THE WITNESS: Like five.
13 HEARING OFFICER TA: Five. Okay.
14 THE WITNESS: Yeah.
15 HEARING OFFICER TA: In the time since the election --
16 THE WITNESS: Uh-huh.
17 HEARING OFFICER TA: -- have your coworkers -- in your
18 experience, have you heard coworkers continuing to talk about
19 the home visits?
20 THE WITNESS: Yes.
21 HEARING OFFICER TA: Okay. So would you say they talk
22 about it daily?
23 THE WITNESS: Not daily, but sometimes they bring it up
24 when they like remember or something comes up and that reminds
25 them about it, then they talk to me about it.

1 HEARING OFFICER TA: Okay. So would you say in the last
2 four months, they talk about it a couple of times a month?
3 THE WITNESS: Yeah. Uh-huh.
4 HEARING OFFICER TA: Okay. Okay. All right. I don't
5 have any other -- any other questions?
6 MR. PARRY: No further questions.
7 HEARING OFFICER TA: Okay. So you're excused.
8 THE WITNESS: Okay.
9 HEARING OFFICER TA: Please don't forget that a
10 sequestration order is in effect, which means that you cannot
11 talk to anyone about your testimony --
12 THE WITNESS: Yes.
13 HEARING OFFICER TA: -- until the conclusion of the
14 hearing.
15 THE WITNESS: Okay.
16 HEARING OFFICER TA: Thank you.
17 THE WITNESS: Thank you.
18 HEARING OFFICER TA: All right. Let's break for lunch.
19 Let's go off the record.
20 (Off the record at 12:55 p.m.)
21 HEARING OFFICER TA: We're back on the record. We're not
22 putting on Union counsel's -- the Union's witnesses.
23 MR. PARRY: Well, if I may.
24 HEARING OFFICER TA: Yeah.
25 MR. PARRY: I did have an issue,

1 HEARING OFFICER TA: Yeah. Employer counsel wanted to
2 address something on the record.
3 MR. PARRY: Before I turn the questioning over to the
4 Union's side, I'd like to call one last witness and that is Mr.
5 Sorza as an adverse witness.
6 HEARING OFFICER TA: Okay. Do you have --
7 MR. BLASI: I need to think about. I mean, the -- I guess
8 the Union would say that the Employer has already said that it
9 had no further witnesses and --
10 MR. PARRY: I never rested or closed evidence.
11 MR. BLASI: -- and we're now heading into the afternoon
12 not having called our first witness, who we were told we'd be
13 able to call after lunch. And I'm not -- it's appearing that
14 we may not have any opportunity to put on even two of the six
15 remaining witnesses we have today, so the Union would say
16 that -- would suggest that the Employer's counsel would have
17 ample opportunity to cross the Union's witness and can do that
18 when the opportunity arises.
19 HEARING OFFICER TA: Is there a reason why --
20 MR. PARRY: I have the right to put on the --
21 HEARING OFFICER TA: Sure.
22 MR. PARRY: -- evidence in the order I'd like to put it on
23 and I would like to put on Mr. Sorza. And I don't know --
24 there's no authority that says I can't do that, I'm prohibited
25 from doing it. There's actually the rules of evidence that

1 allow for it and I --

2 MR. BLASI: There's no requirement that witnesses be taken

3 in order.

4 MR. PARRY: There is no requirement, precisely. And so

5 taking Mr. Sorza's testimony right now is perfectly allowed.

6 And there's nothing prohibiting it. And believe that the

7 Employer has a right to present its evidence as it sees fit.

8 And I've not rested and not closed the presentation of

9 evidence. And I'm entitled to take Mr. Sorza's testimony as an

10 adverse witness.

11 HEARING OFFICER TA: Okay. I'm just a little concerned

12 about it, just because of the representations that were made

13 about how many witnesses were remaining. Honestly, this is

14 just sort of a logistically issue of availability of witness.

15 And I don't know. Like I don't know how long this will bump

16 down the list.

17 MR. BLASI: I have several witnesses that are only

18 available today.

19 MR. PARRY: He's one of the witnesses that presumably

20 they're going to put on. I don't know that, but he's here and

21 he's available right now and I am entitled to the opportunity

22 to examine him. And without the -- I can have the ability not

23 with his preparation for it. I want to get his testimony right

24 now.

25 MR. BLASI: Can we have a --

1 MR. PARRY: And I am entitled to do that. He's present in
2 the room and he should take the stand and testify, so I can get
3 his testimony as he's sitting here right now.
4 MR. BLASI: He's not -- he was not one of the witnesses I
5 was planning to call today, because there are other witnesses
6 who can only testify today and he will be able to testify
7 tomorrow and the Employer can ask whatever questions it wants
8 to. It has not given a proffer of proof of why it's necessary
9 to change the plan that was agreed upon about how this hearing
10 would unfold.
11 HEARING OFFICER TA: Yeah.
12 MR. PARRY: I am not required to disclose my strategy --
13 HEARING OFFICER TA: Right.
14 MR. PARRY: -- and my work product as to why I want to
15 call him now.
16 HEARING OFFICER TA: Again, I'm just worried about the
17 availability of witnesses --
18 MR. PARRY: I understand.
19 HEARING OFFICER TA: -- you know --
20 MR. PARRY: And I -- you know, I've had to deal with those
21 issues, too. I had a handful of witnesses that were here all
22 day yesterday and had to come back, mostly due to all the
23 delays yesterday. We're delaying right now. I don't
24 anticipate questioning for very long and then he can leave and
25 come back if he wants to at some other time. But -- and we

1 have about three hours to put on additional testimony from
2 right now. I'm willing to stay here as long as it takes, as
3 long as the Union needs to put on whoever they want to put on.
4 So it -- not allowing me to put on the witness I need to
5 put on right now is -- prejudices the Employer.
6 HEARING OFFICER TA: How so?
7 MR. PARRY: I don't -- he may not be here -- back here
8 tomorrow.
9 MR. BLASI: I can promise you that he will. He's a --
10 MR. PARRY: And that doesn't --
11 MR. BLASI: -- a party representative.
12 MR. PARRY: -- that's not worth anything. And it also
13 enables --
14 MR. BLASI: You can subpoena him, if you'd like.
15 MR. PARRY: -- it also enables the Union to take him and
16 prep him and do whatever they will with him to get him ready
17 for testimony that they want to put on. I want to put on the
18 testimony that I want to put on right now. I want to ask him
19 the questions without them having the opportunity to do that.
20 HEARING OFFICER TA: And how --
21 MR. PARRY: And I think I'm entitled to do that under the
22 rules of evidence.
23 HEARING OFFICER TA: How long do you anticipate the line
24 of questioning will take?
25 MR. PARRY: Probably 15 to 20 minutes.

1 MR. BLASI: The Union strenuously objects. We're not
2 going to be able to put on our witnesses that are only
3 available today, if that happens.
4 HEARING OFFICER TA: Well, I don't -- I think we're going
5 to have to go off the record for me to make a ruling. Let's
6 take five minutes.
7 (Off the record at 2:11 p.m.)
8 HEARING OFFICER TA: I mean, I want to reiterate my
9 concern about just the availability of witnesses. I think we
10 have a couple options here. We can either put on Mr. Sorza
11 right now, assuming it will take 15 to 20 minutes. And then
12 that way, we complete the Employer's, you know, line of
13 witnesses. Or we can take the -- your two witnesses first and
14 then take Mr. Sorza at the end.
15 MR. PARRY: I object to that, because that clearly gives
16 the Union an opportunity to not only confer with Mr. Sorza on
17 what his testimony would be, it also doesn't guarantee that I'm
18 actually going to get to call him today, which gives another
19 day with, you know, two witnesses left. I don't know how
20 they're going to be and I'm sure counsel will say that they're
21 not going to be very long.
22 But the -- I have a right to call my witness before I
23 close my portion. And I'm not going to go back into that.
24 We've -- I had to deal with witness availability also, where I
25 had probably over an hour of breaks yesterday to deal with that

1 cut into witness testimony time. We've now spent probably
2 close to the time I would have taken to question Mr. Sorza just
3 deliberating on this issue.
4 MR. BLASI: I would just say the Employer may have a right
5 to put on the witnesses it wants to put on, but there's no
6 obligation to put them on -- that the Hearing Officer permit
7 the -- or require that the order be the order of witnesses that
8 the Employer wants. That's never been anything I've seen
9 before in an NLRB proceeding. It's entirely permissible to
10 take witnesses out of order, based on availability. It's now
11 pushing on 2:30. I have two Spanish speaking witnesses that
12 are only available today. Their testimony is likely --
13 HEARING OFFICER TA: Until what time?
14 MR. BLASI: About 5 or so. I don't know. Maybe a little
15 after 5.
16 HEARING OFFICER TA: I mean, can we push through past 5?
17 Is that possible? I mean --
18 MR. BLASI: Maybe a little bit past 5, but I also have an
19 appointment at 6 or 6:30 with a witness I have yet to meet with
20 for tomorrow, so --
21 MR. PARRY: Sounds like there are two witnesses and
22 there's two and a half hours before we even get to 5. That's
23 entirely doable. Let's move on with this.
24 HEARING OFFICER TA: Okay.
25 MR. PARRY: And again --

1 HEARING OFFICER TA: okay.

2 MR. BLASI: I think the consequence of this --

3 MR. PARRY: -- the rules of evidence allow for me to

4 call --

5 HEARING OFFICER TA: Okay.

6 MR. PARRY: -- an adverse witness and I should be allowed

7 to do so without the ability of counsel to have extra time to

8 prep the witness before I question him.

9 MR. BLASI: The practical implication of this is the

10 Union's not going to be able to put on all of the witnesses it

11 needs to put on today. If -- I'd assume -- he's talking about

12 putting him on for 20, a half an hour. There's going to be, I

13 assume, I'll have cross and it's going to go on. And the

14 reality is that we will not be able to put on the witnesses

15 that we intend to put on.

16 MR. PARRY: Then he can bring him back instead of going

17 right after I go. That's --

18 HEARING OFFICER TA: I'm -- bring who back?

19 MR. PARRY: Bring Mr. Sorza back to testify later, to

20 finish his testimony, after I ask my questions.

21 MR. BLASI: He -- Mr. --

22 MR. PARRY: And the reality is I had to deal with the same

23 thing. I didn't get to put on the witnesses --

24 HEARING OFFICER TA: Okay.

25 MR. PARRY: -- that I wanted to put on all yesterday and I

1 had to bring them back today.

2 MR. BLASI: Mr. Sorza's going --

3 HEARING OFFICER TA: Okay.

4 MR. BLASI: -- to be here tomorrow. He's not one of the

5 witnesses that's going to be testifying today.

6 MR. PARRY: Then there should be --

7 HEARING OFFICER TA: Okay.

8 MR. PARRY: -- no problem in bringing him back tomorrow to

9 complete your end of his testimony.

10 HEARING OFFICER TA: Okay. I'm going to allow Mr. Sorza

11 to testify right now. Okay.

12 MR. PARRY: Thank you.

13 HEARING OFFICER TA: Okay. So go ahead. Okay. Can you

14 please state your name and spell it for the record?

15 MR. SORZA: Yes. Sergio Sorza. Is this on? Yeah, okay.

16 Right here? Sergio Sorza. S-E-R-G-I-O S-O-R-Z-A.

17 HEARING OFFICER TA: Okay. And can you please raise your

18 right hand?

19 MR. SORZA: Yes.

20 Whereupon,

21 **SERGIO SORZA**

22 having been duly sworn, was called as a witness herein and was

23 examined and testified as follows:

24 HEARING OFFICER TA: Okay. And again, just the same

25 reminders that you've heard me say all day. You're being

1 recorded, so no nods and shakes of the head. Just make sure to
2 give a verbal response. If you don't understand a question,
3 feel free to clarify and wait until the question is asked in
4 its entirety before you answer. If there is an objection to a
5 question, hold your response until I make a ruling on the
6 objection.
7 THE WITNESS: Okay.
8 HEARING OFFICER TA: Okay. Thank you.
9 THE WITNESS: Thank you.
10 HEARING OFFICER TA: Uh-huh. Go ahead.
11 **DIRECT EXAMINATION**
12 Q BY MR. PARRY: Thank you, Mr. Sorza. During the break
13 that we just came back from -- and I believe the transcript
14 timestamp will reflect the time, what did you discuss with Mr.
15 Blasi?
16 MR. BLASI: Objection. Calls for attorney client
17 privileged communications.
18 HEARING OFFICER TA: Sustained.
19 Q BY MR. PARRY: Did you have a discussion with Mr. Blasi?
20 MR. BLASI: Objection. Calls for testimony --
21 MR. PARRY: I'm not asking --
22 MR. BLASI: -- concerning privileged information.
23 MR. PARRY: -- for the content. I'm asking if it occur --
24 if he discussed anything.
25 HEARING OFFICER TA: Overruled. Go ahead.

1 Q BY MR. PARRY: Did you have a discussion during Mr. Blasi
2 during the break that we just came back from?
3 A Yes.
4 MR. PARRY: Know that that's -- I had called him a witness
5 before the break and I think that's a violation of the
6 sequestration order. Precisely the purpose I wanted to call
7 him, so he could not be -- his testimony could not be colored.
8 and that's precisely what it does is it colors his testimony.
9 HEARING OFFICER TA: So I'm sorry. Are you moving for
10 anything? What's -- you're just --
11 MR. PARRY: Well, I was just --
12 HEARING OFFICER TA: Okay.
13 MR. PARRY: -- pointing out that I think it's colored his
14 testimony and that should bear on the weight of his testimony.
15 If he's been speak -- if he spoke to counsel after I called him
16 as a witness, that appears to be a violation of the
17 sequestration order.
18 HEARING OFFICER TA: Well, I think without knowing the
19 contents of the discussion, I mean the -- the sequestration
20 order says that they cannot discuss their testimony. And we
21 don't know what was discussed. They could have been talking
22 about the weather or baseball.
23 MR. PARRY: Suppose that's the --
24 HEARING OFFICER TA: You know, we don't --
25 MR. PARRY: That's the difficulty with the attorney client

1 portion of that. I would stipulate that it does not waive the
2 attorney client privilege, if we can ask him what was --
3 otherwise waive the privilege, if I can ask him what was being
4 discussed during the break.
5 MR. BLASI: I'm sorry. I don't understand the question.
6 HEARING OFFICER TA: Yeah. And I --
7 MR. PARRY: I would pre --
8 HEARING OFFICER TA: -- I just don't see how -- he's -- he
9 hasn't testified. We don't know if he discussed his testimony.
10 And this is his attorney.
11 MR. PARRY: I'll just continue.
12 HEARING OFFICER TA: Yeah, continue. Go ahead.
13 MR. PARRY: I just want to make that note --
14 HEARING OFFICER TA: okay.
15 MR. PARRY: -- for the record.
16 HEARING OFFICER TA: Okay. Noted.
17 Q BY MR. PARRY: And Mr. Sorza, you work for Unite Here
18 Local 11, correct?
19 A Yes, I do.
20 Q What's your position there?
21 A I am an organizer.
22 Q And what does that entail?
23 A Organizing entails -- excuse me -- representing workers in
24 union shops. So restaurants, hotels that have a CBA with the
25 employer as well as organizing workers that are non-union or

1 folks that work at a worksite that does not have a collective
2 bargaining agreement, CBA.
3 Q So what do you do to organize workers at a worksite that
4 is non-union?
5 A We do various things. One is we meet with workers. Due
6 to their worksite being a non-union workplace, we cannot meet
7 with them inside the workplace, but we do meet with workers via
8 appointments at their homes or at off-work sites, such as
9 cafes, restaurants, to discuss issues or questions and concerns
10 that they have about the workplace or any organizing effort
11 that we are attempting to do.
12 Q And you say you meet with workers off of the worksite
13 through appointments, correct?
14 A Sometimes, yes.
15 MR. PARRY: I'm going to object that this heading into
16 Berbiglia privileged information regarding internal union
17 tactics and strategies.
18 MR. BLASI: I'm not aware of the existence of a privilege
19 there.
20 MR. PARRY: That's a -- one of the most well-established
21 privileges under Board law is that the employer may not inquire
22 upon the internal discussions or activities of the union. I
23 would grant a couple of questions of a general nature, but
24 anything regarding internal union strategy discussions is
25 absolutely privileged under the Berbiglia case.

1 HEARING OFFICER TA: Okay. I'm going to sustain the
2 objection.
3 Q BY MR. PARRY: Mr. Sorza, how long have you worked for
4 Local 11?
5 A A little under two years.
6 Q And do you recall when you were hired?
7 A May of 2016.
8 Q Where did you work before that?
9 MR. BLASI: Objection. I know exactly where the Employer
10 is attempting to go and it's entirely unrelated to anything
11 that we're discussing here.
12 MR. PARRY: How do you know exactly where I'm intending to
13 go?
14 HEARING OFFICER TA: Well, just so counsel what's the
15 relevance of where he worked before?
16 MR. PARRY: I just want to establish a little bit of his
17 background and his history --
18 MR. BLASI: No. The -- what --
19 MR. PARRY: Coun -- well, hold on a second. Counsel --
20 MR. BLASI: It's --
21 MR. PARRY: -- alluded to what the -- what unions have
22 done since I think he said since all eternity and I want to
23 just give a little background and explore that.
24 MR. BLASI: No. This is a --
25 MR. PARRY: I don't think asking where he worked before

1 that and getting his experience --

2 MR. BLASI: It's --

3 MR. PARRY: -- with unions is irrel -- I mean, it's --

4 MR. BLASI: It's obvious to the --

5 MR. PARRY: -- basic background.

6 MR. BLASI: It's obvious where this is going. This is a

7 fishing expedition to --

8 MR. PARRY: Where is it going?

9 MR. BLASI: Well, I'll -- I'm not going to say, because I

10 don't want privilege these proceedings, but it's obvious to me

11 where this is going. This is an effort to inquire into

12 activities that have absolutely nothing to do with the Daily

13 Grill.

14 MR. PARRY: It's not.

15 HEARING OFFICER TA: Okay. Your -- so are you trying to

16 establish his experience working with unions?

17 MR. PARRY: Yes.

18 HEARING OFFICER TA: Okay. Can you just ask him a more

19 direct pointed question --

20 MR. PARRY: Sure.

21 HEARING OFFICER TA: -- about --

22 MR. PARRY: Sure.

23 Q BY MR. PARRY: Have you worked for any union, other than

24 Local 11?

25 A No.

1 Q And since you started at Local 11, have you always been an
2 organizer?
3 A Yes.
4 Q Okay. Now, how many -- just a number. How many
5 organizing campaigns have you been involved in as an organizer
6 for Local 11?
7 A That depends. There's different capacities, so --
8 Q Just overall total.
9 A I would say -- like a number?
10 Q Yes.
11 A No more than ten.
12 Q How many organizing campaigns have you been involved in
13 that have gone to election?
14 A I've been involved in three.
15 Q Okay, three. Is one of those including the Daily Grill?
16 A yes.
17 Q Okay. What were the other two?
18 A One of them was the Renaissance Los Angeles Airport
19 Banquet departmental election. That was conducted -- or --
20 there's that one. And then the second one was the Residence
21 Inn housekeeping departmental election.
22 Q So those are the only three union elections in which --
23 that you've been involved in in your entire life that went to
24 election? Is that correct?
25 A At a workplace election, yes.

1 Q Okay. Aside from the Daily Grill election, did the
2 Renaissance or Residence Inn, did either of those proceed by
3 mail ballot election?
4 A Yes.
5 Q Which one?
6 A The Renaissance election to -- Renaissance Hotel election.
7 Q Do you remember the date of election?
8 A Not the specific date, but --
9 Q Month and year?
10 A That was conducted near the winter of 2016. Winter going
11 into 2017, so I guess --
12 Q Okay. So you're certain --
13 A -- that's still winter.
14 Q -- it was in the winter?
15 A Yes.
16 Q And it wasn't going on at the same time as the Daily
17 Grill?
18 A Yes.
19 Q So it was before the Daily Grill?
20 A It was before the Daily Grill, yes.
21 Q About a year?
22 A Yeah.
23 Q Okay.
24 A '16, yeah, going to '17.
25 Q Sure. Are you aware of any other union elections by Local

1 11 that have gone by mail ballot, aside from the Daily Grill
2 and the Renaissance?
3 A That I'm aware of?
4 Q Yes.
5 A Not in my time with the Union.
6 Q Other than your time, that you just happen to be aware of?
7 A No.
8 Q Now, isn't it true that as it relates to the Daily Grill,
9 the Local 11 had a practice of visiting employees at their
10 homes during the voting period after the mail ballots had been
11 sent out?
12 MR. BLASI: I'm going to object. This is heading into
13 Berbiglia territory again.
14 HEARING OFFICER TA: You're asking about the -- whether
15 there were home visits?
16 MR. PARRY: Yes.
17 HEARING OFFICER TA: Is that right? I think he's just
18 asking whether there were home visits.
19 MR. BLASI: Can I ask for the -- counsel to repeat the
20 question, so I can understand exactly what he's asking?
21 HEARING OFFICER TA: Okay.
22 Q BY MR. PARRY: Isn't it true that Unite Here Local 11, for
23 this Daily Grill election had a practice of visiting employees
24 at their homes during the voting period?
25 A By voting period, you mean after the ballots were --

1 Q Once the ballots were --
2 A -- sent out?
3 Q -- sent out?
4 A Yes.
5 Q Okay. And isn't it true that the Local 11 sent either
6 employees and sometimes representatives that weren't actually
7 employees? Is that correct? To visit Daily Grill employees at
8 their homes?
9 MR. BLASI: Objection. Vague and ambiguous as to what --
10 MR. PARRY: Let me clear that up.
11 HEARING OFFICER TA: Yeah, can -- yeah.
12 MR. PARRY: Let me clear that up.
13 Q BY MR. PARRY: Isn't it true that Local 11 -- you would
14 consider yourself an employee of Local 11, correct?
15 A Yes.
16 Q You're employed by them?
17 A Yes.
18 Q Okay. And Local 11 employees organizers and people in
19 various other capacities, correct?
20 A Uh-huh. Yes.
21 Q Is that a yes?
22 A Yes.
23 Q Okay. Now, isn't it true that -- well, let's start with
24 this. Isn't it true that Local 11 sent its employees at times
25 to visit the homes of the voting employees of the Daily Grill

1 during the election period?
2 A Yes.
3 Q And it's also true that at times Local 11 would have
4 individuals who weren't Local 11's own employees also visit the
5 home of Daily Grill voting employees during the election
6 period, correct?
7 A Is this the same question?
8 Q It's not the same question. I'm asking whether
9 individuals who were not actually employed by Local 11 also
10 sometimes visited the homes of the Daily Grill employees.
11 A Yes.
12 Q Okay. Are you familiar with a person named Gustavo who is
13 a former employee of the Daily Grill?
14 A Yes.
15 Q Is he employed by Local 11?
16 A No.
17 Q And do you know whether he participated in Local 11's
18 visits to Daily Grill employees' homes?
19 A I am aware that he did.
20 Q And did you have a role in recruiting him to come with you
21 or to come with representatives of Local 11 to employees' home?
22 MR. BLASI: Again, we're heading into Berbiglia territory.
23 This is about internal union decision-making tactics and the
24 like. It's also unclear why it was so urgent to put on a
25 witness about general questions, most of which the Union

1 would've stipulated to.

2 HEARING OFFICER TA: Well, I -- you -- counsel, can you

3 rephrase your question to ask whether, you know, Gustavo

4 visited these homes at the request of the Union? I don't think

5 that goes into --

6 MR. BLASI: Well, he was asking about his role. That's

7 what I was objecting to.

8 HEARING OFFICER TA: Yeah, so --

9 MR. PARRY: I'm trying to get into his communications with

10 these people that aren't union employees, which I don't believe

11 a privilege attaches to -- that's external. That's not

12 internal.

13 MR. BLASI: No, the privilege relates to the inner

14 workings of a union, and that information is privileged and --

15 MR. PARRY: It's not an inner working when you have an

16 outside person come in and --

17 HEARING OFFICER TA: I mean, I think it's fine for counsel

18 to establish how Gustavo came about visiting the homes. I'm

19 assuming is that you're getting at?

20 MR. PARRY: Yes, I'd like to explore that.

21 HEARING OFFICER TA: Okay. Then I'm going to overrule the

22 objection. Go ahead and answer the question.

23 THE WITNESS: May you repeat the question, please?

24 Q BY MR. PARRY: I'm trying to remember the question now.

25 Did you have a role in recruiting Gustavo to go visit

1 employees' homes?
2 A I had communication with Gustavo, yes.
3 Q And how did you have those communications?
4 A House visits.
5 Q You visited Gustavo's home?
6 A Yes.
7 Q Did you exchange text messages with him?
8 A Yes.
9 Q Do you still have any of those text messages?
10 A No.
11 Q Do you have -- do you normally delete old text messages
12 periodically?
13 A I get new phones.
14 Q How often do you get new phones?
15 A I was in dire need of a new phone last year.
16 Q When did you get a new phone?
17 A Shortly after the election.
18 Q What was your old phone? What type of phone was it?
19 A It was an iPhone 5.
20 Q What's your new phone?
21 A An 8.
22 Q iPhone 8?
23 A iPhone 8.
24 Q So the -- I mean, I have an iPhone. Isn't -- doesn't your
25 iPhone carry over all the old data to the new one and save it?

1 A Not all the data.
2 Q It didn't save your old text messages? When did you say
3 you got your iPhone 8?
4 A Right after the election.
5 Q Do -- so if the election, I believe, completed on
6 something like December 22nd, does that sound right to you?
7 You got it before the new year?
8 A It was a holiday gift.
9 Q Okay. That's a nice gift. And did you carry over any of
10 your old data on your phone to your new one?
11 A Mostly photos.
12 Q You didn't carry over your text messages?
13 A And contacts.
14 Q So you didn't carry your text messages over?
15 A (No verbal response).
16 Q What other, if any, individuals were not employees of
17 Local 11 have you recruited to visit employees' homes?
18 A Just the -- you're asking if -- if not fellow --
19 Q At --
20 A If not fellow coworkers of mine.
21 Q Yes, not Local 11 employees that have been recruited by
22 Local 11 to visit employees' homes.
23 A If there are other people besides my coworkers --
24 Q Yes.
25 A -- the came to --

1 Q Yes.
2 A -- do visits. Yes.
3 Q And who were those?
4 A Union employees from other union shops.
5 Q What are their names?
6 A One of them was Claudia.
7 Q And what's Claudia's last name?
8 A I can't recall her last name.
9 Q Where is Claudio from? Where does she work?
10 A She's a housekeeper.
11 Q Where?
12 A At a union shop, the Hyatt.
13 Q Which Hyatt?
14 A By LAX.
15 Q What's Gustavo's last name?
16 A Lopez (phonetic).
17 Q Any other non-Local 11 employees that were recruited to
18 participate in the home visits?
19 A There was -- I don't recall a specific name, but there
20 were some cooks, at least one cook, from a downtown hotel
21 property.
22 Q Which property was that?
23 A The west end Bonaventure. And -- yeah.
24 Q Anyone else?
25 A There was Laura from the -- I forget her last name, but

1 she's a union employee at the Renaissance LAX.
2 Q Anyone else?
3 A I believe that's it.
4 Q You participated in home visits with Sandra Diaz, correct?
5 A Yes.
6 Q So Sandra Diaz would also be one that is not --
7 A Oh, oh --
8 Q -- an employee of the union.
9 A Oh, okay. Sorry. I thought you meant like non-Daily
10 Grill workers, non --
11 Q I'm saying any person that's not --
12 A Any person --
13 Q -- a Local 11 employee.
14 MR. BLASI: Can I just ask at this point how much further
15 the employee's counsel intends to go consider the time urgency
16 we have in actually beginning our case?
17 HEARING OFFICER TA: Okay. I mean, are we covering --
18 MR. PARRY: I'm going to ask these questions, I have some
19 more questions, a few more, and --
20 HEARING OFFICER TA: Okay.
21 MR. PARRY: -- I'm going through as quickly as I can.
22 HEARING OFFICER TA: Okay. All right. Continue.
23 THE WITNESS: Yeah, so Sandra Diaz.
24 Q BY MR. PARRY: Anyone else?
25 A Salvador Tello.

1 Q Anyone else?
2 A That's it.
3 Q Now, when we started this proceeding yesterday, there
4 were -- there was yourself and there, I believe, were two other
5 gentlemen sitting in the gallery here that were asked to leave
6 because of the sequestration. Who were those two people?
7 A One of them is Alex Sandoval, a fellow coworker of mine.
8 Q What's his position at Local 11?
9 A He is an organizer.
10 Q And who else? Who was the other one?
11 A William -- William Sanchez.
12 Q What is he at Local 11?
13 A He is also an organizer.
14 Q Is William Sanchez the taller one?
15 A Yes.
16 Q Do you know whether William Sanchez participated in house
17 visits for the Daily Grill employees?
18 A He did participate.
19 Q And Alex Sandoval also participated, correct?
20 A Yes.
21 Q Now, you also -- you participated in several home visits
22 of Daily Grill employees, didn't you?
23 A Yes.
24 Q At least ten?
25 A Different visits?

1 Q Different visits.
2 A Yes.
3 Q And did you participate in at least fifteen different
4 visits, whether it was repeat visits to the same employees or
5 visits to different employees?
6 A Yes.
7 Q Did you participate in at least twenty visits?
8 A Yes.
9 Q I'm going to keep into -- did you participate in at least
10 thirty visits to employees' homes?
11 A That's probably right, yeah. That's around the ballpark.
12 Q Okay. Forty visits?
13 A Probably no more than 40.
14 Q No more than 40? So somewhere between 30 and 40 visits to
15 employees' homes, you personally.
16 A Uh-huh.
17 Q And you didn't participate in all of those visits to
18 employees' home, did you?
19 A Sorry, I thought -- I thought --
20 Q There were visits being made by Local 11 to employees'
21 homes that you were not personally present for, correct?
22 A Yes.
23 Q So there were visits that involved -- perhaps there were
24 two ladies that would go to an employee's home, correct? And
25 you knew of that?

1 A Yes.
2 Q And how many visits do you know of to employees' homes
3 that were made that you did not participate in? Was there at
4 least ten?
5 A Yeah. At least ten.
6 Q Was it at least twenty?
7 A Yes.
8 Q And was it at least thirty?
9 A Yes.
10 Q Was it at least forty?
11 A Probably around there.
12 Q So as far as you know as you sit here today, you
13 participated in somewhere around forty visits to employees'
14 homes, and you were also aware of at least forty visits by
15 Local 11 to employees' homes in which you did not participate;
16 is that accurate?
17 A Yes.
18 Q Do you know how many employees are in the unit?
19 A Somewhere close to mid-seventies, upper seventies.
20 Q Thank you. Isn't it -- you weren't invited to home visits
21 for any of those employees, were you?
22 A I was.
23 Q Who invited you to their home?
24 A Several employees invited me to their homes.
25 Q Did Kirk Mann invite you to his home?

1 A No.
2 Q Did Ashlynn Camberos invite you to her home?
3 A I never visited --
4 Q Okay.
5 A -- Ashlynn.
6 Q Do you know whether Ashlynn Camberos invited any -- let me
7 just put it this way. Ashlynn Camberos did not, as far as you
8 know, invite any Local 11 personnel or representatives to her
9 home, did she?
10 A I mean, I can't speak on Ashlynn and what -- who she
11 invites, but I can tell you that she didn't invite me.
12 Q And Stephanie Mendez didn't invite you to her home, did
13 she?
14 A No.
15 Q During the voting period specifically.
16 A I did not visit Stephanie.
17 Q You did not Stephanie Mendez?
18 A During the voting period, no.
19 Q Did Macey Sheets -- or Macey Sheets never invited you to
20 her home, did she?
21 A No.
22 Q Robin Gunn never invited you to her home, did she?
23 A No.
24 Q Neither did Jose Palacios, did he?
25 A I never visited Jose Palacios.

1 Q Benjamin Acosta did not invite you to his home, did he?
2 A I never visited Benjamin.
3 Q And Lucas Chim never invited you to his home, did he?
4 A I never visited Lucas at his home.
5 Q You visited Kurt Mann, correct?
6 A Yes.
7 Q Do you live in the same complex as Kurt Mann, apartment
8 complex?
9 A No, I do not.
10 Q Who went with you to visit Kurt Mann?
11 A It was just me.
12 Q It was just you. You're the only person? How many
13 times --
14 A Yes.
15 Q -- did you visit him?
16 A Once.
17 Q And you were by -- so you were by yourself when you
18 visited Kurt Mann.
19 A Yes.
20 Q Do you know anyone who lives -- other than Kurt, do you
21 know anyone who lives in his apartment complex?
22 A Not to my knowledge.
23 Q And isn't it true that you, along with other Local 11
24 representatives, visit the -- visiting the Grill Concepts'
25 employees during the voting period at times when you knew or

1 expected they would have their mail ballots on them?
2 A When you say "on them" --
3 MR. BLASI: I'm going to object.
4 Q BY MR. PARRY: Have them in their possession.
5 MR. BLASI: I need to object on the basis that it calls
6 for speculation as to the mental states of others.
7 MR. PARRY: Okay. Let me ask him.
8 HEARING OFFICER TA: Okay. So rephrase.
9 Q BY MR. PARRY: So is that -- so isn't it true that you
10 personally visited employees of the Daily Grill during the
11 voting period at times when you expected that they would have
12 already received their mail ballots, correct?
13 A That they would've arrived to their homes, yes.
14 Q And in fact, you had -- the purpose of doing so at the
15 time when you expected that they would be arriving home to
16 actually get their ballot out of the mail, correct?
17 A Can you repeat -- sorry, that was the wrong question.
18 Q You had a practice of attempting to arrive at their home,
19 be at their homes, at times when you expected that they would
20 have -- they would be getting their mail ballots in the mail,
21 correct?
22 A I didn't know when they got their mail delivered like --
23 Q You knew when the mail ballots went out though.
24 A Yeah, but that doesn't mean I knew like --
25 Q And you heard the --

1 A -- when.
2 Q You heard the testimony of several employees in the last
3 two days, and you -- and the union made an effort to be at
4 their homes at times when the mail ballots would've been
5 arriving.
6 A Would've arrived, yeah.
7 Q Yes.
8 A Would've been at their homes, yes.
9 Q And in fact representatives of Local 11 tried to get Daily
10 Grill employees to open their mail ballots in the presence of
11 Local 11 employees, correct?
12 A No.
13 Q So the testimony you heard to that effect, you believe
14 those employees were just lying.
15 A We did not have a practice of asking people to open their
16 ballots in front of us.
17 Q Yet the union and you're aware of this, even if it wasn't
18 visits that you made, but the union had a practice of being at
19 employees' homes at times when the union knew those employees
20 would be returning home from work, correct?
21 A When there was --
22 Q Yes or no.
23 A When there was a higher probability of them being home,
24 not -- I mean, folks have second jobs. So --
25 Q Is that a yes?

1 A At times, yes.
2 Q So the union had a practice of waiting for employees at
3 their homes on dates when the union expected the employees
4 would be getting their mail ballots, correct?
5 A Waiting are you saying? Like --
6 HEARING OFFICER TA: Your hand --
7 MR. BLASI: I'm going to ask that the question be
8 rephrased. It's a bit ambiguous as to what exactly is being
9 asked.
10 HEARING OFFICER TA: So I think this is what you're
11 getting at. Did you time your visits to coincide with when the
12 employees were expected to receive their ballots in the mail?
13 THE WITNESS: In the -- the day? Like the day, yes.
14 HEARING OFFICER TA: Okay.
15 THE WITNESS: But a time, I think that's where our
16 confusion is. At the time, it's like we had previously visited
17 these workers beforehand --
18 HEARING OFFICER TA: Uh-huh.
19 THE WITNESS: -- at similar times so we expected them to
20 be home. Like the person to be home. We wanted to speak to
21 the actual employee. But we -- you know, some people get mails
22 at night time, early morning. You know, there's no like set
23 time --
24 Q BY MR. PARRY: Isn't it true that you timed those visits
25 to coincide when the employees had their mail ballots

1 purposefully so that you could attempt to get them to complete
2 their vote in your presence or in the presence of Local 11?
3 A No.
4 Q Well, you agree that you purposefully planned visits at
5 times when employees would actually have their ballots,
6 correct?
7 MR. BLASI: Well, I think that that's -- I'm sorry, was
8 that referenced?
9 MR. PARRY: Well, just let -- you state an objection.
10 Don't coach him.
11 MR. BLASI: I'm trying to state an objection.
12 HEARING OFFICER TA: Go ahead. What's -- yeah.
13 MR. BLASI: Well --
14 HEARING OFFICER TA: What's the basis of your objection?
15 MR. BLASI: I was trying to decide whether he was
16 misstating the witness' testimony and then -- but it's fine go
17 on.
18 HEARING OFFICER TA: I -- sorry, could you repeat the
19 question? I don't even know. I --
20 Q BY MR. PARRY: You agree or you admit that Local 11 timed
21 visits to employees' home for when you expected that they would
22 have -- that they would actually have possession of their mail
23 ballots.
24 A Yes.
25 Q Okay. And at those times when you visited the -- when the

1 union visited those homes, actually asked the employees if
2 they'd received their mail ballots.
3 A That was a big concern for us, yes.
4 Q You -- so you and other representatives of the union had a
5 practice of asking them if they had received their mail
6 ballots.
7 A Yes.
8 Q And this was done in-person.
9 A Yes.
10 Q At their homes.
11 A Yes.
12 Q And in many cases, uninvited, correct?
13 A Sometimes.
14 Q It was done uninvited. We've heard from all the witnesses
15 in the last two days those were all uninvited, right?
16 HEARING OFFICER TA: Well --
17 MR. BLASI: Counsel is testifying, and I believe he's
18 misstating at least some of the testimony.
19 HEARING OFFICER TA: Yeah, I -- he the witness has
20 testified that some of the home visits that he was on were
21 actually invited. So --
22 Q BY MR. PARRY: You have -- the union has all the Daily
23 Grill employees' phone numbers, correct?
24 A No.
25 Q Not all of them?

1 A No.
2 Q So it's your testimony that the union doesn't -- wasn't
3 sending text messages to all these employees?
4 A I believe that wasn't what you asked.
5 MR. BLASI: I believe that -- objection --
6 HEARING OFFICER TA: I -- yeah.
7 MR. BLASI: -- misstates the witness' testimony. He
8 didn't say anything about texts.
9 HEARING OFFICER TA: I don't --
10 Q BY MR. PARRY: Well, how do you -- how would they be
11 getting text messages if they -- if you didn't have their
12 numbers? Is there -- are you testifying today that -- has the
13 union ever sent out texts to all the employees with union
14 information?
15 A To some employees.
16 Q And isn't it true that the union performed home visits on
17 employees regardless of whether the union had their phone
18 numbers? So some employees it may have visited that you had
19 their phone number as well, correct?
20 A Yes.
21 Q So the union purposefully and intentionally wanted to be
22 in-person with those employees when they got their mail
23 ballots, as opposed to just sending them a message that says
24 don't forget to vote.
25 MR. BLASI: It's a -- it's an improper -- objection. It's

1 an improper form of a question because it -- I think this is
2 like two scenarios when there are maybe a million others.
3 HEARING OFFICER TA: Yeah, the phrasing is a little
4 confusing.
5 MR. PARRY: Okay.
6 HEARING OFFICER TA: If we can just clean it up a little
7 bit.
8 Q BY MR. PARRY: Isn't it true that the union wanted to be
9 present physically with the employees when they had their mail
10 ballots, and that was the purpose of those home visits,
11 correct?
12 A When they had received their ballots at home to ensure
13 that they actually had received those ballots, yes. But it
14 wasn't like, you know, something that, hey, I want to speak to
15 you with your ballot in-hand. That's not the objective of the
16 home visits. We wanted to ensure that they had in fact
17 received their ballots. So that way every single employee had
18 the opportunity to vote.
19 Q And you wanted to also -- and you also did offer to,
20 quote, unquote, help them with their ballots, correct?
21 A Assist them, yes.
22 Q You offered to assist them with completing their ballots,
23 correct?
24 A No. Assist them in the sense that if -- because some
25 folks don't drive. They don't have a means of secure

1 transportation. A lot of workers share cars, et cetera, with
2 spouses, sons, daughters, et cetera. So to make it accessible
3 for them to cast their ballots, we would offer folks rides so
4 they could themselves drop off these ballots if -- you know,
5 once they had filled the out, not in our presence, never in our
6 presence. But once they had filled out that ballot, that would
7 be the -- the -- the assistance that I am referring to.
8 Q You also offered to assist them in completing the ballot,
9 correct?
10 A No.
11 Q So to the extent you've heard that testimony from
12 witnesses in the last two days, you believe those witnesses are
13 lying.
14 A It was not a practice that we had to help them fill --
15 like fill out their actual ballot, no.
16 Q But you weren't at every home visit, correct?
17 A I couldn't possibly be --
18 Q So of all of those, I think you said at least somewhere
19 around eighty home visits, you couldn't be at all of those,
20 correct?
21 A No, just the ones that --
22 Q And you don't know whether any Local 11 --
23 HEARING OFFICER TA: Sorry, wait.
24 MR. BLASI: Objection. Lacks foundation. The estimates
25 regarding home visits was not a time-bound estimate.

1 MR. PARRY: Okay. Well, whatever he said -- whatever his
2 testimony was, that's fine.
3 HEARING OFFICER TA: Okay. I think it was --
4 MR. PARRY: It was at least around forty for --
5 HEARING OFFICER TA: -- forty that he was aware of that he
6 did not participate in.
7 MR. BLASI: Well, I'm not sure that the witness' testimony
8 regarded home visits that occurred during the election period.
9 I think it was an entirely untime-bound estimate, if I recall
10 that testimony correctly. It was any time. Any time I think
11 as I understood the question.
12 HEARING OFFICER TA: Okay. And what was counsel's
13 question?
14 MR. PARRY: Now I've forgotten it.
15 HEARING OFFICER TA: Okay. I'm --
16 MR. PARRY: Well, my question was, he wasn't at all the
17 home visits. And let me narrow it then.
18 HEARING OFFICER TA: Yeah. All right.
19 Q BY MR. PARRY: How many home visits -- when you testified
20 earlier that you made up to maybe about forty home visits, were
21 those home visits just within the voting period after the
22 ballots were scheduled to be mailed?
23 A No.
24 Q How many home visits did you personally make within the
25 voting period after the ballots were scheduled to be mailed?

1 A I would say at least eight, no more than twelve.
2 Q So somewhere between eight and twelve or inclusive of
3 those two numbers?
4 A Somewhere around there, yes.
5 Q And in what time period was that? Was that one week or
6 two weeks? Something different?
7 A Like a week and a half time frame. A week and a half.
8 Q And as far as you know, how many home visits did the union
9 conduct within that voting period that you were not personally
10 present for?
11 A Repeated visits also count, right? You're not --
12 Q I'm counting those as distinct visits, yes.
13 A Okay. I would say no more than twenty.
14 Q So those visits that you were not present --
15 A That -- that I was not present.
16 Q So during those twenty visits that you weren't present
17 for, you don't know what was said at them, correct?
18 A I was not there.
19 Q So you don't know what was said, correct?
20 A No.
21 MR. BLASI: Objection. I think that there's a -- well,
22 that's fine. I'll leave it be. Okay. I think the question
23 was vague as to what "no" means.
24 MR. PARRY: We can go into what he's asserted was the
25 privilege as to the internal if I have to go into that.

1 HEARING OFFICER TA: Well, I --

2 MR. PARRY: I think it's clear that --

3 HEARING OFFICER TA: -- this his testimony -- yeah.

4 MR. PARRY: -- he doesn't know what was said during those

5 meetings.

6 MR. BLASI: Fine. Let's move on.

7 HEARING OFFICER TA: Okay. Yeah. Let's move on.

8 MR. BLASI: Can we get some estimate of how much further

9 this is going to go?

10 HEARING OFFICER TA: Yeah, how --

11 MR. BLASI: I'm very concerned that I'm not going to be

12 able to --

13 MR. PARRY: I --

14 MR. BLASI: -- put on my witnesses.

15 MR. PARRY: I may be done right now.

16 HEARING OFFICER TA: Okay.

17 MR. PARRY: That's -- I'm getting -- I've got no more

18 questions at this time. Thank you.

19 HEARING OFFICER TA: Okay. Counsel, your cross?

20 MR. BLASI: I'll tell the hearing officer what my plan is

21 because I don't want to give the impression that the union is

22 somehow taking an opportunity to coach the witness or something

23 like that, but I don't have time to ask the questions that I

24 would otherwise get into in the detail or get into them given

25 the other witnesses that can only testify today. So my

1 intention is to ask a few questions and then dive into some of
2 these issues in further detail on direct examination tomorrow.
3 Does that sound suitable?
4 MR. PARRY: My understanding was that he said before that
5 he didn't even intend to call Mr. Sorza --
6 MR. BLASI: No, I didn't.
7 MR. PARRY: -- in this matter.
8 HEARING OFFICER TA: Well --
9 MR. PARRY: That's what he told No.--
10 MR. BLASI: I had never said that. I mean, I have always
11 intended to call Mr. Sorza.
12 MR. PARRY: I think it's on the record.
13 MR. BLASI: No, I said on the record that I intended to
14 call him tomorrow.
15 HEARING OFFICER TA: Okay. I mean, he -- you know, if he
16 chooses to call him at a later time as his own witness, he's
17 allowed to do that. Okay. That's fine. You want to do a
18 couple of questions on cross and then you can call him again
19 and ask him on direct.
20 MR. BLASI: Okay.
21 **CROSS-EXAMINATION**
22 Q BY MR. BLASI: As a general matter when you were visiting
23 workers during the period after the ballots had been mailed,
24 what were your primary objectives in doing that?
25 A Our primary objective was to make sure that the employees

1 had an opportunity to cast their ballots to vote.
2 Q And when you communicated with employees to further that
3 objective, what were some of the things you did, generally
4 speaking, in the conversations?
5 A Yeah. So when we would have conversations with employees,
6 we would communicate information to them as to -- well, whether
7 or not they received their ballots and what they would entail
8 do if they hadn't.
9 Q Can you stop there and elaborate on that, what you mean by
10 that?
11 A Yeah. So if an employee hadn't received the ballot, the
12 NLRB issued a phone number, hotline number, or, you know, where
13 our employees could call and either get a ballot resent. If it
14 hadn't arrived or an address was incorrect employees had that
15 opportunity. We wanted to make sure folks knew about that so
16 they're not just sitting around waiting.
17 Q Were there other things that you were trying to accomplish
18 in these visits?
19 A Yeah.
20 Q -- with respect to the objective of making sure people
21 could vote?
22 A Yeah, and also to make clear to employees the common
23 knowledge of the instructions that folks had to follow an order
24 for their vote to count. Which included their signature on the
25 back on the sealed envelope. Or else -- you know, so it was

1 like a -- I believe like a line under -- above the box, aside
2 if there is no signature, this ballot is hereby voided or will
3 not count. So we wanted to make sure folks knew that and
4 followed those instructions.
5 Q So did you make a point of telling workers if they needed
6 to follow these instructions and sign the ballot -- the
7 envelope that contained the secret ballot?
8 A Yes.
9 Q Was there ever a point when an employee filled our their
10 ballot in front of you?
11 A No.
12 Q Okay. Was there ever a point where you asked an employee
13 to fill out their ballot in front of you?
14 A Never.
15 Q Was there ever a point where you suggested that an
16 employee fill out their ballot in front of you?
17 A No. And if they were to have, protocol was to --
18 MR. PARRY: Object. There's no question pending on that.
19 Move to strike.
20 HEARING OFFICER TA: Yeah. There's no question pending.
21 You can stop. Go ahead, next question?
22 Q BY MR. BLASI: If an employee did attempt to fill out
23 their ballot in front of you, what would you have done?
24 MR. PARRY: This calls for speculation and a complete
25 hypothetical.

1 HEARING OFFICER TA: I'm going to overrule the objection.
2 Go ahead and answer.
3 THE WITNESS: If an employee were to have wanted to vote
4 in front of me, I would have left the worker. I would have
5 left their home, would have left their, you know, where they
6 were at immediately, because I didn't want to be -- or couldn't
7 be present while they voted.
8 Q BY MR. BLASI: And how did you come to learn that that was
9 an appropriate way to respond that sort of situation?
10 A Given my previous experience with mail by ballot election
11 at the Renaissance LAX.
12 Q And in the course of that prior experience, were there a
13 set of rules that you learned to follow?
14 A Yes.
15 Q Can you describe what those rules were?
16 A Yes. Those very strict rules, in the manner that we --
17 that I could conduct myself, which included, one; cannot
18 physically touch the ballot, could not have any form of contact
19 with it; two, another one would be that I couldn't be
20 present -- as I had said before -- while an employee filled out
21 their ballot; three, if a worker told me to leave their
22 property, I would do so; and just not to threaten workers, that
23 was also a very strict rule. Never threaten them under any
24 circumstance.
25 Q Okay. And how did you come to learn that these were the

1 rules that you're to follow in a mail ballot election?
2 A Yes. So had meetings with attorneys in which I got these
3 guidelines.
4 Q Okay. Were there meetings also among the union leadership
5 for your team -- or the - 3:09:13 your organizing team to
6 discuss those rules?
7 A Yes.
8 Q In the context of the Renaissance LAX election?
9 A Yes. In the context of the Renaissance election, yes,
10 almost daily meetings. We'd reinforce these rules, these
11 guidelines, to follow them very strictly.
12 Q Okay. And in the context of The Daily Grill election, was
13 there also some discussion -- or were those rules -- were the
14 same rules in effect?
15 A Yes.
16 Q And --
17 A The same rules were in effect.
18 Q And how did you know the same rules were in effect?
19 A Strict guidelines, as well met with our attorneys that
20 reinforced this. As well I had meetings daily about this that
21 reinforces this, these very strict rules that we had.
22 Q Okay. Are you aware of any incidents in which you
23 violated any of those rules that you laid out a few minutes ago
24 in the course of The Daily Grill election?
25 A No.

1 Q Are you aware of any incidents in which you observed
2 somebody else, whether they were a direct employee of the union
3 or someone collaborating with the union that violated those
4 rules?
5 A No.
6 Q Did you hear about any instance in which an employee
7 violated those rules from anybody in the union -- I guess let
8 me rephrase that. Did you learn of any violations of those
9 rules by any participate in the organizing campaign on the
10 union side?
11 A No.
12 Q Okay. Just going to ask a few more questions regarding
13 house visits, but I'm going to have to cut this short so that I
14 can put on my -- the witnesses I actually intended to put on
15 today. As a general matter, is it possible for you, as an
16 organizer, to organize effectively at the employer's worksite?
17 A No.
18 Q And why do you say that?
19 MR. PARRY: I think it's irrelevant.
20 MR. BLASI: Of course it's relevant.
21 HEARING OFFICER TA: Yeah.
22 MR. BLASI: It goes to why we're doing the mailed ballot
23 house visits.
24 HEARING OFFICER TA: Yeah. Overruled.
25 Go ahead. Answer the question.

1 THE WITNESS: Can you repeat the -- I'm sorry.
2 Q BY MR. BLASI: As an organizer, is it one of your
3 responsibilities to speak to workers about unionization and
4 what that might entail?
5 A Yes.
6 Q Okay. And have you found that it's possible to do that in
7 an effective manner, or in the manner that's necessary to
8 accomplish your work as an organizer while doing it at the
9 Employer's worksite?
10 A No.
11 Q Okay. Where do you typically engage workers in
12 conversations about unionization when you're organizing?
13 A At their homes, in restaurants, coffee shops, parks.
14 Q Okay. And why do you choose those locations?
15 A Because at their workplace, workers are oftentimes afraid.
16 I don't have legal access to their workplace. And when we're
17 offsite or at their homes, workers are more comfortable
18 speaking about issues that they wouldn't otherwise feel
19 comfortable doing at their workplace.
20 Q Okay. Is it standard -- would you say it's standard
21 practice within Local 11 have most conversations offsite, such
22 as at worker's homes?
23 A Yes.
24 MR. BLASI: I think I'm going to have stop there just
25 because of time.

1 HEARING OFFICER TA: Okay.

2 MR. BLASI: I would get into some more detail if I had

3 more time, but I'm really afraid we're not going to able to put

4 on our witnesses now.

5 HEARING OFFICER TA: I know. I know. I just have a

6 couple questions while he's here.

7 MR. PARRY: I also have a few follow up questions.

8 HEARING OFFICER TA: Oh, actually, I'm sorry. Yeah, we

9 haven't done redirect yes.

10 Okay. Go ahead.

11 MR. PARRY: By the --

12 HEARING OFFICER TA: No, no. Go ahead.

13 MR. PARRY: Just a few.

14 **REDIRECT EXAMINATION**

15 Q BY MR. PARRY: Now, you agree -- you referred to the rules

16 that you follow and you enumerated those rules.

17 You would agree then that asking a Local 11 employee --

18 asking a voting employee to open their mail ballot in the

19 presence of the Union member or Union employee is a violation

20 of those rules, correct?

21 A An employee voting in front --

22 Q Well, let me make that clear, because it's --

23 A Yeah. Sorry.

24 Q So let me say, when I talk about the union people, I'm

25 going to say the union people and let's just define it, okay?

1 So when I say employee, I'm talking about an employee of The
2 Daily Grill.
3 A Yeah. I'm getting confused with employees.
4 Q So you would agree that a union person asking a Daily
5 Grill voting employee to open their mail ballot in the presence
6 of the union person is a violation of the rules you discussed?
7 A Voting in front of us, yes, that's a violation.
8 Q So if anyone from the union asked a Daily Grill employee
9 to do that, they violated the rules, correct?
10 A Yes.
11 Q Okay. Now, do you know where those rules come from? Is
12 it some internal rules that the Union created for their own
13 governance, or is it something that comes from the law; do you
14 know?
15 A I trust that the attorneys that provided these guidelines
16 have their legal foundations for as to why these rules are --
17 Q Who was at these meetings when they explained the rules to
18 you?
19 MR. BLASI: I'm going to --
20 HEARING OFFICER TA: Okay. Wait.
21 MR. BLASI: I'm going to object that this is calling for
22 legal conclusions and questions of law, which are not
23 appropriate.
24 HEARING OFFICER TA: Well, I think he -- okay.
25 MR. PARRY: He asked about them first.

1 HEARING OFFICER TA: Yeah. And he's asking how he
2 understands -- whether he understands these rules to be
3 something that was told to him or that he actually somehow --
4 independently know as law.
5 MR. PARRY: I'm not -- I don't need to go deeper into this
6 issue.
7 HEARING OFFICER TA: Okay. Okay.
8 MR. PARRY: I'm just going to --
9 Q BY MR. PARRY: Who was at the meetings where these rules
10 were communicated to you?
11 A You're speaking about the --
12 Q The rules that you went through?
13 A For the meetings that -- for The Daily Grill?
14 Q The meetings that -- where you said attorneys explained to
15 you --
16 A Oh, okay.
17 Q -- all the rules on how you treat mail ballots.
18 A Yes. So attorneys were present, as well as an organizing
19 team, my organizing team.
20 Q And where did that take place?
21 A At one of our union offices.
22 Q You said your organizing team. Are you in charge of the
23 organizing team for Local -- for The Daily Grill election?
24 A I'm --
25 Q Let me ask this. Is there like a head organizer that's

1 appointed for each union campaign that goes on at a property?
2 A It depends on a case-by-case basis.
3 Q Did that happen for The Daily Grill election?
4 A There was a team of organizers.
5 Q Was one --
6 A I was one of the primary folks in charge.
7 Q Okay. And you -- okay. So let me move on to a different
8 subject and I'll wrap it up.
9 You know, you worked for a labor union, yes?
10 A Yes.
11 Q And one of the primary functions of a labor union -- or
12 the primary -- the only real function -- the main function of a
13 labor union is to organize employees under the union, correct?
14 HEARING OFFICER TA: Is there an objection?
15 MR. BLASI: I'm trying to think of it. It just seems like
16 an improper question. I'm not sure exactly what the objection
17 would be.
18 You can answer the question, I guess.
19 HEARING OFFICER TA: It's just a little unclear.
20 MR. PARRY: I don't know want to telegraph where I'm
21 going, but this is like three questions.
22 HEARING OFFICER TA: Okay. So you're asking him what the
23 main function of a labor organization is?
24 MR. PARRY: Yeah.
25 HEARING OFFICER TA: Okay.

1 THE WITNESS: It's a function, yes.
2 Q BY MR. PARRY: So organize employees under the union,
3 right?
4 A Yes.
5 Q And obviously, from there there's other functions that are
6 performed when that's happening.
7 A Yeah. There's --
8 Q But that's the first thing does is organize the employees,
9 correct?
10 A Yeah. Union/nonunion employees, yes.
11 Q Okay. And one of the ways it does that is through an
12 election, right?
13 A That's a method of organizing nonunion workers.
14 Q Okay. And in the event that it's done through an
15 election, the union's goal is to get employees to vote yes for
16 the union, correct?
17 A Yes.
18 Q Their goal is not just to get them to vote, but to vote
19 yes, right? You want them -- and with The Daily Grill, you
20 wanted the employees to vote yes, correct?
21 A Yes.
22 Q So your primary objective is not just to get employees to
23 vote, but to vote yes; would you agree?
24 A To give them the opportunity to cast their ballots, yes.
25 Q And you want them to vote yes?

1 A And in an ideal world, yes.
2 Q Its -- do you -- a union that's organizing employees wants
3 them to vote yes. That's the whole purpose, correct?
4 A Yeah. We want to give employees the opportunity for them
5 to have a say in their workplace.
6 Q That's not what my question is. My question is --
7 A So yes.
8 Q -- is the union's goal to get the employees to vote yes
9 for the union? Is that the goal?
10 A In an election, yes.
11 Q The union sends out posters in different sorts of campaign
12 materials that say vote yes for the union, right? I mean
13 that's no secret, is it?
14 A No posters, per se, but.
15 Q Well, maybe not posters, but communications or --
16 A There's like flyers, yes.
17 Q Flyers. Okay.
18 A Yeah.
19 Q And it's not uncommon for Local 11 to put out flyers that
20 say vote yes for union, correct?
21 A Yes.
22 Q And so that's what the union wants is yes votes; agreed?
23 A Yes.
24 Q Okay. So when you say your primary objective in visiting
25 employees at -- your primary objective doesn't change over the

1 course of the union campaign, correct? From the date that the
2 RC petition is filed until the date the votes are counted,
3 you're objective -- the union's objective, is to get yes votes,
4 correct?
5 A From that time period, yes.
6 Q From RC petition -- let's talk about specifically Daily
7 Grill -- from RC petition -- and before that actually, when
8 you're doing the -- getting cards -- but let's just say from RC
9 petition until the votes are counted, you're primary objective
10 is to get employees to vote yes, correct?
11 A Correct.
12 Q And that -- that doesn't change in that whole span,
13 correct?
14 A Correct.
15 Q So your primary objective in visiting employee's homes
16 during the voting period was to get them to vote yes, correct?
17 A Yes.
18 Q Thank you.
19 MR. PARRY: I don't have any further questions.
20 MR. BLASI: I do. I need to re-cross on that.
21 **RECROSS-EXAMINATION**
22 Q BY MR. BLASI: As a general matter, when the union was
23 visiting workers and communicating with workers after the
24 ballots were mailed, in general, could you say something about,
25 you know, which workers the union was focused on?

1 A Yes. So we focused primarily on employees that had signed
2 union authorization cards.
3 MR. PARRY: I think this is -- this is irrelevant, and I
4 think it kind of --
5 MR. BLASI: Well, it's --
6 MR. PARRY: Given the testimony that's come in, I think
7 it's a little violative of confidentiality and the employee's
8 privacy in their authorization cards.
9 MR. BLASI: I disagree. The Employer's made an argument
10 that the union is --
11 MR. PARRY: It's also irrelevant.
12 MR. BLASI: The point is --
13 MR. PARRY: Pointing to the consent issue that says once
14 you -- if you've done this and you consented to visits
15 throughout the process --
16 MR. BLASI: But that's not the -- that's not what --
17 MR. PARRY: And it's irrelevant. And that's been the
18 ruling so far.
19 HEARING OFFICER TA: Okay. Go ahead.
20 MR. BLASI: That's not the point of this brief question,
21 which is -- the Employer's counsel seems to be suggesting that
22 the witness misspoke or something when he was saying that when
23 he visited the -- Employer's objective was to -- the employees
24 during the election period, the objective was to -- not only to
25 make sure that they voted for the union -- or not only that

1 they had an opportunity to vote in general, but they voted for
2 the union.
3 I'm simply attempting to elicit testimony concerning which
4 employees in general the union was focusing on. And I think
5 the witness already attempted to answer the question in his own
6 words.
7 I don't want to say more, because I don't to, you know,
8 prejudice whatever the testimony -- but it's obviously
9 relevant, because it's responding to the line of questioning
10 the Employer just attempted to pursue.
11 And I will note that we're now really running out of time.
12 HEARING OFFICER TA: Yeah.
13 MR. BLASI: So I'm very concerned about that.
14 HEARING OFFICER TA: I know. I'm just -- I'm going allow
15 a short line of questioning because he's not identifying
16 individual employees who signed authorization cards, so.
17 MR. PARRY: If I may really quickly, I just think those
18 employees have been identified, because he's talking about who
19 they were targeting. And all we've heard from is employees
20 that were targeted for home visits. So while he may not be
21 identifying them by name, we know who those people are.
22 MR. BLASI: I don't think that there's any -- first of
23 all, he's making a general statement about many employees. And
24 second, I don't believe that the ruling that the Hearing
25 Officer made earlier with respect to asking employees about

1 their own authorization card signings would preclude testimony
2 from other witnesses about their conversations with other
3 employees. If you read NLRB decisions, they're replete with
4 discussion about conversations union organizers had with
5 employees and about the substance of those conversations and
6 the employee's perspective, because they are important -- shed
7 important light on what was going on in this conversation.
8 HEARING OFFICER TA: Yeah. I mean I think saying that the
9 union was focused on certain -- on employees doesn't
10 necessarily mean that everyone that they visited were the
11 targets of that focus. So I'm going to allow it, but again,
12 just a short line of questioning.
13 MR. BLASI: I mean it's really just one question.
14 Q BY MR. BLASI: In general, who is the union focused when
15 it was attempting to visit employees and make sure they got
16 their opportunity to vote and have their vote counted?
17 A Yeah. So we were focusing on employees that we had --
18 that we had had previous conversations that included house
19 visit at times. And in these conversations and house visits,
20 workers had signed union authorization cards. I was present
21 for some of these voter petitions and had given as consent --
22 giving us consent to take a photo of them in support of the
23 unionization effort at The Daily Grill.
24 Q And in general, these were employees who had, in some
25 manner, indicated they supported the union; is that fair to

1 say?
2 A Yes.
3 Q Okay.
4 MR. BLASI: No further questions on this matter.
5 And I really would like -- I think you have some
6 questions, but I'm -- it's now --
7 MR. PARRY: I just have one question to follow up.
8 HEARING OFFICER TA: Okay. Quickly.
9 **FURTHER REDIRECT EXAMINATION**
10 Q BY MR. PARRY: You also did home visits on employees who
11 had told you already that they were not interested and didn't
12 want to hear it, right?
13 A Hear what? Sorry.
14 Q Hear from the union anymore at the time you visited their
15 homes, correct?
16 A No. Sorry. You're saying after the ballots were cast?
17 Q Once the ballots were -- during the voting period, you
18 visited employees who when you showed up at their door said
19 they didn't want to hear from you, correct?
20 A No.
21 Q So when you visited Kurt Mann (phonetic throughout), he
22 was receptive to you and he wanted to hear from you?
23 MR. BLASI: Objection. That misstates --
24 Q BY MR. PARRY: Is that what you're saying?
25 HEARING OFFICER TA: I'll allow it. Go ahead.

1 THE WITNESS: Sorry.
2 Q BY MR. PARRY: So when you visited Kurt Mann at his
3 home -- is it your testimony that he did not -- that he wanted
4 to speak with you?
5 A I did not visit Kurt Mann after the ballots.
6 Q Okay.
7 A -- were sent out.
8 Q Tell me one of the people that have testified in the last
9 two days whose home you visited after the ballots were out.
10 A One of the employees that I visited was Macey Sheets.
11 Q And did Macey Sheets want to be visited by you during the
12 voting period?
13 MR. BLASI: Objection. Calls for speculation as to --
14 Q BY MR. PARRY: Did she appear to have wanted to be visited
15 by you at the time you visited her at her home during the
16 voting period?
17 A She had just woken up from a nap and was --
18 Q That -- just yes or no? Did you perceive that she wanted
19 to talk to you at that time?
20 A She wasn't opposed to -- we did have a conversation.
21 Q And so whatever her testimony was that you've already
22 heard today, you think that's just -- that's not true?
23 MR. BLASI: Objection. Vague and ambiguous as to what
24 that means.
25 MR. PARRY: I don't have any more questions. That's fine.

1 HEARING OFFICER TA: Okay. I'm going to reserve my
2 questions for when the witness is recalled again, just in the
3 interest of time.
4 So you are excused for now.
5 THE WITNESS: Okay.
6 HEARING OFFICER TA: So you are excused for now.
7 THE WITNESS: For now. I'll be back.
8 HEARING OFFICER TA: Just remember that a sequestration
9 order is in effect and you are not to discuss your testimony
10 with anyone else until the conclusion of the hearing. Okay?
11 Thank you.
12 MR. PARRY: And that includes counsel, correct?
13 MR. BLASI: I don't believe the sequestration
14 order entails --
15 HEARING OFFICER TA: I don't -- yeah. I think that's
16 privileged. So he -- I don't think that includes counsel.
17 MR. PARRY: So then counsel would be able to then
18 communicate that information to other witnesses, correct?
19 HEARING OFFICER TA: Well, I think counsel is policing the
20 sequestration order. So we're assuming you're not sharing
21 testimony, right?
22 MR. BLASI: I mean I'm allowed to summarize --
23 MR. PARRY: No.
24 HEARING OFFICER TA: -- the testimony of others as you
25 indicated at the hearing's outset so that I can prepare and

1 learn about the perspective of other witnesses. That's
2 permissible and I'm doing that.
3 MR. PARRY: He's not allowed to summarize testimony for
4 other witnesses that are going to go.
5 HEARING OFFICER TA: Yeah.
6 MR. PARRY: That's in -- that's in direct violation of
7 sequestration order. That's --
8 HEARING OFFICER TA: Yeah. And as I understand it,
9 it's --
10 MR. PARRY: And if that's been happening --
11 HEARING OFFICER TA: -- pertaining to rebuttal.
12 MR. BLASI: With respect to rebuttal, yes.
13 HEARING OFFICER TA: I'm just going to read the order
14 again. So I'm going to reread this, the applicable port of the
15 order. "Under the Rule as applied by the Board with one
16 exception, counsel for a party may not, in any manner,
17 including by showing of transcripts of testimony, inform a
18 witness about the content of the testimony given by a preceding
19 witness without express permission of the Hearing Officer.
20 However, counsel for a party may inform counsel's own witness
21 of the content of testimony and may show to a witness
22 transcripts of testimony given by a witness for the opposing
23 side in order to prepare for rebuttal of such testimony.:
24 And it says I expect counsel to police the sequestration
25 order.

1 MR. PARRY: So counsel, it sounds like, interrupts this as
2 allowing him to summarize a witness -- the testimony of all the
3 witnesses that have gone for his own witnesses.
4 MR. BLASI: Well, I think I'm complying entirely with the
5 order, and I'll just leave it at that.
6 HEARING OFFICER TA: Yeah. And I think in order to
7 prepare for rebuttal of the testimony. So to the extent --
8 MR. PARRY: But he may not summarize the testimony of his
9 own witness for another witness.
10 MR. BLASI: That may be true.
11 HEARING OFFICER TA: Yeah. No, it says: "Counsel for a
12 party may inform counsel's own witness of the content of
13 testimony and may show to a witness transcripts of testimony
14 given by a witness for the opposing side in order to prepare
15 for rebuttal of such testimony."
16 MR. PARRY: But Mr. Sorza is not an opposing witness.
17 It's his witness that I called on -- as a -- essentially, on
18 cross as an adverse witness.
19 HEARING OFFICER TA: As a 611(c), yeah.
20 MR. PARRY: It's still his witness. It certainly isn't my
21 witness. So my interpretation of that sequestration order and
22 what I would request it be confirmed is that counsel for the
23 Union cannot communicate in any way, including by summary or
24 transcript, the testimony of Mr. Sorza to any of his own
25 witnesses.

1 HEARING OFFICER TA: Counsel, what's your position?
2 MR. BLASI: I have not, you know, considered this issue.
3 I've never seen it arise where the employer is calling the
4 union's own witness an adverse witness.
5 MR. PARRY: Neither have I.
6 MR. BLASI: I've never seen it happen, and I'm irritated
7 that it happened, because now I'm not going to be able to call
8 my witnesses today. And I may not be able to call them at all,
9 because it's now 3:30 where we anticipated starting our case at
10 1 o'clock and I have two witnesses who only speak Spanish and
11 are only available today.
12 HEARING OFFICER TA: Okay.
13 MR. BLASI: And so counsel for the Union is displeased
14 that we're even having this conversation. Counsel for the
15 Union does not intend the violate order.
16 HEARING OFFICER TA: Okay.
17 MR. BLASI: And I prefer to leave it at that.
18 HEARING OFFICER TA: Okay. Well -- okay, for now, I'm
19 going to say let's not discuss -- let's not discuss his
20 testimony. I'll get a final ruling on it, but for -- while --
21 but just in the interest of moving this hearing along, I do
22 want to get the other witnesses in right now, so.
23 MR. BLASI: Thank you. May we call our first witness?
24 HEARING OFFICER TA: Yes. Go ahead.
25 MR. BLASI: The Union calls Martha Santamaria to the

1 stand.

2 HEARING OFFICER TA: You're excused.

3 MR. BLASI: And if I may -- ready to go get her?

4 HEARING OFFICER TA: Yes, yes. Please.

5 MR. BLASI: Or if you prefer to send someone else?

6 HEARING OFFICER TA: I just --

7 MR. PARRY: And before you leave, can we get copies of the

8 sequestration order?

9 HEARING OFFICER TA: Yeah, yeah, yeah, yeah.

10 MR. PARRY: Okay. Thank you.

11 HEARING OFFICER TA: We can do that. Okay. Can you

12 please state your name and spell it for the record?

13 THE WITNESS: My name is Martha Santamaria. And it's one

14 last name. Should I spell it?

15 HEARING OFFICER TA: Yes, please.

16 THE WITNESS: M-A-R-T-H-A S-A-N-T-A-M-A-R-I-A.

17 HEARING OFFICER TA: Okay. And can you please raise your

18 right hand?

19 Whereupon,

20 **MARTHA SANTAMARIA**

21 having been duly sworn, was called as a witness herein and was

22 examined and testified, by and through an interpreter as

23 follows:

24 HEARING OFFICER TA: Okay. Thank you.

25 Counsel, go ahead. Your witness.

1 MR. BLASI: Okay.

2 **DIRECT EXAMINATION**

3 Q BY MR. BLASI: Ms. Santamaria, who's your current
4 employer?
5 A Local 11, hotels and restaurants.
6 Q Okay. And prior to working for Unite Here! Local 11, what
7 did you do for a living?
8 A I worked for 18 years at the Hotel Bonaventure. I was a
9 room attendant and a cook.
10 Q Okay. And what is your position now with the union?
11 A I am an organizer director.
12 Q And as an organizing director, in general, what are your
13 responsibilities?
14 A Generally, supervising a group of organizers, assist to
15 meetings, going to the hotels to speak.
16 Q Okay.
17 A And that's it, mostly.
18 Q All right. And is the team --
19 A And I also organize workers who do not have a union.
20 Q Okay. And the team that you supervise, does that have a
21 geographic focus?
22 A Yes. It's the hotels on Century Boulevard, and one hotel
23 in downtown, which is Bonaventure Hotel.
24 Q Okay. And you mentioned a moment ago that you -- one of
25 your jobs is to talk to workers; is that correct?

1 A Yes. I always speak with the workers.
2 Q Okay. And is that also responsibility of the organizers
3 you supervise?
4 A Yes.
5 Q Okay. And do you find that it's possible, in speaking
6 with workers, to organize them -- do you find it's possible to
7 do that effectively at the Employer's worksite, at non-union
8 workplace?
9 MR. PARRY: Objection. It's leading.
10 MR. BLASI: It's not leading. It's just a question.
11 HEARING OFFICER TA: Yeah. Overruled. Go ahead and
12 answer the question.
13 THE WITNESS: Should I answer it or not?
14 MR. PARRY: Also irrelevant.
15 HEARING OFFICER TA: Just go ahead and answer the
16 question.
17 THE WITNESS: I can't do it at the places.
18 Q BY MR. BLASI: And why do you say that?
19 A Because the workers feel intimidated when they see the
20 managers and they don't feel the freedom to speak.
21 MR. PARRY: I'm going to object and move to strike as
22 lacking foundation and speculative.
23 MR. BLASI: This is general information about why the
24 Union has --
25 MR. PARRY: She said how people feel.

1 HEARING OFFICER TA: Yeah. Sustained. Yeah, I mean she
2 is speculating about how they're feeling.
3 MR. BLASI: She's talking about her reasons. It's why she
4 does this. It's what she believes.
5 I can rephrase the question as to what do you --
6 HEARING OFFICER TA: Yeah, if you can rephrase.
7 MR. BLASI: Okay.
8 Q BY MR. BLASI: Ms. Santamaria, what are some things that
9 you believe to be true about, in general, about effectiveness
10 of speaking to workers at a worksite that's non-union?
11 MR. PARRY: Objection. It's vague and ambiguous. It's
12 totally irrelevant. It's outside the scope of the matters at
13 issue.
14 MR. BLASI: We're laying basic groundwork --
15 HEARING OFFICER TA: Yeah.
16 MR. BLASI: -- so we can talk about what the union does
17 and --
18 HEARING OFFICER TA: He's laying a foundation so I'm going
19 to allow it.
20 MR. PARRY: The foundation for a matter that's irrelevant,
21 though.
22 HEARING OFFICER TA: Well, I think this goes --
23 MR. PARRY: It has nothing to do with them being at the
24 house, the home visits.
25 HEARING OFFICER TA: Well, I think it does.

1 MR. BLASI: This entire hearing is about house visits --
2 HEARING OFFICER TA: Yeah.
3 MR. BLASI: -- and so it's relevant why the union does
4 them.
5 HEARING OFFICER TA: Okay, yeah.
6 MR. BLASI: I can't imagine a more relevant basic
7 background question --
8 HEARING OFFICER TA: He's trying to --
9 MR. BLASI: -- to begin testimony.
10 HEARING OFFICER TA: -- elicit from her why they might be
11 doing the home visits as opposed to going directly to the
12 worksite. So let's just move along --
13 MR. BLASI: Well, I would be moving along if I wasn't
14 objected to --
15 HEARING OFFICER TA: Okay, yeah. Okay, okay.
16 MR. BLASI: -- at every moment.
17 HEARING OFFICER TA: Okay. Let's ask your next question,
18 Counsel.
19 MR. BLASI: Well, I believe that I was permitted to ask
20 that question, wasn't I?
21 THE WITNESS: Because he interrupts me and I can't hear
22 the -- when she interprets I can't because he interrupts.
23 Q BY MR. BLASI: Okay. Let me ask this. Why don't you -- I
24 believe you testified that you don't generally talk to workers
25 at non-union worksites, at the worksite. Why is that the case?

1 A The reason is that that they don't feel a freedom to speak
2 at this time. I can't go into a place that is not unionized.
3 MR. PARRY: Move to strike.
4 Q BY MR. BLASI: Okay. So if you don't talk to --
5 MR. PARRY: Hold on. Objection. Move to strike on the
6 same grounds to everything until she said she can't go into the
7 employer --
8 HEARING OFFICER TA: Okay.
9 THE WITNESS: I can't go in --
10 MR. PARRY: On the same basis.
11 HEARING OFFICER TA: Okay. Let me take a shot at it.
12 In your experience, when you've met with workers at their
13 worksite, have they communicated to you that they are afraid to
14 speak to you because they're close to their employer?
15 THE WITNESS: Yes.
16 HEARING OFFICER TA: Okay.
17 THE WITNESS: Yes.
18 MR. PARRY: Was that talking about in general or we
19 talking about specifically to this?
20 HEARING OFFICER TA: I think that was in her experience
21 why she doesn't -- she chooses not to go speak with them at the
22 worksite. Okay. Did this also apply for the Daily Grill where
23 workers expressed to you a hesitation or a fear about speaking
24 with you about the union because they were in close proximity
25 to their employer?

1 THE WITNESS: Yes. And besides it's like something that
2 we do not practice.
3 HEARING OFFICER TA: Okay. Thank you.
4 Q BY MR. BLASI: Okay. And so if you don't talk to workers
5 at a non-union worksite, where do you talk to non-union
6 workers, generally speaking?
7 A I go to their homes.
8 Q And why do you do that?
9 A Generally, I always go with a co-worker, a worker that
10 works there and then I go because in the houses, people feel
11 safer to speak with us and express what they think or what they
12 believe.
13 Q Okay. Did you participate in the union's organizing
14 activities at the Daily Grill?
15 A Yes.
16 Q What was your role, in general, relative to that campaign?
17 A Generally, it was like I would hear stories also to be
18 supervising my team and everything was done correctly and that
19 there would be no -- anything that was a violation.
20 Q Okay. And did you participate in supervising organizing
21 team at the Daily Grill with respect to the election that
22 occurred there late last year?
23 A Yes --
24 Q Just answer the question I asked you.
25 A Yes, yes.

1 Q Okay. And did you also -- well, I'll leave it at that.
2 Were there certain rules that you and your team followed
3 regarding speaking with workers at their homes or speaking with
4 workers anywhere during the election period at the Daily Grill?
5 A Would you repeat the question?
6 Q Yes. Were there certain rules that your team followed
7 with respect to meeting with workers of the Daily Grill during
8 the election period, for the election that happened late last
9 year?
10 A Yes. You're asking me about the rules that I had on my
11 team?
12 Q Yes.
13 A Yes. For example, when we knew that we had the election
14 this -- we knew that we could not touch the ballots, that they
15 could not do it in front of us.
16 Q I'm sorry. Could you clarify what you mean "do it in
17 front of us"?
18 A Like opening the ballot and voting. No, that's not.
19 Also, if they asked us to leave then we needed to leave and we
20 did not have to threaten anyone.
21 Q And how did you come to learn these rules?
22 A I think that -- well, I've had many experiences and also
23 we had an election at Renaissance that was also through the
24 mail.
25 Q Let me stop you there. The election at the Renaissance,

1 was that the Renaissance LAX?
2 A At the LAX, the banquet department and it is exactly the
3 same as the one for Grill. It was through the mail, they
4 voted, they want to put it in the mail and then it was counted.
5 Q Okay. And the rules you described a minute ago, were
6 those rules in effect during that election, as well, at the
7 Renaissance?
8 A Yes. Because something that I'm sure of is that an
9 election should not be voted because of a mistake on behalf of
10 the organizers.
11 MR. BLASI: Your Honor, maybe take a minute -- can I
12 invite the interpreter to maybe clarify that?
13 MR. PARRY: I don't think that's appropriate.
14 HEARING OFFICER TA: Yeah. That's not appropriate.
15 MR. BLASI: Well --
16 HEARING OFFICER TA: The interpreter has made her
17 interpretation.
18 THE INTERPRETER: Excuse the interpreter.
19 HEARING OFFICER TA: Okay.
20 THE INTERPRETER: I interpreted what she said. If he has
21 more questions.
22 MR. BLASI: That's fine. Whatever, that's fine.
23 HEARING OFFICER TA: Continue. Just continue.
24 MR. BLASI: That's fine.
25 Q BY MR. BLASI: Okay. And with the Renaissance LAX

1 election, were there -- what was the process of -- how were
2 those rules communicated to organizers during the Renaissance
3 LAX election?
4 A It was the same. For example, the workers, we prepared
5 them. We prepared them --
6 Q Go ahead.
7 A It was the same. We established which are the rules for
8 an election through the mail and we were there every day with
9 the organizers that the rules would be followed exactly like,
10 for example --
11 Q Okay. So you're saying there were meetings that you
12 participated in where these rules were discussed for the
13 Renaissance LAX election.
14 MR. PARRY: That's leading.
15 MR. BLASI: I'm just trying to clarify testimony --
16 HEARING OFFICER TA: Yeah. He's just clarifying it.
17 MR. BLASI: -- that's a little unclear.
18 HEARING OFFICER TA: That's fine.
19 THE WITNESS: The banquet, yes. Banquet's Department. It
20 wasn't the whole --
21 Q BY MR. BLASI: Okay. And were there meetings during the
22 time of the Daily Grill election where you discussed these
23 rules?
24 A Every day.
25 Q Okay. Did you participate in those meetings?

1 A Yes.
2 Q Okay. And what was discussed about these rules during the
3 election?
4 A During the rules of the election, it was the same that
5 when the workers received their ballot, what do you call it,
6 that we would be sure that we didn't touch the vote to make
7 sure that workers, when they voted, that they would read all
8 the information and once they had all the information that the
9 workers would be sure that they signed on the envelope.
10 Q Okay. Under these rules, if a worker attempted to fill
11 out their ballot in front of you, what were you supposed to do?
12 A If the workers to -- tried to vote I would say no. You
13 have to go to another room. You can't vote in front of me.
14 Q Okay. And under these rules if a worker attempted to give
15 you their ballot, would that be permitted?
16 A No. When I would speak, I would say I can't take anything
17 from you, you have to go in another room. The only thing that
18 I can offer is that if you don't have transportation to drop it
19 off at the post office.
20 Q Okay. And did you reinforce these rules with the
21 organizers you supervised?
22 A Always. Discipline in my team is the first thing.
23 Q Okay. And during the Daily Grill election, did you follow
24 these rules yourself?
25 A Yes.

1 Q Okay. Did you learn of any instance in which the union
2 organizers or anybody else supporting the union violated these
3 rules at the Daily Grill election?
4 A No, no because the experience that Renaissance was very
5 strict with the organizers.
6 Q Okay. Was there ever an occasion where you touched a
7 voting ballot or the envelope it contained?
8 MR. PARRY: Are we talking about Renaissance or Daily
9 Grill right now?
10 MR. BLASI: We're talking about the Daily Grill.
11 THE WITNESS: Never.
12 Q BY MR. BLASI: Okay. Was there ever an occasion where you
13 requested or suggested that a worker vote in front of you?
14 A Never.
15 Q Okay. Now, as a general matter, when you were visiting
16 workers at their home or when the organizer or supervisor
17 visited workers at their homes what was your, during the
18 election period, what was your overall goal?
19 A Always in the morning to reinforce the rules and be sure
20 that -- and always report at the end of the day what happened,
21 if something and they would tell me and be sure that everything
22 was fine.
23 Q Okay. So I want to ask you about some specific
24 experiences you've had during the election. Are you familiar
25 with a worker named Benjamin Acosta?

1 A Yes. I visited him.
2 Q Okay. How many times did you visit him?
3 A Twice.
4 Q Okay. Can you tell me about the first time that you
5 visited Mr. Acosta?
6 A I went with another organizer whose name is Priscilla.
7 Mr. Benjamin lives very close to the office, about two small
8 streets away. When I arrived at his house, I knocked at the
9 door and a lady came out who I imagined to be his wife, I don't
10 know, and I asked may I speak with Mr. Benjamin and she said
11 yes. She called him and he came to the door.
12 Q Okay. What happened next?
13 A I said to him my name, my co-worker's, that we were doing
14 some visits and I wanted to if he could give me some minutes to
15 speak with him. He said yes, of course. And I said to him do
16 you know I'm visiting you because we're going to have some an
17 election.
18 Q And if I could pause you there. Generally, take a step
19 back. When did this meeting happen?
20 A About the week before they started sending out the
21 ballots.
22 Q Okay. If you could continue describing what happened.
23 A And I told him why I was there, that I wanted to explain
24 to him a little bit and he said to me oh, yes, I already heard
25 at work. The chef promised us that he was going to raise us,

1 give us a raise of $1 if the union did not come in.
2 MR. PARRY: I'm going to object and move to strike as
3 hearsay.
4 MR. BLASI: The union would take the position that -- just
5 that the Employer has an effect on the listener who is engaging
6 with the worker about their issues and it would infect their
7 strategy from interacting with the worker.
8 HEARING OFFICER TA: I'm going to sustain the objection.
9 I think it is hearsay.
10 MR. BLASI: But it's not offered for the truth.
11 MR. PARRY: And it's stricken?
12 MR. BLASI: It's offered to describe, in full, what was
13 going on in this conversation and what may have been on her
14 mind as a percipient witness to that interaction. It's not
15 offered for the truth of the chef offering a raise. It's
16 offered to make a clear record of what the entire interaction
17 consisted of and what effect it may have had on her thinking
18 about this employee's state of mind.
19 MR. PARRY: And this is the precise issue that was brought
20 up with the statement where the last four lines weren't because
21 it was effect on the listener; it was a hearsay statement. And
22 I'm entitled to a consistent ruling on how we're dealing with
23 hearsay like that. This is the precise issue. It's what
24 someone else said to them about something else going on --
25 MR. BLASI: But it's --

1 MR. PARRY: -- and in the prior instance it was effect on
2 the listener for the fact that they were feeling intimidated or
3 whatnot by the union's presence. And this is the same, exact
4 same side of that coin.
5 HEARING OFFICER TA: Okay. But, yeah. I think the other
6 hearsay comment went more to the truth of the matter asserted,
7 right, which is what the union's actual conduct was in saying,
8 you know, open the ballot in front of me I believe was the
9 statement. This is a little different.
10 MR. BLASI: I would just suggest that the Hearing Officer
11 can take it for what it's worth and we go on with the witness'
12 narrative of what just happened, you know, the unnecessary
13 interruptions.
14 We're just trying to create a clear record of what --
15 HEARING OFFICER TA: Okay. I mean I just --
16 MR. PARRY: It's clearly a hearsay statement and it's
17 being offered to try to show some misconduct by the Employer
18 and that's totally clear.
19 HEARING OFFICER TA: Okay. Yeah --
20 MR. BLASI: Every interaction that occurs outside of this
21 room is a hearsay statement to the extent it's offered for the
22 truth. If it's offered to account for what happened in that
23 interaction and what happens in that interaction has its own
24 legal significance, it's not -- and that's actually the real
25 hearsay exception that applies to what went on during the

1 conversation had its own legal significance.
2 And we simply are trying to elicit a record of what these
3 interactions were that the Employer has alleged are somehow
4 coercive. And we just want to have -- the witness testified
5 about what happened. That's all.
6 MR. PARRY: And Counsel actually does raise a good point
7 that this is actually hearsay within hearsay because we're
8 talking about a hearsay conversation in which another hearsay
9 statement is made about what a non-party to the conversation
10 had supposedly said to him. So that's an even greater reason
11 to sustain the objection. It's not just plain hearsay. It's
12 like --
13 MR. BLASI: Well --
14 MR. PARRY: -- two levels of hearsay.
15 MR. BLASI: -- if it were hearsay then every comment made
16 by almost every witness thus far in this hearing would also be
17 impermissible because it was an out-of-court statement.
18 HEARING OFFICER TA: Well, I mean some of it were party
19 admissions, too, though.
20 MR. BLASI: Some of them were but many of them were not.
21 HEARING OFFICER TA: I mean --
22 MR. PARRY: This is plainly like two layers of hearsay and
23 to say that well because --
24 MR. BLASI: Look, if we --
25 MR. PARRY: -- if this is hearsay nothing is admissible is

1 sort of absurd. It's not a basis. It's not --
2 MR. BLASI: We're going to have no time to put on --
3 MR. PARRY: It's not an exception to the hearsay rule that
4 if this can't come in nothing can. I don't think that's a
5 recognized exception to hearsay.
6 MR. BLASI: It's a legal argument or dictum absurdum.
7 I'm trying to -- look, I'd like to have some chance of
8 putting on our witnesses as we were promised.
9 HEARING OFFICER TA: Right.
10 MR. BLASI: And --
11 MR. PARRY: You can put on your witnesses through --
12 MR. BLASI: -- I'm just happy to move on --
13 MR. PARRY: -- admissible testimony. That's -- you don't
14 get around admissibility by saying you don't have enough to do
15 it the right way.
16 THE WITNESS: (Spanish spoken).
17 MR. BLASI: Ma'am --
18 HEARING OFFICER TA: Okay, wait. There's no question
19 before you.
20 MR. BLASI: Martha please stop.
21 HEARING OFFICER TA: Yeah, there's not a question before
22 you.
23 MR. BLASI: Look. I'll move on. I need to move on --
24 HEARING OFFICER TA: Okay --
25 MR. BLASI: -- in the interest of time.

1 HEARING OFFICER TA: Yeah, let's move on. Let's move on.
2 MR. BLASI: I am chagrined that I'm not having enough
3 chance to put on my witnesses with the time frame that the
4 Union was told we would have.
5 HEARING OFFICER TA: Okay. Continue.
6 MR. BLASI: And I would like to note for the record it is
7 now 3:56 and the Union is just begun to put on its first
8 witness.
9 HEARING OFFICER TA: Okay.
10 MR. PARRY: Also note that we had over an hour of breaks
11 yesterday to go in-between testimony --
12 MR. BLASI: There was no hour break --
13 HEARING OFFICER TA: Okay.
14 MR. PARRY: -- and let's just keep that clear.
15 MR. BLASI: -- between testimony.
16 HEARING OFFICER TA: Okay. Let's continue and let's not
17 waste any more time on this. Continue.
18 MR. BLASI: Okay.
19 Q BY MR. BLASI: So can you describe to me -- the question I
20 asked you about what the Union said about the chef. I don't
21 want you to answer that question. I'd like you to say what
22 happened next in the conversation.
23 A So afterwards, I told him so that's how chefs are. I've
24 worked in a hotel at the Bonaventure Hotel and they're all
25 similar. So I said to him, you know what, Mr. Benjamin, you

1 have a co-worker by the name of Sandra so her husband is a cook
2 here at Westin. You can ask him what the difference is between
3 having a place with a union and a place without a union. Yes,
4 he told me because I earn almost $16. I have a lot of
5 experience; I've worked in many places; I work very hard at
6 Daily Grill and I think that it's an opportunity for me that I
7 can get better. And so my co-worker told him, she said look,
8 Mr. Benjamin, we have some cards here that you can sign. This
9 is not the vote. This is a commitment that you're going to
10 make so that when the election comes, you decide.
11 MR. PARRY: And can I just object that we get a caution
12 about not disclosing individuals' opinions as they're expressed
13 or whether or not they sign the authorization cards. I think
14 it's appropriate to make sure that --
15 MR. BLASI: I disagree.
16 MR. PARRY: -- we maintain their confidentiality and their
17 privacy as to that regard.
18 MR. BLASI: The Employer's entire case, all of its
19 witnesses were about its witnesses allegedly saying that they
20 disapproved of the union. In other words, expressing their
21 opinions about the union. That was -- we've heard about, you
22 know, ten hours of testimony about -- of elicited from the
23 Employer's counsel of witnesses for the Employer describing
24 their perspectives on union and what they said in meetings
25 about the Union.

1 The Union's entitled to put on evidence of the same nature
2 about what witnesses said at various points about their
3 perspectives on unionization because they're replete with
4 discussions of these sorts or reviews of these sorts of
5 conversations. It's exactly parallel to the Employer's
6 evidence with respect to supposed lack of interest on the part
7 of employees.
8 MR. PARRY: Again, whether they signed union cards and
9 said, okay, I will talk to you now has no bearing on whether
10 they continued this consent through to the election period when
11 they have the mail ballots.
12 So to say, when you hear a witness say I didn't really
13 want to talk to them at this point and they were pressuring me
14 to say, well, six weeks ago you signed an authorization card,
15 that doesn't make what the union has done okay. And so because
16 of that, it's irrelevant to say that you gave consent a month
17 ago or a month and a half ago and now we're allowed to come and
18 continue pestering you despite the fact that you don't like it,
19 it's irrelevant.
20 And, secondly, it's just inherently unfair that the union
21 gets complete privacy in the authorization cards. The Employer
22 never gets to see those. But now the Union comes in here and
23 uses those as a sword. And despite that this gets disclosed,
24 who signed it when when it suits the Union to use it
25 offensively here.

1 MR. BLASI: The impact of the Employer's position is that
2 the Hearing Officer is not going to hear the whole story of
3 what happened in these interactions. It's only going to hear
4 the Employer's account or the side that the Employer's
5 attempted to elicit from the employees and not actually what
6 went on, in full.
7 HEARING OFFICER TA: I mean if there's some way to kind of
8 avoid holding someone to having signed an authorization card or
9 indicating how they voted. I mean I think there are ways to
10 elicit the testimony from the witness where you indicate that
11 an individual may have expressed support for the union. But I
12 do want to be a little bit careful about identifying
13 individuals who signed an authorization card or indicating how
14 they voted, so.
15 MR. BLASI: So we're permitted to elicit testimony
16 regarding general statements or statements about their support
17 so long as we stay away from specific actions about voting or
18 signing cards; is that the ruling?
19 HEARING OFFICER TA: I think that's fair. I think that's
20 a fair way to split the baby in terms of getting the
21 information in as to why a union representative may have been
22 motivated to conduct themselves in a certain way, you know,
23 based on prior interest that was expressed about the union.
24 But yeah, I do want to stay away from identifying
25 individuals and how -- or identifying which individuals voted a

1 particular way --

2 MR. BLASI: But the Union doesn't know how any individual

3 voted --

4 HEARING OFFICER TA: Look --

5 MR. BLASI: -- and we're not putting on a case about that.

6 HEARING OFFICER TA: Okay. But to the extent that the

7 witness may know, I want to be careful that we're not kind of

8 putting them --

9 MR. BLASI: But I think there's a distinction between the

10 secret ballot election, which is one thing, and discussions

11 that happened leading up to --

12 HEARING OFFICER TA: Sure.

13 MR. BLASI: -- the election which are an entirely

14 different thing and they provide relevant context to --

15 HEARING OFFICER TA: Right.

16 MR. BLASI: -- what happened next.

17 HEARING OFFICER TA: Right. Okay. Yeah, and I think

18 that's fair is to maybe talk about those discussions, indicate

19 whether, you know, an individual might have expressed support

20 or was not supportive of the union.

21 But I think counsel's point here is to the very specific

22 issue of the authorization cards or the voting and the ballot.

23 MR. PARRY: It is. But I also think, fundamentally, to

24 say well, you were okay with this once and so you must've been

25 okay with it.

1 HEARING OFFICER TA: Well, but --
2 MR. BLASI: Later down the line it's just --
3 MR. BLASI: That's not the Union's argument.
4 HEARING OFFICER TA: But --
5 MR. PARRY: -- inherently completely flawed. And it is --
6 MR. BLASI: Make that argument in closing. That's not --
7 HEARING OFFICER TA: Yeah, and that --
8 MR. BLASI: -- a question --
9 HEARING OFFICER TA: That's --
10 MR. BLASI: -- about admissibility.
11 HEARING OFFICER TA: Yeah, that's a question about
12 argument and less about the factual issue here which is, again,
13 you know goes to what the Union representative did based on
14 prior information they had.
15 MR. BLASI: And I'll just say, just for the record, the
16 Union's position is not that a visit to a home is only
17 legitimate and noncoercive if an employee has been specifically
18 invited. The law does not say that. It says nothing like
19 that.
20 HEARING OFFICER TA: Uh-huh.
21 MR. BLASI: So to be clear, the Union's not conceding that
22 point. We're simply trying to provide some context for what
23 was going on so that the only testimony in the record is not
24 limited to the testimony that the Employer had its witnesses
25 put on and after practiced with them and interviewed them in a

1 context in which the Union wasn't present and the Hearing
2 Officer was not present and who knows what else was going on in
3 those workers' lives. We're trying to provide a fair account
4 of what happened --
5 HEARING OFFICER TA: Right.
6 MR. BLASI: -- in these interactions. That's all.
7 HEARING OFFICER TA: Okay. And so just to the witness.
8 If you can avoid discussing how individuals voted in the
9 ballot, if you know, or how they -- whether or not -- I'm sorry
10 -- they signed an authorization card, if you know, just because
11 we want to keep the confidentiality of that.
12 THE WITNESS: I don't understand.
13 MR. BLASI: All right. So may I attempt to -- well, go
14 ahead if you want --
15 HEARING OFFICER TA: No, if you want to explain it better.
16 Q BY MR. BLASI: Okay. Ms. Santamaria, I'm not going to ask
17 you about whether an individual signed a union authorization
18 card and I don't want you to -- the Hearing Officer is
19 directing the witnesses not to speak specifically about whether
20 a worker signed a union authorization card.
21 However, I may ask you questions regarding whether an
22 employee shared with you a sentiment in favor of unionization
23 or -- does that make sense?
24 A A little bit. I don't understand completely because I
25 think that when you take the time and the employee sympathizes

1 with you as to what they think that they want to improve and if
2 they sign the card, it's because he thinks and we told him this
3 is not --
4 Q Martha, I just want to clear. I'm not going to ask you
5 questions about whether a worker signed an authorization card
6 and I'm asking that you not specifically say, one way or
7 another, if a worker signed an authorization card because
8 that's what the Hearing Officer has said the guidelines for
9 this testimony need to be. Are you clear on that?
10 A I was confused.
11 Q It's very confusing. It's confusing for me, too. That's
12 okay.
13 A Do I continue?
14 Q Okay. I'd like to continue --
15 HEARING OFFICER TA: Okay. Yeah let's continue.
16 MR. BLASI: Yeah, because we're running out of time here.
17 Just stop here and let me --
18 HEARING OFFICER TA: Wait, wait, wait, hang on. Hold on
19 just a minute. Yeah, is there a question before her?
20 MR. BLASI: Let me make sure that there's a question. I
21 don't recall what the question was. Let me get a new one.
22 HEARING OFFICER TA: Okay. Go ahead.
23 THE WITNESS: Everybody speaks at the same time.
24 MR. BLASI: That is true.
25 HEARING OFFICER TA: Okay.

1 THE WITNESS: I have her in my ear and over there and over
2 there.
3 HEARING OFFICER TA: Okay.
4 Q BY MR. BLASI: Okay. So during the meeting with Benjamin
5 that you said was also attended by Priscilla that you were
6 describing earlier, did Benjamin express a sentiment in favor
7 of supporting a union organizing drive?
8 MR. PARRY: Objection. Relevant.
9 HEARING OFFICER TA: Overruled. Continue.
10 THE WITNESS: The answer was yes.
11 THE INTERPRETER: Excuse the interpreter. If we can --
12 Your Honor -- excuse the interpreter, if we can work on not
13 speaking over each other. And if I can ask the counsel to
14 speak up a little bit so that I can --
15 MR. BLASI: I need to speak louder?
16 THE INTERPRETER: Yeah.
17 MR. BLASI: Oh, really, I feel like I'm yelling at people.
18 THE INTERPRETER: Sorry.
19 MR. PARRY: And I'm sorry. I'm trying to just get my
20 objections in there --
21 HEARING OFFICER TA: Right.
22 MR. PARRY: -- before when the question ends and before
23 the answer starts.
24 HEARING OFFICER TA: Yeah.
25 MR. PARRY: So it's kind of -- it's difficult sometimes.

1 HEARING OFFICER TA: Yeah. So if you hear him object,
2 just hold your answer, yeah, until I've made my ruling. And
3 then that way we can avoid talking over each other. Okay. All
4 right.
5 MR. BLASI: Okay. Did the -- the record's clear on the
6 answer to the last question? We can move on? Let me ask you
7 this. How did -- I think it was -- can we -- did the hearing
8 officer hear the answer to the last question?
9 HEARING OFFICER TA: No.
10 MR. BLASI: Great.
11 Q BY MR. BLASI: Ms. Santamaria, during the meeting with
12 Benjamin Acosta, did he express to you a sentiment in favor of
13 unionization after you had spoken to him for some time?
14 A Yes. Because --
15 Q Okay. You can elaborate so long as you don't specifically
16 refer to the authorization cards.
17 MR. PARRY: Well, I'm going to move -- I'm going to object
18 that there's no question pending as to the elaboration part of
19 it.
20 HEARING OFFICER TA: He just asked --
21 Q BY MR. BLASI: Okay. Would you like to elaborate on the
22 answer you just gave when you said yes?
23 A What do you mean elaborate?
24 Q Was there anything further you wanted to add about what he
25 said or how he conveyed a sentiment in favor of unionization,

1 without referring to the authorization cards?
2 A Because he told me that he had worked for many years, he
3 had a lot of experience, and that he thought where he was
4 working at he was working very hard, and he wasn't given what
5 he deserved.
6 Q Okay. And did he indicate to you somehow verbally that he
7 thought unionization was a good idea?
8 MR. PARRY: Objection. Irrelevant. And it's along the
9 same lines. It's -- he's gone into it.
10 HEARING OFFICER TA: Yeah.
11 MR. BLASI: I'm happy to just kind of move on.
12 HEARING OFFICER TA: Okay. I overruled the objection.
13 Go ahead and answer.
14 THE WITNESS: I didn't offer him anything or say anything
15 to him. I just said to speak with his cooks from Weston.
16 That's what they had -- what they had working in a place that
17 had a union.
18 Q BY MR. BLASI: Okay. So in the interest of time I'll move
19 on. Was there another visit that took place after this visit
20 that you did not participate in?
21 A I believe so.
22 Q What information do you have about another visit that
23 happened after this visit?
24 A At the other visit, I think it was a coworker with
25 Priscilla, also, again. And what Priscilla told me is that he

1 was ready to go out already because his mother-in-law was
2 gravely ill at the hospital.
3 MR. PARRY: I'm going to move to strike as hearsay --
4 HEARING OFFICER TA: Oh, wait.
5 MR. PARRY: -- and lacking foundation.
6 MR. BLASI: I mean, I can ask how she learned about this
7 and lay foundation on getting the basics out.
8 HEARING OFFICER TA: Okay. Let's --
9 MR. BLASI: I believe she did actually say that Priscilla
10 told her, so that was --
11 HEARING OFFICER TA: Right, but --
12 MR. PARRY: Then it's hearsay.
13 HEARING OFFICER TA: Yeah. I think -- well, Priscilla was
14 told by another person.
15 MR. BLASI: No, the guy.
16 THE WITNESS: No, the guy.
17 HEARING OFFICER TA: Yeah. Oh, the guy told --
18 THE WITNESS: Yes.
19 HEARING OFFICER TA: Okay.
20 MR. PARRY: Yeah, it's again hearsay within hearsay.
21 HEARING OFFICER TA: Yeah.
22 THE WITNESS: Priscilla with another coworker --
23 MR. PARRY: Hold on a second.
24 HEARING OFFICER TA: Wait. Yeah.
25 MR. PARRY: I'm going to -- yeah, we can't.

1 HEARING OFFICER TA: Yeah. So that is hearsay within
2 hearsay right because the guy told Priscilla and Priscilla told
3 the witness. That's how I understand this testimony going.
4 MR. BLASI: Right. And it's all -- I do believe this fits
5 within the hearsay exception for effect on the listener because
6 it affects the whole calculus of the Union and visiting him
7 again. The guy told Priscilla that was not a core --
8 statement, but it affected Priscilla's perspective on what to
9 do. She then told Martha that affected her decision. So the
10 information is relative to the Union's conduct. It's not
11 offered for the truth of whether the guy was going to --
12 HEARING OFFICER TA: Okay.
13 MR. BLASI: -- go whatever it was --
14 MR. PARRY: You have a speculative link between the people
15 who were told in the chain of hearsay now. So we have
16 speculation and hearsay within hearsay.
17 MR. BLASI: You know --
18 MR. PARRY: There's no reliability to the testimony when
19 you say someone told me that someone else told me and so I made
20 my decision based on her decision that she told me about. And
21 the effect -- you're trying to take the initial hearsay within
22 hearsay statement and apply it to the effect on the listener
23 that's two levels down the line of hearsay.
24 HEARING OFFICER TA: Okay. Okay. Counsel, is there --
25 MR. BLASI: I would like to flush out what happened in

1 these sequence of events. I'd like to do it briefly, and then
2 get to the main course, which is the incident that Mr. Acosta
3 testified about. I've now had to spend about half an hour
4 laying really basic foundation because the Employer objects at
5 every single question.
6 HEARING OFFICER TA: Okay.
7 MR. PARRY: But counsel's desire to get through it quickly
8 doesn't shortcut the rules of evidence.
9 HEARING OFFICER TA: Okay.
10 MR. PARRY: It doesn't allow him to get into any mis --
11 HEARING OFFICER TA: Okay, wait. Okay. So what I --
12 counsel, and correct me if I'm wrong. I think where you're
13 trying to go with this is why she ultimately made the home
14 visit when she did.
15 MR. BLASI: Well, it's one fact. Sure. It's one issue.
16 HEARING OFFICER TA: Okay. Because she couldn't before
17 because it sounded like there was -- he was having some
18 personal stuff go on. And so I'm assuming this line of
19 questioning is going to why she visited him when she did. Is
20 that --
21 MR. BLASI: Well, it's --
22 HEARING OFFICER TA: -- does that sound about right?
23 MR. BLASI: Yes, it -- I think that's part --
24 HEARING OFFICER TA: Because I don't --
25 MR. BLASI: -- of the rationale, yes.

1 HEARING OFFICER TA: -- okay. I just I don't want us to
2 get ourselves tripped up over hearsay when -- over a fact that
3 might not be that significant.
4 MR. BLASI: It's not that relevant.
5 HEARING OFFICER TA: Yeah.
6 MR. BLASI: I'm just trying to --
7 HEARING OFFICER TA: Okay.
8 MR. BLASI: -- get to what actually is relevant and
9 there's some background facts that, you know, help -- will help
10 the hearing officer understand sort of what was going on in
11 general.
12 HEARING OFFICER TA: Okay.
13 MR. BLASI: I can move on. I am --
14 HEARING OFFICER TA: Okay. Yeah.
15 MR. BLASI: -- I believe the level of objection that's
16 going on and the level of intervening in the Union's ability to
17 put on its case is getting to the point of harassment where
18 it's not -- or at least getting to the point where the Union is
19 not being able to put on its case in a meaningful way.
20 MR. PARRY: You don't get to circumvent the rules of
21 admissibility just because they're background facts. If you're
22 presenting facts as background facts and they're important,
23 then it's important that they be admissible and reliable, then
24 that's what this tests. And if they're not reliable, or if
25 they're unimportant, then why is he wasting time on them?

1 HEARING OFFICER TA: Okay.

2 MR. PARRY: So just to downplay a fact as oh, it's just
3 background, we don't need to worry about whether it's an
4 admissible fact or coming in through admissible evidence is --
5 there's no allowance in the rules for that. There's no
6 allowance in the law to say it's not that important of a fact,
7 I'm going to allow it in even though it's two levels of hearsay
8 and speculation with no real exception that applies.

9 If it's a fact that's germane to the issue, it needs to
10 come in through admissible evidence, not by saying, oh, it's
11 not that big of a deal, let's just let it in. There's no --

12 MR. BLASI: Look --

13 MR. PARRY: -- hearsay of exception for saying --

14 HEARING OFFICER TA: I know.

15 MR. PARRY: -- oh, it's not a big deal, we'll let it in
16 without being admissible.

17 MR. BLASI: That's not what --

18 HEARING OFFICER TA: Okay.

19 MR. BLASI: -- the Union's argument was. The Union was
20 making a broader commentary about its inability to put on a
21 case because of the --

22 HEARING OFFICER TA: Okay.

23 MR. BLASI: -- Employer's conduct --

24 MR. PARRY: Because of the rules of evidence.

25 MR. BLASI: -- now, I will move on in the interest of

1 time.

2 HEARING OFFICER TA: Let's move along, yeah, in the

3 interest of time. Thank you.

4 MR. BLASI: And if we could ask that -- anyway, I'm going

5 to move on. Recognizing it's now 4:15 and the Union is still

6 in the middle of putting on its first witness.

7 Q BY MR. BLASI: Martha, was there an occasion in which you

8 visited Mr. Acosta again?

9 A Yes.

10 Q Okay. And general speaking, when did that happen as you

11 recall?

12 A It was Saturday, I believe when they had begun to send out

13 the votes on Friday, I think, and I went to visit him on

14 Saturday. It was approximately at 1:30. He lives, like I said

15 before, two small streets near to the office. His street is a

16 street where you have to reverse in order to be able to get out

17 because it's a closed-off street. There's just one side

18 parking and then you have to return. So again, I went with

19 Priscilla again. She got into the street. She turned because

20 like I said, you can't get out. When she was coming back, I

21 saw that Mr. Benjamin parked his car in the driveway because

22 there was no parking on all the street. And I said to her, let

23 me get off here because Mr. Benjamin had already parked his

24 car, and he walked -- the driveway is here and he walked --

25 HEARING OFFICER TA: Yes. I mean, if she can describe it

1 because the gestures aren't going to get into the recording.
2 THE WITNESS: When he parked his car he got off and he
3 went to the mailbox. The mailbox is near the entrance of the
4 door, but I never went into his property. I just, from the
5 sidewalk to the curb, I said to him -- he opened the mailbox
6 and I saw that he took out two yellow envelopes or orange,
7 something like that color. Those envelopes manila. And I said
8 to him, "Good afternoon, Mr. Benjamin." And he said to me,
9 hello, like that. He said, I already made the decision that
10 I'm not going to vote for you guys because I said to him and I
11 said, why? What? Not really why, but like saying well, why
12 that? And he said oh, because the attorney of the company told
13 me not to vote, to vote no because you just wanted to steal our
14 money. And I said to him --
15 MR. PARRY: This is again hearsay.
16 THE WITNESS: -- really, Mr. Benjamin?
17 MR. PARRY: I'll move to strike it.
18 HEARING OFFICER TA: Yeah, wait, hold on.
19 MR. BLASI: It's not offered for the truth. It's offered
20 for the substance of what happened in the conversation.
21 Whether or not the lawyer made those statements is irrelevant
22 to the Union's case. It's just what happened in the
23 conversation.
24 MR. PARRY: As long as you're recognizing it's irrelevant.
25 I think that admission there says it's irrelevant and why are

1 we going into it, but.

2 MR. BLASI: We're trying to have a narrative of what

3 happened, and I would like to just have a clear record of what

4 the conversation was. The Employer's account is that these

5 interactions were somehow coercive. And so what actually took

6 place in these conversations is obviously relevant to the

7 question of whether these interactions were somehow coercive.

8 We're not putting on a case about Mr. Perry or any other lawyer

9 for the company advising employees to -- that some bad thing

10 would happen to them with the Union. That's not the Union's

11 case. We're simply trying to demonstrate that there was not a

12 coercive -- there was no coercion.

13 HEARING OFFICER TA: But --

14 MR. BLASI: That -- in these interactions.

15 HEARING OFFICER TA: -- but --

16 MR. BLASI: What happened in those interactions is --

17 HEARING OFFICER TA: -- right, but --

18 MR. BLASI: -- relevant to that question.

19 HEARING OFFICER TA: -- but the coercion would be as to

20 the Union's conduct, not necessarily to what Mr. Acosta said,

21 right? So what he says doesn't have any bearing on whether the

22 Union's behavior was coercive, so.

23 MR. BLASI: Right, but the back and forth between them

24 gives flavor and color to what happened in that interaction.

25 If you're only allowed to hear half of the interaction, you're

1 not going to know what happened in the interaction as a, you
2 know, in any complete sense.
3 HEARING OFFICER TA: Yeah. But I mean, I still -- I mean
4 it's hearsay. It's --
5 MR. BLASI: It's hearsay not offered for the truth of the
6 matter asserted. It's not -- it's clearly not offered for that
7 purpose. It's offered to have an account of what happened in
8 this interaction. It impeaches the witness's account because
9 it was not testimony that he gave. And so it's rebuttal in
10 that fashion. And I don't see how it's possible to rebut a
11 witness's testimony without being able to say what Employee
12 actually did say in that interaction and what the substance of
13 that interaction was.
14 HEARING OFFICER TA: So which hearsay exception would you
15 say this falls into?
16 MR. BLASI: I think it's a legally relevant act. The
17 substance of the interaction has its own independent legal
18 meaning. It has independent legal significance because it
19 speaks to whether there was an interaction that involved
20 coercion or one in which employees, you know, individuals felt
21 free to speak their mind and say what was going on. It also
22 has, as I think the witness's testimony will make clear it had
23 an effect on the listener because it then colored -- and
24 actually, this is a very clear example of that because the next
25 question I'm going to ask is what did you say in reply.

1 And if I'm not allowed to ask the question of what she was
2 responding to, then it won't be clear what happened and the
3 reasoning that the witness had for saying what she had won't be
4 clear. It's really actually a very clear example of effect on
5 the listener because it relates to what the listener then did
6 say. It's actually a classic example of that if you think
7 about it. It's like that would be a good example in an
8 evidence class in law school of effect on the listener.
9 MR. PARRY: I don't remember evidence classes being every
10 single conversation is subject to a hearsay exception. That
11 would be the case. If you had two people talking, you could
12 always say what each of them said to one another was the effect
13 on the listener, and I don't think that's the law.
14 MR. BLASI: It's not offered for the truth. It's offered
15 for a separate reason, which is what happened in these
16 conversations. Was it coercive? And did she -- and was it
17 offered for some reason other than the truth? And in this
18 case, it's offered for the fact that it had some effect on the
19 listener and impacted their subsequent course of conduct in the
20 same interaction. I really do think this would be like a class
21 evidence, you know, case where this would clearly be
22 permissible.
23 HEARING OFFICER TA: Yeah, but at the same -- but
24 counsel's point as to then every conversation can be an effect
25 on the listener, right? Then you could admit all kinds of

1 statements as falling within the hearsay rule if you're saying,
2 well, you know --
3 MR. BLASI: Well, but --
4 HEARING OFFICER TA: -- I'm submitting it as -- to
5 demonstrate why the, you know, the witness responded the way
6 they did.
7 MR. BLASI: Well, but in this case that's actually the way
8 the witness responded the way they did is the whole case. It's
9 not like -- it's not, you know, some tangential thing. It's
10 like what the entire case is about is like what did the accused
11 do in that circumstance. And if the hearing officer's position
12 is that the employee -- the witness is only allowed to say what
13 she said and not what the other person said, then there's not
14 going to be a clear record of the interaction.
15 HEARING OFFICER TA: Okay. I mean in the interest of
16 developing a complete record, I'll allow it, but if we can keep
17 it limited in terms of he said this and he said -- I mean --
18 MR. BLASI: That's all I was trying to do.
19 HEARING OFFICER TA: -- and if we can --
20 MR. BLASI: I wasn't even asking questions of the --
21 HEARING OFFICER TA: Yeah. Okay. Okay. If we can just
22 focus on sort of what she said and why she said it without --
23 MR. BLASI: Well --
24 HEARING OFFICER TA: -- getting too much into like the
25 specifics of what he said.

1 MR. BLASI: -- it relates to the credibility of the
2 witness, who's made some accusations that are, the Union
3 contends, are totally bogus and actually quite -- and as we'll
4 develop, the Union's credibility -- of that witness's
5 credibility is really in question given other things that I
6 intend to develop in a moment.
7 MR. PARRY: Well, then he's not offering for effect on the
8 listener. He's offering it for truth to show that the
9 witness --
10 MR. BLASI: No, it's --
11 MR. PARRY: -- what he said happening was not true.
12 That's -- he's just totally --
13 MR. BLASI: -- no. No, I --
14 MR. PARRY: -- completely reversed course --
15 MR. BLASI: No, I --
16 MR. PARRY: -- saying he's offering it to say that the way
17 the witness says, you know, what he said at the time is not
18 what actually happened.
19 MR. BLASI: No --
20 MR. PARRY: So now he's saying it is for the truth.
21 MR. BLASI: -- no, that's wrong.
22 MR. PARRY: That seems to be. You said it --
23 MR. BLASI: It's not --
24 MR. PARRY: -- goes to the witness's credibility, so --
25 MR. BLASI: -- it's not offered for the truth that the

1 Employer's lawyer pressured that witness. That's not why it's
2 being offered. It's being offered to, you know, as indicia of
3 lack of credibility because it contradicts what the employee
4 testified to himself about that interaction. I would just ask
5 that we be able to continue in a narrative fashion about what
6 happened in this conversation. I don't intend to ask a lot of
7 questions. I just want to get a record of what this actual
8 conversation consisted of that's all.
9 MR. PARRY: Again, none of its admissible hearsay. What
10 goes into the record needs to be admissible. And the interest
11 of getting the narrative or moving along quickly is not a
12 reason to allow inadmissible evidence into the record.
13 HEARING OFFICER TA: God. I'm going to allow it to a
14 limited degree. Again, I don't want to get too much into what
15 he said, what he said. If she can -- if we can limit the
16 questions to what she said, maybe what sort of --
17 MR. BLASI: I'm sorry, go ahead.
18 HEARING OFFICER TA: -- no, just what may have motivated
19 her to say the things that she did without getting into the
20 details of what he said. I just -- I do think there's some
21 hearsay concerns here. But in the interest of developing a
22 complete record, I'll allow it for a limited line of
23 questioning.
24 MR. BLASI: All right. Okay. I mean, at this point, it's
25 actually -- the record is now so chopped I'd like to actually

1 go back and just narratively describe what happened so there's
2 a clear account of what the --
3 MR. PARRY: But --
4 MR. BLASI: -- interaction consisted of because now
5 because of the Employer's objection at every single opportunity
6 and every moment. Literally every question you're going to
7 have like sprinkled. I think it's just not being clear what's
8 happened in this interaction. I don't know whether a hearing
9 officer you feel that you're very clear on what's gone on so
10 far.
11 HEARING OFFICER TA: Yeah, I mean, I think I remember
12 where we left off with the witness. So --
13 MR. BLASI: Okay. If that's the case.
14 HEARING OFFICER TA: -- yeah, so -- yeah, so let's move
15 forward instead of tracing back -- retracing our steps.
16 MR. BLASI: Okay.
17 Q BY MR. BLASI: So Ms. Santamaria, what was the next thing
18 that happened in the interaction you had with Mr. Acosta?
19 A After that happened, I told him, oh, but she doesn't want
20 me to mention that and to connect it I have to say it.
21 HEARING OFFICER TA: You can say what -- what did you say
22 next?
23 THE WITNESS: I said, oh -- when he said that to me, I
24 said, oh, ask her how much she's charging you to tell you this.
25 For the company to tell you this, in English. Well, the

1 company. I said, how much her, or the company, is paying her
2 to tell you this. And he said to me, and how much will you
3 also charge for this. And I said, Mr. Benjamin, have a good
4 day. And I left. That conversation was about three minutes
5 long because my friend was inside the car waiting on the
6 street.
7 MR. BLASI: Okay. Does the hearing officer need any
8 clarification about what the --
9 HEARING OFFICER TA: No, that's fine. That's fine.
10 MR. BLASI: Okay.
11 Q BY MR. BLASI: So were you waiting for Mr. Acosta when he
12 arrived?
13 A No. When we were -- my friend, Priscilla, was driving.
14 We had to turn back off the street because there's no exit on
15 that street. We had to turn back on the same street. When we
16 were turning back he was already parking his truck at his
17 house. He walked to the mailbox, from the street, where his
18 fence was, his metal fence. I said to him, good afternoon, Mr.
19 Benjamin. How are you? But I saw that his face looked angry
20 with me. And he said to me I already took the decision to vote
21 no for you guys.
22 HEARING OFFICER TA: Okay.
23 THE WITNESS: And he repeated again.
24 MR. BLASI: Okay.
25 HEARING OFFICER TA: Okay. Yeah.

1 Q BY MR. BLASI: Did you, at any point, ask Benjamin to open
2 the ballot while you were with him?
3 A Firstly, I never asked him if those packages were the
4 voting. Firstly. Never. Never. Secondly, he was very angry
5 already. How am I going to ask a person who's already angry?
6 Q Okay. So did he open his ballot while you were with him?
7 A No, he had it like this. He took it out and had it here.
8 Q Okay.
9 A And how am I going to ask him --
10 MR. PARRY: Can I object? There's no question pending.
11 HEARING OFFICER TA: Yeah, yeah. Let's -- yeah, there's
12 no question in front of you.
13 MR. BLASI: That's fine. Yeah. Okay.
14 Q BY MR. BLASI: Were you by yourself when you had this
15 interaction with Benjamin?
16 A Yes. Yes.
17 Q Okay. Was Priscilla with you at this time?
18 A Priscilla was in the car, in the street because she
19 couldn't find parking.
20 Q Okay. Was there any man with you at this time?
21 A No, it was just her and I.
22 Q Was there a man in the car?
23 A No.
24 Q Who was in the car?
25 A Just Priscilla by herself and me on the outside.

1 Q And when you were speaking with Benjamin, where was
2 Priscilla?
3 A In the car, on the street.
4 Q So you're, again, you're by yourself in the interaction
5 with him?
6 A Yes.
7 Q So if it were said that there were three people together
8 talking to him would that be an accurate statement?
9 MR. PARRY: Objection. Incomplete hypothetical. Calls
10 for speculation. It's --
11 HEARING OFFICER TA: Can you rephrase?
12 MR. BLASI: I mean, am I allowed to refer to the witness's
13 prior testimony when I'm trying to -- not this witness, the
14 witness -- the -- Mr. Acosta?
15 MR. PARRY: I don't think he is.
16 HEARING OFFICER TA: No. Yeah.
17 MR. BLASI: Well, it's not a violation of sequestration
18 order, so would it be a violation?
19 HEARING OFFICER TA: Can you just rephrase the question?
20 MR. BLASI: Okay.
21 Q BY MR. BLASI: If Mr. Acosta were to say that there were
22 three people there that day when you were interacting with him,
23 would that be an accurate statement?
24 MR. PARRY: objection. It's the same question, and it's
25 the same objection. It's exactly the same question.

1 HEARING OFFICER TA: Is there another way to rephrase,
2 counsel?
3 MR. BLASI: I don't know. I'm short on sleep and tired
4 and I don't have better ideas.
5 HEARING OFFICER TA: So I'm going to sustain the
6 objection.
7 MR. BLASI: That's fine.
8 Q BY MR. BLASI: Okay. At what point did you decide to end
9 the interaction?
10 MR. PARRY: Assumes facts and is leading.
11 HEARING OFFICER TA: Okay.
12 Q BY MR. BLASI: How did the interaction end?
13 HEARING OFFICER TA: Thank you.
14 THE WITNESS: When he asked me how much we're we also
15 earning for doing this, and I felt like saying the rule is I
16 don't have to get into an argument with him. Uh-huh.
17 Q BY MR. BLASI: And at that point, you decided it was time
18 to end the interaction?
19 A Yes.
20 Q Okay. At any point, did you offer to help him fill out
21 his ballot?
22 A No, I didn't even know those were the ballots because he
23 took out envelopes, but he put them here. And I was on the
24 street behind the fence.
25 Q And would it have been consistent with the rules you were

1 following to suggest that he fill out the ballot while you were
2 with him?
3 A We never spoke about the vote. Never because he was mad.
4 Q Right. And even if he wasn't made, would it have been
5 appropriate for you to ask him to fill out the ballot in front
6 of you?
7 A No. Since he had already told me that he had already made
8 his decision to vote no.
9 Q Right, but my question is would it be consistent with the
10 Union's policies on mailed-out elections, to ask him to fill
11 out the ballot in front of you?
12 A I never went into anything about the vote.
13 Q All right. I'm having difficulty conveying that question,
14 but I'll leave it. Did you threaten Mr. Acosta in any way, in
15 this conversation?
16 A I even told him have a good day.
17 Q Okay.
18 MR. BLASI: Okay. The Union has no further questions for
19 this witness.
20 **CROSS-EXAMINATION**
21 Q BY MR. PARRY: Ms. Santamaria, how long have you worked
22 for Local 11?
23 A About 20 years.
24 Q And you developed these rules that we've discussed over
25 those 20 years of your experience?

1 MR. BLASI: Objection. Lacks foundation.
2 HEARING OFFICER TA: Wait, hold on. There's an objection.
3 MR. BLASI: Objection. Lacks foundation.
4 HEARING OFFICER TA: Can you rephrase, counsel?
5 MR. PARRY: Does it?
6 Q BY MR. PARRY: You said you worked for Local 11 for 20
7 years.
8 A Uh-huh.
9 Q Now the rules that we discussed, do you have those in
10 mind, for mailed-out elections?
11 A Yes.
12 Q And have you developed those rules over your 20 years of
13 experience working for Local 11?
14 MR. BLASI: It's the same question and it lacks foundation
15 because it assumes she developed the rules.
16 HEARING OFFICER TA: So -- yeah, counsel. I don't --
17 yeah.
18 MR. PARRY: Oh, I'm sorry. Let me ask -- I'll ask a
19 better question.
20 HEARING OFFICER TA: Yeah.
21 Q BY MR. PARRY: Did you develop those rules that you've
22 been discussing on your own?
23 A No, how am I going to set rules? I base myself on the
24 legal rules.
25 Q Okay. That's what I'm trying to understand. So the rules

1 that you discussed about, can't touch the ballots, you don't --
2 employees can't open a ballot and vote in front of the
3 organizers. If asked to leave, then you have to leave. Your
4 understanding is those come from the law?
5 A Yes.
6 Q But in the course of your work for Local 11 as the -- I'm
7 sorry, organizing director, one of your responsibilities is to
8 discipline is enforce those rules and discipline the organizers
9 if they break the rules, correct?
10 A Yes.
11 Q And you agree that if one of your organizers were to ask a
12 voting employee to open their ballot and vote in front of them,
13 that's a violation of the rules, right?
14 A Yes.
15 Q And that's a violation of law as well, as far as you
16 understand?
17 A Uh-huh.
18 Q Is that yes?
19 A Yes.
20 Q Thank you. And as far as you understand, violating that
21 rule -- the reason you don't -- you tell your organizers not to
22 violate that rule is because you don't want an election
23 overturned because of one of those violations, correct?
24 A Yes.
25 Q And you understand -- you agree that if one of your

1 organizers were to violate one of these rules, that would be
2 the basis -- that would be a basis for overturning the
3 election, correct?
4 MR. BLASI: Objection. Calls for a legal conclusion.
5 HEARING OFFICER TA: Can you -- can we --
6 MR. BLASI: Asking the witness to testify about the law
7 is, is not a proper line of inquiry.
8 MR. PARRY: I understand.
9 HEARING OFFICER TA: Yeah. The objection is sustained.
10 Q BY MR. PARRY: Is it your understanding that you don't
11 want -- is it your understanding that you don't want your
12 employees to -- or your organizers to violate those rules
13 because you believe it could result in an election being
14 overturned?
15 A Yes.
16 Q Thank you. Now, you said that you enforce those rules and
17 you're in charge of disciplining your team on those rules,
18 correct?
19 A I've never disciplined them, because we have our heart for
20 the workers and we don't see it as --
21 Q I think you -- you kind of jumped and anticipated my next
22 question. But I believe you testified before that part of your
23 job is to enforce those rules, correct?
24 A Yes.
25 Q And in enforcing those rules, if you see a violation it

1 would be part of your job to discipline your organizers,
2 correct?
3 A Yes.
4 Q And have you ever had an instance in your 20 years with
5 Local 11 where you had to discipline one of your organizers for
6 violating one of those rules?
7 A No.
8 Q So it's your understanding then that in 20 years of
9 working for Local 11 as an organizer, you don't know of any
10 violation of those rules ever having happened; is that correct?
11 A Not with me.
12 Q And these rules are particular to mail ballot elections,
13 correct?
14 A Yes, this is the second time, like I said.
15 Q How many mail ballot elections do you know of in your 20
16 years with Local 11 that Local 11 has conducted by mail ballot?
17 A In my group 2, because each director has their division.
18 Q And what are those two?
19 A Renaissance, the waiters and the Daily Grill.
20 Q So in your 20 years, you've had two mail ballot elections?
21 A Yes.
22 Q And both of those were in the last two years?
23 A Yes.
24 Q Thank you. And now you discussed some of the daily
25 meetings that you had with your team, where you discussed the

1 rules to make sure no one is violating them; is that correct?
2 A Uh-huh.
3 Q Who is present at those meetings?
4 A The organizers.
5 Q Anyone else?
6 A No, because the team meetings are with the organizers.
7 Q Are the attorneys ever present?
8 A No, not at the meetings. Only when we start, like, we're
9 going to file for the elections.
10 Q So in any of these daily meetings that you've discussed,
11 at least as they relate to the Daily Grill election, those
12 never included attorneys at them?
13 MR. BLASI: I'm going to object this is getting into
14 Berbiglia territory about internal union workings.
15 MR. PARRY: He opened the door to it. He asked her about
16 it.
17 HEARING OFFICER TA: Yeah, I think this was asked on
18 direct, so I'm going to allow it. Go ahead.
19 MR. BLASI: Well, only as to the scope of the direct, I
20 assume. We're not waiving the privilege to any --
21 MR. PARRY: I'm asking about the meetings.
22 MR. BLASI: -- conversation the Union has internally about
23 these matters.
24 MR. PARRY: I'm asking about the meetings that he asked
25 her about.

1 HEARING OFFICER TA: I believe the question was were
2 the --
3
4 MR. PARRY: Were the attorneys present --
5 HEARING OFFICER TA: -- attorneys present yet.
6 MR. PARRY: -- at any of these meetings, as they relate to
7 the Daily Grill?
8 HEARING OFFICER TA: I think that's fine. Go ahead.
9 Objection overruled.
10 THE WITNESS: Not in each meetings. Only when we're going
11 to -- as I repeated when we are going to file for the election,
12 they tell us the rules and we practice them.
13 Q BY MR. PARRY: So when you say before we file the
14 election, are you familiar with the RC petition, that term?
15 A No.
16 Q Okay, so but do you have an understanding that at some
17 point in the process the Union filed something with the
18 National Labor Relations Board that starts this whole process?
19 A I think so.
20 Q Okay. Is that what you're referring to when you said
21 the -- when they filed for the election?
22 A Uh-huh.
23 Q So in the time since filing that, whatever that document
24 is, or whatever that filing is, and going forward, is it your
25 testimony that at any of those daily meetings, no attorneys

1 were present?
2 A No. Previously, the do direct everything, but not every
3 day.
4 Q So sometimes attorneys are present and sometimes they're
5 not?
6 A The majority of the time no, but when we begin all of
7 that, yes.
8 Q Okay. You also discussed that --
9 A Unless, I have a question for them and I call them.
10 Q But you call them privately?
11 MR. BLASI: This is absolutely attorney --
12 MR. PARRY: Okay, I actually don't --
13 MR. BLASI: -- client communication here.
14 MR. PARRY: -- care about this, so I'm going to move on.
15 HEARING OFFICER TA: Let's move on.
16 MR. PARRY: It was her -- unsolicited, so I'm going to
17 move on.
18 Q BY MR. PARRY: I think you also made reference to getting
19 reports at the end of the day from your organizers?
20 A What we report is the basic stuff.
21 Q So how do they make those reports to you?
22 A Well, how it went on the day, if we found workers, many
23 times, no.
24 Q Do organizers make those reports by emails?
25 A No.

1 Q Do they make them in writing?
2 A No.
3 Q They have their number of visits. For example they'll say
4 I -- we did three.
5 MR. BLASI: Objection. This was not part of the scope of
6 the direct and --
7 MR. PARRY: It was though.
8 MR. BLASI: -- this is -- it was not part of the scope of
9 the direct about meetings and how the Union conducts its
10 internal affairs. This is Berbiglia privilege information and
11 I'm going to have to direct the witness not to answer questions
12 that relate to internal Union discussions and strategy.
13 MR. PARRY: It's not a deposition. The rule -- to direct
14 a witness whether to answer or I'm sorry, the hearing officer
15 gets to rule on that. But she testified as to getting reports
16 at the end of the day and counsel was going through the scope
17 of her duties. And I'm entitled to -- when she says, I give
18 reports at the end of the day, I get to ask about what those
19 reports are.
20 MR. BLASI: The Employer is not --
21 MR. PARRY: It's within the scope of direct.
22 MR. BLASI: The scope of the direct was a vague reference
23 to meetings. That does not open the door to the substance of
24 those meetings or the discussions that they -- involved in
25 them.

1 HEARING OFFICER TA: So counsel, what's the relevance
2 of --
3 MR. PARRY: I'm looking for --
4 HEARING OFFICER TA: -- the reports?
5 MR. PARRY: -- information. If they're reporting at the
6 end of the day on the home visits that they're doing, I'm
7 entitled to explore that. And to say I can ask about it and
8 I'm just kind of generally asking about your duties and then
9 when something is revealed that might relate to admissible
10 evidence, to say I can't go into it even though he opened the
11 door to it --
12 MR. BLASI: The Union did not open --
13 MR. PARRY: You did open the door, because --
14 MR. BLASI: -- the door.
15 MR. PARRY: -- you asked her about and she testified as to
16 what her -- and I have it listed and we can go back to the
17 record. And you asked about her duties and it included these
18 dealing with the rules, daily meetings, discipline of the team
19 and enforcing the rules and one of the things was reports at
20 the end of the day.
21 MR. BLASI: I would ask the --
22 MR. PARRY: And I've been going into each one of those
23 things that are within the scope of your duties which you
24 explicitly asked her about.
25 HEARING OFFICER TA: Okay, but if these reports are going

1 to whether home visits were reported or any misconduct was
2 reported, I believe she's already testified that in her
3 knowledge, there had been -- there was no misconduct that she
4 was aware of.
5 MR. PARRY: But I wanted to know -- I should be -- that's
6 what cross-examination is for. I know that she's testified
7 that she's not aware of any misconduct that in response to
8 direct examination, but that's what cross is for. So we can
9 ask the questions different ways and figure out if there's
10 other information, like if reports exists.
11 HEARING OFFICER TA: Okay. I mean if you can just keep it
12 tight to --
13 MR. PARRY: I'm trying to --
14 HEARING OFFICER TA: -- this issue of the --
15 MR. PARRY: -- and I will.
16 HEARING OFFICER TA: -- home visits.
17 MR. PARRY: And it's very -- and --
18 MR. BLASI: The Union strenuously objects to any line of
19 inquiry that gets into internal Union deliberations or
20 discussions. That's absolutely privileged under Berbiglia and
21 the fact that a Union representative mentions it has meetings
22 is not waiving the privilege as to substance of those meetings.
23 That's absolutely not the case and a fishing expedition as to
24 internal discussions is not permitted under Board law.
25 MR. PARRY: It's not fishing when she says that they get

1 reports at the day and part of the things that they're
2 reporting on at the end of the day is the visits they made and
3 we're talking about the visits. That's absolutely relevant and
4 it has been opened up.
5 MR. BLASI: It may be relevant in your mind -- excuse me,
6 I should direct -- we should both be directing ourselves to the
7 hearing officer and not to one another and I believe we should
8 follow that rule.
9 HEARING OFFICER TA: It's okay, yeah.
10 MR. BLASI: The Union did not put at issue the substance
11 of any meetings. It doesn't believe -- and just be clear, it's
12 not because the Union is hiding something or thinks something
13 happened in a meeting that was untoward, or that contradicts
14 the witness' testimony. The Union as a matter of principle
15 doesn't believe that an employer should be permitted to ask
16 questions regarding internal deliberations of the Union because
17 that's privileged information under Berbiglia. And the fact
18 that a Union representative, again, might mention that meetings
19 exist does not waive that privilege. That I am confident that
20 Board law would find that that is the state of board law. It's
21 not -- it's like, similar to the earlier issue where the
22 Employer counsel attempted to elicit questions about
23 discussions between the Union and Union's counsel and its
24 client. They were allowed to ask the question of whether the
25 meeting happened, but not the substance of those meetings. The

1 Berbiglia privilege is similar and it applies in these
2 contexts. It's not -- and again, I don't -- there's nothing
3 the Union is trying to hide, but as a matter of principle, I
4 think that privilege needs to be respected.
5 MR. PARRY: We're towards the end of the day and perhaps
6 we should come back with really short bench briefs on this
7 tomorrow and I can --
8 HEARING OFFICER TA: No.
9 MR. PARRY: -- I don't know if we're going to finish with
10 this witness and I can continue on with some other questioning.
11 HEARING OFFICER TA: I mean, right now I -- these -- and
12 I'm sorry, if you can -- so these reports were -- you said they
13 were not written reports; is that right?
14 THE WITNESS: No.
15 HEARING OFFICER TA: So they were --
16 THE WITNESS: It's like if you came home and tell your
17 kids, well how was your day.
18 HEARING OFFICER TA: Okay. Okay.
19 MR. PARRY: I'm trying to find out what these reports --
20 she said reports. I'm trying to find out what they are and how
21 do we -- and I don't see how we can even determine whether the
22 privilege applies unless we know what they are.
23 HEARING OFFICER TA: Well --
24 THE WITNESS: And I say --
25 HEARING OFFICER TA: There's no question for you. I mean,

1 I think it goes to her earlier testimony about whether or not
2 she was aware of any misconduct with the home visits and I
3 think counsel is entitled to explore that on cross, because she
4 did testify to it. I think if we can kind of limit it to that
5 and not into --
6 MR. PARRY: That's what I'm trying to do.
7 HEARING OFFICER TA: -- these reports, these like,
8 whatever these -- because when we -- when you talk about it as
9 the report, it becomes an internal discussion among Union
10 personnel and --
11 MR. PARRY: Well, and a lot of her testimony was -- what
12 was her coworker's name -- Priscilla. What did Priscilla tell
13 me about what she discussed with someone else and they --
14 MR. BLASI: Well, actually that testimony wasn't --
15 MR. PARRY: -- elicited that testimony so how -- and to
16 the extent a report is just one of her organizers telling her
17 this or that. And then you're going to say that falls under
18 the privilege even though the Union is strenuously arguing that
19 they get to produce testimony about what one of the organizers
20 told the person. So it's like, what do we call a report?
21 MR. BLASI: Well, actually that testimony was not given,
22 because it wasn't permitted to be given.
23 MR. PARRY: But in any event, if you say I don't know of
24 any -- as the hearing officer pointed out, I don't know if any
25 misconduct. But so some of that is, okay, well what are your

1 sources of information on that and I'm entitled to test that
2 through cross-examination. And one of the things, whether you
3 call them reports, whether it's a phone call, I'm just trying
4 to find out how it happened.
5 HEARING OFFICER TA: Okay. Okay. So I'm --
6 MR. PARRY: Before you get to the context.
7 HEARING OFFICER TA: I'm going to overrule the objection
8 and as long as counsel -- we just kind of avoid discussions
9 about Union meetings or any --
10 MR. PARRY: I'm just -- yeah.
11 HEARING OFFICER TA: -- anything related to the internal
12 Union workings and that goes just to this issue of the home
13 visits, potential misconduct that may have been and let's maybe
14 not call it reported to her, but that was communicated to her.
15 MR. PARRY: I'm just using the terminology she used and
16 maybe if it's helpful, I'll ask a few clarifying questions.
17 And it's sort of like when you look at something to evaluate
18 whether you have an attorney client privilege. You can ask
19 when the communication took place, you can ask who was present
20 for it, all those things, when the attorney client relationship
21 was established, but you can't ask about the content of it. So
22 before I ask about the content of any of this stuff, I think I
23 should be able to set the parameters as to what she meant by
24 reports.
25 HEARING OFFICER TA: Okay. So let's just lay a small

1 foundation and continue.
2 MR. PARRY: Okay.
3 Q BY MR. PARRY: And I'll try to make this brief and
4 concise. During the voting period, did your -- you had your
5 organizers who were out doing their organizing activities, at
6 the end of the day they somehow communicated what they had done
7 during the day; is that right? To you?
8 A Yes, but it sounds like you call this --
9 THE INTERPRETER: Excuse the interpreter. I'm going to
10 ask her to lower her voice, I can't --
11 HEARING OFFICER TA: Okay, yeah. Can you not speak so --
12 just lower your voice a little bit.
13 THE WITNESS: I have a strong voice, sorry.
14 HEARING OFFICER TA: Yeah, that's okay.
15 THE INTERPRETER: And I'll ask her to repeat her --
16 HEARING OFFICER TA: Okay. Yeah.
17 THE WITNESS: Yes. What I was saying to you when I say
18 report, it's like how was your day, like when you go back to
19 your office and your office says, how as your day, like that.
20 That's what the reports are or we're tired or busy,
21 everything's okay.
22 Q BY MR. PARRY: Do you have a requirement -- let me say for
23 the Daily Grill election, did you have a requirement of your
24 organizers that they communicate their activities for the day
25 to you at the end of the day?

1 A I repeated what it is I asked them. Like you ask your
2 children or your parents, it's normal each person's spirit how
3 to maintain --
4 Q So there's no, like, report form that they fill out,
5 correct?
6 MR. BLASI: Objection. I thought the Employer was
7 directed not to ask about the --
8 MR. PARRY: I'm just trying to rule it out and clarify it
9 and it sounds like that's the case. And --
10 HEARING OFFICER TA: Yeah, overruled. Let's continue.
11 THE WITNESS: No.
12 Q BY MR. PARRY: Is there a requirement that they send you
13 an email describing what happened?
14 A No.
15 Q So when you were referring to reports, this is just
16 something oral, like a conversation?
17 A Yes. How was it, were you tired --
18 Q Do you talk to all of the --
19 A -- things like that.
20 Q -- organizers that were working for the day?
21 A Almost always.
22 Q How many organizers were working under you on the Daily
23 Grill election?
24 A At the election it was six.
25 Q And can you give me each of their names please?

1 A Nick, Priscilla --
2 Q And do you know their last names?
3 A Nick Herbert.
4 Q H-E-R-B-E-R-T?
5 A No. It's G-E-R-
6 Q Okay. B-E-R-T?
7 A G-E-R-B-E-R.
8 Q Gerber.
9 A Gerber.
10 Q Thank you. And Priscilla's last name?
11 A Velasquez.
12 Q Okay.
13 A Alex Sandoval. And William Sanchez.
14 Q Okay.
15 A Guadalupe Luna and I just did one visit with Benjamin.
16 Q Was Sergio Sorza working on this as well?
17 A Yes.
18 Q And he reports to you? Or you're his -- I mean, in the
19 context of the question reports, I'm not talking about issuing
20 reports, but you're his boss, more or less?
21 A I never say I'm the boss.
22 Q Okay. But he's one of the organizers you supervise,
23 correct?
24 A Uh-huh, yes.
25 Q Okay. Now, At just one -- how many total -- in your 20

1 years of working for Local 11, how many total organization
2 efforts went to election as far as you can remember?
3 MR. BLASI: Objection. Vague and ambiguous.
4 Q BY MR. PARRY: That you oversaw or that you worked on?
5 MR. BLASI: Still vague and ambiguous as to what is an
6 election. There's many kinds of elections.
7 HEARING OFFICER TA: I'm sorry, can you say that again?
8 MR. BLASI: There are many kinds of elections.
9 HEARING OFFICER TA: So your question is --
10 Q BY MR. PARRY: In 20 years, how many -- being with Local
11 11, how many organization efforts resulted -- went to a manual
12 election?
13 A In my experience counting San Diego, but they were not --
14 THE INTERPRETER: Excuse the interpreter.
15 THE WITNESS: One of them was not an NLRB election. We
16 had another one in Denver, between --
17 THE INTERPRETER: Excuse the interpreter.
18 THE WITNESS: -- ACSU. A --
19 THE INTERPRETER: Excuse the interpreter.
20 MR. BLASI: I need to object. I don't believe this was in
21 the scope of direct. It's a fishing expedition about --
22 THE WITNESS: I'm not going to remember all of --
23 MR. BLASI: -- the Employer's related experiences have
24 nothing to do with the Daily Grill. I don't see how any of
25 this is relevant.

1 HEARING OFFICER TA: Okay, wait. Hold on, there's an
2 objection.
3 MR. BLASI: The Union did not elicit testimony about her
4 prior experiences in previous elections. This is again a
5 fishing expedition like the one the Employer tried to put on
6 with respect to Sorza who was called as an adverse witness,
7 but --
8 MR. PARRY: I guess I can call her back as a -- on a -- as
9 a witness, so I can go into things that I deem appropriate.
10 MR. BLASI: -- the Employer has rested its case. You can
11 call her in rebuttal, but there's --
12 MR. PARRY: I've not rested.
13 MR. BLASI: -- no -- there's no -- there would have to be
14 a basis for calling in rebuttal. This is not within the scope
15 of the direct. This is a fishing expedition and it's drawing
16 things out so the Union is not going to be able to put on its
17 witness, which seems to be maybe the strategy of the Employer.
18 HEARING OFFICER TA: Well --
19 MR. BLASI: I don't see how this is relevant at all to
20 what happened at the Daily Grill. Not that the Union has
21 anything to hide again, but it just seems completely like --
22 HEARING OFFICER TA: I think it was meant to be a quick
23 question and then the witness is just taking some time to
24 recall, which is making it --
25 MR. BLASI: Well, the Employer is asking her to recall 20

1 years of experience. That's --

2 HEARING OFFICER TA: We spent five or six times the amount

3 of time it would have taken to finish the question by doing

4 this.

5 MR. BLASI: But who knows what the next thing is. All

6 these questions are not within the --

7 HEARING OFFICER TA: Okay. I mean, how relevant is this,

8 counsel?

9 MR. PARRY: Have you been involved --

10 Q BY MR. PARRY: I'll ask her just a general number, a

11 general number of times that she's had other types of

12 elections. Have you been involved in more than 100 elections

13 in your career?

14 A No.

15 Q Is it more or less than 50?

16 A Yes.

17 Q Is it more or less than 20?

18 A Less than 20.

19 Q More or less than ten?

20 A Less than ten.

21 Q Less than ten. More or less than five?

22 A Five.

23 Q You think five? In 20 years you've had five organizations

24 that would go to some kind of election?

25 THE INTERPRETER: Excuse the interpreter, could you repeat

1 please?

2 Q BY MR. PARRY: In 20 years at Local 11, you've had about

3 five representation matters go to election?

4 A Yeah.

5 Q With your experience that you have worked on?

6 A Yes. I think five.

7 Q Including the Daily Grill and Renaissance or other than

8 the Daily Grill and Renaissance?

9 A Daily Grill, Renaissance, and others.

10 Q Okay. So three others, about?

11 A Uh-huh.

12 Q Okay. Now, do you have any work other than for Local 11?

13 A How -- what do you mean?

14 Q Do you get a paycheck from anywhere but Local 11?

15 A Local 11 doesn't pay me.

16 Q They don't pay you?

17 A The International pays me.

18 Q Okay, so the Unite Here -- the Union pays you in some way?

19 MR. BLASI: Objection. These questions like --

20 HEARING OFFICER TA: Okay, yeah, let's --

21 MR. BLASI: -- I think --

22 MR. PARRY: Let me -- let me shortcut.

23 MR. BLASI: -- the Employer is --

24 MR. PARRY: I don't care who pays her.

25 HEARING OFFICER TA: Okay. Okay.

1 Q BY MR. PARRY: You work for the Union, yes?
2 A Yes.
3 Q And part of your job is to organize workers and get them
4 to join the Union, correct?
5 A Yes.
6 Q And to organize elections, correct?
7 A Not really.
8 Q No?
9 A No. I'll organize elections and we sign -- I have
10 internal and external site different hotels, unions and placed
11 without a union.
12 Q Okay. But for purposes of the Daily Grill, your job was
13 to organize the employees and get them to vote in an election
14 for the Union, correct?
15 A Yes.
16 Q Okay. And is it part of your job to do things like defend
17 the result, right?
18 A Yes.
19 Q And that includes showing up at a proceeding like this,
20 correct?
21 A Yes.
22 MR. PARRY: Okay. Thank you. That's all I have.
23 HEARING OFFICER TA: Counsel, redirect?
24 MR. BLASI: Counsel has nothing further. The Union has
25 nothing further for this witness.

1 HEARING OFFICER TA: Recross?

2 MR. PARRY: Nothing further, thank you.

3 HEARING OFFICER TA: You're excused.

4 THE WITNESS: Thank God.

5 HEARING OFFICER TA: Please remember that a sequestration
6 order is in effect, so that means you cannot talk about your
7 testimony with anyone else until the conclusion of the hearing.
8 Okay, thank you.

9 THE WITNESS: My purpose was to say --

10 MR. PARRY: I appreciate that, thank you.

11 MR. BLASI: I think the Union needs some time to figure
12 out whether it's in a position now to put on a witness. We
13 need to have a conversation about that.

14 HEARING OFFICER TA: Should we go off the record?

15 MR. PARRY: Could we go off the record so I can use the
16 restroom?

17 HEARING OFFICER TA: Yeah, let's go off the record.
18 (Off the record at 5:03 p.m.)

19 HEARING OFFICER TA: Okay, so I'm going to read into the
20 record again the sequestration order. So a sequestration order
21 is in effect. This means that all persons who are going to
22 testify in this proceeding with specific exceptions, may only
23 be present in the hearing room when they are giving testimony.
24 Each party may select one person to remain in the room and
25 assist it in the presentation of its case. They may remain in

1 the hearing room even if they are going to testify or have
2 testified. The order also means that from this point on until
3 the hearing is finally closed, no witness may discuss with
4 other potential witnesses either the testimony that they have
5 given or that they intend to give. The best way to avoid any
6 problems is simply not to discuss the case with any other
7 potential witnesses until after the hearing is completed.
8 Under the Rule as applied by the Board with one exception,
9 counsel for a party may not in any manner, including by showing
10 of transcripts of testimony inform a witness about the content
11 of the testimony given by a preceding witness without express
12 permission of the hearing officer. However, counsel for a
13 party may inform counsel's own witness of the content of
14 testimony and may show to a witness transcripts of testimony
15 given by a witness for the opposing side in order to prepare
16 for rebuttal of such testimony. I expect counsel to police the
17 sequestration order and to bring any violation of it to my
18 attention immediately. Also it is the obligation of counsel to
19 inform potential witnesses of their obligations under the
20 order.
21 Okay, so given the sequestration order, I think there was
22 a question as to whether Mr. Sorza could speak with other
23 individuals about his testimony.
24 MR. PARRY: Yes.
25 HEARING OFFICER TA: So he cannot speak to other

1 individuals about his testimony. He can speak with his own
2 attorney about his testimony. Union counsel may share with his
3 own witnesses Mr. Sorza's testimony to the extent that it's
4 done in preparation for rebuttal of Mr. Sorza's testimony. Is
5 that clear?
6 MR. BLASI: Yes.
7 MR. PARRY: Can I -- that's almost like considering that
8 Mr. Sorza is my witness and he's not my witness. He's not --
9 he's my opponent. He's employed by -- he's the client, so he's
10 the Union. And so to say -- and I think the wording of the
11 order is that you can communicate an opposing party's witness
12 testimony to your rebuttal witnesses, but he's -- right. So
13 any -- if I were to put on a Grill Concepts witness and even
14 the witnesses that I presented in my direct, although those are
15 Grill Concept employee witnesses, I think under the terms of
16 the order he can summarize to his rebuttal witnesses to rebut
17 their testimony. But Mr. Sorza is not my witness. I called
18 him as a hostile witness as an opposing party's witness.
19 There's no way in which he can be considered my witness because
20 he's sitting at the Union's table here. And so to say you can
21 use his testimony -- and it doesn't make any sense that he
22 was -- I'm sure counsel is not going to rebut his own witness'
23 testimony, but to say that you can share his testimony with his
24 own witnesses.
25 HEARING OFFICER TA: To the extent that he's preparing

1 them for rebuttal, so it's kind of a null point, right,
2 because --
3 MR. PARRY: But I think the --
4 HEARING OFFICER TA: -- more than likely, I'm guessing Mr.
5 Blasi is not going to prepare his own witness to rebut Mr.
6 Sorza's --
7 MR. PARRY: Well, I would hope so, but --
8 HEARING OFFICER TA: -- testimony.
9 MR. PARRY: -- but there's wiggle room there and I think
10 the key qualifier is that you can use the opposing party's
11 witness -- the opposing party's witness testimony to prepare
12 your witnesses, not your own party's testimony to prepare your
13 witnesses and that's --
14 HEARING OFFICER TA: But he's not using his own -- he's
15 not using Mr. Sorza's testimony to prepare his own witnesses
16 categorically.
17 MR. PARRY: I understand that, but just --
18 HEARING OFFICER TA: It's just to the extent that he
19 prepares them to rebut his own witnesses' testimony, which is
20 an unlikely --
21 MR. PARRY: I know it's unlikely, but --
22 HEARING OFFICER TA: -- incident.
23 MR. PARRY: -- so there's two elements to that exception,
24 right. One, is that you're dealing with the opposing party's
25 witness and two is that it's only for rebuttal and those are

1 the two elements to being allowed to share the witness
2 testimony in light of the sequestration order, so you have to
3 meet both of those two elements. It has to be the opposing
4 party's witness and it's got to be only for rebuttal testimony.
5 And here he doesn't meet the first one because it's not
6 opposing party witness. Mr. Sorza is not an opposing party
7 witness.
8 HEARING OFFICER TA: Well, I mean, you did call him
9 counsel.
10 MR. PARRY: But you can call an opposing party witness and
11 you can call a hostile witness or an adverse witness and
12 there's nothing that prevents that and it doesn't turn that
13 witness into your own -- especially not when it's the actual
14 party.
15 HEARING OFFICER TA: Okay, so what's your concern here
16 with regard --
17 MR. PARRY: My concern --
18 HEARING OFFICER TA: -- to the sequestration order?
19 MR. PARRY: -- is that there is going to be liberties
20 taken and say well this is for rebuttal because you had his
21 testify to -- I don't know, I can't -- it's difficult to
22 imagine something legitimate, but I think because it doesn't
23 meet the test, the two elements, it leaves for little wiggle
24 room to say, oh we told so and so about his testimony, because
25 my witness is going to rebut what he said. I don't think it's

1 necessarily likely or a wise strategy, but it does leave the
2 argument that if we find out there's been a violation of the
3 order, that there's oh well that was for rebuttal, but we
4 shouldn't have to go into that because it's just plain and
5 simple his testimony should not be conveyed for any reason to
6 any of their witnesses because he is not an opposing party
7 witness.
8 HEARING OFFICER TA: I mean, --
9 MR. PARRY: And if it's --
10 HEARING OFFICER TA: It's noted. It's --
11 MR. PARRY: -- if it's not a concern, then counsel
12 shouldn't have any problem with that, because if counsel says
13 I'm not going to prepare to rebut my own client, then I don't
14 see what the problem is with just enforcing the order as to its
15 plain terms.
16 HEARING OFFICER TA: Okay. I mean, I note your position.
17 I think I've made my ruling on this. You can make an exception
18 to it, but that's the ruling here. Are there any other issues?
19 MR. BLASI: The Union has no further issues.
20 HEARING OFFICER TA: So let's go off the record and we'll
21 be back here tomorrow, 9:00.
22 MR. PARRY: Thank you.
23 **(Whereupon, the hearing in the above-entitled matter was**
24 **recessed at 5:30 p.m. until Wednesday, April 25, 2019 at 9:00**
25 **a.m.)**

1 **C E R T I F I C A T I O N**

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 31, Case Number
4 31-RC-209589, Grill Concepts Services, Inc. d/b/a The Daily
5 Grill, and Unite Here Local 11, at the National Labor Relations
6 Board, Region 31, 11500 West Olympic Boulevard, 6th Floor, Los
7 Angeles, California 90017, on Tuesday, April 24, 2018, 9:05
8 a.m., was held according to the record, and that this is the
9 original, complete, and true and accurate transcript that has
10 been compared to the reporting or recording, accomplished at
11 the hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing.
14
15
16
17 _____
18 TROY A. RAY
19 Official Reporter
20
21
22
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OFFICIAL REPORT OF PROCEEDINGS

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

REGION 31

In the Matter of:

Grill Concepts Services, Inc. d/b/a The Daily Grill, Case No. 31-RC-209589

Employer,

and

Unite Here Local 11,

Petitioner.

_____

_____

Place: Los Angeles, California

Dates: April 25, 2018

Pages: 567 through 815

Volume: 3

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1 **UNITED STATES OF AMERICA**

2 **BEFORE THE NATIONAL LABOR RELATIONS BOARD**

3 **REGION 31**

4

In the Matter of: GRILL CONCEPTS SERVICES, INC. D/B/A THE DAILY GRILL, Employer, and UNITE HERE LOCAL 11, Petitioner.	Case No. 31-RC-209589

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12 The above-entitled matter came on for hearing, pursuant to

13 notice, before **LYNN TA**, Hearing Officer, at the National Labor

14 Relations Board, Region 31, 11500 West Olympic Boulevard, 6th

15 Floor, Los Angeles, California 90017, on **Wednesday, April 25,**

16 **2018, 9:35 a.m.**

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1 **A P P E A R A N C E S**

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On behalf of the Employer:

3

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6

On behalf of the Petitioner:

7

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Tel. 213-481-8530

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1 **I N D E X**

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3 WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
4 Alex Sandoval	572	629	681		
5 Sandra Diaz	684	702			
6 William Sanchez	731	739	746		
7 Nicholas Gerber	748	752			
8 Sergio Sorza	760	774			

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1 **E X H I B I T S**

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3 EXHIBIT	IDENTIFIED	IN EVIDENCE
4 **Union:**		
5 U-1	615	615

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1 **P R O C E E D I N G S**

2 HEARING OFFICER TA: So Union counsel, will you call your
3 first witness for the day?
4 MR. BLASI: Yes. We call Alex Sandoval.
5 Sorry, I was just checking to see if there was any more
6 progress on the Sandra situation, but there's not.
7 HEARING OFFICER TA: Go ahead and sit down. Can you
8 please state your name and spell it for the record?
9 MR. SANDOVAL: Alex Sandoval. It's A-L-E-X
10 S-A-N-D-O-V-A-L.
11 HEARING OFFICER TA: Okay. And can you please raise your
12 right hand.
13 Whereupon,
14 **ALEX SANDOVAL**
15 having been duly sworn, was called as a witness herein and was
16 examined and testified as follows:
17 HEARING OFFICER TA: Thank you. A couple of reminders
18 before we begin. Is this the -- this is a microphone -- that's
19 the microphone right there. Okay, so that's the microphone in
20 front of you. It does -- it records what you say, but it
21 doesn't amplify you, so it doesn't make your voice louder. So
22 make sure that every response you give is a verbal response, so
23 no shaking your head or nodding your head because obviously
24 that doesn't get recorded. If a question is asked of you that
25 you don't understand, please feel free to ask for

1 clarification. Please also make sure that the question is
2 asked in its entirety before you respond just to avoid talking
3 over each other. And finally, if a party objects to a question
4 that's being asked, hold your response until I make a ruling on
5 the objection, okay. Great, thank you.
6 Go ahead, counsel.
7 **DIRECT EXAMINATION**
8 Q BY MR. BLASI: Good morning, Alex.
9 A Good morning.
10 Q So can you tell us who your current employer is?
11 A It's Unite Here Local 11.
12 Q Okay. And what is your position with Unite Here Local 11?
13 A I'm a union organizer.
14 Q And prior to working as a union organizer what did you do
15 generally?
16 A I was a house attendant at the Westin Bonaventure hotels
17 in downtown Los Angeles.
18 Q And in general, as a union organizer with Unite Here Local
19 11, what are your responsibilities generally speaking?
20 A On the Union side, I do grievances, resolve grievances,
21 organize workers resolving issues. And on nonunion side, I
22 organized nonunion workers in the nonunion places.
23 Q And does part of that work involve speaking with workers
24 about unionization at nonunion -- employees of nonunion
25 employers?

1 A Yes.
2 Q And in general, where do you typically have conversations
3 with employees of nonunion employers?
4 A Nonunion, typically it's in their houses, sometimes in
5 coffee shops, but generally in their houses.
6 Q And why do you do that?
7 A It's because they feel more comfortable --
8 MR. PARRY: Objection it's speculation.
9 HEARING OFFICER TA: Yeah, let's --
10 MR. PARRY: Lack foundation.
11 HEARING OFFICER TA: It's the same thing as yesterday.
12 Let's rephrase for --
13 Q BY MR. BLASI: In your experiences, have you found -- what
14 have been the advantages of speaking with workers at their
15 homes as opposed to -- or other offsite locations as opposed to
16 say, the Employer's work site?
17 A Definitely yes. There's more convenience for the workers
18 and organizers are more comfortable.
19 Q And when you say more comfortable, what do you mean by
20 that?
21 MR. PARRY: This calls for speculation.
22 MR. BLASI: It's just talking about his experience.
23 MR. PARRY: Lacks foundation.
24 Q BY MR. BLASI: Do workers ever invite --
25 HEARING OFFICER TA: Yeah, rephrase.

1 Q BY MR. BLASI: Do workers ever invite you into their
2 houses to speak?
3 A Yes.
4 Q How frequently does that occur?
5 A Every -- daily basis. And are you able to speak,
6 generally speaking, with workers of nonunion employers at the
7 Employer's worksite?
8 A No.
9 Q And in your experience, why has that been the cases?
10 A Bosses are around, managers are around and they feel --
11 MR. PARRY: Objection speculation, lacks foundation.
12 HEARING OFFICER TA: Sustained. Can you rephrase?
13 Q BY MR. BLASI: Have workers -- when you've attempted to
14 speak to workers at their worksite, have you -- what has been
15 the response of those employees to attempts to speak there in
16 your experience?
17 MR. PARRY: Overbroad, vague, ambiguous, beyond the scope
18 of this matter.
19 MR. BLASI: We're laying foundation for the --
20 HEARING OFFICER TA: Yeah, okay.
21 MR. BLASI: -- subject matter of this hearing, which is
22 house visits.
23 HEARING OFFICER TA: Yeah, overruled. Just continue
24 laying the foundation and just phrase your questions just so
25 they're specific just to what his experience is and that

1 doesn't call for him to speculate about the employees.
2 MR. BLASI: Okay. Let's move on, I think the basic
3 concept is pretty well established.
4 HEARING OFFICER TA: Okay.
5 Q BY MR. BLASI: Did you participate in the Union's -- have
6 you participated in the Union's organizing activities of the
7 Daily Grill on Century Boulevard?
8 A Yes.
9 Q And in particular, did you participate in the election
10 process of the Daily Grill that took place in late 2017?
11 A Yes.
12 Q At the point that the ballots were mailed, did you
13 participate in outreach to workers of the Daily Grill?
14 A Yes.
15 Q And when you were participating in that sort of outreach,
16 what were your main objectives?
17 A The main objectives were we wanted to make sure that
18 everyone has the opportunity to vote, to understand certain
19 rules from the NLRB, you know, and that's basically.
20 Q And were you doing outreach primarily to workers who had
21 expressed support for the Union or to everybody equally?
22 MR. PARRY: Objection. It's irrelevant.
23 HEARING OFFICER TA: Overruled. Go ahead and answer.
24 THE WITNESS: Yeah, there's certain peoples that they
25 agree and you make the effort.

1 Q BY MR. BLASI: Let me ask this, were there -- before the
2 election ballots were mailed, had there been workers who had
3 expressed support to the Union in conversations that you had
4 with them?
5 A Yes.
6 MR. PARRY: Objection. It's irrelevant.
7 HEARING OFFICER TA: Overruled.
8 Q BY MR. BLASI: Were those among the workers that you
9 focused on in carrying out your outreach to workers after the
10 election ballots were mailed?
11 A Yes.
12 Q Was that the focus of your outreach efforts?
13 A Yes.
14 Q You mentioned just a second ago that there were certain
15 rules that you said that you wanted to follow. Can you tell us
16 generally what were the rules that you understood were in
17 effect when you were participating in the election at the Daily
18 Grill.
19 MR. PARRY: I think that misstates his testimony.
20 Q BY MR. BLASI: Well, let me just ask this, were there
21 certain rules that you were instructed to follow when you were
22 conducting outreach to workers during the election period at
23 the Daily Grill?
24 A Yes.
25 Q Okay. And can you tell us what the main rules you

1 remember were that were in effect?
2 A One of the main rules were we're not allowed to touch the
3 ballot or any documents sent by the NLRB. We're not allowed to
4 be in front of people that they're going to vote. And also,
5 not to try to intimidate or not to do or put some kind of
6 pressure on the employees.
7 Q Okay. And was this the first election which you had
8 learned to follow rules related to mail ballot elections?
9 A No.
10 Q Okay. Was there a previous occasion?
11 A Yes.
12 Q And what was that occasion?
13 A Renaissance Hotel by LAX.
14 Q And what were the rules that you learned -- were the same
15 rules in effect for that election?
16 A Yeah, they were the same rules.
17 Q Okay. And generally speaking, without getting into
18 detail, how did you come to learn about those rules?
19 A First of all, having a meeting with you as an attorney and
20 having every day, in our check in meetings, I reminding, you
21 know, go over the rules.
22 Q Okay. And when the Daily Grill election happened, was
23 there any reinforcement that the same rules were in effect?
24 MR. PARRY: That's leading.
25 Q BY MR. BLASI: Were the rules discussed -- did you recall

1 the rules being discussed prior to the election ballots being
2 mailed at the --
3 A Yes.
4 Q -- Daily Grill?
5 A Yes.
6 Q Did you participate -- I'll just leave it at that. And
7 once the ballots were mailed out, did you follow those rules?
8 A Yes, I did.
9 Q And did you ever touch an employees' ballot?
10 A No, I never did.
11 Q Or the envelope containing the employees' ballot?
12 A No.
13 Q Did you ever request or suggest that a worker vote in
14 front of you or fill out their ballot in front of you?
15 A No, I never requested.
16 Q I want to turn your attention now to certain specific
17 workers that you may have interacted with. Are you familiar
18 with a worker named Kimberly Mendez?
19 A Yes, I'm familiar with her.
20 Q And is she a worker at the Daily Grill?
21 A Yeah, she work at the Daily Grill.
22 Q Do you recall having conversations with her prior to the
23 Union ballots being mailed out by the NLRB?
24 A Yes.
25 Q Can you describe, generally speaking, what the substance

1 of those conversations were?
2 A Yes, the first time, one of her coworkers and I went to
3 her house. You know, she invite us to come inside of her
4 house. And I explain her, you know, the reason why we were
5 organizing the Union at the Daily Grill, and have an open
6 conversation being also ex-employees in the hotel. So she
7 brought some concerns about her workplace, you know, some --
8 MR. PARRY: Object as to hearsay. Hearsay within hearsay.
9 HEARING OFFICER TA: I mean, I -- if he can kind of keep
10 it general. I don't want to get -- don't talk about the
11 specifics of what she said.
12 THE WITNESS: Okay.
13 HEARING OFFICER TA: Because then it would be hearsay, but
14 continue.
15 MR. BLASI: Actually I want to just take a moment to state
16 the Union's position on this issue. It's not hearsay, by
17 definition if it's not offered for the truth of the matter
18 asserted. If the reference to the employee complaining about
19 work or the like is not offered to establish that the work
20 conditions are actually those that the employee described, but
21 is rather offered for another purpose, such as to impeach the
22 credibility of that witness or to establish background that's
23 relevant to the proceedings, not to establish the truth of the
24 matter asserted, it's by definition not hearsay and it should
25 come in.

1 HEARING OFFICER TA: But if you can -- if that's where
2 this line of questioning is going -- if you're trying to
3 establish -- I think where you're trying to go with this is the
4 effect on the listener and then that which prompted him then to
5 act a certain way. Is that --
6 MR. BLASI: Well, I want to actually clarify because I
7 went back and read the Rules 801 through 802 in the Federal
8 Rules last night and I was reminded and I should have been
9 clear about this yesterday, that those exceptions like effect
10 on the listener, don't even come into play unless the
11 declarant's testimony is hearsay. And it's not hearsay if it's
12 not offered for the truth of the matter asserted. So it
13 doesn't matter actually whether or not it had an effect on the
14 listener. If it were hearsay, those hearsay exceptions would
15 come into play and it would be relevant and I think there's a
16 fair argument that were hearsay, the effect on the listener,
17 for example, -- helping the listener appreciate that it would
18 be appropriate to return to the workers house for example,
19 would be a fair application of that exception. It might also
20 be a fair application of the exception related to the mental
21 state of the declarant, but none of those exceptions even
22 matter in the context of the witness' testimony about an out of
23 court statement that's not offered for the truth of the matter
24 asserted. And it's not offered for the truth of the matter
25 asserted. Whether or not, for example, in a testimony

1 yesterday, regarding Benjamin Acosta --
2 MR. PARRY: Hold on a second, he can't talk --
3 HEARING OFFICER TA: Yeah, let's not --
4 MR. PARRY: -- about the testimony --
5 HEARING OFFICER TA: -- talk about --
6 MR. PARRY: -- of a witness right now.
7 HEARING OFFICER TA: -- yeah.
8 MR. BLASI: Without getting into any specifics --
9 HEARING OFFICER TA: Right.
10 MR. BLASI: -- whether or not it's true that, for example,
11 the Employer's counsel participated in anti-union conversations
12 with employees, it doesn't -- if the Union is not putting on
13 that testimony to establish that the Union's counsel
14 participated in those anti-Union conversations, it's not
15 hearsay and that's not the Union's intent. The Union's intent
16 is to create a clear record of what the conversations were that
17 took place and the meetings that were -- that are at issue in
18 this hearing, that's it. And the Employer's witnesses have
19 given their counsel what happened, the credibility of those
20 witnesses is very much at issue in this hearing, in fact,
21 that's the main thing that's at issue in this hearing. And the
22 Union should be offered an opportunity to provide testimony
23 concerning what actually happened, at least from that witness;
24 percipient experience about what occurred during those
25 conversations. And to prohibit the Union from putting on

1 testimony describing those interactions is not a fair
2 application of the hearsay rules, because it's presuming an
3 intent that the Union does not have in terms of why that
4 testimony has been introduced.
5 Q BY MR. BLASI: So you're saying you're offering the
6 statements just in the interest of developing a complete
7 record. Is that --
8 A Developing a clear record and in certain cases, maybe not
9 in this particular instance -- well, in this particular
10 instance too, I think, establishing -- there may be impeachment
11 of the other witness' testimony. There may be contrary
12 testimony, about what was said during these interactions.
13 HEARING OFFICER TA: Uh-huh. Okay.
14 MR. BLASI: That needs to come in or there's no possible
15 way for the hearing officer to assess who is telling the truth,
16 what actually happened during those encounters.
17 To the extent that the witnesses are not allowed, for
18 example, to testify about a witness describing experiences that
19 that witness had that were part of the conversation, then
20 there's not an account that the hearing officer has that is
21 full that can be used to determine who is telling the truth.
22 That's why the testimony is being proffered. That's why the
23 testimony was being proffered yesterday. I believe it should
24 have come in. I think that --
25 HEARING OFFICER TA: I think that it did come in

1 yesterday.

2 MR. BLASI: I think it did come in, although in bits and

3 pieces and subject to the same objection every single time

4 there was a reference made to some statement by the Employer or

5 Employer's counsel. I want to be clear that none of the

6 testimony that was proffered yesterday and none of the

7 testimony that is being proffered today is being proffered to

8 prove the truth of the matter asserted.

9 HEARING OFFICER TA: Okay.

10 MR. BLASI: And it's solely being --

11 HEARING OFFICER TA: Right.

12 MR. BLASI: -- put forward for the reasons that I just

13 described and I want to make that clear so we don't have to re-

14 litigate the same concept every time the witness attempts to

15 describe interactions that this witness and other witnesses

16 today had with --

17 HEARING OFFICER TA: Okay.

18 MR. BLASI: -- with others.

19 HEARING OFFICER TA: Okay. Counsel, do you want --

20 MR. PARRY: Yes, briefly. It's clear from the last two

21 days that the Union is attempting to show misconduct by the

22 Employer. That happened with all of the witnesses that the

23 Employer called when they go into what their employer was

24 telling them to do and trying to insinuating or even outright

25 alleging that they were coerced in their testimony. So the

1 Union has repeatedly been trying to present evidence in this
2 matter that has to do with the Union's conduct. They've been
3 trying to put in evidence that somehow there was misconduct by
4 the Employer. And to say that it's not offered for the truth
5 of the matter is just disingenuous when given the questioning
6 and the types of information they've tried to elicit throughout
7 this hearing. So they may have some ulterior purpose and say
8 it's not really for the truth of the matter, but based on all
9 of the information and all of the questioning that's happened
10 to date, it's clear that what they're doing is fishing for
11 allegations of misconduct with the Employer and evidence of
12 that through this proceeding, which is not within the scope of
13 it, it's hearsay, and it has no relevance to the matter we're
14 looking into.
15 HEARING OFFICER TA: Okay.
16 MR. BLASI: If I can respond briefly. The testimony that
17 was elicited yesterday with respect to the Employer's
18 interactions with the witnesses was to ascertain whether the
19 Employer complied with its obligations under the Johnny's
20 Poultry case, which requires the testimony be admissible and
21 for its credibility to be taken at the appropriate weight, the
22 certain assurances that the Board has long recognized the --
23 have been given and that's a standard part of cross-examination
24 of Employer witnesses in NLRB proceedings and that is why that
25 witness was -- that testimony was elicited and nothing further.

1 MR. PARRY: It went beyond that. Counsel tried to ask
2 about every meeting that -- and we had that long discussion
3 about --
4 HEARING OFFICER TA: Okay, well let's --
5 MR. PARRY: -- asking about all the meetings --
6 HEARING OFFICER TA: -- okay, let's -- okay.
7 MR. PARRY: -- with the Employers and now --
8 HEARING OFFICER TA: Let's -- okay.
9 MR. PARRY: -- they're trying to get it in through a
10 different way.
11 HEARING OFFICER TA: Let's not --
12 UNIDENTIFIED SPEAKER: Whoa, whoa, one at a time please.
13 HEARING OFFICER TA: Yeah. So let's not re-litigate that
14 issue. I mean, I think just as with yesterday, I'll allow it.
15 I'll give it its due weight and I understand that you probably
16 will have a standing objection to all of this, but let's not
17 keep pausing to have this conversation after every objection,
18 but I acknowledge that, you know --
19 MR. PARRY: I will object and I'll make them quick and
20 I'll say irrelevant or hearsay and then I don't --
21 understanding that the --
22 HEARING OFFICER TA: Okay. Okay.
23 MR. PARRY: -- ruling is --
24 HEARING OFFICER TA: Right. And like I said, I recognize
25 that there are some hearsay concerns with these types of

1 request and I will take that into consideration when weighing
2 the evidence, but for now, just in the interest of moving this
3 along, I'll allow it in and then hopefully we can get through
4 this quicker, okay.
5 MR. BLASI: The Union appreciates it. Thank you.
6 HEARING OFFICER TA: Okay, go ahead, continue.
7 Q BY MR. BLASI: Okay, so if we could return to the -- I
8 think you were describing a conversation or a visit that you
9 had with Kimberly Mendez?
10 A Yes.
11 Q I don't recall exactly where we left off, but could you at
12 least to finish off that discussion describe some of the points
13 that you mentioned during your conversation?
14 A Yeah, the day we came to her house, she invited us to come
15 inside her apartment, one of her coworkers. And then I
16 explained to her the reason why we are trying to organize the
17 Union at the restaurant and then she brought some concerns
18 about her working conditions, you know, also she mentioned her
19 sister, Stephanie being retaliating for some reasons. And then
20 we -- I think we made the connection, you know, as a hotel
21 worker. And she was positive. She was positive and happy to
22 join the efforts to organize the Union.
23 Q How long did this conversation last, more or less?
24 A For about 30, 40 minutes.
25 Q And to be clear, this conversation occurred prior to the

1 Union ballots being mailed out; is that correct?
2 MR. PARRY: Leading.
3 MR. BLASI: Sure.
4 HEARING OFFICER TA: Can you rephrase?
5 Q BY MR. BLASI: Can you tell us generally speaking when
6 this conversation occurred to the best you can remember?
7 A When the conversation occurred?
8 Q Yes.
9 A That was prior to the day of the election or prior to the
10 ballots were sent out. That was --
11 Q Do you have a sense of how many weeks prior?
12 A Three weeks. I will say three weeks.
13 Q And who accompanied you on that visit?
14 A Sandra Diaz.
15 Q And at any point during this meeting, was there a
16 discussion about follow-up visits that you or others might have
17 at that --
18 A Yes, of course, yes.
19 Q -- persons house. Can you describe what those
20 conversations were?
21 A Yeah. So I explain her that we may visit her again, you
22 know, for the purpose of the way she feels. She's been feeling
23 along to the effort. And if she has any concerns, you know,
24 about the Union, places or any concerns or any questions that
25 she had, so she was -- she agreed and she was okay, like that

1 we can come.
2 Q And was there any discussion about speaking with her
3 sister Stephanie at that point or in that conversation?
4 A Yes. Yeah, I ask her that if she has another sister
5 working in the same place and she says, yeah my sister
6 Stephanie, she also work at the same place.
7 Q And did you understand that Stephanie lived at the same
8 house?
9 A No, she was clear. She said that Stephanie doesn't live
10 there anymore, but she constantly comes, you know, to the same
11 apartment, especially on the weekends.
12 Q And did she make reference to some time that it might be
13 best to visit her to see Stephanie or anything like that?
14 MR. PARRY: Leading.
15 HEARING OFFICER TA: Rephrase counsel.
16 Q BY MR. BLASI: Was there any further discussion about your
17 interacting with Stephanie during this conversation?
18 A Definitely. She said we can come back and she will let
19 Stephanie know so we can talk to her.
20 Q Okay. And so -- and how did this conversation end?
21 A It was okay. I mean, she was happy to be part of the
22 effort and she will definitely also make a compromise and she
23 will talk to her sister. And then we say, thank you for your
24 time, we'll see you soon and you know we'll see you around.
25 Q And did you participate in any further interactions with

1 Kimberly Mendez prior to the Union election ballots being
2 mailed?
3 A Yes.
4 Q And can you describe what occurred?
5 A We come back to Kimberly's house with the concern that if
6 she has any questions, in regards to the effort, that she was
7 compromise, but she still have any questions. So when we
8 talked to her again and she still was okay, positive, and
9 saying, I haven't --
10 MR. PARRY: I object, that's hearsay.
11 HEARING OFFICER TA: Go ahead, continue.
12 THE WITNESS: She said, I hadn't talked to my sister. You
13 know, we're going to see her one of those days, you know. And
14 but the conversation was okay again. But that second visit was
15 on the intent to talk to Stephanie.
16 Q BY MR. BLASI: And were you able to speak with Stephanie
17 on that occasion?
18 A No.
19 Q Okay. Was there any -- I guess you just said. How long
20 did this conversation last?
21 A That was -- like 20 minutes.
22 Q And where did the conversation take place?
23 A That was in the front yard, yeah, outside of her house.
24 We never came inside so it was in the front yard.
25 Q Were you with somebody else when you visited?

1 A Yes, I was with Sandra.
2 Q Sandra Dias?
3 A Yeah, Sandra Diaz.
4 Q And how did that conversation end?
5 A It was okay, it was perfect, so it was the same, we ended
6 the first conversation that she has, only she brought some
7 other issue that they usually take vacation, the whole family
8 at the end of the year, you know, and she's concerned about one
9 of those either her or Stephanie got to stay, so even she was
10 giving concern and upset about it, she say, you know, and we
11 don't want that. So I said -- and I ask her, like, you know,
12 on the Union side we have some rules that you have seniority in
13 the contract so which it works in the best way for each
14 employee. So that was the end and she stay in the same
15 position.
16 Q Okay. And when did this meeting happen more or less, to
17 the best you can recall? Was it -- how many weeks -- was this
18 before the Union election?
19 A Yes, it was before, yeah.
20 Q How long before the ballots were mailed?
21 A A week or so before.
22 Q And did you discuss the Union election during that
23 conversation?
24 A No.
25 Q Okay. And during this conversation, did you make any

1 further plans to interact with her?
2 A The same plan about Stephanie that we haven't talked to
3 her, we haven't seen her and if she can talk to her, you know,
4 actually she gave me her phone number that day, which is -- I
5 attempt to call Stephanie, but she, you know, she didn't
6 answer.
7 Q Okay. Is there anything else that you recall from that
8 conversation that -- well, actually let's not get into much
9 more detail just to move along. So were there -- was there any
10 further occasion where you interacted with Kimberly Mendez at
11 her house?
12 A Yeah, it was another visit.
13 Q And when did that visit occur?
14 A That was still prior to the election day and prior to the
15 ballet was sent out.
16 Q Okay. And generally speaking, what happened during that
17 visit?
18 A She tells me that they were going to have -- that was
19 going to be a good day to --
20 MR. PARRY: Objection as to hearsay again.
21 HEARING OFFICER TA: Okay. Same ruling. Go ahead.
22 THE WITNESS: So she said that was going to be a good day
23 to meet -- to meet Stephanie because they were going to have
24 some birthday party on the weekend, so they were all going to
25 be there.

1 Q BY MR. BLASI: Uh-huh. Okay. Was there anything else
2 from this conversation that you remember?
3 A No, we agreed that we were going to come back on the
4 weekend to see if we can talk to Stephanie.
5 Q Okay. How long did this conversation last?
6 A Twenty minutes. Yeah, 20, 25 minutes.
7 Q And who was there?
8 A Sandra Diaz and I.
9 Q Okay. And did you then follow up on this suggestion about
10 coming back to the party?
11 A Yes, I did.
12 Q And what happened when you did?
13 A Yeah, we came -- we came on the weekend and we finally met
14 Stephanie. Stephanie was there. And, you know, she -- we
15 stayed, you know, in the front yard. You know, she came out of
16 the apartment. And I talked to her and I explained to her the
17 reason why was consistent trying to talk to her. You know, and
18 she told me, yeah, I know, my sister -- my sister talked to me
19 already.
20 MR. PARRY: Hearsay.
21 HEARING OFFICER TA: Same ruling. Continue.
22 THE WITNESS: My sister already talked to me about it.
23 She was a little bit upset because there was a confusion with,
24 you know, all the sisters because there's four sisters and I
25 didn't know there was four sisters, so we kind of confused

1 Stephanie with another sister and she was a little bit upset,
2 but nothing like this. So she said, oh, you know, the only
3 reason why, you know, I haven't talked to you because I was
4 upset because you were trying to make -- trying to confuse my
5 sister that was me. I said, well, I apologize, you know, I
6 didn't know that you were four. I thought it was only two, but
7 you know, my understanding --
8 Q BY MR. BLASI: Without getting into a lot of detail, could
9 you just explain what this confusion was that you're referring
10 to?
11 A The confusion?
12 Q Yeah.
13 A Because when we came to -- one -- the previous visit, when
14 we came to visit Kimberly, there was another sister -- another
15 sister. When she opens the door we asked for Stephanie and she
16 said, you know, she's not here. And I just ask her like are
17 you Stephanie? Because for my understanding it was only
18 Kimberly and Stephanie. And then I asked her like, are you
19 really Stephanie or -- no, it's not, it's my sister. And so,
20 okay, and then, you know, we come back, and then I realized it
21 was not even three, it was four sisters.
22 Q Uh-huh.
23 A So that was the confusion and probably she got upset. I
24 guess she got upset because she thought that I was trying to,
25 you know, build something with her sister saying, oh, no,

1 you're Stephanie, you're lying to me, but it wasn't my
2 intention. I was confused.
3 Q Okay. So now getting back to the latter visit, how did
4 the latter visit end? The one where you were there --
5 A With Stephanie?
6 Q -- on the -- I think you were -- it was on a Saturday; is
7 that what you said?
8 A Yes, it was on Saturday.
9 Q And how did --
10 A With Stephanie.
11 Q -- that visit end?
12 A Yeah, we came to Kimberly's house, you know. Stephanie
13 came outside, you know. I explained to her, you know, the
14 reason why we're making the effort to organize a union at the
15 Daily Grill. You know, I explained to her that I, you know,
16 used to work in a hotel, you know, and she said, you know, she
17 brought some concerns about, you know, her being denying
18 vacation, you know, and I said, you know, it's not just only
19 one reason. It might be a lot of reasons, but -- and I
20 explained to her, you know, the entire, you know, reason why we
21 are trying to organize a union in terms of benefit and working
22 conditions.
23 Q Okay.
24 A You know, after that -- it wasn't a really long
25 conversation. Probably like 15 minutes, you know. She shows,

1 you know, positive, and she shows that she agrees to be on the
2 same effort.
3 MR. PARRY: Objection. Speculative and hearsay.
4 HEARING OFFICER TA: I --
5 MR. BLASI: I can ask him the question to --
6 HEARING OFFICER TA: I'm going to overrule. Yeah. Just
7 continue.
8 Q BY MR. BLASI: Did she say something that gave you the
9 idea that she supported the Unionization effort?
10 MR. PARRY: That's again irrelevant, speculative, hearsay.
11 HEARING OFFICER TA: Did she appear supportive of the
12 Union?
13 THE WITNESS: Yes.
14 HEARING OFFICER TA: Okay. Okay. Continue.
15 Q BY MR. BLASI: Okay. How did this visit end?
16 A Shaking hands. I said thank you. We hope for the -- and
17 if you have any concerns or any questions, you can always ask,
18 you know, through your sister or you can call me, or you know,
19 we hopefully have another conversation again.
20 Q Okay. Was there an occasion where you interacted with
21 Kimberly Mendez again after the Union ballots were mailed?
22 A Yes.
23 Q Okay. And where did that take place?
24 A Kimberly's apartment or house.
25 Q Okay. And what was your objective in making that visit to

1 her house? Actually, let me ask first for background. Who was
2 present with you in that interaction?
3 A With Stephanie?
4 Q With Kimberly. We're speaking about Kimberly, I believe.
5 Did you make a -- did you interact with Kimberly Mendez after
6 the mailed ballots were sent?
7 A Yes.
8 Q Okay. And did -- who was -- who accompanied you when you
9 visited her?
10 A It was Gustavo Lopez, ex-cook at the Daily Grill.
11 Q Uh-huh. Okay. And can you say when that meeting took
12 place?
13 A Yeah, we had a conversation at the same place in the front
14 yard; never inside the house.
15 Q And what -- do you remember what day this took place?
16 A I believe it was on Saturday, the 9th.
17 Q Of which month?
18 A Of December.
19 Q Okay. And what were your -- what was your purpose in
20 making this visit?
21 A Well, first of all, you know, for my understanding and
22 through your trainings, and then it will be sent -- the
23 ballots, during the week, so there was an understanding for me
24 and all my coworkers that they should be getting the ballot by
25 mail on Saturday, you know, all during the week. And if they

1 have not received the ballot, they should call the NLRB right
2 away and verify their address information. So -- and that was
3 the object, like to let them know that if they haven't received
4 the ballot on Saturday, that she should call the NLRB on
5 Monday.
6 Q Okay.
7 A Or as soon as possible.
8 Q And did you have any concerns about ballots not being sent
9 to the employees at proper addresses?
10 MR. PARRY: Leading.
11 HEARING OFFICER TA: Rephrase, counsel.
12 Q Why did you have a concern about insuring that employees
13 received their ballots?
14 A Because some of the addresses might be wrong and we just
15 want to make sure that everyone has their ballots and the
16 opportunity to vote.
17 Q Okay. So can you walk us through what happened in this
18 interaction? What was the first part of the interaction with
19 Kimberly on that day?
20 A Yes. Yeah, we came with Gustavo. We opened the little
21 gate. You know, we stayed there, you know, in the front -- in
22 the front yard. You know, kind of small front yard.
23 Stephanie -- I mean, Stephanie -- Kimberly came, you know,
24 outside and said, hi, Gustavo. How are you? Nice to see you.
25 She hugs Gustavo. You know, happy to see you. And she said,

1 hey, Alex, how are you doing? So you know, let me explain to
2 you the reason why we're here and I think this is -- might be,
3 you know, the last time that we're here. So we wanted to make
4 sure that you are going to get your ballot. The ballot has
5 been sent, you know, during this week. You know, so I want to
6 make sure that you will get -- you will get your ballot and if
7 you haven't got your ballot, you know, you need to call the
8 NLRB, you know, and ask for your address and if your address is
9 okay so to make sure that you're going to -- that you're going
10 to vote.
11 She said I haven't checked my -- I haven't checked my
12 mailbox. Let me check right away. So she came all the way
13 down because we were talking, you know, down about three
14 stairs, and she was in the upper level, I guess. So she came
15 all the way down, you know, go around the house and, you know,
16 she took, you know, a lot of envelopes or mail, you know. And
17 you know, and then she say, well, I guess those are the ones.
18 She said, yeah, it says here Daily Grill. And I told her I'm
19 not sure if that's the one and then there was another -- the
20 same one that says NLRB and I said that's the one. So you
21 know, that's -- that's the one for -- for -- those are your
22 ballot. The other ones, I don't even have an idea what it is.
23 Q And what happened?
24 MR. PARRY: Once again? The other?
25 THE WITNESS: The ones, I don't even have an idea, you

1 know, what it is.

2 Q BY MR. BLASI: Okay. And what happened next in this

3 interaction?

4 A Then Gustavo -- Gustavo -- after that, Gustavo got into

5 the conversation and asked her are we still -- are you still

6 positive? Are you still on board? Are you still, you know, in

7 the effort that we are trying to do? And she say, no, guys.

8 MR. PARRY: Objection. This is hearsay again.

9 HEARING OFFICER TA: Okay. I'm just a little worried with

10 this question in particular because I don't know if it

11 indicates how she voted or planned to vote. I'm just going to

12 go with the same ruling. Go ahead and answer.

13 THE WITNESS: Okay.

14 HEARING OFFICER TA: But if -- we can avoid sharing any

15 information that she shared with you about how she -- how she

16 ultimately voted or said that she was going to vote.

17 MR. BLASI: Well, I have to say that I --

18 MR. PARRY: The answer to the question requires that.

19 MR. BLASI: I could appreciate the need to maintain the

20 confidentiality how an employee actually voted, but to the

21 extent that employees, you know, expressed certain sentiments

22 in conversations, I think that that needs to be part of the

23 record, otherwise it's not clear what happened in these

24 conversations or makes sense of what the -- what the entire

25 interaction consisted of.

1 HEARING OFFICER TA: Right.

2 MR. PARRY: It's still irrelevant. The -- the --
3 whether -- how she felt about the Union at the time has no
4 bearing on whether the Union's conduct in getting that
5 information in her hand during this home visit during the
6 election period, it's -- that has no bearing on the -- whether
7 the Union's conduct was improper.

8 MR. BLASI: The Employer's case is, you know, that somehow
9 this interactions were coercive and that employees were
10 restrained, of course, in how they voted and you put on eight
11 witnesses, I think, sort of describing what these interactions
12 were. What happened in these interactions is sort of what the
13 whole case is about. I mean, the Union's view is that there's
14 nothing -- the Board laws are very clear that there's nothing
15 wrong with a house visit during an election period.

16 HEARING OFFICER TA: Right.

17 MR. BLASI: That's not at issue from what -- our
18 perspective. The only thing we could imagine being potentially
19 at issue would be coercive conduct that occurs during those
20 interactions and there has to be a record on that issue or the
21 only evidence in the record from our witnesses, or the only
22 evidence in the record is the Employer's testimony, which you
23 know, has to be subject to some form of impeachment or there's
24 not a meaningful airing of that evidence.

25 MR. PARRY: The Board law is clear that the unfair

1 practice -- if there's an unfair practice we look at the
2 Board's conduct objectively. And if there's an unfair
3 practice, that is self-established as interference and it
4 doesn't matter how the employee --
5 MR. BLASI: I'm sorry --
6 MR. PARRY: -- how the employee felt in terms of whether
7 they were going to support or not support the Union as a result
8 of that. It's -- you look at what the Union did, how the
9 employee felt about the -- whether it effected their opinion
10 on the Union is irrelevant.
11 MR. BLASI: But we're not -- we're not interested in
12 testimony about how the employee felt.
13 MR. PARRY: But to say that -- asking the question as,
14 well, did she still support the Union after that --
15 MR. BLASI: That was --
16 MR. PARRY: -- after that interaction is like saying
17 it's -- it's trying to say, well, she consented to it because
18 she still -- she was going to support the Union or she wasn't
19 and it doesn't matter which way or the other. But to -- I
20 think there's been -- this entire time, this idea that they
21 could show consent because they at one point didn't object to
22 the Union or -- or you know, before they may have -- whether
23 they indicated support for the Union, whether through a
24 signature or just being receptive of conversations, now carries
25 over into further interactions with the Union. They're trying

1 to show, based on how consented to it, and it's just
2 inconsistent with logic and with what the law says we're
3 looking at today.
4 HEARING OFFICER TA: Okay.
5 MR. BLASI: Okay. Just a couple points.
6 HEARING OFFICER TA: Yeah.
7 MR. BLASI: The Union is not eliciting testimony about
8 what the employee felt. The Union is attempting to elicit
9 testimony about what transpired in these interactions and
10 nothing more. The -- that's what's at issue in this case. The
11 Union, by the way, does not take the Employer's view that
12 consent or invitation or something is required for a house
13 visit to be non-coercive. There's no case law supporting that
14 idea.
15 The only thing that could possibly be coercive is certain
16 misconduct that could occur during interaction. That's what
17 the Board law says and we'll go over it in closing. But
18 there's not -- anyway, so as far as the Union is concerned, the
19 only thing that's actually at issue in this case is whether
20 there was interferences with -- with a voting employee's
21 ability to cast a ballot freely. That, you know, interferences
22 with integrity to the secret ballot. That -- from our
23 perspective, that's the only thing that this case is about.
24 And there's, you know, just a handful of incidences where
25 that's even alleged in this case or even suggested and what

1 we're trying to do is have a clean record on what those
2 encounters actually consisted of so that the Region is able to
3 determine whether there was improper conduct during those very
4 tiny actually number of interactions that were -- that were
5 anything even -- was even suggested.
6 And actually -- I mean, actually to be frank, the Union's
7 position is even all -- even if all of the testimony that the
8 Employer suggested -- brought on is -- is -- is -- is credited,
9 they're still under Board law, no misconduct, but I do think
10 that it's important that there be a clear record of what
11 actually happened from the Union witness' perspective and the
12 same interactions that the Employer's witnesses testified
13 about. That's sort of what it comes down to for us.
14 HEARING OFFICER TA: Right. I mean, I think we're trying
15 to balance right now what went on in these conversations
16 because this is exactly the focus of this hearing, right, is
17 what was said during these home visits and what actually
18 happened, but we're balancing that against needing to focus on
19 the Union's conduct as opposed to, you know, what the employee
20 has said or -- or their indications of how they want to vote.
21 I -- I mean, I think I'm going to -- I'm still going to
22 allow it, giving it the weight that it is, but again, if we can
23 just keep the witness to more of a focus on the Union's conduct
24 and if we can avoid to the best we can any indications about,
25 you know, how the employee voted.

1 MR. BLASI: I think we can do that for sure.
2 HEARING OFFICER TA: Okay.
3 MR. BLASI: I don't know that it's possible to avoid --
4 HEARING OFFICER TA: Okay. Yeah.
5 MR. BLASI: -- you know, reference to an employee saying
6 that, yes, they were supportive -- yes, they agreed or no. And
7 frankly --
8 HEARING OFFICER TA: Okay.
9 MR. BLASI: -- most of the testimony -- well, I don't want
10 to prejudice the testimony, but the -- there's not --
11 MR. PARRY: You're talking about the testimony in front of
12 the witness.
13 HEARING OFFICER TA: Yeah, let's -- yeah.
14 MR. BLASI: Fine. I'm not talking about this witness in
15 particular. But, anyway, the -- the -- okay. So it sounds
16 like we can proceed.
17 HEARING OFFICER TA: Well, let's --
18 MR. BLASI: I do need to mention a housekeeping issue,
19 which is that the witness who we're attempting to bring on was
20 actually not permitted by the Employer to leave until 10:30,
21 which means she's not going to be in route to here until --
22 HEARING OFFICER TA: Okay.
23 MR. BLASI: -- sometime shortly after that.
24 HEARING OFFICER TA: Okay. I mean --
25 MR. BLASI: So that will actually interfere with our

1 timeline perhaps.

2 HEARING OFFICER TA: Well, I just received an --

3 MR. PARRY: Can we -- should we go off the record and --

4 HEARING OFFICER TA: Yeah, let's go off the record.

5 MR. PARRY: And can we just make sure that the witness

6 knows that they're not supposed to be discussing?

7 HEARING OFFICER TA: Yeah.

8 (Off the record at 10:23 a.m.)

9 HEARING OFFICER TA: Want to continue, counsel?

10 MR. BLASI: Sure. Okay. I forget exactly where we were.

11 Q BY MR. BLASI: Do you recall where you were in the

12 interaction as you were describing it?

13 A Yes.

14 Q Can you describe what happened next?

15 A So we came -- we came the Saturday to Kimberly's house.

16 Gustavo and I, you know, we -- she came out, you know. I told

17 her the reason why I was there is because I wanted to make sure

18 that the ballot had been sent, you know, during the week and I

19 want to make sure that she would get it and if it is not

20 getting it on Saturday or during the week that she needs to

21 call the NLRB right away and verify her address. It's okay,

22 you know, to make sure that she will get the ballot.

23 And then she said, you know, I haven't even checked my

24 mailbox. Let me check that out. So she went around the house.

25 She took some, you know, mails, like a lot of envelopes. And

1 so she said I think it's this. I think it's this one. It says
2 Daily Grill.
3 MR. PARRY: Again, it's hearsay.
4 HEARING OFFICER TA: Same ruling. Just continue.
5 THE WITNESS: I say I don't think it's that one, so and
6 then there was another one. It says NLRB. I says that's
7 the -- I'm sorry, that's the one. And she says, okay. And
8 then she hold her, you know, envelopes, you know, under her
9 arms and we continued talking.
10 Q BY MR. BLASI: And what was -- what happened next in the
11 conversation?
12 A Gustavo asked her like so are you still on board,
13 Chaparrita, which is a short woman in Spanish. Are you still
14 on board, Chaparrita? You know, and then she answered, no.
15 She say, you know, I'm sorry guys, I'm going to vote no.
16 Q And --
17 MR. PARRY: Object and move to strike. That's irrelevant.
18 MR. BLASI: I --
19 MR. PARRY: Hearsay.
20 HEARING OFFICER TA: Yeah, well, okay. I'm going to allow
21 it because it doesn’t actually indicate what she then
22 ultimately voted, but again, I'm taking --
23 MR. BLASI: Right, but --
24 HEARING OFFICER TA: I'm going to weigh it -- give it its
25 due weight and --

1 MR. BLASI: Sure. Yeah.

2 HEARING OFFICER TA: And, you know, we can kind of just be

3 a little careful with that questioning.

4 MR. BLASI: Sure. I mean, if there's any guidance, I'm

5 not really sure how to avoid that.

6 HEARING OFFICER TA: Right. Right.

7 MR. BLASI: I mean, we don't know how these workers voted.

8 We have no idea.

9 HEARING OFFICER TA: Right. Right.

10 MR. BLASI: So you know --

11 HEARING OFFICER TA: Right.

12 MR. BLASI: If there's a way I could sort of -- you know,

13 I'm not sure what -- how to sort of accomplish the --

14 HEARING OFFICER TA: Right. I mean, so the -- I'll allow

15 it. Just continue with it and I note the -- the hearsay

16 concerns, the confidentiality concerns.

17 So let's continue.

18 THE WITNESS: And, you know, and then Gustavo tried to

19 have a conversation with her, the reason why we were doing, you

20 know -- you know the effort to bring the Union in the

21 workplace. He remind her, you know, in the way that he got

22 terminated, you know. She agreed with Gustavo saying I know

23 that was unfair termination, Gustavo, and you know that I --

24 MR. PARRY: Hearsay. That sounds like it's offered for

25 the truth.

1 MR. BLASI: It's not offered for the proof. It's not
2 offered for the proof. It's offered for the fact that it
3 said --
4 HEARING OFFICER TA: Okay. Yeah, same ruling. Same
5 ruling. Continue. Continue.
6 THE WITNESS: And she say I understand, Gustavo. You
7 know, I really like you. You're a nice guy. You know, and
8 then I just said I need your planning to go to school, that's
9 fine. You know, you're a young lady, so you know, but there's
10 people that they might not be in the same, you know, position
11 or possibilities at the workplace. And she said, yeah, I
12 understand, but you know -- you know, guys, thank you. And I
13 said, well, thank you for your time. I don't know if you --
14 and if your -- or want us to give you a ride to the post office
15 and she said, no, I'm going to wait outside with my sisters
16 and, you know, I'm going to do it by myself. I'm -- you know,
17 grown woman I guess, and she said.
18 And then I said, okay. Well, Kimberly, thank you for --
19 for your time. I appreciate all this time that you have a
20 conversation with me especially. And then I still -- you know,
21 and then I went to play with -- you know, because she has a
22 little dog and I went to play with her little dog. And Gustavo
23 said, okay. Thank you, Chaparrita. Hopefully I see you
24 around. And then we came out -- out of the front yard.
25 Q BY MR. BLASI: Okay. At any point did you -- did she open

1 the envelope containing that NLRB ballot or did --
2 A No, she didn't. She had all the envelopes, even more
3 envelopes, you know, under her arms.
4 Q Okay.
5 A And while we were talking, you know, she was holding the
6 envelopes.
7 Q Okay. At any point did you ask her to open the envelope
8 and vote in front of you?
9 A No, I didn't.
10 Q Did you ever suggest that she open the envelope and vote
11 in front of you?
12 A No. Definitely no.
13 Q Did you offer her any assistance in voting?
14 A No.
15 Q Okay.
16 A The only help that I -- and if she wanted to go to the
17 post office and she said, no, I'm okay because I'm going to
18 wait with my sisters.
19 Q Okay.
20 A And that was the end.
21 Q Did you ever touch the ballots?
22 A No. She had that -- she had all the mail she had under
23 her arm, so I wasn't even, you know, tried to do it.
24 Nothing -- and also, you know, going back to the rules that we
25 always regard the rules, you know, every morning or every --

1 every day.
2 Q Okay. Were -- was anyone else present during this
3 conversation?
4 A It was Gustavo, Kimberly, and I. At the end of the
5 conversation, two sisters came out because they were about to
6 leave, but nothing -- they were not in our conversation. They
7 were just waiting for her.
8 Q Okay. Was Kimberly's sister, Stephanie, present during
9 any of the conversation?
10 A No, she wasn't present.
11 Q Did you see her?
12 A I didn't see her. I guess she was inside. I didn't see
13 her. I never -- I never had a conversation that day with
14 Stephanie because Kimberly, you know, shown the -- already her
15 position. I wasn't even tried to talk to Stephanie.
16 Q Uh-huh. Okay. I want to put a document in front of you
17 for the record. Do you recognize this document?
18 A Yes, I do.
19 Q Okay. Can you describe what it is?
20 A Those are the rules sent by the NLRB and the instructions
21 that we have to follow and every step, the -- the -- every
22 voter needs to understand.
23 Q Okay. And was this a document that you reviewed when --
24 around the time of the election, before you were doing house
25 visits?

1 A Definitely, yes. Yeah.
2 Q Okay. There's a part that is toward the bottom of the
3 document that starts those employees.
4 A Yes, I --
5 Q Can you read that part into the record?
6 A "Those employees who believes that they are eligible to
7 vote and did not receive a ballot in the mail by Saturday,
8 December 9, 2017, should communicate immediately with the
9 National Labor Relation Board by either calling the Regional
10 office at 313- -- 310-307-7325."
11 Q Okay. And was the information that -- in the statement
12 you just read something you were familiar with at the time that
13 you conducted the house visit with --
14 A Yes, that was on December -- that was on December 9th.
15 That was on Saturday.
16 Q Okay. And did the information that's on this document
17 affect your thinking or discussions around when to do house
18 visits?
19 A Yes.
20 Q And why was that?
21 A It says clear that on Saturday, December -- that if they
22 haven't received the ballots, so they should communicate. So I
23 was worried about the -- I wanted to make sure that everyone
24 gets the ballots on that Saturday, otherwise, you know, they
25 should call immediately. I guess the NLRB doesn't work on

1 weekends, so you know, the plan was like you need to call right
2 away on Monday to let them know that if your address is okay or
3 you haven't received your ballots, so they will guide you, you
4 know, with some -- some steps.
5 Q Okay. And was the phone number that's listed here
6 information that you had with you?
7 A Yes.
8 Q Okay. And -- and also had you taken the opportunity to
9 review the rest of this document, in particular -- well,
10 actually, let's not waste too much time on this. Okay.
11 MR. BLASI: The Union moves to admit this as Union
12 Exhibit 1, the document --
13 MR. PARRY: Lacks foundation.
14 MR. BLASI: I think we -- that was foundation pretty
15 clearly. It's also -- I mean, it's a business record. It's
16 self-authenticating under the rules.
17 HEARING OFFICER TA: Well --
18 MR. PARRY: I just think he doesn't have the ability to
19 authenticate the document and prepare it and that's all.
20 MR. BLASI: He didn't need to prepare it. He looked at
21 it, he observed it, he knew what it was. I think there's --
22 MR. PARRY: There's just no testimony that says this is
23 actually what the NLRB said. This is not authenticated and he
24 doesn't have the ability to authenticate it. He's -- it's not
25 been authenticated and he doesn't have the ability to

1 authenticate it.

2 MR. BLASI: I mean, I can ask the witness if he saw this

3 document, if it was -- I don't know how the Employer -- or how

4 the Region typically authenticates its own documents.

5 HEARING OFFICER TA: Right. Right.

6 MR. BLASI: I can proffer that this is a document that was

7 emailed to me by the NLRB.

8 HEARING OFFICER TA: Well -- okay. Mr. Sandoval, did you

9 see this document prior to doing the home visits? So prior --

10 so let me back up. Did you see this document prior to December

11 9, 2017?

12 THE WITNESS: This specific documents?

13 HEARING OFFICER TA: Yeah, this document.

14 THE WITNESS: Before the Saturday 9th?

15 HEARING OFFICER TA: Yeah, the 9th?

16 THE WITNESS: Yes.

17 HEARING OFFICER TA: Okay. And how did you come to see

18 this document?

19 THE WITNESS: On my email.

20 HEARING OFFICER TA: Okay. So it came to you in email.

21 Do you know who sent it to you -- sent you the email?

22 THE WITNESS: Our attorney.

23 HEARING OFFICER TA: Okay. So you're referring to Mr.

24 Blasi then?

25 THE WITNESS: Yes.

1 HEARING OFFICER TA: Okay. And when you received this
2 document, what did you understand it to be?
3 THE WITNESS: That those are the rules. Like I said, in
4 some of the comments that I was in the previous relation at the
5 Renaissance at LAX, so I was familiar with these rules.
6 HEARING OFFICER TA: Okay. So --
7 THE WITNESS: So and, you know, there was the second time
8 that I seen those rules by the NLRB and I, you know, follow,
9 you know, all the -- and I read all the documents.
10 HEARING OFFICER TA: Okay.
11 THE WITNESS: But I was familiar.
12 HEARING OFFICER TA: So did you -- at the time that you
13 received this document, did you understand it to be something
14 that the National Labor Relations Board had issued?
15 THE WITNESS: Yes.
16 HEARING OFFICER TA: Okay. And when you received this
17 document and you saw this -- this Saturday, December 9, 2017
18 date that you testified about, did you understand it to be the
19 date that the National Labor Relations Board had indicated that
20 all employees should be receiving their mail ballots by?
21 THE WITNESS: Yes.
22 HEARING OFFICER TA: Okay. So then did you rely on this
23 document in determining when to visit the homes of the
24 employees to make sure that they had received their mail
25 ballots?

1 THE WITNESS: Yes.
2 HEARING OFFICER TA: Okay. So I'm going to admit it over
3 Employer's objection. This will be Union Exhibit 1.
4 MR. BLASI: One.
5 HEARING OFFICER TA: Okay. So Union Exhibit 1 is admitted
6 into evidence.
7 **(Union Exhibit Number 1 Received into Evidence)**
8 MR. BLASI: Okay.
9 THE COURT REPORTER: I'm sorry, is it the Union or
10 Petitioner's 1?
11 HEARING OFFICER TA: Were going to go with Union 1.
12 THE COURT REPORTER: Union 1.
13 HEARING OFFICER TA: Yeah, thank you.
14 Q BY MR. BLASI: Okay. Did you have any further
15 interactions with Kimberly Mendez after this interaction that
16 you had that you just described?
17 A No. No.
18 Q Okay. So I want to change gears and ask you some
19 questions about some other employees if that's all right with
20 you?
21 A Okay.
22 Q Are you familiar with an employee named Lucas Chim?
23 A Yes.
24 Q Is that a person that you've interacted with on any
25 occasion?

1 A Yes.
2 Q Okay. Was there an occasion in which you visited Mr. Chim
3 at his home?
4 A Yes.
5 Q Okay. And when did that occasion occur as best as you can
6 recall?
7 A The first time was before the ballot was sent. Sandra
8 Diaz, Gustavo Lopez, and I went to his house. We had a
9 conversation with him. The conversation started, you know,
10 really good. We were laughing because, you know, apparently he
11 has two dogs and there was no dogs that day, so we, you know,
12 clearly came to, you know, knock on his door. You know, he
13 came out and we were -- we started the conversation, you know,
14 having fun.
15 Q Okay. And what else do you recall about that
16 conversation?
17 A Well, we talked to him about how did he -- you know, and
18 if he has any questions or concerns about the effort that we
19 were making. You know, and then he was okay. He said, no, I'm
20 okay. You know, I feel good. I feel strong.
21 MR. PARRY: Same objection on hearsay.
22 HEARING OFFICER TA: Okay. Same ruling. Continue.
23 THE WITNESS: I feel okay. I feel strong, but I don’t
24 want to talk about these and my workplace because, you know, I
25 feel -- I feel that they're going to retaliate me. And I say

1 like, well, you know, that's okay. That's why we're here, you
2 know. And he said okay. And then they had a conversation with
3 Gustavo with some other -- some other conversations about what
4 Gustavo -- if Gustavo was working already in another place and
5 he said, no, you know, I'm still looking for a job. You know,
6 and they have kind of like three, four minutes conversation,
7 you know, about that.
8 Q BY MR. BLASI: Okay. Did anything else happen during this
9 conversation?
10 A No, I remember that I had one of the -- our union contract
11 and I said -- and I told him if you have any questions, any
12 concerns, you know, I can explain you -- how the way we -- we
13 have this contract. You know, and he say, no, I'm okay. You
14 know, I think I'm -- you know, I'm fine, so --
15 Q Uh-huh. Did you provide him any information to him about
16 the benefits of unionization or that sort of topic?
17 A Yes. You know, I guess he had a -- he had questions about
18 how the Union has some rules in the contract about immigration
19 or diversity or work opportunity and definitely had that
20 contract on my hands and I showed it to him.
21 Q Okay. Generally speaking, how long did this conversation
22 last?
23 A Fifteen, 20 minutes.
24 Q Okay. And at some point did you have to leave?
25 A Yes.

1 Q And how did the conversation end?
2 A That he was going to go to the other -- I guess he has
3 another job and he was about -- you know, he needs to start
4 getting ready to go to another job and I told him, okay. I
5 understand. You know, thank you for your time. So you know,
6 we're probably going to have another conversation, you know, in
7 a couple of days later.
8 Q Okay. And I'm not sure if you said, but more or less,
9 when did that conversation happen, the one you're describing?
10 A When that happened?
11 Q Yeah, when did it happen more or less?
12 A Like two weeks -- two weeks or -- two weeks or three
13 before the ballot were sent.
14 Q Okay. And did he say anything to you in the course of
15 that conversation that gave you the impression he had a
16 positive view towards unionization?
17 MR. PARRY: Objection. Irrelevant. Calls for
18 speculation, and hearsay.
19 HEARING OFFICER TA: Overruled. Go ahead and answer.
20 THE WITNESS: Yes, he did. He -- you know, he said that
21 he's still on board. I'm still on board. I'm still with my
22 other coworkers.
23 Q BY MR. BLASI: Okay. Had there been a previous
24 interaction with him before the home visit that you
25 participated in?

1 A There was -- yes, there was one before and -- in the Taco
2 Bell.
3 Q Okay.
4 A In front of the Daily Grill.
5 Q Uh-huh. And --
6 A Across the street. I'm sorry.
7 Q Across the street from the Daily Grill?
8 A Across the street from the Daily Grill.
9 Q Okay.
10 MR. BLASI: I'm trying to -- so I'm not allowed to ask
11 questions about documents, for example, or pictures and things
12 like that; is that -- is that --
13 HEARING OFFICER TA: Documents and pictures? I'm not sure
14 I understand.
15 MR. BLASI: I'm trying to not prejudice the witness or his
16 testimony, so -- could we ask the witness to step outside for
17 just a second so I can clarify what I'm allowed to ask
18 questions about?
19 HEARING OFFICER TA: Yeah. Can you step outside?
20 MR. BLASI: Just stand right outside.
21 THE WITNESS: Okay.
22 MR. BLASI: This will just take a second.
23 HEARING OFFICER TA: Wait. Hang on. Hang on.
24 MR. BLASI: Just really quickly.
25 HEARING OFFICER TA: Okay.

1 MR. BLASI: I just want to make sure, I'm not allowed to
2 ask about whether the guy signed a card or took a picture in
3 support of the Union or anything like that; is that -- if I'm
4 not, that's fine, I just want to be clear?
5 HEARING OFFICER TA: Yeah, I'm just not -- I'm not -- I
6 don't think I'm comfortable with having that disclosed at a
7 public hearing, so --
8 MR. BLASI: Okay. And documents showing that they took a
9 picture or something like that, I assume that's the same rule?
10 I just want to not waste time if we get to it.
11 HEARING OFFICER TA: Well, I don't know what these
12 pictures -- what the purpose of these pictures are.
13 MR. BLASI: So the Union does a thing that's called a --
14 they call it a photo petition.
15 HEARING OFFICER TA: Okay.
16 MR. BLASI: And it's like a -- sort of a matrix of
17 pictures of workers who have agreed to, you know, put
18 themselves forward as supporters of the Union, and the Union
19 uses it when it's recruiting other folks to say you're not
20 alone. You know, we're all on board. Sometimes it mails them
21 out. Sometimes it shows them to individuals. Sometimes it
22 uses them -- sends them out by, you know, by social media or
23 like text message or something. It's a -- I think in this case
24 it was just sort of distributed like informally to individuals
25 to show to individuals.

1 And so you know, I -- I don't know whether that's
2 testimony that is appropriate or not. It's not at the heart of
3 this case, so I appreciate if you don't want us to introduce
4 it, but I do want to clarify whether that was an option for
5 this witness or others.
6 HEARING OFFICER TA: Right.
7 MR. PARRY: Can I just -- are we on the record? We're
8 supposed to be on the record.
9 HEARING OFFICER TA: I -- we -- I think we are on the
10 record; is that right, Steve? Okay.
11 MR. PARRY: Okay.
12 HEARING OFFICER TA: Yeah.
13 THE COURT REPORTER: Yeah.
14 MR. PARRY: No, I think that's totally irrelevant for the
15 same reasons. You know, one is the confidentiality and I
16 understand it's different from the cards, but it's the same
17 issue of saying they consented to it at one point and now it's
18 all fine throughout and that's totally irrelevant and that's
19 not what we're here to look at. That's not the standard that
20 we're testing this conduct by.
21 HEARING OFFICER TA: Yeah. I don't know. I mean,
22 counsel, how -- how relevant is it to --
23 MR. BLASI: It's not that relevant. I mean, it's -- it --
24 it provides some color of what was actually going on.
25 HEARING OFFICER TA: Right.

1 MR. BLASI: I think there's this sort of narrative that
2 the Employer has attempted to create whereby these employees
3 were, you know, somehow berated in an unwelcomed fashion.
4 HEARING OFFICER TA: Right.
5 MR. BLASI: And I think some objection indicia that it's
6 not what was actually happening. This was a, you know, these
7 were workers who at one point they may have changed their
8 opinion and the Union fully acknowledges that can happen. But
9 at --
10 HEARING OFFICER TA: I just -- yeah, go ahead.
11 MR. BLASI: You know, the fact that there was a Union
12 organizing campaign that had broad support that involved many
13 individuals including witnesses who had testified. The
14 Employer was waging anti-Union campaign. It was successful in
15 changing opinion of some workers it would appear. I don't
16 think it ultimately is that legally significant because I
17 believe that the Board law is clear that it doesn't matter
18 whether, for example, a house visit is invited or welcomed. A
19 solicitation is protected and the -- and so at the end of the
20 day I don't think it matters. The only reason I would offer it
21 and sort of do any of this line of inquiry is sort of like a
22 belt and suspenders approach to make sure that --
23 HEARING OFFICER TA: Right.
24 MR. BLASI: -- if the Union's basically the view of what
25 actually matters in this case is not -- the Region doesn't

1 agree with that, although I think it has to under the law.
2 There's some record to dispute the Employer's, sort of other --
3 its theory about, sort of, I don't know, somehow a house visit
4 that's not invited or unwelcomed is illicit. Again, I don't
5 think the law supports that theory, but that would be the only
6 reason it would come in. I'm sort of inclined, if it's going
7 to become a headache to, I guess, forgo it, but I do want to
8 proffer that as evidence that the Union can put on with respect
9 to many different witnesses if the Hearing Officer believes it
10 would be relevant to -- to this case. I would defer to you on
11 the question.
12 HEARING OFFICER TA: I mean, do you want to respond?
13 MR. PARRY: He just said it's -- he admits it's irrelevant
14 and that it's ultimately not important, not going to be
15 considered, so now it's just a waste of time.
16 HEARING OFFICER TA: Yeah. I mean, I -- I'm going to say
17 if it's not that relevant, I feel like there's already -- I've
18 already allowed a lot of testimony in about the conversations
19 at, you know, during these home visits and so if this isn't --
20 it's not very relevant, then I'm just going to say let's move
21 on and not, you know, go down that line of inquiry.
22 MR. BLASI: Okay. I mean, you can only accept the Hearing
23 Officer's decision on that.
24 HEARING OFFICER TA: Okay. Okay.
25 MR. BLASI: But for the record, I do want to proffer that

1 as evidence --

2 HEARING OFFICER TA: Sure.

3 MR. BLASI: -- that we are able to put on if the Region

4 decides that it would be helpful and --

5 HEARING OFFICER TA: Right.

6 MR. BLASI: -- wants to revisit that question, we can put

7 on testimony and provided documents establishing what I just

8 described.

9 HEARING OFFICER TA: Right. Right.

10 MR. BLASI: So we'll --

11 HEARING OFFICER TA: Yeah. Yeah.

12 MR. BLASI: I understand a decision has been made and

13 we'll move on.

14 HEARING OFFICER TA: Okay. Yeah. And we can grab our

15 witness. Thank you.

16 MR. BLASI: Yeah.

17 HEARING OFFICER TA: Okay. Thank you. All right. You

18 want to continue?

19 MR. BLASI: I do.

20 HEARING OFFICER TA: Okay.

21 Q BY MR. BLASI: So -- and I'm not going to ask you further

22 questions about the meeting at Taco Bell, so we'll move onto

23 another topic.

24 A Okay.

25 Q The -- after the ballots were mailed, was there another

1 occasion in which you visited Lucas Chim's house?
2 A Yes.
3 Q And can you describe just very briefly what consisted --
4 that interaction consisted of?
5 A It was a really short visit. I was with another coworker.
6 We came to his house. You know, the dogs were there so we
7 couldn't, you know, get more inside. So there was a guy
8 outside. He asked me like if I was looking for someone
9 specific and I said Lucas. He didn't recall, but he called
10 someone while we were talking to him. Lucas came from
11 somewhere, you know, on the side. You know, another apartment
12 I guess. And he was walking with a child. And I said, hey,
13 Lucas. How are you? You know, and he was kind of surprised,
14 said, I'm fine. Thank you.
15 And I asked him, can we talk? He said, no, I have to
16 take -- you know, I have to take my daughter, or my
17 granddaughter to the school. While he was saying that he was
18 walking. I said why -- why you don't want to talk? Are you
19 okay? And he said, yes, I'm okay. You know, and then he walks
20 and we couldn't -- we couldn't continue our conversation.
21 Q Okay. And how long did the conversation last?
22 A Two, three minutes. Not -- two minutes.
23 Q Okay. Then was there any moment during that occasion when
24 he had his ballot or his NLRB envelope with him?
25 A No. No.

1 Q Okay.
2 A No, he just had his daughter or granddaughter, you know,
3 by the hand saying he was walking.
4 Q Okay. Did you have any even conversation with him about
5 the election?
6 A No, not at all.
7 Q Okay. Or about whether he even received the ballot?
8 A No. I didn't have a chance. I mean, he was walking
9 really fast and -- you know, I don't -- you know, I don't even
10 try to stop him, so he was walking and said I got to take my
11 daughter to school and he was walking and then he just crossed
12 the street, so I --
13 Q Okay.
14 A I was not going to follow him, so you know, we came -- you
15 know, we come back to the car.
16 Q Okay. Did you have any further interactions with him
17 after that?
18 A No.
19 Q Okay. Okay. Let me just ask you a couple of questions
20 really briefly on one final topic and we'll be done with your
21 direct examination. Is there an employee named Ashlynn that
22 you're familiar with?
23 A Yes.
24 Q And is that a person who you had interactions with
25 regarding the Unionization campaign?

1 A Yes.

2 Q Okay. Okay. Okay.

3 MR. BLASI: You know, in the interest of time, I'll just

4 stop there. I do want to ask one quick question on a final

5 topic and we can recess. I've just been told Sandra arrived,

6 so --

7 HEARING OFFICER TA: Okay. Okay. Great.

8 Q BY MR. BLASI: So are you familiar with a person named

9 Lupe Luna?

10 A Yes.

11 Q Okay. And who does Lupe work for?

12 A She works -- she's my coworker. She's an organizer. She

13 works for the same, Unite Here Local 11.

14 Q Okay. And were you here at the Region 31 office on

15 Monday?

16 A Yes.

17 Q Okay. Was Lupe Luna present on that day?

18 A No.

19 Q Did you see her at any time at the Region 31 office?

20 A No.

21 Q Okay. And were you present during the -- you know, in the

22 hallway area outside of the hearing room A and in the hearing

23 room during the course of the day?

24 A Yes, I was all over the place. I didn't see her.

25 Q Okay.

1 A I was basically down -- after when we went out from this
2 room, so I went to use the bathroom and then we went to -- to
3 the cafeteria.
4 Q Okay. So as far as you understand, she was not here?
5 A No, I didn't see her.
6 Q Okay.
7 MR. BLASI: I think the Union -- the Union would rest with
8 this witness. I guess we'll --
9 HEARING OFFICER TA: Yeah, so let's -- okay. Let's --
10 let's --
11 MR. PARRY: I --
12 HEARING OFFICER TA: Go ahead.
13 MR. PARRY: I would like to cross-examine him without
14 having him having the benefit of a break to prep.
15 HEARING OFFICER TA: Yeah, I -- okay.
16 MR. PARRY: I feel like I'm getting, you know, prejudiced
17 by that and not having any --
18 HEARING OFFICER TA: Okay.
19 MR. PARRY: Just don't --
20 MR. BLASI: The Employer certainly took advantage of the
21 time you received yesterday and called an adverse witness --
22 HEARING OFFICER TA: Okay.
23 MR. BLASI: -- and then --
24 MR. PARRY: What do you mean? I didn't take breaks
25 between direct and cross because I wanted to cross-examine the

1 witness as soon as they're done being directed. And I don't --
2 MR. BLASI: Well, this witness was not allowed to testify
3 yesterday because of the Employer's decision to call an adverse
4 witness and told it --
5 MR. PARRY: That's my right.
6 MR. BLASI: -- that's the --
7 MR. PARRY: And that's fine. It's --
8 MR. BLASI: Well, and I'm concerned that this witness is
9 now not going to be able to testify today for the same reason.
10 HEARING OFFICER TA: Okay. Okay. Okay. Can we go off
11 the record?
12 (Off the record at 11:01 a.m.)
13 HEARING OFFICER TA: Do you want to go grab Mr. Sandoval
14 again? Okay. Thank you, Mr. Sandoval.
15 Okay. Go ahead, counsel. Your cross.
16 MR. PARRY: Thank you.
17 **CROSS-EXAMINATION**
18 Q BY MR. PARRY: Mr. Sandoval, thank you for being here.
19 You understand you're still under oath?
20 A Could you repeat the question?
21 Q You understand that you are still under oath?
22 A I don't understand the last word.
23 Q You don't understand what taking the oath means when
24 you --
25 A Okay.

1 Q -- said you swear to tell the truth, the whole truth, and
2 nothing but the truth?
3 A I was not familiar.
4 Q Hold on a second. Hang on, let me finish my question,
5 okay? You understand when you hold up your hand and say I
6 swear to tell the truth, the whole truth, and nothing but the
7 truth?
8 A Yes.
9 Q And you understand what that means?
10 A Yes.
11 Q And you understand that still applies right now, correct?
12 A Yes.
13 Q Do you understand what the penalty of perjury is?
14 A No.
15 Q And I'll represent to you that the penalty of perjury
16 means basically that if you do not tell the truth while you're
17 on the stand today you can be guilty of a crime. Does that --
18 does that -- you understand that?
19 A Yes.
20 Q Okay. Did you understand that when you were testifying
21 earlier -- well, I take it you didn't understand that when you
22 were testifying earlier today; is that right? Since it hadn't
23 been explained to you? Had anyone explained to you what the
24 penalty of perjury was before I just did?
25 A No.

1 Q Okay. So at the time you testified earlier today, you
2 didn't understand what the penalty of perjury meant?
3 A Not exactly.
4 Q Okay. Thank you. But now you understand, right?
5 A Yes.
6 Q Thank you. Were you here yesterday all day?
7 A Yes.
8 Q From about what time to what time?
9 A 9:00 a.m. to 5:00, 5:30 p.m.
10 Q Did you leave at about the same time your colleagues, like
11 Mr. Sorza left last night?
12 A Yes.
13 Q How did you get here yesterday?
14 A It was -- it was on Mr. Sorza's car.
15 Q So you carpooled with Mr. Sorza?
16 A Yes.
17 Q And he drove?
18 A From -- yeah, from -- just one way.
19 Q So he drove you here or he drove you home?
20 A He drove me here and I drove home.
21 Q Oh, so you -- but you drove in the car with Mr. Sorza both
22 ways; is that right?
23 A Oh, can I -- can I go back because I was thinking about
24 Monday as well.
25 Q I was talking about yesterday.

1 A Yeah, so -- so it was yesterday was Tuesday, right?
2 Q Yes.
3 A So yesterday was -- I was in my car. Sorry.
4 Q Did anyone ride with you yesterday?
5 A I was alone in my car yesterday.
6 Q So when you drove home yesterday you were -- also drove
7 home alone?
8 A Yes.
9 Q Okay. Did you have any discussions with Martha Santamaria
10 yesterday after the hearing was over?
11 A No.
12 Q You had no conversations with her whatsoever?
13 A No.
14 Q Okay. Did you have any conversations with Mr. Sorza
15 yesterday after the hearing was over?
16 A No.
17 Q Did you have any conversations with Mr. Sorza yesterday
18 afternoon at all?
19 MR. BLASI: Objection. Vague and ambiguous.
20 HEARING OFFICER TA: Counsel, I'm not -- this is beyond
21 the scope of direct. I --
22 MR. PARRY: I want to test the -- basically --
23 MR. BLASI: I'm going to object on that basis.
24 MR. PARRY: No, I can --
25 MR. BLASI: This is --

1 MR. PARRY: -- inquire as to what information he's got.
2 There's been an order that's extremely relevant to the witness'
3 testimony and the creditability and I think I'm entitled to
4 test that.
5 HEARING OFFICER TA: Okay. So you're questioning whether
6 he violated the sequestration order; is that --
7 MR. PARRY: Right.
8 HEARING OFFICER TA: Okay. Okay. Then let's go ahead and
9 continue.
10 MR. PARRY: It will be quick.
11 HEARING OFFICER TA: Yeah, continue.
12 Q BY MR. PARRY: Did you have conversations with Mr. Sorza
13 yesterday afternoon?
14 MR. BLASI: Objection. Vague and ambiguous. I mean,
15 would a passing conversation in the hallway constitute a
16 conversation with him? What does that mean?
17 MR. PARRY: I'm trying to find out -- I'm trying to set
18 the parameters as to if he had a conversation --
19 HEARING OFFICER TA: Okay.
20 MR. PARRY: -- and then I can go into it deeper.
21 HEARING OFFICER TA: Yeah, and let's narrow after this.
22 MR. PARRY: Okay.
23 THE WITNESS: Conversation about what?
24 Q BY MR. PARRY: Just did you have any conversation with Mr.
25 Sorza yesterday afternoon?

1 A No.

2 MR. BLASI: Objection. Vague and ambiguous as to

3 timeline. Is this in reference to before Mr. Sorza testified

4 or after --

5 HEARING OFFICER TA: Can we just narrow it down?

6 MR. PARRY: I just want to know yes or no. I mean --

7 HEARING OFFICER TA: Well, let's just narrow the question

8 down, yeah.

9 Q BY MR. PARRY: Did you have -- did you have conversations

10 with Mr. Sorza that you understand after he testified yesterday

11 afternoon?

12 A Conversation about?

13 Q Just a conversation? Did you speak to him after he

14 testified yesterday?

15 A After the 5:00 p.m.?

16 Q Are you aware that he testified in here yesterday?

17 A Not fully aware.

18 Q Has he told you that he testified yesterday?

19 A No.

20 Q Okay. So have you discussed with him any -- anything that

21 he has said in this room?

22 A No.

23 Q Okay. And how did you get here this morning?

24 A In my car.

25 Q And were you driving by yourself?

1 A I was driving in my car and Sergio Sorza was with me.
2 Q And did you speak to Sergio this morning on the drive?
3 A In the morning?
4 Q Yes. How long was the drive?
5 A For like 45, 50 minutes.
6 Q So in 45 or 50 minutes all you said to him was good
7 morning?
8 MR. BLASI: Objection. Misstates the witness' testimony.
9 If there's a specific question that the Employer wants to --
10 MR. PARRY: That was a specific question.
11 MR. BLASI: -- ask that's relevant to this order, that
12 would be one thing, but a fishing expedition about every
13 interaction the witness may have had with somebody else is --
14 is way beyond --
15 HEARING OFFICER TA: Yeah. Counsel, we could just --
16 MR. BLASI: -- the scope of what the matter is.
17 HEARING OFFICER TA: Yeah, let's just -- to get through
18 this, can we just start with a narrow question? Yeah.
19 Q BY MR. PARRY: In the 45 minute drive to get here this
20 morning that you were in the car with Mr. Sorza, did you
21 discuss what you'd be testifying here today?
22 A No.
23 Q Did you discuss what he testified about yesterday?
24 A No.
25 Q What did you discuss?

1 A Personal matters.
2 Q And that was it?
3 A Yes.
4 Q Did you have any discussions regarding the Daily Grill?
5 A No.
6 Q Did you have any discussions regarding Local 11 visiting
7 employees at the Daily Grill during the election?
8 MR. BLASI: Objection. This is way beyond the scope.
9 He's asked the question about whether he's had a conversation
10 with Mr. Sorza about his testimony yesterday. That's the only
11 matter that's at issue. That's the only thing that's governed
12 by the sequestration order.
13 There's not a prohibition on discussing anything else and
14 so -- and all the questions that have been asked after that are
15 extraneous and harassing. That's not -- there's not a
16 prohibition on conversing generally, or even conversing about
17 facts of the past. There's a prohibition on discussing Mr.
18 Sorza's testimony and if the Employer wants to ask specifically
19 about that, I believe that would be appropriate, but anything
20 beyond that is not a -- is -- is beyond the scope of any
21 relevant inquiry at this point.
22 MR. PARRY: The question was did he discuss with him Local
23 11's activities visiting Daily Grill employee's homes during
24 the election period. And that is certainly calculated to get
25 to whether the sequestration order was violated because the

1 question arises in what context was that? I just want to know
2 and I am entitled to ask that. Did he talk about visiting
3 employees at their homes during the election?
4 MR. BLASI: No. Objection. That's not a relevant
5 question and it is getting into Berbiglia territory about
6 Union's discussing internal matters. That's not -- that's not
7 what the sequestration order prohibits.
8 HEARING OFFICER TA: Okay.
9 MR. BLASI: It prohibits conversations about Mr. Sorza's
10 testimony yesterday. That's all it prohibits.
11 HEARING OFFICER TA: Okay.
12 MR. PARRY: Well, you know, he would say --
13 MR. BLASI: Any question beyond that is -- is a violation
14 of the -- of the privacy rights of the Union under Berbiglia
15 (phonetic) and is extraneous to the inquiry that even is
16 plausibly relevant in this moment at this -- in this hearing.
17 HEARING OFFICER TA: Okay. I mean, he's already testified
18 that they discussed personal matters. I'm going to allow a few
19 more -- one or two more questions.
20 MR. PARRY: That's my question. I think it probably --
21 HEARING OFFICER TA: But -- but -- okay.
22 MR. PARRY: -- will be done depending on his response.
23 HEARING OFFICER TA: Okay. But then -- and then we'll be
24 done. Yeah. So go ahead, counsel.
25 Q BY MR. PARRY: During your car ride with Mr. Sorza this

1 morning, that was about 45 minutes you said, did you discuss
2 Local 11's activities visiting Daily Grill employees at their
3 homes during the election period?
4 MR. BLASI: Objection as vague and ambiguous as to with
5 whom --
6 MR. PARRY: You've already said the -- you've already said
7 your objections.
8 HEARING OFFICER TA: Okay.
9 MR. BLASI: It's a different objection. He's asking
10 with -- as to with whom he's having those conversations and I
11 can represent --
12 MR. PARRY: What?
13 MR. BLASI: -- to the Court that I had a conversation with
14 Mr. Sorza and that's an attorney/client privileged conversation
15 and I'm not going to be --
16 MR. PARRY: I'm not asking about --
17 HEARING OFFICER TA: Okay.
18 MR. PARRY: -- conversations you had with Mr. Sorza. I'm
19 asking about conversations --
20 HEARING OFFICER TA: Yeah.
21 MR. PARRY: -- Mr. Sandoval had with Mr. Sorza on the
22 drive.
23 HEARING OFFICER TA: Just answer the question.
24 THE WITNESS: No.
25 Q BY MR. PARRY: Do you understand -- do you have the

1 question in mind or do you want me to repeat it?
2 A I do have the question on my mind. I do not have any
3 conversation about this matter. I do have a conversation on
4 regards personal matters, and I can talk -- I cannot talk about
5 personal matters; I don't feel comfortable.
6 Q I'm not going to ask you about personal matters. I'm only
7 concerned with --
8 A I'm sorry, I -- we cannot talk about -- I mean --
9 HEARING OFFICER TA: Okay, yeah. So let's -- okay, go
10 ahead -- there's no question right now before you. You've
11 answered the question.
12 THE WITNESS: Thank you.
13 HEARING OFFICER TA: Counsel, your next --
14 Q BY MR. PARRY: Have you had discussions with Mr. Blasi
15 about what Mr. Sandoval testified to yesterday?
16 MR. BLASI: Objection. The question doesn't make any
17 sense.
18 THE WITNESS: I don't --
19 MR. PARRY: It certainly does.
20 HEARING OFFICER TA: No, I think it's --
21 MR. BLASI: Mr. Sandoval didn't testify yesterday.
22 MR. PARRY: I said that Mr. Sorza testified to yesterday.
23 HEARING OFFICER TA: Yeah.
24 THE WITNESS: Oh, you were saying Mr. Sandoval.
25 HEARING OFFICER TA: Oh, okay, I might -- yeah.

1 Q BY MR. PARRY: Oh, sorry. Let me ask it again then. Have
2 you had any conversations with Mr. Blasi about what Mr. Sorza
3 testified to yesterday?
4 A No, I didn't.
5 MR. BLASI: And objection. That's attorney-client
6 privilege information.
7 HEARING OFFICER TA: Well, he's not asking what was
8 discussed, but did he discuss to the extent that it's a
9 violation of the sequestration orders? So it's fine.
10 Q BY MR. PARRY: Okay. And we had a break earlier. There
11 was a first break that we took in your testimony this morning;
12 do you recall that?
13 A I recall a couple of breaks.
14 Q We had a break. We went out of the room for about five
15 minutes; do you recall that?
16 A Yes.
17 Q Okay. Did you speak with anybody during the break?
18 A No.
19 Q No one at all?
20 A No.
21 Q Okay. Now, during the last break we had, you were in the
22 hallway speaking to Sandra Diaz, correct?
23 A I was not speaking with Sandra Diaz. I --
24 Q So I didn't hear you speaking with Sandra Diaz in Spanish
25 when I walked out the door?

1 A I was talking with another person who actually work at the
2 Local.
3 Q So you're saying when I walked out the door and I saw
4 Sandra Diaz standing there, and you standing right next to her
5 and speaking in Spanish to her, that wasn't Sandra Diaz?
6 A Sandra Diaz was behind me. I didn't see her until I
7 turned. I think even, I believe I saw you coming out of the
8 room. There was a few people. Someone was coming, so I was
9 just turned, and then I saw Sandra Diaz but I wasn't talking to
10 her.
11 Q Who were you speaking to if it wasn't Sandra Diaz?
12 A I was speaking with another co-worker.
13 Q Who was that?
14 A Francis -- Francisco.
15 Q Is it Francis or Francisco? Which one?
16 A Francis.
17 Q What's Francis's last name?
18 A I don't recall.
19 Q What does Francis do? He's a co-worker. Does he work for
20 Local 11?
21 A Yeah. He work at the Local 11.
22 MR. BLASI: Objection. May I suggest something to the
23 Hearing Officer?
24 HEARING OFFICER TA: Go ahead.
25 MR. BLASI: If the question is whether the Witness

1 discussed his testimony with anybody, I would suggest that
2 would be an appropriate question, but to have a fishing
3 expedition about any interaction he may have had with anybody
4 is a waste of time and is beyond the scope of any relevant
5 inquiry that would be appropriate at this time.
6 HEARING OFFICER TA: You can respond.
7 MR. PARRY: If there are Local 11 personnel out here, I
8 can only assume that they're likely or possibly going to be
9 witnesses, and I want to know what was discussed, if anything.
10 And that's testing the sequestration order. And that's
11 entirely relevant to this because it goes right to everybody's
12 credibility.
13 MR. BLASI: It's overbroad because it's not calculated to
14 inquire about violations of the sequestration order. He's
15 asking us --
16 MR. PARRY: Of course it is.
17 MR. BLASI: -- open-ended questions about any interaction
18 he may have had, and that's not what the sequestration order
19 governs.
20 MR. PARRY: I'm asking who specifically he was speaking to
21 in the hall during the break. That's not open-ended.
22 HEARING OFFICER TA: Okay. I'm --
23 MR. PARRY: I'm not asking if he --
24 HEARING OFFICER TA: Um-hum.
25 MR. PARRY: -- you know, about the food order he made to a

1 -- after --

2 HEARING OFFICER TA: I mean how many individuals are you

3 going to end up asking him about? It's --

4 MR. PARRY: This is -- I just heard somebody outside in

5 the hallway, just now.

6 HEARING OFFICER TA: Okay. Okay.

7 MR. PARRY: And that's about it.

8 HEARING OFFICER TA: Okay. All right. Continue. Okay.

9 Q BY MR. PARRY: Okay. When you were speaking to someone in

10 the hall, I think you said it was Francis. What does Francis

11 do at Local 11?

12 A He's an organizer.

13 Q Was Francis -- as far as you know, did Francis participate

14 in any home visits during the election period?

15 A Nope.

16 Q For The Daily Grill?

17 MR. BLASI: Objection. This is beyond the scope. This is

18 a fishing expedition. It has nothing to do with anything.

19 MR. PARRY: I'm trying to narrow it to determine --

20 MR. BLASI: I think the --

21 MR. PARRY: -- whether Francis is one of the people that

22 was involved and potential witness.

23 MR. BLASI: The relevant inquiry, if there is one at all,

24 is whether the Witness had communications with other people

25 about his testimony.

1 MR. PARRY: Which is --

2 MR. BLASI: Or I suppose the testimony of Mr. Sorza. I
3 think it would be reasonable to ask that question, if you had
4 any conversations with anybody, but to go on a -- you know,
5 this harassment -- harassing expedition about every interaction
6 he may have had, and who other people were and what their jobs
7 were, it's like an opportunity to harass the witness, and also
8 to gather information that's not within the scope of his direct
9 testimony.

10 MR. PARRY: So it's Counsel's position that I can't ask
11 about the identity of people and whether they participated in
12 the home visits that we were discussing here for the last three
13 days? That's what it sounds like. I'm asking if that person
14 was involved in the home visits.

15 MR. BLASI: And Counsel for the Union's position is that
16 if it was within the scope of the Witness's testimony, it might
17 be reasonable so long as it's connected to a relevant matter.

18 MR. PARRY: Of course it is.

19 MR. BLASI: But what the Employer's Counsel is attempting
20 to do now is, I guess, under the guise of asking about
21 violation of the sequestration order, is asking about the
22 personal backgrounds of other people who have nothing to do
23 with this matter, frankly. And it's harassing the Witness.
24 It's prolonging a hearing that's gone on far too long to date.

25 I would suggest again that if the relevant question is,

1 have you discussed your testimony with other people during the
2 break, that would be an appropriate question to ask, or if he's
3 discussed the testimony of Mr. Sorza with another person or
4 with Mr. Sorza I guess, that would be appropriate. But an
5 open-ended question about every interaction he's had is
6 overbroad and is harassing the Witness.
7 MR. PARRY: I think counsel may misunderstand the
8 question. I asked if he was involved in the home visits at The
9 Daily Grill. So apparently, by his logic, I can't ask who else
10 from Local 11 was involved in home visits. I can't even get
11 identification of other people and ask what their role was.
12 That is entirely relevant to what we're talking about. Who was
13 there? Who did it?
14 HEARING OFFICER TA: Okay.
15 MR. PARRY: And now I can't ask if that person was
16 involved in the home visits, which is absurd.
17 MR. BLASI: Do --
18 MR. PARRY: That was the question that was posed. Was
19 Francis, whatever his last name is, was he involved in the home
20 visits to The Daily Grill employees during the campaign? I
21 just want to get --
22 HEARING OFFICER TA: Okay, I mean, how many more questions
23 -- yeah. Okay.
24 MR. PARRY: I don't know how many questions. I'm entitled
25 to find out who was doing -- who was, first of all, involved in

1 the home visits. Certainly, there can be no question that I'm
2 entitled to find out who was involved in the home visits.
3 MR. BLASI: Okay. Actually --
4 HEARING OFFICER TA: Um-hum.
5 MR. PARRY: And I don't know if -- is there -- I don't
6 understand why there would be any controversy over me asking
7 who was at the home visits. That's all we've been asking so
8 far. And then to find out if he's talked to those people about
9 his testimony.
10 HEARING OFFICER TA: Counsel could you -- want to respond.
11 MR. PARRY: And then, he may identify 15 more people that
12 I have to ask whether they were involved in home visits and
13 whether he's talked to them. And I'm entitled to explore that
14 whole thing.
15 MR. BLASI: I'm confused as to whether the Employer is --
16 HEARING OFFICER TA: Yeah.
17 MR. BLASI: -- representing his line of inquiry to be
18 about the sequestration order, which would be one thing, or
19 whether it's to elicit testimony that relates to the Witness's
20 direct examination.
21 HEARING OFFICER TA: Um-hum.
22 MR. BLASI: The Witness's direct examination was pretty
23 specific, actually. It was not a broad discussion of every
24 home visit he ever went on. It was focused on, I believe, two
25 specific home visits --

1 HEARING OFFICER TA: Um-hum.

2 MR. BLASI: -- and on generally about the rules that he

3 adhered to. So I would disagree that it's appropriate to ask

4 an open-ended question. It's beyond the scope of his direct.

5 I didn't ask questions yesterday that were beyond the scope of

6 the employee's direct, and I don't think the Employer should be

7 allowed to do so here.

8 MR. PARRY: You certainly did, but --

9 MR. BLASI: It's not permissible under the rules. And to

10 mercifully put us out of this misery, I will not object to

11 answering the one question regarding that individual.

12 HEARING OFFICER TA: Okay.

13 MR. BLASI: But I will object to lines of inquiry that

14 relate to matters that extend beyond the scope of this

15 individual's direct examination.

16 HEARING OFFICER TA: Okay. Okay.

17 MR. BLASI: But I'm not waiving the objection as to

18 open-ended fishing expedition about anything at all.

19 HEARING OFFICER TA: Okay.

20 MR. PARRY: Well, it goes with both. And if I have to

21 call him again --

22 HEARING OFFICER TA: Right.

23 MR. PARRY: -- so I could ask questions that are relevant

24 to the matter, but not confined to the scope of direct, then I

25 guess I have to call him again. But for purposes of

1 efficiency, I should be able to call him -- ask the questions
2 that are relevant.
3 MR. BLASI: That --
4 HEARING OFFICER TA: Okay, but -- okay. So if you can
5 contain this line of inquiry to the extent that this person,
6 this individual, is a potential witness that Mr. Sandoval may
7 have shared his testimony with this person, and that thus is in
8 violation of the sequestration order, you can continue with
9 that line of inquiry.
10 MR. PARRY: That's all I'm trying to find out.
11 HEARING OFFICER TA: Okay. All right. Then let's
12 continue.
13 Q BY MR. PARRY: Okay. I think my question was, was this
14 person, Francis, who you spoke with in the hallway, was Francis
15 involved in -- let me ask more broadly, was Francis involved in
16 The Daily Grill union campaign?
17 A No.
18 Q Okay. Were you speaking -- what language were you
19 speaking to Francis in?
20 A English.
21 Q In English. Who were you speaking Spanish to in the
22 hallway.
23 A I was calling William. He was all the way on the other
24 side.
25 Q Did you speak to William on the break?

1 A No.
2 Q Did you speak to William last night?
3 A About what?
4 Q Did you speak to William about any testimony that occurred
5 in this proceeding so far?
6 A No.
7 Q Did you speak to William this morning?
8 A Yes.
9 Q And did you speak to William about any of the testimony
10 that's come from this proceeding?
11 A No.
12 Q How long did you speak to William for?
13 A This morning?
14 Q Yes.
15 A Five minutes.
16 Q He didn't drive with you in the car?
17 A No.
18 Q How long have you been employed by Local 11?
19 A About nine years.
20 Q And do you currently have any other job?
21 A No.
22 Q In the nine years, have you had any other job other than
23 Local 11?
24 A No.
25 Q Okay. And you discussed on your direct examination what

1 your objectives are; do you recall that?
2 A Yes.
3 Q In you work with Local 11 specifically.
4 A Yep.
5 Q And I think you said that was to make sure everyone has
6 the opportunity to vote, correct.
7 A Yes.
8 Q That they know the NLRB rules; am I getting that right?
9 A Not all the rules. And a specific -- there was one rule I
10 wanted to make sure that they not going to fail in that rule.
11 Q What's that rule?
12 A Signing one of the envelope when they voted.
13 Q So you -- that's one thing that you want to make sure that
14 the voting employees are aware of, is that right?
15 A Not make sure, but to go over all the rules.
16 Q Okay. But another one of your main objectives, and maybe
17 your main objective is to get employees that you're trying to
18 organize to vote yes for the Union, correct?
19 A Could you repeat the question?
20 Q One of your main objectives is also to get the employees
21 to vote yes for the Union, correct?
22 A No.
23 Q It's not your job to get employees to vote yes?
24 A No.
25 MR. BLASI: Objection. The Witness -- Employer's Counsel

1 is being vague and ambiguous as to which interactions he's
2 referring to, and which objectives the witness has testified
3 about. It's causing confusion because the questions are vague
4 as to what specific testimony the Employer is referring to.
5 HEARING OFFICER TA: Well, I think he's asking about, in
6 his job as a Union organizer --
7 MR. PARRY: Yes.
8 HEARING OFFICER TA: -- is one of his objectives to get
9 employees to vote yes for the Union.
10 MR. PARRY: Right. It's that simple.
11 HEARING OFFICER TA: So I'm going to overrule the
12 objection. Go ahead and answer the question.
13 Q BY MR. PARRY: You're a union organizer, correct?
14 A Yes.
15 Q And as a union organizer, you try to convince employees to
16 vote yes for the Union when they're having a Union election,
17 correct?
18 A Yes.
19 Q And the Union puts out campaign materials that encourage
20 employees to vote yes, correct?
21 A Yes, that's correct.
22 Q And union organizers go to employees' homes to try to
23 inform them as to what you think the benefits are of a union,
24 correct?
25 A Yes.

1 Q And that is to try to convince them to vote yes, correct?
2 A Yes.
3 Q So your objective, as it relates to The Daily Grill
4 employees, was to get them to vote yes, correct?
5 A Yes.
6 Q And so that whole process, would you agree, that that's --
7 and I think this is the term that counsel used --
8 MR. BLASI: And I'm going to have --
9 MR. PARRY: Hold on a second. Let me get the question
10 out.
11 HEARING OFFICER TA: Let's let counsel ask the question
12 first.
13 MR. BLASI: All right.
14 Q BY MR. PARRY: That whole process, would you agree, that's
15 basically campaigning, correct?
16 MR. BLASI: I'm going to object to vague and ambiguous --
17 HEARING OFFICER TA: Okay.
18 MR. BLASI: -- as to what specific period of time or
19 interactions the Employer is referring to --
20 HEARING OFFICER TA: Well, I -- okay.
21 MR. BLASI: -- because it's -- there's not a -- there were
22 many different periods of time in which home visits took place.
23 And to --
24 MR. PARRY: That's not the question I'm asking. Let me
25 just ask another question --

1 HEARING OFFICER TA: Yeah, I -- okay.
2 MR. PARRY: -- because these page-long objections are kind
3 of wasting a lot of time.
4 MR. BLASI: And --
5 HEARING OFFICER TA: Okay. I -- yes. Okay, I think his
6 question is as to his job as a union organizer and what he does
7 as a union organizer.
8 MR. BLASI: Right, but that wasn't the -- the initial line
9 of inquiry referred to a question that I asked that was about a
10 much more specific set of interactions that had to do with
11 after the ballots were mailed. And that's why I'm objecting to
12 the form of the question.
13 HEARING OFFICER TA: Are you saying it's beyond the scope?
14 MR. BLASI: No. I'm saying that it's vague and ambiguous
15 because it is not making clear what time reference the --
16 MR. PARRY: Just say vague and ambiguous. You don't need
17 the speaking objection that cuts --
18 HEARING OFFICER TA: Okay. Yeah -- okay.
19 MR. BLASI: I've been asked to clarify what my point is
20 and I'm attempting to do so.
21 HEARING OFFICER TA: Okay. I'm going to overrule the
22 objection. Continue.
23 MR. PARRY: Okay. And now I don't even remember the
24 question, so I'm going to try to ask it again.
25 HEARING OFFICER TA: Okay.

1 Q BY MR. PARRY: The process that union organizer goes
2 through to try to get employees to adopt a union is -- would
3 that be called a campaign? You understand that term?
4 A Yes.
5 Q Okay. That's a union campaign, right?
6 A Yes.
7 Q Okay. Thank you. And so when you were going to the
8 employees -- The Daily Grill employees' homes to speak to them,
9 that was part of your campaigning, correct?
10 MR. BLASI: Objection. Vague and ambiguous.
11 MR. PARRY: All of the home visits.
12 HEARING OFFICER TA: Okay. Yeah, I'm going to overrule
13 the objection. Go ahead, answer it.
14 Q BY MR. PARRY: When you were going to The Daily Grill
15 employees' homes to meet with them and discuss with them, that
16 was part of your campaigning, correct?
17 A What part?
18 Q Going to their homes to speak to them, that was
19 campaigning.
20 A Speak to them and putting that big vision of the Union
21 environment.
22 Q That's campaigning, yes?
23 A I don't really call it campaign, but that's a conversation
24 with another person relating with the job that I used to do
25 before to start working with Local 11.

1 Q I think I'm going to move to strike his non-responses. My
2 question was, going to Daily Grill employees' homes to try to
3 convince them to vote for the Union is part of your
4 campaigning, correct?
5 A Part of the conversation.
6 Q Is it a part of campaigning?
7 A I would say yes.
8 Q Thank you. For instance, I think you testified as to one
9 of the visits at Kim Mendez's house, which I think was the last
10 one, and she indicated to you that she didn't support the
11 Union, right, the last visit?
12 A I was -- you talking about --
13 Q The last visit at Kim Mendez's home was when she indicted
14 to you that --
15 A What was the name? Kim?
16 Q Kim -- Kimberly Mendez.
17 A Oh, Kimberly. I don't recognize as Kim.
18 Q Okay. Kimberly; the last visit you took to Kimberly
19 Mendez's home is when she indicated to you that she didn't
20 support the Union, correct?
21 A Yes.
22 Q And then you also testified that after she said that
23 Gustavo continued to try to convince her to change her mind,
24 yes?
25 A Not convince her, just he had two questions.

1 Q What were his two questions?
2 A Why you're not in supporting anymore? Why did you change
3 your mind?
4 Q And so he asked those questions so he could continue
5 trying to get her to support, yes?
6 A No. He didn't continue. He just asked those two
7 questions.
8 Q And then you offered to take her to the post office to
9 drop off her ballot, correct?
10 A Yes.
11 Q Okay. So what was Gustavo doing asking those questions if
12 not to try to get her to vote yes for the Union?
13 A Because she -- the first visit with Kimberly, she shows a
14 lot of -- you know, I would say a good relationship with
15 Gustavo, and she was upset. You know, why he got terminate.
16 And then Gustavo was just reminding her -- you know, and the
17 reason why he get terminate. And that was the whole point.
18 Q And that was to remind her why the Union was a good idea
19 for the employees, correct?
20 A Yeah. Yes.
21 Q Okay. And that's what he communicated to her at that last
22 visit, correct? Or tried to communicate to her.
23 A Tried to communicate.
24 Q That it was a good idea to vote yes for the Union.
25 A Yes.

1 Q And --
2 A But he didn't say vote yes. He didn't say -- two
3 question, why you're not supporting anymore? And like, why you
4 changed your mind? And you know -- and said, I guess, look at
5 what happened to me, and that was the end because she continued
6 saying, I'm -- you know, I'm okay -- you know, and I'm about to
7 leave so -- that was --
8 Q But you believe the employees should join the Union,
9 correct?
10 A Can you repeat the --
11 Q You believe The Daily Grill employees should vote yes and
12 join the Union, correct?
13 A Yes.
14 Q And do you have an understanding as to whether Gustavo
15 believes that The Daily Grill employees should vote yes and
16 join the Union?
17 MR. BLASI: Objection. Calls for speculation.
18 HEARING OFFICER TA: Yeah. Sustained.
19 MR. PARRY: I asked for his understanding.
20 Q BY MR. PARRY: Did you ever hear Gustavo tell any employee
21 of The Daily Grill in these visits that they should not vote
22 for the Union.
23 A I didn't.
24 Q Never, right? Did you ever hear Gustavo in any of these
25 home visits say that employees should vote for the Union?

1 A Yes.
2 Q Okay. Thank you. Now, during the visits to
3 Kimberly Mendez's home -- let's just talk about the first time.
4 You said you were there with -- it was you and Sandra Diaz,
5 correct?
6 A Yes.
7 Q And did both of you do the talking, or did someone do most
8 of the talking?
9 A Both of us, yeah.
10 Q Both of you. So what language did you speak in when you
11 were speaking with them?
12 A Spanish.
13 Q Okay. During all the conversations with Kimberly Mendez,
14 did you speak Spanish with her?
15 A Yes.
16 Q Okay. How many -- you also testified that Kimberly gave
17 you her sister Stephanie's phone number, correct?
18 A Yeah, that's correct.
19 Q And how many times did you call her?
20 A Once.
21 Q Did you ever text message her?
22 A Who, Stephanie?
23 Q Yes.
24 A I don't recall.
25 Q Did she ever text message you?

1 A No.
2 Q Did she ever call you back?
3 A No.
4 Q Is it your testimony that you were ever invited to
5 Kimberly Mendez's home?
6 A Yes.
7 Q You were?
8 A I was invited, yeah.
9 Q How many times?
10 A I would say a couple of times.
11 Q Were you invited on the first visit?
12 A With Kimberly, yes.
13 Q So how did Kimberly communicate that invitation to you?
14 A She opens the door and say come in.
15 Q But she didn't invite you to come in the first place. She
16 may have opened the door, right?
17 A No.
18 Q She didn't say -- she didn't call you or contact you and
19 say, hey, please come to my home, did she?
20 A No.
21 Q And on the second time, were you invited to Kimberly's
22 house?
23 A Yes.
24 Q How were you invited?
25 A When I ask her like, we might come back later to talk to

1 you or to try to talk to your sister, and she says that's fine.
2 You know, she is usually here on the weekdays, or especially on
3 the weekends.
4 Q When she said she, that's a little confusing using the
5 pronouns, but did -- was Kimberly saying that her sister was
6 usually there on the weekends? Or that Kimberly herself was
7 usually there on the weekends?
8 A Her sister Stephanie.
9 Q And so you believe that Kimberly actually invited you to
10 return to her home?
11 A Yes.
12 Q And then on the third time, I believe you testified it was
13 still prior to when the ballots were mailed. Do you believe
14 you were invited to her home?
15 A Could you repeat the question, please?
16 Q The third time you testified about earlier was, I believe
17 you said it was still prior to the election period and before
18 the ballots had been mailed, and you came to their home -- to
19 Kimberly's home. Had you been invited for that visit?
20 A Yes.
21 Q And how did Kimberly communicate the invitation?
22 A She mentioned that they were going to have a birthday
23 party and she was pretty sure that Stephanie was going to be
24 there, so we can come and talk to her.
25 Q Did she do that by phone or in person?

1 A Person.
2 Q When did she make that invitation?
3 A In the -- in one of the visits prior to the conversation
4 with Stephanie.
5 Q Now, the fourth visit I think you said was when you
6 confused Stephanie with her younger sister; is that right? You
7 thought -- someone answered the door; you thought it was
8 Stephanie, but it was actually her younger sister, correct?
9 A Yes. Yes.
10 Q Had you been invited on that visit?
11 A No.
12 Q Now, there was a Saturday visit you testified to; was that
13 a fifth visit?
14 A Yeah.
15 Q And I think this was the visit where Kimberly got her
16 ballot from the mail; is that right?
17 A Yes.
18 Q Okay. Were you invited to their home on that time?
19 A You mean to come inside or --
20 Q Just to be at their home.
21 A Not directly, but she say -- when I told her in the last
22 visit -- when I ask her, we're going to come back later to make
23 sure, you know, that everything is okay, and she say, yeah,
24 that's fine.
25 Q So it's your testimony that Kimberly said it was fine for

1 you to come back that day?
2 A Yes.
3 Q Had you ever spoken to Stephanie at that point?
4 A Yes.
5 Q When did you speak to Stephanie?
6 A Prior to that Saturday?
7 Q Yes.
8 A Yes.
9 Q When did you speak to her?
10 A The day when Kimberly say there was going to be a party --
11 or a birthday.
12 Q And Stephanie was there when --
13 A Yes.
14 Q And what did Stephanie say to you?
15 A She came out. We were in the front yard, you know. She
16 was a little bit upset because we kind of confused, you know,
17 her with her sister. You know, she -- I mean it, she told me
18 that. We apologized. I apologized and said, like, it wasn't
19 my intention. It was no bad intention at all. You know, I
20 thought it was only two sister. And she say, we are four, and
21 that was -- you know, I didn't realize that it was four sister.
22 Q So it's your --
23 A And that was the day when I talked to her and she chose
24 that she was going to be in the same effort to organize the
25 Union.

1 Q Let's back up there. You said she was going to be in the
2 same effort to organize the Union; who are you referring to?
3 A Stephanie.
4 Q So Stephanie told you she was going to be in the effort to
5 organize the Union?
6 A Yes.
7 Q That's your testimony under oath, that Stephanie told you
8 that, essentially, she was going to help organize the Union?
9 A Yes.
10 Q Okay. And is it your testimony that even though Stephanie
11 was upset with you about the sister confusion on that visit,
12 she still invited you to come back?
13 A Well, she was upset at the beginning of the conversation.
14 After that, we had a -- you know, what was like -- interviews
15 someone.
16 Q So just yes. You say -- you think yes, she --
17 MR. BLASI: I'm sorry. I'm sorry.
18 MR. PARRY: I'm sorry.
19 MR. BLASI: Can I get that answer again please?
20 THE WITNESS: Yeah.
21 MR. PARRY: All right. And I'll move to strike it as
22 non-responsive.
23 HEARING OFFICER TA: Well, let's just let him answer.
24 What's your response to the question?
25 THE WITNESS: Could you repeat the question again?

1 Q BY MR. PARRY: Is it your testimony that even though
2 Stephanie was upset with you over the sister mix up --
3 A Um-hum.
4 Q -- she still invited you to come back to the home again?
5 A I say she wasn't upset the whole conversation; it was just
6 a -- you know, a few seconds, and she expressed, you know, why
7 she was upset. And then, you know, she agreed to be part of
8 the effort to -- you know, with the other co-workers.
9 MR. PARRY: So back to my question; and I'll move to
10 strike as non-responsive.
11 HEARING OFFICER TA: It -- I --
12 Q BY MR. PARRY: You acknowledged that she was upset due to
13 the sister confusion, correct?
14 A I say she was upset and concerns about confusion with
15 another sister. I never said that she was upset the whole
16 conversation.
17 Q I understand that. But at some point, she was upset about
18 being confused with her sister, right?
19 A Yes.
20 Q And did she tell you that she was upset because she heard
21 rumors that were being spread that she was lying about her
22 identity?
23 A No.
24 Q She didn't tell you that?
25 A No.

1 Q And despite however long she was upset for, it's your
2 testimony that she still invited you to her home later?
3 MR. BLASI: Objection. Asked and answered. This is
4 getting harassing.
5 HEARING OFFICER TA: Yeah, I --
6 MR. PARRY: He hasn't answered the question.
7 HEARING OFFICER TA: Well, I think he's made his point
8 that she started out upset and then stopped being upset. It's
9 -- yeah.
10 MR. PARRY: Okay. I'll just move on.
11 Q BY MR. PARRY: You also said that -- and we're talking
12 again about the fourth -- well, no, maybe it's the fifth visit.
13 I think this is the fifth visit; the Saturday visit when, I
14 think it was on or around December 9th.
15 A Um-hum.
16 Q Does that align up? Fifth visit on Saturday, December
17 9th? Is that correct?
18 A Yes.
19 Q Okay. During that visit, in your direct testimony I
20 believe you said with regard to Stephanie, you didn't see her
21 at that time, did you?
22 A I didn't.
23 Q So even though she invited you, you didn't see her at all?
24 A I didn't see her.
25 Q Okay. Would you expect that if she had invited you, she

1 would actually come out and speak to you?
2 A I don't know.
3 Q Since Stephanie invited you, did -- it would be true that
4 you went there with the expectation that you would speak to
5 Stephanie, correct?
6 A I wouldn't be surprised. Kimberly -- the whole visit,
7 Kimberly was positive and saying yes, and at the last visit,
8 she say no, so -- you know --
9 Q Well, so what I'm saying is, you -- on the fifth visit on
10 December 9th, you went to the home --
11 A Um-hum.
12 Q -- expecting to speak to Kimberly -- or I'm sorry. I'm
13 sorry, expecting to speak with Stephanie, correct?
14 A Yes.
15 Q And that's because as far as you have testified, she
16 invited you there, correct?
17 A Yes.
18 Q And then Stephanie did not even show her face on the fifth
19 visit on that Saturday, correct?
20 A That's correct.
21 Q Okay. And you said, I guess she was inside.
22 A I guess she was inside.
23 Q And how do you come to that assumption that she was
24 inside?
25 A Because the other two sister came out and one of them say,

1 hurry up, Stephanie, we got to go. And then this is when we
2 were about to leave.
3 Q Has anyone told you that Stephanie has later said that she
4 was at the house?
5 A No.
6 Q Have you ever heard that Stephanie has complained about
7 the Union coming to her home?
8 A No.
9 Q And you also testified to some visits with Lucas Chim.
10 There was a visit after the ballots had been mailed; and that
11 would have been, again, around December 9th; is that accurate?
12 A You're talking about the second visit?
13 Q I think so. I mean, you testified that you made home
14 visits in relation to the notice of election that said, if you
15 don't have your ballot by December 9th, you need to call the
16 number, right?
17 A Right.
18 Q And you said that's what motivated your visits, correct?
19 A Correct.
20 Q But you also agree that you spoke to -- in these visits
21 around December 9th, you also spoke to some of the employees
22 about whether they were supporting the Union still, correct?
23 A Are you referring to Lucas?
24 Q I'm referring to all the employees you visited.
25 MR. BLASI: Objection. I think the scope of the --

1 Q BY MR. PARRY: You and Gustavo, or you or Gustavo
2 discussed with Kimberly whether she still supported the Union
3 on December 9th, correct?
4 A I got confused. He keeps saying Stephanie, Kimberly, then
5 Lucas --
6 HEARING OFFICER TA: Okay. Okay.
7 THE WITNESS: I got so confused what he's talking about.
8 HEARING OFFICER TA: Okay. All right, let's -- okay,
9 let's --
10 MR. PARRY: I apologize. Let me go back to Kimberly.
11 Let's go back to Kimberly for now.
12 THE WITNESS: Yeah, I got lost a little.
13 HEARING OFFICER TA: Yeah, let's reset. Ask your
14 question.
15 Q BY MR. PARRY: Let me go back to Kimberly.
16 A Um-hum.
17 Q On December 9th when you visited Kimberly's home --
18 A Um-hum.
19 Q -- you or Gustavo also spoke to her about whether she
20 still supported the Union, correct?
21 A Yes, that's right.
22 Q Okay. So it wasn't just to go see that she got her
23 ballot; agreed?
24 A No, also to see if she got her ballot.
25 Q Well, it was both of those things, right?

1 A Yes.
2 Q Okay. And then when you visited Lucas -- I know you
3 visited him more than one time, but on the time that was around
4 December 9th, that's what I want to talk about, okay?
5 A Okay.
6 Q Okay. So the time you visited Lucas's home around
7 December 9, I understand you didn't really have a conversation
8 with him, correct?
9 A The visit with Lucas, it was not on December 9th.
10 Q What day was it?
11 A In the following week. So it's -- I can remember Tuesday
12 or Wednesday, following week. It wasn't that Saturday.
13 Q Okay. Thank you for clarifying that.
14 A Okay.
15 Q You said you went with a co-worker; who was the co-worker
16 that went with you?
17 A William Sanchez.
18 Q And that visit you went to go do the same thing, right?
19 You went to go make sure he had his ballot and to talk to him
20 about his support for the Union, correct?
21 A Yes.
22 Q You also had a visit with Ashlynn Camberos, correct?
23 A Yes.
24 Q When was that?
25 MR. BLASI: Objection. I think we didn't actually elicit

1 testimony on this. I think --

2 HEARING OFFICER TA: Yeah. It was raised; he didn't ask

3 any questions, so it's beyond the scope.

4 MR. PARRY: Do I have to recall him, then, to ask about

5 Ashlynn? And it seems like out of the interest of efficiency,

6 we should just get all of his relevant testimony now.

7 MR. BLASI: Well, I mean --

8 MR. PARRY: And that's how this -- you know, that's how

9 the process normally works, you say -- so that you don't have

10 to recall a bunch of witnesses, you get relevant testimony on

11 direct and cross, and then we get done with the witness.

12 MR. BLASI: And I think the Employer is entitled to call

13 rebuttal witnesses. I don't think he's allowed to recall the

14 same witness.

15 MR. PARRY: No, I haven't rested. I could call him.

16 HEARING OFFICER TA: I mean --

17 MR. BLASI: If it was part of his case, he could --

18 HEARING OFFICER TA: I mean, is that your position,

19 Counselor, you would recall him in the event that he's --

20 MR. PARRY: I might. I think I should be entitled to

21 inquire as to the relevant topics of him.

22 MR. BLASI: It --

23 MR. PARRY: And so that we don't have to recall him.

24 MR. BLASI: I mean, if that were the way things worked,

25 then that would mean the Employer would have used that threat

1 as a means of completely superseding the rule that you are
2 required to stay within the scope of the direct examination.
3 If the position is, well, I can recall him to put him on
4 as my witness on any issue, then that rule means nothing
5 because the Employer would be entitled to put on every single
6 witness that the Union has put on and ask them about any single
7 -- every single thing that the Employer witness might like to
8 talk about and that's not the way this works.
9 MR. PARRY: And when we follow the Federal Rules of
10 Evidence -- and as a practical matter, any time you have a
11 trial under the rules of evidence, and you have witness that
12 both parties want to get information from -- I mean, there are
13 times when you have to recall an adverse witness so you can do
14 a -- I guess, open the direct on them; even though it's cross.
15 But as practical matter, what happens most of the time is
16 you ask the relevant questioning from both sides so that the
17 witness can be done with and gone and doesn't have to come
18 back. I mean, that's just the practicality. And that's the
19 reality if you've ever, you know, had a trial that makes sense.
20 MR. BLASI: I mean, the rule is you stay within the scope
21 of the direct.
22 MR. PARRY: I understand the rule. I'm just saying, as a
23 practical matter so you don't have to bring witnesses back and
24 forth and back and forth, that's usually what's allowed.
25 HEARING OFFICER TA: Right.

1 MR. PARRY: And he asked about -- he did ask whether he
2 visited Ashlynn Camberos. And he didn't delve into it, and he
3 raised Ashlynn Camberos, and I am entitled to go into that.
4 MR. BLASI: I don't believe he is. The scope was -- you
5 could ask, did you visit Ashlynn Camberos? And that would be
6 within the scope of the direct. It would not be within the
7 scope of the direct to wade into it.
8 And frankly, it's not because the Union has anything to
9 hide about him asking, I just sort of stopped that line of
10 inquiry as a matter of -- because I thought we were going to
11 put on Sandra Diaz, not because I don't think there's --
12 HEARING OFFICER TA: So what you're saying is that would
13 have been part of your direct had there --
14 MR. BLASI: Well, I decided it would have been a duplicate
15 of William Sanchez's testimony and I didn't want to belabor
16 simple testimony about really simple matters. Or maybe it's
17 another witness; I can't remember who. But -- so no, it was
18 not -- I mean, I obviously contemplated it, since I asked the
19 initial question, but I determined, as is my prerogative as an
20 attorney, that it was not in my -- you know, that my client was
21 not best served by spending precious time in this hearing --
22 MR. PARRY: And you know what?
23 MR. BLASI: -- delving into a matter that other witnesses
24 could --
25 MR. PARRY: Can I short-circuit this? Because I think my

1 question is answered. I have one question for him.
2 HEARING OFFICER TA: Okay.
3 MR. PARRY: Or maybe two, but it has to do with who else
4 was with him for those visits.
5 HEARING OFFICER TA: Okay. Let's just keep it short,
6 Counsel. Okay?
7 MR. PARRY: That's -- yeah. And that's --
8 HEARING OFFICER TA: Two questions.
9 MR. PARRY: I don't want to go into stuff that he didn't
10 put evidence on for, I just want to find out information.
11 HEARING OFFICER TA: Okay. I mean, technically --
12 MR. BLASI: Well, that's not the rule.
13 HEARING OFFICER TA: Okay.
14 MR. BLASI: I just want to find out information is exactly
15 the opposite of what the rules are.
16 HEARING OFFICER TA: Okay, but -- Counsel, technically,
17 you did ask him if he visited Ashlynn Camberos, and he did
18 respond that he had, so --
19 MR. BLASI: I just think as a matter of principle, I just
20 want to get information is not how things work. If you want
21 to --
22 MR. PARRY: Cross examination doesn't mean you can only
23 ask the same questions that the direct asked. You take the
24 topic and you cross exam the information. It's not like --
25 HEARING OFFICER TA: Okay.

1 MR. PARRY: I only asked, did you visit Ashlynn Camberos,
2 and the cross is limited to, isn't it true you visited
3 Ashlynn Camberos; that's absurd.
4 HEARING OFFICER TA: Okay.
5 MR. PARRY: That means you can't actually have any cross
6 examination.
7 MR. BLASI: Well, typically, you wouldn't just have one
8 question, you would have a scope.
9 HEARING OFFICER TA: Well, Counsel, you said you only have
10 two questions?
11 MR. PARRY: A few questions, yes.
12 HEARING OFFICER TA: Okay. So let's limit the inquiry.
13 Okay?
14 MR. PARRY: Will do.
15 HEARING OFFICER TA: All right. Go ahead.
16 Q BY MR. PARRY: How many times did you visit Ashlynn
17 Camberos at her home?
18 A I don't recall.
19 Q Who went with you to visit Ashlynn Camberos?
20 A Sandra Diaz.
21 Q Did William Sanchez go with you to visit Ashlynn Camberos?
22 A No.
23 Q Was Sandra Diaz with you at every visit of
24 Ashlynn Camberos that you went on?
25 A I don't recall. Most of the time, yeah.

1 Q Did you ever go by yourself to visit her?
2 A No.
3 Q Thank you. That's all I have about that. What does
4 Lupe Luna look like? And I know that's a difficult question to
5 answer. Is she -- do you have an idea of how tall she is?
6 A I can compare my tall.
7 Q She's around the same height as you?
8 A Yes.
9 Q How tall are you?
10 A 5'2'', I guess. 5'2''.
11 Q 5'2"?
12 A 5'2", yeah. 5'2".
13 Q What color is her hair?
14 A What color is my hair?
15 Q Her hair.
16 A She's blonde.
17 Q Do you have an idea of how old she is?
18 A No.
19 Q Is she older or younger than you?
20 A She's older than me.
21 Q How old are you?
22 A Do I have to answer that question?
23 HEARING OFFICER TA: I mean, we're -- yeah, if you can
24 answer it, that's fine. He's trying to get a sense of how old
25 this individual is. If you want to kind of take a guess as to

1 how old she is; and if you don't want to answer the question
2 about how old you are, you can take a guess as to how old she
3 is. Because how old you are isn't the relevant question here.
4 He's just trying to get --
5 MR. PARRY: Just get of frame of reference.
6 HEARING OFFICER TA: Yeah, so how old do you think she is?
7 THE WITNESS: I'm 39.
8 Q BY MR. PARRY: You think she's 39?
9 MR. BLASI: No, I --
10 MR. PARRY: Oh, you're 39.
11 HEARING OFFICER TA: Oh, he's 39. Okay.
12 THE WITNESS: I'm 39.
13 Q BY MR. PARRY: Okay. And you believe she's older than
14 you?
15 A Yes.
16 Q Okay. Do you believe she's in her 40's?
17 A No.
18 Q Do you believe she's in her 50's?
19 A No.
20 Q Do you believe she's in her 60's?
21 A I guess.
22 Q Are you here pursuant to a subpoena? Have you been
23 subpoenaed to show up here?
24 A I don't know what you're referring to.
25 Q Did anyone hand you a document that says -- has your name

1 on and says you're required to appear before the National Labor
2 Relations Board, and other things?
3 A No.
4 Q So are you here basically as part of your job for Local
5 11?
6 A Not just part of my job, but I was part of the interaction
7 with the workers.
8 Q Who asked you here?
9 A My attorney Jeremy.
10 Q Did you have to get permission from your superiors or your
11 supervisor at Local 11 to be here?
12 A No.
13 Q So you're here in your capacity as an organizer that has
14 participated in this union campaign, correct?
15 A Yes.
16 Q And in that -- the purpose of that union campaign was to
17 get employees to vote yes, correct? For the Union.
18 A Yes.
19 Q Okay. And part of sort of your job as an organizer
20 getting the employees to vote yes, is to show up and defend the
21 election results, correct?
22 MR. BLASI: Objection. The question is nonsensical.
23 MR. PARRY: It's not nonsensical.
24 HEARING OFFICER TA: Well, he's asking if being here today
25 is part of his job duties pertaining to this.

1 MR. BLASI: Well, that wasn't the actual question.
2 MR. PARRY: Let me ask another way.
3 HEARING OFFICER TA: Okay.
4 Q BY MR. PARRY: Have you ever been to a proceeding like
5 this?
6 A Like, being part of this as a witness?
7 Q You've been to the Region 31 offices before, correct?
8 A Yes.
9 Q And it wasn't just this week, right? Had you been to
10 these office -- this Union -- or I'm sorry, Region 31 offices
11 before Monday?
12 A Different matters.
13 Q So it's not uncommon for you to come here in relation to
14 your work for Local 11, correct?
15 A No.
16 Q It's no, it's not correct, or -- I'm sorry, that's a
17 difficult question to answer; it's a little confusing.
18 A Yes, it's confusing.
19 Q Because there was like a triple negative I think
20 HEARING OFFICER TA: Yeah. I think that's what it was,
21 yeah.
22 MR. PARRY: I'm trying to phrase it better.
23 Q BY MR. PARRY: Is it fairly common for you to be here at
24 the NLRB offices in connection with your work for Local 11?
25 A Not common.

1 Q But it's not unusual?
2 A Yeah, it's not unusual.
3 Q Okay. And that's because it's sort of part of your job,
4 right, as a union organizer to be dealing with the NLRB,
5 correct?
6 A Yes.
7 Q Okay. And as part of your job, you're here today
8 testifying about what happened in terms of the home visits with
9 The Daily Grill employees, correct?
10 A Part of my -- yeah, my job.
11 Q Okay. And that's to further the Union's objective to
12 organize workers, correct?
13 A Yes.
14 Q Thank you.
15 MR. PARRY: I have no further questions right now.
16 HEARING OFFICER TA: Okay, counselor, redirect?
17 MR. BLASI: Yeah, Union has no further questions for this
18 witness.
19 HEARING OFFICER TA: Recross?
20 MR. PARRY: No further questions.
21 HEARING OFFICER TA: Okay. You are excused. Please
22 remember that a sequestration order is effect.
23 THE WITNESS: Um-hum.
24 HEARING OFFICER TA: So please do not talk about your
25 testimony with anyone until the conclusion of the hearing.

1 THE WITNESS: Okay.
2 HEARING OFFICER TA: Thank you so much.
3 THE WITNESS: Does this --
4 HEARING OFFICER TA: Yeah, I'll take it. I'll take this.
5 Okay, can we go off the record?
6 (Off the record at 12:07 p.m.)
7 HEARING OFFICER TA: On the record. Union Counsel has
8 asked to bring witness Alex Sandoval back for a couple more
9 questions, so we're going to consider this the redirect.
10 Employer's counsel has objected to this and I note the
11 objection, but I'm going to allow it over Employer's objection,
12 so --
13 MR. PARRY: And can I just state for the record my
14 objection --
15 HEARING OFFICER TA: Sure. Sure, go ahead. Yeah, go
16 ahead.
17 MR. PARRY: -- that the questioning was closed. There was
18 no -- counsel said he had no redirect; the witness was excused,
19 and -- that was my objection.
20 HEARING OFFICER TA: Okay. Thank you.
21 MR. BLASI: I think I need to put into the record why, or
22 something.
23 HEARING OFFICER TA: I don't think it's necessary.
24 MR. BLASI: Decision has been made, right? So --
25 HEARING OFFICER TA: I mean, in the interest of developing

1 a complete record, I'm going to allow, you know, more
2 questioning of Mr. Sandoval, so go ahead, Counsel.
3 MR. BLASI: Okay. It's going to take literally two
4 minutes.
5 HEARING OFFICER TA: Okay. Go ahead.
6 **REDIRECT EXAMINATION**
7 Q BY MR. BLASI: Mr. Sandoval, are you familiar with an
8 employee named Benjamin Acosta?
9 A Yes.
10 Q Okay. So my only question for you is, after the point at
11 which the ballots were mailed for The Daily Grill, did you ever
12 attempt to visit Mr. Acosta at his home?
13 A No.
14 Q And I guess that's it. Let me just one, just to be clear.
15 Did you ever go to his house at any point after the ballots
16 were mailed?
17 A After the --
18 Q Ballots were mailed.
19 A No.
20 Q Okay.
21 MR. BLASI: That's it.
22 HEARING OFFICER TA: Okay. Recross?
23 MR. PARRY: One moment, please. No questions.
24 HEARING OFFICER TA: No questions. Okay. You are
25 excused. Please remember that a sequestration order is in

1 effect, so please don't talk about your testimony with anyone
2 until the conclusion of the hearing. Thank you.
3 THE WITNESS: Thank you.
4 HEARING OFFICER TA: All right, counsel, do you want to
5 call your next witness.
6 MR. BLASI: Sure, the -- this one needs an interpreter, so
7 do -- is that --
8 HEARING OFFICER TA: Right, yeah, so we have an
9 interpreter here. Yeah, so go ahead.
10 THE INTERPRETER: I am --
11 MR. BLASI: Oh, okay, hi.
12 THE INTERPRETER: Do I have to go there?
13 MR. BLASI: Great, yeah.
14 HEARING OFFICER TA: Yeah. Yeah.
15 MR. BLASI: So the Union calls Sandra Diaz. I can go grab
16 her.
17 THE INTERPRETER: Sit behind there?
18 HEARING OFFICER TA: Yeah, you can take this chair over
19 here.
20 THE INTERPRETER: I'm sorry, yeah.
21 HEARING OFFICER TA: Okay. Can you please state your name
22 and spell it for the record.
23 THE WITNESS: Sandra Diaz.
24 THE INTERPRETER: Sandra Diaz, S-A-N-D-R-A, last name
25 Diaz, D-I-A-Z.

1 HEARING OFFICER TA: Okay. And can you please raise your
2 right hand?
3 Whereupon,
4 **SANDRA DIAZ**
5 having been duly sworn, was called as a witness herein and was
6 examined and testified, by and through an interpreter as
7 follows:
8 HEARING OFFICER TA: Okay. And I'm going to swear in the
9 interpreter.
10 THE INTERPRETER: Sure.
11 HEARING OFFICER TA: Okay. Please raise your right hand.
12 THE INTERPRETER: Absolutely.
13 Whereupon,
14 **ROMAN KANCEPOLESKI**
15 the interpreter, having been duly sworn, translated from
16 Spanish to English and English to Spanish, as follows:
17 HEARING OFFICER TA: Great. Thank you. And just a couple
18 of reminders. Your testimony is being recorded, so please make
19 sure that you give verbal responses; no shaking your head or
20 nodding your head.
21 And if you do not understand a question, please feel free
22 to ask for clarification. And please wait for the question to
23 be asked in its entirety before you answer, just to avoid
24 talking over each other.
25 If there is an objection to a question, please hold your

1 response until I rule on the objection. Is all that clear?
2 THE WITNESS: Yes.
3 HEARING OFFICER TA: Okay. Counsel, your witness.
4 MR. BLASI: Sure. Okay.
5 **DIRECT EXAMINATION**
6 Q BY MR. BLASI: Ms. Diaz, good morning, or good afternoon I
7 should say. Can you say who is your current employer?
8 A Daily Grill.
9 Q Okay. And which location -- or where is The Daily Grill
10 located?
11 A Century Daily Grill.
12 Q Okay. And what is your position at The Daily Grill?
13 A Busser.
14 Q Okay. How long have you worked there, approximately?
15 A Eight years.
16 Q Okay. And during your time working at The Daily Grill,
17 have you been involved in an effort to organize a union at that
18 worksite?
19 A Yes.
20 Q And for more -- if you could give an estimate of for about
21 how long you've been involved in an effort to organize a union?
22 A Approximately four years.
23 Q Okay. And in the course of your participation in this
24 effort to organize a union with your co-workers, have you had
25 conversations with your co-workers about the subject of

1 unionizing?

2 MR. PARRY: Object on its overbroad if we're talking about

3 four years of it.

4 MR. BLASI: And I'm just trying to lay some basic

5 foundation about, you know, house visits and the like.

6 HEARING OFFICER TA: Okay. Yeah, if we can narrow the

7 time period, Counsel.

8 MR. BLASI: Okay.

9 Q BY MR. BLASI: Say, within the last six months, have you

10 participated in conversations with your co-workers about

11 organizing The Daily Grill?

12 A Yes.

13 Q And in general, where have most of those conversations

14 taken place?

15 A Outside the job premises, at a restaurant or at our

16 houses, you know.

17 Q Okay. And why do the conversations take place in those

18 locations?

19 MR. PARRY: I'm going to object that it calls for

20 speculation.

21 MR. BLASI: Well, I mean, let me -- I can rephrase.

22 Q BY MR. BLASI: Why have you chosen to have conversations

23 about the Union at restaurants or at homes?

24 A Well, the environment is more casual being at home, you

25 know what I mean? We are more relaxed other than being at

1 work, you know; having those meetings at home, you know.
2 Q Okay. And have you attempted to have conversations at the
3 workplace?
4 MR. PARRY: Object. This is going into matters that are
5 irrelevant. I think it's --
6 MR. BLASI: I'm just trying to lay a brief foundation as
7 I've done with the other witnesses about why we do house
8 visits.
9 HEARING OFFICER TA: Well -- yeah --
10 MR. PARRY: I think it's going to -- the direction that
11 counsel is going is, again, I think, looking to show some sort
12 of what the conduct of The Daily Grill was. And that's not
13 what we're looking at, we're looking at the conduct of the
14 Union.
15 HEARING OFFICER TA: I'm going to overrule the objection.
16 Go ahead and answer.
17 THE WITNESS: Well, we did that because we wouldn't be
18 able to do it comfortably doing at -- you know, at the work
19 with supervisors or managers watching, or the Union personnel.
20 Q BY MR. BLASI: Okay. And have you yourself been visited
21 at your home as part of Union organizing in, I guess I can
22 limit this to say the last six months?
23 A Yes, also.
24 Q Okay. Can you give some sense of how frequently that's
25 happened?

1 A A lot of times because we were organizing the place of
2 work.
3 Q Okay. And as a person who has been visited at your home,
4 have you found that being visited by the Union is something
5 that you're comfortable with at your house?
6 A I was being comfortable because I wasn't feeling that I
7 was being watched who I was talking to, you know.
8 Q Um-hum. And I think you may have answered this, but to be
9 clear, in the last six months, have you participated in visits
10 to your co-workers' houses?
11 A Yes.
12 Q Okay. And is one of the workers who you visited a worker
13 named Ashlynn Camberos?
14 A Yes.
15 Q Okay. Can you recall for us the first time you remember
16 visiting her house and being able to speak with her?
17 A It was about a week before the ballots were given by mail,
18 you know -- were out on the mail.
19 Q Okay.
20 A It was basically because she was a lot of questions
21 regarding the Union. We were having a lot of meetings during
22 that week regarding about the Union. She wanted to find out to
23 know if it was right, what the company was telling them
24 regarding the insurance that will have to pay from your own
25 pocket; around the premium, when are they going to start

1 charging the Union, how is it going to work; regarding the
2 benefits. And I was telling her that I was there to answer the
3 questions regarding the Union; me and the Union members, we
4 were there to answer the questions if she had any regarding the
5 Union or the work.
6 Q And what were some of the points that you discussed with
7 her?
8 A Regarding insurance, the premium; regarding if we were,
9 like, been lease (sic), or we have we have any reprimands
10 because we were talking about the Union, you know.
11 Q Okay. And I should ask, where did this meeting take
12 place?
13 A Outside her home.
14 Q Okay. And was anybody else present besides you and her?
15 A Alex Sandoval, the organizer, yes.
16 Q Okay. And before this meeting happened, had you
17 previously had some conversations with her about the Union?
18 A Yes.
19 Q And in those previous conversations, had she given you any
20 reason to believe that she supported the Union, and --
21 MR. PARRY: Objection. It's irrelevant and it calls for
22 speculation.
23 MR. BLASI: If you want we can also advise the Witness not
24 to make reference to the authorization cards.
25 HEARING OFFICER TA: Yeah, so let's -- yeah, I'm going to

1 allow the question, and please advise the Witness.
2 MR. BLASI: So the --
3 THE INTERPRETER: Yeah. Repeat the question for me, thank
4 you.
5 MR. BLASI: Sure. Let me just say before I ask the
6 question that, under the rules of this hearing, I would like
7 you not to answer any questions specifically -- or not say
8 anything specifically about whether a particular worker signed
9 a union authorization card.
10 Q BY MR. BLASI: Do you understand that?
11 A Yes.
12 Q Okay. So now I'm going to ask the question I asked
13 before, which was, prior to your visiting Ashlynn at her house
14 in the meeting you just described, had she given you any -- had
15 she previously said anything to you to give you the impression
16 that she had a positive view about organizing a union together
17 at the worksite?
18 A Yes.
19 Q Without entering into details about the authorization
20 form, can you say anything further about why you believe that
21 she supported the Union campaign?
22 MR. PARRY: Objection. It calls for speculation, and it
23 asks for hearsay, and it's irrelevant.
24 HEARING OFFICER TA: Overruled. Go ahead and answer the
25 question.

1 THE INTERPRETER: Repeat the question for me, counsel,
2 please.
3 Q BY MR. BLASI: Oh, geez, okay. Maybe I'll ask it this
4 way, what gave you the idea that she supported the Unionization
5 campaign? And again, I ask you not to make reference to
6 authorization cards.
7 A She was being very positive and interested in -- you know,
8 regarding the insurance; how to change the benefits, and how
9 can improve things, you know.
10 Q Okay. And so when you had the meeting with her at her
11 house, did you have the understanding that she was a supporter
12 of the Union campaign?
13 A Yeah, because she was very kind. And I told her, you can
14 ask me; if I don't have the answer, you can talk to the
15 organizer.
16 Q Okay. And then -- so going back to the meeting itself,
17 you said that she had raised to some questions with you; did
18 she tell you why she had those questions?
19 MR. PARRY: And calls for hearsay; irrelevant.
20 HEARING OFFICER TA: Okay. My same ruling; I'm going to
21 allow it. Go ahead.
22 Q BY MR. BLASI: Did she tell you why she had questions
23 about the Union?
24 A Because at work, we have, like, short and, you know, big
25 meetings regarding that we didn't need the Union, you know.

1 And we didn't have to have the Union. And as workers, the only
2 thing that they wanted from us was to get our premium, you
3 know, that's the thing they were only interested in.
4 Q Okay. And in the meeting that you had with her, did you
5 feel that you and Alex were able to respond to the concerns
6 that she raised?
7 A Yeah, precisely. And we told her we are available
8 whenever you want to talk to us, you know?
9 Q And how did the meeting end?
10 A Everything was nice and comfortable, and I'll see you -- I
11 told her we'll see you tomorrow at the -- at work, and have a
12 great day.
13 Q Okay. And so after this meeting, did you see her again
14 outside work?
15 A Yes.
16 Q Okay. Did you visit her again at her home?
17 THE INTERPRETER: Repeat the question?
18 Q BY MR. BLASI: Did you visit her again at her home?
19 A Yes, after the ballots were out.
20 Q Okay. And can you tell us what happened when you visited
21 her?
22 A Her husband went outside. They told us that he -- she
23 wasn't there. Actually that she was there, but she's taking a
24 rest, that she was resting. Understood that because I knew we
25 were getting at 5:30 and I understood that she was taking a

1 rest in or taking a rest. I told him tell her that we came
2 here visit her, and we might come back later or we don't know.
3 Q Okay. And did you ultimately come back later and were
4 able to speak to her?
5 A Yeah, we came back later. She came -- she came out with
6 holding her -- her daughter and she was very kind. She say,
7 hi, you know, she, you know, greet us. We told her sorry to
8 bother you, we apologize, but came here to make sure that you
9 received the ballot, to please double-check your mailbox. She
10 told us that she have her mother address so she didn't know if
11 she received a ballot or not. We told her that voting was very
12 important and it was the best option for her to -- to make her
13 decision. The best help that we could -- we told her the best
14 help that we can give is give you the NLRB phone number in case
15 you didn't receive it. And then I told her have a great day
16 and we'll see you tomorrow.
17 Q And was anybody with you when you did this visit?
18 A Guadalupe Luna.
19 Q Okay. Does that person also go by the name Lupe?
20 A Yes.
21 Q Okay. How long would you say that that conversation
22 lasted?
23 A Ten to 15 minutes while Lupe was playing with the -- the
24 little girl, so she was holding her, you know, talking to her.
25 Q Uh-huh. And did she have her ballot with you -- with her

1 when you were talking to her?
2 A No.
3 Q Did you ask her to fill out -- or to get the ballot and
4 fill it out in front of you?
5 A No. Basically, the reason of the visit was to phone her,
6 to check on her mailbox, and if she didn't receive the ballot,
7 to talk to the NLRB.
8 Q Okay. How would you describe the tone of the
9 conversation?
10 A Like pleasant, you know?
11 Q Okay. And how did the conversation end?
12 A We told each other, we will -- you know, I will see you at
13 work basically.
14 Q Okay. And did you visit her again after that point?
15 A No.
16 Q But would you remember what day of the week it was or any
17 of that?
18 A I think it was on Friday.
19 Q Okay. So I want to ask you some questions about a
20 different worker. Are you familiar with a worker named
21 Kimberly Mendez?
22 A Yes.
23 Q And was -- she's somebody who you believed supported the
24 Union?
25 MR. PARRY: Objection. Speculative and it is irrelevant.

1 HEARING OFFICER TA: Overruled. Go ahead and answer.
2 THE WITNESS: Yes.
3 Q BY MR. BLASI: And why did you believe that?
4 A On her visit, she was really nice. She let us down to her
5 living room, and she was questioning regarding everything about
6 the Union, how many hours, regarding the benefits. Pretty much
7 everything.
8 Q This was a visit that -- did this visit take place before
9 the ballots were mailed?
10 A Yes.
11 Q Okay. And was somebody with you when you visited her?
12 A Alex Sandoval.
13 Q Okay. And how did -- maybe if you could walk us here, how
14 did the meeting start?
15 A It was -- it start about, you know, talking about her
16 benefits. She was interested in know how many hours she had to
17 work.
18 Q Can you clarify what you mean by she was interested in how
19 many hours she had to work?
20 A For someone to qualify for the insurance, how many hours
21 you should work during a period of a week, you know? Things
22 like that.
23 Q Okay. And so what else do you remember about what you
24 discussed during that meeting with her?
25 A I don't think any -- anything else.

1 Q Okay. Did you get the impression during this meeting that
2 she felt that it was a good idea to join the Union? And again,
3 I need you to remind you to -- I don't want to -- you to say
4 anything about signing authorization cards, whether or not she
5 signed one.
6 MR. PARRY: Objection. It calls for speculation and it's
7 irrelevant.
8 HEARING OFFICER TA: Overruled. Go ahead and answer.
9 THE WITNESS: She seemed really interested, and we shared
10 the idea that she -- if she had any questions, she could call
11 for the organized or any way we will go in again and visit her
12 again in the future.
13 Q BY MR. BLASI: Okay. And did she say anything about
14 her -- how should I ask this? Did she say anything else that
15 gave you the idea that she had a positive view about organizing
16 a union with you?
17 MR. PARRY: Same objection as to relevance, hearsay,
18 speculation.
19 HEARING OFFICER TA: Overruled. Go ahead and answer.
20 THE WITNESS: Yeah, because she was -- she seemed really
21 interested and she was really interested, and she asked many
22 questions regarding the environment of the Union around the
23 Union work.
24 Q BY MR. BLASI: How long would you say this meeting lasted?
25 A Thirty to 45 minutes.

1 Q Okay. How did the meeting end?
2 A Very friendly. She was really nice and open, and we told
3 her any question, you know, you want to ask us, we are open to
4 answer you.
5 Q Okay. And again, maybe I said this, but where exactly did
6 that meeting take place?
7 A On -- at her living room, her living room.
8 Q Okay. Did you ever visit her and have a chance to talk to
9 her again at her house?
10 A No.
11 Q Okay. Now I want to talk about a different worker,
12 coworker. Are you familiar with a coworker named Lucas Chim?
13 A Yes.
14 Q Okay. And was Lucas Chim someone who you had the view or
15 any belief was a person who supported the Union?
16 MR. PARRY: Speculation, hearsay, irrelevant.
17 HEARING OFFICER TA: Overruled. Go ahead and answer.
18 THE WITNESS: Yes.
19 Q BY MR. BLASI: And why did you believe that?
20 MR. PARRY: Same objections.
21 HEARING OFFICER TA: Same ruling.
22 THE WITNESS: We were having a conversation. He was
23 asking how many hours he had to work weekly. He was interested
24 in the insurance for his family.
25 Q BY MR. BLASI: So just to be clear, did you visit Mr. Chim

1 at his house?
2 A It was on his patio.
3 Q Okay. And more or less, when did that take place?
4 A One week before the ballots order.
5 Q And was there anybody else with you when you made that
6 visit?
7 A Yes.
8 Q And who was that?
9 A Alex Sandoval.
10 Q And how long would you say that that visit lasted?
11 A Ten to 20 minutes because he had to go to work.
12 Q Okay. Was anybody else with you when you visited him?
13 A Yes, Gustavo.
14 Q Okay. And before any of you had this visit to Lucas
15 Chim's house, did you have the perspective that he was a
16 supporter of the Union organizing campaign?
17 MR. PARRY: Objection. Speculation, hearsay, and
18 irrelevance.
19 HEARING OFFICER TA: I'm going to overrule it. It goes to
20 her -- what she believes. Go ahead and answer.
21 THE WITNESS: Yeah, because it was important. He liked the
22 idea and they were having meetings. He was leasing so he
23 wanted to know what was good or convenient for him, you know?
24 Q BY MR. BLASI: You mentioned meetings. What do you mean
25 by that?

1 A Well, meetings that happened at work regarding don't
2 complete the ballot and don't do anything otherwise they're
3 going to remove our benefits.
4 Q These are meetings conducted by whom?
5 A Well, they hire a person -- they hired persons to conduct
6 these meetings because we didn't know this person.
7 MR. PARRY: I would object to this line of questioning
8 because it goes out of the scope --
9 HEARING OFFICER TA: Yeah.
10 MR. PARRY: -- to relevance.
11 HEARING OFFICER TA: It puts --
12 MR. PARRY: And I would move to strike.
13 MR. BLASI: I'm just trying to clarify what was actually
14 meant by her earlier testimony.
15 HEARING OFFICER TA: Okay. Let's -- yeah, I think that's
16 enough and we can move onto something else.
17 MR. PARRY: That's fine.
18 HEARING OFFICER TA: Yeah.
19 Q BY MR. BLASI: So did Mr. Chim, before you visited him at
20 home, tell you that he's part of the Union?
21 MR. PARRY: Objection. It's hearsay again. It's
22 irrelevant.
23 HEARING OFFICER TA: Could you repeat the question,
24 counsel?
25 Q BY MR. BLASI: Before you visited Mr. Chim at his home,

1 had he told you that he supported the Union?
2 HEARING OFFICER TA: Wait, hold on.
3 MR. BLASI: How is that problematic?
4 MR. PARRY: Objection. It's --
5 HEARING OFFICER TA: I'm going to overrule it. Go ahead
6 and answer it.
7 THE WITNESS: Yes.
8 Q BY MR. BLASI: Okay. Without mentioning anything about
9 authorization cards, do you recall what you said?
10 THE INTERPRETER: Hmm?
11 Q BY MR. BLASI: Without mentioning anything about
12 authorization cards or whether or not he signed one, can you
13 say what you remember that he told you?
14 A Yes. Basically interested in having the 40 hours of work
15 and the insurance, paid vacation, holidays, you know.
16 Q And these are things that he mentioned to you before you
17 visited him at home?
18 A No.
19 Q When did he mention those things to you?
20 A At work, yes.
21 Q Okay. Now, going back to the meeting at his house, do you
22 remember anything else about the discussion that you had with
23 him there?
24 A He wanted, you know, information regarding insurance
25 benefits, all around, you know, the Union. Everything about

1 the Union.
2 Q Uh-huh. And what was the tone of the meeting?
3 A Was really friendly. He was -- even he was happy. He
4 said he didn't expect to see you guys, you know, here it is --
5 you know, he was friendly.
6 Q Okay. And you may have said this, but where did the
7 conversation take place, would that be?
8 A On his back yard patio.
9 Q Okay. And how did the visit end?
10 A Friendly, nice, but we didn't -- he didn't have much time
11 because he had to go to work.
12 Q Okay. And did you visit Mr. Chim again after that visit?
13 Was the answer no? I actually was --
14 A No.
15 MR. BLASI: If I could just be granted one second confer
16 with my notes of a different worker?
17 Q BY MR. BLASI: So I'm going to talk last about a different
18 worker. Are you familiar with an individual named Jose
19 Palacios?
20 A Yes.
21 Q Did you ever visit Mr. Palacios at his house?
22 A Yes.
23 Q And who did you -- did you do that visit along with
24 anybody else?
25 A With Guadalupe Luna.

1 Q Okay. And if you can describe how did -- what happened
2 when you made that visit. Sort of start from the beginning?
3 A We were entering the driveway. We knocked his door,
4 nobody answered. We went to the street and he was entering
5 with his car. He was parking in the back side of his home.
6 Q Okay. What happened next?
7 A He came back. He, you know, greet us. We are like good
8 afternoon. We told have you checked your mail. He just say I
9 just came -- I came -- I'm coming from work and I'm, you
10 know -- he mentioned he didn't have too much time to talk.
11 Basically we're talking, that was very important for him to
12 vote, to check his mailbox. If he didn't receive the ballot to
13 call the NLRB number. He told us I got to go to work, so we
14 told him okay, have a great day, and we left.
15 Q Okay. At any point, did you ask him to fill out the
16 ballot in front of you?
17 A No.
18 Q Okay. Did he have the ballot with him?
19 A No.
20 Q Okay. How long did this conversation last?
21 A Less than five minutes.
22 Q Okay. And again, how did the conversation end?
23 A Friendly, nice. He was rushing going along to another
24 place. He was kind to us.
25 Q Okay. And did you visit Mr. Palacios again after that

1 point?

2 A No.

3 Q Okay.

4 MR. BLASI: If I could just be permitted one second to

5 just make sure I don't have anything else. Okay. The Union

6 has nothing further of this witness at this time.

7 HEARING OFFICER TA: Okay. Cross?

8 **CROSS-EXAMINATION**

9 Q BY MR. PARRY: Good afternoon, Ms. Diaz.

10 A Good afternoon.

11 Q You understand that you've been put under oath?

12 A Yes.

13 Q And you understand what that means?

14 A (Spanish spoken).

15 Q And what does that mean to you?

16 A Telling you the truth.

17 Q Okay. Do you understand what the penalty of perjury is?

18 A No.

19 Q Has that ever been explained to you?

20 A No.

21 Q Ms. Diaz, you were here in the building yesterday, were

22 you not?

23 A Yes.

24 Q And you were here in the building on Monday, correct?

25 A No.

1 Q Okay. Thank you. When you were here yesterday, were you
2 here understand subpoena?
3 A What do you mean? I don't know what is that.
4 Q Well, you were here before yesterday. Had you been given
5 a piece of paper by anyone saying that you were required to be
6 here at this hearing?
7 A Yes.
8 Q What was the piece of paper that said you needed to be
9 here?
10 A To testify.
11 Q Do you have that with you?
12 A I left it in my purse.
13 Q Is your purse in here with you?
14 A It's in the other room.
15 MR. PARRY: Just as an aside very quickly, I'd like to see
16 what she has. It says she was required to be here. She was
17 possibly here under subpoena.
18 HEARING OFFICER TA: That, I --
19 MR. PARRY: If it's a matter of regarding getting the
20 document, and I don't even need to see it. The hearing officer
21 could look at it first before it is even disclosed, that's
22 fine. I just want to know if she was here under subpoena
23 yesterday or not.
24 MR. BLASI: Well, I can represent that she was not under
25 subpoena. She was given a subpoena yesterday. I believe there

1 was some confusion, but --

2 MR. PARRY: Okay. Let me try to clear it up. I'm going

3 to try to clear it up.

4 HEARING OFFICER TA: Okay. Okay.

5 Q BY MR. PARRY: Ms. Diaz, the piece of paper that's in your

6 purse, when did you get that?

7 A Yesterday.

8 Q Last -- was it yesterday after 5 p.m.?

9 A I don't remember.

10 Q Did you get it yesterday morning?

11 A No.

12 Q Does that -- do you recall if that document tells you, you

13 had to be here at 2 p.m. today?

14 A Yes.

15 Q Okay.

16 MR. PARRY: Counsel, then we just stipulate that what

17 she's talking about is the subpoena that you gave her last

18 night?

19 MR. BLASI: Yes.

20 MR. PARRY: Thank you.

21 Q BY MR. PARRY: So you had not received a document like the

22 one in your purse there right now, you had not received

23 something like that before yesterday, correct?

24 MR. BLASI: Objection. Vague and ambiguous as to time

25 frame.

1 Q That required you to be here at the hearing.
2 A Can you repeat it?
3 Q Yes. Other than the document that's in your purse right
4 now, you have not received any other paperwork telling you to
5 be at this hearing, correct?
6 A No.
7 Q Okay. Thank you. I think I phrased that question as
8 requiring a yes answer.
9 HEARING OFFICER TA: Yeah, it's probably better to phrase
10 it as a -- as not as a negative.
11 MR. PARRY: Yes. I'll do that.
12 Q BY MR. PARRY: Other than the document in your purse, did
13 your receive any document requiring you to be at this hearing?
14 A No.
15 Q Thank you. And then just so you know, I wasn't trying to
16 trick you. I was just trying to make my question more clear
17 because my question was -- so yesterday you were here
18 voluntarily, correct?
19 A Yes.
20 Q And yesterday you were here as part of your effort to work
21 with Local 11 to organize employees at the Daily Grill,
22 correct?
23 A No, the question is not really clear.
24 Q The reason you came here yesterday voluntarily is because
25 you are trying to help Local 11 organize the employees at the

1 Daily Grill, correct?
2 A No. I'm here because I want the workers to have the
3 opportunity to have a place and union, you know?
4 Q You said that you've been working with Local 11 for four
5 years in efforts to organize The Daily Grill employees, right?
6 Well, you've been working --
7 A I don't work for Local 11.
8 Q But you've been working in conjunction with them to help
9 their effort to organize the employees.
10 A Yeah, but that's part of my personal time that I, you
11 know, that I dedicated to do what I want.
12 Q And you're willing to devote your personal time to that
13 effort, correct?
14 A It's volunteer. That's what I'm here for.
15 Q And you want the employees to vote yes for the Union,
16 correct?
17 THE INTERPRETER: Repeat the question, counselor.
18 Q BY MR. PARRY: You want the employees at the Daily Grill
19 to vote in favor of the Union, correct?
20 A I just wanted to show the benefits that you have with the
21 Union but the final decision is from the employee.
22 Q Have you ever told any employee they should vote no for
23 the Union?
24 A Can you repeat the question. It's not clear.
25 Q Have you ever told a Daily Grill employee that they should

1 vote no for the Union?
2 A Yes, Michael Burnett.
3 Q You told Michael Burnett that he should vote no for the
4 Union?
5 A Oh, no, no. I was confused. I didn't understand the
6 first question.
7 Q I'm asking whether you have ever told the Daily Grill
8 employees that they should vote no for the Union.
9 A No, because that's your own decision.
10 Q And then when you were participating in these home visits
11 to employees that were just discussed, you were there to try to
12 convince employees to vote for the Union, correct?
13 A No. I just wanted to explain the difference between a
14 place with union and without union.
15 Q How did you get to this office yesterday?
16 A That's my own personal time.
17 Q How did you get here?
18 A They gave me a ride.
19 Q And who is they?
20 A Sergio Sorza brought me here.
21 Q Sergio Sorza that's sitting at the table here in the room?
22 A Yes.
23 Q And how long did that ride take?
24 A I'm not so sure. Maybe 30 minutes, around that time.
25 Q And did Mr. Sorza discuss with you what was going on in

1 this hearing during that ride?
2 A No, because I didn't have much to talk to him other than
3 personal matters.
4 Q Did you discuss with Mr. Sorza on that ride over here
5 yesterday any of your home visits to Daily Grill employees?
6 A No. He just mentioned, told me that I have to talk to the
7 attorney, to the lawyer, and he was going to talk to me. The
8 attorney told me just to tell the truth.
9 Q Okay. So and when you say "the attorney," are you
10 referring to Mr. Blasi that's sitting at the table?
11 A Yes.
12 Q And when did you speak to Mr. Blasi?
13 A When had a lunch yesterday.
14 Q And how long did you have a conversation with him for?
15 A It was fast, less than ten minutes.
16 Q Did you sit down and eat with him?
17 A Yes.
18 Q And you ate within ten minutes?
19 A No, it was a little bit more but he was asking me about
20 the conversation, no, no, during the time that we were eating.
21 Q Did Mr. Blasi discuss with you what your testimony would
22 be in this hearing?
23 A He told me to testify whenever it happens and tell the
24 truth.
25 Q Did he ask you details about your home visits to Daily

1 Grill employees?

2 MR. BLASI: Objection. This is getting into attorney work

3 product and Berbiglia --

4 MR. PARRY: It's not work product with a third party.

5 MR. BLASI: It --

6 MR. PARRY: It's not work product.

7 MR. BLASI: It is work product --

8 MR. PARRY: And it's not a attorney-client privilege.

9 There's no privilege.

10 MR. BLASI: It relates to the attorney's legal strategy

11 vis-a-vis the same hearing. And inquiring into the

12 conversations that I may have had with the witness is

13 inappropriate in this context. It's also likely, I believe,

14 privileged under Berbiglia privilege because this was

15 specifically internal union conversations.

16 MR. PARRY: It's absolutely not internal. She is a third

17 party. She's not -- and I can ask the question but she's

18 already said she doesn't work for the Union. And you don't get

19 to maintain a attorney work product privilege when you're

20 asking a third party. You disclose that to the extent it

21 discloses strategy. Questions were asked about conversations

22 that I had with other witnesses that are employees of the Daily

23 Grill. She's a third party. There's no attorney-client

24 privilege. There's no work product privilege when you say

25 things to individuals that aren't part of the privilege.

1 That's like basic privilege --

2 HEARING OFFICER TA: I mean I agree there's no attorney-

3 client privilege here --

4 MR. BLASI: I'm not asserting attorney-client privilege.

5 HEARING OFFICER TA: Okay. You're asserting work product?

6 MR. BLASI: I'm asserting work product and Berbiglia

7 privilege.

8 MR. PARRY: When you disclose information that would

9 otherwise be part of a privilege to someone that's not within

10 the scope of the privilege then it becomes unprivileged. If I

11 disclose my work product to someone that's not me or not in my

12 firm and not within the privilege then that's discoverable.

13 MR. BLASI: I believe that Berbiglia extends to agents of

14 the Union when they're involved in a collaborative effort.

15 That's my recollection of the law on that issue.

16 MR. PARRY: She said she's not an agent of the Union.

17 HEARING OFFICER TA: I don't think we've established that

18 she's an agent of the Union.

19 MR. PARRY: She said it was voluntary on her personal

20 time.

21 MR. BLASI: Well, I didn't -- obviously, didn't prepare

22 her on that issue because --

23 HEARING OFFICER TA: Right.

24 MR. BLASI: -- this is the cross examination where it's

25 first arisen. But certainly --

1 MR. PARRY: But you did prepare her.
2 MR. BLASI: -- there's nothing illicit about preparing a
3 witness. That's what attorneys do when they're putting on --
4 MR. PARRY: And I'm entitled to ask about how he prepared
5 her.
6 HEARING OFFICER TA: Well, Counsel, I'm assuming that
7 you're going to the sequestration order, right? And whether
8 she --
9 MR. PARRY: That and --
10 HEARING OFFICER TA: And whether that was -- whether
11 testimony was discussed. I'm assuming that's where this is
12 going.
13 MR. PARRY: That and bias. And if she's been coached then
14 I should be able to find that out in her testimony --
15 HEARING OFFICER TA: I mean --
16 MR. PARRY: -- and that goes to the weight of her
17 testimony.
18 HEARING OFFICER TA: Is there any way to ask her to get at
19 the same point?
20 MR. PARRY: I'm just -- I'm asking straightforward
21 questions to try to find out when it happened, how long it took
22 and when she says -- if someone says we had a ten-minute
23 conversation and say what did you discuss, they said "tell the
24 truth." That doesn't seem like it takes a ten-minute
25 conversation or whatever the amount of time it is. So this is

1 cross examination. I'm entitled to explore that.
2 MR. BLASI: I don't believe this is within the scope of
3 the direct and I don't believe that it's appropriate to go on a
4 fishing expedition as to another attorney's conversations.
5 My questions yesterday were specifically limited only to
6 the Johnny's Poultry questions. There was --
7 MR. PARRY: Credibility is always within the scope of
8 direct.
9 HEARING OFFICER TA: Well, yeah. And I think he's going
10 also to whether she shared testimony or not. I'm going to --
11 MR. BLASI: But, but --
12 HEARING OFFICER TA: Uh-huh.
13 MR. BLASI: It's not even an alleged violation of this
14 sequestration order. So what is it exactly proffering?
15 MR. PARRY: It goes to credibility.
16 MR. BLASI: The attorney is --
17 MR. PARRY: Like I said, she's been coached.
18 MR. BLASI: The attorney is entitled to share testimony
19 when you're putting on a witness whether it's as a rebuttal
20 witness to prior testimony. That's specifically within the
21 sequestration order that we've now read into the record twice.
22 I think that Counsel should be at least required to proffer
23 some legal theory as to how there is some --
24 MR. PARRY: I just done that.
25 MR. BLASI: -- potential violation of the sequestration --

1 MR. PARRY: I'm not -- there's two things and it's a
2 timing issue. Whether it's a violation of sequestration order,
3 which I will get to, and whether and to what extent she's been
4 coached in her testimony. And to what extent she's been
5 coached in her testimony goes directly to her credibility
6 regardless of what the sequestration order is.
7 HEARING OFFICER TA: So you're saying that Mr. Blasi is
8 not allowed to prepare his witness?
9 MR. PARRY: I'm not saying he's not allowed to but it
10 should be -- it can be considered in weighing her testimony.
11 Certainly he's allowed to prepare his witness. He can say
12 whatever he wants to her and I should be -- and it's not
13 privileged because she's a third-party witness and I can
14 explore that in cross-examination for the purpose of
15 establishing or refuting her credibility.
16 And as Counsel, I think, has said over and over again in
17 support of the testimony that he has brought in that
18 credibility is always -- and in this case since we just have
19 competing witness testimony for the most part, credibility is a
20 crucial issue in this hearing.
21 HEARING OFFICER TA: Okay. I'm going to take some time to
22 research this work product issue. So we'll go on a break.
23 We'll take time out, five minutes. And I'm going to research
24 this and make a ruling. So let's go off the record.
25 (Off the record at 2:07 p.m.)

1 HEARING OFFICER TA: I did some research. Work product
2 does not apply here. As I understand work product, it applies
3 to tangible things and in this case we're talking about a
4 discussion that was had, right?
5 That being said, my sense is that with every one of these
6 witnesses, there will be this line of questioning about --
7 MR. PARRY: Who they spoke to.
8 HEARING OFFICER TA: -- who they spoke to.
9 Can we limit --
10 MR. BLASI: Wait, wait, wait. All Union's witnesses?
11 Because, clearly, some are privileged by attorney --
12 HEARING OFFICER TA: No, no, no.
13 MR. BLASI: -- client privilege.
14 HEARING OFFICER TA: What I mean is that Counsel, seems
15 the way that this is going, every witness that you put on
16 Employer's counsel has been asking about whether they've spoken
17 to other individuals about testimony here in this hearing.
18 Does that make sense?
19 MR. BLASI: The sequestration issue.
20 HEARING OFFICER TA: Right, the sequestration issue. And
21 so because my sense is that this is going to be an ongoing
22 issue, if we can limit the inquiry to whether or not they
23 shared testimony --
24 MR. PARRY: Well, as to witnesses that are within the
25 attorney-client privilege, I certainly understand that there's

1 a privilege argument and the privilege argument about meetings
2 and preparation but as for those ones, I should be able to ask
3 about the sequestration order for Ms. Diaz who is not within
4 the attorney-client privilege --
5 HEARING OFFICER TA: Uh-huh.
6 MR. PARRY: -- to be able to ask about how she was
7 prepared for this.
8 HEARING OFFICER TA: Okay --
9 MR. PARRY: And notwithstanding the sequestration order
10 because it goes to her credibility and --
11 HEARING OFFICER TA: Okay --
12 MR. PARRY: -- as I just said on the record before.
13 HEARING OFFICER TA: Okay. I just -- it just feels a
14 little speculative. I mean is there -- do you have an offer of
15 proof for why you think that she might have violated the
16 sequestration order?
17 MR. PARRY: I'm not -- this is having something other to
18 do with the sequestration order. And, of course, I didn't have
19 the chance to get discovery before going into this stuff. But
20 the offer of proof is she met with counsel and discussed
21 something with him at lunch yesterday during the break.
22 HEARING OFFICER TA: Okay.
23 MR. PARRY: And she's here and presented by counsel and
24 he's got notes and he's got a direct examination for her
25 prepared so.

1 HEARING OFFICER TA: Okay.

2 MR. PARRY: It's -- and actually counsel stated on the

3 record he's, you know, talking about protecting his preparation

4 of this witness under a work product privilege which doesn't

5 apply. And it's basically his admission that he prepared her.

6 HEARING OFFICER TA: Okay. Well --

7 MR. BLASI: What I meant is --

8 HEARING OFFICER TA: Okay.

9 MR. BLASI: --I obviously prepared for this testimony. I

10 interviewed the employee. I discussed with her what she was

11 going to testify. Obviously, I did that as any --

12 HEARING OFFICER TA: Right.

13 MR. BLASI: -- attorneys would.

14 MR. PARRY: I don't say there's anything wrong with that.

15 I'm entitled to know what that entailed and because it goes to

16 her credibility.

17 HEARING OFFICER TA: Okay. I don't want to spend too much

18 time on this.

19 MR. PARRY: I don't want spend too much time on it either.

20 I want to move on --

21 HEARING OFFICER TA: We've probably spent a lot of time

22 already on this.

23 MR. PARRY: -- and finish with this.

24 HEARING OFFICER TA: Okay. So --

25 MR. BLASI: Is there any possibility we're going to finish

1 today --

2 HEARING OFFICER TA: Well, how many more witnesses do you

3 have?

4 MR. BLASI: Four.

5 HEARING OFFICER TA: Oh, boy.

6 MR. PARRY: No, then.

7 MR. BLASI: Well, I don't know.

8 HEARING OFFICER TA: My guess is probably no if we've got

9 four more to go.

10 MR. BLASI: I mean --

11 HEARING OFFICER TA: But, you know, you never know.

12 Maybe, maybe, maybe they will be quick. I don't --

13 MR. BLASI: Can the Hearing Officer ask Counsel for the

14 Employer how long he intends to go on on his cross examination?

15 MR. PARRY: I don't know. We have to stop a lot to deal

16 with these objections and -- so I don't know.

17 MR. BLASI: Can we get some --

18 MR. PARRY: I honestly don't know. And I've been accused

19 of taking forever on my cross but I think my cross examination

20 of the last witness was about half the time as the direct. So

21 it's not like I'm belaboring things. I'm trying to get through

22 these and we've spent so much more time on these objections to

23 things that are, clearly, within the scope of what I can ask

24 that that's what's wasted the most time at least today and

25 throughout this whole entire process.

1 HEARING OFFICER TA: Well --
2 MR. BLASI: I'd just like to know to make some logistical
3 decisions. So if the Employer's --
4 MR. PARRY: I don't know.
5 MR. BLASI: -- planning on going for another hour that it
6 would affect some basic logistical matters I need to --
7 MR. PARRY: I would hope not but a lot of that's up to the
8 witness, too.
9 HEARING OFFICER TA: Well, I mean we're on cross already.
10 We haven't gotten into even the substance of the home visits,
11 so. You know, I don't know. I think you can try to assess
12 based on, you know, how cross has been going previously. But I
13 mean I obviously -- I don't know how long this is going to
14 take, so. But --
15 MR. BLASI: Right. And in my experience sometimes more
16 cooperative attorneys will make estimates so that the various
17 parties can --
18 MR. PARRY: I'm not going to make an estimate because I
19 don't want to be held to it and then have more complaints.
20 HEARING OFFICER TA: Okay.
21 MR. PARRY: This is an adversarial proceeding --
22 MR. BLASI: Yes, that's --
23 MR. PARRY: -- and it's not --
24 HEARING OFFICER TA: Okay.
25 MR. PARRY: It shouldn't be --

1 MR. BLASI: If there's one thing --
2 MR. PARRY: -- surprising that it's adversarial.
3 MR. BLASI: -- that's been made clear in this hearing I
4 think that's it.
5 HEARING OFFICER TA: Okay. Noted.
6 Let's not spend any more time on this. I want to get the
7 witness back in here and continue. So, again, counsel if we
8 can just kind of move this along as quickly as possible. Okay.
9 Can you -- can someone get the witness back in.
10 Okay. Counsel, go ahead.
11 Q BY MR. PARRY: Ms. Diaz, the questions that I believe we
12 were at when we broke was the conversation you had with Mr.
13 Blasi at lunch yesterday. I believe you said you sat with him
14 and ate and it took more than ten minutes; is that accurate?
15 A More or less, approximately.
16 Q And did Mr. Blasi discuss with you the home visits you
17 participated in with the Daily Grill employees?
18 A Told me that I have to tell what happened during those
19 visits.
20 Q Did he ask you about the home visit that you had with
21 Ashlynn Camberos?
22 A To recall, to remember what happened.
23 Q But did you tell him what had happened in the visit with
24 Ashlynn Camberos?
25 A We didn't have time to talk about it.

1 Q Did you -- did he tell you what Ashlynn Camberos testified
2 to?
3 MS. DIAZ: No.
4 MR. PARRY: Did you discuss your visit with -- I'm sorry,
5 I didn't let you translate that.
6 THE INTERPRETER: Oh, no. No, no. Don't worry about --
7 MR. PARRY: Or interpret that.
8 Q BY MR. PARRY: Did you discuss with Mr. Blasi your home
9 visit with Kimberly Mendez?
10 A No.
11 Q Did you discuss with him your home visit with Lucas Chim?
12 A No.
13 Q Did you discuss with him your home visit with Jose
14 Palacios (phonetic)?
15 A No.
16 Q Have you had any conversations with Sergio Sorza between
17 yesterday afternoon and today as you sit here right now?
18 MR. BLASI: Objection. Vague and ambiguous as to time
19 frame.
20 MR. PARRY: I said between yesterday --
21 Q BY MR. PARRY: Let's say yesterday at 2 p.m. and right
22 now.
23 THE INTERPRETER: Can you rephrase the time frame, please.
24 MR. PARRY: Yes.
25 Q BY MR. PARRY: Have you had any conversations with Mr.

1 Sorza between yesterday at 2 p.m. and right now?
2 A Yeah, well he gave me a ride back and we were talking
3 about music, about food, you know, things like that.
4 Q And when you say "gave me a ride back," he gave you a ride
5 from the building here yesterday to wherever you were going?
6 THE INTERPRETER: Okay. From here to where -- rephrase
7 that question.
8 Q BY MR. PARRY: Yeah, from here to your destination at the
9 end of the day.
10 A Yes.
11 Q Did Mr. Sorza discuss with you the testimony he gave in
12 this hearing?
13 A No.
14 Q Did he discuss with you any of your home visits to Daily
15 Grill employees?
16 A No.
17 Q How did you get here today?
18 A They gave me a ride.
19 Q Who is "they"?
20 A Lupe Luna.
21 Q Did you discuss any of your Daily Grill employee home
22 visits with Ms. Luna on the ride here?
23 A No.
24 Q Have you had any discussion with Martha Santamaria between
25 yesterday at 3:00 and right now?

1 A No.
2 Q Do you know who Martha Santamaria is?
3 A Yes.
4 Q And you've worked with her on the Daily Grill -- or is it
5 true that you know her through your efforts with Local 11 to
6 organize the Daily Grill?
7 A I knew her. She presented as the supervisor of the
8 organizers.
9 Q Now, Ms. Diaz, you at least since November, the beginning
10 of November 2017, you've had the opportunity to discuss issues
11 involving the Union while at the workplace at Daily Grill,
12 correct?
13 A Yes.
14 Q And you've done that in the workplace, correct?
15 A I don't know what you're talking about. What are you
16 referring specifically to?
17 Q You've discussed your views on having the Daily Grill be
18 organized under Local 11 while you were in the workplace,
19 correct?
20 A Yes.
21 Q And you've voiced your opinions in meetings with
22 employees, correct?
23 A Sometimes.
24 Q Ms. Diaz, your husband is a union employee, correct?
25 A Yes.

1 Q And where does he work?
2 MR. BLASI: Wait. Objection. Vague as to the meaning of
3 the Union employee.
4 HEARING OFFICER TA: Can you clarify it, counsel.
5 MR. PARRY: Yeah. Let me back up and I'll --
6 HEARING OFFICER TA: Okay.
7 Q BY MR. PARRY: Where does your husband work?
8 A Westin LAX.
9 Q BY MR. PARRY: And the --
10 THE INTERPRETER: Westin LAX.
11 Q BY MR. PARRY: And the Westin LAX is a union property,
12 correct?
13 A Yes.
14 Q And the Union there is Local 11, correct?
15 A Yes.
16 Q And your husband is the shop steward there, correct?
17 THE INTERPRETER: Clarify that again.
18 Q BY MR. PARRY: Your husband is the shop steward there,
19 correct?
20 A No.
21 Q Has he ever been the shop steward there?
22 A He's a cook.
23 Q You don't know what a shop steward is?
24 A An organizer, correct?
25 Q That's your understanding as to what a shop steward is?

1 A Yes.
2 Q And so it's your testimony that your husband is not a shop
3 steward at the Westin LAX.
4 A He works for a union for a hotel. He works for a union at
5 the hotel -- for the Union.
6 MR. BLASI: In other proceedings, they've been --
7 HEARING OFFICER TA: Right.
8 MR. BLASI: -- been allowed to ask the interpreter -- we
9 haven't been able to do that here -- but where there's clear
10 obvious misinterpretation.
11 HEARING OFFICER TA: Well, okay.
12 THE INTERPRETER: Sorry?
13 HEARING OFFICER TA: So I just want to clarify. Her last
14 response was that he works as a shop steward for the Union?
15 THE WITNESS: No, he works as a cook for a place of a
16 union.
17 MR. PARRY: Let me ask this way.
18 HEARING OFFICER TA: Okay.
19 Q BY MR. PARRY: Do you have an understanding that where a
20 property like the Westin LAX is a union property there is
21 oftentimes an employee or employees who are designated to be
22 sort of the representatives that other employees can go to with
23 issues they have that they want to take to the Union.
24 THE INTERPRETER: Can you rephrase the question or break
25 it down. It was kind of long.

1 Q BY MR. PARRY: Do you have an understanding that at a
2 union property there may be an employee designated as the
3 person that employees can go to with issues that relate to the
4 Union?
5 A Yes.
6 Q Is your husband that person at the Westin LAX?
7 A No.
8 Q Has he ever been that person at the Westin LAX?
9 A No.
10 Q And you testified as to home visits that you've made to
11 Ashlynn Camberos, Kimberly Mendez, Lucas Chim and Jose
12 Palacios. Was it your testimony that at every one of those
13 home visits that those employees were, received it friendly?
14 THE INTERPRETER: I need you tell the names. Okay?
15 MR. PARRY: Okay. Let me -- Ashlynn Camberos, Kimberly
16 Mendez, Lucas Chim and Jose Palacios.
17 Q BY MR. PARRY: All of those employees received those
18 visits in a friendly way?
19 A Yes.
20 Q And those were all pleasant meetings with them?
21 A Yes.
22 Q And you wouldn't expect that any of those employees would
23 complain about your visits with them; is that right?
24 A They wouldn't tell me. They wouldn't tell me.
25 Q And at those visits, you went there with -- did you always

1 go with a union organizer?
2 A Yes.
3 Q And during each of those visits, either you or -- and/or
4 you -- let me back up. At each of those visits, you and the
5 Union organizer would discuss what you believed to be the
6 benefits of joining a union to those employees, correct?
7 A Yes.
8 Q And that was with the goal of convincing them to vote for
9 the Union, correct?
10 A Yes.
11 Q Now you said you've been visited at your home by union
12 organizers; is that right?
13 A Yes.
14 Q And you did that -- did you agree to do that because you
15 were part of the organizing effort?
16 A No, I don't know what you're referring. I'm going to
17 explain to just I am understanding.
18 Q Well, no, let me ask the question, and I can maybe ask a
19 better question. You've been involved in efforts to organize a
20 union for four years, correct?
21 THE INTERPRETER: Repeat the question one more time,
22 counsel.
23 Q BY MR. PARRY: You've been involved in the Union's effort
24 to organize The Daily Grill employees for four years?
25 A Yes.

1 Q And in the course of those four years, union organizers
2 have visited you at your home, correct?
3 A Yes.
4 Q And that was part of the effort to organize The Daily
5 Grill employees, correct?
6 A Yes.
7 Q And you did that voluntarily, right?
8 A Yes.
9 Q Because you were working with Local 11, correct?
10 A What do you refer that I'm working for Local 11?
11 Q I don't mean working for, I mean, maybe the better word is
12 collaborating with Local 11?
13 A Yes.
14 Q Do you know of any other Daily Grill current employees
15 that made home visits to other Daily Grill employees in the
16 course of the Local 11 election?
17 THE INTERPRETER: Rephrase it what you want me to --
18 Q BY MR. PARRY: Do you know of any other Daily Grill
19 employees who made home visits to other employees?
20 THE INTERPRETER: Sure, okay, about the last part, okay.
21 Q BY MR. PARRY: During the course of the election?
22 THE INTERPRETER: Okay, the question was were -- okay,
23 rephrase the question because it was in two parts. One more
24 time, please?
25 Q BY MR. PARRY: Do you know of any other Daily Grill

1 employees who also made home visits to employees during the
2 course of the election?
3 A No.
4 Q Okay. Ashlynn Camberos didn't -- well, scratch that. Has
5 anyone from the Union ever explained to you what the rules of a
6 mail ballot election are?
7 THE INTERPRETER: The rules of what election?
8 Q BY MR. PARRY: Of a mail ballot election.
9 A Yes.
10 Q What are those rules?
11 A Not to touch the ballots or the envelopes, they shouldn't
12 complete or fill the ballot in front of somebody. And if the
13 person tells you that you got to get out of my house, you got
14 to get out.
15 Q And you understand that the reason for those rules is
16 because violating that rule might result in the election being
17 overturned, right?
18 MR. BLASI: Objection. Calls for a legal conclusion.
19 MR. PARRY: It's her understanding of why those rules
20 exist.
21 HEARING OFFICER TA: Yeah, I'm going to --
22 MR. BLASI: Okay, but it's --
23 HEARING OFFICER TA: Oh, go ahead.
24 MR. BLASI: I mean, it's defined --
25 HEARING OFFICER TA: Yeah, I mean I think he asked what

1 her understanding of the consequences of the --
2 MR. PARRY: Yes.
3 HEARING OFFICER TA: -- violation of those rules would be.
4 So overruled. Go ahead.
5 THE WITNESS: Yes.
6 Q BY MR. PARRY: And you understand that if this happened
7 with The Daily Grill election, any of the violations of those
8 rules, that the election that occurred here would be
9 overturned, correct?
10 A That's why we respect those rules.
11 MR. PARRY: I have no further questions at this point.
12 HEARING OFFICER TA: Okay. Redirect?
13 MR. BLASI: I don't think so but I need to take a moment.
14 I don't have anything further for this witness.
15 HEARING OFFICER TA: Okay. Thank you. You're excused.
16 Please remember that a sequestration order is in effect so
17 please don't discuss your testimony with anyone until the
18 conclusion of the hearing.
19 THE WITNESS: Of course.
20 HEARING OFFICER TA: Mr. Blasi, do we need the
21 interpreter's services anymore?
22 MR. BLASI: No.
23 HEARING OFFICER TA: Okay, all right.
24 THE INTERPRETER: Am I excused as well?
25 HEARING OFFICER TA: You're excused. Thank you very

1 much --

2 THE INTERPRETER: Thank you, everybody.

3 HEARING OFFICER TA: -- for your services, thank you.

4 THE INTERPRETER: Have a great day. Bye-bye.

5 MR. BLASI: Thank you, bye-bye. Thanks very much. I need

6 to use the restroom.

7 HEARING OFFICER TA: Yeah, that's fine. Let's take a --

8 let's go off the record and take a five-minute break.

9 (Off the record at 2:56 p.m.)

10 HEARING OFFICER TA: And do you want to call your next

11 witness?

12 MR. BLASI: Sure. The Union calls William Sanchez.

13 HEARING OFFICER TA: Okay. Okay, can you please state

14 your name and spell it for the record?

15 MR. SANCHEZ: William Sanchez, W-I-L-L-I-A-M,

16 S-A-N-C-H-E-Z.

17 HEARING OFFICER TA: Okay, and can you please raise your

18 right hand?

19 Whereupon,

20 **WILLIAM SANCHEZ**

21 having been duly sworn, was called as a witness herein and was

22 examined and testified as follows:

23 HEARING OFFICER TA: Okay. A couple of reminders. You're

24 being recorded so that's the microphone right there. So make

25 sure that your responses are clear and verbal so no shaking

1 your head, nodding your head, because it's obviously not going
2 to be picked up by the microphone. If you don't understand a
3 question that's asked of you, feel free to ask for
4 clarification.
5 Please wait for the question to be asked in its entirety
6 before you answer just so that we're not talking over each
7 other. And if a party objects to a question that's being
8 asked, hold your response until I make a ruling on the
9 objection, okay? Thank you. Go ahead, counsel.
10 **DIRECT EXAMINATION**
11 Q BY MR. BLASI: Good afternoon, William.
12 A Good afternoon.
13 Q Can you state who your employer is?
14 A Unite Here Local 11.
15 Q And what is your position with the Union?
16 A I'm the organizer.
17 Q Okay. And is one of your responsibilities as an organizer
18 been to support the organizing campaign at The Daily Grill?
19 A Yes.
20 Q Of Century Boulevard?
21 A Yes.
22 Q And did you participate in outreach to employees around
23 the time of the election that was held at the end of 2017?
24 A Yes.
25 Q And as part of your efforts to outreach to workers, did

1 you visit some workers at their homes?
2 A Yes.
3 Q Okay. And are you familiar with a worker named Kurt Mann?
4 A Yes.
5 Q Did you have occasion to visit that person at his home at
6 some point after the ballots were mailed out?
7 A Yes.
8 Q Do you recall more or less when that visit took place?
9 A I believe it was Saturday morning after the ballots had
10 been mailed.
11 Q And were you by yourself?
12 A I was with Nicholas Gerber.
13 Q Okay. And does Kurt Mann live in an apartment building?
14 A Yes.
15 Q How did you enter that building?
16 A As we were arriving, someone was exiting the building, and
17 we entered.
18 Q Okay. Did you go to knock on, well, what happened next
19 after you entered the building?
20 A So we reached Kurt's apartment and we knocked on the door.
21 Q Okay. I should ask, actually, before you describe what
22 happened, did you have the understanding before you knocked on
23 his door that he was somebody that supported the Unionization
24 effect?
25 MR. PARRY: It's, excuse me, objection. It's leading.

1 HEARING OFFICER TA: Overruled, go ahead and answer the
2 question.
3 THE WITNESS: Yes.
4 Q BY MR. BLASI: Okay. And why did you have that view?
5 MR. PARRY: I'm sorry, and this is also irrelevant and it
6 calls for hearsay and speculation.
7 HEARING OFFICER TA: Overruled. Go ahead and answer.
8 THE WITNESS: Can you repeat the question again?
9 Q BY MR. BLASI: Actually, I'm not even going to go there.
10 I'll keep it simple. So as you were saying you knocked on the
11 door. Can you just describe what happened next?
12 A Yeah. We knocked on the door. Kurt opened the door like
13 halfway. He was kind of asleep, and we introduced ourselves,
14 Nick and myself.
15 Q And if you could just continue describing what happened in
16 as much detail as you remember?
17 A Right. So I asked Kurt if he had voted already. I asked
18 him and he said no. I asked him if he had received his ballot
19 already, and he said he hadn't checked his mail yet. So I
20 said -- I asked him if he -- if it was okay for him to go check
21 his mailbox right now to see if the ballot had arrived. And he
22 said that he didn't have time right now and he would do it
23 later.
24 Q Okay. And what happened next?
25 A So I just reminded him that -- why we were there just to

1 make sure that his ballot if he had -- to make sure that he
2 received his ballot, and if he didn't that it was important
3 that he call the NLRB and let them know. Check if his address
4 was correct and let them know that he hadn't received his
5 ballot so that they could resend it to him.
6 Q Okay. And what happened after that?
7 A He said that he understood that if he didn't receive his
8 ballot that he would have to call to make sure. And then I
9 kind of told him to make sure that when he -- if he did receive
10 his ballot to make sure to follow the instructions, to make
11 sure that he signs the envelope before mailing it so that his
12 vote could count.
13 Q Okay. And did anything else happen in this visit, or what
14 happened next?
15 A Then Nick just, you know, reassured him, and said, hey,
16 make sure, you know, you vote, your vote counts. Make sure it
17 counts so that you can see -- so that there could be some
18 changes inside the workplace.
19 Q Okay. And did anything else happen after that?
20 A No. He just said I'll make sure that when I receive the
21 ballot I'm pretty sure I can read the instructions and make
22 sure I vote correctly, and I'll make sure I -- another ballot.
23 Q Okay.
24 A And then we said -- or we wished him well and we left.
25 Q Okay. Did he have his ballot in front of him or with him

1 at this time?
2 A No. No.
3 Q How did the visit end?
4 A Just we shook hands, shook hands, and we said see you
5 later.
6 Q Okay. How long would you say this entire encounter
7 lasted?
8 A No more than five minutes.
9 Q Okay.
10 A About five minutes.
11 Q At any point during this visit did you ask him to vote in
12 front of you or fill out the ballot in front of you?
13 A No.
14 Q Is that something that you would have done?
15 A No.
16 Q And why is that?
17 A Because it's against the rules.
18 Q And where were you physically when this conversation took
19 place?
20 A Outside his door.
21 Q And where was he?
22 A Inside his apartment.
23 Q Okay. And what happened next?
24 A That's it. We just had our -- we wished him well and we
25 left.

1 Q Okay. Now a minute ago you said that you would not have
2 asked him to fill out the ballot in front of you; is that
3 correct?
4 A That's correct.
5 Q And if Mr. Mann had gotten the ballot and attempted to
6 vote in front of you, what would you have done?
7 MR. PARRY: Objection. Incomplete hypothetical,
8 speculative, and I guess it's irrelevant because he said it
9 didn't happen.
10 HEARING OFFICER TA: Well, I'm going to overrule it. Go
11 ahead and answer.
12 THE WITNESS: Can you repeat the question again?
13 Q BY MR. BLASI: If Mr. Mann had had his ballot, or had
14 obtained his ballot, and he had -- and you were there with him
15 in the same location, and he attempted, or began to fill out
16 his ballot, how would you have reacted to that situation?
17 A Oh, I would have told him to stop. I would have had to
18 leave the location where we were at because it's a secret
19 ballot. And he would have to vote or go into his other room,
20 or go somewhere else, but I would leave the location we were
21 at.
22 Q Okay. Was Sergio Sorza present in this occasion?
23 A No.
24 Q He wasn't with you and Nick?
25 A No. It was just Nick and myself.

1 Q Okay. In the course of doing outreach to employees, did
2 you ever confront a situation where an employee tried to or
3 began to fill out a secret -- the ballot in your presence?
4 A Yes.
5 MR. PARRY: It's vague and ambiguous. Are we talking
6 about ever or in terms of this election?
7 MR. BLASI: Sure.
8 HEARING OFFICER TA: Can you repeat the question, counsel?
9 MR. BLASI: Yeah. I was real -- not the most elegant
10 phrasing.
11 Q BY MR. BLASI: In the course of your outreach to employees
12 of The Daily Grill during the election in end of 2017, were you
13 ever confronted with a situation in which an employee began or
14 attempted to fill out the ballot materials in your presence?
15 A Yes.
16 Q And can you describe what happened?
17 A I visited a worker, as I arrived to his apartment
18 building, he was at his mailbox retrieving his mail, and
19 introduced myself. Said, hey, how you doing? And he did -- he
20 received the ballot at the time when I got there. So we walked
21 to his apartment, and he invited me inside. And he had two
22 envelopes with him, and he says which one's the ballot? And I
23 said I'm not sure which one it is. And as he started opening
24 it I said, hey, I need to step outside. You need to make sure
25 you follow the instructions.

1 I said make sure that you do sign the envelope so that,
2 you know, so that your vote counts. I asked him if he needed a
3 ride to the Post Office. He said yes. So I said you need to
4 vote in here, and I can't be present in here. I'm going to
5 step outside. As soon as you're done, just come outside, and
6 I'll drive you to the Post Office. So I got up, went outside,
7 closed the door, he voted, and then he did what he had to do
8 with the ballot. And then when opened, and he walked outside,
9 and I drove him to the Post Office, and then brought him back
10 home.
11 Q And at the point that he -- you reunited, was the ballot
12 sealed, as best you could tell?
13 A Yeah.
14 Q Okay. And did you learn, well, let's leave it at that.
15 Can you tell us the name of that employee?
16 A Marcelino Perez (phonetic).
17 Q Okay. Just another topic related to your earlier
18 testimony. Were you here on Monday?
19 A On Monday? Yes.
20 Q Okay. And are you familiar with a person named Lupe Luna?
21 A Yes.
22 Q Was she here in the building on Monday?
23 A No.
24 MR. BLASI: The Union has no further questions for this
25 witness at this time.

1 **CROSS-EXAMINATION**

2 Q BY MR. PARRY: Mr. Sanchez, you talked about Marcelino
3 Perez. How did you come to be at his home?
4 A Drove there.
5 Q Well, did you go there with the purpose of -- well, let me
6 ask this question. What date was that?
7 A I believe that was Sunday of the week after the ballots
8 were mailed.
9 Q So would that be December 10th?
10 A Yes.
11 Q And so you went -- you went to Marcelino Perez's home for
12 the same reason you went to Kurt Mann's home, and that would be
13 to discuss whether he had his ballot, correct?
14 A Yes.
15 Q Also to emphasize what you believe to be the benefits of
16 joining the Union?
17 A Yes.
18 Q Sorry, say that --
19 A Thank you.
20 Q Were you invited to Marcelino Perez's home?
21 A Not directly by him.
22 Q By whom?
23 A He knew I was coming.
24 Q Okay. But you weren't invited?
25 A No.

1 Q How did he know you were coming?
2 A I believe another organizer had spoken to him, told him
3 that an organizer named William was going to come by, and give
4 him a ride to the Post Office if he needed a ride.
5 Q Had he asked for a ride to the Post Office before that?
6 A I'm not sure about that.
7 Q Who was the other organizer that told you or that told
8 Marcelino that you were coming, if you know?
9 A Sergio spoke to him over the phone.
10 THE COURT REPORTER: I'm sorry?
11 THE WITNESS: Sergio spoke to him over the phone.
12 Q BY MR. PARRY: And was there a specific purpose for why
13 you sought out Marcelino Perez?
14 A He had been someone who had shown being positive towards
15 the Union.
16 Q So your intention was to go there to make sure to make
17 sure he voted Union, right?
18 A Uh-huh. Yes.
19 Q I'm sorry, say that audibly?
20 A Yes.
21 Q Thank you. And you would agree that as an employee of
22 Local 11, your purpose in this whole matter was to Daily Grill
23 employees to vote yes for the Union, correct?
24 A Yes.
25 Q That's the whole point of it, right?

1 A Yes.
2 Q How long have you been an organizer for Local 11?
3 A It's going to be 10 years here going on May.
4 Q Do you have any other employment right now?
5 A No.
6 Q So you work exclusively for Local 11?
7 A Yes.
8 Q How long have you worked -- and have you worked
9 exclusively for Local 11 the entire 10 years?
10 A Yes.
11 Q Were you subpoenaed to be here today?
12 A Subpoenaed?
13 Q Subpoenaed to be here today?
14 A No.
15 Q Did anyone hand you a piece of paper -- okay. You
16 understand what a subpoena is?
17 A Yeah, when you get subpoenas go to court, yeah, no. No I
18 didn't get a piece of paper handed to me, no.
19 Q So you're here as part of your job with Local 11, correct?
20 A Yes.
21 Q And as part of your job with Local 11 you're supposed to
22 come to these sort of things to defend an election result in
23 Local 11's favor, correct?
24 A Yes.
25 Q Because your goal, as an employee of Local 11, is to

1 preserve an election result that's in favor, correct?
2 A Yes.
3 Q And you under -- I think there was some discussion of the
4 rules that you follow in a mail ballot. Do you recall that?
5 A Uh-huh.
6 Q And those rules include --
7 THE COURT REPORTER: Can I get --
8 THE WITNESS: Yes.
9 Q BY MR. PARRY: Sorry. Those rules include not touching
10 the ballot?
11 A Yes.
12 Q Not being present when the employee fills out the ballot,
13 right?
14 A Correct.
15 Q Leaving when they ask you to leave, correct?
16 A Correct.
17 Q And you understand that violation of one of those rules
18 might result in the election being overturned, correct?
19 A Correct.
20 Q And so it's your purpose here today is to help to try to
21 ensure that this election is not overturned, correct?
22 A Correct.
23 Q Because if there were testimony that came out that one of
24 those rules was broken, that the election might be overturned,
25 you understand that?

1 A Yes.
2 Q And so the purpose of your testimony is to make sure that
3 doesn't happen, right?
4 A Correct.
5 Q Thank you. Was there another organizer with you when you
6 visited Marcelino Perez?
7 A No.
8 Q Was there any other employee that accepted your offer to
9 be driven to the Post Office with their ballot?
10 A No.
11 Q And you asked more than one employee if they needed help
12 getting their ballot to the mailbox, right?
13 A Correct.
14 Q Have you spoken to Mr. Sorza anytime between yesterday at
15 about 2 p.m. until right now?
16 A Yes.
17 Q And have you discussed with Mr. Sorza the Local 11's home
18 visits to Daily Grill employees?
19 A No.
20 Q Have you spoken with Martha Santamaria anytime between
21 2:00 yesterday and right now?
22 A Yes.
23 Q And have you discussed with her any of these home visits?
24 A No.
25 Q How often do you report to -- let me back up. Is Martha

1 Santamaria your supervisor?
2 A She's the director of our team.
3 Q And so you report to her?
4 A Uh-huh, yeah.
5 Q And, sir, being the director of your team, you let her
6 know what goes on under various organizing activities, correct?
7 A Yes.
8 Q Okay. And so at the end -- and that's done at the end of
9 the day?
10 A Yes.
11 Q And does she meet with the members of her team in the
12 mornings as well?
13 A Yes.
14 Q And at those meetings in the morning, does she give out
15 assignments, or direct what work you're going to be doing for
16 the day?
17 A Yes.
18 MR. BLASI: I'm going to object. This is outside of the
19 scope, and it's getting into Berbiglia territory.
20 HEARING OFFICER TA: Yeah, let's limit it to discussion
21 about the home visits.
22 Q BY MR. PARRY: How did you get here today?
23 A I drove.
24 Q By yourself?
25 A Yes.

1 Q Any discussions with Sandra Diaz today?
2 A Discussions about?
3 Q Discussions with her today?
4 A Yeah. I talked to her today.
5 Q Have you had a discussion with her in the halls?
6 A No.
7 Q When did you have a discussion with Sandra today?
8 A During lunch.
9 Q And what did you discuss with her at lunch?
10 A Some personal issues.
11 Q How long did you sit with her at lunch?
12 A Maybe like half an hour.
13 Q And during that half hour did you have any discussion
14 related to the home visits --
15 A No.
16 Q -- to The Daily Grill employees?
17 A No.
18 Q You visited other employees aside from Kurt Mann and
19 Marcelino Perez in their homes, correct?
20 A Yes.
21 Q Which other employees did you visit their homes?
22 MR. BLASI: Objection. This is outside the scope of his
23 direct testimony. The Employer's counsel not free to go on a
24 fishing expedition for every encounter the witness may have --
25 MR. PARRY: It's not a fishing expedition. There's been

1 testimony the last two and a half days about who showed up at
2 whose home, and that's -- I'm entitled to explore that, and --
3 MR. BLASI: The Employer's counsel is not entitled to
4 explore anything outside of the scope of the direct examination
5 which focused on two specific visits. If he wishes to ask
6 questions about those visits, he's entitled to, but he's not
7 entitled to ask any question you might like that tangentially
8 relates to the general matter of this hearing.
9 MR. PARRY: Then I suppose I have to reserve my right to
10 recall Mr. Sanchez and do that. And then it's going to make
11 this hearing take longer.
12 HEARING OFFICER TA: I'm going to sustain the objection.
13 It's beyond the scope of direct.
14 MR. PARRY: I have no further questions.
15 **REDIRECT EXAMINATION**
16 Q BY MR. BLASI: Mr. Sanchez, just one question. Have you
17 testified truthfully in response to the questions you've been
18 asked today to the best of your ability?
19 A Yes.
20 HEARING OFFICER TA: Is that it?
21 MR. BLASI: That's it.
22 HEARING OFFICER TA: Okay. Recross?
23 MR. PARRY: No.
24 HEARING OFFICER TA: Okay. You're excused. Please
25 remember that a sequestration order is in effect. So that

1 means you please don't talk about your testimony with anyone
2 else until the conclusion of the hearing, okay? Thank you.
3 THE WITNESS: Thank you.
4 HEARING OFFICER TA: All right, counsel, you want to call
5 your -- let's --
6 MR. BLASI: Yes, sure.
7 HEARING OFFICER TA: Call your next witness?
8 MR. BLASI: The Union calls Nicholas Gerber.
9 HEARING OFFICER TA: Okay, we're back on. Can you please
10 state your name and spell it for the record?
11 MR. GERBER: My name is Nicholas Gerber. N-I-C-H-O-L-A-S
12 Gerber G-E-R-B-E-R.
13 HEARING OFFICER TA: Okay, and can you raise your right
14 hand, please?
15 MR. GERBER: Sure.
16 Whereupon,
17 **NICHOLAS GERBER**
18 having been duly sworn, was called as a witness herein and was
19 examined and testified as follows:
20 HEARING OFFICER TA: I just want to remind you of a few
21 things. So your answers are being recorded. That's the
22 microphone right there.
23 THE WITNESS: Uh-huh.
24 HEARING OFFICER TA: Which means that when you respond,
25 make sure that your answers are clear, and that your responses

1 are verbal. So no like shaking your head, or nodding your
2 head, because obviously that's not going to get picked up by
3 that microphone.
4 THE WITNESS: Okay.
5 HEARING OFFICER TA: If you're asked a question that you
6 don't understand, please feel free to ask for clarification.
7 Please make sure that a question is asked in its entirety
8 before you answer, just to avoid talking over each other.
9 THE WITNESS: Uh-huh.
10 HEARING OFFICER TA: And if a -- if one of the parties'
11 objects to a question that's being asked, hold your response
12 until I make a ruling on the objection. Okay.
13 THE WITNESS: Okay.
14 HEARING OFFICER TA: Go ahead, counsel.
15 **DIRECT EXAMINATION**
16 Q BY MR. BLASI: Good afternoon, Nicholas.
17 A Good afternoon.
18 Q Can you state for the record, who your employer is?
19 A My employer is Unite Here Local 11.
20 Q And what is your position as an employee?
21 A I'm an organizer.
22 Q Remember to wait until I finish.
23 A Sorry.
24 Q Sorry, if you could say again, what is your position as an
25 employee of Unite Here Local 11?

1 A I'm an organizer with Local 11.
2 Q Okay, and as part of your work as an organizer for Local
3 11, did you conduct outreach to workers of the Daily Grill on
4 Century Boulevard in the period around the time of the election
5 that was held for that worksite in late 2017?
6 A I did.
7 Q And as part of that outreach, did you visit the home of an
8 employee named Kurt Mann?
9 A I did.
10 Q And did you visit Kurt Mann by yourself?
11 A No.
12 Q Who was with you?
13 A My colleague, William Sanchez.
14 Q And do you recall when the visit took place?
15 A Time of day I believe was around 5:00. It was early
16 evening.
17 Q And do you remember the day? Do you remember what day of
18 the week it was?
19 A Which day of the week, no, I do not.
20 Q Can you describe -- and actually just while we're on the
21 topic of who was there, was Sergio Sorza present on that
22 occasion?
23 A No.
24 Q Okay. So if you could just describe -- well, first of all
25 how did you -- does -- strike that. Does Kurt Mann live in an

1 apartment building?
2 A Yes.
3 Q Okay, and how were you able to visit him in the apartment?
4 A We were let in by a neighbor.
5 Q And what happened once you entered the building? If you
6 could just describe what happened?
7 A We went up the stairs to the floor which he lives on and
8 knocked on the door to his apartment.
9 Q And what happened at that point?
10 A He answered, and we spoke to him at his door.
11 Q So where were you located physically?
12 A In front of the door, to the side of the door.
13 Q And where was Mr. Mann?
14 A Standing in his doorway.
15 Q Okay, and can you just describe what happened in the
16 interaction with him, starting from the beginning?
17 A Sure. We introduced ourselves. Myself and William, by
18 name, and as folks from the Union. And told him we were there
19 to make sure that he had the opportunity to vote in the
20 election at his workplace. Asked him if he had voted, and he
21 said no. We asked him if he received his ballot, and he also
22 said no. And I asked him -- or I think I told him this is an
23 opportunity for you to make the changes you would like at your
24 workplace. And he told us, you know, I know what to do. I've
25 been told what to do. I know what I'm going to do. And I

1 asked him if -- you know, what are some of the things that he
2 thought about that he would like to see better at his
3 workplace. And I think he again said, I know what I'm going to
4 do. And so William then asked him would you be able to check
5 and see if you have received your ballot. And he declined.
6 And we then just said, you know, well, you can follow-up if you
7 want with, you know, some of your coworkers or reach out to
8 your representative and have a good day. And that was the end
9 of the conversation.
10 Q And what happened next?
11 A He went back into his apartment and we departed from the
12 apartment building.
13 Q Okay, and was there any point when you or William asked
14 him to fill out the ballot, while you were present with him?
15 A No, no.
16 Q And did he have the ballot with him during this
17 conversation?
18 A No.
19 Q How long did this whole conversation last, would you
20 estimate?
21 A A few minutes. No more than five max.
22 Q Had Mr. Mann had the ballot with him, and attempted to
23 fill out the ballot in front of you, what would you have done?
24 A I mean if he attempted, I would have told him, no, that's
25 not something that he could do. And I would have made sure

1 that I wasn't present when he did that.
2 Q Okay, and before you visited Mr. Mann at his home, did you
3 have an understanding that he had a particular perspective on
4 support for the Union?
5 MR. PARRY: Objection, it's irrelevant. It calls for
6 speculation.
7 HEARING OFFICER TA: Overruled. Go ahead and answer it.
8 THE WITNESS: Did I have -- can you repeat the question?
9 MR. BLASI: Again, to be more general -- this is the last
10 witness -- or the Hearing Officer has a preferred way of asking
11 the question, I just want to elicit whether he understood
12 whether the --
13 HEARING OFFICER TA: I mean I think this is kind of the
14 same question you've asked, so prior to this visit, what was
15 your understanding of Mr. Mann's -- did you believe that Mr.
16 Mann was supportive of the Union prior to this meeting?
17 THE WITNESS: Yes.
18 MR. BLASI: I don't think there's anything else. Let me
19 just make sure. Okay, I don't think the Union has any further
20 questions for this witness.
21 HEARING OFFICER TA: Okay, cross.
22 MR. PARRY: Sorry, I don't mean to be distracting by
23 standing up.
24 **CROSS-EXAMINATION**
25 Q BY MR. PARRY: Mr. Gerber, your meeting with Kurt Mann at

1 his home, you were not invited, correct?
2 A Yes, we had spoken before.
3 Q And it was unannounced to him?
4 A Yes.
5 Q Okay, and you had to wait outside his apartment complex
6 for a neighbor to walk out to actually get into his apartment
7 complex, correct?
8 A Yeah, I don't recall if we waited, but, that's probably
9 true.
10 Q You didn't have any other way of getting in, right?
11 A Yes, that's correct.
12 Q Okay. There was a question as to what you would have done
13 if he would tried to open the ballot in front of you, and I
14 think you said you would have told him you can't be there and
15 stepped outside. Is that accurate?
16 A I would have made sure I was not present, nor did I see
17 him doing it.
18 Q And that's because you understand the rules for mailed out
19 election include that you can't touch their ballots, you can't
20 be there when they're opening or completing their ballots, and
21 you have to leave when they ask you to leave, correct?
22 A Correct, yes, I do understand.
23 Q And you understand that a violation of any of those rules
24 might result in overturning the election, correct?
25 A Yes, I do understand that.

1 Q Now, you testified that when you spoke to Kurt Mann, you
2 told him, you know, you'll have -- he will have the opportunity
3 to make the changes he wants in the workplace; is that about
4 right?
5 A I think it's more or less accurate, yes.
6 Q And then he said to you that he knows what to do. He
7 already knows what he's going to do. Something to that effect,
8 right?
9 A Correct.
10 Q And the after that, you said you kept asking him questions
11 about his feelings towards the Union, right?
12 A I said, and what I did was I asked one follow-up question
13 of him, which was was there anything specifically, that he
14 thought about, that he wanted to see different in the
15 workplace.
16 Q And did he respond to that?
17 A I believe he repeated more or less a similar response of,
18 you know, I know what I'm going to do. And that was the effect
19 of what he said.
20 Q So the first time he says I know what I want to do, and I
21 don't need help essentially, you understood that he really
22 didn't want to keep talking to you, right?
23 A I wouldn't say that.
24 Q He didn't really respond to your questions in the first
25 place, right? He sort of said I know what I'm going to do, I

1 don't help, right?
2 A Well, he didn't say I don't need help.
3 Q Okay, what did he say exactly?
4 A He said that I know what I'm going to do, I've been told
5 how to do it, and I know what I'm going to do.
6 Q Okay, and then you asked him a follow-up question,
7 correct?
8 A Uh-huh.
9 Q And then he said essentially the same thing or --
10 HEARING OFFICER TA: Yes, yes. Say yes or no.
11 THE WITNESS: I'm sorry. Yes.
12 Q BY MR. PARRY: And then he said essentially the same thing
13 in response to your follow-up question, correct?
14 A Correct.
15 Q Okay, and then I think you said William Sanchez asked him
16 a question, correct?
17 A Yes.
18 Q Okay, and that was again after he told -- said now twice
19 that he knows what to do, and how to do it, correct?
20 A Yes.
21 Q Okay, and what did he say in response to William Sanchez's
22 question?
23 A So the question that William asked him was would he be
24 able to check and see if the ballot had arrived at his home.
25 And I think he declined. And that was more or less the end of

1 the conversation.
2 Q You say more or less. Was it the end, or was it not the
3 end?
4 A After that it was just basically saying goodbye.
5 Q Did you ask him any follow-up questions after that?
6 A No.
7 Q Did William?
8 A No.
9 Q Now the purpose you were there that day was to essentially
10 campaign, right?
11 A What do you mean by campaign?
12 Q You wanted to try and convince him to vote for the Union,
13 correct?
14 A We -- as I said wanted to make sure he was going to vote
15 in the election.
16 Q You also wanted him to vote yes for the Union, correct?
17 A We were there to talk to him as well about yes, about --
18 yeah, for the Union.
19 Q Because that's your goal as a union organizer is to get
20 people to vote yes for the Union, correct?
21 A Yeah, that's one of my goals.
22 Q Have you ever encouraged an employee to not vote for the
23 Union?
24 A No, I have not.
25 Q How long have you worked for Local 11?

1 A A little more than three years.
2 Q Has it always been as an organizer?
3 A Yes.
4 Q Who have you talked to about your testimony today?
5 A I spoke with our counsel for the Union.
6 Q Did counsel tell you about what Mr. Sorza testified to?
7 A No.
8 Q When was the last time you spoke with Martha Santa Maria?
9 A I believe I spoke with her over the phone on Monday.
10 Q You didn't speak with her last night?
11 A No.
12 Q Did you speak with her this morning?
13 A Nope.
14 Q Have you spoken with Sandra Diaz in the last day?
15 A I saw her earlier today.
16 Q Did you speak with her today?
17 A I exchanged words with her, yes.
18 Q What time did you see her?
19 A Earlier today in the witness room.
20 Q So earlier today, do you have any estimate as to what time
21 that was?
22 A I think I arrived around 11:30.
23 Q So you arrived at 11:30 and you went into the witness
24 room?
25 A Uh-huh.

1 Q And was Sandra in there?
2 A Yes.
3 Q And how long were you two in there together?
4 A I think around an hour and a half then.
5 Q So in that hour and a half, what did you discuss?
6 A I exchanged greetings with her, and that was really the
7 extent of what I did with her.
8 Q In an hour and a half. You otherwise sat there silently?
9 A I was on my phone.
10 Q Has anyone ever explained to you what a sequestration
11 order is?
12 A No.
13 MR. PARRY: I have no further questions.
14 HEARING OFFICER TA: Redirect?
15 MR. BLASI: Union has no further questions for this
16 witness.
17 HEARING OFFICER TA: You're excused. Please remember that
18 a sequestration order is in effect, which means that you cannot
19 talk about your testimony with anyone until the conclusion of
20 the hearing.
21 THE WITNESS: Absolutely.
22 HEARING OFFICER TA: Thank you. Counsel do you have your
23 next witness ready?
24 MR. BLASI: I do. I want to take a minute to just make
25 sure I'm clear on what I'm asking him, so I don't waste our

1 time.

2 HEARING OFFICER TA: Okay.

3 MR. BLASI: What I'm trying to recall is what -- because

4 he testified yesterday, and I want to make sure we're not

5 duplicating, but also, anyway it's going to take me a second to

6 figure this out.

7 MR. PARRY: Maybe we should take a quick break off the

8 record?

9 HEARING OFFICER TA: Yeah. Let's --

10 MR. PARRY: So that I can use the restroom.

11 HEARING OFFICER TA: Let's take --

12 MR. BLASI: We're about done --

13 HEARING OFFICER TA: Let's do -- is five minutes okay?

14 MR. PARRY: Yeah, that's plenty.

15 HEARING OFFICER TA: Okay.

16 MR. PARRY: I just kind of want to stretch my back.

17 (Off the record at 4:00 p.m.)

18 HEARING OFFICER TA: Back on the record. Counsel, can you

19 call your next witness?

20 MR. BLASI: Yes, the union calls Sergio Sorza.

21 HEARING OFFICER TA: I'm going to swear you in again.

22 Let's just do the whole thing. So, please can you state and

23 spell your name. State your name and spell it for the record,

24 please.

25 MR. SORZA: Yes, S-E-R-G-I-O S-O-R-Z-A, Sergio Sorza.

1 HEARING OFFICER TA: Okay, please raise your right hand.
2 Whereupon,
3 **SERGIO SORZA**
4 having been duly sworn, was called as a witness herein and was
5 examined and testified as follows:
6 HEARING OFFICER TA: And same reminders about giving
7 responses, you know, don't talk over each other and wait for me
8 to rule on objections. Okay. All right, go ahead, counsel.
9 **DIRECT EXAMINATION**
10 Q BY MR. BLASI: Okay, Sergio, I want to just ask you some
11 additional questions that weren't covered during the testimony
12 you gave yesterday when you were called as an adverse witness
13 for the employer. So first of all, are you familiar with a
14 worker named Macey Sheets?
15 A Yes.
16 Q Okay, is that an employee of the Daily Grill on Century
17 Boulevard?
18 A Yes.
19 Q Okay, and in the course of your efforts to help workers at
20 the Daily Grill organize an union, did you have conversations
21 with Macey Sheets?
22 A Yes, I did.
23 Q Okay. Can you recall the first time you had a conversation
24 with Macey Sheets?
25 A Yes, the first time I had a conversation with Macey was

1 shortly after a morning shift for her. Sometime in the
2 afternoon a fellow coworker of hers had pointed her out, as she
3 was climbing up some stairs. Kind of like a little stairway.
4 And he called her. She turned around, saw us both. And we
5 proceeded to walk towards her. I introduced myself as a union
6 organizer and her and her coworker chatted a little bit about,
7 you know, just how her shift was and if she had a little time
8 to speak with us.
9 Q Okay, and again, where did this take place?
10 A This took place in the parking structure, where -- the
11 parking structure at the Westin Hotel.
12 Q Okay, and can you describe what the conversation consisted
13 of?
14 A Yes, so she had -- she had agreed to speak with us. She
15 said she had -- she was in no rush to head home. So I spoke to
16 her a little bit about the unionization effort that was going
17 on. She told me that she had overheard some coworkers speak
18 about it but didn't personally know anything that was going on.
19 She had a few concerns. One of the major ones was a previous --
20 MR. PARRY: Objection, this is beyond the scope, it's
21 irrelevant, and it's hearsay.
22 MR. BLASI: It's not offered for the truth. It's just a
23 recounting of the incident that occurred, so that there's a
24 record of the same instances or a fuller record of the
25 instances of the interaction between the union and the employee

1 who testified yesterday about a series of incidents of
2 interaction with the union.
3 HEARING OFFICER TA: Okay, yeah, overruled. Go ahead and
4 answer it.
5 THE WITNESS: Yeah, a relative of hers had been laid off.
6 She spoke to me about a large Marriott buyout of Starwood
7 Hotels and her mother told her was working at the hotel for a
8 couple of years. I believe she was a previous employee there
9 before coming to the Daily Grill. And a couple of months back,
10 her relative had been laid off, and had to have been rehired
11 back with no seniority. And she was very concerned about that
12 because it affected her personally because of the close
13 relationship that this relative had with her. And which is,
14 you know, job security was a very concern for her because she
15 knew that the Westin was a Starwood property. And that buy out
16 affect had, you know, was at the same property where her
17 employer was at. So we had a very positive interaction with
18 her. And, yeah, she was -- she thanked me and Salvador for all
19 the information. Like I said, she had several other concerns,
20 but that was her main concern. And after the conversation I
21 left with the impression that she was supportive of the
22 organizing efforts.
23 Q BY MR. BLASI: Did you have any conversations with her
24 again after that?
25 A Yes. I -- yes.

1 Q Would you -- can you describe more or less when the next
2 conversation happened, to the best you can recall?
3 A Yes, the next -- the following conversation I had with Ms.
4 Sheets was at her house. It was before the ballots were sent
5 out. At the time this was several weeks after I had initially
6 spoken to her. And I spoke to her husband, I believe, fiancé,
7 I'm, not really sure. But I spoke to him first. I knocked at
8 the door, he answered. Mind of gave me, you know, it was like,
9 hey, who are you. I introduced myself as well. And then he
10 shortly -- I explained to him I was there to speak to speak to
11 Ms. Sheets, if, you know, if she was there. I don't know if
12 she was like married or anything. But he called her. She came
13 to the door and reiterated some of the points that we had
14 spoken about.
15 Q I'm sorry, if I could stop you. Who reiterated the
16 points?
17 A Me. So I reiterated some of the points that we had talked
18 about in the initial interaction that we had. And by this
19 point, there was knowledge being circulated that there was
20 going to be an election. An election had been directed by the
21 NLRB and with that, certain regulations and rules. However,
22 the ballots had not been sent. So I spoke to her about hey,
23 you know, this is what's going to happen. Please keep an eye
24 out for the mail, you know, it's -- she's around my age, so
25 most people our age don't know what mail is, or really have

1 much knowledge as to, you know, snail mail, as folks call it.
2 Q Can I ask you how old you are, just so it's in the record?
3 A Yes, I am 26 years old. So yes, so we went over the --
4 like I expressed with her, hey, you're going to get a ballot in
5 the mail, or you should be receiving a ballot. However, if you
6 don't, we want to make sure that your vote is counted, that you
7 get your ballot, that you're able to vote, so there's a number.
8 I shared with her the NLRB number, and reassured her that like,
9 there are instructions that you should follow. She proceeded
10 to give me her number, in case she had any questions, or if she
11 hadn't received it, because it's time sensitive. From the time
12 the ballots were sent until the time they needed to be
13 received, it was a short window, I guess. So we really wanted
14 to make sure that, you know, folks didn't just forget or, you
15 know, folks had the ability to vote and, you know, send it out.
16 It's not like I said, an email that we're used to getting. You
17 do have to plan ahead and send out stuff earlier.
18 Q Okay, and how long would you say that this conversation
19 lasted?
20 A Including the time that I spoke with her partner, I would
21 say no more than like 15 minutes.
22 Q Okay, and where were you physically when this conversation
23 took place?
24 A We were outside her doorsteps and she was by the door, I
25 guess. I was outside her doorsteps, yes.

1 Q Did she ask any questions or convey any sentiment to you
2 during this conversation? That's two questions. Did she ask
3 any questions during the interaction?
4 A Yes, yes. She did. Both her and her partner did, yes.
5 Q Do you remember what those questions were?
6 A Yes, so she asked me questions in regard to family health
7 insurance. She is a recent mom. And she had like pictures of
8 her baby on the wall. We spoke a little bit about that. And
9 some of her concerns with like government issued like
10 insurance, like Medi-Cal. She just had like some concerns
11 about that. And, you know, we started talking about like
12 family and like her insurance, et cetera, as well as just like
13 the health insurance that is typical of like union shops and
14 properties. So we talked a little bit about that.
15 Q And did you give her information about union shops and
16 union properties and their health insurance?
17 A Yes, yes, so even though it was in a different state, in a
18 different side of the country, we spoke a little bit about
19 Daily Grill having a restaurant in Chicago. And the type of
20 CBA they have there with their employees. And we spoke a
21 little bit about that. About how the same employer has a CBA
22 with a different restaurant. Even though obviously we agree
23 it’s not going to be a mirror -- it wouldn't be a mirror or
24 anything, but this is an agreement that your same company has
25 at a different location, so that's why we started talking about

1 the whole family health insurance.
2 Q And CBA for the record stands for collective bargaining
3 agreement?
4 A Yes.
5 Q Okay. What else do you remember from this interaction?
6 A From this interaction, I mean it was a very positive
7 experience. I know that her partner didn't entirely leave the
8 conversation. He wasn't at the door with her, but he was very
9 interested in, you know, what we had to talk about. This was
10 not -- at that time was not her sole form of income. She likes
11 to do hair and is a stylist, so in regard to the insurance, she
12 wanted to make sure that what hours I would qualify with. What
13 are the usual standards to qualify, because it's very hard for
14 a hair stylist or hair salon person to obtain a job or make
15 sufficient funds to be able to afford health insurance on their
16 own or work for an employer in that industry that provides
17 family health insurance, so she -- you know, and like I said,
18 her partner wasn't too far from the door, was in the living
19 room area, so he was not like eavesdropping but just like, you
20 know, attentive to what we were speaking about.
21 Q Okay, and how did the conversation end?
22 A It ended, well, like I said, she gave me her phone number
23 and was like, hey, you know, if I don't get the ballot, or if I
24 lose this number that you just gave me, or something, I will
25 get a hold of you, get in contact with you and, yeah, that was

1 it. Shook her hand, shook her partner's hand, husband's hand,
2 and then left.
3 Q Okay, and again, how long was this before the ballots were
4 mailed, as far as you can recall?
5 A It was probably like a week before, yeah, like a week
6 before.
7 Q Okay, and did you have any further occasions to speak with
8 Ms. Sheets after that?
9 A Yes. I mean we -- like I said we had exchanged
10 information. She gave me her phone number, so because a
11 follow-up was, you know, expected at some point to see if she
12 hadn't received her ballot.
13 Q Uh-huh, so what happened?
14 A Yeah, so I went to go visit Ms. Sheets, I believe after
15 the ballots had been sent out. I believe it was on Sunday. I
16 went with a coworker of mine, or a union member worker. A
17 union worker, sorry. A union worker. And we visited Ms.
18 Sheets sometime around an afternoon. Like around 12:00,
19 knocked on the door for a little bit. I was actually about to
20 leave, had actually turned around, when I heard the knob start
21 to turn. And she opened the door very slowly. I could visibly
22 see that she had just woken up from her nap. She was just like
23 half asleep. And I proceeded to walk up the steps again. And
24 I immediately apologized. I was like, hey, Macey, I'm so
25 sorry, I probably woke you up. She's like, hey, no, yeah, you

1 did. I was like, hey, I'm super sorry. Just wanted to make
2 sure that you had gotten your ballot at that time. She was
3 like, no, no, yes, I've gotten my ballot. I've sent it out. I
4 followed the instructions. It's fine. I already took care of
5 it. And I was like, thank you, so much, once again. I'm
6 sorry, again, for waking you up. You have a good day. Thank
7 you for letting me know. And she like -- it was kind of like
8 -- she made a -- like I said she was slowly opening the door.
9 Never fully opened it. But was like slowly, she like had it
10 half opened. And then towards the end was all right, thank
11 you. And once I was already leaving, she closed the door. And
12 that interaction lasted maybe a minute, or, yeah, maybe a
13 minute. So it was just really fast, brief interaction with
14 her. And then I was --
15 Q Okay, do you remember anything else that was said, besides
16 what you described?
17 A No, I mean, no, I was -- like I said, I could tell she was
18 like just woken up. So she was very, you know, she said she
19 had already sent the ballot. She had already done that. And it
20 was all taken care of so at that point, you know, it was just I
21 told her great, that's great. You got your ballot. You made
22 your decision, you have a great one, and proceeded to leave.
23 Q Okay, and did you have occasion to interact with her again
24 after that?
25 A No, didn't have any visits after that with her.

1 Q Okay, now in the visit that you did have with her, the
2 last one you're just describing, did you at any point offer to
3 help her fill out the ballot?
4 A No, like I said she had -- you know, she initiated the
5 conversation with hey, I've already voted, so there was no need
6 for me to ask her anything else. You know, she'd said she'd
7 taken care of it, so I was like great, that's awesome. And
8 that's it. Because I was just -- you know, she had started off
9 by telling me she already got the ballot, so no, I didn't ask
10 her.
11 Q All right. Would you have asked her to help fill out the
12 ballot in front of you?
13 A No.
14 Q Did you ever see the ballot?
15 A No, I never saw her ballot.
16 Q Or the envelope containing the ballot?
17 A No.
18 Q During this interaction did you offer to take her to the
19 post office or anything like that?
20 A No, not at the last interaction. At the previous one
21 before -- before the ballots were cast I explained to her that
22 I could offer her a ride. But she pointed out that, you know,
23 she almost pointed, because she lives two blocks away from a
24 post office. And she was like, no, that's silly, I could just
25 walk there. It's fine. So, you know, like I said, she nearly

1 pointed to the post office, so I didn't know there was a post
2 office right there.
3 Q But the subject matter of the post office didn't come up
4 in the last interaction you had after the ballots were mailed?
5 A No. It came out -- we discussed that before.
6 Q Uh-huh. Okay, and so if I understand you correctly, she
7 sort of initiated the conversation by telling you that she had
8 already voted?
9 A Yes, yes.
10 Q So at that --
11 A When she -- when she opened the door. I mean I started
12 the conversation because I could tell she was like asleep.
13 Like she was like half asleep. Her eyes were still kind of
14 closed, so she was just, you know, you could tell she had just
15 woken up from a nap, or from sleeping.
16 Q Okay. Okay, at any point during any interaction with her,
17 did you tell her that you could take the ballot in for her?
18 That you could receive the ballot from her and, you know,
19 deposit in the mail?
20 A No.
21 Q Is that something that you would have done?
22 A No.
23 Q And why do you say that?
24 A No, it was explained to me very clearly that we cannot
25 touch the ballots, by our attorney staff.

1 Q Okay. Okay. Is there anything else regarding Macey
2 Sheets that you recall that you think is important to mention?
3 MR. PARRY: That's not really a question. It's vague,
4 ambiguous and overbroad.
5 HEARING OFFICER TA: Yeah. It's -- you can narrow it.
6 Q BY MR. BLASI: Okay, let me ask it -- all right. Is there
7 anything else regarding the last encounter with Macey Sheets
8 after the ballots were mailed, that you haven't mentioned, that
9 you think -- do you remember anything else that was said during
10 the conversation you had with her, that you haven't mentioned
11 so far?
12 A No, I mean, like I said it was very, very brief
13 interaction. She had -- like it wasn't -- like previous
14 interactions. It was a positive one, though, I could tell when
15 someone wakes up from their nap it's not ideal time to speak to
16 anyone. But no, like you know, as soon as she had given me
17 that information, said she'd already vote. Left. And she --
18 yeah, and then I left shortly after.
19 Q Okay, so I just want to ask you just very briefly about a
20 different employee of the Daily Grill. Are you familiar with
21 an employee named Robin Gunn?
22 A Yes.
23 Q Okay, and did you have any occasion to interact with her,
24 during your organizing efforts to help workers organize a union
25 at the hotel -- at the restaurant, I should say?

1 A Yes.
2 Q And can you describe the encounter that -- or the
3 interactions that you remember?
4 A Yes. So I went to visit Robin at her home, which is also
5 where her parents live. I went with a coworker of hers,
6 Salvador. And a fellow union worker. And the three of us
7 knocked on her door. And she answered the door. She was very
8 happy to see Salvador. They were -- they are long term --
9 they've been working together for close to a decade. Prior to
10 working for this Daily Grill location, so they had a very
11 longstanding relationship. And you know, we asked her if she
12 could give us some time to speak to her about the organizing at
13 her location. She'd been well aware of it. And she had
14 concerns. She had some questions for us. Her biggest one was
15 about job security and when it came to seniority, she wanted to
16 know what it was, what it meant, and how she would be affected,
17 having been one of the company's longest standing employee at
18 that property. She wanted to know what that would mean for her
19 in terms of someone that was new. So we explained that to her.
20 Again she's -- she had known about the Marriot buyout by
21 Starwood. No, the Starwood buyout by Marriot, excuse me. So
22 she understood that Westin was no longer under Starwood
23 ownership, but by Marriot's. So she was concerned about that.
24 And how that kind of worked. Which we explained that well,
25 we're not Marriot. We're not sure what Marriot's intentions

1 are on national, international-wide discourse, but we talked to
2 her about successorship language.
3 Q Okay, I think we may be getting to where we need to.
4 A Okay.
5 Q Could you just say generally whether you got an impression
6 from this conversation that Ms. Gunn was supportive of the idea
7 of the union?
8 A Yes.
9 MR. PARRY: Objection. It's irrelevant and calls for
10 speculation.
11 HEARING OFFICER TA: Overruled. Go ahead and answer.
12 THE WITNESS: Yes, right off the bat from the visit, like
13 I said, she was very happy to see us. She had a lot of
14 questions. Very interested and had not herself previously
15 worked at a union shop. But she was very interested, like I
16 said in the topics that we talked about. The visit lasted
17 about 20 to 25 minutes, in which like it was she expressed
18 super positive support. And like I said, we exchanged phone
19 numbers. At that point I told her she could follow-up with me
20 on anything further that she had. If she had any questions or
21 she wanted to follow-up or speak to me, she could always call
22 me or text me if she had any concerns or questions that she
23 didn't have right there at the moment. So from the offset of
24 the visit to the end of the visit very positive encounter with
25 her.

1 Q Okay, I have nothing further for this -- oh, before I
2 finish that sentence, were you here at the NLRB office on
3 Monday?
4 A Yes.
5 Q Okay, and was -- are you familiar with a person named Lupe
6 Luna?
7 A Yes.
8 Q Was she here at all that day?
9 A No, she was not.
10 Q Okay. I have nothing further for this witness.
11 HEARING OFFICER TA: Cross?
12 **CROSS-EXAMINATION**
13 Q BY MR. PARRY: Mr. Sorza, you visited the homes of at
14 least these two employees, Macey Sheets and Robin Gunn during
15 the election period, correct? When the ballots were out?
16 A Sorry, the period after the ballots were mailed out?
17 Sorry.
18 Q After the ballots had been sent.
19 A Yes.
20 Q All right. And in a manual election, employees don't get
21 ballots at their homes, correct?
22 A I believe so. Like an in-place worker.
23 Q If they're a manual election, but they wouldn’t be
24 completing ballots at home, correct? They'd be doing it at a
25 polling place?

1 A Yes.
2 Q But that's not the case in a mailed-out election?
3 A No.
4 Q So would you agree that basically they get their ballots
5 at home and they do what they will with them, whether it's at
6 home or wherever else, right?
7 MR. BLASI: I'm just going to object on the basis that
8 this line of inquiry doesn't seem related to the scope of the
9 direct examination.
10 MR. PARRY: It's related to him going to their homes.
11 MR. BLASI: Well, I think as we discussed earlier the
12 scope of direct examination.
13 MR. PARRY: Okay, I'm going to relate it to Macey Sheets
14 and Robin Gunn then.
15 HEARING OFFICER TA: Okay, I'll allow it. Go ahead
16 counsel.
17 THE WITNESS: Can you repeat the question?
18 Q BY MR. PARRY: I am trying to think of what it was. In a
19 mailed out election these employees get their ballots at home
20 and complete them at home, or wherever, right?
21 A Yeah, wherever they --
22 Q Because there's no polling place other than their homes
23 when they get their ballots, right?
24 A No physical polling place, no.
25 Q Okay, so that's -- for all intents and purposes you would

1 agree that the polling place is their homes, right?
2 A It could be. It's a potential site.
3 Q You said, I'm sorry?
4 A It could be. It's a potential site.
5 Q Okay. Thank you.
6 Q Okay. When you went to Lisa or Macey Sheets and Robin
7 Gunn, you went to their homes as part of your campaign,
8 correct?
9 A To visit them, yes.
10 Q To discuss if they had questions about the union, right?
11 A Yes.
12 Q To discuss what you thought the benefits of the union
13 would be, right?
14 A Yes.
15 Q And you were there to try to convince them to vote yes,
16 correct?
17 A Give our previous conversations, yes.
18 Q Thank you. Now you sat -- you heard Macey Sheet's
19 testimony. You were here for that, right?
20 A Yes.
21 Q And would you agree that Macey Sheets didn't seem happy or
22 pleased about the home visits in her testimony here?
23 A She was not pleased at the last one. She said she wasn't
24 Q But she didn't appear to be placed with any of the home
25 visits in her testimony, did she?

1 A If that's what she said, I guess.
2 Q Well, you heard her testimony.
3 A Yeah.
4 Q And you saw that she had submitted a statement -- actually
5 two statements, but one particularly about the home visit,
6 right?
7 A Is there --
8 Q You were here for the presentation --
9 A Yeah, yeah, but are you asking about a particular
10 document. I don't know what --
11 Q You were here when we discussed the statement that she
12 provided regarding the home visit, correct?
13 A Yes.
14 Q And from that statement, did she appear to be happy about
15 being visited at her home by the union?
16 A Not by her statement, no.
17 Q And you were here for the testimony of Robin Gunn; as
18 well, right?
19 A Yes.
20 Q And would you agree that Ms. Gunn did not appear in the
21 testimony at this hearing, to be pleased about being visited at
22 her home by the union?
23 A I never spoke to Robin Gunn after the ballots were sent
24 out.
25 Q Well, you would agree that she didn't appear to be happy

1 about being visited at her home by the union in her testimony?
2 A I don't recall her expressing discontent in her testimony.
3 Q Okay. You've heard all of the testimony in this hearing
4 so far, right?
5 A Yes.
6 MR. PARRY: Objection this is beyond the scope.
7 MR. BLASI: It's going to his credibility. It goes to the
8 other issues of the sequestration order.
9 HEARING OFFICER TA: I'll allow it.
10 MR. PARRY: It's a very vague offer of proof.
11 HEARING OFFICER TA: I'll allow it, go ahead.
12 Q BY MR. BLASI: So you've heard all of the testimony here.
13 A Yes.
14 Q Is that a yes?
15 A Yes.
16 Q And you've had the opportunity to prepare for your
17 testimony and to respond to everything that all of the other
18 witnesses have said, correct?
19 A I mean I've heard everything, so I have knowledge of
20 everything.
21 Q And you've had the opportunity to prepare for your
22 testimony by using all of what you've heard and hearing, right?
23 A I guess.
24 Q You guess. Is that a yes?
25 A Yes.

1 Q You've had the opportunity to consult with counsel. I'm
2 not asking what you consulted about, but you had the
3 opportunity, right?
4 A I've spoken with counsel.
5 Q And you've had the opportunity to develop your testimony
6 as it's being put on today, correct?
7 A Yes.
8 Q Okay, and now is your understanding of the sequestration
9 order is that it allows you to discuss with other witnesses
10 what you've heard from the employer's witnesses previously?
11 A If I could clarify the question. You said the order
12 allows me to --
13 Q Yes. It doesn't prohibit you from discussing the
14 testimony of the witnesses that the employer put on with
15 basically other individuals that would be testifying?
16 A Sorry, I believe the first one was, you used the word
17 allowed, and this time you used the --
18 Q Okay, yeah, let me rephrase it. Let me start completely
19 over with that.
20 A Sorry.
21 Q You have an understanding -- is your understanding of the
22 sequestration order that it does not prohibit you from
23 discussing the testimony of the witnesses that the employer put
24 on, with the union's potential witnesses?
25 A I believe so, yes.

1 Q It does not prohibit that?
2 A Wait. I don't have the actual --
3 Q I know that. I'm just asking what your understanding of
4 that was because you're aware of the sequestration order,
5 correct?
6 A Yes, yes.
7 Q And you know it puts some limitations on what you can
8 discuss related to testimony that you hear in here, correct?
9 A Yes.
10 Q Do you understand that?
11 A Yes.
12 Q Okay. Do you think it prevents you from discussing Macey
13 Sheets' testimony with somebody like William Sanchez?
14 A Oh, yes.
15 Q Okay, so you have not discussed Macey Sheet's testimony
16 with William Sanchez?
17 A No.
18 Q Okay, and that's just an example. So you have an
19 understanding that it prevents you from talking about any
20 witness's testimony?
21 A Yes.
22 Q Now, as part of your job as a union organizer in this
23 matter to basically work to preserve the election results,
24 correct?
25 A Yes.

1 Q Okay, and you don't want those election results
2 overturned, correct?
3 A No.
4 Q It's not correct, or -- let me say it again.
5 A Yeah.
6 Q My questions are difficult I'll grant you that because I'm
7 asking sort of a mixed affirmative and negative question. Do
8 you want the election results overturned?
9 A I wouldn't.
10 Q In this Daily Grill election, you're aware of the outcome,
11 correct?
12 A Yes.
13 Q And you don't want that outcome overturned?
14 A No.
15 Q You want it to stay as is?
16 A Yes.
17 Q And you certainly don't want it overturned as a result of
18 any of your testimony, right?
19 A No.
20 Q That's another one of those negative and positive. Do you
21 want --
22 A I mean I hope I'm --
23 Q You're here with the intention that the results are not
24 overturned? Correct?
25 A I'm -- sorry, just let me. Yes.

1 Q Okay.
2 A Yes. Yes.
3 Q And you don't want it overturned because of any of your
4 testimony, is that right?
5 A Yes, that's right.
6 Q Thank you.
7 A Okay.
8 Q Q Okay, thank you. That's all my questions.
9 HEARING OFFICER TA: Redirect.
10 MR. PARRY: No further questions for this witness.
11 HEARING OFFICER TA: Any other questions?
12 MR. BLASI: No questions.
13 HEARING OFFICER TA: Okay, is that the last --
14 MR. PARRY: It's the last witness for the union.
15 HEARING OFFICER TA: Okay. You are excused. Please
16 remember that the sequestration order is in effect, which means
17 please don't discuss your testimony with anyone else until the
18 conclusion of the hearing.
19 THE WITNESS: Okay.
20 HEARING OFFICER TA: Okay, let's go off the record.
21 (Off the record at 4:44 p.m.)
22 HEARING OFFICER TA: So during an off-the-record
23 discussion, the parties stated they wish -- or Employer's
24 counsel stated that he wishes to file post-hearing briefs.
25 Right now if the parties can give their positions on the record

1 concerning the need for briefs.

2 Go ahead --

3 MR. PARRY: Yes. Grill Concepts --

4 HEARING OFFICER TA: -- Employer's counsel.

5 MR. PARRY: -- requests that we have post-hearing briefings

6 on this given the volume of the testimony, the extraordinary

7 circumstances, a mail ballot vote, which -- and even the

8 representatives of the Union had testified it only happened

9 twice, one of them has 20 years of experience, and sort of the

10 application of law to those facts -- and the volume of

11 evidentiary issues that came up during the hearing, we think

12 it's best to address through post-hearing briefs.

13 HEARING OFFICER TA: Okay.

14 MR. BLASI: The Union believes --

15 HEARING OFFICER TA: Union counsel?

16 MR. BLASI: The Union's believes that the standard

17 protocol, which all parties are expected to be prepared to

18 follow, which is that at the conclusion of the hearing, the

19 parties offer concluding argument, it should be filed here, and

20 there's no reason to depart from that standard operating

21 procedure as set forth in the case handling manual.

22 There have been a fairly large number of witnesses, but, as

23 I think concluding argument will make clear, most of that

24 testimony is substantively irrelevant to any question that the

25 Region would -- to the legal question at hand. And the actual

1 legal questions are pretty straightforward. And the Union is
2 prepared to provide its testimony -- or its concluding argument
3 now into the record.
4 HEARING OFFICER TA: Okay. So as Hearing Officer, I've
5 concluded that briefs will not be filed; largely because this
6 is a straightforward case. There are no real complex issues
7 with regard to the law. The legal standard here is an
8 objective one. And I think the testimony that was given was
9 very straightforward factual testimony that can be applied to
10 the law in a very straightforward manner.
11 So for those reasons, I'm denying the filing of post-
12 hearing briefs.
13 Right now I'm going to allow the parties to make oral
14 arguments. We'll go ahead and start with Employer's counsel.
15 MR. PARRY: Thank you.
16 So I think most importantly start by saying -- pointing out
17 that this is a matter where we had a very close vote. It was
18 29 to 24 -- I'm sorry -- 29 to 25 in favor of the Union in a
19 mail ballot election that is contrary to the case -- the
20 Board's case handling manual standard procedures. So this is
21 an extraordinary circumstance.
22 The mail ballot election was ordered over objection by the
23 Employer based on the potential and actually the likelihood
24 that the employees' free choice was subject to interference by
25 the Union, which actually did come to fruition based on the

1 evidence that we have heard over the last two days.
2 Now, the law on this matter in establishing that the --
3 that there was misconduct that warrants overturning the
4 election is clear, and as the Hearing Officer pointed out, it's
5 a fairly objective standard. And the general rule is that
6 where you have a violation during the critical election period,
7 that is -- that -- the conduct occurs itself -- basically
8 conclusive evidence that it interfered with the results of the
9 election unless it is so de minimis that it is virtually
10 impossible to conclude that the violation could have affected
11 the results of the election. And that comes from Super Thrift
12 Markets, Inc. And that's 233 NLRB 409.
13 And to elaborate on that a bit, Super Thrift says, the only
14 recognized exception to this policy is where the violations of
15 such that it is virtually impossible to conclude that they
16 could have affected the results of the election. This
17 determination is based inter alia on the number of violations,
18 their severity, the extent of dissemination, the size of the
19 unit, and other relevant factors. So --
20 And in the event -- unless you have completely de minimis
21 violations, the policy is that you direct a new election, not
22 considering whether it actually had an effect on the election.
23 And I think that has been clear through the rulings on the
24 evidence.
25 And in the Super Thrift case, there were coercive

1 statements by an employer that were directed to two employees
2 in a unit of 24. And the case held that -- the Board held
3 that -- they've long held that statements made during the
4 election campaigns can reasonably expected to have been
5 disseminated and discussed among the employees. So in that
6 case, even though there were only two employees where there was
7 evidence of coercive statements made, the Board concludes that
8 you can basically assume that it's going to be disseminated to
9 others and have an effect on others.
10 And so the -- and just to discuss a couple of other cases
11 where violations were found that warranted overturning the
12 election -- and, actually, to be clear, there doesn't need to
13 be a specific violation of the Act. It just -- we just have to
14 show that there was interference with free choice in the
15 election.
16 So in the case of Intertape Polymer Corp., the ruling is
17 that -- was that even though interrogation of employees about
18 their union sentiments is not per se unlawful under the Act.
19 Such questioning will rise to the level of a Section 8(a)(1)
20 violation if is coercive in nature.
21 So the standard is not that we prove that there was an
22 actual -- that there -- it doesn't rise to the level of proving
23 an unfair labor practice per se, just that there was conduct
24 that was coercive enough to affect the employees' free choice
25 in the election. And that's what Super Thrift Market says when

1 it's basically -- unless it's so minimal that it can't have any
2 affect, then the election must be overturned and a new election
3 directed.
4 And then there's another case, Waste Management, Inc., and
5 that's 330 NLRB 634, a new election was directed. And in that
6 case it was really not even a close vote. It was 8 -- I'm
7 sorry. 70 votes for the election, 108 votes against the -- or
8 I'm sorry -- 70 votes for the union, 108 against the union with
9 ten challenges. The Board still directed a new election even
10 though it wasn't close. And that had to do with an employer
11 just removing union postings from a bulletin board. It doesn't
12 get close to the level of misconduct that we're dealing with
13 here by the Union.
14 And so going -- getting into that evidence, and looking at
15 it in light of the Regional Director's order and the standards
16 set forth in that order where it's enumerated, basically the
17 nine elements that we look to determine whether it warrants
18 directing a new election -- we talk about the number of
19 incidents -- we know at least there were nine witnesses that
20 testified that they had been visited at their homes on multiple
21 times. Those witnesses also testified, many of them, that they
22 heard from other co-workers about the Union visiting their
23 homes as well. So there are -- there appear to be, based on
24 the testimony, more employees that perhaps just haven't come
25 forward.

1 We also learned from testimony from the Union witnesses
2 that there was another employee who had not been previously
3 identified, Marcelino Perez (phonetic). So we're now at 10
4 employees out of a unit of 76 that we know had been visited by
5 the Union during the election period at their homes.
6 And, as an aside -- and I actually should have mentioned
7 this earlier -- the NLRB even warns that engaging in excessive
8 electioneering at or near the polls is improper election-
9 related conduct. Here we're dealing with a mail ballot
10 election. There's no polling place. Clearly a union
11 interfering with a vote at the polling place would be, no
12 question, a violation if it's -- if it's intercepting employees
13 when they're delivering their ballots at the polls. There's no
14 question of that.
15 When you have a mail ballot election, the polling place is
16 effectively their home. And what the Union was doing,
17 admittedly, is going to their homes and campaigning during the
18 election period, which was the -- which was essentially about a
19 two-week period, from December 9th to December 21st, that they
20 visited the homes, admittedly, to continue campaigning, to
21 continue trying to convince the employees to vote for the
22 Union.
23 The testimony was that -- and the testimony from the
24 employees was that at times the Union said -- offered to help
25 them, quote, unquote, "complete their ballots," asked them to

1 show them the ballots, asked them to show how they voted. That
2 is all going on at the polling place, which is their homes,
3 during the election period.
4 So moving on, the number of incidents is at least ten
5 witnesses who'd been visited multiple times, and apparently,
6 based on the testimony, even more than that. The severity of
7 the incidents and whether they were likely to cause fear among
8 employees in the voting unit. And that element is extremely
9 important. Each one of the nine witnesses -- the employee
10 witnesses came up and said they were annoyed by this, they --
11 some of them were upset by it, it was unwelcome, it was
12 uninvited.
13 And more specifically, there were three employees, and
14 that's Ashlynn Camberos, who was concerned about the security
15 of her ballot. She actually -- she testified that she had her
16 ballot mailed to her mom's house because she heard that the
17 Union was going around to people's homes. She didn't want her
18 ballot to be in her mailbox at home when the Union was
19 visiting.
20 Stephanie and Kimberly Mendez testified similarly. They
21 saw the Union outside of their home, and so Stephanie testified
22 that she sent her sister out to go grab the mail ballot before
23 they came up. She testified that she was concerned about the
24 security of her ballot because the Union was showing up at
25 employees' homes.

1 There was clearly fear among those employees that there was
2 going to be something done if they didn't take measures to
3 secure their ballots.
4 Number three, the number of employees in the voting unit
5 were subjected to misconduct. And that kind of relates to
6 number one. We have ten, that we know of, employees in the
7 unit that were visited by the Union during the election period,
8 and others that those witnesses testified they discussed it
9 with.
10 And as I'd cited, the Board considers that in the Super
11 Thrift Markets' case, they only had evidence of 2 employees out
12 of 24 who had coercive statements directed at them, but the
13 Board said, we've long held the statements made during the
14 election campaigns can be reasonably expected to be
15 disseminated and discussed among the employees. So that is
16 affecting more than just the ten, because they're discussing it
17 in the workplace, as they testified.
18 Number four, the proximity of the misconduct to the date of
19 the election. And there's no question that this happened
20 actually during the election, because the election period is
21 the two weeks where they have their mail ballots and are in the
22 period in which they can -- they receive them, they review
23 them, and they submit them. And this, admittedly from the
24 Union, was occurring during that time. And we've been calling
25 it the election period. And the Union witnesses have even

1 referred to it as the election period when they were visiting
2 the homes.
3 Number five is, the degree to which the misconduct persists
4 in the minds of the employees in the voting unit. And the
5 Hearing Officer's questions really went to that, that this
6 wasn't something that, at least for these nine employees that
7 testified, they really kept to themselves. These employees
8 actually on their own accord spontaneously reported it to their
9 employer. And, as they testified, they voluntarily provided
10 statements. They wanted to alert their co-workers and their
11 employer as to what was going on with the Union. They also --
12 many of them also testified that they continued to discuss what
13 was going on after the election ended and up to today actually.
14 For months after the election, it's persisting in their minds.
15 They're discussing it with their co-workers.
16 Number seven, is the affect, if any, of any misconduct by
17 the nonobjecting party cancel out the effects of the misconduct
18 alleged -- let me see. Oh, I've skipped one.
19 Number six is, to the extent of dissemination of the
20 misconduct to employees were not subject to the misconduct but
21 who are voting in the voting unit. And this again is covered
22 by -- the employees testified that they discussed it with
23 numerous other employees at work. This wasn't something that
24 wasn't (sic) confined to them, that they weren't keeping it to
25 themselves. This was being discussed at the workplace, and on

1 a fairly regular basis, if not a daily basis, while it was
2 going on and after. Even in the months after.
3 Seven is, the affect, if any, of any misconduct by the
4 nonobjecting party to cancel out the effects of the misconduct
5 alleged in the objection. And I read that as the nonobjecting
6 party as being the Union and what affect that -- they canceled
7 out the effects of the misconduct, and there was no evidence
8 that they did anything to cancel the effects. We had the
9 evidence from the employee witnesses who described how they
10 felt about the Union coming to their homes. And that is what
11 it is. There's been no evidence that there was an effect of
12 other misconduct by the nonobjecting party to cancel out the
13 effects. And number seven.
14 Number eight is, the closeness of the vote, which I
15 alluded -- which I already discussed. It's four votes. And we
16 have nine witnesses that have testified to this conduct --
17 misconduct.
18 And number nine, the degree to which the misconduct be
19 attributed to the party against whom the objections are filed.
20 And that is 100 percent. It's only the Union that went to the
21 employees' homes, it's only the Union that tried to interfere
22 with their free choice in the election by visiting them
23 uninvited, unwelcomed during the election period.
24 And I will -- the last thing I'll discuss is the fact that
25 the Hearing Officer's faced with weighing the testimony

1 basically of the Union witnesses versus the employee witnesses
2 that have been heard from here, and it's a matter of who can we
3 believe. The employee witnesses have all come here saying that
4 they spontaneously on their own reported this misconduct to the
5 Employer. They said they wanted to bring -- to submit written
6 statements. They discussed it with other employees. They've --
7 you heard their testimony that they were unhappy about it.
8 They were annoyed by it. Some of them were even put in fear
9 about what's going on happen to their ballots.
10 They've got no reason to be dishonest in this hearing.
11 They've got really nothing to lose or gain. They've -- they
12 basically, during the process, contemporaneously, with what was
13 going on, reported it. And they signed declarations.
14 And we contrast that with the Union's witnesses. All but
15 one of the witnesses that the Union put on worked for the
16 Union. Their job is to get yes votes. Their job is to protect
17 the results of an election that's favorable to them. Their job
18 is to come here and sit there and not give testimony that would
19 result in the reversal of this election that went in their
20 favor. So when weighing the credibility of these witnesses,
21 that has to be taken into account.
22 And also importantly -- and I'll address Ms. Diaz, who is
23 not an employee of the Union but has been working in
24 collaboration with the Union for four years to organize the
25 employees at the Daily Grill. She feels she has something to

1 gain from the Union. She has a reason to come in here and say
2 that nothing was done wrong. Every single employee -- or every
3 single person put on by the Union has a reason to come in here
4 and say, there's never been a violation, we've never done
5 anything wrong, and essentially that every one of the Daily
6 Grill employee witnesses is lying.
7 And, finally, as to the testimony of Ms. Diaz, she
8 testified she didn't even know what the penalty of perjury was.
9 And she testified all throughout her direct examination that
10 she didn't even know what that was. And Mr. William Sanchez
11 testified he didn't know -- he doesn't know what the penalty of
12 perjury was. Ms. Diaz didn't know what it was until I
13 explained it to her on cross. And Mr. Sanchez presumably still
14 doesn't know what it means. Their testimony -- I think that's
15 entitled to consideration when determining how much weight to
16 give their testimony, that -- when they sit up here purportedly
17 under oath and not understanding what that means. And I
18 actually believe that the testimony that was given without an
19 understanding of what the oath is should be stricken and not
20 considered.
21 So based on each of these factors that are set out in the
22 Regional Director's decision on objections and notice of
23 hearing and the facts and credible evidence that's comes in
24 over the last three days, the election should be overturned and
25 a new one directed.

1 HEARING OFFICER TA: Thank you, counselor.

2 Union counsel, you want to please state your oral argument

3 for the record?

4 MR. BLASI: Sure. And just for the benefit of the court

5 reporter, I'm going to take the convention of saying quote and

6 then end quote where I quote law, if that's all right.

7 The Employer faces a heavy burden in establishing that the

8 election should be set aside in light of employees' exercise of

9 their Section 7 rights. Quote, "The burden of proof on parties

10 seeking to have a Board supervised election set aside is a

11 heavy one," end quote. And that's at Delta Brands, Inc., 344

12 NLRB 252, 253 (2005). I won't bother to include internal

13 citations.

14 To prevail, the objecting party must establish facts

15 raising a, quote, "reasonable doubt as to the fairness and

16 validity of the election," end quote. Patient Care

17 Pennsylvania, Inc., 360 NLRB 3 -- I'm sorry -- 637 (2014)

18 (sic). Moreover, to meet this burden, the objective party must

19 show the conduct in question affected employees in the voting

20 unit with respect to their ability to cast a ballot.

21 So I want to address two matters. First I want to speak

22 initially about home visits in general. So it's important to

23 note that there is nothing objectionable about union agents

24 visiting employees at their homes during the critical period.

25 As Member Goul (phonetic) summarized in concurrence in San

1 Diego Gas & Electric, 325 NLRB 1143, 1149 (1988), quote, "The
2 Board permits unions, but not employers, to visit individual
3 employees at their homes to present views on unionization. The
4 Board, however, applies this rule in both manual and mail
5 ballot elections based on the recognition that there is a
6 substantial difference between the employment of the technique
7 of individual interviews by employers on the one hand, by
8 unions on the other.
9 "Unlike employers, unions often do not have the opportunity
10 to address employees in assembled or informal groups, and never
11 have the position of control over tenure of employment and
12 working conditions which imparts the coercive effect of
13 systemic individual interviews conducted by employers.
14 "Thus, not only do unions have more need to seek out
15 individual employees to prevent their views, but more important
16 lack the relationship with the employees to interfere with
17 their choice of representatives thereby."
18 And I'll just note that that entire quote includes a block
19 quote from Plant City Welding, which is 119 NLRB 133.
20 This conclusion is obviously necessary. If the Union were
21 not permitted to speak with workers outside of work, which, in
22 practice, means at their home, then only the Employer would be
23 able to campaign during the election period since the Union
24 does not have access to the work site, as many witnesses
25 observed in the course of this hearing. That should be self-

1 evidently unfair and contrary to the Board's policies. And the
2 Act's policies.
3 It should be noted that well-established -- it should be
4 noted as well that well-established Board law provides that
5 absent any threats or coercive statements, quote, "The Act
6 allows employees to engage in persistent union solicitation
7 even when it annoys or disturbs the employees who are being
8 solicited," end quote. That's Rider Truck Rental,
9 341 NLRB 761.
10 The rationale for this rule, which has been set forth at
11 various times by the Board is explained in Bank of St. Louis,
12 119 NLRB 669 at 673. Quote, "Depending on the point of view of
13 the person solicited, the same conduct by the solicitor might
14 be described by one employee as constant badgering and by
15 another as persistent attempts to persuade. The union
16 solicitor would be in no position to know whether it's conduct
17 in repeatedly seeking to persuade an employee to sign a union
18 card was being regarded by the solicited employee as constant
19 badgering or as a mere attempt to persuade," end quote.
20 There is no evidence in the record of any threats or
21 coercive statements. Every single one of the Employer's
22 witnesses acknowledged that the Union representatives were
23 workers from the work -- from the Employer did not threaten
24 them. No witness described any conduct that suggested any sort
25 of implied threat or stated that they felt that their safety

1 was in jeopardy. The fact that some of the Employer's
2 witnesses may have been irritated or annoyed by the house
3 visits does not make the conduct objectionable.
4 I want to now move on to a second set of points. For the
5 conduct to be objectionable in this case, there would need to
6 be a violation of the integrity of the election or coercion
7 during the house visits themselves. The Board has held that
8 the mere solicitation of conduct implicating mail ballot
9 secrecy is not itself objectionable. The hearing officer is
10 bound to follow that rule. The controlling case is Fessler &
11 Bowman, 341 NLRB 932.
12 To be clear, the union does not dispute that it is
13 objectionable for a union to take possession of mail ballots.
14 That's explained at Fessler & Bowman, 341 NLRB 932 as well.
15 Also, the Union recognizes that the Board has suggested,
16 although not decided, that it is objectionable for union agents
17 to be present when the voting (sic) is actually casting the
18 ballot. That's Continental Bus System, 104 NLRB 599.
19 But none of this conduct that I just mentioned is at issue
20 in this case. None of the Employer's eight witnesses alleged
21 that they gave their ballots to a Union representative.
22 Likewise, none of the Employer's eight witnesses alleged that
23 they filled out their ballots in the presence of Union
24 representatives. Nor is there any allegation that workers or
25 Union organizers threatened any of the Employer's witnesses.

1 As I noted earlier, every single one of the witnesses
2 acknowledged that they were not threatened. Rather, at best,
3 the Employer can contend only that Union agents or workers
4 solicited employees to allow them to be present while the
5 employees were voting.
6 In fact, the Employer failed to prove that -- even that.
7 Most witnesses for the Employer merely said that the Union
8 representatives or workers asked them if they received their
9 mail ballots, confirming the Union witnesses' testimony that
10 the Union was offering information on how to obtain a ballot if
11 they had not received one, and that these conversations were
12 taking place on the day that the Board's own notice indicated
13 that if employees had not received a ballot, they should
14 immediately -- and that's the word used on the notice -- call
15 the NLRB to receive a replacement ballot.
16 The Union had very good reason to be concerned about
17 employees receiving their ballots because it did not have
18 confidence that the Employer had the correct addresses for all
19 employees, and wanted to ensure that all employees, in fact,
20 received their ballots. And if they didn't, had time,
21 according to the Board's notice, to have a replacement ballot
22 sent to where they could obtain it.
23 Witnesses also confirmed that the Union provided in these
24 conversations information regarding how to make sure that their
25 ballot was properly filled out so that it would be counted,

1 noting in particular that it's important to sign the envelope
2 containing the ballot so that the ballot is counted.
3 Some workers spoke generally and vaguely about the Union
4 offering, quote, help, end quote, in voting. But as clarified
5 in the Union's testimony, and in some of the Employer's
6 testimony, this referred only to offers to take them to the
7 post office to drop off their ballot, not to take possession of
8 their ballot and not to help them fill out their ballot in
9 their presence.
10 There was, at most, I believe four Employer witnesses out
11 of the eight whose testimony can even remotely be taken to
12 suggest or who even remotely suggested that Union
13 representatives suggested to them that they fill out their
14 ballots in front of them. And, again, I stress that that
15 testimony, to the extent that it even touches on this question,
16 was rather general.
17 Each of these witnesses had major credibility problems.
18 First, Benjamin Acosta's testimony cannot be credited because
19 he testified incorrectly on the most basic fact about the
20 interaction in which he claimed the solicitation of him opening
21 a ballot in front of a Union representative. He claimed that
22 three persons visited him -- three persons who had previously
23 visited him, Alex Sandoval, a Union organizer named Priscilla,
24 and Martha Santamaria, had previously visited him visited him
25 again on the day that -- a day after the ballots were mailed

1 and made some comments regarding statements that those persons
2 allegedly made to him.
3 In fact, as Martha Santamaria testified, and whose
4 testimony was corroborated by Alex Sandoval, the same three
5 people who had taken part in the previous visit, which predated
6 the ballots being mailed out, did not visit him on that day.
7 In fact, only one worker, Martha Santamaria visited him.
8 If Acosta can be so massively incorrect on the most basic
9 aspect of his story, that there were three persons rather than
10 one person, the somewhat more specific, although still quite
11 general testimony, he gave regarding an alleged statement to
12 him made by the supposed persons who were present cannot be
13 credited.
14 Mr. Acosta also had difficulty remembering basic
15 information concerning his conversations with management. He
16 went in circles and was very unclear about events that took
17 place during the same time frame and about the same issues. It
18 was also clear from his testimony that the chef who solicited
19 his statement, did not provide at least two of the three
20 assurances that are required under the Johnnie's Poultry case
21 before asking him to provide information that the Employer has
22 attempted to present at this hearing. And, for that reason,
23 his testimony and the exhibit produced in association with his
24 testimony should additionally not be credited.
25 Second, I'll speak briefly to the testimony of Kimberly

1 Mendez. She only testified generally, and I emphasize that,
2 that her testimony was extremely general, that a Union
3 organizer offered to help her in regard to filling out her
4 ballot. But she did not testify that a Union representative --
5 I'm sorry. I misspoke. I'd like to strike the last sentence.
6 She testified only generally that a Union organizer offered to
7 provide her with help in regards to her ballot, not that she
8 fill out her ballot in front of the Union representative. She
9 did not testify as such. She never specifically said that a
10 Union -- the Union representatives asked her to vote in front
11 of her (sic). Her testimony on this point was extremely vague
12 in general.
13 And as Alex Sandoval explained, the only, quote, unquote,
14 help that he offered or was offered during this occasion was to
15 provide information on how to preferably submit the ballot,
16 including signing the envelope to make sure that the ballot
17 counted, and to offer to give her a ride to the post office if
18 she would like that so that she could deposit the ballot
19 herself. There was no specific solicitation to fill out the
20 ballot in front of the Union supporters, and Mendez did not
21 testify credibly that there was. Nor is there any
22 contemporaneous statement from Kimberly Mendez in support of
23 any such claim.
24 Her sister Stephanie Mendez did provide a statement. But
25 as Stephanie Mendez and I believe Kimberly Mendez also

1 acknowledged she was not present when the conversation
2 concluded. And so appropriately the Hearing Officer did not
3 admit into evidence the portion of her statement that made
4 reference to any such misconduct.
5 Third, I'll speak briefly about the testimony of Kurt Mann.
6 He testified that Sergio Sorza asked him to vote in front of
7 him or perhaps suggested that in some fashion. And, in fact,
8 he was very specific about pointing out Mr. Sorza. And he
9 testified from the witness stand, pointing at Mr. Sorza, and
10 said something to the effect of, he's the guy, or, my man,
11 that's who visited me, in relation to -- at a time when he
12 claimed that the ballots had already been mailed.
13 In fact, Sergio Sorza never visited Kurt Mann after the
14 point that the ballots were mailed. So he quite obviously
15 could not have made any such statement. This was established
16 clearly through the testimony of Sergio Sorza, Nicholas Gerber,
17 and William Sanchez. The only time Sorza did visit him was
18 before the election ballots were even mailed. Kurt Mann's
19 testimony being so off on such a straightforward and simple
20 question as to who was the person visiting him. And I'll note
21 that the Hearing Officer had an opportunity to observe each of
22 the three witnesses in question and can reach her own
23 conclusion as to whether they even look similar in any fashion.
24 And I would represent that they don't. And that mistaking them
25 for one another is -- would not be easily done by somebody with

1 decent vision or the ability to listen.

2 Two other organizers who, as I said, don't resemble

3 Mr. Sorza, did visit Mr. Mann after the ballots were mailed.

4 Again, those were William Sanchez and Nicholas Gerber. But

5 they provided mutually corroborative testimony of a detailed

6 nature that they did not ask Mann to vote in front of them.

7 They merely asked if he had received the ballot and suggested

8 that he could check to see whether he had.

9 During Mann's own testimony, he acknowledged that the offer

10 that was made to him was not to take his ballot in possession,

11 but only to give him a ride to the post office if he was

12 interested in that. He acknowledged that the organizers were

13 providing -- trying to provide information regarding how to

14 fill out the ballot to make sure it counted, but he did not

15 allege anything specific about them providing assistance to him

16 with the ballot in filling it out in the sense that they would

17 assist him as he had the ballot in front of him. In fact, he

18 was very specific, emphatic, in fact, that he did not have the

19 ballot in front of them.

20 He told the organizers that he would get the ballot later

21 on. And so the ballot was never nearby. So it would not make

22 any sense for anyone to offer to help him fill out the ballot.

23 And he also acknowledged, Kurt Mann did, that he's training to

24 be a manager, which I think reasonably calls into question his

25 credibility, or at least factors into his credibility, as a

1 witness.

2 Finally, with respect to specific witnesses who said

3 something that even under some legal theory could plausibly be

4 objectionable, although not under controlling Board law, Macey

5 Sheets, she did not provide credible testimony of any coercion

6 or restraint in her interactions with the Union. She testified

7 that she had just awakened from a nap, when a person would not

8 be expected to be especially cogent, when she was visited. And

9 I think it was quite evident from the testimony we heard from

10 today from Mr. Sorza that she was conflating in her mind two

11 different visits.

12 Mr. Sorza testified in some detail about these two visits.

13 One which took place before the ballots were mailed in which he

14 gave some information about what would be taking place, the

15 ballots will be mailed, that she could call to have the ballots

16 sent in, and that -- or a replacement ballot sent, and that he

17 could provide her I think with a ride to the post office, if

18 she wanted to.

19 So that was an entirely different encounter previous to the

20 ballots being mailed. And she was I think quite evidently

21 conflating that incident with a latter visit, which, even she

22 acknowledged, was an extremely short visit that took place

23 after the ballots were mailed; she testified that she -- in

24 addition to that. So I think it's obvious that her testimony

25 was unclear and not consistent -- or not plausibly consistent

1 with the facts as credibly testified about here.

2 Her testimony also did not make sense. She testified that

3 Sorza -- she testified that she told Sorza that she had already

4 voted. And if that were the case, it wouldn't make any -- it

5 would not make any sense for Sorza to ask her to vote in front

6 of her (sic) since obviously her vote would have already been

7 cast and -- I think it's quite obvious it would not make sense.

8 She also acknowledged a contradiction between her written

9 statement, which I believe says that she slammed the door, and

10 her testimony here where she did not repeat that testimony,

11 or did not testify consistently with that.

12 The Employer suggested that its witnesses had no reason to

13 color their testimony since they're employees or they're --

14 well, suggested, in any case, that they don't have any reason

15 to color their testimony. And I think it should be self-

16 evident that witnesses being presented by the Employer, which

17 controls their livelihood after all, and which has been waging

18 an aggressive antiunion campaign, only small inklings of which

19 were heard about in the testimony today, and over the course of

20 a longer period, as the Region is aware, has engaged in

21 numerous unfair labor practices, as determined by an

22 Administrative Law Judge and upheld by the Board during the

23 course of the overall organizing campaign that employees in

24 those circumstances might be expected to feel some pressure to

25 provide testimony convenient to the employer.

1 But I want to stress that even if the Hearing Officer were
2 to find that Union agents solicited employees on any occasion
3 to fill out their ballot in front of them, this is not
4 objectionable conduct. Solicitation of that alleged misconduct
5 is not objectionable. In Fessler & Bowman, the Board upheld
6 the hearing officer's ruling that the union's solicitation of
7 ballots for the purposes of taking possession and mailing them
8 was not objectionable even though the Board ruled that actually
9 taking possession of the ballots could be.
10 Members Leidman (phonetic) and Walsh (phonetic) stated that
11 the mere solicitation -- that merely solicitation -- soliciting
12 does not inflict harm on the integrity of the election process.
13 They stated, quote, "Solicitation" -- ellipsis -- "does not
14 implicate the same concerns that cause us to find the ballot
15 collection objectionable. Unlike the ballot collection, the
16 solicitation of ballots do not create an opportunity for ballot
17 tampering or breach of secrecy," end quote. They concluded
18 correctly that, quote, "Solicitation does not cast out on the
19 secrety" -- "secrecy of the employees' ballots or the integrity
20 of the election process," end quote. That's at Fessler &
21 Bowman at 934.
22 They rejected the notion that potential harm to the process
23 is sufficient -- potential harm to the process is sufficient to
24 overturn election results. Providing in that quote, "Few
25 elections would withstand scrutiny if the Board were to set

1 aside" -- "set them aside based on conduct that does not
2 inflict harm on the election process," end quote. That's again
3 from Fessler & Bowman, 341 NLRB 932. And the pin site I
4 believe is 934.
5 The Hearing Officer is obviously required to follow this
6 ruling. It's the controlling case in this matter. But even if
7 it -- but it is not necessary that the Hearing Officer so far,
8 because, once again, the Employer has failed to establish the
9 asserted facts that any solicitation -- even solicitation took
10 place.
11 As explained, there's no specific and credible testimony
12 that Union organizers solicited employees to fill out their
13 ballots in front of them. And crediting the vague testimony on
14 this point by a handful of employees would require accrediting
15 testimony of witnesses who made clearly incorrect testimony
16 about the most basic possible things, like how many people were
17 present during the meeting, as in the case of Benjamin Acosta,
18 or who was present, in the case of Mann. And also putting
19 great weight so as to overturn a Board election in the absence
20 of clear and undisputed, or at least clearly credible
21 testimony.
22 So for all of the reasons that I've just laid out, the
23 Union submits that the Employer has not met its heavy burden of
24 establishing that this election should be overturned. Thank
25 you.

1 HEARING OFFICER TA: Okay. Great.

2 MR. PARRY: Can I just really quickly respond to just a

3 couple of points just really brief?

4 HEARING OFFICER TA: Go ahead.

5 MR. PARRY: Union's counsel I believe in talking about what

6 the standard is said that you actually do have to show that the

7 conduct affected the employees, and that's just not what it is.

8 And according to the Regional Director's order that directed

9 this hearing, it says -- and this is at the bottom of page 4,

10 in determining whether the set aside an election, the Board

11 applies an objective test. The test is whether the conduct of

12 a party has, quote, "the tendency to interfere with employees'

13 freedom of choice," end quote. Citing Cambridge Tool. I won't

14 put the whole thing in there because it's in the document.

15 Thus, under the Board's test, the issue is not whether a

16 party's conduct, in fact, coerced employees, but whether the

17 party's misconduct reasonably tended to interfere with the

18 employee's free and uncoerced choice in the election.

19 So that's what we're looking at. Is it something that

20 could interfere with their choice in the election or has a

21 tendency to do so. So the -- all the points that counsel made

22 about whether it actually did are simply not under

23 consideration.

24 Counsel did point out that the standard includes

25 establishing facts -- or showing facts that establish there's a

1 reasonable doubt that -- in the free choice of the election.
2 And so reasonable doubt I think is an important term there.
3 And according to Counsel's closing argument, there's no
4 reasonable doubt because, I think as he said, all the
5 employees' testimony was clearly or wildly incorrect, and on
6 even the most basic issues, I think is the term he used.
7 And, really, it's only clearly and wildly incorrect if you
8 completely credit the Union representatives' testimony and
9 don't credit the employees' testimony whatsoever. And, again,
10 we're looking at the Union people's testimony whose stated sole
11 job is to get employees to vote union and making -- and being
12 here to make sure that this election does not get overturned.
13 That's their job. That's why they're here testifying.
14 The employees who got subpoenaed -- who no one likes to get
15 subpoenaed -- and had to come here, they have every reason to
16 be angry at their employer actually when they're up there
17 testifying because they got -- because they got subpoenaed.
18 And who likes getting subpoenaed?
19 And just a couple of points on the testimony. And,
20 actually, looking at a case that I cited earlier Intertape
21 Polymer Corp., which is -- and that's versus NLRB. That's a
22 Fourth Circuit court. And that's 817 F.3d 224. And then
23 that's a case that involved removing campaign -- union campaign
24 literature from a break room. And the circuit court basically
25 said that the testimony of a couple of employees that

1 corroborated each other was enough to carry the burden to show
2 that there was improper election conduct that warranted
3 overturning the election.
4 And we look at the testimony of the witnesses, which is
5 stated on the record in their live testimony, which was also
6 set forth in their statements that they gave either like a day
7 or two after this stuff happened that corroborates their
8 testimony, you have Macey Sheets who said that she was asked
9 if -- by the Union if we can help you fill out your ballot.
10 And counsel says, you can't rely on that at all. It doesn't
11 make any sense because she said she'd already filled out her
12 ballot. Well, it only makes sense -- or it doesn't make sense
13 the way counsel put it, but it makes sense if the Union person
14 says, "Can I help you fill out your ballot," and she says, "No,
15 I've already submitted it, and that's certainly -- I believe
16 that was the testimony.
17 Well, let's talk about -- and basically the fact that those
18 kind of questions and those solicitations and statements and
19 the pressure was put on these employees is corroborated
20 independently by Macey Sheets, Kurt Mann, by Stephanie Mendez,
21 by Benjamin Acosta, all of whom said that that's what happened
22 to them. These are independently corroborated testimony by
23 these employee witnesses.
24 And so by the fact that it's employees that don't have an
25 interest in the election like the Union does, whose sole

1 purpose was to get them to vote yes and to protect the outcome,
2 those employees corroborated each other. That creates the
3 reasonable doubt in the free election.
4 And, with that, I will stop talking.
5 HEARING OFFICER TA: All right. Anything else?
6 MR. BLASI: I would just note that the Union agrees that
7 the standard is as the Employer just described and as the
8 hearing -- as the Regional Director has established it. I was
9 making a more narrow point as to it has to be conduct that
10 would affect employees, not something that nobody would ever
11 have heard of. But it was just a recitation of the general
12 standard, which is 323 NLRB 555.
13 So leaving that aside -- yeah, I mean, the Union doesn't
14 really have anything else to offer.
15 HEARING OFFICER TA: Okay. Great. Thank you both parties
16 for a very rigorously litigated case.
17 MR. PARRY: Thank you for your patience with me at least.
18 HEARING OFFICER TA: Before closing the record, I just want
19 to check in with the court reporter, that he has all the
20 exhibits.
21 And, counsel, if you can actually help me -- because I know
22 you had a lot of exhibits. I just want to make sure that we
23 have everything. So I'm going to go back to see what the last
24 exhibit number was. I think I have to 24. Is that what you
25 have?

1 MR. PARRY: That's what I have --
2 HEARING OFFICER TA: Okay.
3 MR. PARRY: -- as well.
4 HEARING OFFICER TA: Okay. So do we have Employer's
5 Exhibits 1 through 24?
6 THE COURT REPORTER: It looks like.
7 HEARING OFFICER TA: Okay.
8 THE COURT REPORTER: 24.
9 HEARING OFFICER TA: Great. And then we have I believe
10 only one exhibit from the Union --
11 MR. BLASI: That's right.
12 HEARING OFFICER TA: -- is that right? So it's Union's
13 Exhibit 1. Okay.
14 MR. BLASI: Although, for the record, the Union's prepared
15 to submit many more exhibits than were permitted.
16 HEARING OFFICER TA: Okay. Do we have an estimate of the
17 number of pages of the transcript?
18 THE COURT REPORTER: Open for today.
19 HEARING OFFICER TA: Okay.
20 THE COURT REPORTER: I've got about 250 --
21 HEARING OFFICER TA: For today?
22 THE COURT REPORTER: -- today, but --
23 HEARING OFFICER TA: Okay. Well, that's -- okay.
24 THE COURT REPORTER: I can't tell you about --
25 HEARING OFFICER TA: Times three.

1 THE COURT REPORTER: -- the rest of it.
2 HEARING OFFICER TA: Okay. Thank you very much.
3 So if there is nothing further, the hearing will be closed.
4 MR. PARRY: Nothing further from Grill Concepts Services,
5 Inc.
6 MR. BLASI: And nothing further for the Union. The Union
7 would just like to again reiterate it's appreciation for the
8 Hearing Officer's patience in this somewhat arduous proceeding.
9 HEARING OFFICER TA: Okay. The hearing is now closed.
10 **(Whereupon, the hearing in the above-entitled matter was closed**
11 **at 5:51 p.m.)**
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1 **C E R T I F I C A T I O N**

2 This is to certify that the attached proceedings before the
3 National Labor Relations Board (NLRB), Region 31, Case Number
4 31-RC-209589, Grill Concepts Services, Inc. d/b/a The Daily
5 Grill, and Unite Here Local 11, at the National Labor Relations
6 Board, Region 31, 11500 West Olympic Boulevard, 6th Floor, Los
7 Angeles, California 90017, on Wednesday, April 25, 2018, 9:35
8 a.m., was held according to the record, and that this is the
9 original, complete, and true and accurate transcript that has
10 been compared to the reporting or recording, accomplished at
11 the hearing, that the exhibit files have been checked for
12 completeness and no exhibits received in evidence or in the
13 rejected exhibit files are missing.
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18 TROY A. RAY
19 Official Reporter
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25

EXHIBIT 7

EXHIBIT 7

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC. D/B/A
THE DAILY GRILL

Employer

and **Case 31-RC-209589**

UNITE HERE LOCAL 11

Petitioner

HEARING OFFICER'S REPORT AND RECOMMENDATION ON OBJECTION

This report contains my findings of fact, conclusions, and recommendations regarding the Employer's objection to the Petitioner's and/or third parties' home visits to employees before and during the voting period of the mail ballot election. For the reasons set forth below, I recommend that the objection be overruled.

I. Procedural History

Grill Concepts Services, Inc., d/b/a The Daily Grill (the Employer) is a corporation with an office and place of business in Los Angeles, California, and is engaged in the nationwide operation of restaurants. Pursuant to a Decision and Direction of Election that the Regional Director of Region 31 (the Regional Director) issued on November 30, 2017, a mail ballot election was conducted from December 7 through 21, 2017, among a unit consisting of all non-supervisory employees employed by the Employer at its restaurant located at 5410 West Century Boulevard, Los Angeles, California 90045. A tally of the ballots issued on December 22, 2017 and showed that UNITE HERE Local 11 (the Petitioner) received a majority of the votes. Out of the 76 eligible voters, 29 cast ballots in favor of the Petitioner, and 25 cast ballots against representation. There were 7 void ballots and no challenged ballots.

The Employer timely filed its Objections to Election with Offers of Proof (Employer's Objections) on December 29, 2017. In the Employer's Objections, the Employer objected to the appropriateness of the Regional Director's direction of a mail ballot election. The Employer also alleged in its objections that the Petitioner and/or third parties visited employees' homes to coerce them to vote in the election, to vote for the Petitioner, and/or to fill out their mail ballot in the presence of the Petitioner's representatives and/or third parties. In a Partial Decision on Objections and Notice of Hearing that issued on April 11, 2018, the Regional Director overruled the Employer's objections as they related to the direction of a mail ballot election. As to the objections related to the home visits (referred to as the Home Visits Regarding Ballots Objection in the Partial Decision on Objections and Notice of Hearing, a term that I also employ here in the interest of consistency), the Regional Director ordered that a hearing be conducted to give the parties an opportunity to present evidence. Accordingly, from April 23 to 25, 2018, as the Hearing Officer designated to conduct the hearing and to recommend to the Regional Director

whether the Employer's objections are warranted, I heard testimony and received into evidence relevant documents. At the hearing, all parties were afforded the right to call, examine, and cross-examine witnesses, to present any relevant documentary evidence, and to argue their respective legal positions.

This Report contains my findings and recommendations with regard to the Home Visits Regarding Ballots Objection. The findings of fact, credibility resolutions and recommendations to the Regional Director contained herein are based upon my review and evaluation of all testimony in light of the demeanor of the witnesses, the logical probability of testimony, and the record as a whole. Based upon my careful consideration of the entire record and all evidence presented herein, and the application of relevant case law, I make the following findings of fact, resolutions of credibility, and recommendations.

II. The Home Visits Regarding Ballots Objection

The order directing hearing in this matter instructs me to resolve the credibility of witnesses testifying at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with one another, with documentary evidence, or with undisputed evidence, as well as testimony that is uncontested. Omitted testimony or evidence is either irrelevant or cumulative. Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of the objection related to the witnesses' testimony.[1]

A. The Employer's Objections

In the Employer's Objections, the Employer alleges that "the Union came unbidden to employees' homes, unlawfully attempted to coerce them into filling out their ballots in front of Union representatives, and unlawfully attempted to coerce them into voting for the Union." P. 4. The Employer further alleges that during the home visits, representatives from the Union "refused to leave . . . sometimes even asking to 'help' the employee in filling out the ballot." P. 7.

B. Record Evidence

1. Testimony

At the hearing, the Employer put on nine of its employees to testify about the home visits: Benjamin Acosta Amezaga (Acosta), Ashlynn Camberos (Camberos), Lucas Chim (Chim), Robin Gunn (Gunn), Kurt Mann (Mann), Kimberly Mendez (K. Mendez), Stephanie

[1] Where any witness has testified in contradiction to the findings herein, his or her testimony has been discredited as being in and of itself not worthy of credence or because it conflicted with the weight of other credible evidence. See *Bishop and Malco, Inc. d/b/a Walker's*, 159 NLRB 1159 (1966).

Mendez (S. Mendez), Jose Palacios (Palacios), and Macey Sheets (Sheets). Eight of the nine witnesses testified credibly to their experiences with the Union and/or third parties visiting their homes. Acosta's testimony was the only one with portions of confusing and/or conflicting testimony.[2]

These employees testified about the Union and/or third parties visiting them at home.[3] All nine employees testified that the Union and/or third parties did not make any threats to them during the home visits.[4] [Tr. 74-75, 109, 112, 138-39, 144-45, 190, 202, 237-38, 242, 277, 278, 307, 339, 404, 425]. Acosta, Chim, K. Mendez, Camberos, Gunn, Sheets, and S. Mendez testified that during the home visits, the Union and/or third parties offered information to the employees about the benefits of unionization or solicited the employees' support for the Union. [Tr. 23, 26, 88, 110, 124, 190, 223, 242, 260, 267, 292-93, 315, 403]. With regard to the ballots, several of the employees testified that the Union and/or third parties asked them if they received their ballots [Tr. 91, 167, 222, 317]; if they needed help with their ballots [Tr. 37, 128, 142, 168, 200, 222, 317]; and if they needed help going to the post office to mail their ballots[5] [Tr. 129, 143, 222-23, 319].

Acosta testified that three Union representatives (two women and a man) were outside of his house on the day that his ballot arrived in his mailbox. [Tr. 36]. Acosta stated, "When I confronted them, I said to them, I didn't like this for them to be following me, for them to be looking for me. When I opened the mailbox, I took out the voting ticket. And a lady told me, open it. And I said, excuse me, that's personal, please, leave me alone. No. But they kept explaining to me, like, oh, Mr. -- we're going to help you fill it out." [Tr. 37]. When later asked how he knew that the Union wanted to help him fill out his ballot, Acosta testified, "Well, the lady told me clearly." [Tr. 77] Similarly, in a statement that Acosta drafted on December 12, 2017, he wrote, "[The Union] wanted for me to take it out, the [voting] ticket, for them to explain to me how to vote." [Tr. 43, Employer's Exh. 1].

K. Mendez and S. Mendez, who are sisters and both employees of the Employer, testified about a home visit on the day that the ballot had arrived in their mailbox. A Union representative and a former co-worker were outside of K. Mendez's house when she went to retrieve her mail, which included the ballot, from her mailbox. [Tr. 126-27]. K Mendez testified, "They were offering to help me vote. . . . They said that they didn't think that I was going to vote. And I told them I'm pretty sure I'm not a child. I know how to vote. . . . They just said they think I didn't -- I wasn't going to do it right and they offered to like take me to the post office. But I was like, no, I know how to." [Tr. 128]. When questioned if the Union and/or third parties asked her to open her ballot and fill it out in front of them, K. Mendez responded, "Well, yeah, pretty much, since they were telling me that they wanted to help me." [Tr. 129]. When questioned again whether the Union and/or third parties asked her to vote in front of them so as to ensure that she voted for the Union, K. Mendez replied, "They asked me if I was onboard with them, and they believed that I

[2] The lack of clarity in sections of his testimony appears to be attributable to misunderstandings in the language interpretation.

wasn't going to be onboard with them. And I told them I don't think I'm onboard with you." [Tr. 129].

Similarly, S. Mendez testified about the same incident, stating that she and K. Mendez were inside the house when they saw the Union representative and former co-worker outside of the house. [Tr. 371]. S. Mendez had recalled seeing the ballots in the mailbox earlier in the day, and she testified that she sent K. Mendez outside to retrieve the mail because "we were told that we weren't allowed to talk to anyone about our votes, and to make sure that nobody knew when we were going to send them out and nobody tried to send them out for us. And just because I didn't really like trust them in a way." [Tr. 371-72]. S. Mendez stood inside at the house's threshold as K. Mendez interacted with the Union representative and former co-worker. [Tr. 374]. S. Mendez testified that she heard either the Union representative or the former co-worker ask K. Mendez if she needed help with the ballot and if she knew where she was going to mail the ballot. [Tr. 374-75]. Shortly thereafter, K. Mendez returned inside the house.[6] [Tr. 375]. S. Mendez testified that she did not hear the Union representative or former co-worker ask K. Mendez to vote or fill out the ballot in front of them. [Tr. 384].

All nine of the employees' testimonies show that after the ballots had been mailed out, the nine employees did not open the ballots in the presence of the Union and/or third parties

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[3] Acosta was visited three times [Tr. 21]; Chim was visited twice [Tr. 87]; K. Mendez was visited four times, but was actually home only twice [Tr. 122, 124-26, 128]; Camberos was visited five times, but only interacted with the Union and/or third parties twice [Tr. 156, 198]; Mann was visited twice [Tr. 218]; Palacios was visited twice [Tr. 259]; Gunn was visited twice, but was home only once [Tr. 290]; Sheets was visited twice [Tr. 312]; and S. Mendez was visited four times, but was home only twice [Tr. 360, 376].

[4] For example, when asked if he was threatened by the Union, Acosta responded, "No, no. No, they didn't threaten me at all. They just wanted to convince me. That's it." [Tr. 74].

[5] Sheets testified: "And [the Union] just wanted to confront like, did you get the ballot, do you need help with the ballot, do you need us to take it to the post office for you." [Tr. 317-18]. Similarly, Mann testified: "[The Union] had asked me if I received my ballot, asked me if I needed help filling it out or I needed help taking it to the post office to mail, or help getting it all filled out and everything sent." [Tr. 222-23].

[6] S. Mendez testified that after K. Mendez returned to the house, K. Mendez "said that they were trying to help her, I guess, with her ballot and trying to help her fill it out, or something like -- along those lines." [Tr. 375]. Similarly, at the hearing, the Employer moved to admit S. Mendez's handwritten statement dated December 9, 2017 (Employer's Exhibit 22) into evidence, as well as the typed version of the statement (Employer's Exhibit 24). These statements were about the home visit from the Union representative and former co-worker outside of the house as K. Mendez was collecting the ballot from the mailbox. I partially admitted the statements into evidence, excluding as hearsay, over the Employer's objections, the portion that read, "And told me they were trying to make her vote in front of them and when she said no, that she was probably not going to vote yes, they got mad and said what I heard and left."

during the home visits.[7] [Tr. 77, 92, 110, 128-30, 144, 198-200, 240-41, 278-79, 307-08, 340-41, 410]. Mann and K. Mendez explicitly testified that the Union and/or third parties did not ask them to hand over their ballots. [Tr. 143, 239].

Acosta, Chim, Palacios, and K. Mendez testified that when they requested the Union and/or third parties to leave their homes, the Union and/or third parties left without resistance. [Tr. 37, 110, 145-46, 261]. Mann testified that he requested the Union and/or third parties to leave his home "a couple times," but they wanted to continue the conversation and interjected with new pieces of information about why it was a good idea to have a union. [Tr. 243-44].

After the election was completed, the employees testified that their co-workers continued to discuss the home visits. Camberos testified that her co-workers continued to talk about the home visits. [Tr. 215] Mann testified that after the election, he continued to talk about the home visits with four to five co-workers every couple of days or "just in passing." [Tr. 246-47]. Mann stated that discussion of the home visits has diminished with time. [Tr. 247-48]. Palacios testified that his co-workers talked about the home visits in the first few days after the election, but in the last four months, they have not talked about it at all. [Tr. 284]. Gunn testified that her co-workers have not discussed the home visits at all after the election. [Tr. 309-10]. Sheets testified that her co-workers continue to talk about the home visits a couple of times a month and they bring it up "here and there." [Tr. 355-56]. Sheets stated that this rate of discussion has stayed the same since the completion of the election. [Tr. 356]. S. Mendez testified that in the last four months, her co-workers talked about the home visits a couple of times per month. [Tr. 426-27].

Camberos testified that she had her ballot mailed to her mother's address.[8] [Tr. 167, 199-200]. Several of the employees also testified about their perceptions of the Union and the election process.[9]

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[7] Acosta and K. Mendez had their ballots in their possession in the presence of the Union and/or third parties, but there is no evidence that the ballots were actually opened during that time. [Tr. 77, 128-30, 144, 410].

[8] Camberos' reason for why she did this was slightly unclear. At one point, she testified that she had the ballot sent to her mother's address "because [the Union] was coming to my house. You never know. . . . [My mother] has a gate and everything, so." [Tr. 167]. But later, she testified, ". . . I had [the ballot] mailed to my mom's house. . . . Because my address for The Daily Grill was my mother's address. . . . And I had just moved to this house." [Tr. 200].

[9] Although the standard for setting aside an election is an objective one, the employees also provided subjective testimony. K. Mendez and Gunn testified that they did not feel pressured by the Union and/or third parties during the homes visits. [Tr. 128, 308]. Camberos and Sheets testified that they were annoyed by the home visits. [Tr. 205, 318]. Acosta and Mann testified that they felt pressured by the Union and/or third parties. [Tr. 37, 242] Acosta said he felt pressured when he saw the Union and/or third parties waiting outside of his mailbox for him. [Tr. 37]. Mann stated that he felt "a little pressured and like they wouldn't leave if I didn't give them the ballot or take the ballot with them or have them help me fill it out." [Tr. 242]. Camberos, Mann, Sheets, and S. Mendez expressed concern about the anonymity of their ballots. [Tr. 170, 225, 320-21, 371-72].

Union organizer Sergio Sorza ("Sorza") also provided credible testimony. He testified that in total, he participated in about thirty to forty home visits, and he was aware of about forty home visits by other Union personnel that he did not participate in. [Tr. 453-54]. During the voting period, after the ballots had been mailed out, he participated in eight to twelve home visits and he was aware of other Union personnel participating in no more than twenty home visits during this time. [Tr. 466]. He stated that the primary purpose of his home visits was to make sure that the employees had the opportunity to cast their ballots to vote. [Tr. 468-69]. When asked to elaborate, Sorza replied, "[T]o make clear to employees the common knowledge of the instructions that folks had to follow an [*sic*] order for their vote to count. Which included their signature on the back on the sealed envelope." [Tr. 469]. He also stated that when he offered to help the employees with their ballots, he was offering assistance with transporting the employees to the post office so they could mail their ballots. [Tr. 463-64]. He testified that there was never a point when an employee filled out their ballot in front of him. [Tr. 470].

2. Documentary Evidence

The Employer submitted as exhibits handwritten statements from seven of the nine employees.[10] These statements were written shortly after each of the employees had been visited by the Union and/or third parties, and they recount the same information about the home visits that the seven employees testified to.[11]

III. Analysis and Recommendation

A. Objectionable Conduct

Under Board law, it is lawful for unions to visit individual employees at their homes to present views on unionization during mail ballot elections. *San Diego Gas and Electric*, 325 NLRB 1143, 1149 (1998); *see also Plant City Welding & Tank Co.*, 119 NLRB 131, 133–34 (1957), rev'd on other grounds, 133 NLRB 1092 (1961). Home visits by union representatives are unobjectionable as long as they are unaccompanied by threats or other coercive conduct. *Longwood Security Servs., Inc.*, 364 NLRB No. 50, slip op. at 3 (2016), citing *Canton, Carp's, Inc.*, 127 NLRB 513, 513 fn. 3 (1960). However, the Board has indicated that evidence of employees voting in the presence of union representatives is potentially grounds for holding a hearing or setting aside an election. *Continental Bus System, Inc.*, 104 NLRB 599, 602 (1953).

Nonetheless, it is lawful "to engage in persistent union solicitation even when it annoys or disturbs the employees who are being solicited." *Ryder Truck Rental, Inc., d/b/a Ryder Transportation Services*, 341 NLRB 761 (2004); *Bank of St. Louis*, 191 NLRB 669 (1971); *see also Kern's Bakery, Inc.*, 154 NLRB 1582 (1965). During solicitation, a union "may ask employees whether they favor the union so long as it does not coerce employees while

[10] The Employer did not submit statements from K. Mendez and Gunn.
[11] As discussed in note 6, *supra*, I excluded as hearsay a portion of S. Mendez's handwritten statement and its corresponding transcription.

conducting its poll." *Fessler & Bowman, Inc.*, 341 NLRB 932 (2004), citing *Kusan Mfg. Co.*, 267 NLRB 740, 746 (1983), enfd. 749 F.2d 362 (6th Cir. 1984). However, while the Board has found that a union's solicitation of voters' ballots did not constitute objectionable conduct, the actual collection or otherwise handling of voters' mail ballots is objectionable and may form the basis for setting aside the election. *Fessler & Bowman, Inc.*, 341 NLRB at 934. The Board reasoned that unlike ballot collection, which gives a party to the election exclusive control of the ballot, solicitation of the ballots does not implicate the same concerns about tampering or breach of secrecy. *Id*.

Here, the evidence shows that the Union and/or third parties did not engage in objectionable conduct during the home visits. All nine employees testified that the Union and/or third parties did not threaten them. The Union and/or third parties discussed unionization with the employees and operated within the scope of soliciting support for the Union. The Union and/or third parties also asked the employees if they received their ballots, which is not unlawful conduct.

The Union and/or third parties offered to help the employees vote, but the testimony about what was meant by "helping" is equivocal. Sorza testified that this meant assisting with transportation to the post office, and ensuring that the employees signed the back of the sealed envelope and followed voting instructions. [Tr. 463-64, 469-70]. Meanwhile, Acosta stated that the Union and/or third parties said they wanted to "help [him] fill it out" and "explain to [him] how to vote," but he did not further clarify what this meant. [Tr. 37, 43, Employer's Exh. 1]. Similarly, K. Mendez testified that the Union and/or third parties offered to help her vote because they did not think that she would vote at all. [Tr. 128]. When asked pointedly whether the Union and/or third parties asked her to open her ballot and vote in front of them, K. Mendez responded non-definitively: "Well, yeah, pretty much, since they were telling me that they wanted to help me." [Tr. 129]. Her answer suggests that she assumed that the Union's and/or third parties' offer to help her vote meant that they wanted her to vote in front of them, but not that they had explicitly requested this of her. When asked again if the Union and/or third parties had asked her to vote in front of them, K. Mendez was again equally non-definitive: "They asked me if I was onboard with them, and they believed that I wasn't going to be onboard with them. And I told them I don't think I'm onboard with you."[12] [Tr. 129]. Ultimately, however, the testimony overwhelmingly establishes that regardless of what the employees and the Union subjectively understood "helping" to mean, the ballots were never opened in the presence of the Union and/or third parties, and thus, the latter never had "exclusive control" of the mail ballots. *Fessler & Bowman*, 341 NLRB at 934; see also *Continental Bus System*, 104 NLRB at 602.

[12] S. Mendez testified that K. Mendez had told her that the Union and/or third parties had tried to help K. Mendez fill out her ballot, [Tr. 375], and in her written statements, S. Mendez stated that K. Mendez had told her that the Union and/or third parties had tried to make K. Mendez vote in front of them, Employer's Exhibits 22 and 24. I did not give weight to these portions of S. Mendez's testimony and written statements because they constitute hearsay. See notes 6 and 11, *supra*. The Employer did not re-call K. Mendez to corroborate S. Mendez's testimony and written statements.

Similarly, there was testimony that the Union and/or third parties offered to help mail the ballots, with some employees testifying that the Union and/or third parties offered to take the ballot to the post office, [Tr. 238, 317-18, 342], and some employees testifying that the Union and/or third parties offered to drive the employees to the post office, [Tr. 129, 143, 222-23, 238, 319, 341]. Regardless, there is no evidence that the Union and/or third parties actually took possession of any of the ballots. And the Board has held that the solicitation of ballots does not constitute objectionable conduct, and thus, even if the Union and/or third parties had solicited the ballot from the employees to take to the post office, it would not be objectionable.[13] *Fessler & Bowman*, 341 NLRB at 934.

B. The Burden of Proof and the Standard for Setting Aside Elections

It is well settled that "[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, "the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989). To prevail, the objecting party must establish facts raising a "reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enfd. 414 F.2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at Boca Raton*, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence that unit employees knew of the alleged coercive incident).

In determining whether to set aside an election, the Board applies an objective test. The test is whether the conduct of a party has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool Pearson Education, Inc.*, 316 NLRB 716 (1995). Thus, under the Board's test the issue is not whether a party's conduct in fact coerced employees, but whether the party's misconduct reasonably tended to interfere with the employees' free and uncoerced choice in the election. *Baja's Place*, 268 NLRB 868 (1984). See also, *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers a number of factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to which the misconduct persists in the minds of employees in the voting unit; (6) the extent of

[13] The Board, however, has expressed "disapproval of this practice." *Fessler & Bowman*, 341 NLRB at 934.

dissemination of the misconduct to employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the opposing party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Having determined that the Union and/or third parties did not engage in any objectionable conduct, I will nevertheless conduct an analysis to determine if the home visits reasonably tended to interfere with the employees' free and uncoerced choice in the election. I find that they did not.

1. Number of Incidents

The record shows that the Union and/or third parties visited the homes of the nine employees a total of twenty-six times.[14] Of those twenty-six visits, the employees interacted in person with the Union and/or third parties eighteen times; the employees were not home during the remainder of the times that the Union and/or third parties visited.[15] Sorza testified that he personally conducted thirty to forty home visits and was aware of about forty home visits conducted by other Union personnel.

This factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice. This number of home visits is not unusual and the Board has not disapproved of a similar rate of home visits.[16]

2. Severity of Incidents and Likelihood of Causing Fear Among Employees in the Voting Unit

There is no evidence in the record that the employees were fearful, or that the Union's and/or third parties' conduct during the home visits likely caused fear among the employees in the voting unit. All nine employees testified that the Union and/or third parties never threatened them. At most, the severity of the home visits reached only a level of irritation. Several of the employees described the reactions of their co-workers, who were presumably in the voting unit, as annoyed with the home visits [Tr. 215, 229, 355]; angry and upset [Tr. 265]; and upset but not afraid [Tr. 284]. Using an objective standard, the evidence shows that the Union's conduct during the home visits was persistent but not threatening, and thus the home visits had a

[14] See note 3, *supra*.
[15] [Tr. 124-26, 198, 290, 360].
[16] See, e.g., *Independence Residences, Inc*., 358 NLRB 362, 369 (2012) (adopting the administrative law judge's decision and findings of fact, which noted that during a mail ballot election for a proposed bargaining unit of about 100, eleven union organizers made home visits and one union representative "alone visited 35-50 different . . . employees during the 'blitz,' and of those, some were visited as many as five times.").

likelihood of causing annoyance, but not fear.[17] Therefore, this factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

3. Number of Employees in the Voting Unit Subjected to the Alleged Misconduct

According to Sorza, the Union and/or third parties conducted about eighty home visits. Of that number, the record is unclear as to how many were repeat visits to the same employee, and how many were visits in which the employee was actually home and interacted with the Union and/or third parties.[18] Nevertheless, given that the voting unit consisted of seventy-six eligible voters, and eighty home visits were made, it is clear that a significant number of employees in the voting unit were subjected to home visits. This factor weighs in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice, to the extent that the home visits involved any objectionable conduct.

4. Proximity of Alleged Misconduct to Date of Election

The record demonstrates that the home visits occurred both before and during the voting period. During the voting period, the Union and/or third parties participated in about thirty home visits. [Tr. 465-66]. In its closing argument, the Employer claimed that these thirty visits were tantamount to electioneering at the polls because "the polling place is effectively [the employees'] home." [Tr. 788]. While the home can be a polling place, it is not necessarily so. Moreover, the record is clear: there is no evidence that any ballots were ever opened in the

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[17] There is some testimony that the employees had concerns about the security of their ballots. Camberos testified that she had the ballot sent to her mother's house because it was gated and the Union had been coming to her house. However, she later testified that she had her ballot mailed to her mother's address because that was the address on file with the Employer and Camberos had just moved to a new house. S. Mendez also testified that she sent K. Mendez out to retrieve the mail because the Union representative and former co-worker were by the mailbox and she did not trust them with the ballots. K. Mendez's testimony did not necessarily corroborate this, though. On direct examination, K. Mendez was asked, "Oh, so you -- were you outside checking the mail when they showed up?" [Tr. 126]. K Mendez responded, "Yeah." [Tr. 126]. The rest of her testimony similarly describes this incident as one in which she is outside checking the mail and encounters the Union representative and former co-worker. [Tr. 128, 142]. Camberos, Mann, and Sheets testified that they had concerns about the anonymity of their ballots. [Tr. 170, 225, 320-21]. However, Camberos testified that the home visits were "part of" of the reasons for her concern. [Tr. 170]. Mann's and Sheets' concerns about anonymity stemmed from their respective signatures on their sealed envelopes when the Union and/or third parties offered to help them mail their ballots. [Tr. 225, 320]. This concern, though, is rooted in Board requirements and since there is no evidence that Mann's or Sheets' ballot was ever handed over to the Union and/or third party, the concern is mitigated. Ultimately, because the standard is an objective one, the employees' subjective concerns about the security and anonymity of their ballots are given less weight.

[18] There is some testimony that co-workers told several of the nine employees that the co-workers had also been visited at home by the Union and/or third parties, [See Tr. 113, 213-14, 245-46, 264, 283-84, 309, 426], but this testimony is arguably hearsay. The same problem also exists in terms of how many of those home visits involved the co-worker being home and interacting with the Union and/or third parties.

presence of the Union and/or third parties. Also, the voting period spanned two weeks, and the record does not show when the thirty home visits occurred relative to when the employees actually voted. Therefore, this factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

5. Degree to Which the Alleged Misconduct Persists in the Minds of Employees in the Voting Unit

Several of the nine employees testified that their co-workers, who are presumably in the voting unit, continued to discuss the home visits after the election was completed. However, the frequency of these discussions does not demonstrate that the home visits persisted to a high degree in the minds of employees in the voting unit. Mann testified that discussion of the home visits occurred "just in passing" and continued to dissipate with time. Palacios testified that in the last four months, his co-workers did not discuss the home visits at all. Gunn testified that she never heard any discussion of the home visits after the election. Sheets and S. Mendez both testified that their co-workers discussed the home visits a couple of times per month. In fact, testifying about her co-workers' discussion of the home visits, Sheets stated: "they want to just drop it." [Tr. 356]. Thus, this factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

6. Extent of Dissemination of the Alleged Misconduct to Employees Who Were Not Subjected to the Misconduct But Who Are in the Voting Unit

The record demonstrates that several of the nine employees discussed their home visits with other co-workers, who were presumably in the voting unit. Chim testified that he spoke with twenty co-workers. [Tr. 119]. K. Mendez testified that she spoke with only her sister. [Tr. 146]. Camberos testified that she spoke with seven co-workers. [Tr. 213-15]. Mann testified that he spoke with four or five co-workers. [Tr. 245]. Palacios testified that he spoke with two or three co-workers. [Tr. 283]. Gunn testified that she spoke with about six co-workers. [Tr. 309]. Sheets testified that she did not discuss the home visits with any of her co-workers. [Tr. 355]. S. Mendez testified that she spoke with about two co-workers. [Tr. 425-26].

The evidence is clear that there was dissemination of the fact that the Union was conducting home visits. However, the evidence also shows that the employees disseminated this information to co-workers who, themselves, also received home visits from the Union.[19] [Tr. 113, 213-14, 245-46, 264, 283-84, 309, 426]. Therefore, the record does not evince wide dissemination of the home visits to members of the voting unit who were not subjected to the home visits. Thus, this factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

[19] This testimony is arguably hearsay. Absent this testimony, the evidence is equally lacking that there was dissemination to other employees in the voting unit who were not subjected to home visits.

7. Effect of Any Misconduct by Non-Objecting Party to Cancel Out Effects of the Misconduct Alleged in the Objection

There is no evidence of an effect of any misconduct by the Employer to cancel out the effects of the misconduct alleged in the objection. Thus, this factor weighs in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

8. Closeness of the Vote

The Union won the election by a four-vote margin; seven ballots were voided. The Employer submitted a statement by Sheets (Employer's Exhibit 20), indicating that she did not sign the back of the sealed envelope because she was concerned about the anonymity of her ballot as a result of the home visits. [See also Tr. 332-33]. Even if Sheets' ballot was counted,[20] and assuming she voted against representation by the Union, the Union would still have won a majority of the votes. Moreover, the Employer has not provided evidence that the remaining six voided ballots were similarly discounted because of the home visits.

However, assuming the other eight employees felt coerced to vote for representation by the Union, their changed votes would impact the outcome of the election. Therefore, given the number of employees who testified relative to the victory margin, this factor weighs in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

9. Degree to Which the Alleged Misconduct Can Be Attributed to the Party Against Whom Objections Are Filed

The home visits, which are the basis of the Employer's objections, can be completely attributed to the Union. To the extent that the home visits involved any misconduct, which I have found that they did not, this factor would weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice.

C. Recommendation

On balance, the evidence and law weighs against directing a new election.[21] The Employer did not carry its burden of proving that the Union and/or third parties engaged in

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[20] If anything, that Sheets was not aware that her failure to sign the sealed envelope would void her ballot supports the Union's expressed concerns about employees not properly completing their ballot, and thus their decision to conduct home visits to offer assistance.

[21] In its closing argument, the Employer supported its position by citing three cases in which the courts directed a new election: *Super Thrift Markets, Inc*., 233 NLRB 409 (1977); *Waste Management, Inc*., 330 NLRB 634 (2000); and *Intertape Polymer Corp*., 801 F.3d 224 (4th Cir. 2015). In *Super Thrift Markets*, the Board directed a new election because the employer made coercive statements during the pre-election period to two employees, in violation of Section 8(a)(1) of the Act. Here, there is no evidence that the Union and/or third parties made coercive statements during the home visits, regardless of whether it rose to the level of an actual unfair labor practice or not. And contrary to the Employer's contention, *Waste*

objectionable conduct during the home visits, or that the home visits tended to interfere with the employees' free and uncoerced choice in casting their votes in the representation election. Accordingly, I recommend that the Home Visits Regarding Ballots Objection be overruled in its entirety.

IV. CONCLUSION

Based on the foregoing, and as noted above, the Employer has failed to establish that the Union and/or third parties engaged in objectionable conduct during the home visits or that the home visits reasonably tended to interfere with employees' free choice. Therefore, I recommend that the Employer's Home Visits Regarding Ballots Objection be overruled and that a Certification of Representative be issued to the Union.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 31 by **June 21, 2018**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, Region 31, 11500 West Olympic Boulevard, Suite 600, Los Angeles, CA 90064.

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 5:00 p.m. on the due date. If E-Filed, it will be considered timely if the transmission of the entire document

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Management did not merely involve an employer removing union postings. [Tr. 787]. In that case, the Board directed a new election also because the employer threatened to terminate an employee for defacing the employer's anti-union campaign literature. *Waste Management*, 330 NLRB at 636. In the present case, there is no evidence of the Union and/or third parties making any threats to the employees. Finally, the Fourth Circuit did not overturn the election in *Intertape Polymer*. The Court remanded the case back to the Board and stated that because it affirmed only two of the three rulings by the Board, the Board would "find it necessary to reconsider its decision to direct a second election." 801 F.3d at 241. Additionally, while the Court did hold that interrogations of employees about their union sentiment is not unlawful *per se*, and that such interrogations violate Section 8(a)(1) of the Act if they are coercive in nature, this was the standard the Court applied for determining unfair labor practices and not for setting aside elections. *Intertape Polymer*, 801 F.3d at 230-31. I disagree with the Employer's reading of these three cases to mean that the standard for setting aside an election is a *de minimis* one. [Tr. 785-86]. If anything, the burden of proof for setting aside an election "is a heavy one." *Lockheed Martin*, 331 NLRB at 854; *Delta Brands*, 344 NLRB at 253.

through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: June 7, 2018

/s/ Lynn Ta

_____

Lynn Ta, Hearing Officer
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Ste. 600
Los Angeles, CA 90064

EXHIBIT 8

EXHIBIT 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, Inc., d/b/a
THE DAILY GRILL,

Employer,

and **Case No. 31-RC-209589**

UNITE HERE LOCAL 11,

Petitioner.

EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND RECOMMENDATIONS

Employer/Respondent, Grill Concepts Services ("Employer") respectfully submits the following exceptions to the Hearing Officer's June 7, 2018 Report and Recommendations on Objection ("RRO") in the above-captioned case overruling Employer's objections to the conduct of the election, pursuant to National Labor Relations Board Rules and Regulations section 102.69.

INTRODUCTION

The RRO subject to these exceptions follows an evidentiary hearing on Employer's objections to the election based on the Union's misconduct in visiting voting employees' homes, unwelcomed, during the voting period to coerce their votes. Throughout this matter, Employer has also objected to the Region's extraordinary departure from its "longstanding policy" of holding manual elections by ordering a mail ballot election. (See Case Handling Manual § 11301.2.) Employer objected to a mail ballot election from the outset, particularly out of concern that it would enable the Union to unduly influence the vote through employee coercion. These fears were warranted, as several employees alerted Employer to unwelcomed home visits and intimidating

tactics by the Union.

The evidentiary hearing on Employer's objections lasted three days, with testimony from nine employee witnesses, each of whom testified that the Union visited their homes without welcome, and made efforts to coerce their votes. The Hearing officer also took testimony from several Union witnesses, each of whom attempted to refute the testimony of the employee witnesses. In effect, the Union's strategy at the hearing amounted to calling each of the testifying employees liars. This tactic was surprising and deplorable, particularly from a Union who throughout this process has pledged to these employees that it represents their interest, and seeks to bring them "dignity and respect" in their workplace. Rather than offer the testifying employees that dignity and respect, it called them liars when they spoke out about the Union's misconduct.

The Hearing officer issued the RRO on June 7, 2018, finding insufficient evidence of Union misconduct upon which to overturn the election and order a new one. The Hearing Officer's summary of the record evidence fails to take into account critical testimony by several witnesses that sets forth the Union's objectionable conduct during the Union's home visits and the coercive effect of these visits on the employees' free choice in this election.

EXCEPTIONS

<u>Exception No. 1</u>: The Hearing Officer erred in finding that the "Union and/or third parties did not engage in objectionable conduct during the home visit." (RRO at p. 7).

Union home visits are objectionable when the visits are accompanied by *other coercive conduct*. (*See Longwood Security Servs., Inc.*, 364 NLRB No. 50, slip op. at 3 (2016) (emphasis added). Thus, objectionable conduct can be established by relying upon evidence that either implicates or suggests coercive conduct. After listening to the testimony of nine different witnesses, the Hearing Officer concluded that, "the Union and/or third parties did not engage in

objectionable conduct during the home visits" as "[a]ll nine employees testified that the Union and/or third parties did not threaten them." (RRO at p. 7). The Hearing Officer further made a sweeping conclusion that "there [was] no evidence that the Union made coercive comments during the home visits, regardless of whether it rose to the level of an actual unfair labor practice or not." (RRO at p. 12, FN 17).

The Hearing Officer conveniently ignores direct testimony from these same nine employees regarding the Union and/or third parties' coercive comments to employees during the unwelcome home visits, which demonstrably affected their voting decisions and conduct in some instances. In *Milchem, Inc*., the Board set aside election results after finding that a Union member's conversations "with prospective voters waiting to cast their ballots, regardless of the content of the remarks exchanged, constitutes conduct which, in itself, necessitates a second election." *Milchem, Inc*., 170 NLRB 362 (1968). There, the Board found that, the potential for distraction, last minute electioneering or pressure, and unfair advantage from prolonged conversations between representatives of any party to the election and voters waiting to cast ballots is of a sufficient concern to warrant a strict rule against such conduct . . ." *Milchem, Inc*., 170 NLRB 362 (1968). Similarly, here, the Union's conduct during these home visits is of significant concern that necessitates setting aside the election results. Multiple witness testimony proves that during the election period, Union representatives visited employees' homes uninvited on the day ballots were expected to arrive in the mail, often waiting for employees to come home and open their ballots. During these unwelcome visits, the Union made several coercive comments and remarks towards employees to clearly designed to coerce or intimidate the employees into voting for the Union.

In *Super Thrift Markets, Inc*., 233 NLRB 409, the Board directed a new election after

finding that "the Respondent engaged in a number of interrogations and a serious threat; that, i.e., working conditions might change if the Union won the election . . ." (*Super Thrift Markets, Inc*., 233 NLRB 409, 410 (1977). Also, in *Intertape Polymer Corp. v. N.L.R.B.,* the Court held that the "[q]uestioning or interrogation of employees about their union sentiments is not per se unlawful under the Act, such questioning will rise to the level of a Section 8(a)(1) violation if it is *coercive in nature*." (*Intertape Polymer Corp. v. N.L.R.B.*, 801 F.3d 224, 230–31 (4th Cir. 2015) (emphasis added). Here, similar to the comments Respondent made in both *Super Thrift Markets, Inc.* and *Intertape Polymer Corp.* that warranted setting aside the election results, the Union made comments to multiple employees regarding how voting for or against the Union would affect their job security and working conditions – these comments are coercive in nature. Kurt Mann testified that the Union made him promises regarding job protection and benefits. (Tr. 222:24-223:1-12 ". . . It wasn't so much specifics, as it was in comparison to another deal they got at a different hotel. They were just telling us, or telling me that things they had received for this hotel and they could get us the same thing or better. It was mostly, you know, insurance, wages, protection, stuff like that"). Robin Gunn testified that the Union visited her and told her the following:

> The Daily Grill's Contract was going to be up, and that Marriott was taking over, and Marriott was a union. And for me to, *in a sense secure my position and my schedule, that it would probably be good to unionize*. (Tr. 292:16-26, 306:18-24) (emphasis added).

Also, Stephanie Mendez testified that she overheard the Union tell her sister, Kimberly Mendez, that, "she would be hurting other people", referring to her fellow co-workers, if she voted against the Union. (Tr. 380:1-15). It is evident, that during these home visits, the Union engaged in objectionable conduct and made coercive comments that improperly leveraged the employee's job security against Union promises to coerce employees into voting for the Union.

The coercive effect of these home visits is prevalent through various employees' behaviors.

Stephanie Mendez and her sister, Kimberly Mendez, felt the need to run outside and grab their ballots out of the mailbox upon seeing Union members outside their homes. (Tr. 371:10-372:8). Ashley Camberos even changed her address with Employer to re-direct her ballot to her mother's home to avoid receiving her ballot in front of the Union. (Tr. 167:18-168:13). Thus, the effect of this objectionable coercive conduct is exemplified through employee testimony that the Hearing Officer chose to ignore.

In addition, the Union visited the employees' homes with a former employee whom Employer had previously terminated. Stephanie Mendez testified that the terminated employee's presence "was meant to persuade the employee to feel like [they] should have a Union because of an incident that happened with [the former employee]. And [she felt] like it was just to . . . get sentiment from people and make people feel like [voting for the Union] was for a good cause or something like that . . .". (Tr. 373:6-14). Alex Sandoval, a Union organizer, further admitted that the Union purposefully brought former employee, Gustavo, to the employees' homes as a coercive tactic. Gustavo's explanation to employees as to why he was terminated served as a reminder to the employees that voting for the Union was a good idea. (Tr. 656:11-657:7).

Lastly, overt, verbal threats are not the only justification for objectionable conduct that warrants setting aside an election. In *Milchem, Inc*., the Board set aside election results after finding that a Union member's conversations "with prospective voters waiting to cast their ballots, *regardless* of the content of the remarks exchanged, constitute[d] conduct which, in itself, necessitate[d] a second election." *Milchem, Inc*., 170 NLRB 362 (1968). There, the Board considered the "potential for distraction, last minute electioneering or pressure, and unfair advantage from prolonged conversations between representatives of any party to the election and voters." *Milchem, Inc*., 170 NLRB 362 (1968). Here, as stated above, employees testified that,

during these home visits, the Union made coercive comments and engaged in last minute electioneering tactics to distract the employees. This conduct constitutes objectionable conduct, and the Hearing Officer's blatant choice to ignore this testimony resulted in a finding of error. The Hearing Officer's findings must be overruled, and the election results set aside.

<u>Exception No. 2</u>: The Hearing Officer erred in finding that the "home visits did not reasonably tend to interfere with the employees' free and uncoerced choice in the election." (RRO at p. 9).

The Hearing Officer used a nine-factor test to determine whether the Union's conduct during the home visits "had the tendency to interfere with an employee's free choice in the election." The Hearing Officer concluded that three of the four factors weighed in favor of Employer, and that the home visits tended to interfere with the employees' free and uncoerced choice (RRO at p. 9-12).[1] However, the Hearing Officer erred in finding the following:

(1) the number of home visits was not unusual;
(2) the Board has not disapproved of a similar rate of home visits;
(3) the "Union's conduct during the home visits was persistent but not threatening, and thus, the home visits had a likelihood of causing annoyance, but not fear;
(4) the proximity of alleged misconduct to date of election did not weigh in favor of finding that the home visits tended to interfere with the employees' free and uncoerced choice,
(5) the record does not demonstrate that the home visits persisted to a high degree in the minds of employees in the voting unit;
(6) the record does not evince wide dissemination of the home visits to members of the voting unit who were not subjected to the home visits. (RRO at p. 9-12).

In *Super Thrift Markets, Inc.*, the Board found that "[a] violation of Section 8(a)(1) during the critical election period is, a fortiori, conduct that interferes with the results of the election *unless*

[1] The Hearing Officer found that (1) the effect of any misconduct by the non-objecting party (Employer) to cancel out the effects of the misconduct alleged in the objection, (2) the closeness of the vote, and (3) the degree to which the alleged misconduct can be attributed against the Union all weighed in favor of tending to interfere with the employees' free and uncoerced choice.

it is so de minimis that it is "virtually *impossible* to conclude that [the violation] could have affected the results of the election." (*Super Thrift Markets, Inc*., 233 NLRB 409, 409 (1977 (emphasis added). Here, multiple witness testimony proves that it is significantly possible that the Union's conduct during the home visits were coercive in nature and interfered with the election results. The record proves that the Union's conduct directly interfered with the results of the election and affected the employees' freedom of choice to vote in this election. Contrary to the Hearing Officer's findings, the Union's coercive conduct created a likelihood of fear that interfered with the employees' free and uncoerced choice to vote. Specifically, at least one employee, Macey Sheets, testified that she did not sign her mail ballot for fear that it would not remain anonymous, and that the union's practice of visiting her home stoked that fear. (Tr. 333:9-22)[2] While the Hearing Officer contends that the home visits were not threatening, the witnesses' collective testimony prove that the Union's visits were coercive in nature and, at the minimum, had a coercive *effect* on the employees' freedom to vote in the election.

Not only did multiple witnesses confirm the contents of their written statements, but their testimony further proved that the Union came to these employees' home uninvited, refused to leave, and attempted to coerce them into opening and filling out their ballots in front of the Union, sometimes even to "help" the employee in filling out the ballot. Moreover, the Union made several coercive comments to employees including statements that the employee's job security would be affected by whether they vote for or against the Union. (Tr. 222:24-223:1-12; 292:16-26, 306:18-24). This testimony proves that the Union's coercive conduct reasonably tended to interfere with their free choice to vote. Several witnesses, including Brandon Acosta, Lucas Chim, Kimberly

[2] The election results were 29 votes in favor of the union, and 25 votes against. Seven of the mail ballots submitted were voided because they were unsigned.

Mendez, and Jose Palacios testified that, they were upset, felt uncomfortable, and/or pressured by the Union's home visits. (Tr. 37:18-21; 130:1-10; 242:3-15; 153:13-17; 260:10-25; 261:19-21). Kurt Mann described the Union's demeanor as follows:

> "[The Union demeanor is] . . . always a little intimidating, kind of; not mean, but definitely forceful, for sure . . . insisting upon not leaving until [he] could help them, or they were pretty forceful in telling me, like hey, we want to make this sure this happens, can you -- can we do it, can we do it now, can we -- you know, it was pretty forced. It was tough to not notice the -- they were trying to be nice about it, but at the same time, like, you could tell *they weren't going to take no really*, for an answer." Tr. 223:23-224:16-25).

Lucas Chim even testified that the Union had entered the confines of his home uninvited and without his knowledge (Tr. 87:24-88:9). While the Hearing Officer concludes that no ballots were opened in the presence of the Union and/or third parties, employee testimony proves that some employees feared going to their own mailboxes and receiving their ballots in front of the present Union members who were waiting for them at home. (Tr. 371:7-372:8).

The Union also brought a formerly terminated employee to the home visits as a coercive tactic meant to affect the employees' free choice and persuade employees into voting for the Union. Alex Sandoval, a Union organizer, admitted that the Union purposefully brought former employee, Gustavo, to the employees' homes as a coercive tactic. Alex testified that Gustavo explained his reason for termination as a reminder to the employees that voting for the Union was a good idea. (Tr. 656:11-657:7). Employee Stephanie Mendez further testified that she believed that the former employee's presence was meant to persuade herself and other employees. (Tr. 373:6-14). When Stephanie Mendez was asked whether she had any understanding as to why Gustavo, the former employee, was present with the Union during the home visit, she testified:

> "Just because one of the main reasons why the – the Union felt like we should have a union was because of an incident that happened with Gustavo. And I feel like it was just to . . . get sentiment from people and like make people feel like it was for a good cause or something like that . . ."). (Tr. 373:6-14).

Lastly, the home visits were both disseminated and discussed among the employees and persisted to a high degree in the employees' minds. In *Super Thrift Markets,* Inc., 233 NLRB 409, the "Board long held that statements made during election campaigns can reasonably be expected to have been disseminated and discussed among the employees . . . [The Board] conclude[ed] these statements by Respondent clearly warrant the setting aside of the election and the directing of a second election." *Super Thrift Markets, Inc.,* 233 NLRB 409, 1–410 (1977). Here, the Hearing Officer contends that the discussion of the home visits occurred "just in passing" and continued to dissipate with time. (RRO at p. 11). However, multiple employees, including Ashlynn Camberos, Macey Sheets, and Stephanie and Kimberly Mendez, testified that concerns over ballot anonymity and the Union's coercive conduct during these home visits were disseminated and discussed among the employees. Contrary to the Hearing Officer's findings, Macey Sheets explicitly testified that the discussions regarding the home visits had not decreased as time had passed and rather, had continued and remained ongoing amongst her co-workers within the last four months and as of the date of her testimony on April 24, 2018. (Tr. 355:12-356:14). Lucas Chim further testified that a "majority" of, at least 20 of his co-workers, had discussed the home visits while at work. Mr. Chim further testified that he believed "[some employees] were not going to vote because the Union members were going" to their homes. (Tr. 119:23-120:14).

Ashlynn Camberos explicitly testified that, during the ballot process, she felt as though her co-workers were retaliating against her. (Tr. 212:1-14). She further testified: ". . . it felt like there was a lot of tension at work with certain people, where they weren't doing certain things of their job and that would affect me, because they were backing up from helping me with tables when they had to do their jobs . . ." *Id.* Also, Macey Sheets testified that, she was concerned with ensuring her ballot was anonymous because "she didn't want to have like any like problems with

any coworkers. So, like – if anyone would say anything or talk about it, I just kept my mouth shut. And I didn't want anyone to know what I voted." (Tr. 320:14-20). She further testified that it affected her coworkers, as some coworkers were not receiving as much help after disclosing what they voted for. (Tr. 320:23-321:7). The Union's conduct during these home visits affected their workplace environments and the employees' relationships with their fellow co-workers, proving that the Union's conduct persisted to a high degree in the employee's minds.

Despite the conclusions reached by the Hearing Officer, the Union's presence and comments made to these employees during the home visits directly affected and interfered with the employees' freedom of choice to vote in this election.

<u>Exception No. 3</u>: The Hearing Officer Erred in Her Findings as to Witness Credibility.

The Hearing Officer erred when she concluded that the "employees' subjective concerns about the security and anonymity of their ballots [was] given less weight." (RRO at p. 10, FN 17). Dismissal of a voting employee's "subjective concerns" in considering whether there was coercion is patently absurd. An employee's subjective concerns directly establish what coercive effect, if any, the Union's conduct has on the voting unit. A Hearing Officer cannot not properly conclude whether the Union's conduct interfered with an employee's freedom of choice to vote without considering the employee's subjective concerns of security and anonymity of their ballots. Notably, the Hearing Officer must give the employees' witness testimony credible weight when assessing the following factors:

- the likelihood of causing fear among employees,
- the degree to which the misconduct persists in the minds of the employees, and
- extent of dissemination of the alleged misconduct to employees who were not subjected to the misconduct but who are in the voting unit.

Each of these factors, which the Hearing Officer acknowledges must be considered, relate

to an employee's *subjective* feelings about the misconduct. Several employees, including Macey Sheets, Kurt Mann, and Kimberly Mendez testified that, the Union's visiting her home had an effect on whether their vote was anonymous. (Tr. 153:20-154:2; 224:16-225:22; 320:3-18). Ashlynn Camberos even re-directed her ballot to be sent to her mother's gated home to avoid receiving the ballot in front of Union members. (Tr. 167:18-168:13). The Hearing Officer concludes that "Camberos' reason for [having her ballot mailed to her mother's house] was unclear" because Camberos later testified that "[because her] address for The Daily Grill was [her] mother's house" (RRO at p. 5, FN 8). However, this does not change the fact that Camberos *changed* the address for The Daily Grill for the sole purpose of having the ballot mailed to her house, as she directly testified. This is a direct example of the Hearing Officer choosing to conflate different parts of an employee's testimony in order to give the testimony less weight. The concern of anonymity, as a direct result of the Union's home visits and coercive comments, directly proves that the Union's conduct tended to reasonably interfere with the employees' free choice. The Hearing Officer's failure to consider this sworn testimony is a blatant error and the Hearing Officer's findings must be rejected accordingly.

Also, the testimony of two witnesses for the Union, Sandra Diaz and William Sanchez, should be stricken from the record as they blatantly testified that they did not understand the oath that they had taken upon testifying and the fact that were required to testify under penalty of perjury. To the extent that such witness testimony was relied upon or considered in the Hearing Officer's findings and recommendations is an error on the Hearing Officer's part.

Finally, the Hearing Officer unfairly and illogically gives greater weight to the testimony of Union representatives than to the affected employees to whom the misconduct is directed. As is clear from the testimony, the union representatives were present for testimony *as part of their*

jobs, which includes protecting the election result favorable to the Union. (Tr. 676:22-677:15, 678:23-679:13; 704:5-19; 705:15-706:21; 741:11-742:2). These Union witnesses testified that they made numerous home visits throughout the course of the campaign, up to approximately 80 discreet visits. They each purported to recall specific details of each visit, which occur as routine to them. On the other hand, the nine affected employees who testified do not engage in union campaigns as part of their job, or on a routine basis. Having Union representatives visit their homes uninvited was an unusual and unwelcome occurrence. More importantly, these employees voluntarily submitted contemporaneous written statements that detail the home visits. These contemporaneous and voluntary written statements corroborate their live testimony. Despite all of these indicators of reliability of the employee witness' statements, the Hearing Officer somehow concludes that the testimony of Union Representatives, who have a direct and admitted interest in preserving the outcome of the election, was more credible.

CONCLUSION

For the reasons and arguments stated above, and based on the authority presented, Employer respectfully submits that the findings and recommendations of the Hearing Officer be rejected.

Respectfully Submitted,
STOKES WAGNER

_/s/ *Adam L. Parry*_____
Diana Dowell
Adam L. Parry
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

ATTORNEYS FOR GRILL CONCEPTS SERVICES, INC. d/b/a THE DAILY GRILL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

UNITE HERE - LOCAL 11

And

Case 31-RC-209589

Grill Concepts Services, Inc. d/b/a The Daily Grill

PROOF OF SERVICE

I am employed in the County of San Diego, California. I am over the age of eighteen years and not a party to the within action; my business address is 600 W. Broadway Ste. 910 San Diego, CA 92101.

On June 21, 2018 I caused the following document(s) to be served:

- **EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND RECOMMENDATIONS**

on the interested party below in this action by filing the enclosed.

☐ BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business pursuant to Code of Civil Procedure Section 1013(a). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY FACSIMILE: I served said document(s) to be transmitted by facsimile pursuant to Board's Rules and Regulations, Series 8, as amended, Section 102.24. The telephone number of the sending facsimile machine was (404) 766-8823. The name(s) and facsimile machine telephone number(s) of the person(s) served are set forth in the service list. The sending facsimile machine issued a transmission report confirming that the transmission was complete and without error.

☒ BY THE NLRB'S ELECTRONIC FILING SYSTEM on its website: http://www.nlrb.gov.

☒ BY ELECTRONIC MAIL to: Simone.Gancayco@nlrb.gov; lynn.ta@nlrb.gov; jblasi@unitehere11.org

☐ BY EXPRESS MAIL: I caused said document(s) to be deposited in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure Section 1013(c).

Executed on June 21, 2018, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Perla D. Cuevas
STOKES WAGNER
600 W. Broadway Ste. 910
San Diego, CA 92101

EXHIBIT 9

EXHIBIT 9

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

GRILL CONCEPTS SERVICES, INC. D/B/A
THE DAILY GRILL

Employer

and **Case 31-RC-209589**

UNITE HERE LOCAL 11

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Decision and Direction of Election, a mail ballot election was conducted from December 7 through 21, 2017, among the following unit of employees of Grill Concepts Services, Inc. d/b/a The Daily Grill (Employer):

> **Included:** All non-supervisory employees employed by Grill Concepts Services, Inc., d/b/a The Daily Grill at its restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045.
>
> **Excluded:** All managers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

The tally of ballots showed that of the approximately 76 eligible voters, 29 cast ballots for Unite Here Local 11 (Union or Petitioner), and 25 cast ballots against representation. There were 7 void ballots and no challenged ballots. Therefore, the Union received a majority of the votes.

The Employer timely filed objections[1] relating to the appropriateness of having directed a mail ballot election and to the conduct of the Union and/or third parties while visiting the employees' homes before and during the voting period of the election. Specifically, the Employer alleged that the Union's representatives made uninvited home visits, attempted to coerce employees into voting for the Union, attempted to coerce them into completing their ballots in front of them, refused to leave, and offered to help employees fill out their ballots. In the Partial Decision on Objections and Notice of Hearing that issued on April 11, 2018, I overruled the Employer's objections regarding the direction of a mail ballot election, but ordered a hearing regarding the visits to employees' homes. Following the hearing, on June 7, 2018, the Hearing Officer issued a Report and Recommendation on Objection (the Report), in which she recommended overruling the objections in their entirety. The Employer timely filed exceptions and a supporting brief to the Hearing Officer's Report. The Union did not file an answering brief.

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[1] The Employer did not number its objections in its submission entitled Objections to Election with Offers of Proof.

I have carefully reviewed the Hearing Officer's rulings made at the hearing and find that they are free from prejudicial error, and they are hereby affirmed. I have considered the evidence and the arguments presented by the parties and, as discussed below, I agree with the Hearing Officer that all of the Employer's exceptions should be overruled. Accordingly, I am issuing a Certification of Representative.

I. THE EXCEPTIONS

Exception 1: The Hearing Officer erred in finding that the Union and/or third parties did not engage in objectionable conduct during the home visit.

The Hearing Officer found that the Union's representatives and/or third parties[2] did not engage in objectionable conduct during their visits to employees' homes. Applying relevant Board law, she explained that Union representatives' visits to employees' homes during elections are not objectionable so long as the visits are unaccompanied by threats or other coercive conduct. The Hearing Officer noted that all nine of the Employer's employee witnesses testified that the Union representatives and/or third parties did not threaten them. Instead, they discussed unionization with the employees. She found that although Union representatives offered to help the employees to vote, the employees never opened the mail ballots in the presence of the Union representatives, and the representatives did not handle the mail ballots. The Hearing Officer also found that while Union representatives offered to take the ballot to the post office and/or to drive some employees to the post office, the Union representatives were never in actual possession of any of the ballots. In sum, the Hearing Officer determined that the complained of conduct was not coercive but instead constituted lawful solicitation of employee support.

The Employer contends that the Hearing Officer erred because she ignored testimony from the nine employees regarding coercive comments and behavior that the Union representatives engaged in during the uninvited home visits. Specifically, the Employer claims that comments to employees regarding how the election would impact job security and working conditions are coercive in nature. The Employer also claims that the Union's decision to have an employee who had been previously terminated by the Employer accompany representatives on the home visits was a coercive tactic. The Employer further argues that the Hearing Officer ignored evidence regarding the effects the coercive conduct had on employees' behavior. Lastly, citing *Milchem, Inc.*, 170 NLRB 362 (1968), the Employer asserts that the home visits amounted to last minute electioneering designed to distract employees and thus constituted objectionable conduct.

As the Hearing Officer explained in the Report, union agents may lawfully visit employees at their homes as part of their unionization efforts in both manual and mail ballot elections. *San Diego Gas and Electric*, 325 NLRB 1143, 1149 (1998); *Plant City Welding &*

[2] For purposes of this decision, I will refer to those individuals who conducted home visits as Union representatives, although some of the individuals who participated in the home visits were co-workers or former employees. This is consistent with the Hearing Officer's analysis because she applied the party standard conduct for objectionable election conduct, rather than the stricter third-party standard. See e.g., *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984) (third-party misconduct objectionable when it is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible").

Tank Co., 119 NLRB 131, 133-34 (1957) (rev'd on other grounds, 133 NLRB 1092 (1961)). However, employers cannot conduct home visits. *Peoria Plastic Co.*, 117 NLRB 545, 548 (1957) (setting aside and ordering a new election where employer representatives conducted interviews at employees' homes). Justifying the different standards, the Board has recognized that "[i]n view of the very different positions that unions and employers occupy with respect to employees, the Board—with court approval—has consistently applied different standards to a wide variety of employee and union conduct during an election campaign." *Longwood Security Servs., Inc.*, 364 NLRB No. 50, slip op. at 2 (2016). See also *Plant City Welding & Tank Co.*, 119 NLRB at 133-34 (explaining that since unions, unlike employers, do not typically have the ability to address employees in informal groups or control over working conditions, "unions have more need to seek out individual employees to present their views, but more important, lack the relationship with employees to interfere with their choice of representatives thereby.")

Thus, unions are permitted to engage in a variety of persuasive tactics to solicit union support. Unions may poll employees to determine support. *Springfield Hospital*, 281 NLRB 643, 692-93 (1986) (union polled employees and recorded responses), enfd. 899 F.2d 1305 (2d Cir. 1990); *J.C. Penney Food Department*, 195 NLRB 921, 924 fn. 4 (1972) (union polled employees as to how they would vote), enfd. 82 LRRM 2173 (7th Cir. 1972). Unions can solicit employees to sign a prounion petition encouraging them to vote in their favor. *Kusan Mfg. Co.*, 267 NLRB 740 (1983). Unions can also lawfully make promises regarding job protection and other benefits since it has long been recognized that "[e]mployees are generally able to understand that a union cannot obtain benefits automatically by winning an election but must seek to achieve them through collective bargaining." *Smith Co.*, 192 NLRB 1098, 1101 (1971) (overruling employer's objections to union representatives' campaign statements that the union would provide a contract with many benefits, that without a union the employer was free to fire employees, that the union can make available loans and special discounts on tires, cars and appliances.) Moreover, the Board generally does not examine the accuracy of campaign statements in light of its "view of employees as mature individuals who are capable of recognizing campaign propaganda for what it is and discounting it." *Midland National Life Insurance Co.*, 263 NLRB 127, 132-33 (1982) (quoting *Shopping Kart Food Market, Inc.*, 228 NLRB 1311, 1313 (1977)).However, home visits, polling, and other efforts to solicit union support must be free from threats and other coercive conduct. *Longwood Security Servs., Inc.*, 364 NLRB No. 50, slip op. at 2 (2016) (citing *Canton, Carp's, Inc.*, 127 NLRB 513, 513 fn. 3 (1960)); *J.C. Penney Food Department*, 195 NLRB at 924 fn. 4. Additionally, the Board has recognized that Union and Employer representatives engage in objectionable conduct if they collect ballots in a mail ballot representation election. *Fessler & Bowman, Inc.*, 341 NLRB 932 (2004).

Applying the foregoing Board law, I find that the Hearing Officer properly concluded that the Union representatives did not make coercive statements or engage in coercive conduct during its home visits. The Employer points to the testimony of employees Kurt Mann and Robin Gunn as evidence of coercive comments because the Union representatives discussed with them how the outcome of the election would impact their job security. Kurt Mann testified that the Union representatives "told [him] certain things about what they were – promised [him] certain things about what they were going to be getting us as a deal with the Union." He

explained that they did so by informing him about a "deal" the Union reached with a different hotel and told him that "they could get [the employees] the same thing or better." Mann's testimony made clear that Union was referring to terms and conditions of employment like wages, more affordable health insurance, and job protection. Robin Gunn testified that the Union representatives told her that "The Daily Grill's contract was going to be up and that Marriot was taking over and Marriot was a union. And for [her] to, in a sense secure [her] position and [her] schedule, that it would probably be good to unionize." The Employer counsel at the hearing then immediately asked whether the Union representatives told Gunn that she might lose her job if she did not support the Union. Gunn said she did not recall them telling her that, and she explained that she understood the Union's comments to mean that support for the Union would "guarantee my position and maybe my schedule and my seniority and stuff like that." On cross-examination, Gunn reiterated that the Union representatives discussed job security and protecting seniority for scheduling, and that no threats were made. The statements described by Mann and Gunn clearly fall within the scope of campaign promises regarding the benefits of unionization, which is lawful. *Smith Co.*, 192 NLRB at 1101.

In support of its Exception, The Employer also cites employee Stephanie Mendez's testimony as providing additional evidence of the Union's coercive conduct. Stephanie Mendez testified that she overheard a Union representative tell her sister Kimberly Mendez, who is also an employee of the Employer, that "you're going to be hurting other people by doing that, when Kimberly Mendez did not respond positively to the Union's request for her vote in support of the Union" However, such a statement under *Midland, supra*, constitutes campaign propaganda that is easily recognized by employees, presumably reflecting the Union's predication of the potential consequences if it lost the election. Similarly, the mere presence of a terminated employee who accompanied Union representatives during home visits, which Stephanie Mendez also testified about, is yet another example of campaign propaganda. Rather than establishing coercion as the Employer claims, Stephanie Mendez's testimony that she felt that the purpose of the discharged employee's presence during home visits "was just to . . . get sentiment from people and make people feel like it was for a good cause or something like that . . . " shows that she was "capable of recognizing campaign propaganda for what it is and discounting it." *Midland National Life Insurance Co.*, 263 NLRB at 132-33.

In support of its contention that the Union representatives' statements to employees were coercive, the Employer compared them to similar statements made by employers in *Super Thrift Markets, Inc.*, 233 NLRB 409 (1977) and *Intertape Polymer Corp. v. N.L.R.B.*, 801 F.3d 224, 230-31 (4th Cir. 2015). In *Super Thrift Markets, Inc.*, the Board set aside an election where a store manager interrogated employees regarding their union support and activities and threatened to appraise work performance based on their support for the Union, in violation of Section 8(a)(1) of the Act. In *Intertape Polymer Corp.*, the Board found, among other unlawful conduct, that the Employer violated Section 8(a)(1) of the Act when a supervisor asked an employee to reveal his view of the Union, and this determination was affirmed on appeal.

The Hearing Officer correctly distinguished both of these cases in her report, noting that they involved coercive conduct by employers that rose to the level of unfair labor practices, whereas in the instant matter there was no evidence that the Union representatives engaged in

any coercive conduct. More fundamentally, however, the Employer's argument fails to recognize what the Board described in *Longwood Security Servs., Inc., supra*, as its consistent application of different standards to election campaign conduct engaged in by union representatives and employers. The Board explained that "[b]y no stretch of the imagination are employers of unorganized workers and union seeking to organize those workers equally matched with respect to their powers of or opportunities for the exercise of coercion . . .." *Longwood Security Servs., Inc.*, 364 NLRB No. 50, slip op. at 3 (quoting *Kusan Mfg. Co. v. NLRB*, 749 F.2d 362 (6th Cir. 1984), where the court endorsed the Board's policy of differentiating between union and employer polling of employees). Since the cited cases involve employer threats and interrogation to determine union support, they are irrelevant in analyzing the union's electioneering conduct.

The Hearing Officer also correctly determined that the Union representatives' solicitation of some of the voters' mail ballots did not constitute objectionable conduct. As she explained in her Report, the Board in *Fessler & Bowman, Inc., supra*, clearly distinguished between a party's solicitation of mail ballots and the actual collection of mail ballots. *Id.* at 934. It reasoned that, unlike ballot collection, solicitation is not objectionable conduct because it does not implicate ballot tampering or secrecy concerns. *Id.* Since the Employer produced no evidence at the hearing that the Union representatives were at any point in actual possession of the mail ballots, the Hearing Officer properly concluded that mere solicitation was not objectionable.

Furthermore, the Employer's argument that the Hearing Officer ignored the effects of the Union's conduct is also without merit. It claims that the coercive effect of the home visits is demonstrated through employees' behaviors during the election. With respect to Stephanie Mendez's and her sister Kimberly Mendez's testimony, the Employer claims that they felt compelled to get their ballots out of the mailbox when they saw Union representatives outside the house. As the Hearing Officer described in the Report, Stephanie Mendez testified that she had her sister go outside to retrieve the ballots from the mail because "we were told that we weren't allowed to talk to anyone about our votes, and to make sure that nobody knew when we were going to send them out and nobody tried to send them out for us. And just because I didn't really like trust them in a way." The Hearing Officer also noted that as a result of the home visits, Kimberly Mendez did not feel pressured by the Union representatives while her sister, Stephanie, was concerned about the anonymity of their ballots. The Hearing Officer also clearly addressed that Ashlynn Camberos directed her ballot to her mother's home, and discussed that her motivation for doing so was unclear since at one point in her testimony she said it was because the Union was coming to her house, while at another point it was "because my address for the Daily Grill was my mother's address . . . And I had just moved to this house." Assuming the employees' behavior could be attributed solely to the Union's home visits, the Employer provides no legal support for its claim that employees' subjective reactions to the Union representatives' lawful electioneering efforts transforms such conduct into objectionable coercive conduct. Moreover, as the Hearing Officer correctly explained, the test for determining whether coercive conduct warrants setting aside an election is an objective one. *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1994). *See also Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1123 (2003) (explaining in third-party conduct case "[i]t is well established that

'the subjective reactions of employees are irrelevant to the question of whether there was, in fact, objectionable conduct.") (additional citations omitted)).

Lastly, the Employer's reliance on *Milchem, Inc*, *supra*, to establish coercive conduct is misplaced. The Board in *Milchem, Inc.* determined that it will set aside an election if there were prolonged conversations between a representative of a party and employees waiting in line to vote, without evaluating the content of those conversations. 170 NLRB at 362. The Board reasoned that "[t]he final minutes before an employee casts his vote should be on his own, as free from interference as possible." *Id.* In the instant matter, there was a mail ballot election, the employees were not waiting in line to vote, there is no evidence that the electioneering occurred within the "final minutes" before they voted, and the employees were able to complete their ballots in the privacy of their own homes. *See also Boston Insulted Wire & Cable Co.*, 259 NLRB 1118 (1982) (Board declined to apply the *Milchem* rule in manual election where union representatives passed out campaign materials and had conversations with voters as they went through entrance that was approximately 10 feet from the polling place).

For these reasons, I agree with the Hearing Officer's recommendation that the Union did not engage in any objectionable conduct, and, therefore, I overrule this Exception.

Exception 2: The Hearing Officer erred in finding that the home visits did not reasonably tend to interfere with the employees' free and uncoerced choice in the election.

Having determined that the Union representatives did not engage in objectionable conduct, it is unnecessary to consider the factors the Board usually analyzes to determine whether conduct reasonably tended to interfere with the employees' free and uncoerced choice in the election. Nevertheless, because the Hearing Officer proceeded to evaluate whether the Union's conduct warranted setting aside the election under the Board's nine-factor analysis, I have analyzed the issue and concluded that the Hearing Officer properly determined that the Union representatives' conduct did not reasonably tend to interfere with employees' free choice and, therefore, does not warrant setting aside the election.

As the Hearing Officer explained in her Report, "the burden of on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989). "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000) (quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citations omitted)). The test to determine whether to set aside an election is objective and the issue is whether the conduct has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995).

In determining whether a party's conduct has the tendency to interfere with employee free choice, the Board considers the following factors: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among employees in the voting unit; (3) the number of employees in the voting unit who were subjected to the misconduct; (4) the proximity of the misconduct to the date of the election; (5) the degree to

which the misconduct persists in the minds of employees in the voting unit; (6) the extent of dissemination of the misconduct to the employees who were not subjected to the misconduct but who are in the voting unit; (7) the effect (if any) of any misconduct by the opposing party to cancel out the effects of the misconduct alleged in the objection; (8) the closeness of the vote; and (9) the degree to which the misconduct can be attributed to the party against whom objections are filed. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

Applying these factors, the Hearing Officer concluded that they weighed against setting aside the election. The Hearing Officer found that if the Union had engaged in objectionable conduct, factors 3, 7, 8, and 9 would weigh in favor of finding that the home visits tended to interfere with employees' free choice, whereas factors 1, 2, 4, 5, and 6 would all weigh against finding that the home visits tended to interfered with employees' free choice. The Employer contends that the Hearing Officer erred in finding that those five factors weighed against setting aside the election.

With respect to the first factor regarding the number of incidents, the Employer claims that the Hearing Officer erred in finding that the number of home visits was not unusual and that the Board has not disapproved of a similar rate of home visits. However, it does not set forth in its Exception any specific cases or legal arguments to support its claim that the number of home visits at issue in this case was of a sufficient number to be objectionable or otherwise weigh in favor of setting aside the election. Furthermore, as discussed above, the Hearing Officer properly found that home visits by Union representatives do not constitute objectionable conduct. Therefore, the Employer offers no basis for disturbing the Hearing Officer's conclusion that the number of visits does not weigh in favor of finding that the home visits tended to interfere with employees' free choice.

With respect to the second factor, the Employer claims that the Hearing Officer erred in finding that the Union's conduct during the home visits was not likely to cause fear. It notes that that one employee, Macey Sheets, did not sign her mail ballot because the Union's home visits caused her to fear that it would not remain anonymous.[3] Similarly, it notes that four other employees testified that they felt upset, uncomfortable, or pressured by the home visits, and that a fifth employee, Kurt Mann, testified that he believed "they weren't going to take no really, for an answer." The Employer also again cites the belief of employee Stephanie Mendez that the Union brought a recently terminated employee on visits as a persuasive tactic, and that employees feared going to their mailboxes when they saw Union members outside. However, the record also shows that employees had different subjective reactions to the home visits. For example, while one employee may have decided against signing her mail ballot partially due to the Union's visits, 54 other employees in the unit cast valid ballots that were signed. Similarly,

[3] The Employer provided a statement from Sheets in which she explained that she did not sign the back of the sealed envelope because she "thought it was supposed to be confidential." Her statement does not itself connect her failure to sign the ballot to the Union's conduct during home visits. She explained at the hearing that she did not want to sign the ballot because she felt it would not be anonymous. When asked on direct whether the Union's visits had an effect on her concern for the anonymity of her vote, Sheets agreed, and then added, "But I was more concerned about having my coworkers know what I voted, yes or no."

while some employees felt pressured, others did not.[4] Moreover, as explained above and in the Hearing Officers' report, the relevant legal inquiry is an objective one. *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1123 (2003) (explaining that in concluding that third-party conduct at issue did not warrant setting aside election, Board was not relying on employee testimony that they felt insecure whether votes would be confidential). Thus, the subjective reactions cited by the Employer do not establish that the Union's conduct during the home visits was likely to cause fear among employees in the voting unit.

With respect to the second factor, the Employer also claims that the Union engaged in a variety of objectionable conduct during the home visits such as attempting to coerce them into filling out their ballots in front of the Union, offering to help the employee in completing the ballot, and made coercive comments regarding job security. Again as discussed in Exception 1, I have already concluded that the conduct underlying these allegations was not objectionable. Additionally, I find that the conduct the Employer complains of is not sufficiently severe to likely cause fear among employees or warrant setting aside the election.

With respect to the fourth factor regarding the proximity of the misconduct to the date of the election, the Employer fails in its Exception to identify specific legal or factual arguments in support of its claim that this finding was in error. Therefore, the Employer offers no basis for disturbing the Hearing Officer's conclusion that the timing of the visits does not weigh in favor of finding that the home visits tended to interfere with employees' free choice. Moreover, the Union's conduct during the home visits was not objectionable, and, therefore, the proximity of the Union's home visits to the election does not warrant setting aside the election.

With respect to the fifth factor regarding the degree to which the alleged misconduct persists in the minds of employees in the voting unit, the Employer contends that the Hearing Officer erred in finding that the home visits did not persist to a high degree in the minds of the employees. The Employer notes employee testimony that co-workers continued to discuss the home visits at work. However, the Hearing Officer specifically recognized that several employees testified that employees continued to discuss the home visits, but she determined that their testimony failed to establish that they persisted to such a degree in employees' minds that it would weigh in favor of finding that the home visits tended to interfere with employees' free choice. The Hearing Officer explained that Macey Sheets and Stephanie Mendez testified that co-workers discussed the home visits a couple of times per month, Lucas Chim testified that a majority of his co-workers discussed home visits at work, while Kurt Mann testified that the discussions occurred in passing and continued to dissipate with time. Contrary to Macey Sheets' testimony that discussions remained ongoing with the four months before the hearing, Jose Palacios testified that his co-workers did not discuss the home visits during that same period of time. Another employee Robin Gunn, testified that she did not hear co-workers talk about the

[4] The Employer in its Exception also notes that employee Lucas Chim testified that the Union entered his home uninvited and without his knowledge, but does not specifically accuse the representatives of trespass. The record shows that a co-worker, a former co-worker and a Union representative visited his home the first time. When they arrived, Chim was asleep so Chim did not know how they came in to the house, but only testified that he did not invite them in. His wife woke Chim to inform him about the visitors, but it is unclear whether his wife or another family member had the visitors come in. Chim proceeded to talk with the visitors for about 45 minutes, and he could not recall whether they had their discussion on the yard or in his garage.

home visits after the election. Thus, based on this mixed evidentiary record, the Hearing Officer properly concluded that employee discussion of the home visits did not persist to such a degree to weigh in favor of setting aside the election. Furthermore, even if the Union representatives' conduct during its home visits persisted to a high degree in the employees' minds, it was not objectionable and, therefore, does not warrant setting aside the election.

The Employer also claims that the testimony of Ashlynn Camberos and Macey Sheets established that the Union's home visits persisted to a high degree in the employees' minds because they both discussed how the Union's conduct impacted the work environment and employees' relationships. Camberos explained that she did not want to disclose the identity of an employee who had referred to the Union visitors as thugs. She felt she was retaliated against by some co-workers during the election because ". . . it felt like there was a lot of tension at work with certain people, where they weren't doing certain things of their job and that would affect me, because they were backing up from helping me with tables when they had to do their jobs . . . " Sheets testified that as a relatively new employee she was more concerned about her co-workers knowing how she voted, and that while she personally did not have problems, another co-worker did not get as much help as in the past. When asked whether the change in treatment was "based on how a given person voted in the election," she agreed. However, the Employer does not explain how the co-workers' conduct can be attributed to the Union's conduct during home visits. At most, the record shows that the third-party conduct Camberos and Sheets describe was based on whether or not an employee was perceived to support the Union or management during the election. Therefore, their testimony about third-party conduct does not support a finding that the Union's conduct during home visits persisted to any significant degree in the minds of employees.

Finally, with respect to the sixth factor regarding the extent of dissemination of the alleged misconduct to employees who were *not* subjected to the misconduct, the Employer contends that concerns about the Union's conduct, including ballot anonymity, were disseminated and discussed among the employees. Quoting *Super Thrift Markets, Inc.*, 233 NLRB 409, 410 (1977), the Employer claims that the Board has recognized that campaign statements "can reasonably be expected to have been disseminated and discussed among the employees ...." The Hearing Officer concluded that the evidence clearly demonstrated that the Union's home visits were disseminated among employees. However, she ultimately concluded that this factor did not weigh in favor of setting aside the election because the employees who received information about the home visits were also subjected themselves to home visits from the Union. In its Exception, the Employer does not point to any specific testimony in the record to show that there was wide dissemination to voting unit members who had *not* received home visits. Moreover, because the Union's conduct during its home visits was not objectionable, to the extent there was any dissemination to employees who were not subject to home visits, it would not provide a basis for setting aside the election. Accordingly, the Hearing Officer properly concluded that this factor does not weigh in favor of finding that the home visits tended to interfere with the employees' free choice.

Thus, I agree with the Hearing Officer's recommendation that the factors weigh against setting aside the election, as the Union representatives' conduct was not objectionable and did

not tend to interfere with the employee's free and uncoerced choice in the election. Accordingly, I overrule this Exception.

Exception 3: The Hearing Officer erred in her findings as to witness credibility.

The Employer disputes the Hearing Officer's credibility findings on three grounds. First, it argues that the Hearing Officer erred in dismissing the subjective concerns in evaluating whether there was coercion. Second, it argues that the Hearing Officer erred to the extent that the testimony of two union witnesses was relied upon because those witnesses testified that they did not understand the oath they had taken. Third, the Employer claims that the Hearing Officer erred by concluding that the testimony of interested union representatives was more credible than that of the employees.

All three of the Employer's arguments are unpersuasive. As explained in the Hearing Officer's report, and in this Decision, the standard for setting aside an election is an objective one. Contrary to the Employer's claim, the factors regarding the likelihood of causing fear among employees, the degree to which the misconduct persists in the employees' minds, and the extent of dissemination of the alleged misconduct, are all objectively analyzed like the remaining six factors. Tellingly, the Employer cites no legal authority to support its claim that "[a] hearing officer cannot properly conclude whether the Union's conduct interfered with an employees' freedom of choice to vote without considering the employee's subjective concern of security and anonymity of their ballots." The Employer's claim that the Hearing Officer erred in relying upon on the testimony of Union witnesses, Sandra Diaz and William Sanchez, is also without merit. There is nothing in the Hearing Officer's report that suggests the Hearing Officer at any point relied upon the testimony provided by these two witnesses. In fact, their names never appear in the report. The majority of the report relies upon the testimony gathered from the employees, whereas the only Union witness whose testimony was considered and deemed credible was organizer Sergio Sorza. Lastly, at no point does the Employer in its Exception identify when the Hearing Officer concluded that the Union witnesses were more credible. As noted, Union Organizer Sorza's testimony was the only one from a Union witness that was discussed in the report. The Hearing Officer identified eight of the nine employees' testimony as credible and Sorza's testimony as credible. The Hearing Officer explained that the remaining employee had portions of confusing testimony that she attributed to misunderstandings in language interpretation. Thus, the Employer's claim is wholly unsupported. Moreover, it is well settled that the Board's established policy is to not overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces the reviewer that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). Here, for the reasons noted above, the Employer has wholly failed to establish by a clear preponderance of the evidence that any credibility resolutions made by the Hearing Officer were incorrect. Accordingly, I overrule this Exception.

II. CONCLUSION

Based on the above and having carefully reviewed the entire record, the Hearing Officer's Report, and the exceptions and arguments made by the Employer, I overrule the

Employer's exceptions in their entirety, and I shall certify the Union as the representative of the appropriate bargaining unit.

III. CERTIFICATION OF REPRESENTATIVE

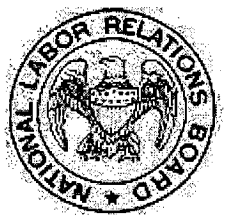
IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for **UNITE HERE Local 11**, and that it is the exclusive representative of all the employees in the following bargaining unit:

> **Included:** All non-supervisory employees employed by Grill Concepts Services, Inc., d/b/a The Daily Grill at its restaurant located at 5410 West Century Boulevard, Los Angeles, CA 90045.
>
> **Excluded:** All managers, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this Decision which may be combined with a request for review of the Regional Director's decision to direct an election as provided in Sections 102.67(c) and 102.69(c)(2), if not previously filed. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **August 7, 2018**. If no request for review is filed, the Decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.



July 24, 2018

Mori Rubin

MORI RUBIN
Regional Director, Region 31
National Labor Relations Board

EXHIBIT 10

EXHIBIT 10

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

GRILL CONCEPTS SERVICES, INC. D/B/A
THE DAILY GRILL
Employer

and Case 31-RC-209589

UNITE HERE LOCAL 11
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Partial Decision on Objections and Notice of Hearing is denied as it raises no substantial issues warranting review.[1]

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[1] We have treated the Employer's Request for Review as also requesting review of the Regional Director's Decision and Direction of Election.

In Member McFerran's view, the facts found by the Regional Director strongly suggest that holding several staggered voting periods (instead of conducting a mail ballot election) would not have yielded more complete and reliable results here. As found by the Regional Director, most of the employees are part-time (51 out of 76), sometimes working only one day a week, and work on either the breakfast, lunch, or dinner shifts. Moreover, even employees scheduled for the same shift can have different start and end times. Further, the Regional Director found that 40% of the workforce is not scheduled to work "on any given day" and that more than 15% of the workforce is not scheduled during any 2-day period. In those circumstances, the Regional Director reasonably found that a manual election scheduled on a single day or even two consecutive days would disenfranchise a substantial percentage of the workforce. Last, although the Employer offered to schedule all employees to work on a particular day, so that a manual election could be scheduled on that day, the Regional Director reasonably concluded that this approach could negatively affect part-time employees who may have second jobs, familial duties, or school obligations. See *London's Farm Dairy, Inc*., 323 NLRB 1057 (1997)(inconvenience to employees with conflicting obligations could cause resentment of the organizing campaign). In sum, this case appears to demonstrate the substantial benefits offered by the Board's current policy regarding mail ballot elections.

Member Emanuel finds, consistent with current Board precedent, that the Regional Director did not abuse her discretion by ordering a mail ballot election. But in his view, this case illustrates why the Board should consider revising its policy in this area to restrict mail ballot elections to cases where a manual election is not feasible. Here, although the employees' varied work schedules made a manual ballot election difficult, scheduling several voting sessions should have reasonably addressed the problem. Instead, the mail ballot process left nearly 30 percent of eligible voters (22 of 76) uncounted, followed by the current litigation. In Member Emanuel's view, a manual ballot election, which was certainly feasible, would have yielded more complete and certain results.

JOHN F. RING, CHAIRMAN

LAUREN McFERRAN, MEMBER

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., August 3, 2018