

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

**DOUGLAS EMMETT MANAGEMENT,  
LLC**

**and**

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

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**Case No. 31-RM-264449**

**UNION'S REQUEST FOR REVIEW OF THE REGIONAL  
DIRECTOR'S DECISION DISPOSING OF OBJECTIONS  
TO CONDUCT AFFECTING THE RESULTS OF THE  
REVISED TALLY OF BALLOTS AND CERTIFICATION  
OF RESULTS**

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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. STATEMENT OF FACTS

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

In February 2018, the Union unanimously won (3-0) a representation election for the Employer’s Santa Monica properties.<sup>1</sup> The engineering unit included Chief Engineer Luis Pasillas, Apprentice Engineer Adelberto Merino, and Utility Engineer Jose Morales. DEI employed union avoidance consultants and incurred new ULP charges.<sup>2</sup> Subsequently, the company terminated bargaining unit member and union supporter Luis Pasillas in August 2018, even though Pasillas had won a company award for performance just months prior in December 2017. The company then initiated unilateral changes against the two remaining bargaining unit members.<sup>3</sup> Douglas Emmett would eventually settle these ULP charges in November 2019.

On August 2, 2018, Chief Engineer Luis Pasillas was terminated for nebulous reason, The company initially accused Luis of a series of minor infractions that were all baseless and successfully rebutted. After the failed series of allegations, the company settled on another baseless allegation that Luis was moonlighting (i.e. had accepted a phone call) on company time. The sole evidence the company produced was hearsay from an agent of the employer alleging she overheard Luis on a phone call months earlier. In light of the company’s exhibited animus as

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<sup>1</sup> <https://www.nlr.gov/case/31-RC-213147>

<sup>2</sup> For example, [31-CA-215642](#) and [31-CA-223120](#)

<sup>3</sup> See [31-CA-228140](#), [31-CA-215642](#), and [31-CA-223120](#)

it blatantly searched for any pretext to terminate Luis, and given the supposed evidence emerged months after the fact, the grounds for Luis's firing are dubious. Moreover, termination is a disproportionate penalty for allegedly taking a phone call while a number of other DEI chiefs are known to have operated their own side businesses.

After the wrongful termination of the chief engineer, Luis Pasillas, the two remaining bargaining unit members, apprentice engineer Adelberto Moreno and utility engineer Jose Morales, were forced to man their building portfolio alone, while experiencing harassing conduct by their property manager. They consistently performed work above and beyond their job classifications and were never promoted or compensated for this elevated work. The union filed a series of ULPs against the company<sup>4</sup> over its retaliatory conduct, which the company ultimately settled in November 2019.

**IN 2019, THE COMPANY STARTED PACKING THE BARGAINING UNIT WITH ANTI-UNION WORKERS TO DEFEAT MAJORITY SUPPORT BY CREATING NEW POSITIONS AT MUCH HIGHER RATES OF PAY**

In late 2019, Douglas Emmett began transferring temporary workers into the bargaining unit to work at the building portfolio. In December 2019, union agent Gareth Grant requested customary information on the news workers, which includes current and historical wage rates, benefit information, job classification and job requirements. Douglas Emmett attorney Harrison Kuntz responded on January 27, 2020, by providing personnel files for both workers, John Roman and Luis Augustin. The personnel files, however, provided no information on the terms of Mr. Roman's or Mr. Augustin's transfer to the Santa Monica bargaining unit.

On March 20, 2020, Harrison Kuntz filed an RM petition with NLRB Region 31, wherein for the first time he disclosed three new job classifications for the bargaining unit, including

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<sup>4</sup> Again, these include [31-CA-228140](#), [31-CA-215642](#) and [31-CA-223120](#)

“Apprentice Engineer I” (Adelberto Moreno), a higher title of “Apprentice Engineer II” (Luis Augustin), and “Lead Operating Engineer” (John Roman). Douglas Emmett unilaterally imposed these new positions and changes to the bargaining unit without notifying or bargaining with the union.

A long-time bargaining unit member, Adelberto Moreno, who voted in the February 2018 election, had his position unknowingly changed from “Apprentice Engineer” to the lesser “Apprentice Engineer I”—reflective of Douglas Emmett’s historical pattern of anti-union conduct. Further, the company created two new positions elevated over the existing bargaining unit members without negotiating with the union or affording the bargaining unit members the opportunities to apply for these more advance positions, even after the bargaining unit members Adelberto Moreno and Jose Morales had demonstrated an ability to oversee the Santa Monica building portfolio for approximately eighteen months without their unjustly terminated chief engineer, Luis Pasillas.

### **III. LEGAL ARGUMENT**

The Regional Director disposed of the Union’s objections and challenges after the revised tally of ballots based on a provision of the Case Handling Manual’s instruction that objections be based on revised tally and not the original objection. While the Case Handling Manual is not precedent, regions are “expected that in their exercise of professional judgment and discretion, there will be situations in which they will adapt these guidelines to circumstances.” CHM, Part 2: Purpose. Given the lengthy and acrimonious relationship between the parties, the Union requests that the Board review the totality of the instant matter. See *Douglas Emmett Management, LLC* (2021) 370 NLRB No. 92.

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 terminating a known Union supporter.
2. 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.
3. 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.
4. 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.

Roman and Augustin were paid at much higher rates than the others in the bargaining unit. The rates paid the two 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.

A long-time bargaining unit member, Adelberto Moreno, who voted in the February 2018 election, had his position unknowingly changed from “Apprentice Engineer” to the lesser “Apprentice Engineer I”—reflective of Douglas Emmett's historical pattern of anti-union conduct.

Further, the company created two new positions elevated over the existing bargaining unit members without negotiating with the union or affording the bargaining unit members the opportunities to apply for these more advance positions, even after the bargaining unit members Adelberto Moreno and Jose Morales had demonstrated an ability to oversee the Santa Monica building portfolio for approximately eighteen months without their unjustly terminated chief engineer, Luis Pasillas.

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 revised tally of ballots be set aside

**B. THE UNION’S CHALLENGES SHOULD HAVE BEEN UPHELD**

As indicated above, the bargaining unit originally consisted of 3 engineers who unanimously supported the Union in 2018. One member was terminated and then Luis Augustin

and John Roman were transferred in and new positions with higher rates of pay were provided to them. The actions of the employer have resulted in numerous ULP charges, which must be resolved before the election on the Petition can be resolved. *See e.g. Neises Construction Corp.*, (2017) 365 NLRB No. 129.

Roman and Augustin were paid at much higher rates than the others in the bargaining unit. The rates paid the two 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 two individuals were brought in for the sole reason to defeat 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 the revised tally of ballots should be vacated.

Respectfully submitted,

**MYERS LAW GROUP, APC**



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

Date: March 2, 2021

**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 March 2, 2021, I served the foregoing document described as **UNION’S REQUEST FOR REVIEW OF THE REGIONAL DIRECTOR’S DECISION DISPOSING OF OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE REVISED TALLY OF BALLOTS AND CERTIFICATION OF RESULTS** by electronically serving interested parties in this action, addressed as follows:

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I am “readily familiar” with the firm’s practice of services of process. Under that practice, 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 March 2, 2021 at Fontana, California.

  
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Justin M. Crane