

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MR. C MANAGER, LLC,

Employer,

and

UNITE HERE LOCAL 11,

Petitioner.

CASE NO. 31-RC-249624

EMPLOYER MR. C MANAGER, LLC'S REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION TO ADOPT HEARING OFFICER'S
RECOMMENDATIONS, COUNT CHALLENGED BALLOTS AND
OVERULE OBJECTIONS

Gordon A. Letter
LITTLER MENDELSON, P .C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067-3107
Telephone: 310.772.7226
Facsimile: 310.553.5583
Email: gletter@littler.com

Counsel for Employer
Mr. C MANAGER, LLC

February 21, 2020

TABLE OF CONTENTS

| | PAGE |
|--|------|
| PRELIMINARY STATEMENT..... | 1 |
| I. PROCEDURAL HISTORY..... | 2 |
| II. UNDER THE CORRECT TEST, THE ROOM INSPECTORS RESPONSIBLY DIRECT HOUSEKEEPING EMPLOYEES AND ARE STATUTORY SUPERVISORS..... | 4 |
| A. Possession Of Authority To Responsibly Direct Other Employees Is Sufficient To Establish Supervisory Status..... | 4 |
| B. To Establish Responsible Direction Of Other Employees, The Board Requires Accountability..... | 5 |
| C. Applying Accountability Under The Proper Broad Interpretation Of <i>Oakwood Healthcare</i> Espoused By Former Member Hayes and Former Chairman Miscimarra, The Record Evidence Establishes The Room Inspectors Responsibly Direct Housekeeping Employees..... | 10 |
| D. Contrary To The Regional Director’s Conclusions, The <i>Holiday Inn of Dunkirk-Fredonia</i> Case Relied Upon By Mr. C Supports Its Position That The Room Inspectors Responsibly Direct Other Housekeeping Employees On The Hotel Floors | 19 |
| E. As The Room Inspectors Responsibly Direct Housekeeping Employees And Are Accountable For Doing So Under The Appropriate Test, They Are Statutory Supervisors Who Are Ineligible To Vote And Whose Challenged Ballots Should Not Be Counted..... | 20 |
| III. ASSUMING, <i>ARGUENDO</i> , THE ULTIMATE TALLY OF VOTES FAVORS THE PETITIONER, SINCE ROOM INSPECTOR MARQUEZ IS A SUPERVISOR, THE REGIONAL DIRECTOR SHOULD HAVE ANALYZED EMPLOYER’S OBJECTION 5 UNDER THE TEST APPLICABLE TO A SUPERVISOR’S CONDUCT ON BEHALF OF THE UNION AND FOUND OBJECTIONABLE CONDUCT SUFFICIENT TO ORDER A NEW ELECTION | 20 |
| A. Since Room Inspector Marquez Is A Supervisor, The Board Must Apply Its Test Assessing Whether Efforts Of A Supervisor On Behalf Of A Union Constitute Objectionable Conduct | 21 |
| B. Under The <i>Harborside Healthcare</i> Test As Modified By <i>Domino’s Pizza</i> , Marquez’ Threat Reasonably Tended To Coerce A Room Attendant, Interfered With Her Free Choice, And Materially Affected The Election Outcome..... | 22 |
| IV. CONCLUSION..... | 24 |

TABLE OF AUTHORITIES

| | PAGE |
|---|----------------|
| Cases | |
| <i>CHI Lakewood Health,</i> 365 NLRB No. 10 (2016) | 9 |
| <i>Cook Inlet Tug & Barge, Inc.,</i> 362 NLRB 1153 | 9 |
| <i>Dean & Deluca New York, Inc.,</i> 338 NLRB 1046 (2003) | 5 |
| <i>DH Long Point Management LLC,</i> 369 NLRB No. 18 (February 3, 2020) | 8 |
| <i>Domino’s Pizza, LLC,</i> 368 NLRB No. 142 (December 16, 2019) | 2, 21, 22, 23 |
| <i>DST Industries, Inc.,</i> 310 NLRB 957 (1993) | 5 |
| <i>Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia,</i> 211 NLRB 461 (1974) | 19, 20 |
| <i>Entergy Mississippi, Inc.,</i> 357 NLRB 2150 (2011), reversed on other grounds | 6, 7, 8 |
| <i>Entergy Mississippi, Inc.,</i> 367 NLRB No. 109 (2019) | 6 |
| <i>G4S Government Solutions, Inc.,</i> 363 NLRB No. 113 (2016) | 8 |
| <i>Harborside Healthcare, Inc.,</i> 343 NLRB 906 (2004) | 21, 22, 23, 24 |
| <i>Island Holidays, Ltd., d/b/a Coco Palms Resort Hotel,</i> 201 NLRB 522 (1973) | 20 |
| <i>Labriola Baking Company,</i> 361 NLRB 412 (2014) | 23 |
| <i>Oakwood Healthcare, Inc.,</i> 348 NLRB 686 (2006) | <i>passim</i> |

TABLE OF AUTHORITIES
(CONTINUED)

PAGE

Ohio River Co.,
303 NLRB 696 (1991)5

Sheraton Universal Hotel,
350 NLRB 1114 (2007)5

*SR-73 and Lakeside Avenue Operations LLC d/b/a Powerback Rehabilitation, 113
South Route 73*,
365 NLRB No. 119 (2017)7, 8

Statutes

29 U.S.C. § 152(11)5

Regulations

National Labor Relations Board’s Rules and Regulations Section 102.62(b).....1

National Labor Relations Board’s Rules and Regulations
Section 102.67(c) and (d).....1

National Labor Relations Board’s Rules and Regulations Section 102.67(d).....4

National Labor Relations Board’s Rules and Regulations
Section 102.67(d)(1)(ii),(2), and (4)1

National Labor Relations Board’s Rules and Regulations Section 102.69(c)(2)1

PRELIMINARY STATEMENT

Pursuant to Sections 102.62(b), 102.67(c) and (d), and 102.69(c)(2) of the National Labor Relations Board's Rules and Regulations, Mr. C Manager, LLC ("Employer" or "Mr. C") respectfully submits this Request for Review of the Regional Director's Decision to Adopt Hearing Officer's Recommendations, Count Challenged Ballots, and Overrule Objections ("Decision to Adopt") issued on February 7, 2020. Compelling reasons exist under Section 102.67(d)(1)(ii), (2), and (4) for granting this Request for Review.

Initially, in overruling challenges to the ballots of three room inspectors whom Mr. C asserts are ineligible as statutory supervisors, the Regional Director erroneously applied an existing narrow interpretation of accountability in relation to responsible direction under *Oakwood Healthcare, Inc.*, 348 NLRB 686 (2006), rather than the appropriate broader test espoused in later dissents of former Member Hayes and former Chairman Miscimarra that the individual be evaluated on the basis of his own performance and mistakes rather than upon the performance of the individual's subordinates. For the reasons explained below, Mr. C submits that when the facts establishing responsible direction are accurately examined under this proper test, the room inspectors are shown to responsibly direct other housekeeping personnel and to be supervisors.

Further, assuming *arguendo* that among the remaining challenged ballots, room inspector Omar Marquez is determined to be a statutory supervisor and ineligible to vote, but room inspectors Rosalia Rodriguez and Nancy Uribe are concluded not to be supervisors and their ballots reverse the election outcome, Mr. C respectfully submits the Regional Director applied the wrong test of objectionable conduct and incorrectly overruled its Objection 5 that went to hearing. Instead of analyzing a threatening statement made by Marquez under the standard applicable to communication by a supervisor on behalf of a union, the Regional Director found the statement insufficient to constitute objectionable conduct by utilizing the standard for evaluating employee's

statements. Further, in adopting the Hearing Officer's finding that Marquez was not capable of carrying out his threat the Regional Director ignored Mr. C's argument that whether or not an express threat is coercive does not depend upon such capacity of the utterer based upon the Board's recent decision in *Domino's Pizza, LLC*, 368 NLRB No. 142 (December 16, 2019). Finally, in determining the threatening statement did not constitute objectionable conduct the Regional Director failed to even consider that it occurred in the context of an election decided by one vote. Mr. C submits that, contrary to the Regional Director's decision and based upon applying the proper test, in the event of an election result in favor of the Petitioner, Marquez' threatening statement is objectionable conduct that would warrant setting aside the election.

I. PROCEDURAL HISTORY

After the Petition was filed on October 8, 2019,¹ the parties entered into and the Regional Director approved a Stipulated Election Agreement for an election in the following unit:

Included: All full-time and regular part-time employees employed by the Employer as a room attendant, uniform attendant, coordinator, minibar attendant, houseperson, public area attendant, and turndown employee at its facility located at 1224 Beverwil Drive, Los Angeles, California 90035.

Excluded: All other employees, Director of Housekeeping, Assistant Housekeeping Director, Housekeeping Supervisors, office clerical employees, confidential employees, managers, guards, and supervisors as defined in the Act.

It further was agreed to include the following provision regarding the opportunity for the additional classification of room inspectors to participate in the election:

Others permitted to vote: The parties have agreed that employees in the classification of Room Inspectors may vote in the election, but their ballots will be challenged since their eligibility has not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit. The eligibility or inclusion of

¹ All dates hereafter are in calendar year 2019 unless otherwise indicated.

these individuals will be resolved, if necessary, following the election.

(Bd. Ex. 3, pp. 1-2).²

The election was held on November 1 and during the voting a Board agent challenged the ballots of the three room inspectors – Omar Marquez, Rosalia Rodriguez, and Nancy Uribe – based upon the agreement that they would vote subject to challenge. (Bd. Ex. 1(a), p. 2). The resulting tally of ballots shows 19 votes for and 20 votes against the Petitioner, with four challenged ballots being sufficient to potentially affect the results of the election.³ (Bd. Ex. 1(a), p. 1). On November 8, Mr. C also timely filed six objections.

On December 2, the Acting Regional Director issued a Decision Overruling Certain Objections, Order Directing Hearing, and Notice of Hearing on Challenged Ballots pursuant to which the four challenged ballots and the Employer’s Objections 3 and 5 were set for hearing. (Bd. Ex. 1(a)). On December 16, Employer Mr. C Manager, LLC’s Request for Review of Acting Regional Director’s Decision on Certain Election Objections was timely filed with the National Labor Relations Board (“NLRB” or “the Board”) concerning the Acting Regional Director’s dismissal of the Employer’s Objections 1, 2, 4, and 6. To date, Mr. C understands the Board has not acted upon this Request for Review.

The post-election hearing on challenged ballots and objections was conducted before a Hearing Officer on December 11 through 13. At the hearing, the challenged ballot of Chan

² References are indicated as “RDD” to the Regional Director’s Decision to Adopt, as “HRO” to the Hearing Officer’s Report on Challenged Ballots and Objections, and as “Tr.” to the post-election hearing transcript together with applicable page numbers. References to Board Exhibits, Employer Exhibits, and Union Exhibits are noted as “Bd. Ex.,” “Er. Ex.,” and U. Ex., respectively.”

³ In addition to the three room inspectors, the ballot of Sarita Chan Hernandez was challenged by the Employer on the ground she was employed at that time as a Sales Coordinator, a position outside the Housekeeping department that was excluded from the unit. (Bd. Ex. 1(a)).

Hernandez was resolved through the parties' stipulation that she is ineligible and that her ballot will not be counted. (Tr. 8-9, 608). At the conclusion of the hearing, the Hearing Officer expressly authorized the filing of post-hearing briefs, which were filed by the parties on December 27 with respect to the remaining challenged ballots of the three room inspectors and Employer's Objections 3 and 5.

The Hearing Officer's Report issued on January 10, 2020, finding that the three room inspectors are not statutory supervisors, recommending that their challenged ballots be opened and counted, and concluding that the evidence did not establish objectionable conduct as alleged in Objections 3 and 5. On January 24, 2020, Mr. C timely filed 83 exceptions to the Hearing Officers' findings, conclusions, and recommendations in Employer's Exceptions to the Hearing Officer's Report on Challenged Ballots and Objections ("Employer's Exceptions") and an Employer's Brief in Support of Exceptions to the Hearing Officer's Report on Challenged Ballots and Objections ("Employer's Supporting Brief").

On February 7, 2020, the Regional Director issued her Decision to Adopt. Mr. C now files this request for review based upon grounds set forth in Section 102.67(d) of the Board's Rules and Regulations.

II. UNDER THE CORRECT TEST, THE ROOM INSPECTORS RESPONSIBLY DIRECT HOUSEKEEPING EMPLOYEES AND ARE STATUTORY SUPERVISORS

A. Possession Of Authority To Responsibly Direct Other Employees Is Sufficient To Establish Supervisory Status

It is well-established that because the list of authorities in Section 2(11) of the Act is written in the disjunctive, an individual need only possess one of the enumerated authorities to be a supervisor. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 688 (2006) [possession of authority to engage in any one of the 12 supervisory functions is necessary to establish supervisory status];

Ohio River Co., 303 NLRB 696, 717 (1991) [“. . . possession of any one of the above explicitly expressed supervisory powers is sufficient to place the individual within the statutory supervisory definition.”] Since authority responsibly to direct other employees is one of the supervisory authorities listed in Section 2(11), possession of that authority alone qualifies an individual to be a supervisor.⁴

In addition, “[i]ndividuals with statutory supervisory authority do not lose their status simply because they infrequently exercise their authority. [Footnote omitted.]” *DST Industries, Inc.*, 310 NLRB 957, 958 (1993). In fact, “Section 2(11) requires only possession of authority to carry out an enumerated supervisory function, not its actual exercise. [Citations omitted.]” *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007). A party seeking to prove supervisory status need only establish it by a preponderance of the evidence. *Dean & Deluca New York, Inc.*, 338 NLRB 1046, 1047 (2003).

B. To Establish Responsible Direction Of Other Employees, The Board Requires Accountability

The Board noted in *Oakwood Healthcare* that the inclusion of “responsibly to direct” among the indicia of supervisory authority “was designed to ensure that the statutory exemption of Section 2(11) encompassed those individuals who exercise basic supervision but lack the authority or opportunity to carry out any of the other statutory supervisory functions” 348 NLRB at 690. It observed that: “If a person on the shop floor has ‘men under him,’ and if that

⁴ The status of “supervisor” is defined in Section 2(11) as follows:

The term ‘supervisor’ means any individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, **or responsibly to direct them** or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [Emphasis added.]

29 U.S.C. § 152(11).

person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor, provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” *Oakwood Healthcare, supra*, 348 NLRB at 691. The Board determined that in order for the direction to be responsible, “. . . the person directing and performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequence may befall the one providing the oversight if the tasks performed by the employee are not performed properly.” *Id.* at 692. It was concluded that:

. . . to establish accountability for purposes of responsible direction, it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.

Id. On the page of *Oakwood Healthcare* referenced by the Regional Director (RDD 7, 9) it is reiterated that “. . . to constitute “*responsible*” direction the person performing the oversight must be held accountable for the performance of the task, and must have some authority to correct any errors made.” *Id.* at 695 [emphasis in original].

In subsequently applying accountability as a requirement of responsible direction in *Entergy Mississippi, Inc.*, 357 NLRB 2150 (2011), reversed on other grounds, *Entergy Mississippi, Inc.*, 367 NLRB No. 109 (2019),⁵ a two-member majority found the evidence did not show responsible direction by the dispatchers because they were not held accountable for the employees they direct and instead demonstrated the dispatchers were accountable for their own failures and

⁵ After the majority in the original representation decision concluded that the dispatchers at issue were not supervisors because they neither responsibly directed other employees nor assigned work, and based upon remand in the ensuing unfair labor practice case by the Circuit Court solely on the issue of whether the dispatchers possessed the authority to assign other employees using independent judgment, the later Board panel concluded the dispatchers did assign work and were statutory supervisors. 367 NLRB No. 109, slip op. at 1.

errors. *Entergy Mississippi, supra*, 357 NLRB at 2154-2155. Former Member Hayes dissented, however, on the basis that the dispatchers were “. . . held accountable for their oversight and judgment when directing field employees.” *Id.* at 2158. He indicated that the majority’s interpretation of responsible direction was “narrow” and noted that:

. . . a supervisor’s “responsible direction” under *Oakwood Healthcare* is not based simply on being accountable for the errors and mistakes of the employees directed. Rather, accountability focuses on the supervisor’s own conduct and judgment in exercising oversight and direction of employees in order to accomplish the work. [Footnote omitted.] As expressed in *Oakwood Healthcare*, the critical inquiry is whether the person delegated authority to direct and oversee the performance of a task by other employees is accountable for the employees’ success or failure in accomplishing the task for the employer. *Oakwood Healthcare, supra* at 692.

Id. at 2158.⁶

Later, former Chairman Miscimarra as well embraced the broader interpretation of accountability for purposes of responsible direction. In his dissent in *SR-73 and Lakeside Avenue Operations LLC d/b/a Powerback Rehabilitation, 113 South Route 73*, 365 NLRB No. 119, slip op. at 4, n. 3 (2017), former Chairman Miscimarra quoted Member Hayes’ dissent from *Entergy Mississippi* and disagreed with the majority view of accountability “. . . because it fails to recognize that accountability exists whenever a putative supervisor is deemed responsible for his or her ‘own conduct and judgment in exercising oversight and direction of employees in order to accomplish the work.’ [Citation omitted.]” He went on to state: “Indeed, it is so rarely the case that a supervisor suffers the consequences when a subordinate performs poorly – as opposed to being held accountable for his or her own performance in directing and overseeing the subordinate’s work – that the Board’s restrictive interpretation of ‘accountability’ effectively nullifies the statutory

⁶ Former Member Hayes further observed that *Oakwood Healthcare* “. . . does not require that an ‘adverse consequence’ must be some formal discipline or even that every incident must result in an adverse consequence. [Footnote omitted.]” *Id.* at 2158.

phrase ‘responsibly to direct.’” *Id.*

Insofar as Mr. C is aware, the current three-member Board has not indicated its interpretation of the accountability standard for purposes of responsible direction under *Oakwood Healthcare*. To the extent the Regional Director concluded, based upon the recent decision in *DH Long Point Management LLC*, 369 NLRB No. 18 (February 3, 2020), that the current Board’s failure to criticize an Administrative Law Judge’s (“ALJ”) application of the accountability standard demonstrates support for extant Board law, and opposition to the interpretation supported by former Member Hayes and former Chairman Miscimarra, the Regional Director is mistaken. Initially, *DH Long Point* is an unfair labor practice case in which the Board’s Decision was a short-form adoption of the ALJ’s recommended Decision. 369 NLRB No. 18, slip op. at 1. The ALJ found that a junior sous chef, Freddy Lovato, was unlawfully disciplined and discharged for union and protected, concerted activities, and rejected one of the respondent employer’s defenses that Lovato was a statutory supervisor who was not protected by the Act. *Id.* at slip op. at 3, 16. But, the ALJ relied upon the *Oakwood Healthcare* formulation of the accountability standard, and not the narrow interpretation of *G4S Government Solutions, Inc.*, 363 NLRB No. 113, slip op. at 1 (2016), relied upon the Regional Director in the instant case, in finding that Lovato had not been shown by a preponderance of the evidence to be held accountable. 369 NLRB No. 18, slip op. at 5-6. Although the ALJ directed attention to *Entergy Mississippi*, he did so only insofar as quoting that: “Supervisory status is not proven where the record evidence ‘is in conflict or otherwise inconclusive.’” 369 NLRB No. 18, slip op. at 6. As a result, the Regional Director erred in asserting that the Board’s short-form adoption of a Hearing Officer’s reliance upon and application of the accountability standard under *Oakwood Healthcare* supports “extant Board law” favoring the narrow interpretation of the accountability standard relied on by the majority in *G4S Government Solutions, Inc.* (RDD at 9).

The Employer submits the Board instead should adopt the accountability standard for responsible direction set forth in the dissents of former Member Hayes and former Chairman Miscimarra described above for determining whether the room inspectors in the instant case are statutory supervisors.⁷

In alternatively applying the accountability standard sought by the Employer, the Regional Director further incorrectly concludes, however –citing *CHI Lakewood Health*, 365 NLRB No. 10, slip op. at 1, n. 1 (2016) - that the Employer may not satisfy that standard through reliance upon authority set forth in job descriptions and performance evaluations because it is “paper” rather than actual authority. (RDD at 9, n. 7). But, the definition of a supervisor under Section 2(11) does not preclude reliance upon authority described in job descriptions and performance evaluations, which simply requires an individual to “possess” the authority enumerated in the Section. In fact, former Chairman Miscimarra observed in his dissent in *CHI Lakewood Health* that evidence of accountability contained in a job description cannot be ignored. 365 NLRB No. 10, slip op. at 3. See also, *Cook Inlet Tug & Barge, Inc.*, 362 NLRB 1153, 1155 (Chairman Miscimarra dissenting) [“. . . [I]t was inappropriate for the Board to discount relevant documentary evidence by labeling it ‘mere paper authority’ . . .”]. Further, for the reasons stated below, under the correct interpretation of accountability under *Oakwood Healthcare*, other evidence demonstrates the room inspectors responsibly direct other Housekeeping personnel and are accountable in doing so.

⁷ Mr. C has consistently argued from the outset in this post-election proceeding for such broader interpretation of accountability in its Employer’s Brief to Hearing Officer on Challenged Ballots and in Support of Objections (page 15, footnote 16), and in its Employer’s Exceptions (Exceptions 41 and 42) and Employer’s Supporting Brief (pages 10 to 11).

C. Applying Accountability Under The Proper Broad Interpretation Of *Oakwood Healthcare* Espoused By Former Member Hayes and Former Chairman Miscimarra, The Record Evidence Establishes The Room Inspectors Responsibly Direct Housekeeping Employees

Initially, the record evidence demonstrates the room inspectors are held responsible for their own performance in directing and overseeing the work of room attendants, housepersons, and mini bar attendants. The room inspector job description includes a number of provisions relevant to their authority.⁸ Initially, a “JOB OVERVIEW” provides: “Supervise and inspect the work of assigned room and/or public area attendants to ensure product quality standards are met and that optimum service is provided to hotel guests according to hotel and company business objectives.” (Er. Exs. 1 and 2). Next, it lists the duties and responsibilities of the position, which include the following items:

- Inspect all assigned areas to ensure furnishings, guest rooms/suites, equipment, linens, and public areas are clean and in good repair to meet guest satisfaction. **Advise employees of deficiencies and instruct on corrective action.** Provide adequate retraining as needed. [Emphasis added.]
* * * * *
- **Monitor performance** and recommend disciplinary action in accordance with company rules and policies. Alert management of potentially serious issues. [Emphasis added.]
* * * * *
- Report maintenance and housekeeping deficiencies using the established procedures. Compile reports
* * * * *

(Er. Exs. 1 and 2).

⁸ Mr. C maintains job descriptions for the positions at the hotel, and a copy of the job description for each employee is contained in that employee’s file. (Tr. 29). The up-to-date job description for room inspector is contained in the employee files of the three room inspectors in different font and type but with identical substance, and included in the hearing record. Marquez signed one form on July 21, 2014. The other one, maintained in the files of Rodriguez and Uribe, is unsigned. (Tr. 30–33, 34, 35-36, 522-523; Er. Exs. 1 and 2).

Consistent with their job description, in the room inspectors' Employee Performance Evaluations, they are reviewed on their supervision of other employees in the "NARRATIVE OF PERFORMANCE" section of the evaluations. (Tr. 40-42). The performance evaluation for each of the three room inspectors states that such room inspector "ensures to report any discrepancies and/or deficiencies that are found to the supervisors/managers on duty." (U. Ex. 1, p. 5; U. Ex. 2, p. 5; U. Ex. 3, p. 5).

In terms of day-to-day operations, it is a goal of the housekeeping department and of the room inspectors to have as many rooms as possible available for hotel guests by the 3:00 p.m. check-in time. This is a high priority for the entire department. (Tr. 209-210 and 226). As a result, part of the room inspector job is to see to it that rooms are made ready up to the hotel standards as quickly as possible. In getting rooms ready as soon as possible, a room inspector takes whatever steps are necessary within the hotel standards and under the hotel procedure that is part of that objective. (Tr. 497-498).

For most housekeeping employees, the day begins with a housekeeping stand up meeting, which occurs each morning at 8:00 a.m. on Monday through Friday and at 9:00 a.m. on the weekend. Employees in the following job classifications attend the meeting: housekeeping coordinator, room attendants, housepersons or housemen, the early room inspector, and uniform attendant. (Tr. 179-181).

During the housekeeping stand-up meeting, the housekeeping employees are briefed on any scheduled hotel events that day, reminders on cleaning standards, items to focus on, how many arrivals and departures are scheduled for that day, the room occupancy, and other information. As some employees speak only Spanish, the Associate Director of Housekeeping, Jorge Mario Marroquin, or the AM Housekeeping Supervisor, Andy Ortiz, conducts the meeting in Spanish. On Mondays, the early room inspector (Rodriguez) interprets the meetings for the General

Manager, Sam Jagger, and at times, she assists with interpreting certain words where Marroquin has difficulty conveying them in Spanish. (Tr. 145-146, 148-151, 184-186, 220-221, 233-234, 246, 263, 581).

In the stand-up meeting a “Housekeeping Task Sheet,” containing an individual rooms list, is distributed to each room attendant on that shift. If a room attendant regularly assigned to a particular floor is off work, then that floor and the tasksheet are assigned to a floater room attendant. The housepersons or housemen at the meeting are given a Vacant Rooms list, which indicates vacant dirty rooms. The early room inspector receives a copy of the housekeeping board,⁹ a Vacant Rooms List, and a list showing every hotel room and whether a guest is checking out of the room or arriving, the room is out of service, and any rooms on pickup. Throughout the day, a room inspector may pick up a revised vacant dirty or vacant clean list from the housekeeping department. (Tr. 164-165, 178-184).

The stand-up meeting lasts roughly 15 to 20 minutes. When it ends, the room attendants load up their caddies with amenities and check with the housekeeping coordinator regarding any questions on their assigned rooms. Then, they go to the elevator and go up to their assigned floor. The housepersons pick up the vacant dirty list and go up to the floors to strip the dirty rooms, which includes removing linens, towels, and the trash to ready the rooms for the room attendants. The early room inspector assists the room attendants in stocking up on envelopes, postcards, and Mr. C stickers to bring to their floors. After completing this task, the room inspector goes to a floor to begin inspecting rooms. (Tr. 184, 186-189, 224).

Initially, the room inspector goes to inspect vacant clean rooms because if nothing further

⁹ The housekeeping board lists the room assignments for each room attendant and is finished in time for the housekeeping stand-up meeting. A sample of the housekeeping board for October 25 is in the record. (Tr. 156-157; Er. Ex. 3).

is needed in those rooms they can readily be released to a guest. On the Housekeeping Detail Report containing the list of vacant rooms the “Status” column indicates whether the room previously was inspected and is clean – for example, on Employer Exhibit 5 three such rooms appear. But, there may not be any vacant clean rooms listed if the hotel was sold out on the preceding day. (Tr. 192 and 193-194; Er. Ex. 5).

If the report does not show any vacant clean rooms, then the room inspector begins with inspecting vacant dirty rooms. Initially, the room inspector focuses on the rooms for which an arrival is listed under “Reservation Status.” First, the room inspector looks to ensure either that the houseperson has stripped the room or that a room attendant is already working in the room. If the room inspector finds the room is not stripped, the room inspector calls a houseperson on the radio and directs the houseperson to strip that room next. If the room inspector finds the room stripped and that the room attendant has not begun cleaning the room, the room inspector looks for the room attendant on that floor and instructs the room attendant to next clean that vacant dirty room that is reserved for an arrival. Throughout the day, the room inspectors focus on arrivals in prioritizing the rooms to have them ready when guests arrive at the hotel. (Tr. 192-195; Er. Ex. 5).

Where the room inspector arrives at a vacant dirty room already cleaned by the room attendant, the room inspector inspects the room. The inspection includes checking that: the door is free of scuff marks; the bathroom contains all required towels, has no hair on the floor or in other areas, and has a cleaned toilet; the minibar is stocked; the credenza is dusted; light fixtures are working; the bed is properly made; the balcony is clean; and the carpet is clean. If the room inspector finds something is deficient or unsatisfactory, the room inspector cryptically notes the

issue on one of the lists in order to refresh the room inspector's recollection.¹⁰ (Tr. 120, 195-198).

The subsequent handling of the deficiencies found in a room by the room inspector is the portion of the Regional Director's Decision to Adopt that is clearly erroneous on the record on a substantial factual issue and which prejudicially affects the rights of the Employer. The Regional Director concluded that:

. . . substantial evidence in the record supports the Hearing Officer's finding that, except in instances of minor issues when the room inspectors usually fix the problem directly, the room inspectors contact the housekeeping coordinator, Marroquin, or Ortiz who will then contact the room attendant, either by phone or through a houseperson, and instruct the room attendant to return to the guest room to correct the discrepancy.

(RDD at 6). While the Hearing Officer, and the Regional Director by adoption, inferred the foregoing from Marroquin's testimony, he never indicated that such notification precedes the room inspectors' contacts directly with other housekeeping personnel to fix the deficiencies.

Marroquin first testified on direct examination that after finding deficiencies the room inspector contacts different hotel personnel depending upon the issue. For example, if a light is not working, the room inspector calls the Engineering department on channel 2 on the radio. (Tr. 205-206). If the problem involves scuff marks on the door, or the balcony, or carpet stain, then the room inspector contacts a houseperson on the radio and instructs that individual to address it. (Tr. 198, 199). For missing items on the mini bar, the room inspector calls the mini bar attendant on the radio and makes sure the room will be the next room addressed. (Tr. 207-208).

Where the issue relates to cleanliness of the bathroom or its amenities, or the bedding, the floor, or hair or crumbs on the carpet, the room inspector initially checks the housekeeping board to see who cleaned the room. (Tr. 203). The room inspector then looks for that room attendant

¹⁰ It is within the room inspector's discretion as to which list to use in entering these notes. (Tr. 197).

on the floor. (Tr. 198-199, 203). If the room inspector finds the room attendant on the floor, the room inspector directs the room attendant to return to the inspected room to address the problem. (Tr. 198-199). The room inspector returns to the room and points out the deficiency or discrepancy, and directs the room attendant to redo or fix it. (Tr. 204, 272). If the room attendant appears not to understand the standard, the room inspector trains the room attendant on the standard. (Tr. 272-273).

If the room inspector finds that the room attendant is not available on the floor, the room inspector calls the housekeeping coordinator who puts that room on pick up. Placing the room on pick-up means that it will wait for that room attendant to become available by, for example, returning from her meal break or from work at the Residences.¹¹ (Tr. 206-207). If that room attendant remained unavailable for some reason, another room attendant may address the deficiency.

Contrary to the Regional Director's determination that room inspector Marquez' testimony supports the Hearing Officer's finding, in fact, the evidence provided by Marquez corroborates Marroquin's indication that the room inspectors directly address deficiencies with the appropriate hotel staff, and only call the Housekeeping office if a room attendant is not on the floor. If Marquez finds any issues he reports them to the person or department responsible for the issue, and tells them what the deficiency is and what needs to be done to correct it. If the deficiency involves Engineering, he reports it to them. If the problem is for a houseman, he reports it to the houseman. If the problem is for a mini bar attendant, Marquez reports it to the mini bar attendant. Marquez uses a radio to contact a houseman or a mini bar attendant because they also carry radios. (Tr.

¹¹ Besides the 138 guest rooms in the main hotel building, additional accommodations are available in five Mr. C Residences, which each consist of four stories and are located in a single separate building. These Residences may be rented for a minimum of 30 days. (Tr. 62-63).

453, 495-497, 544).

If Marquez finds a deficiency that is for a room attendant who is available on the same floor as Marquez then he goes and finds that room attendant and lets the room attendant know what the deficiency is in the room. As examples of issues that involve a room attendant needing to come back to a room that was already cleaned Marquez identified dirty mirrors, showers not washed properly, and hair on the floors. Marquez further testified that examples of his handwritten notes on the paperwork he receives indicate he would have to call the room attendant back to address room deficiencies. He also instructs the room attendant what he expects the room attendant to do in returning to the room to fix the deficiency. If he does not find the room attendant on the floor, Marquez communicates the issue to the housekeeping coordinator so that the room attendant will be located to let her know. But, Marquez testified he is not required to notify the housekeeping coordinator about issues he finds in a room. (Tr. 453-454, 486, 496-497, 506, 512-513; Er. Ex. 9, first page).

As for the other two room inspectors, the Regional Director in adopting the Hearing Officer's findings erroneously credited the testimony of Rosalia Rodriguez and Nancy Uribe that they "always" have to call the Housekeeping office to notify the housekeeping coordinator or a supervisor of a deficiency before acting upon it. (RDD at 6; HOR at 6). Initially, Uribe testified that she always initially calls downstairs to her supervisor if she finds an issue in a room. (Tr. 294, 296). But, she contradicted herself in stating that if the room is missing a pen or a postcard, she replenishes it herself either from her own supply or by asking a room attendant on the floor for one. (Tr. 323, 324). Uribe also said she only returns the room attendant back to the room if she is asked in that call to "do them the favor" and let the room attendant know what is wrong. (Tr. 294, 295, 324). But thereafter, Uribe says there are not any circumstances in which she calls a room attendant back to a room herself. (Tr. 324-325).

Rodriguez first testified that she always has to call the housekeeping coordinator if she finds something wrong in a room. (Tr. 390). Further, even though Rodriguez could readily determine who cleaned the room from the numbers listed on the housekeeping board tasksheets, she stated that she asks the coordinator in these calls who cleaned that room. (Tr. 388-389). Rodriguez also indicated that only if the housekeeping coordinator allows her does she find a room attendant who is working on the same floor, tell the room attendant what is wrong in the room, and direct the room attendant to go fix it. (Tr. 389, 390). On cross-examination, Rodriguez initially claimed that even if she knows the room attendant is two doors down from the room she is inspecting, she does not go tell that room attendant to return to the room without calling downstairs. (Tr. 411-413). But under further questioning, Rodriguez contradicted her initial testimony and admitted that there are times when she brings a room attendant back to a room on her own without first calling the housekeeping coordinator. (Tr. 413).

In accepting the above-described testimony of Uribe and Rodriguez, the Regional Director and the Hearing Officer entirely ignored credible testimony of Managing Director Sam Jagger regarding operation of the Housekeeping department. Jagger explained that efficiently utilizing the positions in Housekeeping to expedite release of rooms to the front desk is critical for the hotel. (Tr. 578). He indicated the importance of housekeeping personnel seeing a job through from beginning to end. (Tr. 579). With respect to the room inspectors in particular, Jagger stated that merely having them go to a room and report to someone else (like the housekeeping coordinator or associate director) on any deficiency found is highly inefficient and unworkable. (Tr. 580). Rather, the room inspectors must follow through by notifying appropriate personnel to return to the room to fix the issue and thereafter going back to the room to verify it meets the quality standard before releasing the room to the front desk for a guest. (Tr. 580).

Contrary to the Regional Director's finding, room attendant Miriam Castellanos testified

that all three room inspectors have instructed her to go back to rooms she has already cleaned in order to clean something. She stated that Marquez had done so on three occasions, Uribe had done so twice, and Rodriguez had done so more than 10 times. (Tr. 76-78). Castellanos identified a specific example as having occurred on October 22 when room inspector Marquez assigned her to go back to correct something in a room in the hotel building that she had already cleaned. In particular, Castellanos said that Marquez instructed her to return to the room and to kneel down and clean all of the baseboards on the walls of the room. In response, Castellanos obeyed the instruction, returned to that room, and cleaned the baseboards. (Tr. 73-74). When Castellanos is cleaning rooms on a floor in the hotel building she considers Marquez her immediate supervisor. (Tr. 78).

Castellanos also testified on cross-examination that sometimes the person who tells her to return to the room she has already cleaned is not a room inspector. In these instances, she said the room inspector would contact the housekeeping coordinator in the housekeeping office, who would then ask a houseman to tell Castellanos that the room inspector called for Castellanos to go back to the room.¹² The houseman would not relate the problem in the room. When Castellanos went back to the room, the room inspector was there and pointed out the issue in the room. Castellanos also stated that many times a room inspector instructs her to go fix something in rooms she did not clean. (Tr. 84-85, 94-95).

Based upon all the foregoing, the Regional Director incorrectly concluded that “substantial evidence refutes the Employer’s contention that room inspectors exercise independent judgment by directing Housekeeping employees to fix discrepancies without first conferring with the

¹² This is not surprising in that Castellanos spends much of her time cleaning the Residences (Tr. 67-68), and may therefore not be on the floor or in the hotel building where the room inspector has found a deficiency.

housekeeping coordinator, Marroquin, or a housekeeping supervisor.” (RDD at 6). In fact, as shown above, the preponderance of the evidence demonstrates otherwise, and establishes that the room inspectors possess the authority responsibly to direct Housekeeping employees.

D. Contrary To The Regional Director’s Conclusions, The *Holiday Inn of Dunkirk-Fredonia* Case Relied Upon By Mr. C Supports Its Position That The Room Inspectors Responsibly Direct Other Housekeeping Employees On The Hotel Floors

Like the assistant motel housekeeper in *Dunkirk Motor Inn, Inc., d/b/a Holiday Inn of Dunkirk-Fredonia*, 211 NLRB 461, 462 (1974), the room inspectors instruct Housekeeping employees to correct deficiencies in their work. This responsibility is not routine. As the Board majority specifically stated in that case, the test of “responsible direction” does not depend upon the complexity and difficulty of maids’ work or of the corrective measures taken. The proper test is whether the individual in question:

[E]xercises independent judgment without consultation with the housekeeper in ascertaining the deficiencies in the maids’ work, however prosaic or uncomplicated, and utilizing the authority to order that the work be done correctly.

211 NLRB at 462. The Regional Director inaccurately dismisses the fact that the room inspectors exercise independent judgment without consultation in asserting that the room inspectors engage in “frequent consultation with the housekeeping coordinator, Associate Director of Housekeeping Marroquin, and Housekeeping Supervisor Ortiz.” (RDD at 7-8). Such consultation only occurs in instances that will entail substantial amounts of time and effort to bring the room to the cleaning quality standard. Moreover, the room inspectors are exercising independent judgment in determining whether a particular job performed by another housekeeping employee satisfies the quality standard or not. Finally, the record evidence supports Mr. C’s position that the room inspector contacts the room attendants on the same floor, but goes through the housekeeping coordinator, Marroquin, or Ortiz to locate and return a room attendant working on another floor.

As a result, the Regional Director erred in not concluding that *Holiday Inn of Dunkirk-Fredonia* supports the Employer's position. (See RDD at 8). For these reasons, like the assistant motel housekeeper in *Holiday Inn of Dunkirk-Fredonia*, the room inspectors responsibly direct housekeeping employees and are statutory supervisors.¹³

E. As The Room Inspectors Responsibly Direct Housekeeping Employees And Are Accountable For Doing So Under The Appropriate Test, They Are Statutory Supervisors Who Are Ineligible To Vote And Whose Challenged Ballots Should Not Be Counted

Based upon adoption of the appropriate test of accountability and the record evidence of responsible direction of Housekeeping employees discussed above, the room inspectors possess such supervisory authority under Section 2(11) of the Act. Since the room inspectors are statutory supervisors, they are ineligible to vote. As a result, the decision of the Regional Director finding to the contrary and her accompanying decision to count their ballots must be overruled by the Board.

III. ASSUMING, ARGUENDO, THE ULTIMATE TALLY OF VOTES FAVORS THE PETITIONER, SINCE ROOM INSPECTOR MARQUEZ IS A SUPERVISOR, THE REGIONAL DIRECTOR SHOULD HAVE ANALYZED EMPLOYER'S OBJECTION 5 UNDER THE TEST APPLICABLE TO A SUPERVISOR'S CONDUCT ON BEHALF OF THE UNION AND FOUND OBJECTIONABLE CONDUCT SUFFICIENT TO ORDER A NEW ELECTION

As indicated in the Procedural History section above, the tally of ballots revealed 20 votes against and 19 votes for representation by Petitioner. Assuming, *arguendo*, that room inspector Marquez is determined to be a statutory supervisor and ineligible to vote, but room inspectors Rodriguez and Uribe are concluded not to be supervisors and their ballots are counted, which

¹³ In addition, Mr. C submits the Regional Director has not distinguished the Board's holding in *Island Holidays, Ltd., d/b/a Coco Palms Resort Hotel*, 201 NLRB 522, 523 (1973), and that similar to the assistant housekeeper in that case, the room inspectors are statutory supervisors because they direct other Housekeeping personnel in the cleaning of rooms and inspect the rooms after the maids leave. (See RDD at 8-9).

results in a revised tally of ballots indicating 21 votes cast for and 20 against the Petitioner, Mr. C submits the Regional Director applied the wrong test of objectionable conduct and incorrectly overruled Objection 5.¹⁴

A. Since Room Inspector Marquez Is A Supervisor, The Board Must Apply Its Test Assessing Whether Efforts Of A Supervisor On Behalf Of A Union Constitute Objectionable Conduct

In *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004), the Board established the following test applicable to an assertion of objectionable conduct based upon efforts of a statutory supervisor on behalf of a union:

(1) Whether the supervisor's prounion conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election.

This inquiry includes: (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the prounion conduct; and (b) an examination of the nature, extent, and context of the conduct in question.

(2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

Id. at 909. Recently, however, the Board clarified the *Harborside Healthcare* test by indicating that "a supervisor's **express** threat is coercive under the first prong, whether or not the supervisor possesses the specific authority to effectuate the threat. [Emphasis added.]" *Domino's Pizza, LLC*, 368 NLRB No. 142, slip op. at 2 (December 16, 2019).

¹⁴ If all three room inspector challenged ballots are counted and lead to a revised tally of ballots indicating less than a majority of the valid votes were cast for the Petitioner, then the Employer's Objections would be moot.

B. Under The *Harborside Healthcare* Test As Modified By *Domino's Pizza*, Marquez' Threat Reasonably Tended To Coerce A Room Attendant, Interfered With Her Free Choice, And Materially Affected The Election Outcome

With respect to the statement made by room inspector Marquez, room attendant Miriam Castellanos testified in Spanish through an interpreter that on Tuesday, October 22, 2019, at about noon, as she was coming out of a room into the hallway on a floor of the hotel building Marquez was also in the hallway and made a statement to her that she considered unusual.¹⁵ Castellanos indicated that no one else was present at the time. (Tr. 69-72). When asked on direct examination what Marquez said to her, Castellanos' testimony was initially interpreted as “[t]hat they were going to run her out of there and were going to take her off the Residences.” (Tr. 72). In explaining whom she understood Marquez to be referring to when he said “they,” Castellanos' testimony was interpreted to indicate that if she got into or became affiliated with the Union, “they^[16]” will take her out of the Residences because it was all based on seniority. (Tr. 72-73). Castellanos testified her reaction was that she was speechless, did not know what to say, and that “my head started to ache – or started to like spin because of fear.” In explaining what she was afraid of based upon Marquez' statement Castellanos stated that she feared that the Union would get her fired or “run me off,” meaning that if she did not agree to be with the Union, they would run her off and she would lose the opportunity to work in the Residences and lose her job. (Tr. 75-76). She also indicated that she had to use her inhaler to help her in breathing and to take some pills because she did not feel well. (Tr. 73 and 74-75). Marquez ended the conversation by sending Castellanos back to a room she had already cleaned. Specifically, he told her that she needed to kneel down

¹⁵ Marquez testified that he is bilingual in English and Spanish and a fluent native speaker of Spanish. He also indicated that he spoke with Castellanos in Spanish. (Tr. 551-552).

¹⁶ Mr. C submits that the interpretation of Castellanos' testimony communicates that she understood Marquez' reference to “they” as referring to the Union.

and clean all the baseboards along the walls of the room. (Tr. 73-74).

In addition, Elvia Pineda, another room attendant, testified in Spanish through the interpreter that on Monday, October 28 - her day off – she received a phone call from Sarita Chan Hernandez, who was employed by the hotel at that time.¹⁷ In the call, Pineda was told she had to vote or she would be out of work or run out of the Residences.¹⁸ (Tr. 100, 101-102).

Applying the initial prong of the *Harborside Healthcare* test to Marquez’ threat, the record evidence indicates he monitors the work of the room attendants, housepersons, and mini bar attendants to ensure it satisfies Mr. C’s standards, takes corrective action so that deficiencies are fixed, and reports recurring deficiencies to the associate director of housekeeping and the housekeeping supervisor. His statement to Castellanos was an express threat relating to being “run off” in relation to both her work assignment in the Residences and her job with Mr. C. Marquez further finished off his threat by directing Castellanos to return to a room she had already cleaned, kneel down, and clean all the baseboards. Whether Marquez had the capability to carry out his threat does not matter. Under this Board’s view as quoted above from *Domino’s Pizza*, whether Marquez possesses authority to take away a work assignment of or to fire a room attendant does not impact the nature and degree of his supervisory authority for purposes of analyzing his express threat to Castellanos. As Marquez’ threat jeopardized Castellanos’ work assignment and job, it reasonably tended to induce fear – as Castellanos immediately felt when her head began to ache

¹⁷ It was stipulated during the hearing that at the time of entry into and approval of the Stipulated Election Agreement on October 21, Chan Hernandez occupied the position of housekeeping coordinator in the unit. It was further stipulated that at the time of the election, Chan Hernandez held the position of sales coordinator in the Sales department, which is not a Housekeeping position. (Tr. 280-281).

¹⁸ Mr. C submits the statement made by Chan Hernandez is sufficiently similar to the statement of Marquez described above that it is appropriate to consider this evidence in support of Employer’s Objection 5. See *Labriola Baking Company*, 361 NLRB 412 (2014) [“[T]he Board may consider conduct that does not ‘exactly coincide with the precise wording of the objections’ where, as here, that conduct is ‘sufficiently related’ to the filed objections. (Citation omitted.)”].

and spin, causing her to use her inhaler and take pills – and thereby tended to coerce or interfere with her exercise of free choice in the election.

With respect to application of the second prong of the *Harborside Healthcare* test to this conduct, it particularly must be noted that this election presently involves only a one-vote margin in favor of Mr. C, and that counting two of the challenged ballots has the potential to result in only a one-vote margin for the Union. As a result, Marquez' threat directed at one employee was enough to materially affect the outcome of the election. But, the record further indicates that less than a week after Marquez uttered his threat, Chan Hernandez made a very similar threat to another room attendant, Pineda, who works in the Residences. Both statements also occurred relatively close to the election. Given that Marquez' threat was directed at Castellanos' work assignment and job, it objectively would have had a lingering effect upon her. For all these reasons, the conduct interfered with freedom of choice and materially affected the outcome of the election.

Thus, if the final tally of ballots results in the Employer's Objections becoming operative, then Objection 5 raises objectionable conduct warranting a new election.

IV. CONCLUSION

Based upon all the foregoing, Mr. C respectfully submits there are compelling reasons under Section 102.67(d)(4) for reconsideration of the Board's standard for accountability in determining whether an individual possesses the supervisory authority to responsibly direct others. The Employer further submits that in applying that appropriate standard of accountability the record establishes – contrary to the Regional Director's Decision – that the room inspectors responsibly direct other Housekeeping employees and are statutory supervisors. As a result, the

room inspectors are ineligible to vote, and the Regional Director's determination to count their challenged ballots must be overruled.

February 21, 2020

/s/ Gordon A. Letter

LITTLER MENDELSON, P .C.
Gordon A. Letter
2049 Century Park East, 5th Floor
Los Angeles, CA 90067-3107
Telephone: 310.772.7226
Facsimile: 310.553.5583
Email: gletter@littler.com

Counsel for Employer
Mr. C MANAGER, LLC

4825-7889-5540.3 099284.1005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Employer Mr. C Manager, LLC's Request For Review Of The Regional Director's Decision To Adopt Hearing Officer's Recommendations, Count Challenged Ballots And Overrule Objections was e-filed in accordance with NLRB requirements and served via electronic mail, this 21st day of February, 2020, upon:

Charles Du
Staff Attorney
UNITE HERE Local 11
cdu@unitehere11.org

Jeremy Blasi
Staff Attorney
UNITE HERE Local 11
jblasi@unitehere11.org

Mori Rubin, Regional Director
National Labor Relations Board
Region 31
mori.rubin@nlrb.gov

/s/ Gordon A. Letter
Gordon A. Letter
LITTLER MENDELSON, P.C.
2049 Century Park East, 5th Floor
Los Angeles, CA 90067-3107
Telephone: 310.772.7226
Mobile: 310.871.2202
Facsimile: 310.553.5583
E-mail: gletter@littler.com