

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**DOUGLAS EMMETT MANAGEMENT,
LLC**

and

**INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 501,
AFL-CIO,**

Case No. 31-RM-264415

**UNION'S *CORRECTED* REQUEST FOR REVIEW OF THE
REGIONAL DIRECTOR'S DECISION DISPOSING OF
OBJECTIONS AND DETERMINATIVE CHALLENGES**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS	1
A.	THE UNION WON A REPRESENTATION ELECTION DESPITE TREMENDOUS INTIMIDATION BY THE EMPLOYER	1
B.	THE COMPANY IMMEDIATELY BEGAN CARRYING OUT ITS PRE-ELECTION THREATS.....	6
C.	THE COMPANY THEN BROUGHT IN “RINGERS” TO DEFEAT UNION SUPPORT	11
III.	LEGAL ARGUMENT	14
A.	THE UNION’S OBJECTIONS TO THE ELECTION SHOULD HAVE BEEN SUSTAINED	14
1.	The Region Disposed Of The Objections Because The Employer Dismissed And Immediately Refiled The Same Petition.....	15
2.	The Gravamen Of The Objections Are That Laboratory Conditions Were Not Maintained	16
B.	THE UNION’S CHALLENGES SHOULD HAVE BEEN UPHELD.....	19
1.	The Chief Engineers Are Statutory “Supervisors”	19
2.	The Challenged Voters Were Brought In For The Sole Purpose Of Defeating Union Support.....	22
IV.	CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases

<i>Carson International, Inc.</i> , 259 NLRB 1073 (1982)	15, 16
<i>Children’s Farm Home</i> , 324 NLRB 61, 61 (1997).	20
<i>DirectTV</i> , 357 NLRB 1747, 1750 (2011)	20
<i>Liquid Transporters, Inc.</i> , 250 NLRB 1421, 1425 (1980).....	21
<i>Metropolitan Transportation Services</i> , 351 NLRB 657, 678 (2007)	21
<i>Nestle Ice Cream Co. v. NLRB</i> (6th Cir. 1995) 46 F.3d 578.....	18, 24
<i>NLI v. Security Guard Serv.</i> , 384 F.2d 143 (5th Cir. 1967)	19
<i>NLRB v. Kentucky River Community Care</i> , 532 U.S. 706, 713 (2001)	20
<i>Oakwood Healthcare, Inc.</i> , 348 NLRB 686, 687 (2006).....	20, 21
<i>Pacific Beach Corp.</i> , 344 NLRB 1160, 1161 (2005).....	21
<i>Poly-America, Inc.</i> , 328 NLRB 667, 673 (1999).....	21
<i>Progressive Transportation Services, Inc.</i> , 340 NLRB 1044, 1045 (2003)	21
<i>R. Dakin & Co.</i> , 191 NLRB 343 (1971)	15
<i>RCC Fabricators, Inc.</i> , 352 NLRB 701, 727 (2008).....	21
<i>Sheraton Universal Hotel</i> , 350 NLRB 1114, 1118 (2007).....	21
<i>Springfield Terrace LTD</i> , 355 NLRB 937, 940 (2010)	21

National Labor Relations Board’s Rules and Regulations

Section 102.67.....	1, 14
Section 2(11).....	19, 20
Section 8(a)(1).	3, 5, 6

Pursuant to Section 102.67 of the National Labor Relations Board’s Rules and Regulations, International Union of Operating Engineers Local 501, AFL-CIO (hereinafter “Union” or “Petitioner”) hereby requests review of the Decision Disposing of Objections and Determinative Challenges issued by the Regional Director on January 28, 2021.

I. INTRODUCTION

The Union filed its Objections and Challenges to Voters. In its Decision, the Regional Director disposed of Union’s Objections 1 through 4, and its challenges to Voters Cardenas, Gibson, Navaroli, Rojas-Campos, and Zeek, who were brought into the bargaining unit for the sole purpose of defeating support for the Union and challenges to Navaroli and Zeek, who enjoy supervisory status.

The Union hereby seeks review of the Regional Director’s decision.

II. STATEMENT OF FACTS

A. **THE UNION WON A REPRESENTATION ELECTION DESPITE TREMENDOUS INTIMIDATION BY THE EMPLOYER**

In early 2017, Local 501 began organizing engineers at multiple commercial office properties owned by Douglas Emmett, Inc. After several months of organizing, Local 501 filed its first petition for an NLRB-conducted representation election on July 28, 2017.¹ In response, according an Administrative Law Judge’s August 2019 Decision,² company managers and consultant unlawfully solicited worker’s grievances, promised them better terms and conditions of employment if they rejected the union, and threatened them with discharge or other reprisals if

¹ <https://www.nlr.gov/case/31-RC-203314>

² <https://www.nlr.gov/case/31-CA-211448>, ALJ Decision available at <https://apps.nlr.gov/link/document.aspx/09031d4582d426f3>

they supported the union. Ultimately, the election was held on August 25, 2017, and the union won by a vote of 12-7.

On July 31, 2017, three days after the submission of the union election petition by Woodland Hills engineers, Douglas Emmett's head of engineering, Robert Lutes, distributed a "Notice to Employees" at the worksite. The notice included the following statement: "It is very important that you know that we intend to oppose the Operating Engineers' attempt to unionize these locations with every legal means available to us." Furthermore, the notice stated: "This is a very serious decision, one that could affect your working future, and the future of those that depend on you. We believe that, once you get all the facts about the union you will decide that our future will be better without a union."

On July 31, Robert Lutes began captive audience meetings with Woodland Hills engineers. Three engineers attested that Lutes informed them, "the company will fight against the union, that they do not believe that we need any representation."

A series of one-on-one meetings were conducted by DEI's contracted labor consultant, Simon Jara, during the last week before the August 25 election. Local 501 immediately researched Jara and learned that he was a convicted criminal who had participated in a conspiracy to commit aggravated mayhem, i.e. an armed assault for hire involving a shotgun.³ The engineers were alerted of Jara's past by the union. In conducting his meetings, Jara stated to an engineer that he would lose his 401(K). Jara stated to another engineer, "I've offered my services to negotiate for free [...] I've kicked a lot of union asses, and I will be here to see they never get a BOMA contract." BOMA is a reference to a standard Local 501 contract. In the process of a meeting with union supporter Juan Avina, Avina confronted Jara about his criminal past, among other

³ See <https://law.justia.com/cases/california/court-of-appeal/4th/56/1360.html>

things. Jara did not deny his involvement in the shooting but stated that “everyone has a past.” The confrontation singled out Juan Avina as a union supporter. Jara subsequently relayed to another Douglas Emmett engineer that he was “coming after Juan,” a reference to Avina. Coming from a convicted violent criminal, this statement is a serious threat. Douglas Emmett management selected Simon Jara as their contracted labor consultant. The CEO and COO of the company directly interacted with Jara and would engage workers in meetings involving Jara (see below).

Robert Lutes attended yet another one-on-one meeting between Simon Jara and an engineer, Douglas Vaught. In response to a pro-union comment by Vaught, Lutes responded that the engineers were “stupid” and needed to get the union “out of [their] mind[s].” Lutes said that he would be the negotiator for the company and that he would not sign the union contract. He said the company could not afford to pay the union rates, that the only option engineers would have would be to go on strike, and that the moment they did so he would terminate everyone. Per an Administrative Law Judge’s Decision,⁴ Lute’s statement violated Section 8(a)(1) of the National Labor Relations Act as a threat of discharge.

The pressure continued as Lutes also held a second series of meetings with the engineers during the last week before the August 25 election. Per the ALJ’s Decision, Lutes said that he wanted the Woodland Hills engineers to give him “another chance.” Lutes asked for “another opportunity to work directly” with the engineers. He said he wanted to “make sure each and every one of you is happy,” and that he was “committed to making this a great place to work.”

The Administrative Law Judge determined that the company violated Section 8(a)(1) of

⁴ <https://apps.nlr.gov/link/document.aspx/09031d4582d426f3>, page 6, Vaught quotes taken from testimony cited in the ALJ Decision

the Act because, “An employer’s solicitation of employee grievances during a union campaign inherently includes an implied promise to remedy them and is therefore unlawful unless the employer has a past policy and practice of soliciting grievances and did not significantly alter its past manner and method of doing so.”⁵ Lutes and Jara solicited the engineers’ grievances during the pre-election period but there was no evidence that the company had a past policy or practice of soliciting the engineers’ complaints, according to the ALJ. Moreover, according to the ALJ, Lutes and Jara “augmented and reinforced the implicit promise to remedy those grievances with additional statements indicating that the Company would in fact do so if [the engineers] did not support the Union.”⁶

The following week, a day or two before the election, with Simon Jara present, Douglas Emmett’s President and CEO, Jordan Kaplan, also held mandatory anti-union group meetings with the engineers. Kaplan asked the engineers to give him and the company another chance. He also told them that if they voted for the union the company would bargain with it in good faith but would never agree to anything that was not in its best interests.

As the meetings wore on Kaplan spoke extemporaneously. He became angry, raised his voice, and pounded the podium or table with his fist. He told the engineers that there had never been a union in the company and he would do anything and everything he could to the fullest extent of the law to stop the union from getting in. He also told them that if they voted for the union in the election, he would never agree to or sign Local 501’s standard BOMA contract or any union contract that provided better health or other benefits to them than what the company provided to its nonunion employees. According to the ALJ, the employer’s statement that it

⁵ Ibid., page 5

⁶ Ibid., page 5

would never agree to provide unionized employees with better wages or benefits than its nonunion workforce constitutes an unlawful statement of futility. As such, the ALJ determined that Kaplan had violated Section 8(a)(1) of the Act.⁷

During the same meeting with Kaplan, the company's Chief Operating Officer, Kenneth Panzer, addressed the engineers as well. According to an affidavit provided by bargaining unit member Fernando Salazar, COO Panzer stated the following:

"We were caught by surprise and feel like you're backstabbing us. When we had the economic downturn from 2006 to 2008 we didn't have any layoffs and now you're going to do this to us. Vote no on this because you have no idea what you're getting into right now. Right now, you're part of the family; after tomorrow if you vote yes you're not part of the family. If you vote this union in then we're going to fight you guys. We won't be able to talk to you, the union will speak for you. The only thing you got is a strike and when you go on strike we're going to fire all of you (pounding his fist on the table). You're not going to get a contract in months; we are going to drag this out as long as possible."

On the day of the election, August 25, 2017, Panzer violated labor law. As documented in the ALJ's Decision, COO Panzer, with Jara present, intimidated the engineer Juan Avina by saying repeatedly "I make payroll." Panzer, speaking privately with Avina, told the engineer that the company needed him to vote against the union. Panzer asked Avina to give the company another opportunity and reminded Avina, "I make payroll." Avina said, "I know you do," and tried to step away. But Panzer followed him and repeated several more times that he made payroll and really needed Avina's vote. Avina eventually responded that he considered himself lucky to be working for the company and appreciated what it had done for him, and the

⁷ Ibid., page 8

conversation ended. The ALJ determined that, because Panzer made repeated references to his authority over Avina's payroll while trying to persuade Avina to vote against the union in the election, Avina would have reasonably construed Panzer's statements as veiled or implied threats of reduced pay or other adverse employment consequences if Avina didn't vote the way Panzer and the company wanted him to. As such, the ALJ determined that the statement violated Section 8(a)(1) of the Act.⁸

Despite the company's anti-union campaign, the bargaining unit voted 12-7 in favor of Local 501 during the August 25 election. The parties began bargaining for their first contract in October 2017.

B. THE COMPANY IMMEDIATELY BEGAN CARRYING OUT ITS PRE-ELECTION THREATS

Since the 20-man engineering unit in Woodland Hills voted to form a union, Douglas Emmett has carried out its pre-election threats issued by COO Panzer—systematically retaliating against the bargaining unit members by reducing historically scheduled raises and bonuses, terminating one appointed steward, and serially harassing many of the known union supporters over 30-plus months.

Evidence of the monetary retaliation can be seen clearly in the annual bonuses workers received. Following the August 2017 election, historical 5 percent bonuses were notably cut to all bargaining unit members from previous years. Similarly, workers had historically received annual 3 percent wage rate increases in January of each year. Those too were cut.

Alternatively, engineers at non-union Douglas Emmett locations continued to receive historically scheduled raises and bonuses. Non-union engineers even received additional \$2

⁸ <https://apps.nlr.gov/link/document.aspx/09031d4582d426f3>, page 9

raises starting October 2017, immediately following the election, with the implicit design to reward non-union workers and punish workers who organized.

Douglas Emmett justified the retaliatory cuts against Woodland Hills engineers under the guise of annual performance reviews. The company had a practice of granting the engineers merit wage increases and bonuses at the end of each year. The amounts of each varied depending primarily on an engineer's performance during the year. If an engineer received an overall rating of at least 3 ("meets requirements") out of 5 on his evaluation—which almost everyone did in each of the four years prior to 2017—he would typically be given a 5 percent bonus and a 3 percent wage increase. (Note that the bonus was historically prorated or reduced to account for periods during the year when an engineer was not working at the facilities, e.g., where an engineer was hired in the middle of the year.)

Following mid-November 2017, the employer notified Local 501 that it planned to give each of the Woodland Hills bargaining unit engineers a 2017 bonus of 2 percent and, after initial refusal by the employer, a wage increase of 1 percent. As usual, DEI informed the engineers about these amounts during their December performance reviews. Unlike in past years, the Director of Engineering for Douglas Emmett, Robert Lutes, attended each of the December 2017 reviews. All 20 members of the bargaining unit received 3 ratings in their performance reviews, yet they were offered significantly smaller bonuses and wage increases. Although few of the engineers asked any questions or protested the unusually low bonuses and wage increases, Lutes was eager to gloat about the substandard bonuses and wage increases. Per one witness, Lutes goaded him to ask for explanation and then stated that the lower bonuses and wages were "payback for voting in the union." Another bargaining unit member stated that Lutes stated he "took it personally" that the workers voted in the union. Another bargaining unit member

reported that Lutes told him “if everything was resolved by January [2018] then then I may get a [customary] raise later.”

The substandard bonus of 2 percent and wage increase of 1 percent violate past practice as exhibited by historical data. Between 2013-2016, there were 39 cases where a bargaining unit member worked year-over-year at the same position in the same bargaining unit location (i.e., Woodland Hills) and earned an overall performance review rating of 3 or more prior to the annual wage rate change. In 39 of 39 cases (100 percent), the worker received a 3 percent wage increase, or a 3 percent wage increase prorated for a partial work year. Between 2013-2016, there were 44 cases of bargaining unit members in Woodland Hills receiving a 3-plus overall performance rating. In 41 of 44 cases (93 percent), the bargaining unit member received a 5 percent annual lump sum bonus. Again, the bonus prorated to 5 percent for bargaining unit members who worked only a portion of the year. For those who were promoted during the year, the bonus reflected a blended wage rate for the year (i.e. the 5 percent bonus percentage was multiplied by the gross pay).

In light of the past practice, the company’s diminished bonuses of 2 percent and diminished wage increases of 1 percent can only be interpreted as the fulfillment of the company’s pre-election threats espoused by COO Panzer. As an example, Juan Avina’s December 2016 bonus was \$2,778 but his December 2017 bonus only \$1,144. John Hall’s December 2016 bonus was \$4,842 but his December 2017 bonus only \$1,995. Both men scored overall ratings of 3 in 2016 and 2017, yet their bonuses were substantially cut between 2016 and 2017.

To this day, the Woodland Hills bargaining unit continues to be punished annually with anemic bonuses that are markedly less than prior to the union election. Woodland Hills bonuses

were 2 percent in 2017, 1 percent in 2018, and 1.5 percent in 2019. The substantially reduced wage increases similarly harm the workers and have accumulated over time. Woodland Hills wage increases were 1 percent at the start of 2018, 0.75 percent at the start of 2019, and 0.75 percent at the start of 2020.⁹

Douglas Emmett continued to enact its pre-election threats issued by COO Panzer. After reducing historically scheduled raises and bonuses, Douglas Emmett proceeded to terminate an appointed steward, Juan Avina.

In fall of 2017, Local 501 appointed Juan Avina as a steward for Woodland Hills, identifying him as a clear union supporter. Avina had also testified in against the company before the NLRB. Prior to Juan's open support for the union, he was recognized as an exemplary employee, as evidence from his series of promotions from Utility Engineer in 2013 to Apprentice Engineer in 2014 to Operating Engineer in 2015. This quick ascension reflects the skill, value and dedication he brought to the job, which was acknowledged by Douglas Emmett management.

However, following his designation as a union steward and his NLRB board testimony for a significant multi-year ULP case (wherein Juan testified that COO Kenneth Panzer intimidated him by saying repeatedly "I make payroll"), the company and its agents began targeting Juan with a harassment campaign at work. For instance, in fall of 2018, an individual named Jason Gardner was transferred into the Woodland Hills bargaining unit as an engineer. Gardner held known anti-union sentiments and was contemporaneously known to have been in a romantic relationship with the daughter of Douglas Emmett's then-Director of Engineering,

⁹ There were two exceptions to this. Alex Montenegro and Dorian Moreno received 1.9 percent at the start of 2018 (from \$13 to \$13.25) and 7.5 percent raises at the start of 2019 (from \$13.25 to \$14.25) only because of the upcoming Los Angeles County minimum wage increases in those years. See <https://lacounty.gov/minimum-wage/>

Robert Lutes, even spending nights at Lutes's home. After a staff-wide training for the Woodland Hills building portfolio in December 2019, Gardner, unprovoked, aggressively confronted Juan about his support for the union, which included hostile language. Gardner proceeded to physically accost Juan, poking a finger into Juan's chest touching Juan's pocket protector which bears a union insignia. Juan immediately reported the incident to Douglas Emmett's HR Director, Fausto Hurtado. To the union's knowledge, and to Juan's knowledge, Gardner was never disciplined but was instead awarded a promotion and transferred to another Douglas Emmett portfolio property.

Next, as part of a wider retaliatory effort against the Woodland Hills engineers who voted to support the union, Douglas Emmett in late 2018 began deliberately understaffing Juan's buildings to overload him with work and thus rig a paper trail of alleged poor performance—even though his performance had always been exemplary prior to unionization. The company denied Juan help or requests for overtime, as had been allowed prior to unionization. Concurrently, management began increasing its scrutiny of Juan's performance to a level never experienced prior to unionization. Juan communicated to management multiple times his need for the same level of assistance he received prior to unionization, but management failed to assist and told Juan, falsely, that management could not do anything due to the union negotiations.

In December 2019, Juan was forced to take two weeks of certified medical leave with documentation from a doctor due to work-induced stress as a result of the company's campaign of harassment against him. The company delayed Juan's annual performance review, which typically occurs in December. At his review on January 3, 2020, company agents grossly exaggerated or flat out fabricated claims against Juan's performance, as well as alleged

insubordination and a threatening demeanor.

It was this performance review that the company cited as its justification to terminate Juan's employment in January 2020. The union filed a ULP charge in response.¹⁰ The termination was a targeted effort to put a chill in the bargaining unit by singling out a leader and steward. The goal all along was to demoralize union supporters in the bargaining unit, in accordance with DEI's pre-election threats. Accordingly, bargaining unit member Fernando Salazar intends to testify to the Board about the chill created in the unit after his steward, Juan Avina, was terminated. Per Salazar, there was a feeling that the company would do whatever it wanted and would not obey any labor law. It is no coincidence that less than 3 months after Juan's termination, the company initiated a decertification drive (explained below).

C. THE COMPANY THEN BROUGHT IN "RINGERS" TO DEFEAT UNION SUPPORT

In Woodland Hills, the decertification drive was advanced by two company agents: Chief Engineer William Navarolli and Lead Operating Engineer Brandon Zeek, both of whom were recently transferred in from non-union properties.

In July 2019, Chief Engineer and union supporter, John Hall, took a leave of absence following knee surgery. Hall has worked for the company since 2015 and voted in support of the union in August 2017. Hall was replaced by William Navarolli.

Brandon Zeek arrived in Woodland Hills by another route. In December 2019, the union was made aware by Douglas Emmett that the company was bringing in temporary engineers to cover vacations and special projects. The union first learned that three temporary workers were being transferred into the bargaining unit on January 22, 2020. Further, the union learned that

¹⁰ <https://www.nlr.gov/case/31-CA-258353>

Douglas Emmett had unilaterally created two new job classifications in the bargaining unit without first bargaining with the union. Those classifications were “Apprentice Engineer I” and “Lead Operating Engineer”. The company refused to afford existing bargaining unit members opportunities to apply for new higher-paid positions. Instead, the company installed men for these positions, and Brandon Zeek was appointed Lead Operating Engineer. By not disclosing the moves to the Union, the Union was deprived of the opportunity to bargain on the existing employees behalf for the promotional opportunities.

The Apprentice Engineer I is a higher paid position than the existing Apprentice Engineers in the bargaining unit, and no current Operating Engineers in the bargaining unit were afforded the opportunity to apply for the newly created and higher-paid Lead Operating Engineer position. Multiple bargaining unit members have testified that they were not afforded the opportunity for these higher-ranking and higher-paid positions and feel this reflects continued retaliation by the company for supporting the union. Moreover, the company even refused to inform the bargaining unit of the open positions, thereby precluding the chance that union supporters might recruit union-friendly associates for the positions. Local 501 has filed ULP charges over the company’s recruitment practices.¹¹

In March 2020, union agent Patrick Murphy sought to clarify with Douglas Emmett attorney Harrison Kuntz whether the three new transfers were transferred on a permanent basis. Harrison Kuntz confirmed on that date that they were indeed permanent.

Once they were unilaterally installed in Woodland Hills, William Navarolli and Brandon Zeek proceeded to act as agents of the company, intimidating and making promises to convince bargaining unit members to sign a statement saying they no longer wished to be represented by

¹¹ <https://www.nlr.gov/case/31-CA-261799>

Local 501. Certain workers who refused to sign the petition have faced ongoing harassment from company agents. Workers intimidated into signing company documents disavowing Local 501 have since provided testimony to the Board saying they were intimidated into doing so (April-May 2020).

Navarolli is designated by the company as a Chief Engineer, which holds supervisory status. Navarolli was allowed during working hours to roam outside of his designated buildings (the Trillium Towers) and venture to the Warner Center portfolio for the purpose of holding onsite meetings to convince bargaining unit members to sign documents disavowing their union. In one instance, he instructed a bargaining unit member, Jose Antonio, during working hours to call in his break, which deviated from past practice. Navarolli further instructed Jose Antonio to meet him at a Warner Center tower to convince him to sign anti-union documents. Jose Antonio testified that he did so because of Navarolli's elevated status over him and because he felt intimidated.

Gilberto Burgess and Luis Perez-Limon were also called to these meetings during working hours for the purpose of disavowing their union. They too have testified that they felt intimidated by Navarolli's elevated supervisory status. Furthermore, they testified that Navarolli had promised them five dollar per hour pay raises to sign the documents disavowing Local 501.

Using the coerced anti-union documents, Douglas Emmett filed for an RM petition on April 7, 2020.¹² RM petitions are used by employers to demonstrate to the NLRB that the union has lost the support of a majority of employees.

By contrast, Alex Montenegro refused to sign said petition. He immediately reports to Brandon Zeek, who attempted (also during working hours) to convince Alex to sign documents

¹² <https://www.nlr.gov/case/31-RM-258900>

disavowing the union. In retaliation, Brandon Zeek subsequently vandalized Alex's Local 501 stickers he properly posted in his designated workspaces. Zeek further intimidated and retaliated against Alex.

Company HR and management have been made aware of this improper conduct by Navarolli and Zeek (the actions of both men violate multiple company policies), yet there is no evidence of any action taken by the company to address this behavior, further reinforcing that the men are acting at the behest of the company.

III. LEGAL ARGUMENT

Pursuant to Section 102.67(d) of the National Labor Relations Board's Rules and Regulations, the Board may only review the DDE upon the following grounds:

“(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 any hearing or any ruling made in connection with the proceeding has resulted in prejudicial error.

“(4) That there are compelling reasons for reconsideration of an important Board rule or policy.”

The Union requests review based on each of the above grounds. Pursuant to subsection (d)(2), the Union has summarized the pertinent facts above and will discuss each ruling below.

A. **THE UNION'S OBJECTIONS TO THE ELECTION SHOULD HAVE BEEN SUSTAINED**

The Union made the following objections:

1. The Employer did not maintain laboratory conditions for the election by transferring two employees from a non-union shop into the bargaining unit with the purpose of defeating majority support.
2. The Employer transferred the two employees into the bargaining unit and created new senior positions for them and paid them at much higher rates than the others in the bargaining unit. The Union asserts that the promotions with pay raises were an inducement to vote against the Union and were sufficiently valuable and desirable, which resulted in the election process being materially altered.
3. The Employer did not disclose the creation of the new positions or transfers and thereby deprived the Union with opportunity to bargain on the existing employees behalf for the promotional opportunities.
4. The Employer has provided employees with pay raises after the decertification petition, which may work as an incentive to not support the Union.

1. The Region Disposed Of The Objections Because The Employer Dismissed And Immediately Refiled The Same Petition

The Regional Director's decision disposing of the objections was largely based on the Employer's "slight of hand." The Region stated, "[T]he Union failed to provide the Region with evidence of arguably objectionable conduct that occurred within the critical period of the operative petition in this matter." The Region stated:

"The Board has on occasion confronted the question of the appropriate objections period in cases where there are two petitions. In *R. Dakin & Co.*, 191 NLRB 343 (1971), enf. denied 477 F.2d 492 (9th Cir. 1973), on remand 207 NLRB 521 (1973), the Board held that conduct occurring prior to the operative petition was not to be considered even though it occurred after the filing and withdrawal of an earlier petition for the same unit. See also *Carson International, Inc.*, 259 NLRB 1073 (1982)."

The Region has ignored Board precedent of when the second petition is filed immediately after the withdrawn petition. The very case the Region cites, *Carson International, Inc.*, provides a distinction from the instant matter. The Board stated, "**Thus, in contrast to *Monroe Tube*, where the second petition came immediately on the heels of the withdrawal of the first**

petition, there is a significant period during which the Board’s processes were not involved.”
Carson International, Inc., 259 NLRB 1073, 1073 (1982), emphasis added.

Here, the Employer filed its first petition on April 7, 2020 and withdrew it on August 6, 2020.¹³ The Employer then filed the instant petition on August 10, 2020. This did not allow for the 31-day intervening period upon which the Region erroneously based its reliance on *Carson International*. Therefore, the Region’s ruling that there was no objectionable conduct between the two petitions was clearly erroneous and was a departure from Board precedent.

2. The Gravamen Of The Objections Are That Laboratory Conditions Were Not Maintained

The Region misconstrues Board precedent and applies an interpretation that would require overruling all objections that also involved an unfair labor charge. The Region erroneously stated that because the ULP alleging similar conduct was dismissed, the objection necessarily has to be overruled. This is erroneous.

Case 31-CA-285352 alleged that the Employer did not bargain in good faith by unilaterally adding positions to the bargaining unit. The lack of bargaining in good faith is not a necessary inquiry to determine whether laboratory conditions were preserved.

In Woodland Hills, the decertification drive was advanced by two company agents: Chief Engineer William Navarolli and Lead Operating Engineer Brandon Zeek, both of whom were recently transferred in from non-union properties.

In July 2019, Chief Engineer and union supporter, John Hall, took a leave of absence following knee surgery. Hall has worked for the company since 2015 and voted in support of the union in August 2017. Hall was replaced by William Navarolli.

¹³ NLRB Case No. 31-RM-258900

Brandon Zeek arrived in Woodland Hills by another route. In December 2019, the union was made aware by Douglas Emmett that the company was bringing in temporary engineers to cover vacations and special projects. The union first learned that three temporary workers were being transferred into the bargaining unit on January 22, 2020. Further, the union learned that Douglas Emmett had unilaterally created two new job classifications in the bargaining unit without first bargaining with the union. Those classifications were “Apprentice Engineer I” and “Lead Operating Engineer”. The company refused to afford existing bargaining unit members opportunities to apply for new higher-paid positions. Instead, the company installed men for these positions, and Brandon Zeek was appointed Lead Operating Engineer. By not disclosing the moves to the Union, the Union was deprived of the opportunity to bargain on the existing employees behalf for the promotional opportunities.

The Apprentice Engineer I is a higher paid position than the existing Apprentice Engineers in the bargaining unit, and no current Operating Engineers in the bargaining unit were afforded the opportunity to apply for the newly created and higher-paid Lead Operating Engineer position. Multiple bargaining unit members have testified that they were not afforded the opportunity for these higher-ranking and higher-paid positions and feel this reflects continued retaliation by the company for supporting the union. Moreover, the company even refused to inform the bargaining unit of the open positions, thereby precluding the chance that union supporters might recruit union-friendly associates for the positions. Local 501 has filed ULP charges over the company’s recruitment practices.¹⁴

The rates paid the individuals brought in to defeat majority support of the Union amount to pre-election benefits that materially altered the election process. See *Nestle Ice Cream Co. v.*

¹⁴ <https://www.nlr.gov/case/31-CA-261799>

NLRB (6th Cir. 1995) 46 F.3d 578. The valuable additional pay and desirable promotions into newly created positions was designed to influence the votes of the two newly transferred bargaining unit members and serve as a disincentive to support the Union for the remaining members of the bargaining unit.

In March 2020, union agent Patrick Murphy sought to clarify with Douglas Emmett attorney Harrison Kuntz whether the three new transfers were transferred on a permanent basis. Harrison Kuntz confirmed on that date that they were indeed permanent.

Once they were unilaterally installed in Woodland Hills, William Navarolli and Brandon Zeek proceeded to act as agents of the company, intimidating and making promises to convince bargaining unit members to sign a statement saying they no longer wished to be represented by Local 501. Certain workers who refused to sign the petition have faced ongoing harassment from company agents. Workers intimidated into signing company documents disavowing Local 501 have since provided testimony to the Board saying they were intimidated into doing so (April-May 2020).

Navarolli is designated by the company as a Chief Engineer, which holds supervisory status. Navarolli was allowed during working hours to roam outside of his designated buildings (the Trillium Towers) and venture to the Warner Center portfolio for the purpose of holding onsite meetings to convince bargaining unit members to sign documents disavowing their union. In one instance, he instructed a bargaining unit member, Jose Antonio, during working hours to call in his break, which deviated from past practice. Navarolli further instructed Jose Antonio to meet him at a Warner Center tower to convince him to sign anti-union documents. Jose Antonio testified that he did so because of Navarolli's elevated status over him and because he felt intimidated.

Gilberto Burgess and Luis Perez-Limon were also called to these meetings during working hours for the purpose of disavowing their union. They too have testified that they felt intimidated by Navarolli's elevated supervisory status. Furthermore, they testified that Navarolli had promised them five dollar per hour pay raises to sign the documents disavowing Local 501.

By contrast, Alex Montenegro refused to sign said petition. He immediately reports to Brandon Zeek, who attempted (also during working hours) to convince Alex to sign documents disavowing the union. In retaliation, Brandon Zeek subsequently vandalized Alex's Local 501 stickers he properly posted in his designated workspaces. Zeek further intimidated and retaliated against Alex.

Company HR and management have been made aware of this improper conduct by Navarolli and Zeek (the actions of both men violate multiple company policies), yet there is no evidence of any action taken by the company to address this behavior, further reinforcing that the men are acting at the behest of the company.

This conduct continues Douglas Emmett's global pattern of retaliation and promised pre-election threats against bargaining unit members who supported organizing. The company is sending an unambiguous message to newly transferred employees and longstanding employees regarding the consequences of forming a union. As such, the Union requests that the election be set aside.

B. THE UNION'S CHALLENGES SHOULD HAVE BEEN UPHELD

1. The Chief Engineers Are Statutory "Supervisors"

The task of identifying supervisor has been described as an "aging but ... persistently vexing problem." *NLI v. Security Guard Serv.*, 384 F.2d 143, 145 (5th Cir. 1967). Section 2(11) of the Act defines a "supervisor" as:

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

Thus, the Board will find individuals to be supervisors if:

- (1) they hold the authority to engage in any 1 of the 12 supervisory functions... listed in Section 2(11);
- (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment;” and
- (3) their authority is held “in the interest of the employer.”

Oakwood Healthcare, Inc., 348 NLRB 686, 687 (2006), citing *NLRB v. Kentucky River Community Care*, 532 U.S. 706, 713 (2001).

Individuals will be found to possess supervisory authority if they can independently take any of the actions enumerated in Section 2(11), or if they can effectively recommend such actions. *Oakwood Healthcare, Inc.*, 348 NLRB at 687. The Board considers individuals’ authority to recommend actions to be effective if the recommendations are usually followed without independent investigation by a superior. *DirecTV*, 357 NLRB 1747, 1750 (2011), citing *Children’s Farm Home*, 324 NLRB 61, 61 (1997).

To establish that a putative supervisor exercises independent judgment in exercising supervisory authority, a party must show that the individual takes or recommends the relevant actions “free of the control of others” and that he or she “form[s] an opinion or evaluation by discerning and comparing data.” *Oakwood Healthcare, Inc.*, 348 NLRB at 692-93.

Board law defines “assign” as the “act of designating an employee to a place (such as a location, department, or wing), time (such as a shift or overtime period), or giving significant

overall duties, i.e., tasks, to an employee.” *Oakwood Healthcare, Inc.*, 348 NLRB at 689. The Board has clarified that in order for a putative supervisor to “responsibly to direct” under the meaning of the Act, he or she performs oversight and directs employees in a manner for which she or he is accountable to the employer. *Id* at 691-92.

A putative supervisor’s authority to effectively recommend discipline may exist even if he or she only decides whether conduct warrants a recommendation. *Progressive Transportation Services, Inc.*, 340 NLRB 1044, 1045 (2003) (the individual effectively recommended discipline by, bringing rule infractions and misconduct to employer’s attention, thereby initiating the discipline process).

Where at least one primary indicium of supervisory status exists, secondary indicia may also be considered. *Pacific Beach Corp.*, 344 NLRB 1160, 1161 (2005). These indicia include whether the putative supervisor is considered a supervisor by other workers, *Poly-America, Inc.*, 328 NLRB 667, 673 (1999); whether individual receives a higher wage, *Liquid Transporters, Inc.*, 250 NLRB 1421, 1425 (1980); the individual’s job description, *Springfield Terrace LTD*, 355 NLRB 937, 940 (2010); whether the individual has his or her own desk, *RCC Fabricators, Inc.*, 352 NLRB 701, 727 (2008); the individual’s uniform, *Metropolitan Transportation Services*, 351 NLRB 657, 678 (2007); whether an employer holds the individual out as a supervisor, *Sheraton Universal Hotel*, 350 NLRB 1114, 1118 (2007); and whether the individual is authorized to make purchases on behalf of the employer, *RCC Fabricators, Inc.*, 348 NLRB at 931.

In July 2019, Chief Engineer and union supporter, John Hall, took a leave of absence following knee surgery. Hall has worked for the company since 2015 and voted in support of the union in August 2017. Hall was replaced by William Navarolli

Navarolli is designated by the company as a Chief Engineer, which holds supervisory status and should not be included within the bargaining unit. Navarolli was allowed during working hours to roam outside of his designated buildings (the Trillium Towers) and venture to the Warner Center portfolio for the purpose of holding onsite meetings to convince bargaining unit members to sign documents disavowing their union. In one instance, he instructed a bargaining unit member, Jose Antonio, during working hours to call in his break, which deviated from past practice. Navarolli further instructed Jose Antonio to meet him at a Warner Center tower to convince him to sign anti-union documents. Jose Antonio testified that he did so because of Navarolli's elevated status over him and because he felt intimidated.

The Union has provided evidence to the Region indicating that the position of Chief Engineer was changed dramatically from when John Hall held the position. Navarolli is given more deference, allowed to leave the assigned property of his own will, and is paid at a higher rate. Unfortunately, the Region did not even contact John Hall to investigate these claims. Moreover, Navarolli made promises of better wages to those that opposed the Union and delivered on those promises. It is clear from the evidence that Navarolli is a statutory supervisor and agent of the company.

2. **The Challenged Voters Were Brought In For The Sole Purpose Of Defeating Union Support**

The five challenged workers received large raises leading up to their transfer into the bargaining unit; the newly added workers in some cases were brought in with newly-created elevated positions ("Apprentice Engineer I" and "Lead Operating Engineer") that the existing bargaining unit members did not have the opportunity to apply for; and the newly added workers

earned more than their comparable peers from the existing bargaining unit.¹⁵

- **Utility Engineer**: the newly added worker, Juan Rojas, made between \$3 and \$5 per hour more than his closest peers from the existing bargaining unit.
- **Apprentice Engineer**: the newly added workers earned more and were given larger and more consistent raises than the existing bargaining unit members. Additionally, Douglas Emmett unilaterally created a new position, "Apprentice Engineer 1," for a newly added worker.
- **Operating Engineer**: Douglas Emmett unilaterally created a new position, "Lead Operating Engineer," without bargaining with the union and provided this position to Brandon Zeek at a substantially elevated pay rate without allowing for equally qualified and experienced operating engineers from the existing bargaining unit to apply for the position.

Additionally, Navarolli is designated by the company as a Chief Engineer, which holds supervisory status and should not be included within the bargaining unit. Navarolli was allowed during working hours to roam outside of his designated buildings (the Trillium Towers) and venture to the Warner Center portfolio for the purpose of holding onsite meetings to convince bargaining unit members to sign documents disavowing their union. In one instance, he instructed a bargaining unit member, Jose Antonio, during working hours to call in his break, which deviated from past practice. Navarolli further instructed Jose Antonio to meet him at a Warner Center tower to convince him to sign anti-union documents. Jose Antonio testified that he did so because of Navarolli's elevated status over him and because he felt intimidated.

Gilberto Burgess and Luis Perez-Limon were also called to these meetings during working

¹⁵ See Wage Breakdown, attached as Exhibit A.

hours for the purpose of disavowing their union. They too have testified that they felt intimidated by Navarolli's elevated supervisory status. Furthermore, they testified that Navarolli had promised them five dollar per hour pay raises to sign the documents disavowing Local 501.

Using the coerced anti-union documents, Douglas Emmett filed for an RM petition on April 7, 2020.¹⁶ RM petitions are used by employers to demonstrate to the NLRB that the union has lost the support of a majority of employees.

By contrast, Alex Montenegro refused to sign said petition. He immediately reports to Brandon Zeek, who attempted (also during working hours) to convince Alex to sign documents disavowing the union. In retaliation, Brandon Zeek subsequently vandalized Alex's Local 501 stickers he properly posted in his designated workspaces. Zeek further intimidated and retaliated against Alex.

Company HR and management have been made aware of this improper conduct by Navarolli and Zeek (the actions of both men violate multiple company policies), yet there is no evidence of any action taken by the company to address this behavior, further reinforcing that the men are acting at the behest of the company.

The rates paid the individuals brought in to defeat majority support of the Union amount to pre-election benefits that materially altered the election process. See *Nestle Ice Cream Co. v. NLRB* (6th Cir. 1995) 46 F.3d 578. The valuable additional pay and desirable promotions into newly created positions was designed to influence the votes of the two newly transferred bargaining unit members and serve as a disincentive to support the Union for the remaining members of the bargaining unit.

The clear indication is that these individuals were brought in for the sole reason to defeat

¹⁶ <https://www.nlr.gov/case/31-RM-258900>

majority support for the Union. The Union has support from all 3 members of the bargaining unit in 2018. The Employer then terminated one supporter and replaced him with 2 employees that were paid at much higher rates and in newly created and desirable positions, thereby having the incentive to vote against the Union.

IV. CONCLUSION

Based on the foregoing, the Decision should be set aside in part and an election for the petitioned for unit should be scheduled.

Respectfully submitted,

MYERS LAW GROUP, APC

Date: February 11, 2021



Adam N. Stern, Esq.
Justin M. Crane, Esq.
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On February 12, 2021, I served the foregoing document described as **UNION’S CORRECTED REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION DISPOSING OF OBJECTIONS AND DETERMINATIVE CHALLENGES** by electronically serving interested parties in this action, addressed as follows:

Mori Rubin
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Ste. 600
Los Angeles, CA 90064
mori.rubin@nlrb.gov

Daniel A. Adlong
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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I am “readily familiar” with the firm’s practice of services of process. Under that practice, this document would be deposited:

 X **(BY ELECTRONIC MAIL):** I caused the document(s) to be sent to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 12, 2021 at Fontana, California.



Justin M. Crane