

CAREN P. SENCER, Bar No. 233488
DAVID W. M. FUJIMOTO, Bar No. 299316
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: nlrbotices@unioncounsel.net
csencer@unioncounsel.net
dfujimoto@unioncounsel.net

Attorneys for Union International Association of Machinists and
Aerospace Workers, AFL-CIO

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 27

MHN GOVERNMENT SERVICES, LLC,

Employer,

and

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL-CIO,

Union.

No. 27-RC-237341

**PETITIONER'S OPPOSITION TO
RESPONDENT'S REQUEST FOR
REVIEW**

I. INTRODUCTION

Respondent contends that the undisputed testimony of the three nonvoting employees—that they never appeared to the polls on election day—was not “objective evidence” that the late opening of the polls by two minutes could not have disenfranchised the nonvoters. This contention defies reason, flies in the face of the meaning of the word “evidence,” and is contrary to established Board precedent and the Board’s Rules and Regulations.

Respondent requests review of the Regional Director’s (“RD”) Decision because of the (1) “absence of and/or [(2)] departure from precedent defining the ‘objective evidence’ that the Board will rely on to resolve issues of possible disenfranchisement when the polls open [late] . . .

.” (3) “the Hearing Officer’s ruling, over the Employer’s objection, which allowed two of the three [nonvoters] to give after-the-fact subjective testimony regarding their reasons for not casting ballots;” and (4) the “[RD]’s decision on a substantial factual issue—i.e., the absence of possible disenfranchisement of eligible voters—is clearly erroneous and prejudicially affects not only the rights of the Employer, but also the Section 7 rights of . . . employees.” (Req. for Review at 2)

Respondent’s Request for Review should be denied because the Hearing Officer and RD did not err in concluding that voter disenfranchisement was impossible. There is nearly two decades of precedent that defines “objective evidence” in the context of late poll opening cases. The RD followed precedent in determining that Petitioner presented undisputed objective evidence that disenfranchisement was not made possible by the late opening of the polls. Respondent’s proposal that “objective evidence” be interpreted to not include when a party presents only testimony ignores the definition of the word “evidence” under the Board’s Regulations and the Rules of Evidence and does not make sense. The hearing officer’s decision to admit evidence of the nonvoting employees’ subjective reasons for not appearing at the polls was without error because the reasons were relevant to the question of whether they appeared at the polls and their credibility. And the RD was correct in concluding that the objective evidence demonstrated that the late opening of the polls could not have disenfranchised the nonvoters. As such, Respondent’s Request for Review should be denied.

II. ARGUMENT

A. RESPONDENT’S REQUEST FOR REVIEW SHOULD BE DENIED BECAUSE THERE IS NEARLY TWO DECADES OF PRECEDENT THAT DEFINES “OBJECTIVE EVIDENCE” IN LATE POLL OPENING CASES

1. Pea Ridge Sets Forth that the Objective Standard Does Not Include Subjective Statements Collected During the Board Agent’s Administrative Investigation

Pea Ridge Iron Ore Co., 335 NLRB 161 (2001) provides clear guidance for what the objective standard is not. When cautioning that the “objective standard does not rely on after-the-fact statements obtained from eligible voters as to the reasons why they did not vote in an

election,” *Pea Ridge* cites to *G.H.R. Foundry Div., Dayton Malleable Iron Co.*, 123 NLRB 1707, 1709 (1959), *Whatcom Security Agency, Inc.*, 258 NLRB 985, 985 (1981), and *Nyack Hospital*, 238 NLRB 257, 259 (1978). *Pea Ridge*, 335 NLRB at 161. These three cases all involved administrative investigations wherein the Board agent obtained statements from the nonvoting employees. In *G.H.R. Foundry*, 123 NLRB at 1709 “[t]he Regional Director interviewed substantially all these employees to ascertain their reasons for not voting.” In *Whatcom Security*, 258 NLRB at 985 “the investigation by the Acting Regional Director, consisting of polling eligible employees who did not vote, and his reliance on the impressions of the employees in question obtained at various times and under varying circumstances after the instant election, is not a proper method of determining voting intentions and is inconsistent with Board precedent.” And in *Nyack Hospital*, 238 NLRB at 259 the Board stated that “[s]uch an investigation, whether conducted by the Board or by the Employer, would, for the most part, merely adduce the subjective reasons of eligible employees as to why they did not vote.” *Pea Ridge* itself involved a nonvoter who gave a subjective statement to the Board agent during the administrative investigation that he “decided not to vote” after appearing at the polling place. The statements provided to the Board agents in these cases did not meet the “objective evidence” standard.

The present case does not involve subjective statements collected by the Board agent as to why nonvoters did not vote. It involves nonvoters who swore under oath, and were subject to cross-examination, that they were not present at the polling place at any time on election day. For this reason, the testimony of the three nonvoting employees did not constitute subjective statements, but constituted “objective evidence.”

2. ***Arbors, Colgate Scaffolding, and Bronx Lobster Establish that Objective Evidence Includes Sworn Testimony, Parties’ Stipulations, and Documentary Evidence***

Arbors at New Castle, 347 NLRB 544 (2006) makes clear that the objective standard of “objective evidence” includes parties’ stipulations, testimony, and documentary evidence that is made a part of the hearing officer’s findings. *Colgate Scaffolding and Equipment Corp.*, 354 NLRB 544 (2009) provides that objective evidence includes credited testimony regarding a

nonvoting employee's whereabouts. And *Bronx Lobster Place, LLC*, 2018 NLRB LEXIS 59, *5 (N.L.R.B. February 2, 2018) also made clear that "objective evidence" includes sworn testimony. These cases are each consistent with the Board's Regulation section 102.39 that incorporates the Federal Rules of Evidence to the extent practicable.

In *Arbors*, the hearing officer's findings relied on testimony from the employer's chief administrator, documentary evidence, and the parties' stipulation in concluding that "the five employees could not possibly have been disenfranchised by the delayed opening of the poll, consistent with the *Pea Ridge* standard." 347 NLRB at 544-545.

In *Colgate Scaffolding*, the Board noted that "The dispositive evidence in this case does not consist of testimony by Oseguera as to his subjective reasons for choosing not to vote, but rather of objective credited testimony from witnesses that Oseguera was absent from the country on a long-term basis, and on the Employer's own records confirming that Oseguera was off the payroll before and on the date of the election." 354 NLRB at 544. Here too, the evidence relied upon by the RD were not subjective statements of the nonvoting employees, but their sworn testimony as to their whereabouts on the day and time of the election (Decision at 5). *Colgate Scaffolding* establishes that objective evidence includes the kind of credited testimony relied upon here.

Bronx Lobster clarified that a party seeking to uphold the results of the election may not successfully rely on an absence of evidence of voter disenfranchisement. 2018 NLRB LEXIS 59, at *5 ("an absence of evidence to explain why potentially determinative voters did not cast their ballots—is insufficient to distinguish this case from *Pea Ridge*."). In other words, the objective evidence standard does not include an absence of affirmative evidence of voter disenfranchisement. *Bronx Lobster* distinguished its case from *Arbors* by stating:

in *Arbors* the Board also relied on *testimony and documentary evidence* that established that of the five employees who did not vote, one was on long-term sick leave, one was not scheduled to (and did not) work on the day of the election, one called in sick and did not work that day, and the remaining two clocked in to work after the delayed opening of the polls. See *id.* at 544. Thus, in addition to the stipulation, there was *clear objective evidence* explaining why the employees did not vote.

Id. at *4-5 (emphases added). *Bronx Lobster*, then, clearly stated that if testimony or documentary evidence would have been provided, it would have considered it to be objective evidence that could have established that disenfranchisement was not possible.

3. **Respondent Inappropriately Injects the Notion of Subjective Evidence, when the Dichotomy as Stated in Board Precedent is Objective Evidence vs. Subjective Statements**

Board precedent makes clear that the objective standard does not include “after-the-fact statements,” *Pea Ridge*, 335 at 161. As previously stated, *Pea Ridge* cited three cases, each of which involved administrative investigations and statements collected from nonvoting employees by the Board agent investigating the objections. *Supra* Part II.A.1. Post-*Pea Ridge* cases state that “subjective, after-the-fact statements regarding why an eligible employee did not vote,” *Arbors*, 347 NLRB at 545 (citing *Pea Ridge*), or “subjective reasons why eligible voters decided not to vote in a Board election,” *Colgate Scaffolding*, 354 NLRB at 544, may not be included as a part of the objective evidence standard. These cases do not differentiate between objective evidence and subjective evidence. They merely stand for the proposition that testimony that is credited such that they become a part of the factual findings is objective evidence.

Respondent ignores Board precedent when it states “[i]t is unfortunate that the Board has failed to clearly indicate, in any of its decisions in late-opening objection cases, where the line is drawn between *objective* and *subjective* evidence regarding the reasons why an eligible voter did not cast a ballot.” (Req. for Rev. at 10) (emphases in original). Respondent argues that “the Board should grant review in this case, provide the necessary guidance on “objective” vs. “subjective” evidence, and find that the testimony on May 1 by Ms. Goulding and Ms. Ferguson, relied on by both the Hearing Officer and Regional Director, was inadmissible to show that they could not have been disenfranchised” *Id.*

But there is no notion of “subjective evidence” in Board precedent that needs clarification. The Board has already differentiated between objective evidence and subjective *statements*. Previously, it has gone without saying that evidence includes documents or testimony that is admitted at a hearing. 29 CFR §102.39 (incorporating the Federal Rules of Evidence).

Simple after-the-fact statements are not evidence because they are merely collected during administrative investigations. *See Pea Ridge*, 335 at 161 (citing *G.H.R. Foundry*, 123 NLRB at 1709, *Whatcom Security*, 258 NLRB at 985, and *Nyack Hospital*, 238 NLRB at 259). Evidence is either admitted into or excluded from the record. Testimonial evidence is subject to cross-examination. Evidence can also be rebutted by other evidence and can be credited or not credited, based on the Hearing Officer's credibility determinations. *See* Hearing Officer's Guide at 168-169. Evidence that is credited and becomes part of the hearing officer's factual findings is objective evidence.

Board precedent has set forth the necessary guidance in late opening cases. There is no notion of "subjective evidence" that needs clarification and therefore the Board should not grant review on this basis.

B. THE REGIONAL DIRECTOR FOLLOWED *PEA RIDGE* AND ITS PROGENY IN PROPERLY CONCLUDING THAT PETITIONER PRESENTED OBJECTIVE EVIDENCE THAT DISENFRANCHISEMENT WAS IMPOSSIBLE

The Hearing Officer and RD correctly relied on the Petitioner's objective evidence, in the form of the three nonvoting employees' testimony. The RD's decision discussed *Pea Ridge*, *Arbors*, *Colgate Scaffolding*, and *Bronx Lobster*, in arriving at its conclusion.

Specifically, the RD correctly distinguished this case from *Pea Ridge* by noting "[u]nlike the lone employee in *Pea Ridge*, who was on-site, visited the polls, and subjectively 'decided not to vote,' here, one nonvoter was on an airplane and the two others were off-site a considerable distance from the polls." (at 4-5).

The RD properly found this case to be more in line with *Arbor's* and *Colgate Scaffolding* because the nonvoters here "credibly testified without contradiction to the objective fact that, like the nonvoters in *Arbor's* and *Colgate*, they did not appear at the polls at any time during the scheduled polling hours." (at 4).

And while not expressly stated, the RD also differentiated the present case from *Bronx Lobster* in noting that "[t]he Board highlighted the critical difference between the objective evidence in *Arbors* (credible employee testimony, documentary evidence, and a factual

stipulation) and the facts (not) present in *Bronx Lobster*; ‘essentially, an *absence* of evidence to explain why potentially determinative voters did not case their ballots.’” (*Id.* – citing *Bronx Lobster*, 2018 NLRB LEXIS 59) (emphasis in Decision). Here, too, Petitioner did not rely on an *absence* of evidence of voter disenfranchisement, but called the three nonvoters to the witness stand and elicited their sworn testimony. This is completely different than *Bronx Lobster* where the union relied on the election observers’ testimony that they did not witness any voters waiting during the 7-minute delay to support their contention that there was no voter disenfranchisement. *Bronx Lobster*, 2018 NLRB LEXIS 59 at *5. As the Board there noted, the union pointed to an absence of evidence of voter disenfranchisement, instead of relying on “clear objective evidence explaining why the employees did not vote.” *Id.*

Respondent argues that the RD’s decision does not identify “objective evidence.” (Req. for Rev. at 6). That assertion is false. The RD Decision states, “the three subject employees provided sworn testimony at hearing and were subject to cross-examination. They credibly testified without contradiction to the objective fact that, like the nonvoters in *Arbor’s* and *Colgate*, they did not appear at the polls at any time during the scheduled polling hours.” (at 4). As already discussed, objective evidence includes sworn, credited testimony. The RD therefore did rely on objective evidence.

Respondent argues that the “standard is not ‘credible testimony;’ rather, the case law requires a showing of ‘objective evidence,’ and no such showing has been made.” (Req. for Rev. at 7). It is true that credible testimony, alone, will not always suffice. For example, there could be a hypothetical case—not present here—where a witness provides otherwise credible testimony that is rebutted by more probative, credible evidence. A hearing officer could weigh the evidence and make factual findings that are inconsistent with the first witness’s otherwise credible testimony. In that way, Respondent is not wrong when it repeats that there is an “objective evidence” standard. However, credible testimony can rise to the level of objective evidence if it is credited and made part of the factual findings, as was true in *Arbors* and *Colgate Scaffolding*, as well as this case. In the present case, Petitioner presented among the most probative evidence

possible on this issue. Each of the three nonvoting employees were called to testify and testified under oath that they were not present anywhere near the polling location during the election. The Hearing Officer and RD did not err in relying on the only evidence presented by the parties on this issue—that the nonvoting employees were not near the polling location on election day—in making a factual finding that they were not present near the polling location on election day.

C. RESPONDENT’S PROPOSED STANDARD OF REQUIRING EITHER A FACT STIPULATION OR DOCUMENTARY EVIDENCE VIOLATES THE BOARD’S RULES AND REGULATION PROVIDING THAT THE RULES OF EVIDENCE GOVERN

The Board’s Rules and Regulations section 102.39 provides that the Federal Rules of Evidence control “so far as practicable.” The Federal Rules of Evidence recognize and regulate both testimonial evidence and documentary evidence. To require fact stipulations as a prerequisite to finding the objective evidence standard or to find that testimonial evidence alone cannot meet the objective standard would violate section 102.39.

Respondent argues that because there was no stipulation between the parties and because Petitioner did not offer documentary evidence, the objective standard was not met (Req. for Rev. at 7-8). However, relying on a factual stipulation makes no sense because parties are not required to enter into fact stipulations, and requiring such a high standard of “objectivity” would effectively mean that whichever party loses the election in a late opening case could always get a rerun election by simply not stipulating to facts.

Similarly, requiring documentary evidence would result in a bizarre standard not present in any other legal proceeding, perhaps except in contract disputes and the applicable statute of frauds. Quite simply, documentary evidence does not always exist, particularly in the kinds of cases at issue here where either an employer or union will be required to prove that a nonvoting employee was not present at a polling place on election day. More importantly, requiring documentary evidence as a prerequisite to finding the objective evidence standard has been met would be counter to the Board’s Rules and Regulations section 102.39 that the Federal Rules of Evidence control “so far as practicable.” Nothing in the Federal Rules of Evidence excludes

testimonial evidence and, in fact, much of the Rules are dedicated to regulating testimonial evidence. *See e.g.* Fed. R. Evid. 601-615 (Article VI Witnesses), 701-706 (Article VII Opinion and Expert Testimony), and 801-807 (Article VIII Hearsay). To conclude that the “objective evidence” standard cannot consist of testimony alone would violate the Board’s Rules and Regulations.

For these reasons, the RD applied existing precedent defining the “objective evidence” standard in concluding that voter disenfranchisement was not possible, and Respondent’s Request for Review based on an alleged lack of precedent or departure from precedent should be denied.

D. THE HEARING OFFICER’S ADMISSION OF EVIDENCE OF FERGUSON’S AND GOULDING’S TESTIMONY REGARDING THEIR REASONS FOR NOT VOTING WAS NOT IN ERROR

As previously stated, the Federal Rules of Evidence (“FRE”) provide a guidepost for hearing officers in deciding whether to admit or reject evidence. Under FRE 402, evidence is generally admissible if it is relevant. Under FRE 401, evidence is relevant if “(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.”

The hearing officer’s admission of evidence on whether the nonvoters were present at the voting location on election day is clearly the main issue. It was not an error to admit that testimony.

It was also not an error to admit testimony as to the nonvoters’ subjective reasons for not voting. The fact of consequence that the Union needed to prove was that the nonvoters were not present on election day. The fact that Ms. Ferguson “was not planning to vote,” (Req. for Rev. – citing Tr. 138-40), made it more probable that in fact she did not report to the polling place on election day. Ms. Goulding’s testimony that she “did not wish to participate in the vote,” (Req. for Rev. at 8 – citing Tr. 222), similarly made it more probable that she eventually did not report to the polling place on election day. Therefore, these subjective reasons for not voting, while not dispositive, made it more probable that the employees in fact did not report to the polling place

on election day, which is a critical factual issue in the inquiry of whether the late opening of the polls possibly disenfranchised the nonvoters. *Infra* Part II.E.

Moreover, the nonvoters' subjective reasons for not voting were relevant to their credibility. As already discussed, a hearing officer is required to make credibility determinations when evaluating witnesses' testimony and writing the report on objections. 29 CFR § 102.69(c)(1)(iii). Therefore, witness credibility is a fact of consequence in this action. Ms. Ferguson's testimony was subject to a credibility evaluation by the hearing officer. Ms. Ferguson's testimony that she "was not planning to vote" made her testimony that she did not appear at or near the polling location more credible. And Ms. Goulding's testimony that "she did not wish to participate in the vote," made her testimony that she did not appear at the polls more credible. If Ms. Ferguson had testified that she did not appear to the polling place because she "really wanted to vote and participate in the election," such a response would be dissonant with the Petitioner's factual assertion that she did not appear to the polling place on election day. The Hearing Officer, or Respondent's counsel on cross-examination, could have asked more questions to get to the truth of the matter or could have disregarded her testimony outright. Therefore, asking about the employees' subjective reasons for not voting—while not necessarily determinative on whether the nonvoters were potentially disenfranchised—was relevant not only to the question of whether the nonvoters were present at the polls on election day, but also as to the nonvoters' credibility as witnesses.

Respondent argues that "it is not possible to parse Ferguson's and Goulding's *after-the-fact subjective testimony* regarding their reasons for not voting from the testimony concerning their whereabouts on the day of the election." (Req. for Rev. at 9). This is not true as demonstrated in the preceding paragraph. Testimony regarding Ferguson's and Goulding's whereabouts on the day of the election is distinct from, but related to, their reasons for not participating in the election. In this case, their stated reasons were consistent with their conduct on election day. And as already stated, their reasons for not voting meet the standards of admissibility under the Federal Rules of Evidence and the Board's regulations.

Since the nonvoters' testimony regarding why they did not participate in the election was relevant to whether they appeared at the polling place, as well as to their credibility, the Hearing Officer did not err by admitting the testimony of Ms. Goulding and Ms. Ferguson about why they did not vote in the election.

E. THE REGIONAL DIRECTOR WAS CORRECT IN CONCLUDING THAT VOTER DISENFRANCHISEMENT WAS IMPOSSIBLE BECAUSE THE UNCONTROVERTED, CREDITED EVIDENCE AT THE HEARING ESTABLISHED THAT THE NONVOTERS DID NOT APPEAR AT THE POLLING PLACE ON ELECTION DAY

When determining whether the late opening of the polls possibly disenfranchised voters, the voters' presence or lack thereof is crucial. The RD correctly factored this into the conclusion that "the two-minute delay in opening the polls could not have possibly prevented those employees from voting." (Decision at 4-5).

Extant Board precedent reflects how the NLRB treats the question of nonvoters' presence at the polling site. In *Pea Ridge*, an important reason for rejecting the nonvoting employee's statement as subjective was that he was present at the polls on the day of the election. 335 NLRB at 161. Therefore, he could have been disenfranchised by the late opening of the polls. In contrast, in *Colgate Scaffolding*, the Board agreed with the ALJ that the nonvoter in question "was in Mexico on the day of the election, and was not 'possibly disenfranchised' by the late opening of the polls." *Colgate Scaffolding*, 354 NLRB at 547. And in *Arbors*, the Board concluded that the nonvoters were not possibly disenfranchised because they "did not appear at the polls at any time during the scheduled polling hours." 347 NLRB at 545. In sum, if the employees appeared at the polling place on election day, there will typically be a finding that they could have been disenfranchised by the late opening of the polls.¹ If the objective evidence

¹ This assumes that the employees showed up toward the beginning of the voting period and the polls opened late. A different result would be warranted if the polls opened late, and the objective evidence established that a nonvoting employee reported to the polling place two minutes after the polls closed, but did not report to the polling place when the polls opened. In this hypothetical, the fact that the employee reported to the polling place, alone, would not warrant a finding that the late opening of the polls possibly disenfranchised the employee.

establishes that the nonvoting employees did not report to the polling place on election day, then the late opening of the polls could not possibly have disenfranchised the nonvoters.

Here, the hearing officer determined, and the RD agreed, that the undisputed objective evidence revealed that the nonvoters did not appear on election day. Contrary to Respondent's assertion that "[n]o serious attempt is made [by the RD's Decision or the Hearing Officer's Report] to reasonably distinguish *Pea Ridge* and *Bronx Lobster*, or to explain why they are inapposite in this case[or why *Arbors* controlled], the RD's Decision stated that the three nonvoters "credibly testified without contradiction to the objective fact that, like the nonvoters in *Arbor's* and *Colgate*, they did not appear at the polls Unlike the lone employee in *Pea Ridge*, who was on-site, visited the polls, and subjectively 'decided not to vote,' here, one nonvoter was on an airplane and the other two were off-site" (Dec. at 4-5). The Decision also distinguishes *Bronx Lobster* from the present case, albeit implicitly, by noting "[t]he Board highlighted the critical difference between the objective evidence in *Arbors* . . . and the fact (not) present in *Bronx Lobster*, 'essentially, an *absence* of evidence to explain why potentially determinative voters did not cast their ballots.'" (at 4 – citing *Bronx Lobster*). Similarly, in the present case, Petitioner did not rely on an absence of evidence of disenfranchisement, but presented undisputed evidence that disenfranchisement was not possible.

Our case would be like *Bronx Lobster* if the Union had not presented the nonvoters at the hearing, but presented an election observer to testify that they did not see anyone arrive at the polls and then leave the polling place. Here, in contrast, Petitioner relied on the testimony of the nonvoters themselves to establish that they were not present at the polling place on election day and could not have possibly been disenfranchised. Therefore, the Union has met *Pea Ridge's* standard of "evidence sufficient to establish that the employee[s] could not possibly have been prevented from voting by the late opening of the polls" *Pea Ridge*, 335 NLRB at 161. As such, Respondent's contention that the RD erred in concluding that there was an absence of possible disenfranchisement should be rejected.

III. CONCLUSION

For the foregoing reasons, Respondent's Request for Review should be denied.

Dated: August 22, 2019

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

/S/ DAVID W. M. FUJIMOTO

By:

DAVID W. M. FUJIMOTO

Attorneys for Union International Association of
Machinists and Aerospace Workers, AFL-CIO

147297\1042208

**PROOF OF SERVICE
(CCP §1013)**

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On August 22, 2019, I served the following documents in the manner described below:

OPPOSITION TO EMPLOYER’S REQUEST FOR REVIEW

- (BY U.S. MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing with the United States Postal Service, and I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Postal Service at Alameda, California.
- (BY OVERNIGHT MAIL) I am personally and readily familiar with the business practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for overnight delivery, and I caused such document(s) described herein to be deposited for delivery to a facility regularly maintained by United Parcel Service for overnight delivery.
- (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld’s electronic mail system from lhull@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

Mr. Ronald K. Hooks National Labor Relations Board, Region 19 Regional Director 2948 Jackson Federal Building 915 Second Avenue Seattle, WA 98174-1078 (206) 220-6300 General (206) 220-6305 Fax Ronald.Hooks@nlrb.gov	Peter D. Conrad, Esq. David L. Bayer, Esq. PROSKAUER ROSE LLP Attorneys for the Employer Eleven Times Square New York, NY 10036 212, 969. 3020 (tel) 212. 969. 2900 (fax) pconrad@proskauer.com dbayer@proskauer.com
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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 22, 2019, at Alameda, California.



Lara Hull