UNITED STATES OF AMERICA
THE NATIONAL LABOR RELATIONS BOARD

FDR SERVICES CORP. OF NEW YORK, Employer, -and- LAUNDRY DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED, Petitioner.	:	Case No. 29-RC-215193

UNION-PETITIONER'S STATEMENT IN OPPOSITION TO EMPLOYER'S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR'S DECISION AND CERTIFICATION OF REPRESENTATIVE

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Pursuant to Section 102.69(c)(2) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or the "Board"), the Laundry Distribution and Food Service Joint Board, Workers United (the "Union") submits this statement in opposition to the request for review of the Regional Director's Decision and Certification of Representative filed by FDR Services Corp. of New York ("FDR" or the "Employer").[1] The Board should deny the Employer's request for review.

PRELIMINARY STATEMENT

FDR asks the Board to overturn an election where the workers voted by a margin of 103 to 1 in favor of the Union because, it claims, the Union coerced those workers and violated the National Labor Relations Act ("NLRA" or the "Act"). As we explain below, the factual record is clear that the Union did not violate the Act. It did not coerce those workers. The election should be upheld, and the voice of the workers should be heard.

In its brief, FDR bemoans at length the Regional Director's decision to conduct the election by mail ballot. This is disingenuous; it is the height of Chutzpah. FDR had stipulated to an in-person election to be held at its facility. The day before the scheduled vote, *FDR* reneged and refused to allow the Board access to its premises. The Region, the Union, and FDR's employees were left without a location for the election. The Board conducted a mail ballot election, and, undaunted, the workers voted for the Union by an overwhelming margin. FDR then filed objections, which were largely overruled. The Region conducted a hearing on FDR's sole remaining objection, and the Hearing Officer recommended that the objection be overruled. The Regional Director adopted that recommendation. Now, lacking a factual record to suggest that any coercion took place, and as part of its ongoing campaign to stifle the freely expressed

[1] We cite to the Regional Director's Decision and Certification of Representative as "RD Decision, at ___," and to FDR's brief in support of its request for review as "FDR's Br., at ___."

will of its workers to be represented by the Union, FDR asks the Board to change the law and undo the results of the election. In seeking this relief, FDR relies on innuendo and suggestion rather than an actual factual record.

There is no factual basis for these claims, and as a result, there is no basis to overturn the election. Further, assuming *arguendo* that the Union engaged in objectionable conduct, there is no basis to conclude that the conduct could have affected the outcome of the election. The Board's law on this point is well-settled, and FDR's desperate attempts to change the law are meritless.

In sum, the proverbial "smoke" about which FDR complains does not exist. FDR's Br., at 1. The workers voted overwhelmingly for the Union despite the Employer's misconduct — not because the Union engaged in objectionable conduct. The Regional Director's decision should be upheld, the workers' vote should be honored, and the Union should be certified as the employees' representative.

STATEMENT OF THE CASE

The RC petition giving rise to the election here was filed in February 2018 by Local 514, Brotherhood of Allied Trades ("Local 514"). RD Decision, at 1 n.2. The election was blocked by multiple unfair labor practice charges which the Union filed against FDR. After investigating those charges, the General Counsel issued two complaints. *See* Report on Objections and Notice of Hearing, attached here as Exhibit A, dated Dec. 23, 2019, at 2; Compl., Case No. 29-CA-214454, attached here as Exhibit B; Compl., Case No. 29-CA-235879, attached here as Exhibit C.

FDR wanted Local 514 to replace the Union: one of the complaints the Region issued alleged that in March 2018 FDR provided unlawful assistance to Local 514. *See* Ex. B, ¶¶ 22,

24. The certification petition was blocked by the Employer's conduct for more than eighteen months. Ex. A at 2. In September 2019, after the parties settled the second complaint, the Region processed this petition. FDR, Local 514, and the Union, which had intervened in the election, agreed to an in-person, manual election. *Id.* The Regional Director approved a tripartite election agreement and scheduled the election for October 25. *Id.*

On October 23, Local 514 sought to withdraw the petition. *Id.* at 3. The next day, on October 24, just one day before the election, FDR reneged on the parties' agreement and announced that it would deny the NLRB access to its facility. *Id.* at 3, 5. FDR again refused access to the NLRB on October 29. *Id.* at 3. After the Employer's second refusal, the Regional Director ordered a mail ballot election and granted Local 514's request to be removed from the ballot. *Id.* The workers voted for the Union by a margin of 103 to 1. *Id.* at 2.

FDR filed post-election objections, alleging, *inter alia*, that the Union visited employees at their homes and offered to mark their ballots.[2] *Id.* at 4. The Regional Director ordered a hearing only on this specific issue. After receiving testimony from witnesses presented by both FDR and the Union, the Hearing Officer recommended overruling FDR's objection. RD Decision, at 1–2. The Regional Director agreed, *id.* at 2, and certified the Union as the representative of FDR's workers. *Id.* at 8. FDR's request to review the Regional Director's decision should be promptly denied.

STATEMENT OF FACTS

I. The Union's Lawful Election Campaign

The Union conducted an election campaign. As part of its efforts, it made lawful home

[2] FDR alleged that the Union conducted a meeting in violation of *Peerless Plywood Co.*, 107 NLRB 427 (1953), and that the Regional Director abused her discretion in directing a mail ballot election. Ex. A at 3, 5. The Regional Director overruled both objections as meritless. *Id.* at 4, 6.

visits. Two Union representatives testified about these visits, Dario Almanzar and Marcia Almanzar.

Mr. Almanzar testified that he "knocked on about 10, 15 doors," but that he "only made one visit." Tr. 108.[3] He testified that the one employee he visited was named Evelyn, but that he did not remember her last name. Tr. 112–113. The Hearing Officer, who heard Mr. Almanzar testify and observed his demeanor, credited his testimony and concluded that "[h]e testified in a straightforward, honest and clear manner." Hearing Officer's Report and Recommendations on Objections ("R&R"), dated Feb. 24, 2020, attached here as Exhibit D, at 4. Similarly, Ms. Almanzar testified that she made about 10 or 12 home visits. Tr. 131. The Hearing Officer also credited Ms. Almanzar's testimony, again observing that she testified in a clear and straightforward manner. R&R, at 5.

Answering questions from FDR's counsel, both witnesses stated that they and the Union did not engage in unlawful or coercive conduct during the home visits. Mr. Almanzar testified without contradiction that he never marked an employee's ballot; never offered to mark an employee's ballot; and never offered to mail an employee's ballot. Tr. 113. Likewise, Ms. Almanzar testified without contradiction that she did not help employees fill out their ballots, and that she never took or received a ballot from an employee. Tr. 133. Ms. Almanzar further testified that she never touched an employee's ballot, ballot package, or ballot envelope. Tr. 135.

In an attempt to show that the Union unlawfully coerced voters during the home visits, FDR called three employees: Angela Torres, Maria Robles, and Rena Rodriguez. Below, we explain why their testimony does not support FDR's allegations of coercive or otherwise unlawful Union misconduct.

[3] We cite to the hearing transcript as "Tr. __."

II. Offer to Mark Ballots

A. Angela Torres

Ms. Torres testified that two Union representatives named "Dario and Marcia" visited her home in November or December 2019, but that she did not let them in. Tr. 50. Ms. Torres initially testified that the representatives merely "wanted to come in to speak to me about the ballot, about *how to fill it out*." Tr. 50 (emphasis added). After FDR counsel asked her a leading question on direct examination — did anyone from the Union "ask to mark your ballot" — Ms. Torres changed her testimony, and said, "yes," but that she did not let them. Tr. 51.

Ms. Torres's testimony was vague and lacking meaningful detail. She did not specify when the Union representatives visited her home, and she did not explain which representative made which statements. Similarly, although Ms. Torres testified that coworkers told her that a Union representative wanted to fill out other people's ballots, Tr. 52–53, she could not identify anyone by name "because there were several." Tr. 56. Ms. Torres's testimony was also inconsistent. She testified on redirect that the representatives visited her house twice, Tr. 73, but she gave no such testimony when she was first asked to describe her interactions with the Union on direct. Tr. 50.

Ms. Torres testified that she prepared an affidavit with FDR and its counsel in December 2019. Tr. 60. She stated that she was "careful" when she and FDR counsel created the affidavit and that she included everything she knew about the election. Tr. 61–62. As the Hearing Officer noted on the record, however, Ms. Torres makes *no mention* of any home visit by the Union in her affidavit. Tr. 69. Indeed, both Mr. Almanzar and Ms. Almanzar testified that they did not visit Ms. Torres. Tr. 108–109 (Mr. Almanzar), 131 (Ms. Almanzar).

B. Maria Robles and Maria Rivas

Maria Robles, an FDR employee, and Maria Rivas, an assistant shop steward, spoke

about the mail ballot election. While FDR argues that the election should be overturned because, it claims, Ms. Rivas offered to mark Ms. Robles' ballot, there is no evidence that Ms. Rivas in fact offered to mark Ms. Robles's ballot.

When asked if she ever offered to mark Ms. Robles's ballot, Ms. Rivas stated, "No. That's secret. It must not be done." Tr. 164. Ms. Rivas testified that she never offered to collect Ms. Robles's ballot, that she never touched Ms. Robles's ballot, and that she never saw Ms. Robles mark her ballot. Tr. 164–165. Rather, Ms. Rivas merely asked Ms. Robles if she had received a ballot. Tr. 162. Ms. Robles responded that the ballot had arrived, but that "she was confused" because "there were a lot of envelopes." Tr. 162. Ms. Rivas told Ms. Robles to call a member of the Union. Tr. 163. The next time the two spoke, Ms. Robles told Ms. Rivas that she had completed the ballot herself. Tr. 163–64.

Ms. Robles provided similar testimony. She testified that Ms. Rivas asked if she had received her ballot. Tr. 82. Ms. Robles replied, "No," and said, "I can't fill it out, I don't even know how to read." Tr. 82. According to Ms. Robles, Ms. Rivas allegedly responded by saying, "Bring it here, and I'll help you fill it out." Tr. 82. Ms. Robles confirmed that she completed the ballot herself, without the help of anyone. Tr. 82. As explained more fully below, viewed in context, and analyzed under applicable Board precedent, Ms. Rivas's alleged offer of "help" was no more than an offer to explain the mail ballot election to a confused employee.

II. Offer to Drive Employees to the Post Office

The Union's offers to drive employees to the post office were lawful. Specifically, Dario and Marcia Almanzar testified that, during home visits, they offered to drive four or five employees to the post office. Tr. 114 (Dario); 131–32 (Marcia). Both Dario and Marcia testified that they made these offers because the employees did not have cars. Tr. 114, 132. In addition, the employees were free to accept or reject the Union's offer, and in fact, neither Dario nor

Marcia gave anyone a ride. Tr. 114, 135. As we explain below, this was lawful.

III. Presence While Employees Voted

A. "Evelyn" and Dario Almanzar

Dario Almanzar was not in the presence of any employees while they voted. While Mr. Almanzar attempted to visit between ten and fifteen employees, he made only one actual home visit, to an employee named Evelyn. He did not recall her last name. Tr. 108, 113. He gave uncontradicted testimony that, when he visited Evelyn, "she went to make her vote in the kitchen while we were in the living room," and that he was "[n]ot in the same room" as Evelyn when she marked her ballot. Tr. 114. FDR put on no evidence to rebut this.

B. Rena Rodriguez and Marcia Almanzar

Marcia Almanzar was also not in the presence of any employees while they voted. FDR presented the testimony of an employee named Rena Rodriguez. Tr. 84. She testified that a person from the Union named Marcia came to her house and spoke to her about how to mark the ballot. Tr. 87–88. Ms. Rodriguez testified that she marked her ballot after Marcia "told me what I had to do," and that after she marked her ballot, Marcia asked if she knew where a mailbox was and offered to take her to one. Tr. 88. FDR's counsel had the opportunity to ask Ms. Rodriguez where Marcia was when Ms. Rodriguez completed her ballot, but did not do so.

FDR also called Union representative Marcia Almanzar. Tr. 128. Ms. Almanzar testified that she met with Ms. Rodriguez. Tr. 131. FDR's counsel asked Ms. Almanzar if she was "ever present when an FDR employee filled out their ballot," and she stated, "No." Tr. 133. FDR's counsel did not ask Ms. Almanzar where she was when Ms. Rodriguez marked her ballot, and FDR offered no other evidence about Ms. Almanzar's home visit to Ms. Rodriguez.

STANDARD OF REVIEW

The Board will grant a request for review only for "compelling reasons." 29 C.F.R.

§ 102.67(d). Specifically, a party seeking review must establish:

> (1) That a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from, officially reported Board precedent;
>
> (2) That the regional director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party;
>
> (3) That the conduct of the hearing or any ruling made in connection with the proceeding has resulted in prejudicial error; [or]
>
> (4) That there are compelling reasons for reconsideration of an important Board rule or policy.

Id. (internal punctuation altered). These regulations impose "stringent requirements" on the moving party, *St. Barnabas Hospital*, 355 NLRB 233 (2010), and review should be granted only when one of these "narrowly define[d]" reasons can be shown to exist. *Shepard Convention Servs., Inc. v. N.L.R.B.*, 85 F.3d 671, 674 (D.C. Cir. 1996).

ARGUMENT

FDR contends that the election should be set aside because the Union engaged in objectionable conduct. Specifically, FDR argues that Union representatives: (1) offered to mark employees' ballots; (2) offered to drive employees to the post office; and (3) were in employees' presence while they voted. FDR's Br., at 14–15. Both the Hearing Officer and the Regional Director rejected these claims, and the Board should do so as well.

I. The Regional Director Applied the Correct Legal Standard

"[R]epresentation elections are not lightly set aside," and the "burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Jurys Boston Hotel*, 356 NLRB 927, 943 (2011) (quoting *In re Safeway, Inc.*, 338 NLRB 525 (2002)) (internal quotation marks omitted). Whether an election should be set aside is governed by well-settled Board law, which was thoroughly and correctly applied by the Regional Director.

In her Decision, the Regional Director stated that the Board employs an "objective test" to determine whether "the conduct of a party has the tendency to interfere with the employees' freedom of choice." RD Decision, at 2–3 (citing *Cambridge Tool & Manufacturing Co.*, 316 NLRB 716, 716 (1995)). This is the applicable law. *See, e.g.*, *Pacific Coast Sightseeing Tours and Charters, Inc.*, 365 NLRB No. 131 (2017) (affirming ALJ decision employing *Cambridge Tool*); *In re Metaldyne Corp.*, 339 NLRB 352, 352 (2003).

The Regional Director cited the factors that guide the Board's analysis, which include:

> (1) the number of incidents of misconduct; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election date; (5) the degree of persistence of misconduct in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party in cancelling out the effect of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the union.

RD Decision, at 3 n.4 (citing *Taylor Wharton Division*, 336 NLRB 157, 158 (2001); *Cedars-Sinai Med. Ctr.*, 342 NLRB 596 (2004)). This, too, is the law. *See, e.g.*, *California Cartage Co. LLC*, 2019 WL 4271853 (N.L.R.B. Div. of Judges, Sept. 9, 2019) (citations omitted); *Franklinton Preparatory Academy*, 366 NLRB No. 67, at *1 (2018) (citing *Cedars-Sinai*, 342 NLRB at 597).

Applying these standards, the Regional Director agreed with the Hearing Officer that the Union did not engage in objectionable conduct. RD Decision, at 4. Nevertheless, assuming *arguendo* that Union representatives violated the law, the Regional Director concluded that the alleged misconduct "would not have affected the outcome of the election." RD Decision, at 8. Once again, this analysis is current Board law. *See, e.g.*, *In re Metaldyne Corp.*, 339 NLRB at

352 (citing *Cambridge Tool*, 316 NLRB at 716); *Jurys Boston Hotel*, 356 NLRB at 928; *see also Madison Square Garden Ct., LLC*, 350 NLRB 117, 120 (2007) (adopting similar factors to evaluate whether a supervisor's objectionable conduct "materially affected the outcome of the election").

There is no basis — let alone the compelling one required — to grant review of the Regional Director's decision. As explained below, the Union did not engage in objectionable conduct, and even if it did, FDR cannot show that the alleged misconduct could have affected the outcome of the election. Without any hope to meet its heavy burden of proof, FDR resorts to a desperate plea to change the Board's election law. As we explain below, FDR's position is unworkable, contravenes decades of well-settled law, and must be rejected.

II. The Union Did Not Engage in Objectionable Conduct

A. The Union Did Not Offer to Mark Employees' Ballots

The Board outlined the relevant legal principles in *Grill Concept Services, Inc.*, 2019 WL 2869823 (N.L.R.B. June 28, 2019). There, the credible evidence showed that the union: (1) asked eligible voters whether they had received their mail ballots; and (2) offered to explain the process for correctly filling them out. *Id.* at *1. The Board concluded that this conduct was not objectionable for two reasons. *Id.* at *1–2. First, it found that there was no evidence that the representatives collected or solicited the voters' mail ballots. *Id.* at *1 (citing *Fessler & Bowman, Inc.*, 341 NLRB 932, 934 (2004)). Second, and more importantly, the Board emphasized that the union did not physically assist a voter in filling out his ballot or otherwise engage in coercive conduct. *Id.* at *2. Thus, while a union cannot "physically assist" an employee with his ballot, it can certainly "offer to help [that] employee[]" understand how to complete the necessary forms. *Id.*

Here, FDR claims that the Union engaged in misconduct by offering to mark the ballots

of two FDR employees, Angela Torres and Maria Robles. FDR's Br., at 14. This argument is meritless. Ms. Torres was not a credible witness, and FDR adduced no evidence that the Union offered to mark or physically assist Ms. Robles with her ballot.

(i) Ms. Torres Did Not Credibly Testify that the Union Offered to Mark Her Ballot

Ms. Torres testified that two Union representatives visited her home in November or December 2019, but that she did not let them in. Tr. 50. She initially testified that the representatives merely "wanted to come in to speak to me about the ballot, about *how to fill it out*." Tr. 50 (emphasis added). After being asked in a leading manner on direct examination if anyone from the Union "ask[ed] to mark your ballot," Ms. Torres changed her testimony, and said, "yes," but that she did not let them. Tr. 51.

The Hearing Officer concluded, and the Regional Director agreed, that Ms. Torres's testimony was not credible. RD Decision, at 4–5. This determination is afforded significant deference. The Board will reverse a hearing officer's credibility findings "only when the clear preponderance of all the relevant evidence convinces us that the [trial examiner's] resolution is incorrect." *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957) (citations omitted). This standard applies where an employer submits a request for review in an election case. *See, e.g.*, *Island Hosp. Mgmt. II, LLC*, 2019 WL 7584372, at *1 n.1 (N.L.R.B. Nov. 21, 2019).

Here, the Hearing Officer's credibility finding is overwhelmingly supported by the record. Ms. Torres prepared an affidavit with FDR and its counsel in December 2019, Tr. 60, and she testified that she included everything she knew about the election in that affidavit. Tr. 62. As the Hearing Officer noted on the record, however, the affidavit makes *no mention* of any home visit by the Union. Tr. 69; RD Decision, at 4 n.8. Thus, Ms. Torres's sworn testimony changed dramatically from December 2019, when she prepared her affidavit with FDR, to the

hearing in January 2020, casting serious doubt on her credibility.

Ms. Torres's testimony was vague and imprecise. Ms. Torres: (1) did not specify when the Union representatives visited her home; (2) did not explain which representative made which statements;[4] and (3) was unable, despite testifying that coworkers told her that a Union representative wanted to fill out other people's ballots, to identify any of these coworkers by name "because there were several." Tr. 52–53, 56. Ms. Torres's testimony was also inconsistent. She testified on redirect, for example, that Union representatives visited her house twice. Tr. 73. But she gave no such testimony when she first described her interactions with the Union, and of course, she did not mention the home visits at all in her "careful[ly] . . . prepared" sworn affidavit given only a month before. Tr. 61.

Ms. Torres's testimony was directly contradicted by Dario Almanzar. Mr. Almanzar testified that he "knocked on about 10, 15 doors" during the Union's organizing drive. Tr. 108. The only employee that Mr. Almanzar actually spoke with, however, was named Evelyn, Tr. 108, 113, and Mr. Almanzar confirmed that he did not visit or speak with Ms. Torres. Tr. 108–109. Ms. Torres's testimony was also contradicted by Marcia Almanzar, who testified that she did not visit Ms. Torres either. Tr. 131. The Hearing Officer, who observed both Dario and Marcia's demeanor, credited their testimony and explained that they testified in a straightforward and honest manner. R&R, at 4–5.

FDR must prove that the "clear preponderance of all the relevant evidence" shows that the Hearing Officer's credibility determinations were incorrect. *Stretch-Tex Co.*, 118 NLRB at 1361 (citations omitted). It does not even attempt to meet its burden, ignoring the relevant legal

[4] Ms. Torres could not recall the identity of one of the Union agents who visited her home without referring to the affidavit she provided to FDR. Tr. 50. As the Hearing Officer pointed out in her decision, however, Ms. Torres testified that she could not fully understand the affidavit because it was in English, Tr. 64, 69, and that, when she made the affidavit, she did not give anyone's name. Tr. 61.

standard and summarily stating that there is "no reason to discredit [Ms. Torres's] testimony." FDR's Br., at 14. This will not do. The Hearing Officer reasonably concluded that Ms. Torres was not a credible witness, and as a result, Ms. Torres's testimony provides no basis to conclude that the Union offered to physically mark a ballot.

FDR argues that "[u]nlike the Union representatives, who had a personal stake in the outcome of the election, . . . Torres is a rank and file employee with FDR with little interest in the outcome of the election." FDR's Br., at 14. This claim is flawed. First, while Mr. Almanzar obviously wanted the Union to win the election, he had no "personal stake" in its outcome; FDR adduced no evidence that he would personally benefit from a Union victory. Second, FDR ignores the *Stretch-Tex* standard: even assuming that Ms. Torres had "little interest" in the outcome of the election,[5] that alone does not demonstrate the requisite "clear preponderance of all the relevant evidence" to show that the Hearing Officer's credibility finding was "incorrect." *Stretch-Tex*, 118 NLRB at 1361 (citations omitted).

Finally, the Regional Director properly rejected Ms. Torres's testimony that Mr. Almanzar offered to mark other employees' ballots. Ms. Torres could not identify these employees, and she did not specify when Mr. Almanzar made such an offer or what was specifically said. Tr. 56. Further, these statements, even if they were made, are inadmissible hearsay. FDR could have — but did not — ask Ms. Torres to name these employees beforehand so that it could have subpoenaed them to testify. Instead, FDR chose to rely on Ms. Torres's vague hearsay testimony, which is no basis to overturn an election where the workers voted 103 to 1 in favor of the Union.

(ii) The Union Did Not Offer to Mark or Physically Assist Ms. Robles with Her Ballot

[5] *But see* Tr. 51 (Torres: "I'm not in agreement with the Union; I don't support it.").

FDR also argues that Maria Rivas, an assistant shop steward, offered to mark the ballot of an FDR employee named Maria Robles. FDR's Br., at 14. This argument misconstrues the record and should be rejected.

Ms. Rivas's testimony directly rebuts FDR's claim. When Ms. Rivas asked Ms. Robles if she had received a ballot, Ms. Robles responded that her ballot had arrived but that "she was confused" because "there were a lot of envelopes." Tr. 162. Ms. Rivas told Ms. Robles to call a member of the Union, and Ms. Robles later stated that she had completed the ballot herself. Tr. 163–164. This is simply not objectionable conduct. Indeed, Ms. Rivas expressly testified that she never offered to mark Ms. Robles's ballot, explaining that an employee's ballot was "secret" and that offering to mark it "must not be done." Tr. 164. She also testified that she never offered to collect Ms. Robles's ballot, that she never touched Ms. Robles's ballot, and that she never saw Ms. Robles mark her ballot. Tr. 164–165. Accordingly, there is no basis to conclude that Ms. Rivas engaged in objectionable conduct.

Ms. Robles's testimony does not alter this conclusion. According to Ms. Robles, after she stated that she could not fill out her ballot, Ms. Rivas responded by saying, "Bring it here, and I'll help you fill it out." Tr. 82. Based on the record as a whole, the Regional Director correctly decided that Ms. Rivas did not offer to mark Ms. Robles's ballot. RD Decision, at 5.

First, assuming that Ms. Rivas even made the alleged statement, she was merely offering to help Ms. Robles understand how to complete the ballot. Ms. Robles testified that she told Ms. Rivas, "I can't fill it out, I don't even know how to read." Tr. 82. This indicates that Ms. Robles needed assistance understanding what the forms said, not physically filling them out. Ms. Rivas's testimony supports this conclusion, as it shows that Ms. Robles was "confused" by the various envelopes. Tr. 162. Thus, viewed in context, Ms. Rivas's alleged offer of help was

nothing more than an attempt to explain the mail ballot election process to a struggling employee.[6]

Second, the Board has previously recognized that general offers of help do not amount to objectionable conduct. In *Grill Concepts*, an employee testified that a union representative asked, among other things, if the employee "needed help filling [his ballot] out."[7] The union's witnesses, on the other hand, consistently testified that they "merely asked eligible voters whether they had received their mail ballot and offered to explain the process for correctly filling out the ballot." *Grill Concepts*, 2019 WL 2869823, at *1. The Board concluded that the hearing testimony was "ambiguous" and rejected the employer's argument that the union's "offers to help employees with their mail ballots" were unlawful. *Id.* at *1–2.

The same analysis applies here. Ms. Rivas testified that she never offered to mark an employee's ballot, and Ms. Robles's claim that Ms. Rivas offered to "help . . . fill [her ballot] out" is identical to the unobjectionable statement in *Grill Concepts*. Moreover, in context, Ms. Rivas's alleged remark is merely an offer to explain the election process. FDR's claims to the contrary are entirely without merit.

B. Offering to Drive Employees to the Post Office is Lawful

FDR contends that the Union engaged in objectionable conduct by offering to drive employees to the post office. FDR's Br., at 15–16. But that is not the law. The Regional Director twice rejected this argument,[8] and the Board should do so as well.

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[6] Furthermore, as noted by the Regional Director, the evidence presented at the hearing does not establish that Ms. Rivas acted as an agent of the Union while talking to Robles about her mail ballot. RD Decision, at 5 n.14.

[7] Transcript of hearing in *Grill Concepts*: https://www.nlrb.gov/case/31-RC-209589 (last visited May 18, 2020) (click: "08/07/2018 Attachments or Exhibits to Brief to Board").

[8] In her Decision, the Regional Director rejected FDR's contention that the Union engaged in objectionable conduct by offering to drive employees to the post office. RD Decision, at 6. Further, although FDR raised this claim in its initial objections to the election, the Regional Director ordered a

Grill Concepts forecloses FDR's position. In that case, the evidence showed that the union offered to drive voters to the post office to mail their ballots. *Grill Concepts*, 2019 WL 2869823, at *1 n.2. The Board upheld the election, reasoning that the union's conduct did not amount to the solicitation of ballots. *Id.* at *1. Merely offering to drive voters to the post office is therefore permitted under the Act.

Other case law confirms this conclusion. The Board has consistently held that a party can drive employees to the polling place in a manual election. *Gastonia Combed Yarn Corp.*, 109 NLRB 585, 587 (1954) (citations omitted). This principle was upheld by the Court of Appeals for the Second Circuit, which found that the Board had a "reasonable basis in law" to rely on precedent holding that transporting voters to the polls is permissible. *N.L.R.B. v. Innovative Facility Servs.*, 310 F. App'x 415, 417 (2d Cir. Apr. 16, 2008) (citations omitted). Thus, because driving voters to the polls is permissible in a manual election, driving voters to the post office is permissible in a mail ballot election.

FDR claims that the Union's conduct was unlawful because the Union made offers only to a limited number of employees. FDR's Br., at 16. This argument is unavailing. In *Hercules Motors Corp.*, an employer supplied transportation to the polls for a "number" of its employees. 73 NLRB 650, 654 (1947). The Board concluded that the employer did not engage in objectionable conduct because there was no evidence that: (1) the transportation was rendered exclusively to non-union employees; and (2) the supervisors who drove them were otherwise guilty of improper conduct. *Id.* Accordingly, a party may provide transportation to and from the polls so long as the benefit is "offered on a *nondiscriminatory basis*, and the employees are free to accept or reject the offer." *David Saxe Prods., LLC*, 2019 WL 4051970 (N.L.R.B. Div. of

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hearing solely on the "alleged conduct of Union representatives offering to mark employees' ballots." Ex. A at 4.

Judges Aug. 27, 2019) (citation omitted) (emphasis added).

There was no objectionable conduct here. Dario and Marcia Almanzar testified that they offered to drive a total of four to five employees to the post office during the home visits. Tr. 114 (Dario), 131–32 (Marcia). These offers were not made on a discriminatory basis; rather, both representatives gave unrebutted testimony that they offered to drive the employees because the employees did not have cars. Tr. 114, 132. The employees were also free to accept or reject the Union's offer, as demonstrated by the fact that neither Dario nor Marcia actually gave anyone a ride. Tr. 114, 135. For these reasons — and because FDR does not even attempt to show that the Union engaged in coercive or threatening conduct at any time — the Union's actions were unobjectionable. *See Gastonia*, 109 NLRB at 587 ("[T]ransporting voters to the polls is not objectionable, unless accompanied by other conduct clearly prejudicial to the freedom of the employees to choose their bargaining representative by secret ballot.") (citations omitted).

C. Union Officials Were Not in Employees' Presence While They Voted

FDR argues that the election should be set aside because "Union representatives were present when more than one-unit [sic] employee cast their vote." FDR's Br., 15. FDR is wrong on both the facts and the law. Its claim should be rejected.

"[U]nion home visits during election campaigns are lawful and unobjectionable as long as the visitors do not threaten or coerce eligible voters during their visits." *Grill Concepts*, 2019 WL 2869823 at *1 (citations omitted). As the objecting party, FDR bears the burden of proving that "objectionable threats or coercion occur[red] during home visits" and that such conduct — if it in fact occurred — "had the tendency to interfere with employee free choice in the election and thus warrants setting the election aside." *Id.* (citations omitted). FDR cannot meet this burden.

There is no evidence that either Dario or Marcia Almanzar was present while an employee voted. Mr. Almanzar gave uncontradicted testimony that, when he visited Evelyn,

"she went to make her vote in the kitchen while we were in the living room," and that he was "[n]ot in the same room" as Evelyn when she marked her ballot. Tr. 114. FDR put on no evidence to rebut this. Indeed, FDR failed to show that Mr. Almanzar engaged in *any* objectionable conduct while in Evelyn's home, and Evelyn was the only employee who Mr. Almanzar actually visited. Tr. 108, 113. The record is therefore undisputed: Mr. Almanzar made a lawful visit to Evelyn's home, did not engage in objectionable conduct, and was not in Evelyn's presence when she marked her ballot.

Similarly, although she met with Rena Rodriguez at her home, Ms. Almanzar testified that she was never present when an FDR employee filled out their ballot. Tr. 133. FDR's counsel did not ask Ms. Almanzar where she was when Ms. Rodriguez marked her ballot. Thus, once again, the record does not show that Ms. Almanzar was present while an employee completed their ballot. Indeed, Ms. Almanzar testified without contradiction that she never solicited, collected, or touched *any* ballot or envelope, including that of Ms. Rodriguez. Tr. 133, 135.

Ms. Rodriguez's testimony does not compel a different result. She testified that Ms. Almanzar came to her house and spoke to her about how to mark the ballot. Tr. 87–88. After Ms. Rodriguez marked her ballot, she testified that Ms. Almanzar asked her if she knew where a mailbox was and offered to take her to one. Tr. 88. FDR had the opportunity to ask Ms. Rodriguez where Ms. Almanzar was when Ms. Rodriguez completed her ballot, but did not do so.

As the party objecting to the election, FDR bears the burden of proof. In *Grill Concepts*, the Board suggested that a union representative being in the "presence" of a person marking her ballot could be objectionable. *Id.*, 2019 WL 2869823 at *2. Although the evidence suggests that

two Union representatives were in the same *house* as two employees when they marked their ballots, FDR offered no proof that a Union official was in the "presence" of either individual, or that the officials were even in the same room. There is therefore no evidence that the secrecy of the election was impugned, and because there is no evidence that the Union engaged in any other coercive conduct during its home visits, FDR has failed to meet its burden.

II. Even if the Union Engaged in Objectionable Conduct, It Did Not Affect the Outcome of the Election

A. Any Alleged Misconduct Did Not Affect the Outcome of the Election

The Regional Director correctly decided that the Union did not engage in objectionable conduct. RD Decision, at 4. FDR nonetheless argues that the election should be overturned because, it claims, in two instances, Union representatives were "present" when employees marked their ballots. FDR's Br., at 21. As discussed above, the record does not support FDR's assertion, and the Regional Director correctly found that being in an employee's home does not rise to objectionable conduct. RD Decision, at 7. However, assuming *arguendo* that Union representatives engaged in the alleged conduct, the Regional Director concluded that FDR could not demonstrate that this conduct would "have affected the outcome of the election." RD Decision, at 8. This analysis is current Board law and was correctly applied by the Regional Director to quickly dispose of FDR's argument. *See, e.g.*, *Werthan Packaging, Inc.*, 345 NLRB 343, 345 (2005) (overruling objections and certifying the results of the election).

In evaluating whether objectionable conduct is a basis to overturn an election, the Board looks to, *inter alia*, the number of incidents of misconduct, the number of employees subjected to the misconduct, the extent of dissemination of the misconduct among the employees, and the closeness of the final vote. *Avis Rent a Car System*, 280 NLRB 580, 581 (1986). Here, assuming *arguendo* that the mere presence of a Union representative in the same building as an

employee casting her ballot is objectionable, the Regional Director's conclusions were correct and supported by the evidence.

First, and most importantly, the number of affected voters — two — was 100 votes fewer than the Union's margin of victory. RD Decision, at 7–8 & 8 n.18. The Regional Director found that the "impugned votes are isolated instances and are not sufficient to affect the outcome of the election." *Id.* at 7 (citing *Continental Business Systems*, 104 NLRB 599, 602 (1953) (one isolated instance of objectionable conduct insufficient)).[9] The Regional Director stressed that with the Union's "substantial margin of victory," two votes in a unit of 197 employees could not have impacted the results. RD Decision, at 7–8. Thus, *Avis's* "closeness of the final vote" factor overwhelmingly supports the Union. *Id.*, 280 NLRB at 581.

FDR argues that the Hearing Officer[10] erred by "focusing solely on the tally of ballots" in analyzing whether the alleged misconduct affected the outcome of the election. FDR's Br., at 16. This was a mistake, FDR insists, because it required FDR to produce "direct evidence of objectionable conduct affecting each and every cast ballot," which was impossible given the "palpable threat of union reprisal." *Id.* Even a cursory review of the Regional Director's Decision or the Report and Recommendation shows that neither the Regional Director nor the Hearing Officer focused "solely" on the tally of ballots. The Regional Director considered five relevant factors: the overwhelming margin of victory, the finite instances of the purportedly objectionable conduct, the number of affected employees, the size of the unit, and the lack of evidence of dissemination. RD Decision, at 7–8. And as discussed below, there was no

[9] In *Continental*, in contrast to the facts here, the voter filled out the ballot in the union's own office and in "plain view" of "several" union representatives. *Id.*, 104 NLRB at 602. Notwithstanding the loss of secrecy of that ballot, the Board found the conduct was too isolated to warrant setting aside the election. *Id.*

[10] We presume that FDR intended to refer to the Regional Director.

evidence of any "palpable" threat, much less coercion of any sort.

The Regional Director correctly analyzed the other factors — FDR put on no evidence of dissemination of any alleged misconduct, and no evidence that the alleged misconduct was known by or affected any other voter. With regard to Dario Almanzar's uncontradicted testimony about his single home visit to Evelyn, Tr. 108, 113, the Employer failed to produce Evelyn as a witness, and none of the witnesses offered by the Employer testified that they spoke to Evelyn, or were aware that a Union representative was in another room of her home when she marked her ballot. FDR also offered no proof that Ms. Rodriguez told any other employee about Ms. Almanzar's visit to her house or the circumstances of her vote. Tr. 87-88. Thus, even if objectionable, the alleged conduct occurred only two times, involved only two employees, and was not communicated to anyone else in the near-200-person bargaining unit. *See* RD Decision, at 7. The remaining *Avis* factors therefore weigh conclusively in the Union's favor.

FDR does not cite any evidence with regard to any dissemination of information regarding the presence of Union representatives in the homes of voters. However, FDR repeats its claim that the Union's purported "offers" to mark ballots were a rumor in the workplace. FDR's Br., at 22 & n.4. Again, since there was no objectionable conduct found, the extent of any purported dissemination is immaterial. Notwithstanding that, FDR cites the testimony of Ms. Torres, who stated that she heard this from her coworkers who themselves heard from Dario Almanzar about marking ballots. Tr. 52-53, 56. This is uncorroborated hearsay, and, as the Hearing Officer noted, Ms. Torres could not name these coworkers. R&R, at 4. This rumor did not even warrant mention in the Regional Director's decision, and rumor is no basis to upset an election.

FDR's allusion to the Union's specter of coercion also does not support a claim that there

was widespread dissemination of any information. FDR contends the fact that three employees testified about alleged objectionable conduct "strongly suggests" that others "felt the same coercive effects." FDR's Br., at 21. This is a fantasy, not a fact. FDR does not cite to the hearing transcript and nothing in the record suggests that the Union threatened employees. FDR cannot escape the results of an election — particularly when the Union won with 99% of the vote — with conclusory assertions that it is "conceivable" or "entirely possible" that its outcome may have been different absent the Union's lawful home visits. FDR's Br., at 22-23.

FDR's appeal to *Steak House Meat Co.*, 206 NLRB 28 (1973), does not cure its failure to produce relevant evidence. FDR's Br., at 21-22. In *Steak House*, the bargaining unit was composed of only eight employees, and the union's margin of victory was only one vote. *Id.*, 206 NLRB at 28. The Board set aside the election, finding that there was a "general atmosphere of . . . confusion and fear" because an employee threatened another employee's life with a knife if he did not vote for the union, and another employee made an additional threat days before the election. *Id.* at 28–29. The facts here are radically different. The Union did not threaten employees, there is no evidence that any alleged misconduct was widespread, the bargaining unit contains almost 200 members, and the margin of victory was 102 votes. Thus, *Steak House* undermines, not supports, FDR's position.

As found by both the Regional Director and Hearing Officer, the Board regularly upholds election results in these circumstances. In *Sanitation Salvage Corp.*, 359 NLRB 1129 (2013), cited by the Hearing Officer, "the employer made several threats to employees" and the union lost the election by a margin of 27 to 22. R&R, at 9. The Board did not overturn that election because "there is no evidence in the record . . . that the objectionable conduct . . . was disseminated beyond the two employees directly affected by it," and "the Board has declined to

set aside election results in cases in which the disparity between the vote margin and the number of employees affected by the objectionable conduct was similar to the disparity in this case." *Sanitation Salvage*, 359 NLRB at 1129; *see also Flamingo Las Vegas Operating Co.*, 360 NLRB 243, 246-47 (2014) (finding that it was "virtually impossible" that an employer's unlawful threats affected the outcome of the election where the threats "affected significantly fewer employees than the 18-vote margin," and there was no evidence of dissemination); *Werthan Packaging*, 345 NLRB at 345 (in a unit of 200 employees, where the union lost the election by 21 votes and there were at most five unlawful interrogations, and where there was no evidence that the interrogated employees "disseminated those acts to other unit employees," "the record does not establish that the [e]mployer's conduct affected a determinative number of employees, or that it was otherwise so pervasive as to warrant a new election"). This election should not be set aside on the basis of two instances where FDR showed *no* objectionable conduct.

B. This Case Does Not Present Circumstances Warranting a Reversal of Board Law

In determining whether to set aside the election, well-reasoned and longstanding law requires that the Board evaluate multiple factors. In seeking to invalidate the will of the voters who voted 103 to 1 against the Employer, FDR requests that the Board reconsider this law for two reasons. First, FDR argues that current Board law holds FDR to an "impossible" standard of proof. Second, FDR contends that "[a] single instance of [objectionable] conduct impugns the integrity of the election," and therefore the Board should "set the election aside." FDR's Br., at 21 (citing *Fessler*, 341 NLRB at 936). FDR's positions contravene decades of well-settled law; the circumstances of this case do not warrant a departure from sound Board law and policy.

(i) The Board's Standard for Reviewing Elections Protects the Election Process and Employees' Exercise of the Vote

FDR claims that the Board's factors hold it to an "impossible" standard because the test requires FDR to produce "direct evidence of objectionable conduct affecting each and every cast ballot." This is untrue. The Board considers the facts holistically, not simply looking at the circumstances of each ballot, but instead looking at how any misconduct impeded the will of the voters and affected the outcome of the election as a whole. *See In re Hacienda Hotel, Inc.*, 355 NLRB 950, 952 (2010) ("[The Board's test in representation cases] evaluates whether a party's conduct has the tendency to interfere with the employees' freedom of choice and could well have affected the outcome of the election.") (internal quotation marks and citation omitted). FDR had the chance to make the showing that there was conduct that materially affected the outcome of this mail ballot election, but as discussed above, it has failed to do so. FDR's failure to meet its burden is not an occasion to change the law.

Further, FDR also argues that producing such evidence was "impossible" given the "palpable threat of union reprisal." FDR's Br., at 16. The "threat of union reprisal" FDR cites is nonexistent. FDR points to no record evidence of any "threat of union reprisal." FDR failed to produce any evidence that its employees were afraid to testify about the Union's home visits. Although FDR summarily asserts that unnamed employees "fear[ed] retaliation by the Union," *see id.*, it does not cite the record to support the conclusion. Nor could it: despite presenting four employee witnesses and cross-examining four Union witnesses, FDR failed to even ask whether any of the witnesses felt threatened by the Union.

While surely not "impossible" — representation elections are, in fact, set aside on the basis of objectionable conduct — the Board's test is meant to be stringent so as to safeguard employees' exercise of their rights. *Jurys Boston Hotel*, 356 NLRB at 943 ("[R]epresentation elections are not lightly set aside," and the "burden of proof on parties seeking to have a Board-

supervised election set aside is a heavy one.") (quoting *Safeway, Inc.*, 338 NLRB 525) (internal quotation marks omitted). "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citations omitted). The test also provides some certainty to election results, as well as insurance that the expression of the true will of voters will not require multiple, successive elections. Any standard that overturned elections upon a lesser showing of proof would not only be inefficient, it would sap employees' morale and their faith in the Board's ability to conduct democratic elections. In light of these purposes, it is wholly appropriate that challengers be required to present "specific evidence of specific events . . . showing not only that the acts occurred, but also that they interfered with the employees' exercise of free choice to such an extent that they materially affected the results of the election." *Hood Furniture*, 941 F.2d at 328 (citation and internal quotation marks omitted).

Perhaps the Board's established and well-reasoned test seems "impossible" to FDR because it lost the election by over 100 votes. If, for example, the Union's margin of victory had been quite close, say 54 to 53, FDR could theoretically make a showing sufficient to overturn the election by presenting evidence regarding only two ballots. The Board's analysis regarding whether objectionable conduct could have affected the election takes into account the voters' desires. The more definitively voters express their will, the more reluctant the Board is to overturn the election.

In sum, that FDR cannot meet the Board's established test does not render it "impossible" to satisfy, nor does it warrant the Board lowering the showing required to set aside an election.

(ii) FDR's Proposed Standard Abrogates Employee Free Choice

FDR also contends that a single instance of objectionable conduct requires setting aside the election. FDR's Br., at 21. This standard is unworkable and contravenes well-settled law.

In effect, FDR argues that an election should be set aside, regardless of the factual record adduced at the hearing, if there is a single offer to mark a ballot, or a single instance of an employee voting in a party's presence. FDR's position must be rejected. Section 7 of the Act assures employees the basic right to choose whether they wish to be represented by a labor organization for collective bargaining purposes. Under FDR's standard, however, employees would have to repeatedly vote in elections even where: (1) the employees unanimously voted either for or against collective representation; and (2) the losing party engaged in a single instance of improper conduct that affected only one employee. This is nonsensical — FDR's standard unduly strains Board resources, and much worse, unjustifiably strips employees of their statutorily guaranteed right to free choice.

Beyond that, FDR's standard is inconsistent with well-established law. To set aside an election, there must be evidence that, among other things, the alleged misconduct "could well have affected the outcome of the election." *Pacific Coast*, 365 NLRB No. 131 (quoting *Cambridge Tool*, 216 NLRB at 716); *accord Jurys Boston Hotel*, 356 NLRB at 928; *In re Hacienda Hotel, Inc.*, 355 NLRB at 952 ("[The Board's test in representation cases] evaluates whether a party's conduct has the tendency to interfere with the employees' freedom of choice *and* could well have affected the outcome of the election.") (internal quotation marks and citation omitted) (emphasis added). This leaves no room for FDR's "single instance" test, which completely ignores whether the objectionable conduct could have changed the election results.

Further, as explained in the cases discussed *supra*, the Board has repeatedly made clear that an election must stand where the unlawful conduct is isolated and could not have affected a determinative number of employees. *See Flamingo Las Vegas Operating Co.*, 360 NLRB at 246–47; *Sanitation Salvage Corp.*, 359 NLRB at 1129; *Werthan Packaging*, 345 NLRB at 345;

Continental Bus Sys., Inc., 104 NLRB at 602; *accord M.B. Consultants, Ltd.*, 328 NLRB 1089, 1089 (1999) (certifying the results of an election because, given the six-vote margin, the employer's coercive statement to two employees could not have affected the results of the election) (citations omitted). FDR's standard flies in the face of this established principle, and it makes no attempt to explain why these cases (and the many others just like them) were wrongly decided.

FDR's reliance on *Fessler & Bowman*, 341 NLRB 932 (2004), is misplaced. In that case, the union collected mail ballots from two employees during the election that resulted in a close margin of victory for the union. *Id.* at 934-35. The Board concluded that the union engaged in objectionable conduct because handling an employee's ballot "casts doubt on the integrity of the election process and undermines election secrecy." *Id.* at 934. The Board remanded the election so that the Regional Director could resolve the challenged ballots and determine whether the union's conduct affected the outcome of the election. *Id.* at 935.

In a partial dissent, Chairman Battista and Member Schaumber stated that, in their view, "elections should be set aside . . . whenever a party is shown to have collected or solicited mail ballots." *Id.* at 936. This is because "such collection and solicitation . . . undermines the integrity of the electoral process itself." *Id.* This position — which did not garner majority support then and has never been adopted since — is no basis to set aside an election where the Union won by over 100 votes.[11]

FDR does not allege that the Union collected or solicited mail ballots. As a result, and as noted by the Regional Director, the partial dissent is inapplicable on its face. RD Decision, at 8.

[11] In *Fessler*, the union prevailed by a 19-15 margin. *Id.*, 341 NLRB at 935. Thus, in supporting a bright-line rule, the partial dissent was faced with a close election in a small unit of employees. In this case, however, the Union obtained over 99% of the vote in an election where over 100 employees participated, a situation clearly outside the scope of the partial dissent's contemplation.

In addition, FDR cannot show that the dissent's reasoning should be extended to the facts here. The Union conducted routine home visits, did not offer to mark employees' ballots, and did not otherwise engage in coercive behavior. The only relevant conduct is that Union representatives were arguably in the same building as two different employees while they completed their ballots. FDR's attempt to extend the partial dissent to this situation is foreclosed by the dissent's own reasoning.

Chairman Battista and Member Schaumber argued that a bright-line rule was necessary because collecting and soliciting mail ballots undermined the electoral process itself. *Fessler*, 341 NLRB at 936. They emphasized, *inter alia*, that such behavior: (1) interfered with an employee's ability to control his ballot; (2) threatened the secrecy of an employee's ballot; and (3) pressured employees to give their ballots to the soliciting party or risk being viewed as a dissenter. *Id.* at 935–36. None of these concerns apply to the Union's conduct here. Standing in a different room while an employee completes his ballot *protects*, not threatens, the secrecy of the election. Further, the Union did not pressure an employee to cede control over his ballot — none of the witnesses testified that they felt coerced, and home visits during an election campaign are lawful. *See Grill Concepts*, 2019 WL 2869823, at *1.

The Board's election law is well-settled, and FDR's appeal to the dissent is *Fessler* is unavailing. This election should be set aside only if FDR showed that the Union engaged in objectionable conduct that could have affected the outcome of the election. As both the Hearing Officer and Regional Director concluded, FDR failed to meet this heavy burden. The Regional Director's certification should stand, and FDR's request for review should be denied.

CONCLUSION

For the foregoing reasons, FDR's request for review of the Regional Director's decision should be promptly denied.

Dated: May 19, 2020
New York, New York

Respectfully submitted,

/s/ Hanan B. Kolko

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CERTIFICATE OF SERVICE

I hereby certify that, on May 19, 2020, I electronically filed the Union's Statement in Opposition to the Employer's Request for Review of the Regional Director's Decision and Certification of Representative with the National Labor Relations Board and the Regional Director using the Electronic Filing system and caused a true and correct copy to be served by electronic mail on:

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Exhibit A

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK,	)	
Employer	)	
and	)	Case No. 29-RC-215193
LAUNDRY DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED	)	
Petitioner	)	

REPORT ON OBJECTIONS AND NOTICE OF HEARING

On February 20, 2018, Brotherhood of Amalgamated Trades, Local 514, herein called Local 514, filed a petition seeking to represent certain employees employed by FDR Services Corp. of New York, herein called Employer. Laundry Distribution and Food Service Joint Board, Workers United, herein called the Union, intervened on the basis of a collective bargaining agreement.

Pursuant to an Order Scheduling Mail Ballot Election and Approving Petitioner's Request to Be Removed From Ballot[1] issued by the undersigned on October 30, 2019,[2] an election by mail ballot was conducted on November 8, among the employees in the following unit:

> All full-time and regular part-time employees employed by the Employer, but excluding guards, office employees, clerical employees, confidential employees, and supervisors as defined by the Act.

The Tally of Ballots made available to the parties at the conclusion of the election pursuant to the Board's Rules and Regulations, showed the following results:

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1 As explained more fully below, Local 514 requested not to appear on the ballot.
2 Unless otherwise specified, all dates are 2019.

Approximate number of eligible voters	197
Number of void ballots	4
Number of ballots cast for Laundry Distribution and Food Service Joint Board, Workers United	103
Number of votes cast against participating labor organization	1
Number of valid votes counted	104
Number of challenged ballots	17
Number of valid votes counted plus challenged ballots	121

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted plus challenged ballots has been cast for Laundry Distribution and Food Service Joint Board, Workers United.

Thereafter, the Employer filed timely objections to conduct affecting the results of the election. The Employer's objections are attached hereto as Exhibit A.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Employer's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

Procedural History

On February 2, 2018, the Union filed an unfair labor practice charge in Case No. 29-CA-214454 alleging that the Employer violated Section 8(a)(5) of the Act by failing to execute and implement a memorandum of understanding between the Union and the Employer.

As stated above, on February 20, 2018, Local 514 filed the instant petition.

On February 27, 2018, the undersigned determined that the charge filed in Case No. 29-CA-214454 would block the processing of the instant petition.

On September 12, the undersigned issued an Order Resuming the Processing of the Petition.

On September 25, the undersigned approved a Stipulated Election Agreement in which the parties agreed to hold a manual election in the bargaining unit described above. A manual election was scheduled to be held on Friday, October 25, in the cafeteria at the Employer's facility located at 44 Newmans Court, Hempstead, New York.

On October 23, Local 514 requested permission to withdraw the instant petition. The Union, a full intervenor, objected to the withdrawal of the petition.

On October 24, the Employer informed the Region that it would not permit the election to take place on its premises on October 25.

On October 24, the undersigned issued an Order Cancelling Election and Denying Petitioner's Request to Withdraw the Petition.

On October 29, the Employer again stated that it would not permit the NLRB to conduct a manual election on its premises.

As stated above, on October 30, the undersigned issued an Order Scheduling Mail Ballot Election and Approving Petitioner's Request To Be Removed From Ballot. In that order, the undersigned directed that the election proceed by mail ballot. Mail ballots were mailed to employees employed in the collective bargaining unit set forth in the parties' stipulated election agreement on November 8. Voters had to return their ballots so that they would be received in the Region 29 office by close of business on December 2. In the October 30 Order, the undersigned also approved Local 514's request to have its name removed from the ballot.

THE OBJECTIONS

Objection No. 1: Meeting Held in Violation of *Peerless Plywood*

In its first objection, the Employer alleges that the Union made coercive campaign statements to assembled employees within the twenty-four hour period prior to the mailing of the ballots in violation of *Guardsmark LLC*, 363 NLRB No. 103 (2016) and *Peerless Plywood Co.*, 107 NLRB 427 (1953). In its offer of proof, the Employer provided an affidavit from a named witness in which the witness stated that the Union held a meeting for unit employees on or about November 17, while the mail ballot election was being conducted. The witness stated that s/he was not invited to attend the meeting, but that other employees did attend the meeting and that the Union brought dinner for the employees who attended.

Peerless Plywood prohibits parties from "making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election." *Peerless Plywood*, 107 NLRB at 429. In *Gaurdsmark*, the Board clarified that in mail ballot elections, the parties are prohibited from making such speeches during the period commencing twenty-four hours before the mail ballots are mailed out by a regional office. *Guardsmark*, 363 NLRB No. 103 slip op. at 3.

The *Peerless Plywood* rule is limited and specific in scope. The rule does not prohibit "employers or unions from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary and on the

employees' own time." *Peerless Plywood*, 107 NLRB at 430; *see also Nebraska Consolidated Mills, Inc.*, 165 NLRB 639, 639 (1967) (in which the Board held that the "*Peerless Plywood* rule does not prohibit employers or unions from making campaign speeches on or off company premises during the 24-hour period preceding an election if employee attendance is voluntary and on the employee's own time.").

The Board has held that an objecting party must provide evidence in support of objections which would support a *prima facie* case. *See Park Chevrolet-Geo, Inc.*, 308 NLRB 1010 (1992) (in which the Board found that an objecting party bears the burden of presenting evidence that raises substantial and materials issues of fact); *see also The Daily Grind*, 337 NLRB 655, 656 (2002) (in which the Board found that an objecting party must present "some evidence supporting its allegation"). The Employer's offer of proof does not establish that the meeting held on or about November 17 was mandatory for employees or held on work time. In fact, the Employer's witness states that the Union provided dinner suggesting that this was, in fact, on employees' own time. The Employer offers no evidence that the Union was able to require employees' attendance. Absent evidence that the meeting was mandatory and on employees' work time, the Employer has not established that the Union violated the *Peerless Plywood* rule as applied to mail ballot elections in *Guardsmark*. Accordingly, I overrule the Employer's first objection.

Objection No. 2: Offer of Assistance with Ballots

In its second objection, the Employer alleges that the Union subjected employees to fear and intimidation, specifically by visiting employees at their homes and offering to mark employees' ballots for them. In its offer of proof, the Employer provided affidavits from named employees. In one affidavit, an employee states that Union representative Maria Rivas offered to mark the employee's ballot for him/her. In a second affidavit, a second employee states that Union representative Maria offered to take the employee to the post office to mail his/her ballot. In a third affidavit, another employee states that s/he heard that during a Union meeting, Union officials offered to mark employees' ballots.[3]

The foregoing alleged conduct of Union representatives offering to mark employees' ballots, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[4] In view of the conflicting positions and facts asserted by the parties regarding the allegations in the Employer's second objection, I find that this objection raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the Employer's second objection.

---

[3] I note the testimony provided in this affidavit is hearsay. Such evidence in permissible in an offer of proof. *See The Holladay Corp.*, 266 NLRB 621 (1983). The Employer will have an opportunity to provide direct evidence at a hearing.

[4] *See Grill Concepts Services, Inc.*, 2019 WL 2869823 (NLRB, June 28, 2019) (in which the Board stated that it could be coercive for a party to physically assist employees with filling out mail ballots or to be present while an employee filled out a mail ballot); *Fessler & Bowman, Inc.*, 341 NLRB 932 (2004) (finding objectionable conduct where a party collects employees' mail ballots)

Objection No. 3: Decision to Run Mail Ballot Election

In its third objection, the Employer alleges that the undersigned abused her discretion by directing a mail ballot election in this case. The Employer asserts that the use of a mail ballot election was improper where the employees reside in a limited geographic area.

As explained above, the Employer refused to grant the NLRB access to conduct a manual election on its premises. Moreover, the Employer did not inform the Region that it would not permit the NLRB access until the day before the manual election was scheduled to take place. In addition, the independent investigation established that the Employer made no attempt to provide the Region with an alternative location, but instead advised the Board Agent that the Region should find a place open to the public near the Employer's facility in order to conduct an election. Although the manual election had been scheduled pursuant to a stipulated election agreement, the Employer made compliance with that agreement impossible.

In addition to the Employer's conduct, Local 514 requested permission to withdraw from the ballot, which the undersigned granted. This change of choices on the ballot further differed from the provisions of the election agreement.

The Regional Director generally has broad discretion in setting election details, including whether an election is held by manual or mail ballot. *See San Diego Gas and Electric*, 325 NLRB 1143, 1144 (1998) (where the Board recognized that a Regional Director has "discretion in determining the arrangements for an election, including the location of the election and whether it should be conducted by manual balloting or mail ballot."). The Board will disturb a Regional Director's decision about the conduct of an election only upon a finding that the Regional Director abused her discretion. *See National Van Lines*, 120 NLRB 1343, 1346 (1958); *Cast North America (Trucking) Inc.*, 327 NLRB 537, 537 n. 2 (1999) (noting that "*San Diego Gas* retained the Board's longstanding deference to the Regional Director's discretion in determining the appropriateness of a mail-ballot election."). A Regional Director's discretion is not unlimited, however, especially in cases where the parties enter into a stipulated election agreement.

When parties enter into a stipulated election agreement, the parties, including the Regional Director, are bound by the terms of that agreement. In *T and L Leasing*, 318 NLRB 324 (1995), the parties had agreed that on December 2, 1994, the Board would conduct a manual election in a trailer on the property of Sears and Roebuck and Co., where the petitioned-for employees reported to work. Prior to the date of the election, the employer advised the Region that Sears would not permit the election to take place on its premises. The employer proposed alternative sites for the election, including a nearby motel that was within walking distance for the employees. The Regional Director ordered that the election be conducted by mail to commence on November 28, 1994, earlier than the original December 2 election date. The Board set the election aside,

finding that the Regional Director breached material terms of the election agreement by directing that the election be conducted by mail ballot and by changing the date of the election. The Board found that the Regional Director had not revoked his approval of the election agreement and that none of the parties had withdrawn from the election agreement. The also Board noted that the election agreement was not unclear, ambiguous, or contrary to Board law or policy. Significantly, the Board further reasoned that "the provisions of the Stipulation relating to the election time and place were at all times capable of performance." *Id.* at 326. In fact, the employer attempted to assist the Board is finding an alternative site to comply with the election agreement. These facts are readily distinguishable from the instant case.

In the instant case, the Employer has rendered compliance with the election agreement impossible. The Employer revoked its agreement to hold the election on its premises and did so the day before the election was to take place, thus making it impossible to comply with both the location and the date provided for in the election agreement. Unlike the employer in *T and L Leasing*, the Employer in the instant case made no effort to secure an alternative site at which to conduct a manual election. Having rendered compliance with the election agreement impossible, the Employer cannot object to the Region directing alternative means to conducting the election.

I also note that Local 514 withdrew from the election the day before the election was originally scheduled to take place. The Board has recognized that a change of parties participating in an election pursuant to a stipulated election agreement constitutes unusual circumstances. *See Sunnyvale Medical Clinic*, 241 NLRB 1156 (1979) (finding that an employer could withdraw from a stipulated election agreement where an intervenor was belatedly added to the ballot). Thus, the unusual circumstances of this case had rendered compliance with the election agreement impossible. Accordingly, where there was not physical site readily available for a manual election, it was within the Regional Director's discretion to order a mail ballot election and allow employees to vote.

As the Board stated in *San Diego Gas and Electric*: "[o]nly where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative [sic] elections will the Board nullify an election and prescribe other election standards." *San Diego Gas and Electric*, 325 NLRB at 1144 *citing National Van Lines*, 120 NLRB at 1346. Under the circumstances of this case, where the Employer rendered compliance with the election agreement impossible and the Petitioner withdrew from the case on the eve of the election, the Employer has not shown that the Regional Director abused her discretion to direct a mail ballot election. Accordingly, I overrule the Employer's third objection.

Summary and Notice of Hearing

In summary, I have overruled the Employer's first and third objections. I have directed that a hearing be held regarding the Employer's second objection.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by the Employer's second objection.

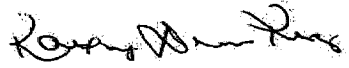
PLEASE TAKE NOTICE that on **January 7, 2020 at 9:30 a.m.**, and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

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, D.C., a Request for Review of this Decision. This Request for Review must conform with the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by Washington not later than fourteen days from the date of the final decision and/or certification of the Regional Director in this case.

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 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 at Brooklyn, New York, on December 23, 2019.



Kathy Drew King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, NY 11201

Exhibit B

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK

and **Case No. 29-CA-214454**

LAUNDRY, DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED, SERVICE EMPLOYEES INTERNATIONAL UNION

and

BROTHERHOOD OF AMALGAMATED TRADES, LOCAL UNION 514,

PARTY IN INTEREST

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Laundry, Distribution and Food Service Joint Board, Workers United, Service Employees International Union ("SEIU"). It is issued pursuant to Section 10(b) of the National Labor Relations Act ("the Act"), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board ("the Board") and alleges that FDR Services Corp. of New York ("Respondent") has violated the Act as described below.

1. The charge in this proceeding was filed by the Union on February 2, 2018, and a copy was served on Respondent by U.S. mail on February 8, 2018.

2. The first amended charge in this proceeding was filed by the Union on February 12, 2018, and a copy was served on Respondent by U.S. mail on February 13, 2018.

3. The second amended charge in this proceeding was filed by the Union on February 20, 2018, and a copy was served on Respondent by U.S. mail on February 21, 2018.

4. The third amended charge in this proceeding was filed by the Union on March 23, 2018, and a copy was served on Respondent by U.S. mail on March 26, 2018.

5. At all material times, Respondent has been a domestic corporation with an office and place of business located at 44 Newmans Court, Hempstead, New York ("the Hempstead facility"), and has been engaged in providing commercial laundry services to healthcare facilities.

6. Annually, in conducting its operations described above in paragraph 5, Respondent has purchased and received at the Hempstead facility goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York.

7. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. At all material times, SEIU has been a labor organization within the meaning of Section 2(5) of the Act.

9. At all material times, Brotherhood of Amalgamated Trades, Local Union 514 ("Local 514") has been a labor organization within the meaning of Section 2(5) of the Act.

10. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Keith Lunburg	–	President
Jesse McCormack	–	Vice President
Ana Funes	–	Supervisor

11. At all material times, Xiomara Hernandez has been a secretary employed by Respondent and an agent of Respondent within the meaning of Section 2(13) of the Act.

12. At all material times, Respondent has recognized SEIU as the exclusive collective-bargaining representative of the Unit, consisting of all employees working out of Respondent's Hempstead facility. This recognition has been embodied in successive collective-bargaining agreements, including, most recently, in an extension agreement that was effective from February 1, 2017 to July 31, 2017.

13. On or about January 30, 2018, Respondent, by McCormack, at the Hempstead facility, engaged in the following conduct:

(a) threatened employees with discharge if they engaged in union activities.

(b) interrogated employees about their union activities.

14. On or about February 14, 2018, Respondent, by McCormack, outside the Hempstead facility, recorded employees' union activities with his smart phone.

15. On or about February 14, 2018, Respondent, by Funes, outside the Hempstead facility and in the presence of Respondent's employees, threatened violence by attempting to hit a union representative.

16. On or about February 14, 2018, certain employees of Respondent, represented by the Union and employed at the Hempstead facility, ceased work concertedly and engaged in a strike.

17. On or about February 14, 2018, the following employees, who engaged in the strike described above in paragraph 16, each made unconditional offers to return to their former positions of employment, both verbally and via email from the Union to Respondent:

(a) Adela Alberto

(b) Delmi Canales

(c) Kathy Clayborn

(d) Yanira Diaz

(e) Sipriana Granados

(f) Dalia Orellana

(g) Maria Valladares

(h) Petrona Yanes

18. On or about February 14, 2018, failed and refused to reinstate the employees named above in paragraph 16 to their former positions of employment.

19. On or about the dates set forth below, Respondent reinstated the following discharged employees:

(a) Adela Alberto – March 9, 2018

(b) Delmi Canales – March 31, 2018

(c) Kathy Clayborn – March 8, 2018

(d) Yanira Diaz – March 31, 2018

(e) Dalia Orellana – June 2, 2018

(f) Maria Valladares – June 2, 2018

(g) Petrona Yanes – March 31, 2018

20. Since February 15, 2018, Respondent has refused to reinstate, or offer to reinstate Sipriana Granados to her former position of employment.

21. Respondent engaged in the conduct described above in paragraphs 17, 18 and 20 because the employees of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

22. On or about the dates set forth below, Respondent, by Funes, at the Hempstead facility engaged in the following conduct:

(a) March 8, 2018 – gave assistance and support to Local 514 by distributing literature to employees encouraging them to support Local 514 instead of the Union; and

(b) March 15, 2018 – gave assistance and support to Local 514 by distributing literature to employees encouraging them to support Local 514 instead of the Union.

23. By the conduct described above in paragraphs 13 through 15, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

24. By the conduct described above in paragraph 22, Respondent has been rendering unlawful assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act.

25. By the conduct described above in paragraphs 17, 18, 20, and 21, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

26. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

27. As part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that, at a meeting or meetings during work-time and scheduled to ensure the widest possible attendance of its employees, Respondent's representative Keith Lunburg read the Notice to Employees in the presence of a Board Agent of the NLRB and in the presence of a representative of SEIU. Alternatively, the General Counsel seeks an order requiring that Respondent

promptly have a Board Agent read the Notice to Employees during work-time and scheduled to ensure the widest possible attendance of its employees in the presence of Respondent's supervisors and agents identified above in paragraph 10 and in the presence of a representative of the SEIU.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before September 14, 2018, or postmarked on or before September 13, 2018.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer

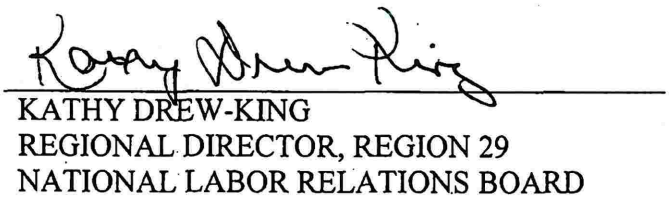
containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulation, be filed by the close of business on September 14, 2018. The request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **November 27, 2018, at 9:30 a.m., at a Fifth Floor hearing room at Two MetroTech Center, Brooklyn, New York** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: August 31, 2018



KATHY DREW-KING
REGIONAL DIRECTOR, REGION 29
NATIONAL LABOR RELATIONS BOARD
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 29-CA-214454

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Aaron Solomon , ESQ.
Kaufman Dolowich Voluck
135 Crossways Park Dr Ste 201
Woodbury, NY 11797-2005

Jesse McCormack , Vice President
FDR Services Corp. of New York
44 Newmans Ct
Hempstead, NY 11550-4815

Vincenza Ramirez , Business Agent
Laundry, Distribution and Food Service Joint
Board, Workers United, SEIU
703 McCarter Highway
Newark, NJ 07102

Thomas Murray , ESQ.
KENNEDY JENNIK & MURRAY, P.C.
900 Third Ave
New York, NY 10022-4869

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence**: At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered**

(OVER)

in evidence. If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

Exhibit C

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK

and

LAUNDRY, DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED, SERVICE EMPLOYEES INTERNATIONAL

Case Nos. 29-CA-235879
29-CA-236922
29-CA-237876
29-CA-238992
29-CA-242625

ORDER CONOLIDATING CASES, CONSOLIDATED COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board ("the Board") and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case Nos. 29-CA-235879, 29-CA-236922, 29-CA-237876, 29-CA-238992, and 29-CA-242625, which are based on charges filed by Laundry, Distribution and Food Service Joint Board, Workers United, Service Employees International Union ("the Union") against FDR Services Corp. of New York ("Respondent"), are hereby consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on the aforementioned charges, is issued pursuant to Section 10(b) of the National Labor Relations Act ("the Act"), 29 U.S.C. § 151 et seq., and Section 102.15 of the Board's Rules and Regulations, and alleges that Respondent has violated the Act as described below.

1. The charge in Case No. 29-CA-235879 was filed by the Union on February 13, 2019, and a copy was served on Respondent by U.S. mail on February 13, 2019.

2. The first amended charge in Case No. 29-CA-235879 was filed by the Union on February 26, 2019, and a copy was served on Respondent by U.S. mail on February 27, 2019.

3. The charge in Case No. 29-CA-236922 was filed by the Union on February 28, 2019, and a copy was served on Respondent by U.S. mail on March 1, 2019.

4. The charge in Case No. 29-CA-237876 was filed by the Union on March 15, 2019, and a copy was served on Respondent by U.S. mail on March 18, 2019.

5. The charge in Case No. 29-CA-238992 was filed by the Union on April 3, 2019, and a copy was served on Respondent by U.S. mail on April 4, 2019.

6. The charge in Case No. 29-CA-242625 was filed by the Union on June 3, 2019, and a copy was served on Respondent by U.S. mail on June 4, 2019.

7. At all material times, Respondent has been a domestic corporation with an office and place of business located at 44 Newmans Court, Hempstead, New York ("the Hempstead facility"), and has been engaged in providing commercial laundry services to healthcare facilities.

8. Annually, in conducting its business operations described above in paragraph 7, Respondent has purchased and received at its Hempstead facility goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York.

9. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

10. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

11. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and/or agents of Respondent within the meaning of Section 2(13) of the Act:

Jesse McCormack – Vice President

Abraham Rodriguez – General Manager

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

> All of the employees of the Employer working at its facility located at 44 Newmans Court, Hempstead, New York, except guards, confidential employees, and supervisors as defined by the National Labor Relations Act.

13. At all material times, Respondent has recognized the Union as the exclusive collective-bargaining representative of the Unit. This recognition has been embodied in successive collective-bargaining agreements, including, most recently, in an extension agreement that was effective from February 1, 2017 to July 31, 2017.

14. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

15. Article 2, Section B of the expired collective bargaining agreement between Respondent and the Union provides as follows:

> The Employer shall recognize and deal with such representative as the Manager of the Union may designate and shall permit such designated representative to visit the plant during working hours provided that there shall be no interference with production or disruption of FDR's operations. Such representative must conduct him/herself with proper decorum. Upon arrival to the building, the representative must check in with the General Manager, or if the General Manager is not available, then with the next in charge.

16. Beginning on or about December 3, 2018 and continuing, Respondent implemented changes to the Union's access rights described above in paragraph 15, by requiring that the Union:

(a) obtain liability insurance, and

(b) submit to a tour / walk-through of the facility.

17. Respondent denied access to the Union's representative on dates including the following:

(a) January 10, 2019

(b) February 7, 2019

(c) February 20, 2019

(d) February 21, 2019

(e) February 25, 2019

(f) March 7, 2019

(g) March 23, 2019

(h) March 25, 2019

(i) April 15, 2019

18. The subjects set forth above in paragraphs 16 and 17 relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

19. Respondent engaged in the conduct described above in paragraphs 16 and 17 without affording the Union with notice and an opportunity to bargain with Respondent with respect to this conduct and without first bargaining with the Union to an overall good-faith impasse for a successor collective bargaining agreement.

20. On or about the various dates set forth opposite their names, Respondent reassigned the following employees to more onerous work in the soil department:

(a) Maria Hernandez – In or about December 2018, a more exact date presently unknown;

(b) Delmi Canales – January 14, 2019;

(c) Estabana Morales – February 4, 2019; and

(d) Delmi Canales – February 4, 2019

21. In or about late February 2019, more exact dates presently unknown, Respondent assigned employee Patricio Munoz to more onerous working conditions by adding stops to his route.

22. On or about March 13, 2019, Respondent discharged the following employees:

(a) Patricio Munoz;

(b) David Duran

23. Since March 13, 2019, Respondent has failed and refused to reinstate the employees named above in paragraph 22 to their former positions of employment.

24. On or about April 4, 2019, Respondent revoked employee Maria Rivas' parking spot in Respondent's employee parking lot.

25. Respondent engaged in the conduct described above in paragraphs 20 through 24 because the employees of Respondent assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

26. By the conduct described above in paragraphs 20 through 25, Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

27. By the conduct described above in paragraphs 16 through 19, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

28. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the Consolidated Complaint. The answer must be **received by this office on or before July 10, 2019, or postmarked on or before July 9, 2019.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and

Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the Consolidated Complaint are true.

Any request for an extension of time to file an answer must, pursuant to Section 102.111(b) of the Board's Rules and Regulation, be filed by the close of business on July 10, 2019. The request should be in writing and addressed to the Regional Director of Region 29.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **Tuesday, August 20, 2019, at 9:30 a.m., at a Fifth Floor hearing room at Two MetroTech Center, Brooklyn, New York** and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this Consolidated Complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 26, 2019

KATHY DREW KING
REGIONAL DIRECTOR, REGION 29
NATIONAL LABOR RELATIONS BOARD
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838

Attachments

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 29-CA-235879

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Jesse McCormack , Vice President
FDR Services Corp. of New York
44 Newmans Ct
Hempstead, NY 11550

Alberto Arroyo
Laundry, Distribution and Food Service Joint Board
703 McCarter Highway
Newark, NJ 07102-3106

Cristina Gallo , ESQ.
Cohen Weiss and Simon LLP
900 Third Avenue, Suite 2100
New York, NY 10022

Aaron N. Solomon , ESQ.
Kaufman Dolowich & Voluck LLP
135 Crossways Park Drive, Suite 201
Woodbury, NY 11797

Form NLRB-4668
(6-2014)

Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: www.nlrb.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf.

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at www.nlrb.gov, click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement. The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.

- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.

- **Exhibits: Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility

(OVER)

of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts**: An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.

- **Oral Argument**: You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

- **Date for Filing Post-Hearing Brief**: Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.

- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.

- **Exceptions to the ALJ's Decision**: The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK	**Case Nos. 29-CA-235879**
and	**29-CA-236922**
	29-CA-237876
LAUNDRY, DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED, SERVICE EMPLOYEES INTERNATIONAL	**29-CA-238992**
	29-CA-242625

ERRATUM

On June 26, 2019, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("Consolidated Complaint") issued in the above matter, mistakenly duplicating one of the alleged discriminatees while omitting employee Maria Rivas in paragraph 20. The paragraph should correctly read as follows:

20. On or about the various dates set forth opposite their names, Respondent reassigned the following employees to more onerous work in the soil department:

    (a) Maria Hernandez – In or about December 2018, a more exact date presently unknown;

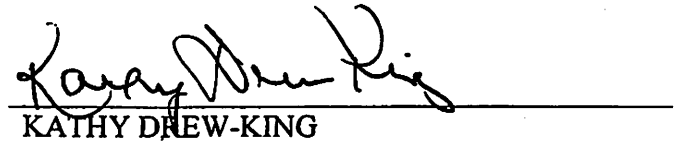
    (b) Delmi Canales – January 14, 2019;

    (c) Estabana Morales – February 4, 2019; and

    (d) Maria Rivas – February 4, 2019

The undersigned hereby corrects paragraph 20 of the Consolidated Complaint to correctly identify Maria Rivas as an alleged discriminatee.

Dated: July 18, 2019



KATHY DREW-KING
REGIONAL DIRECTOR, REGION 29
NATIONAL LABOR RELATIONS BOARD
Two Metro Tech Center, Suite 5100
Brooklyn, NY 11201-3838

Exhibit D

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK,	)	
Employer	)	
and	)	Case No. 29-RC-215193
LAUNDRY DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED	)	
Petitioner	)	

Hearing Officer's Report and Recommendations on Objections

This report contains my findings and recommendations regarding the Employer's objection alleging that the Union subjected employees to fear and intimidation, specifically by visiting unit employees at their homes during a mail ballot election and offering to mark employees' mail ballots. For the reasons contained herein, I recommend overruling the Employer's objection. I further recommend certifying the Petitioner as the collective bargaining representative of the employees in the petitioned-for unit.

Procedural History

On February 20, 2018, Brotherhood of Amalgamated Trades, Local 514, herein called Local 514, filed a petition seeking to represent certain employees employed by FDR Services Corp. of New York, herein called Employer. Laundry Distribution and Food Service Joint Board, Workers United, herein called the Union or the Petitioner, intervened on the basis of a collective bargaining agreement.

Pursuant to an Order Scheduling Mail Ballot Election and Approving [Local 514's] Request to Be Removed From Ballot[1] issued by the undersigned on October 30, 2019,[2] an election by mail ballot was conducted on November 8 among the employees in the following unit:

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1 On October 23, 2019, Local 514 requested permission to withdraw the instant petition. The Union, a full intervenor, objected to the withdrawal of the petition. On October 24, 2019, the Employer informed the Region that it would not permit the election to take place on its premises on October 25. The Regional Director issued an Order Cancelling Election and Denying Local 514's Request to Withdraw the Petition.

On October 30, 2019, the Regional Director issued an Order Scheduling Mail Ballot Election and Approving [Local 514's] Request To Be Removed From Ballot in which she directed that the election proceed by mail ballot. Mail ballots were mailed to employees employed in the collective bargaining unit set forth in the parties' stipulated election

All full-time and regular part-time employees employed by the Employer, but excluding guards, office employees, clerical employees, confidential employees, and supervisors as defined by the Act.

The Tally of Ballots made available to the parties at the conclusion of the election pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	197
Number of void ballots	4
Number of ballots cast for Laundry Distribution and Food Service Joint Board, Workers United	103
Number of votes cast against participating labor organization	1
Number of valid votes counted	104
Number of challenged ballots	17
Number of valid votes counted plus challenged ballots	121

Challenges are not sufficient in number to affect the results of the election.
A majority of the valid votes counted plus challenged ballots has been cast for Laundry Distribution and Food Service Joint Board, Workers United.

Thereafter, the Employer filed timely objections to conduct affecting the results of the election. Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director caused an investigation to be conducted concerning the Employer's objections. On December 23, the Regional Director issued and served on the parties a Report on Objections and Notice of Hearing, in which she overruled the Employer's first and third objections and directed that a hearing be held by a duly designated Hearing Officer regarding the Petitioner's second objection alleging that the Union visited employees at their homes and offered to mark employees' ballots for them.

A hearing was held before the undersigned on January 21 and 22, 2020, in Brooklyn, New York. The Employer and Petitioner appeared at this hearing.

In accordance with the Notice of Hearing, and upon the entire record of this case, consisting of the transcript of the hearing and exhibits, including my observation of the demeanor of the witnesses who testified, and the specificity of their testimony, the undersigned issues this Report and Recommendations with respect to the Employer's second objection. [3]

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agreement on November 8. Voters had to return their ballots so that they would be received in the Region 29 office by close of business on December 2. In the October 30 Order, the Regional Director also approved Local 514's request to have its name removed from the ballot.

[2] Unless otherwise specified, all dates are 2019.

[3] References to the transcript are identified as Tr. __. References to the Board, Employer, and Petitioner's exhibits will be cited as Bd. Ex. __, Er. Ex. __, and Pet. Ex. __, respectively.

THE OBJECTION

Objection No. 2: Offer of Assistance with Ballots

In its second objection, the Employer alleges that the Union subjected employees to fear and intimidation, specifically by visiting employees at their homes during the mail ballot and offering to mark employees' mail ballots.

The Employer presented three employee witnesses, Angela Torres, Maria Robles, and Rena Rodriguez. In addition, the Employer presented testimony from four Union representatives, Dario Almanzar, Megan Chambers, Marcia Almanzar, and Alberto Arroyo. The Union presented one witness, Maria Rivas, an employee of the Employer who serves as an assistant shop steward.

Employee Angela Torres and Union Representative Dario Almanzar

Angela Torres works in the Employer's ironing department and has worked for the Employer for over thirty years. Tr. at 48-49. Torres testified that she received her mail ballot in November or December. Torres testified that two Union representatives came to her house. On redirect, Torres testified that the Union representatives came to her house twice. Tr. at 73. She did not specify when either visit occurred. Torres identified one of the representatives as "Dario," but could only identify the second representative as "Marcia" after reviewing an affidavit she had previously given.[4] On cross examination, Torres testified that she could not understand the entire affidavit because it was in English. Tr. at 64, 69. Torres also testified that she did not mention anyone's name when she gave her affidavit to the Employer. Tr. at 61.

Torres testified that when the Union representatives came to her house, they wanted to speak to her about how to fill out the mail ballot, but that she did not let them in. Tr. at 50. Specifically, Torres testified that the Union representatives said, "Here, I want to show you how to write, what to do." Tr. at 73. Torres did not specify which Union representative made this comment. After being asked in a leading manner on direct examination if anyone from the Union offered to mark her ballot, she replied that the Union representatives wanted to mark her ballot, but reiterated that she did not let them. Tr. at 51.

Torres testified that she heard from other employees that Dario and the woman wanted to fill out other people's ballots, but did not know if other workers accepted the Union representatives' help. Tr. at 52-53. Torres declined to identify any co-workers who made such comments to her. Tr. at 56.

Dario Almanzar testified that he made only one home visit to an employee of the Employer, although he knocked on the doors of approximately ten to fifteen employees. Tr. at 108. The one employee he visited with was Evelyn (he did not know her last name). During this visit, Evelyn completed her mail ballot while Dario waited in another room. He offered to take Evelyn to the post office because he knew that she did not have a car. She declined his offer. Tr. at 114. Evelyn was the only employee Dario offered to take to the post office. Tr. at 114. Dario testified that he did not mark any employees' ballots, offer to mark any employees' ballots, or offer to mail any employees' ballots. Tr. at 113-14.

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[4] This affidavit was prepared by the Employer and submitted with the Employer's offer of proof. Torres testified that the Employer's owner was present with the Employer's attorney while she gave her affidavit. Tr. at 60.

Credibility

After observing the demeanor and listening carefully to the testimony of the foregoing witnesses I do not credit the testimony of Angela Torres. Her testimony was extremely vague and inconsistent. For example, she did not specify when the Union representatives visited her home. On redirect, she testified that they visited her twice, but it was not clear that from her testimony on direct examination that there were two visits. Moreover, she could not recall the identity of one of the Union agents who visited her home without referring to an affidavit she had provided to the Employer. She testified, however, that she could not fully understand the affidavit because it was in English. Significantly, Torres also testified that she had not given anyone's name when she gave her affidavit to the Employer. Torres stated that she heard from other employees that Union representatives wanted to fill out other people's ballots, but declined to identify any employees who told her this. As I stated during the hearing, I do not rely on this hearsay testimony. Finally, after observing her demeanor, I note that she appeared nervous and hesitant on cross-examination. For these reasons, I do not find Torres a credible witness.

I generally credit the testimony of Dario Almanzar. He testified in a straightforward, honest, and clear manner.

Employees Maria Robles and Maria Rivas

Maria Robles works as a packer and has worked for the Employer for approximately 19 years. Tr. at 80. Robles received the mail ballot in November. Tr. at 81. Robles testified that someone came to her house before she received the mail ballot, but she did not let them in. When asked who came to her house, she testified that she could not say who it was. Tr. at 82.

Robles testified that Maria Rivas, a co-worker, asked Robles if she had received the ballot. It is uncontroverted that Rivas is an assistant shop steward for the Union, but Robles testified that she did not know if Rivas held a Union position. Robles testified that when Rivas initially asked about the ballot, Robles had not received it. Rivas asked Robles about the ballot a second time. At that point, Robles told Rivas that she had the ballot, but did not know how to complete it. Rivas offered to help Robles complete the ballot. Robles said she did not want to fill the ballot out at work. According to Robles, Rivas offered to go to Robles' house to help her fill out the ballot. When Rivas called her the next day, Robles told Rivas that she was not home. Robles filled out her ballot by herself. Tr. at 82.

Maria Rivas testified that she has worked for the Employer for twenty-seven years. With regard to Rivas's role as an assistant shop steward, Marcia Almanzar, a Union representative, testified that Rivas has been trained to be present if an employee is disciplined at work. Tr. at 133. Rivas testified that as a shop steward, she represents employees when the Employer needs a Union representative present. Tr. at 161.

With regard to her conversations with Robles, Rivas testified that she spoke to Robles about the mail ballot on two occasions. During the first conversation, which occurred at work, Rivas asked Robles if she had received her ballot. Robles said that she had received it and that she was confused because there were a lot of envelopes. According to Rivas, Robles asked if Rivas could help her complete the "process of the envelopes." Tr. at 162-63. Rivas advised Robles to call the Union, but Robles said she did not want anyone from the Union at her house. Robles asked Rivas

to call her when Rivas finished work. Rivas called Robles, but Robles did not answer the phone. Tr. at 163. Rivas testified that she had a second conversation with Robles at work a couple of days later. Tr. at 163. Rivas asked if Robles had completed the mail ballot. Robles said that she had. Tr. at 163-64. Rivas did not see Robles vote because Robles voted at home. Tr. at 165. Rivas testified that she did not offer to mark or collect Robles' ballot. Tr. at 164.

Credibility

I generally credit the testimony of Robles and Rivas. Both testified in a clear and straightforward manner. The testimony of these witnesses is substantially consistent. Although their accounts differ on a couple of details, such as whether Robles asked for help or Rivas offered help when Robles said she was confused by the envelopes, I do not find that those differences were significant.

Employee Rena Rodriguez and Union Representative Marcia Almanzar

Rena Rodriguez has worked for the Employer for approximately two years. Tr. at 85. Rodriguez testified that Marcia, a Union representative, and another woman Rodriguez could not identify visited her at her home. Marcia asked Rodriguez if the ballot for the election had arrived and Rodriguez showed Marcia her ballot, stating that she did not know how to complete the ballot. Rodriguez explained that Marcia "told me what I had to do, where I had to sign, and where to put stuff, what envelope to put in. And then once I did it, she asked me if I know where there was a mailbox." Marcia offered Rodriguez a ride to the mailbox, but Rodriguez declined because she had to stay home with her children. Rodriguez told Marcia that she would give the envelope to her husband to mail. Tr. at 88. Rodriguez further testified that while at her house, Marcia was calling other employees and arranging to visit them as well. Rodriguez does not know with whom Marcia was speaking. Tr. at 89.

Marcia Almanzar testified that she met with approximately ten to twelve unit employees in their homes during the campaign, including Rena Rodriguez. Tr. at 131. Marcia testified that she spoke to employees about how to fill out the ballots because many of the employees could not read the ballot. Tr. at 132-33. Marcia stated that she did not help any employees fill out their ballots and that she was not present when any employees voted. Marcia testified that she did not collect any ballots from employees and that she never touched anyone's ballot, ballot package, or ballot envelope. Tr. at 133, 135.

Marcia testified that she offered to take Rodriguez to the post office because she knew that Rodriguez did not have a car. She did not give Rodriguez a ride to the post office. Tr. at 132, 135. Marcia stated that she made the same offer of transportation to two or three employees, but did not specify if any of the other employees accepted her offer of transportation to the post office. Tr. at 132.

Credibility

I generally credit the testimony of Rodriguez and Marcia Almanzar. Both testified in a clear and straightforward manner. The testimony of these witnesses is substantially consistent.

Other Testimony

The Employer also called Alberto Arroyo and Megan Chambers, who serve as managers of the Union. Neither of these witnesses were substantially involved in the campaign. There is no evidence that Arroyo or Chambers made home visits to any unit employees or spoke to any employees about their ballots.

Discussion

General Principles

It is well-settled that the Board will not set aside a representation election lightly. *See In re Safeway. Inc.*, 338 NLRB 525, 525-26 (2002). There is a "strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of employees." *Id.* at 525, *quoting NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991). An objecting party has the burden of proving its allegations, and that burden is a heavy one. *See also Mastec North America. Inc. d/b/a Mastec Direct TV Employer*, 356 NLRB 809 (2011), *citing Kux Mfg. co. v. NLRB*, 890 F.2d 804, 806 (6th Cir. 1989).

When evaluating alleged objectionable conduct, the Board employs an objective test to determine "whether the conduct of a party to an election has the tendency to interfere with the employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995). The Board examines several factors, including:

1. the number of the incidents of misconduct;
2. the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit;
3. the number of employees in the bargaining unit subjected to the misconduct;
4. the proximity of the misconduct to the election date;
5. the degree of persistence of the misconduct in the minds of the bargaining unit employees;
6. the extent of dissemination of the misconduct among the bargaining unit employees;
7. the effect, if any, of misconduct by the opposing party in canceling out the effect of the original misconduct;
8. the closeness of the final vote; and
9. the degree to which the misconduct can be attributed to the union.

Avis Rent-a-Car System, 280 NLRB 580, 581 (1986).

The Legal Standard

It is not objectionable to offer a voter assistance with a mail ballot as long as a party does not collect or solicit a voter's ballot. In *Grill Concepts Services, Inc.*, 2019 WL 2869823 (NLRB, June 28, 2019), union representatives visited voters' homes and offered to help employees fill out their mail ballots. The evidence in that case demonstrated that union representatives asked voters if they had received their ballots and offered to explain the process for correctly filling out the ballot. The Board found that the offer to assist employees vote was not objectionable because it did not involve solicitation or collection of ballots. The Board noted that the record in that case did not "establish that the [union's] representatives sought to physically assist voters in filling out the ballot, sought to have the voters record their votes in the representatives' presence, or engaged in any other conduct that could reasonably be viewed as coercive or imperiling the integrity of the mail ballots in this election." Id. at *2. In *Fessler & Bowman, Inc.*, 341 NLRB 932 (2004), by contrast, union agents offered to mail voters' completed mail ballots for them. Union agents collected and mailed two completed, sealed ballots for employees. Although there was no evidence that the union agents had tampered with the ballots, the Board set the election aside finding that mail ballot collection by a party casts doubt on the integrity of the Board's election process and undermines the secrecy of the election. Id. at 934. The Board split on whether the solicitation of mail ballots without the actual collection of those ballots was objectionable. Under this legal standard, the Employer has not established that the Employer engaged in objectionable conduct.

Application to the Present Case

Torres

As explained above, I do not credit Torres's testimony. I have credited the testimony of Dario Almanzar and Marcia Almanzar, the two Union representatives whom Torres alleges visited her house, that they did not solicit, mark, or collect mail ballots from any unit employees. There is no credible evidence that the Union solicited, marked, or collected Torres's ballot.[5]

Robles

Maria Robles testified that co-worker and assistant shop steward Maria Rivas asked if Robles had received her ballot. Robles told Rivas that she did now know how to fill out the ballot and Rivas offered to help her.[6] When Rivas called Robles, Robles told Rivas that she could not meet. Robles testified that she filled out her ballot by herself.

As an initial matter, the Employer has not established that Rivas is an agent of the Union for purposes of this objection. Rivas serves as an assistant shop steward. Serving as a shop steward does not necessarily confer agency. *See Narragansett Restaurant Corp.*, 243 NLRB 125, 128 (1979). The Board employs traditional agency principles to determine when an individual is an agent. In *International Brotherhood of Teamsters, General Drivers, Chauffeurs and Helpers Local Union No. 886 (Lee Way Motor Freight, Inc.)*, 229 NLRB 832, 832-33 (1977), the Board noted that it "is enough if the principal actually empowered the agent to represent him in the general area

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[5] Even if I were to credit Torres's testimony that the Union representatives offered to mark her ballot, an offer which she consistently testified that she refused, this single instance of such conduct would not invalidate this election in which the Union prevailed by over one hundred votes, as discussed in greater detail below.

[6] According to Rivas, Robles asked Rivas to help her with the ballot because she was confused by the envelopes.

within which the agent acted." (*citing International Longshoremans's and Warehousemen's Union, C.I.O., Local 6 (Sunset Line and Twine Co.)*, 79 NLRB 1487, 1509 (1948)). In that case, the Board found that the shop steward in question was an agent of the union based on the shop steward's authority as expressly granted in the union's bylaws, including the power to investigate and present grievances to management and to transmit messages and information from the union. In this case, the only duties Rivas performs as a shop steward is to be present in disciplinary meetings between the Employer and unit employees. There is no evidence that Rivas has any additional authority. For example, there is no evidence that she can investigate or initiate grievances, or speak to the Employer or employees on behalf of the Union, as the shop steward in *Lee Way Motor Freight* could. The evidence of Rivas's limited authority as a shop steward is not enough to support a finding that Rivas acted as a Union agent while talking to Robles. *See United Builders Supply Co.*, 287 NLRB 1364 (1988) (declining to find that an employee was an agent of the Union where the employee did not, *inter alia*, hold himself out as a union representative or speak on behalf the union). Moreover, Robles did not know that Rivas serves as a shop steward, so there is no apparent agency because Robles could not have understood that Rivas was speaking on behalf of the Union. *See Id.* at 1364-65 (declining to find apparent agency where there was no "manifestation" that the employee was acting on behalf of the union).

Even if Rivas were a Union agent, as explained above, it is not objectionable to offer a voter assistance with a mail ballot, as Rivas did in this case. There is no evidence that Rivas or any Union agent attempted to solicit or collect Robles' ballot.

Rodriguez

Rodriguez testified that she received a visit at her home from Marcia Almanzar along with another union representative that Rodriguez did not identify. Marcia asked if Rodriguez received her ballot and Rodriguez showed Marcia the ballot, stating that she did not know how to complete the ballot. According to Rodriguez's account, Marcia told her "what [she] had to do, where [she] had to sign, and where to put stuff, what envelope to put it." Rodriguez testified that she completed her own ballot. Marcia testified that she did not complete or collect any ballots from employees. There is no evidence that Marcia collected or solicited Rodriguez's ballot.

Offer of Transportation

It is not objectionable for an Employer to offer employees transportation to the polls as long as the offer is made to all employees indiscriminately. *See John S. Barnes Corp.*, 90 NLRB 1358 (1950). The evidence shows that two Union representatives, Dario Almanzar and Marcia Almanzar, offered to take three to four employees to the post office to mail their ballots. Both Dario and Marcia stated that they made the offers because they knew that employees did not have cars to drive themselves. There is no evidence that either Union representative made these offers in any sort of discriminatory manner. Accordingly, I do not find that this conduct is objectionable under the Board's precedent.

Union Agents' Presence While Employees Voted

In *Grill Concepts*, the Board noted that it might be coercive if a representative of a party were present while an employee completed a mail ballot. The evidence demonstrates that Union representatives were present in two employees' homes while these employees voted, although at least one representative remained in another room while the employee filled out her ballot. Union

representative Dario Almanzar testified that he visited an employee named Evelyn and that Evelyn completed her mail ballot in another room while Dario was at her home. Union representative Marcia Almanzar remained at employee Rena Rodriguez's home while Rodriguez voted. I note that Rodriguez did not testify whether Marcia remained in the same room while she filled out her ballot. Marcia testified that she was not present while any employees voted. In neither of these cases did the Union representative collect the employees' ballot.

Assuming it were objectionable for the Union representatives to remain in the employees' homes while they voted, even if in another room, the Employer has not demonstrated that these two instances could have affected the results of the election. As explained above, when considering whether objectionable conduct could have affected the outcome the election, the Board examines the number of violations, the severity of those violations, the extent of dissemination, the size of the unit, the closeness of the election results, the proximity of the objectionable conduct to the election date, and the number of unit employees affected. *See Bon Appetit Management Co.*, 334 NLRB 1042, 1044 (2001).

In the present case, the Petitioner prevailed by 103 votes to 1. As noted above, the tally of ballots is a relevant factor to be considered when determining whether alleged objectionable conduct could have affected the results of an election. *See Sanitation Salvage Corp.*, 359 NLRB 1129 (2013) (finding that the Board will not set aside an election if the number of employees affected by objectionable conduct is insufficient to affect the outcome election); *Hopkins Nursing Care Center*, 309 NLBR 958, 959 fn. 8 (1992) (finding that the closeness of an election was due "great weight' when deciding whether conduct is objectionable). Given that the Union prevailed by over one hundred votes, two instances of objectionable conduct with no evidence of dissemination could not have affected the results in this case.

The Employer repeatedly argued that any objectionable conduct, even one isolated instance, is enough to invalidate the entire election and necessitate a new election. This argument, however, is not consistent with the Board's precedent, as explained above. In fact, in *Fessler & Bowman*, having found that the union collected voters' ballots, the Board explicitly examined the potential affects of that conduct on the results of the election. The Board set that election aside only after finding that the two instances of objectionable conduct could have affected the results of the election given the closeness of the tally in that case. *See Fessler & Bowman*, 341 NLRB at 935. Accordingly, I reject the Employer's contention that even a single instance of objectionable conduct would invalidate the election results in this case. I do find that the presence of two Union representatives in the homes of two voters while those voters voted could have affected the results of this election.

For the reasons stated above, I make the following recommendation:

Recommendation

Based on the foregoing, I recommend overruling the Employer's second objection. Accordingly, I further recommend that the Petitioner be certified as the exclusive collective bargaining agent of the following appropriate unit:

All full-time and regular part-time employees employed by the Employer, but excluding guards, office employees, clerical employees, confidential employees, and supervisors as defined by the Act.

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 29 by March 9, 2020. 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 must 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.

Pursuant to Sections 102.111-102.114 of the Board's Rules, exceptions and any supporting brief must be received 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. 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 at Brooklyn, New York, on February 24, 2020.

Rachel Zweighaft
Hearing Officer
National Labor Relations Board, Region 29
Two MetroTech Center
Brooklyn, NY 11201

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

FDR SERVICES CORP. OF NEW YORK,	)	
Employer	)	
and	)	Case No. 29-RC-215193
LAUNDRY DISTRIBUTION AND FOOD SERVICE JOINT BOARD, WORKERS UNITED	)	
Petitioner	)	

ERRATA

On February 24, 2020, the undersigned issued a Hearing Officer's Report and Recommendations on Objections in the above referenced case. The following corrections to the Report and Recommendation are hereby made:

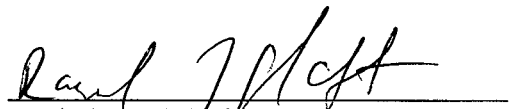
On Page 2, replace "On December 23, the Regional Director issued and served on the parties a Report on Objections and Notice of Hearing, in which she overruled the Employer's first and third objections and directed that a hearing be held by a duly designated Hearing Officer regarding the **Petitioner's** second objection alleging that the Union visited employees at their homes and offered to mark employees' ballots for them." with "On December 23, the Regional Director issued and served on the parties a Report on Objections and Notice of Hearing, in which she overruled the Employer's first and third objections and directed that a hearing be held by a duly designated Hearing Officer regarding the **Employer's** second objection alleging that the Union visited employees at their homes and offered to mark employees' ballots for them."

On Page 7, replace "Under this legal standard, the Employer has not established that the **Employer** engaged in objectionable conduct." with "Under this legal standard, the Employer has not established that the **Petitioner** engaged in objectionable conduct."

On Page 9, replace "I do find that the presence of two Union representatives in the homes of two voters while those voters voted could have affected the results of this election." with "I do **not**

find that the presence of two Union representatives in the homes of two voters while those voters voted could have affected the results of this election."

Dated at Brooklyn, New York, on March 3, 2020.



Rachel Zweighaft
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