EXHIBIT 1

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

UNION DUES

DO YOU WANT TO PAY THEM??????

The following is an example of a employee who recently started paying union dues at Coastal Community Hospital.

PLEASE NOTE THESE FOLLOWING FACTS:

- In one pay period working 56 hours a total of $15.85 was deducted for union dues.
- Year to date this employee has already paid $257.28 in union dues.
- A initiation fee of $100.00 has additionally been deducted from her pay.

YOU DO THE MATH!!!!!!!!!!!

Ummmm....We get annual raises without paying any dues. FIGURE IT OUT!!!!!!

EX. 1

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 31

AMH CGH, INC.
d/b/a CHAPMAN MEDICAL CENTER

Employer

and

Case 31-RC-8410

HEALTH CARE EMPLOYEES UNION,
LOCAL 399, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

ORDER APPROVING WITHDRAWAL OF PETITION WITH PREJUDICE AND CANCELING ELECTION

Pursuant to a petition filed on July 1, 2004, and a Consent Election Agreement thereafter executed by the parties, an election was scheduled for July 27, 2004. On July 26, 2004, the Petitioner requested to withdraw its petition. The undersigned having duly considered the matter,

IT IS HEREBY ORDERED that the Petitioner's request to withdraw its petition be, and it hereby is, granted with prejudice to its filing a new petition for a period of six months from the date of this Order unless good cause is shown why a new petition filed prior to the expiration of such period should be entertained.

IT IS FURTHER ORDERED that the election scheduled for July 27, 2004 be, and it hereby is, canceled.

Signed at Los Angeles, California this 30th day of July, 2004.

Byron B. Kohn, Acting Regional Director
National Labor Relations Board
Region 31
11150 West Olympic Blvd., Suite 700
Los Angels, CA 90064-1824

EX. 2

EXHIBIT 3

10/25/11 today's date

SEIU-UHW
5480 Ferguson Drive
Los Angeles, CA 90022
Areeve@seiu-uhw.org

Dear Abby Reeve:

I no longer wish the union, SEIU, to represent me for collective bargaining purposes. Please make this effective immediately.

Sincerely,

Elena L. Edwards
Elena L. Edwards name

Counselor

EX. 3

I Federico Barrera. previously signed a
(Print Name)

card to gain additional information about the union I now understand that this card will count as a YES vote. At this time I am rescinding my signature. I do not want to be represented by the SEIU.

Signature: [signature]

Date: 11-2-11

Chapman Medical Center

EXHIBIT 4

FORM NLRB-501 (11-08)

UNITED TES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 44 U.S.C. 3512

L NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-074085	02-07-12

File an original and 4 copies of this charge with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer	b. Number of workers employed
Chapman Medical Center	Hundreds

c. Address *(street, city, state, ZIP code)*	d. Employer Representative	e. Telephone No.
2601 East Chapman Ave., Orange, CA 92869	Gretchen Lindeman, Reg. H.R. Dir.	714-663-0011

f. Type of establishment *(factory, mine, wholesaler, etc.)*	g. Identify principal product or service
Hospital	Health care

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (2) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Immediate injunctive relief sought under Section 10(j) of the NLRA

1. Charging Party is employed at Chapman Medical Center ("Chapman"), a hospital in California owned and operated by Integrated Healthcare Holdings, Inc.

2. Chapman has entered into a neutrality and card check agreement with SEIU-UHW ("SEIU"). The agreement waives secret ballot elections and allows employees to become unionized by the abusive card check method.

3. Charging Party and a majority of other employees in a bargaining unit at Chapman signed cards, letters and petitions stating that they did NOT wish to be represented by the SEIU, and delivered those documents to Chapman. Nevertheless, a rigged "card count" was held and an "arbitrator" declared SEIU to be the employees' representative, even though a majority of employees in that bargaining unit did not support the union.

4. Chapman has recognized the SEIU as a result of the rigged "card count," and these parties are now bargaining for a contract despite the fact that Chapman's recognition of the SEIU is unlawful because it does not have majority support among the employees in the unit.

5. The above acts and omissions, and related ones, threaten, restrain and coerce the Charging Party and similarly situated employees in the exercise of their Section 7 right to refrain from collective activity, and constitute unlawful employer support, assistance, domination and discrimination in favor of SEIU.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*

Marlene Felter

4a. Address *(street and number, city, state and ZIP code)*	4b. Telephone No.
2145 Parsons St., Costa Mesa, CA 92627	949-548-3830

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)*

6. DECLARATION

I declare that I have read the above charge and that the statements are true to the best of my knowlec

EX. 4

By _____ Glenn M. Taubman — Attorney

(signature of representative or person making charge) (title or office, if any)

Address National Right to Work Legal Def. Fdtn.
Suite 600, 8001 Braddock Rd., Springfield, VA 22160

(703) 321-8510 (Telephone No.)

2/3/12 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

FORM EXEMPT UNDER 44 U.S.C. 3512

FORM NLRB-508 (6-90)

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CB-074064	02-07-12

INSTRUCTIONS: File an original and 4 copies of this charge and an additional copy for each organization, each local, and each individual named in item 1 with the NLRB Regional Director of the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name: SEIU United Healthcare Workers - West

b. Union Representative to contact:

c. Telephone No.: 510-251-1250

d. Address *(street, city, state and ZIP code)*: 560 Thomas L. Berkley Way, Oakland, CA. 94612

e. The above-named organization(s) or its agents has *(have)* engaged in and is *(are)* engaging in unfair labor practices within the meaning of section 8(b), subsection(s) *(list subsections)* (1)(A) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

Immediate injunctive relief sought under Section 10(j) of the NLRA

1. Charging Party is employed at Chapman Medical Center ("Chapman"), a hospital in California owned and operated by Integrated Healthcare Holdings, Inc.

2. Chapman has entered into a neutrality and card check agreement with SEIU-UHW ("SEIU"). The agreement waives secret ballot elections and allows employees to become unionized by the abusive card check method.

3. Charging Party and a majority of other employees in a bargaining unit at Chapman signed cards, letters and petitions stating that they did NOT wish to be represented by the SEIU, and delivered those documents to Chapman. Nevertheless, a rigged "card count" was held and an "arbitrator" declared SEIU to be the employees' representative, even though a majority of employees in that bargaining unit did not support the union.

4. Chapman has recognized the SEIU as a result of the rigged "card count," and these parties are now bargaining for a contract despite the fact that Chapman's recognition of the SEIU is unlawful because it does not have majority support among the employees in the unit.

5. The above acts and omissions, and related ones, threaten, restrain and coerce the Charging Party and similarly situated employees in the exercise of their Section 7 right to refrain from collective activity, and constitute SEIU's unlawful receipt of employer support and assistance.

3. Name of Employer: Chapman Medical Center

4. Telephone No.: 714-663-0011

5. Location of plant involved *(street, city, state and ZIP code)*: 2601 East Chapman Ave., Orange, CA 92869

6. Employer representative to contact: Gretchen Lindeman, HR

7. Type of establishment *(factory, mine, wholesaler, etc.)*: Hospital

8. Identify principal product or service: Health care

9. Number of workers employed: Hundreds

10. Full name of party filing charge: Marlene Felter

11. Address of party filing charge *(street, city, state and ZIP code)*: 2145 Parsons St., Costa Mesa, CA 92627

12. Telephone No.: 949-548-3830

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By: Glenn Taubman
(signature of representative or person making charge)

Attorney
(title or office, if any)

Address: National Right to Work Legal Def. Fdtn., Suite 600, 8001 Braddock Rd., Springfield, VA 22160

(703) 321-8510
(Telephone No.)

2/3/12
(date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EXHIBIT 5

FORM NLRB-31
(12-97)

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

To Custodian of Records
SEIU United Healthcare Workers-West
560 Thomas L. Berkley Way
Oakland, CA 94612

As requested by Stephanie Cahn, Field Attorney, Region 21, Telephone Number (213) 894-7859

whose address is 888 So. Figueron Street, 9th Floor (Street) Los Angeles (City) California (State) 90017-5449 (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE Olivia Garcia, Regional Director, Region 21 of the National Labor Relations Board

at Conference Room A, 888 South Figueron Street, 9th Floor

in the City of Los Angeles, California 90017-5449

on the 9th day of April 20 12 at 9:00 (a.m.) (p.m.) or any adjourned or rescheduled date to testify in SEIU United Healthcare Workers-West (Chapman Medical Center)

Case 21-CB-074064
(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books,records, correspondence, and documents:

See Attachment

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

B - 631403

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is issued at Los Angeles, California

this 26th day of March 20 12

Lester A. Heltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek its enforcement in federal court.

EX. 5

SEIU United Healthcare Workers-West
(Chapman Medical Center)
Case 21-CB-074064

ATTACHMENT TO SUBPOENA DUCES TECUM NO. B-631403

The subpoena is intended to cover all documents that are available to SEIU United Healthcare Workers-West., herein called the Union, or subject to its reasonable acquisition, including but not limited to, documents in the possession of attorneys, accountants, advisors, investigators, or other persons or organizations directly or indirectly employed by, or connected with, Respondent or its attorneys.

As used in this request, the terms "documents" shall mean, without limitation, the following items, whether printed or recorded or reproduced by any other mechanical process, or written or electronically stored, or produced by hand: correspondence, missives or communiqués, notes, memoranda, business records, books, lists, certificates, files, contracts, agreements, reports, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, summaries or reports of investigations or negotiations, letters, data contained in computers, any marginal comments appearing on any document, film or tape recordings, and all other writings, figures, or symbols of any kind.

All documents in response to this subpoena should be organized by subpoena request paragraph.

1. Original Union authorization cards signed by employees at Chapman Medical Center submitted by the Union to Arbitrator Robert Hirsch on about November 3, 2011.

2. Revocation cards/letters received by the Union in 2011 from employees at Chapman Medical Center.

3. Revocation cards/letters from employees at Chapman Medical Center the Union presented to Arbitrator Robert Hirsch on about November 3, 2011.

EXHIBIT 6

BRUCE A. HARLAND, Bar No. 230477
MANUEL A. BOIGUES, Bar No. 248990
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501-1091
Telephone 510.337.1001
Fax 510.337.1023

Attorneys for Respondent
SEIU, UHW – West

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 21

MARLENE FELTER, Charging Party, and, CHAPMAN MEDICAL CENTER, Employer, and, SEIU, UNITED HEALTHCARE WORKERS – WEST, Respondent.	Case Nos. 21-CB-074064 **RESPONDENT'S PETITION TO REVOKE/QUASH SUBPOENA DUCES TECUM** Date: April 9, 2012 Time: 9:00 a.m. Place: NLRB Region 21 888 So. Figueroa, 9th Fl., Rm. A Los Angeles, CA 90017

Respondent SEIU, United Healthcare Workers – West ("UHW"), by its undersigned counsel of record, hereby petitions to revoke Subpoena Duces Tecum No. B-631403, a copy of which is attached hereto as Exhibit A, for the following reasons:

1. The subpoena is over burdensome;
2. The subpoena is overbroad and vague;
3. The subpoena is a means to harass the Union; and
4. The subpoena calls for irrelevant and immaterial documentation.
5. The documents requested are protected by the attorney client privilege and/or

attorney client work product.

For all these reasons it is respectfully requested that the above-referenced subpoena duces tecum be revoked.

Dated: March 28, 2012

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: Bruce Harland
BRUCE A. HARLAND
MANUEL A. BOIGUES
Attorneys for Respondent

130469/662257

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 207
Alameda, CA 94501-1091
510.337.1001

EXHIBIT 7

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SEIU UNITED HEALTHCARE WORKERS - WEST

and

MARLENE FELTER

and

CHAPMAN MEDICAL CENTER

Case 21-CB-074064

ORDER REFERRING PETITION TO REVOKE INVESTIGATIVE SUBPOENAS DUCES TECUM

Petitions to Revoke Subpoenas Duces Tecum B-631403 and B-631404 having been filed with the Regional Director on March 30, 2012, by Counsel for the Charged Party SEIU United Healthcare Workers-West,

IT IS ORDERED, pursuant to Section 102.31(b) of the Board's Rules and Regulations, that the Petitions are hereby referred to the Board for ruling.

Dated: April 3, 2012

Olivia Garcia
Regional Director
National Labor Relations Board
Region 21

EX. 7

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SEIU UNITED HEALTHCARE WORKERS - WEST

and **Case 21-CB-074064**

MARLENE FELTER

and

CHAPMAN MEDICAL CENTER

AFFIDAVIT OF SERVICE OF: Order Referring Petition to Revoke Investigative Subpoenas Duces Tecum, dated April 3, 2012.

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **April 3, 2012,** I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

BRUCE HARLAND , ATTORNEY AT LAW
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY, STE 200
ALAMEDA, CA 94501-6430

(bharland@unioncounsel.net)

April 3, 2012 — Date

Designated Agent of NLRB — Name

Mildred Washington — Signature

UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

To: Lester A. Heltzer, Executive Secretary
Office of Appeals

Date: April 3, 2012

From: Olivia Garcia, Regional Director

Subject: SEIU United Healthcare Workers-West
(Chapman Medical Center)
Case 21-CB-074064

REGIONAL DIRECTOR'S OPPOSITION TO THE UNION'S PETITIONS TO REVOKE SUBPOENAS DUCES TECUM

This matter is being submitted to the Board for consideration of two petitions to revoke two identical subpoena duces tecums. One subpoena duces tecum (B-631403) was issued to the Custodian of Records for SEIU United Healthcare Workers-West, herein called the Union located in Oakland, California on March 26, 2012, and the other subpoena duces tecum (B-631404) was issued to the Custodian of Records for the Union in Orange, California, on the same date.[1] Both subpoenas request the production of records before the Regional Director for Region 21. A copy of the subpoena B-631403 is attached as Exhibit A and a copy of subpoena B-631404 is attached as Exhibit B.

The subpoenas were issued after the Union failed to cooperate in the Region's investigation of a charge filed by Marlene Felter, herein Felter, an employee who works at Chapman Medical Center in Orange, California, herein Chapman. The charge alleges that an arbitrator found the Union to represent a majority of employees at Chapman pursuant to a card count despite a majority of employees submitting revocations of their authorization cards prior to the card count. The charge also alleges that Chapman is bargaining with a minority Union, as the Union does not have majority support among the employees in the unit. A copy of the charge is attached as Exhibit C.

[1] Subpoena B-631404 was inadvertently addressed to Chapman, however it appears that the Union received this subpoena. A subsequent subpoena was sent out to the Union's Custodian of Records at its Los Angeles location on March 28, 2012 (B-630796)requesting identical information as contained in the other two subpoenas .

I. The Facts

The charge was filed on February 7, 2012, along with an identical charge filed against Chapman (21-CA-074085) by Felter. The investigation disclosed that the Union obtained signatures on authorization cards from employees in the following unit at Chapman:

> All skilled maintenance, service and maintenance, technical, and business office clerical employees at Chapman Medical Center.

On about October 5, 2011, the Union informed Chapman that it had a majority of cards signed by the employees in the unit. The Union demanded recognition, and thereafter on October 19, 2011, the Union and Chapman entered into an Organizing and Card-Count Agreement, herein Agreement. Pursuant to that Agreement, the parties scheduled a card-check hearing before Arbitrator Robert Hirsch, herein Arbitrator Hirsch, on November 3, 2011.

Prior to the card-check hearing, in about October and November 2011, Felter began collecting signatures from Chapman employees seeking revocation of their authorization cards. Some employees signed a form Felter had created with the Union's address on it, while others hand wrote a statement with their signature. Felter claims that she turned in approximately 80 of these revocation letters to both the Union and the Employer prior to November 3, 2011.

Card Count Hearing

At the card-check hearing on November 3, 2011, the Union handed over 129 signed authorization cards to Arbitrator Hirsch. The parties agreed on a unit of 208 employees, and provided Arbitrator Hirsch with a list of those employees. Chapman then presented the 82 revocation letters it had received to Arbitrator Hirsch and the Union. The Union objected that the revocation letters should not be counted because it had not received all 82. The Union claimed that it had received some revocation letters which it submitted to Arbitrator Hirsch.[2] At the card check, Arbitrator Hirsch found that of the 82 revocation letters the Employer submitted, 32 revocations matched up to employees who were in the unit and had signed authorization cards.

At the arbitration, the parties argued about whether or not certain revocation letters should be counted. Some of the revocation letters had the Union's address on it, while other letters did not. Arbitrator Hirsch asked the parties to brief the issue on the revocation letters and whether or not they should be counted. Arbitrator Hirsch stated he would hold off on making a decision until after briefs were received.

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[2] Felter claims that she sent the same number of revocation letters to both the Union and Chapman. It is not clear the exact number of revocation letters from Chapman employees the Union claims to have received and turned over to Arbitrator Hirsch.

Arbitrator's Decision

In the end, neither party submitted briefs on the revocation letters. After notifying Arbitrator Hirsch of this, he issued his award and certification on November 30, 2011. In his decision, Arbitrator Hirsch made the following findings without explanation:

1) There were 208 employees eligible to sign cards.
2) There were 129 cards signed authorizing the Union to represent the unit.
3) There were 23 valid revocations signed and submitted by individuals who had previously signed authorization cards.[3]
4) Accordingly, there were 106 valid authorization cards signed by unit members.

As a result of his determination, Arbitrator Hirsch found that a majority of employees submitted valid authorization cards, and certified the Union as the collective-bargaining representative of the employees in the unit.

Attempts to obtain information from the Union

In order to verify that a majority of employees at Chapman wanted the Union to represent them and did not effectively revoke their authorizations, it is essential to have the authorization cards and the revocations the Union received. In a letter dated February 15, 2012, to Union counsel Bruce Harland, herein Harland outlining the allegations in the charge, the Region specifically asked that the Union submit, "copies of all the cards used in the card check..." The Union submitted a response dated March 9, 2012, but did not include the authorization cards.

On March 12, 2012, the Region, via e-mail asked Harland to provide copies of the cards used in the card check and the revocations it received from Chapman employees by March 14, 2012, or the Region would act accordingly. Harland never responded to the Region's request.

On March 26, 2012, the Region issued two subpoena duces tecums to the Union's Custodian of Records.

On March 27, 2012, Harland called the Region and inquired as to the status of the case. Harland was informed that the Region had issued investigative subpoenas to the Union, and advised that if the Union wished to voluntarily turn over the information, then there would be no need for the subpoenas. Harland did not respond.

[3] Apparently, Arbitrator Hirsch did not count nine revocations because the Union did not receive them prior to the count.

On March 28, 2012, the Union filed two identical Petitions to Revoke/Quash Subpoena Duces Tecums, herein Petitions to Revoke. A copy of the Union's Petition to Revoke Subpoena B-631403 is attached as Exhibit C and a copy of the Union's Petition to Revoke Subpoena B-631404 is attached as Exhibit D.

II. Legal Argument

Section 11(1) of the Act explicitly grants the Board authority to issue subpoenas requiring the production of evidence and/or testimony during the investigatory stages of an unfair labor practice proceeding.[4] Federal Courts have confirmed that the Board may issue subpoenas requiring both the production of evidence and testimony during the investigation of an unfair labor practice case. *NLRB v. North Bay Plumbing*, 103 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors*, 81 F.3d 507 (4th Cir. 1996). In this regard, if the documents requested are relevant to any manner under investigation, the subpoena is appropriate unless the party being investigated proves that the inquiry is overbroad or unduly burdensome. *NLRB v. North Bay Plumbing*, supra. at 1007. Since the instant subpoena seeks relevant documents, that are not burdensome, overbroad, vague, irrelevant or protected by the attorney client privilege, the Union's Petition to Revoke should be denied.

Union's Objections

In its Petitions to Revoke, the Union has failed to provide any legal basis for its objections to the subpoena. The party asserting a privilege bears the burden of proving that it is applicable. *Dole v. Milonas*, 889 F.2d 885, 889 (9th Cir. 1989). The Union's first three objections are that the subpoena is over burdensome, overbroad and vague. The Union does not explain how the request for authorization cards and letters of revocation merits these objections.

These subpoena requests are very narrowly tailored and are information that the Union turned over to Arbitrator Hirsch without any difficulty. The Union's next two objections, that the subpoena is a means to harass the Union and calls for irrelevant documentation, is simply not true.

---

[4] Section 11(1) of the Act states in part:

> The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application.

The documents subpoenaed are crucial to determining whether or not a majority of employees wish to be represented by the Union. Arbitrator Hirsch's decision does not set forth any basis for his findings, and it is unclear how many valid revocation letters were submitted. Thus these documents are necessary for the Region to determine whether or not the Union is the majority representative of employees in the unit at Chapman.

The Union's last objection, that these documents are protected by the attorney client privilege and/or attorney client work product is a stretch as the subpoena does not seek any documents protected by the privilege or work product. "It is *communication* between attorney and client related to the giving of legal advice that is privileged—not simply documents that pass between them." *Patrick Cudahy, Inc.*, 288 NLRB 968, 971 fn. 13 (1988).

Here, there is no evidence that the Union is the attorney for any of the employees at Chapman who signed authorization cards or revocation letters. Certainly the signing of a union authorization card or a revocation letter does not constitute any communication with an attorney so as to fall within the privilege. Thus, the Union's blanket assertion, without any basis, that the subpoena seeks documents protected by the attorney-client privilege and/or attorney work product, is insufficient to demonstrate that the subpoena seeks privileged information.

III. Conclusion

Based on the foregoing, the Union's Petitions to Revoke should be denied in their entirety. The Union has failed to establish any legal basis for revoking the subpoenas. The Region is presently unable to make merit determinations on the allegations in the charge(s) without the requested documentary evidence. Therefore, the Union should be ordered to produce the requested documents at a new time and date to be established by the Regional Director.

O. G.

Attachments: Exhibit A
Exhibit B
Exhibit C
Exhibit D
Exhibit E

cc:
COUNSEL FOR THE UNION
Bruce Harland, Attorney at Law
Weinberg Roger & Rosenfeld
1001 Marina Village Pkwy, Suite 200
Alameda, CA 94501-6430

EXHIBIT 8

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SEIU UNITED HEALTHCARE
WORKERS-WEST

and Case 21-CB-074064

MARLENE FELTER

ORDER[1]

The petitions to revoke subpoenas duces tecum B-631403 and B-631404 filed by SEIU United Healthcare Workers-West are denied. The subpoenas seek information relevant to the matters under investigation and describe with sufficient particularity the evidence sought, as required by Section 11(1) of the Act and Section 102.31(b) of the Board's Rules and Regulations. Further, the Petitioner has failed to establish any other legal basis for revoking the subpoenas. See generally *NLRB v. North Bay Plumbing, Inc.* 102 F.3d 1005 (9th Cir. 1996); *NLRB v. Carolina Food Processors, Inc.*, 81 F.3d 507 (4th Cir. 1996).

Dated, Washington, D.C., May 23, 2012.

MARK GASTON PEARCE, CHAIRMAN

TERENCE F. FLYNN, MEMBER

SHARON BLOCK, MEMBER

[1] The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

EX. 8

EXHIBIT 9

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 21
888 S FIGUEROA STREET, 9TH FLOOR
LOS ANGELES, CA 90017-5449
Telephone: (213) 894-5184

Agency Website: www.nlrb.gov
Telephone: (213)894-5204
Fax: (213)894-2778

August 17, 2012

BRUCE HARLAND, ATTORNEY AT LAW
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY, STE 200
ALAMEDA, CA 94501-6430

Re: SEIU United Healthcare Workers - West
(Chapman Medical Center)
Case 21-CB-074064

Dear Mr. Harland:

Enclosed is a copy of the Settlement Agreement which the Regional Director unilaterally approved in this case on August 7, 2012. Because no appeal of that approval was filed, the Settlement Agreement is in effect and has been assigned to me to secure compliance. This letter discusses what the Union needs to do to comply with the Agreement.

Post Notice: Enclosed are 15 copies of the Notice to Employees and Members. In compliance with the Agreement, a responsible official of the Charged Party, not the Charged Party's attorney, must sign and date the Notices before posting them. The Notices should be posted on the bulletin boards at the Charged Party's offices located at 5480 Ferguson Drive, Los Angeles, California and 560 Thomas L. Berkley Way, Oakland, California. If the Charged Party maintains bulletin boards at the facility of the Employer, the Charged Party shall also post Notices on each bulletin board for 60 consecutive days. The Charged Party must take reasonable steps to ensure that the Notices are not altered, defaced or covered by other material. If additional Notices are required, please let me know. During the posting period, a member of the Regional Office staff may visit the Charged Party's facility to inspect the Notices.

Certification of Posting: A Certification of Posting form is also enclosed. This form should be completed and returned by not later than August 24, 2012 **with six signed and dated original Notices.** The Region will send copies of the singed Notices to the Employer and request that the Notices be posted in prominent places at the Employer's facility for 60 consecutive days.

Please read all the terms of the Settlement Agreement and Notice carefully, as you will be expected to comply with all such provisions. If you have any questions or I can assist you, please let me know.

EX. 9

Closing the Case: When all the affirmative terms of the Settlement Agreement have been fully complied with and there are no reported violations of its negative terms, you will be notified that the case has been closed on compliance. Timely receipt of the signed and dated Notices and the Certification of Posting will assist us in closing the case in a timely manner.

Very truly yours,

Hector Martinez
Compliance Officer

Enclosures: Conformed copy of Settlement Agreement
Notices to Employees and Members
Certification of Posting

cc: (See next page)

cc: SEIU UNITED HEALTHCARE
WORKERS - WEST
560 THOMAS L BERKLEY WAY
OAKLAND, CA 94612-1602
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
15 COPIES OF THE ENGLISH NOTICE
CERTIFICAE OF POSTING)

GLENN M. TAUBMAN,
ATTORNEY AT LAW,
NATIONAL RIGHT TO WORK
LEGAL DEFENSE FOUNDATION, INC.
8001 BRADDOCK RD., STE. 600
SPRINGFIELD, VA 22160-0002
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

MARLENE FELTER
2145 PARSONS ST
COSTA MESA, CA 92627-1919
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

CHAPMAN MEDICAL CENTER
2601 E CHAPMAN AVE
ORANGE, CA 92869-3206
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

BARBRA ARNOLD, ATTORNEY AT LAW
JEFFER MANGELS BUTLER & MARMARO LLP
1900 AVENUE OF THE STARS, FL 7
LOS ANGELES, CA 90067-4308
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

MARTA M. FERNANDEZ, ATTORNEY AT LAW
JEFFER MANGELS BUTLER & MARMARO LLP
1900 AVENUE OF THE STARS, FL 7
LOS ANGELES, CA 90067-4308
(ENCLOSURES: COPY OF THE SETTLEMETN AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

HSM/nm

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

SEIU United Healthcare Workers - West (Chapman Medical Center) Case 21-CB-074064

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:

POSTING OF NOTICES — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them on the bulletin boards at the Charged Party's offices located at 5480 Ferguson Drive, Los Angeles, California and 560 Thomas L Berkley Way, Oakland, California. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting. Further, if the Charged Party maintains bulletin boards at the facility of the Employer where the alleged unfair labor practices occurred, the Charged Party shall also post Notices on each such bulletin board during the posting period. The Regional Director will send copies of the signed Notices to the Employer whose employees are involved in this case, and request that the Notices be posted in prominent places in the Employer's facility for 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

NON ADMISSIONS CLAUSE—By entering into this agreement, the Charged Party does not admit that it has violated the Act.

SCOPE OF THE AGREEMENT — This Agreement settles only the allegations in the above-captioned case, and does not settle any other cases or matters. The allegations are that SEIU-UHW accepted recognition by Chapman Medical Center and bargained with Chapman Medical Center when there was no demonstration that a majority of unit employees supported SEIU-UHW.

It does not prevent persons from filing charges, the Acting General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether Acting General Counsel knew of those matters or could have easily found them out. The Acting General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case for any relevant purpose in the litigation of this or any other cases, and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the Acting General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes BAH _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Acting General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the Acting General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the Acting General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the Acting General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party SEIU UNITED HEALTHCARE WORKERS - WEST		Charging Party MARLENE FELTER	
By: Name and Title Bruce A. Harland	Date 7/27/12	By: Name and Title	Date
Recommended By: Attorney for Union Stephanie Cahn STEPHANIE CAHN, Field Attorney (BZ)	Date 8/7/12	Approved By: Olivia Garcia Regional Director, Region 21	Date 8/7/12

Form NLRB-4761
(1-02)

NOTICE TO

EMPLOYEES AND MEMBERS

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with your employer on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of your rights under Section 7 of the Act.

WE WILL NOT request or accept recognition as the exclusive bargaining representative of any unit of employees of Chapman Medical Center at a time when we do not represent a majority of employees in that unit.

WE WILL NOT act as the exclusive bargaining representative for all skilled maintenance, service and maintenance, technical, and business office clerical employees of Chapman Medical Center or any of those employees for a period of one year unless and until we have demonstrated our majority status and have been certified as a Representative of those employees following a secret ballot election conducted by the National Labor Relations Board

SEIU UNITED HEALTHCARE WORKERS - WEST
(Labor Organization)

Dated: _____ **By:** _____
(Representative) (Title)

Si quiere, puede hablar con un agente de la Junta Nacional de Relaciones del Trabajo en confianza. [A Board agent who speaks Spanish can be made available to speak with you in confidence.] La página electrónica de red de la Junta Nacional de Relaciones del Trabajo también tiene información en español: www.nlrb.gov [Information in Spanish is also available on the Board's website: www.nlrb.gov]

National Labor Relations Board
888 South Figueroa Street, 9th Floor
Los Angeles, California 90017

Telephone: (213) 894-5184
Hours of Operation: 8:30 a.m. to 5:00 p.m.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE.
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 21
888 S FIGUEROA STREET, 9TH FLOOR
LOS ANGELES, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5204
Fax: (213)894-2778

August 16, 2012

BARBRA ARNOLD, ATTORNEY AT LAW
JEFFER MANGELS BUTLER & MARMARO LLP
1900 AVENUE OF THE STARS, FL 7
LOS ANGELES, CA 90067-4308

Re: CHAPMAN MEDICAL CENTER
Case 21-CA-074085

Dear Ms. Arnold:

Enclosed is a copy of the Settlement Agreement in the above matter which was approved on August 14, 2012. This letter discusses what the Employer needs to do to comply with the Agreement.

Post Notice: Attached to the Employer's copy of this letter is a copy of the Settlement Agreement together with 12 copies of the English Notice to Employees. In compliance with the Agreement, a responsible official of the Employer, not the Employer's attorney, must sign and date the Notices before posting them. The Notices should be posted in the locked bulletin board on the wall outside the cafeteria; by the time clock near the cafeteria on the first floor; by the time clock in the lobby on the first floor; by the time clock located outside the emergency room/intensive care unit on the first floor; by the time clock on the positive achievement center unit on the first floor; and by the time clock by the medical/surgical unit on the second floor for 60 consecutive days at the Employer's place of business in Orange, California. The Employer must take reasonable steps to ensure that the Notices are not altered, defaced or covered by other material. If additional Notices are required, please let me know. During the posting period, a member of the Regional Office staff may visit the Employer to inspect the Notices.

Certification of Posting: A Certification of Posting form is also enclosed. This form should be completed and returned by not later than August 23, 2012 **with two signed and dated original Notices.**

Please read all the terms of the Settlement Agreement and Notice carefully, as you will be expected to comply with all such provisions. If you have any questions or I can assist you, please let me know.

Closing the Case: When all the affirmative terms of the Settlement Agreement have been fully complied with and there are no reported violations of its negative terms, you will be notified that the case has been closed on compliance. Timely receipt of the signed and dated Notice to Employees and the Certification of Posting will assist us in closing the case in a timely manner.

Very truly yours,

Hector Martinez
Compliance Officer

Enclosures: Copy of Settlement Agreement
Notices to Employees
Certification of Posting

cc: (See next page)

cc: MARTA M. FERNANDEZ,
ATTORNEY AT LAW
JEFFER MANGELS BUTLER &
MARMARO LLP
1900 AVENUE OF THE STARS, FL 7
LOS ANGELES, CA 90067-4308
(ENCLOSURES: COPY OF THE SETTLEMENT AGREEMENT
1 COPY OF THE ENGLISH NOTICE
CERTIFICATE OF POSTING)

GRETCHEN LINDEMAN,
HUMAN RESOURCES DIRECTOR
CHAPMAN MEDICAL CENTER
2601 E CHAPMAN AVE
ORANGE, CA 92869-3206
(ENCLOSURES: COPY OF THE SETTLEMENT AGREEMENT
12 COPIES OF THE ENGLISH NOTICE
CERTIFICATE OF POSTING)

GLENN M. TAUBMAN,
ATTORNEY AT LAW
NATIONAL RIGHT TO
WORK LEGAL DEFENSE
FOUNDATION, INC.
8001 BRADDOCK RD., STE. 600
SPRINGFIELD, VA 22160-0002
(ENCLOSURES: COPY OF THE SETTLEMENT AGREEMENT
1COPY OF THE ENGLISH NOTICE)

MARLENE FELTER
2145 PARSONS ST
COSTA MESA, CA 92627-1919
(ENCLOSURES: COPY OF THE SETTLEMENT AGREEMENT
1 COPY OF THE ENGLISH NOTICE)

HSM/nm

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
SETTLEMENT AGREEMENT

IN THE MATTER OF

CHAPMAN MEDICAL CENTER **Case 21-CA-074085**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

POSTING OF NOTICES — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notices to the Charged Party in English. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in the locked bulletin board on the wall outside the cafeteria; by the time clock near the cafeteria on the first floor; by the time clock in the lobby on the first floor; by the time clock located outside the emergency room/intensive care unit on the first floor; by the time clock on the positive achievement center unit on the first floor; and by the time clock by the medical/surgical unit on the second floor. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

COMPLIANCE WITH NOTICE — The Charged Party will comply with all the terms and provisions of said Notice.

SCOPE OF THE AGREEMENT — This Agreement settles only the following allegations in the above-captioned case, and does not settle any other cases or matters. The allegations are that Chapman Medical Center granted recognition to SEIU United Healthcare Workers-West as representative of a unit of all skilled maintenance, service and maintenance, technical and business office and clerical employees at a time when SEIU United Healthcare Workers-West did not posses the support of an actual majority of the employees in this unit.

It does not prevent persons from filing charges, the Acting General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether Acting General Counsel knew of those matters or could have easily found them out. The Acting General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence.

PARTIES TO THE AGREEMENT — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the Acting General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

BU.

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes ___X___ Initials No _____ Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Acting General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the Acting General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the Acting General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the Acting General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party **CHAPMAN MEDICAL CENTER**		**Charging Party** **MARLENE FELTER**	
By: Name and Title Barbara Arnold, Counsel B. Allen	Date 8/1/12	By: Name and Title	Date
Recommended By: Stephanie Cahn (SC) STEPHANIE CAHN, Field Attorney	Date 8/14/12	Approved By: Celeste Mattina Regional Director, Region 21	Date 8/14/12

AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement, original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes _____ No _____
Initials Initials

PERFORMANCE — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the Acting General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will issue a complaint that will include the allegations spelled out above in the Scope of Agreement section. Thereafter, the Acting General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Party understands and agrees that all of the allegations of the complaint will be deemed admitted and it will have waived its right to file an Answer to such complaint. The only issue that may be raised before the Board is whether the Charged Party defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations found as is appropriate to remedy such violations. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Party/Respondent at the last address provided to the Acting General Counsel.

NOTIFICATION OF COMPLIANCE — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the Acting General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

Charged Party CHAPMAN MEDICAL CENTER		Charging Party MARLENE FELTER	
By: Name and Title	Date	By: Name and Title [signature] Attorney for Charging Party	Date 8/3/12
Recommended By: [signature] (PZ) STEPHANIE CAHN, Field Attorney	Date 8/14/12	Approved By: [signature] Regional Director, Region 21	Date 8/14/12

FORM NLRB-4722
(6-09)

Case 21-CA-074085

NOTICE TO EMPLOYEES

POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

WE WILL NOT recognize or deal with SEIU United Healthcare Workers-West (Union) as the exclusive collective-bargaining representative of our employees at a time when it is not the representative of a majority of such employees in an appropriate bargaining unit.

WE WILL withdraw all recognition from the Union as the collective-bargaining representative of our employees.

WE WILL withhold, for a one year period, all recognition from the Union as the collective-bargaining representative of our employees, unless and until the Union has been certified by the National Labor Relations Board as the exclusive representative of such employees.

CHAPMAN MEDICAL CENTER
(Employer)

Dated: _____ By: _____
(Representative) (Title)

Si quiere, puede hablar con un agente de la Junta Nacional de Relaciones del Trabajo en confianza. [A Board agent who speaks Spanish can be made available to speak with you in confidence.] La página electrónica de red de la Junta Nacional de Relaciones del Trabajo también tiene información en español: www.nlrb.gov [Information in Spanish is also available on the Board's website: www.nlrb.gov]

National Labor Relations Board
888 South Figueroa Street, 9th Floor
Los Angeles, California 90017

Telephone: (213) 894-5184
Hours of Operation: 8:30 a.m. to 5:00 p.m.

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov and the toll-free number (866)667-NLRB (6572).

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office.

EXHIBIT 10

We're Ready to Protect Our Union

SEIU-UHW Members Call for Immediate Election at Chapman

Since joining SEIU-UHW, we've made huge accomplishments at Chapman; like eliminating the CA Differential and securing free healthcare for all members in our upcoming contract. Now IHHI management is working with a small group of our co-workers to try and get rid of our union.

If management and this group are successful, our union protections will disappear, our ability to bargain a contract will end, and all of our hard work will be for nothing.

It's time to move past this distraction. There's no doubt that we're keeping SEIU-UHW as our union, so we're calling on management and the National Labor Relations Board (NLRB) to hold an election and let us make our voices clear.

"We work way too hard to let a few spoilers set us back. This group wants us to believe there's some 'big bad union' out there – but we're the ones who pushed to join SEIU-UHW and we're the ones bargaining our contract. No matter what these people say – we are the union."
--Bernice Benally, Respiratory
Chapman Medical Center

Take a Stand – We are SEIU-UHW!

We refuse to let IHHI management divide our unity or stall our contract negotiations. Contact an SEIU-UHW bargaining team member or steward if management or any worker in their group tries to get you to sign anything about our union.

For questions, contact:
Western Med – JoAnna Powers: 714-425-4272
Coastal Communities – Ruth Calderon: 714-814-3072
Chapman Medical Center – Bernice Benally: 562-325-1141,
Esmeralda Palacios: 323-527-2836 and
Theresa Salvatierra: 714-264-5380

SEIU-UHW
United Healthcare Workers West

EX. 10

SEIU-UHW
United Healthcare Workers West
560 Thomas L Berkley Way
Oakland, CA 94612

UNITED STATES POSTAGE
FIRST ROWES
02 1H $ 00.90⁰
0004278495 NOV 08 2012
MAILED FROM ZIP CODE 90022

The SEIU-UHW Difference

Chapman Medical Center	SEIU-UHW Members at IHHI
No across-the-board raises for the past two years—any raises are solely up to management	Across-the-board raises—9% for a majority of workers over the next year
No wage scales to reward experience	**Guaranteed** wage scales for each classification based on years of service
No guaranteed free healthcare—medical costs can be increased at any time, and management is now threatening to impose $250 monthly premiums	Fully-paid family healthcare guaranteed by SEIU-UHW contract
No protections from subcontracting or call-offs	Job security, including protections from subcontracting and call-offs—and a joint labor-management committee to ensure that our workplace is as stress-free and healthy as possible
No Education Fund for continuing education	Education fund provides **free continuing education units** for career advancement—paid for by employer contributions
Only five holidays per year	Seven holidays per year

"I've been at Chapman for 13 years, and it's finally our time to vote SEIU-UHW so that we receive treatment equal to IHHI members at Coastal and Western Med-Anaheim—especially when it comes to wages, health insurance, and job security."

Esmeralda Palacios, Respiratory Therapist, Chapman Medical Center

"Thanks to the SEIU-UHW contract we just won, we have guaranteed free family healthcare AND raises of up to 9%. As the mother of four, that gives me tremendous peace of mind."

Janet Herrera
CNA, Med Surg
Coastal Communities

We have an election date!

www.seiu-uhw.org

Vote ✓ YES-SEIU-UHW

on November 28 for a better hospital

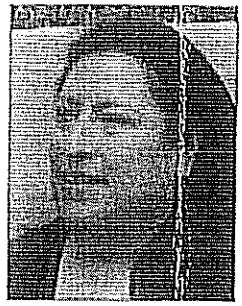
United at Chapman ◆ United Across IHHI

For more information, contact any organizing committee member. www.seiu-uhw.org

La Diferencia que hace SEIU-UHW

Chapman Medical Center	Miembros de SEIU-UHW en IHHI
Ningún aumento salarial general durante los últimos dos años—cualquier aumento salarial depende totalmente de la administración	Aumentos salariales generales—9% durante el transcurso de tres años para la mayoría de los trabajadores
No existen las escalas salariales para recompensar la experiencia	Escalas salariales **garantizadas** para cada clasificación basadas en los años de servicio
No se ofrece seguro médico gratis garantizado —los costos médicos pueden aumentar en cualquier momento y la administración ahora está amenazando con imponer primas mensuales de $250	Seguro médico familiar completamente pagado garantizado por el contrato
Ninguna protección contra la subcontratación o las cancelaciones	Seguridad en el empleo, incluyendo la protección contra la subcontratación y las cancelaciones—y un comité patrono–laboral conjunto para asegurar que nuestro lugar de trabajo sea lo menos estresante y lo más saludable posible
No existe un Fondo de Formación Profesional para la continuación de estudios	El fondo de formación profesional proporciona **unidades para la continuación de estudios** para la promoción profesiona—pagado por medio de contribuciones hechas por el empleador
Únicamente cinco días festivos por año	Siete días festivos por año

"He trabajado en Chapman 13 años y finalmente ha llegado nuestra hora de votar por SEIU–UHW para que recibamos el mismo trato que los miembros de IHHI en Coastal y Western Med-Anaheim reciben - especialmente en lo que se refiere a sueldos, seguro médico y seguridad en el empleo."



Esmeralda Palacios, Respiratory Therapist
Chapman Medical Center

"Gracias al contrato de SEIU–UHW que acabamos de obtener, tenemos seguro médico familiar gratis ADEMÁS DE aumentos salariales de hasta el 9%. Como madre de cuatro hijos, eso me da una tranquilidad inmensa."

Janet Herrera
CNA, Med Surg
Coastal Communities

¡Tenemos la fecha para las elecciones!

www.seiu-uhw.org

Vote Sí-SEIU-UHW

el 28 de noviembre por un mejor hospital

Unidos en Chapman ◆ Unidos a Través de IHHI

Para obtener más información, comuníquese con cualquier miembro del comité organizador

EXHIBIT 11

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 21-RC-092165	Date Filed 10/29/12

INSTRUCTIONS: Submit an original and 4 copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petition alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- [X] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.
- [ ] RD-DECERTIFICATION - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION - A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees: (Check one) [ ] In unit not previously certified. [ ] In unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION - Petitioner seeks amendment of certification issued in Case No. _____. Attach statement describing the specific amendment sought.

2. Name of Employer: Integrated Healthcare Holdings, Inc. (Chapman Medical Center)
Employer Representative to contact: Ken Westbrook
Telephone Number:

3. Address(es) of Establishment(s) involved (Street and number, city, state, ZIP code): 2601 East Chapman Avenue, Orange, CA 92869

4a. Type of Establishment (Factory, mine, wholesaler, etc.): Medical Center
4b. Identify principal product or service: Healthcare

5. Unit Involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.)

Included: All service and maintenance, and technical employees

6a. No. of Employees in Unit: Present: ~175
Proposed (By UC/AC):

Excluded: All other employees, including business office clerical, professionals, guards, managers, confidential employees, and supervisors as defined by the Act.

6b. Is this petition supported by 30% or more of the employees in the unit? Yes (Not applicable in RM, UC and AC)

If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable.

7a. [X] Request for recognition as Bargaining Representative was made by this petition, and Employer declined recognition on or about (Date). If no reply received, so state.

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of recognized or Certified Bargaining Agent (If none, so state)
Affiliation:
Address and Telephone Number:
Date of Recognition or Certification:

9. Expiration Date of Current Contract, If Any (Month, Day, Year)

10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day, and Year)

11a. Is there now a strike or picketing at the Employer's establishment(s) involved? No

11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (Insert Name), Since (Month, Day, Year)

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in item 5 above. (If none, so state)

Name	Affiliation	Address	Date of Claim (Required only if Petition is filed by Employer)

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief.

Name of Petitioner and Affiliation, if any: Service Employees International Union, United Healthcare Workers – West (Service Employees International Union) SEIU

By: [signature] 10/26/12
Signature of Representative or person filing petition: Yuri Y. Gottesman
Title: Attorney
Address: Weinberg, Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501
Telephone: (510) 337-1001

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

EX. 11

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 21
888 S FIGUEROA ST
FL 9
LOS ANGELES, CA 90017-5449

Agency Website: www.nlrb.gov
Telephone: (213)894-5204
Fax: (213)894-2778

October 29, 2012

INTEGRATED HEALTHCARE HOLDINGS,
INC. (CHAPMAN MEDICAL CENTER)
2601 E CHAPMAN AVE
ORANGE, CA 92869-3206

Re: INTEGRATED HEALTHCARE
HOLDINGS, INC.
(CHAPMAN MEDICAL CENTER)
Case 21-RC-092165

Dear Sir or Madam:

Enclosed is a copy of a petition that SERVICE EMPLOYEES INTERNATIONAL UNION - UNITED HEALTHCARE WORKERS WEST filed with the National Labor Relations Board (NLRB) seeking to represent certain of your employees. This letter tells you how to contact the Board agent who will be handling this matter, explains your right to be represented, requests that you provide certain information, notifies you of a hearing, requests that you post notices, and discusses some of our procedures including how to submit documents to the NLRB.

Investigator: This petition will be investigated by Field Examiner SYLVIA MEZA whose telephone number is (213) 894-4247. The Board agent will contact you shortly to discuss processing the petition. If you have any questions, please do not hesitate to call the Board agent. If the agent is not available, you may contact Supervisory Field Examiner TIRZA CASTELLANOS whose telephone number is (213) 894-5411.

Immediately upon receipt of the petition, the NLRB conducts an impartial investigation to determine if the NLRB has jurisdiction, if the petition is timely and properly filed, if the showing of interest is adequate, and if there are any other interested parties to the proceeding or other circumstances bearing on the question concerning representation. If appropriate, the NLRB then attempts to schedule an election either by agreement of the parties or by holding a hearing and then directing an election.

Right to Representation: You have the right to be represented by an attorney or other representative in any proceeding before us. If you choose to be represented, your representative must notify us in writing of this fact as soon as possible by completing Form NLRB-4701, Notice of Appearance. This form is available on our website, www.nlrb.gov, or at the Regional office upon your request.

If someone contacts you about representing you in this case, please be assured that no organization or person seeking your business has any "inside knowledge" or favored relationship with the NLRB. Their knowledge regarding this matter was only obtained through access to information that must be made available to any member of the public under the Freedom of Information Act.

OCT-29-2012 14:24 NLRB REGION 21 2138942778 P.02/07

Requested Information:

Information Needed Immediately: To process the petition in this matter, we need certain information from you. Accordingly, please submit to this office, as soon as possible, the following information:

(a) The correct name of your organization;

(b) A copy of any existing or recently expired collective-bargaining agreements, and any addenda or extensions, or any recognition agreements covering any of your employees in the unit involved in the petition (the petitioned-for unit);

(c) The name and contact information for any other labor organization (union) claiming to represent any of the employees in the petitioned-for unit;

(d) Your position as to the appropriateness of the petitioned-for unit;

(e) A completed commerce questionnaire (form enclosed) to enable us to determine whether the NLRB has jurisdiction in this matter;

(f) If potential voters will need notices or ballots translated into a language other than English, the names of those languages and dialects, if any; and

(g) An alphabetized list of employees in the petitioned-for unit, with their job classifications, for the payroll period immediately before the date of this petition. This list will be used to resolve possible eligibility and unit questions as well as to determine the adequacy of the Petitioner's showing of interest. If such a list is not submitted promptly, any later submission and request for an evaluation of the Petitioner's showing of interest will be considered untimely and no check of the showing of interest will be conducted absent unusual circumstances.

Information Needed Later: If an election is agreed to or directed in this matter, the Employer must file with this office an alphabetized list of the full names and addresses of all eligible voters. We will then make the list available to all parties to the election. The list must be furnished within 7 days of the direction of, or agreement to, an election. I am advising you of this requirement now, so that you will have ample time to prepare this list.

Notice of Hearing: Enclosed is a Notice of Hearing to be conducted on **November 8, 2012,** if the parties do not voluntarily agree to an election. If a hearing is necessary, it is expected to run on consecutive days until concluded. The enclosed Form NLRB-4339 provides information about rescheduling the hearing. Requests for postponement of the hearing to a date more than 14 days after the petition was filed will normally not be granted absent extraordinary circumstances.

Posting Notices: The NLRB believes that employees should have information about their rights while a representation petition is pending; and employers and labor organizations should be apprised of their responsibilities to refrain from conduct which could interfere with employees' freedom of choice in an election. Accordingly, please immediately post the enclosed

OCT-29-2012 14:24 NLRB REGION 21 2135948778 P.03/07

Notice to Employees (Form 5492) in conspicuous places in areas where employees in the petitioned-for unit work. Additional copies of the Notice to Employees are available for posting if you need them.

Procedures: We strongly urge everyone to submit all documents and other materials (except unfair labor practice charges and representation petitions) by E-Filing (not e-mailing) through our website, www.nlrb.gov. However, the NLRB will continue to accept timely filed paper documents. On all your correspondence regarding the petition, please include the case name and number indicated above.

Information about the NLRB, the procedures we follow in representation cases, and our customer service standards is available on our website, www.nlrb.gov, or from an NLRB office upon your request.

We can provide assistance for persons with limited English proficiency or disability. Please let us know if you or any of your witnesses would like such assistance.

Very truly yours,

Olivia Garcia

OLIVIA GARCIA
Regional Director

Enclosures

1. Notice of Hearing
2. Notice Regarding Representation Cases (Form 4339)
3. Statement of Standard Procedures in Formal Hearings (Form 4669)
4. Commerce Questionnaire
5. Notice to Employees (Form 5492)
6. Copy of Petition

OG/mf

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 21

INTEGRATED HEALTHCARE HOLDINGS, INC. (CHAPMAN MEDICAL CENTER)
Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION - UNITED HEALTHCARE WORKERS WEST, (SERVICE EMPLOYEES INTERNATIONAL UNION) SEIU
Petitioner

Case 21-RC-092165

NOTICE OF REPRESENTATION HEARING

The Petitioner filed the attached petition pursuant to Section 9(c) of the National Labor Relations Act. It appears that a question affecting commerce exists as to whether the employees in the unit described in the petition wish to be represented by a collective-bargaining representative as defined in Section 9(a) of the Act.

YOU ARE HEREBY NOTIFIED that, pursuant to Sections 3(b) and 9(c) of the Act, at 9:00 a.m. on **November 8, 2012,** and on consecutive days thereafter until concluded, at the National Labor Relations Board offices located at Room 903, 888 South Figueroa St., 9th Floor, Los Angeles, CA 90017, a hearing will be conducted before a hearing officer of the National Labor Relations Board. At the hearing, the parties will have the right to appear in person or otherwise, and give testimony. Form NLRB-4669, *Statement of Standard Procedures in Formal Hearings Held Before The National Labor Relations Board Pursuant to Petitions Filed Under Section 9 of The National Labor Relations Act,* is attached.

Dated: October 29, 2012

OLIVIA GARCIA, ACTING DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 21
888 S FIGUEROA ST., FL 9
LOS ANGELES, CA 90017-5449

OCT-29-2012 14:36 NLRB REGION 21 3136942778 P.06/07

EXHIBIT 12

FORM NLRB-760
(12-82)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHAPMAN MEDICAL CENTER, INC.

Employer

and

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST

Petitioner

Case No. 21-RC-092165

DATE FILED 10/29/2012

Date Issued 11/28/2012

Type of Election: *(Check one:)*

- [X] Stipulation
- [ ] Board Direction
- [ ] Consent Agreement
- [ ] RD Direction

Incumbent Union *(Code)*

(If applicable check either or both:)

- [ ] 8(b) (7)
- [ ] Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of the tabulation of ballots cast in the election held in the above case, and concluded on the date indicated above, were as follows:

1.	Approximate number of eligible voters	205
2.	Number of Void ballots	3
3.	Number of Votes cast for PETITIONER	48
4.	Number of Votes cast for	
5.	Number of Votes cast for	
6.	Number of Votes cast against participating labor organization(s)	90
7.	Number of Valid votes counted (sum of 3, 4, 5, and 6)	138
8.	Number of Challenged ballots	41
9.	Number of Valid votes counted plus challenged ballots (sum of 7 and 8)	179

10. Challenges are (not) sufficient in number to affect the results of the election.

11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for PETITIONER

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For EMPLOYER

For

For PETITIONER

For

EX. 12

EXHIBIT 13

BRUCE A. HARLAND, Bar No. 230477
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Alameda Ca 94501-11091
Telephone (510) 3371001

MONICA T. GUIZAR, Bar No. 202480
LISL R. DUNCAN, Bar No. 261875
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
800 Wilshire Blvd., Ste. 1320
Los Angeles, CA 90017
Telephone (213) 380-2344
Fax (213) 443-5098

Attorneys Petitioner
SEIU, United Healthcare Workers – West

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 21

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS – WEST, Petitioner, and INTEGRATED HEALTHCARE HOLDINGS, INC. (CHAPMAN MEDICAL CENTER), Respondent.	Case No. 21-RC-092165 **OBJECTIONS TO CONDUCT OF ELECTION**

COMES NOW Petitioner and pursuant to Section 102.69 of the Rules of the Board, as amended, objects to conduct of the election and/or to conduct affecting the outcome of the election in this matter held herein on November 28, 2012:

1. The employer, by its agents, placed the names of persons not eligible to vote on the

"Excelsior List."

2. The employer, by its agents, intimidated eligible voters with loss of employment opportunities if they supported the Union.

3. The employer, by its agents, made promises of benefits to those eligible voters who would vote against the Union, and/or made promises of benefits to all eligible employees as an inducement not to vote for the Union, and/or promised benefits if the Union lost the election.

4. The employer, by its agents, interfered with the rights of employees by singling out known Union adherents and publicly insulting them.

5. The petitioner, by its agents, bribed eligible voters with gifts.

6. The employer, by its agents, interfered with, restrained, and/or coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act.

7. The employer, by its agents, made material misrepresentations regarding National Labor Relations Board proceedings and/or made material misrepresentations about the neutrality of the National Labor Relations Board.

8. The petitioner, by its agents, interfered with, restrained, and/or coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act

9. The employer, by its representatives, informed employees that if they selected the Union to represent them, bargaining with the Union as their representative would be futile.

10. The employer, by its agents, campaigned for the petitioner.

11. The employer, by its agents, assigned employees more onerous working conditions because of their support for their Union.

12. The employer, by its agents, questioned and polled employees regarding their support for the Union during critical period.

13. The employer, by its agents, imposed a discriminatory, no-solicitation and/or discriminatory no-distribution rule on employees in a matter designed to interfere with conduct of a fair election.

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway
Suite 200
Alameda, CA 94501-6430
510-337-1001

14. The employer, by its agents, denied workers access to their Union representatives during the period proceeding the conduct of the NLRB election, while allowing anti-union supporters as well as managers and supervisors to campaign against the Union on work time and in work areas.

15. The employer, by its agents, including petitioner, created an atmosphere of fear and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election.

16. The employer, by its agents, made captive audience speeches to employees within 24 hours before the scheduled time of the Board conducted election.

17. The employer, by its agents, forced Union supporters, through discipline and the threat of discipline, to remove and take off pro-Union buttons and stickers, while allowing anti-Union supporters as well as managers and supervisors to wear buttons and stickers that contained anti-Union messages.

18. The employer, by its agents, engaged in surveillance of employees as they were voting in the National Labor Relations Board conducted election, interfering with the laboratory conditions necessary for the conduct of a fair election.

19. The employer, by its agents, omitted the names of eligible voters from the eligibility list furnished to the Union prior to the election.

20. The employer, by its agents, omitted the addresses of employees eligible to vote from the Excelsior list furnished to the Union prior to the election.

21. The employer, by its agents, included ineligible voters or the eligibility list in order to undermine the employees support for the Union.

22. The employer, through its agents, disciplined employees for engaging in protected, concerted Union activity.

23. The employer, by its agents, campaigned at the polling places and in the line to the polling place by the NLRB conducted election.

24. The employer, by its agents, specifically the employer observers, kept lists of which

employees voted in the NLRB election and communicated with eligible voters who were standing in line destroying the laboratory conditions necessary for the conduct of a fair election.

25. The employer, through its agents, interrogated workers about their support for the Union.

26. The employer, through its agents, cancelled shifts of Union supporters, who were scheduled to work on the day of the election.

27. The employer, by its agents, told employees they would lose their benefits if the Union won the election.

28. The employer, by its agents, solicited the grievances of employees and implicitly promised to remedy others, so as to induce employees not to support the Union.

29. The employer, through its agents, escorted workers to the voting poll.

30. The employer, by its agents, discriminated against employees in violation of Sections 8(a)(1) and 8(a)(3) by terminating them because of their union and or protected, concerted activities.

31. The employer, by its agents, discriminated against employees in violation of Sections 8(a)(1) and 8(a)(3) by reducing employment opportunities and overtime for employees who supported the Union.

32. The employer paid anti-union supporter to recruit "no" votes, and to intimidate Union supporters.

33. The employer, through its agents, locked the entrances to the building where the voting took place, in an effort to prevent pro-Union supporters from voting.

34. The employer's security force escorted workers to an elevator that lead to the polling place, where a CEO stood welcoming and campaigning to each voter before they entered into the polling place.

35. The employer, through its agents, required workers to wear "Vote No" stickers.

36. The employer, through its agents, kept lists of workers who spoke with Union

organizers.

37. The employer, through its agents, required workers to pass out anti-union flyers.

38. The employer, through its agents, posted anti-union flyers inside a locked Human Resources Bulletin Board, directly underneath the official NLRB election notice, while prohibiting pro-Union supporters from posting any pro-Union flyer on any bulletin board.

39. The employer, through its agents, discriminately enforced its no-solicitation and no-distribution rule by allowing anti-union supporters to engage in solicitation and distribution of anti-union literature on work time and in work areas, while denying Union supporters the same opportunity.

40. The employer, through its agents, were directly situated outside of the polling area and engaged in surveillance of voters.

41. The employer, through its agents, called the police, on multiple occasions, on election day, and threatened Union supporters and staff with arrest.

42. The employer, through its agents, assaulted Union organizers.

43. The employer increased the number of security guards that it normally employs in an effort to intimidate eligible voters.

44. The employer's security force agents intimidated eligible voters by shining flashlights in their eyes as they made their way to the polling area.

45. The employer's agents engaged in campaigning and electioneering to eligible voters who stood in line waiting to vote.

Dated: December 5, 2012

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: Bruce A Harland

BRUCE A. HARLAND
MONICA T. GUIZAR
LISL R. DUNCAN
Attorneys for Petitioner
SEIU, United Healthcare Workers – West

WEINBERG, ROGER & ROSENFELD
A Professional Corporation
[illegible]

PROOF OF SERVICE
(CCP 1013)

I am a citizen of the United States and an employee in the County of Alameda, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1001 Marina Village Parkway, Suite 200, Alameda, California 94501-1091. On December 5, 2012, I served upon the following parties in this action:

Ms. Marta M. Fernandez
Jeffer, Mangels, Butler & Marmaro LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067-4308
(310) 712-8534 Fax
MFernandez@JMBM.com

copies of the document(s) described as:

OBJECTIONS TO CONDUCT OF ELECTION

[X] **BY MAIL** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Alameda, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[ ] **BY FACSIMILE** I caused to be transmitted each document listed herein via the fax number(s) listed above or on the attached service list.

[X] **BY EMAIL** I caused to be transmitted each document listed herein via the email address(es) listed above or on the attached service list.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 5, 2012.

Rhonda Fortier-Bourne

132875/695220

EXHIBIT 14

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

CHAPMAN MEDICAL CENTER, INC.[1]

Employer

and Case 21-RC-092165

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST

Petitioner/Union

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

This report contains my findings of fact, conclusions, and recommendations regarding the Union's objections to the election held in the above matter. For the reasons contained in this report, I recommend Union Objection Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, be overruled due to insufficient evidence of objectionable conduct.

I. Procedural Background

The petition in this matter was filed by the Union on October 29, 2012.[2] Pursuant to a Stipulated Election Agreement approved on November 7, a secret ballot election was conducted on November 28, in the unit agreed appropriate for collective-bargaining.[3]

---

[1] In the Report on Objections and Order Directing Hearing and Notice of Hearing, which issued on January 9, 2013, the name of the Employer involved herein erroneously appeared the caption thereon as "INTEGRATED HEALTHCARE HOLDINGS, INC." In the Stipulated Election Agreement approved in this matter on November 7, 2012, the parties agreed that the name of the Employer is "Chapman Medical Center, Inc." Thus, the above caption has been corrected to conform with the Agreement.

[2] All dates herein are in 2012, unless otherwise noted.

EX. 14

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 205 eligible voters, 48 cast ballots for, and 90 against, the Union. There were four void ballots and 41 challenged ballots, which were insufficient in number to affect the results of the election. The Union timely filed objections to conduct affecting the results of the election. The Regional Director investigated the objections and, on January 9, 2013 the Regional Director issued and served upon the parties her Report on Objections and Order Directing Hearing and Notice of Hearing, in which she concluded that Union Objection Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45 could best be resolved by a hearing. Pursuant thereto, a hearing on the Union's objections was held in Los Angeles, California, on January 28, 29, 30, February 4, 5, 8, 14, 15, 19, 20, 21, and 22, 2013. All parties were given a full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues.

Upon the entire record of the hearing and my observation of the witnesses, their demeanor and testimony, I make the following findings of fact, conclusions, and recommendations.

II. Preface

This report is, unless otherwise noted, based on a composite of the credited aspects of the testimony of all witnesses, unrefuted testimony, supporting documents, undisputed evidence, and careful consideration of the entire record.[4]

---

[3] The collective-bargaining unit agreed appropriate in this matter is comprised of:
"INCLUDED: All skilled maintenance employees, service and maintenance employees, and technical employees employed by the Employer at its facility located at 2601 East Chapman Avenue, Orange, California;
EXCLUDED: All other employees, business office clerical employees, professional employees, managers, confidential employees, guards and supervisors as defined in the Act."

[4] The Employer and Union filed briefs in this matter, which, by agreement of the parties, were not longer than ten pages.

Although each iota of evidence, or every argument of counsel, is not individually discussed, all matters have been considered. Omitted matter is considered either irrelevant or superfluous. To the extent that testimony or other evidence not mentioned might appear to contradict the findings of fact, that evidence has not been overlooked. Rather, it has been rejected as incredible or of little probative value. Unless otherwise indicated, credibility resolutions have been based on my observations of the testimony and demeanor of witnesses at hearing. *NLRB v. Brooks Camera, Inc.*, 691 F.2d 912, 915, 111 LRRM 2881, 2881 (9th Cir. 1982); *NLRB v. Ayer Lar Sanitarium*, 436 F.2d 45, 49, 76 LRRM 2224, 2226 (9th Cir. 1970). Failure to detail all conflicts in testimony does not mean that such conflicting testimony was not considered. *Bishop and Malco, Inc., d/b/a Walkers*, 159 NLRB 1159, 1161 (1966). Further, the testimony of certain witnesses has been only partially credited. *Kux Manufacturing Co. v. NLRB*, 890 F.2d 804, 810-811, 132 LRRM 2935 (6th Cir. 1989); *NLRB v. Universal Camera Corp.*, 179 F.2d 749, 754, 25 LRRM 2256 (2nd Cir. 1950), *rev'd on other grounds*, 340 U.S. 474, 27 LRRM 2373 (1951).

III. Legal Standard to be Applied in Objection Cases:

It is well settled that "[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works,* 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991). Additionally, the burden is on the objecting party to establish evidence in support of its objection. *Waste Management of Northwest Louisiana, Inc.*, 326 NLRB 1389 (1998). The objecting party must show that, inter alia, the conduct in question affected the employees in the voting unit and had a reasonable

tendency to affect the outcome of the election. *Delta Brands, Inc.*, 344 NLRB 252 (2005); *Avante at Boca Raton*, 323 NLRB 555, 560 (1997).

The Board applies an objective test as to whether the conduct of a party to an election has "the tendency to interfere with the employees' freedom of choice." *Cambridge Tool Mfg.*, 316 NLRB 716 (1995). Under that test, the issue is not whether an employer's statement or conduct in fact coerced the employees but whether it had a reasonable tendency to do so. *Pearson Education, Inc.*, 336 NLRB 979, 983 (2001), citing *Amalgamated Clothing Workers v. NLRB*, 441 F.2d 1027, 1031 (D.C. Cir. 1970). In determining whether a party's misconduct has the tendency to interfere with employees' freedom of choice, the Board considers:

> (1) the number of incidents; (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; (5) the degree to which the misconduct persists 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 to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. *Taylor Wharton Div.*, 336 NLRB 157, 158 (2001) citing *Avis Rent-a-Car*, 280 NLRB 580, 581 (1986).

The Board will examine whether the misconduct, taken as a whole, warrants a new election because it has "the tendency to interfere with the employees' freedom of choice" and "could well have affected the outcome of the election." *Cambridge Tool & Mfg. Co.*, supra. Additionally, the narrowness of the vote in an election is a relevant consideration. *Robert Orr–Sysco Food Services*, 338 NLRB 614 (2002). It is not, however, dispositive and as the Board noted in *Accubuilt, Inc.*, 340 NLRB 1337 (2003), it will assess the general atmosphere at the

location "rather than comparing the number of employees subject to any sort of the threats against the vote margin."

IV. The Objections

Excelsior List Objections

Objection No. 1

> The employer, by its agents, placed the names of persons not eligible to vote on the "Excelsior List."

Objection No. 19

> The employer, by its agents, omitted the names of eligible voters from the eligibility list furnished to the Union prior to the election.

Objection No. 20

> The employer, by its agents, omitted the addresses of employees eligible to vote from the Excelsior list furnished to the Union prior to the election.

Objection No. 21

> The employer, by its agents, included ineligible voters on the eligibility list in order to undermine the employees support for the Union.

Inasmuch as they are related, I will consider Union Objection Nos. 1, 19, 20 and 21 together.

After the approval of the Stipulated Election Agreement, the Employer proffered an *Excelsior*[5] list containing 190 names and addresses.

Prior to the election, the Union and Employer exchanged lists of individual employees that each party believed should be added or removed from the *Excelsior* list. In response to the Union's position that certain per diem employees should be removed from

[5] *Excelsior Underwear,* 156 NLRB 1236 (1966).

Excelsior list due to insufficient hours worked, on November 21, Employer Attorney Marta Fernandez emailed to Hal Ruddick, Union director of the hospital division, a payroll report generated by the Employer of total hours worked for the period of August 4 through November 1, for the 72 employees listed in the 12-page report, and a 6-page time card report for one other employee for about the same period. The Stipulated Election Agreement includes no eligibility formula for per diem or any other employees. Union Organizing Director Amado David testified that he did not know how many hours per diem employees would have had to work in order to be eligible to vote. After he examined the reports, David decided that he needed further documentation. David requested that the Employer provide supporting payroll records, but Fernandez responded that the Employer would not pull the records.[6] The November 21 email also provided hire dates for six other employees, termination dates for two other employees, and the Employer's agreement with the Union's request to remove two specified employees from the *Excelsior* list.

By email dated November 25, David listed 10 employees and the reasons why the Union wanted to add them to the *Excelsior* list. David also listed 26 employees and the reasons why the Union wanted them removed from the *Excelsior* list. Therein, the Union also agreed with the Employer's contention that a terminated employee should not be added to the *Excelsior* list. Regarding the 10 employees that the Union sought to add, the Union contended that 9 of them had been included in a collective-bargaining unit during the parties' prior card check and collective bargaining.[7] Regarding the 28 employees that the Union sought to remove from the

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[6] It is noted that the information contained in the reports that the Employer provided to the Union is the type which is often utilized to determine voter eligibility for per diem unit employees. See *Davison-Paxon Co.*, 185 NLRB 21 (1970); and *Sisters of Mercy Health Corp.*, 298 NLRB 483 (1990).

[7] At hearing, the parties stipulated that in or about 2011, the Employer and Union entered into a card check agreement, which resulted in the Employer recognizing the Union and the commencement of collective bargaining. I hereby take administrative notice of Case 21-CA-074085, in which the Employer agreed to withdraw recognition

Excelsior list, the Union detailed that they should be excluded as management, professionals, rehab counselors, business office clericals, non-unit employees, had worked insufficient hours, and/or were no longer employed by the Employer. Later on November 25, Ruddick emailed these lists to Fernandez. By email to the Employer dated November 26, the Union further detailed its positions regarding voter eligibility.

By email dated November 27, Employer Attorney Barbra Arnold replied to the Union and proposed to add ten Spine and Orthopedic Clinic employees to the *Excelsior* list, five of whom the Union had been requesting to add.[8] Arnold also sought to confirm that the Union had dropped its request to add three specific employees to the *Excelsior* list.

At the pre-election conference on November 28, the parties finalized the *Excelsior* list, as they had previously discussed, by removing the names of two employees as agreed on November 21. At hearing, the parties stipulated that at the pre-election conference, they also agreed to add the names of five Spine and Orthopedic Clinic employees to the *Excelsior* list.[9] It appears that in the end, the Employer and Union failed to reach agreement on three names that the Union wished to add and 26 names that the Union wished to remove from the *Excelsior* list. By stipulation at hearing, the parties further agreed that of the 41challenged ballots cast during

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from the Union. During this earlier collective-bargaining relationship, on June 25, 2012, the Employer provided the Union with a list of unit employees containing 210 names, which included all but one of the names that the Union sought to add to the *Excelsior* list in the case at hand. David testified that the earlier inclusion and exclusion of certain categories of employees and individuals should control with regard to unit placement in the current case. Inasmuch as the earlier collective-bargaining relationship had ended, the language of the Stipulated Election Agreement, agreed to by the parties and approved by the Regional Director, created a new collective-bargaining unit which is not defined by prior agreements of the parties. Accordingly, I give no weight to the composition of any prior unit.

[8] Employer Human Resources Manager Jo Anne Suehs testified that her office and the Spine and Orthopedic Clinic are both located in the medical office building at 2617 East Chapman Avenue, Orange, California, which is adjacent to the Hospital located at 2601 East Chapman Avenue, Orange, California – the only street address listed in the unit description involved herein. Because of the separate address, the Employer suggests, but does not explicitly contend, that employees of the Spine and Orthopedic Clinic were appropriately left off of the *Excelsior* list.

[9] This written stipulation was received at hearing as Joint Exhibit 1. To the extent that the facts in this stipulation differ from the testimony of David, I have relied on the stipulation, and do not credit David's testimony regarding such facts.

the election, which remained unresolved at the tally of ballots, 35 ballots were challenged by the Union and six ballots were challenged by the Employer. David credibly testified that the Union challenged the ballots cast by all persons whose eligibility the Union was disputing, and for whom no agreement was reached with the Employer. As noted above, such challenges were insufficient in number to affect the results of the election. Accordingly, the eligibility of such voters was not investigated at hearing, and no such conclusions are made herein.

No evidence was presented that the Employer omitted employee addresses from the *Excelsior* list, other than addresses of employees whose names were also left off the *Excelsior* list.

Discussion of Objection Nos. 1, 19, 20, and 21

The purpose of the *Excelsior* rule is to ensure that all participants in an election have access to the electorate so that employees can make a free and reasoned choice regarding union representation. Omissions from an *Excelsior* list undermine this objective. See *Women in Crisis Counseling*, 312 NLRB 589, 589 (1993). Indeed, the Board "presumes that an employer's failure to supply a substantially complete eligibility list has a prejudicial effect on the election." *Thrifty Auto Parts,* 295 NLRB 1118, 1118 (1989). However, the Board noted in *Lobster House*, 186 NLRB 148 (1970), "Generally, the Board will not set an election aside because of an insubstantial failure to comply with the *Excelsior* rule if the employer has not been grossly negligent and has acted in good faith."

In *Woodman's Food Markets,* 332 NLRB 503, 504 (2000), the Board found that an analysis of the percentage of eligible voters omitted from the *Excelsior* list, relative to the number of employees in the unit, was overly simplistic. The Board opted instead for a more comprehensive approach:

> Accordingly, while we will continue to consider the percentage of omissions, we will consider other factors as well, including whether the number of omissions is determinative, i.e., whether it equals or exceeds the number of additional votes needed by the union to prevail in the election, and the employer's explanation for the omissions.

Citing *Woodman's*, in *Automatic Fire Systems*, 357 NLRB No. 190 (2012), the Board set aside the election because of a 28 percent omission rate and evidence of bad faith.

In the case at hand, the Employer failed to include names and addresses on the *Excelsior* list for nine employees, which the Union contends were eligible to vote, which equal about 4.7 percent of the names on the original *Excelsior* list. During the election campaign, the Union did not have the benefit of utilizing addresses, from the *Excelsior* list, to communicate with these nine employees. Second, the tally of ballots indicates that the Union needed 43 additional "yes" votes in order to prevail in the election. Clearly, these nine missing names and addresses do not equal or exceed the number of additional votes needed by the Union for it to have prevailed in the election. Thirdly, with regard to any Employer explanation for the omissions, the Employer has not taken a clear position. However, no evidence was presented at hearing that the Employer omitted names from the *Excelsior* list with intentional disregard of the unit description in the Stipulated Election Agreement. See *Automatic Fire Systems*, supra. Similarly, regarding the names missing from the *Excelsior* list, the hearing evidence does not establish that the Employer was grossly negligent or failed to act in good faith. *Lobster House*, supra. Rather, when the Union raised concerns about the *Excelsior* list and inquired about the voter eligibility of specific employees, the Employer responded to Union with detailed employment information and provided the Union with detailed payroll reports. Thereafter, the Employer agreed to add five employees to and remove two employees from the *Excelsior* list, as requested by the Union. See *Telonic Instruments*, 173 NLRB 588 (1969), where omissions were

confined to 4 of about 111 eligible voters and the employer acted with alacrity in informing the Region and the union that the list was incomplete.

Based on the above, regarding Union Objection Nos. 19 and 20 and the omissions from the *Excelsior* list of as many as nine employees' names and addresses, it appears that the Employer was in substantial compliance with the *Excelsior* rule.

The Board has ruled on objections involving employers placing names of ineligible voters on the *Excelsior* list. In *Idaho Supreme Potatoes*, 218 NLRB 38 (1975), the Board found noncompliance with the *Excelsior* rule when the employer provided the union with a list that contained 81 names of ineligible voters in a unit of 146 employees. Therein, the employer knew of its mistake, but made no efforts to remedy it until 2 days before the election, and only after the union had complained to the Region about the errors on the *Excelsior* list.

With regard to Union Objection Nos. 1 and 21, which allege that the Employer placed on the *Excelsior* list the names of persons not eligible to vote, the Union contends that there were 28 such names on the original *Excelsior* list, of which the Employer agreed to remove two names. In this case, the portion of the unit involved is several times smaller than that in *Idaho Supreme Potatoes*. The fact that the Stipulated Election Agreement contained no per diem eligibility formula created ambiguity regarding the eligibility of such employees. The broad language of the unit description herein provides no guidance on the placement of rehab counselors. Reasonable parties may differ on what facts and legal standards warrant a finding that persons are management employees or professionals employees, and/or non-unit employees. Even the continued employment of employees might not always be clear to all parties.

Because the parties had explicitly excluded business office clericals from the unit described in the Stipulated Election Agreement, the Union requested that four employees in that

category be removed from the *Excelsior* list. The Employer did not agree to remove these four names. However, the hearing record did not reveal any facts to establish that these four employees were in fact business office clericals or that the Employer knew their placement on the *Excelsior* list was inappropriate. Accordingly, I cannot rely upon this situation as a basis for concluding that the Employer acted in bad faith regarding the placement of ineligible voters on the *Excelsior* list. It is noted that no evidence was revealed at hearing to establish that any of the employees contested by the Union were in fact non-unit members or were otherwise ineligible to vote. Even assuming that the evidence established that the Employer placed four excluded employees on the *Excelsior* list, which it does not, the scope and nature of the Employer's conduct herein is easily distinguishable from that in *Idaho Supreme Potatoes*, supra.

Voter eligibility issues such as those involved herein commonly arise in elections and are routinely handled through the challenged ballot procedure. During this election, the Union took the opportunity to challenge the votes of all of the individuals whose eligibility it was disputing.

Based on the above, regarding Union Objection Nos. 1 and 21, I do not find that the inclusion of possibly ineligible voters on the *Excelsior* list rises to the level of objectionable conduct, or undermined employee support for the Union. Rather, I conclude that the Employer's compilation of the *Excelsior* list and its handling of the concerns raised by the Union was in substantial compliance with the *Excelsior* rule.

For these reasons, I recommend that Union's Objection Nos. 1, 19, 20, and 21 be overruled.

Discipline and Work Schedule Objections

Objection No. 2

The employer, by its agents, intimidated eligible voters with loss of employment opportunities if they supported the Union.

Objection No. 22

The employer, through its agents, disciplined employees for engaging in protected, concerted Union activity.

Objection No. 26

The employer, through its agents, cancelled shifts of Union supporters, who were scheduled to work on the day of the election.

Objection No. 31

The employer, by its agents, discriminated against employees in violation of Sections 8(a)(1) and 8(a)(3) by reducing employment opportunities and overtime for employees who supported the Union.

Inasmuch as they are related, I will consider Union Objection Nos. 2, 22, 26 and 31 together. No evidence was presented at hearing in support of Union Objection Nos. 2, 22 or 26.[10]

With regard to Union Objection No. 31, unit employee Eugenia Torres, a full-time certified nursing assistant (herein CNA) in the senior mental health unit, testified about having been flexed off work, about one week before the November 28 election, "because the census went down." Torres also testified that patient census does fluctuate and senior mental health unit employees have been flexed off work in the past due to low census. Moreover,

[10] In response to evidence described in the Report on Objections and Order Directing Hearing and Notice of Hearing, Director of Food and Nutrition Services Lynne Kiernan testified at hearing that she did not tell employees: (a) that they could not come to work on election day; (b) to remove campaign stickers or buttons; (c) to wear campaign stickers or buttons; or (d) which way to vote.

Torres testified that she was scheduled to work on the day of the election and does not believe that the Employer viewed her as pro-Union.[11]

Chief Operating Officer/Chief Nursing Officer Ada Yeh testified that she is also the acting manager for the senior mental health unit. Yeh testified that physicians and health plans decide whether or not to admit patients to the Hospital, and this is what controls census levels. The Employer uses census reports to help determine staffing needs, and employee shifts may be flexed/cancelled if patient census low. The census report for November 2012 showed that patient census was low in various departments, including the senior mental health unit. Yeh testified that low census numbers in November resulted in employees being flexed in the medical-surgical and senior mental health units. The report showed that during the week before the election, senior mental health unit patient census dropped from seven on November 20 to five on November 23.

Discussion of Objection Nos. 2, 22, 26 and 31

Among these four objections, evidence was only presented in support of Union Objection No. 31. Regarding such, it is undisputed that low census numbers cause employees to be flexed, census numbers were low at times during November 2012, and employees were therefore flexed.

Moreover, regarding the discriminatory reduction of employment opportunities and overtime referenced in Union Objection No. 31, such an allegations cannot be considered in the absence of a corresponding unfair labor practice charge and complaint. *Meat Packers*, 130 NLRB 279 (1961), and *McLean Roofing Co.*, 276 NLRB 830 fn. 1 (1985). No such charge has been filed and no such complaint has issued.

[11] I hereby take administrative notice that no charge has been filed alleging any loss of work in 2012 for Eugenia Torres.

For these reasons, I recommend that Union Objection Nos. 2, 22, 26 and 31 be overruled.

Promises and Grants of Benefits Objections

Objection No. 3

> The employer, by its agents, made promises of benefits to those eligible voters who would vote against the Union, and/or made promises of benefits to all eligible employees as an inducement not to vote for the Union, and/or promised benefits if the Union lost the election.

Objection No. 5

> The employer, by its agents, bribed eligible voters with gifts.

Inasmuch as they are related, I will consider Union Objection Nos. 3 and 5 together.

The Union contends that unit employee Juan Alvarez, a licensed vocational nurse (LVN), was promised a registered nurse position if he would campaign against the Union. Ruth Calderon is a Union chief steward at Coastal Communities Hospital (herein Coastal), which is a sister hospital to the Employer.[12] As a non-employee Union organizer, Calderon campaigned at the Hospital daily during most of November 2012. Calderon testified that Alvarez openly supported the Union until about a week before the election, when Alvarez disagreed with Calderon about the content of a Union flier about raises at Coastal. Calderon testified that Alvarez told her that "management went over [the Union flier] with us and you're a liar." Alvarez confirms that he had a conversation like this with Calderon. Calderon testified that she was not aware of any employee who was promised a registered nurse (RN) position if they

[12] Integrated Healthcare Holdings, Inc. (IHHI) operates Chapman Medical Center, Inc., Coastal Communities Hospital, and Western Medical Center Anaheim.

would campaign against the Union, but she heard rumors to that effect. Calderon stated that Alvarez never told her why he decided to campaign against the Union.

Alvarez testified that while he worked for the Employer as an LVN, he passed his Board of Registered Nursing licensure examination on October 19, and received his examination results and RN license October 22. Alvarez testified that in October 2012 he informed his supervisor, Director of Subacute Unit Eleanor Ghan, that he had earned his RN license and asked if she had an RN position for him. According to Alvarez, Ghan replied that there were no openings because she had just hired an RN. Alvarez testified that after the election, on December 16, the Employer hired him as an RN. Alvarez stated that during his communications with the Employer about becoming an RN, nothing was said about the Union and he was promised nothing. More specifically, Alvarez testified that the Employer did not offer an RN position to him in exchange for his pro-Union activities, and his pro-Union activities were not influenced by the fact that he wanted to be promoted to an RN position. COO/CNO Ada Yeh testified that Alvarez told her that he had graduated and wanted to work for the Employer as an RN. Yeh stated that she told Alvarez that he should talk to Employer supervisors and she hoped he would stay with the Employer, but nothing was said about the Union. Yeh confirmed that the Employer has promoted other employees to RN in past. Yeh denied that Alvarez was offered an RN position in exchange for him changing his view on the Union.

The Union also contends that unit employee Altagracia Trammell, a CNA in the medical-surgical unit, was given a wage increase to induce her to drop her support for the Union. Trammell testified that on or about November 20 or 21, Director of Medical Surgical Unit Nancy McKinney gave Trammell her evaluation which got her "a two percent increase and with that I would get a 2.9 raise of my salary." Trammell testified that McKinney gave her an anti-Union

flier and said that raises discussed by the Union are not guaranteed, raises might be received in three years, and Union dues would take two percent of her pay.[13] According to Trammell, McKinney gave her a sample ballot issued by the Employer and said that in the election employees would mark their preference and not sign their ballot. Trammell stated that she first noticed the pay increase on her paycheck after this conversation. On cross-examination, Trammell said that McKinney told her that her raise "was all going to be taken away by the Union." Trammell testified that McKinney said, "Well, this is what you're going to make. But if you go with the Union . . ." McKinney did not finish the thought.

At hearing, the Employer offered into evidence a copy of Trammell's annual Job Description/Performance Evaluation Tool form dated July 20, which indicates that her evaluation score was 2.9. Trammell testified that she first saw this form when McKinney gave Trammell her evaluation on July 20. Trammell confirmed that in past years, her wage increase was based upon her performance evaluation score, and the amount of the raise, if any, would be communicated to her several months after she received her performance evaluation. The Employer also offered into evidence a copy of Trammell's Personnel Change Notice, which indicates that the raise was effective October 21. After reviewing this notice, Trammell acknowledged that she has been paid at the new, higher rate since October 21. Copies of Trammell's pay stubs confirm that her increase was effective October 21.[14]

Employer Human Resources Manager Jo Anne Suehs testified that most employees receive their evaluation score in about July, and employees are informed of raises at

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[13] A Union produced flier titled "Ask Ruth the Truth about SEIU-UHW," was received into evidence at hearing, and states that Union dues are two percent.

[14] Copies of Trammell's evaluation form, pay change notice, and pay stubs were received into the hearing record.

various times after they get their evaluation score.[15] Suehs explained that employees' percentage wage increase is based on the evaluation score, but they are not same numbers. Suehs testified that she prepared and signed Trammell's Personnel Change Notice, which confirms the 2.25 percent wage increase, on or before October 21 - the effective date of Trammell's raise. COO/CNO Ada Yeh testified that she also signed Trammell's Personnel Change Notice, and such notices must be approved before the effective date of the raise. Suehs testified that October 21 was the start of a 2-week pay period, and paychecks for that pay period were issued on November 9. Trammell's pay stubs confirm that her pay increase was first included in her November 9 paycheck.

The Union also asserts the Employer bribed employees by offering to pay mileage for those who voted on their day off. Unit employee Eugenia Torres testified that she received a letter in the mail from Employer CEO Don Kreitz dated November 21, which reads in relevant part, "Because this is such an important issue, we will reimburse you for mileage if you are not scheduled to work on the 28th, but chose [sic] to come in to vote. Please see your Manager or Director for the correct paperwork for mileage reimbursement."[16] Unit employee Philip Zoerlein, a central supplies technician, states he received no such letter. No other evidence was presented about the letter or any reimbursement for mileage.

The Union also presented evidence regarding several comments which it asserts constitute objectionable promises of benefits.

Unit employees Eugenia Torres and Yolanda Garcia, a CNA in the senior mental health unit, testified about COO/CNO Ada Yeh speaking to employees in the senior mental health unit.

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[15] At hearing, the parties stipulated that Suehs is a supervisor as defined in Section 2(11) of the Act.
[16] A copy of the letter was received into evidence at hearing.

Garcia stated that Yeh spoke to her and two other senior mental health employees, in the senior mental health unit dining room, at the daily morning shift change patient information meeting, one day at about 7:00 a.m. Garcia said that the incident took place in October or November 2012, possibly about a month before the election. Regarding what Yeh said, Garcia testified, "She explained to us the difference in raise that we would get from the hospital and the raise we would get from the Union if the Union came to the hospital and what amount of money we would have to pay for the Union to come to the hospital." On cross-examination, regarding what Yeh said, Garcia testified, "She told me that the last two years, we've been getting these very good raises. And those don't compare to the ones that the Union would promise to do." According to Garcia, Yeh showed employees a flier, but Garcia did not recall what it said.

Torres stated that Yeh called her and possibly three other senior mental health employees into the senior mental health unit dining room, early one morning, a week before the election. Torres testified that Yeh told the employees: "Look, you're going to have a three-percent raise with the Union. You're going to only end up taking one percent and the Union will take the two percent;" "You should think it very carefully. If you do this, this is going to happen. If you get the Union in, this is going to happen. So you have to think it clearly;" and "Well, we can give you three percent without any need for the Union." On cross-examination, Torres stated that Yeh was talking about what might happen if the Union was voted in, but Yeh did not say what raises employees would get in the future from the Employer if the Union was rejected.

Torres testified that Yeh possibly said, "[I]f you get a three percent increase, two percent goes to the Union and you only get one percent."[17]

Yeh testified that she attended one or two meetings in the senior mental health unit, but did not promise future raises to employees, say anything about caps on possible raises with the Union, or that if the Union comes into Chapman, you're going to have to give whatever raises you get to the Union. Yeh denied telling employees that they would not benefit from the Union or that the Union would not be good for them. According to Yeh, when employees asked her about wage increases under the Union contract at Coastal, she described the details to them.

Unit employees Myrna Chavez, Luis Estrada and Teresa Salvaltierra, all CNAs in the Subacute Unit, and LVN Alvarez testified about COO/CNO Yeh and Director Ghan speaking to employees in the subacute unit.

Chavez estimated that in November 2012 he attended about four meetings a week where Yeh discussed the Union with 12 to 16 subacute unit employees. Chavez testified that Yeh told employees that the Union wasn't going to give employees what it promised, because of limits on wage rates - the Union would only give bonuses, employees would have to pay two percent dues to the Union, many Coastal employees were not satisfied, some Coastal employees paid Union dues out of their own pockets, and if there's no Union – employees don't have to pay union dues. On cross-examination, Chavez confirmed that Yeh's comments were about raises that the Employer gave in past. Chavez testified that Yeh did not say what would be in any contract between the Union and Employer or that there would be a wage ceiling or bonuses if the Union was voted in at the Employer. Chavez claimed that Director Ghan also met with

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[17] Torres also testified about a different occasion, approximately a month before the election, when Yeh spoke to senior mental health employees about the Union contract at Western Medical Center Anaheim, but Torres provided no additional details about this.

employees and made the same comments as Yeh, but offered no meaningful specifics. In her testimony, Salvaltierra said Ghan commented to her, regarding an unidentified flier about past Employer raises, the Union contract at Coastal, and union dues, "[T]hat's what's going to happen if we vote for the Union." Salvaltierra made no reference to Yeh making any promises to employees. In his testimony, Estrada provided no evidence about Yeh having promised benefits, and made no reference to Ghan speaking to employees about the Union. Alvarez testified that at morning patient report meetings conducted by Ghan, he did not recall comments about Employer raises, or how the Union election or union dues would impact any raises. Alvarez did not recall attending morning patient report meeting where Yeh talked about raises.

Yeh testified that she attended one or two shift report meetings in the subacute unit, and discussed the Union with employees, and that the Employer has a history of granting wage increases of between two and three percent. Yeh stated that she did not promise future raises to employees, make statements regarding caps or limitations on what Union raises could be negotiated with the Employer, tell employees that the Employer could give them a three percent raise without any help from the Union or tell employees that Union would take their raises or take a percentage of their raise if they voted in the Union. Yeh testified that, in response to employees' questions, she said that the Union contract for Coastal employees provides for wage increases of up to nine percent over three years, and that she thought Union dues were about two percent.

Discussion of Objection Nos. 3 and 5

In *G & K Services, Inc.*, 357 NLRB No. 109 (2011), the Board discussed objectionable conduct where employers make implied promises of benefits to employees:

> It is well settled that an employer may lawfully inform employees of the wages and benefits its nonunion employees receive and respond to requests for information from employees about such

> benefits. See, e.g., *Suburban Journals of Greater St. Louis, LLC*, 343 NLRB 157, 159 (2004) (citations omitted). The Board will set aside an election, however, when an implied promise of benefits is made to employees. See, e.g., *Etna Equipment & Supply Co.*, 243 NLRB 596 (1979). The Board infers that such a promise interferes with employees' free choice in the election; an employer may rebut this inference by showing a legitimate purpose for the timing of the promise. See *Sun Mart Foods*, 341 NLRB 161, 162 (2004).
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> Determining whether a statement is an implied promise of benefit involves consideration of the surrounding circumstances and whether, in light of those circumstances, employees would reasonably interpret the statement as a promise. See *Viacom*, supra, 267 NLRB at 1141 ("the question is, was there a promise, either express or implied from the surrounding circumstances"); *Crown Electrical Contracting, Inc.*, 338 NLRB 336, 337 (2002) (finding employees could not reasonably interpret employer statement as implied promise). Although an employer may compare union and nonunion benefits and make statements of historical fact, the Board has long held that even comparisons and statements of fact may, depending on their precise contents and context, nevertheless convey implied promises of benefits. See e.g., *Grede Plastics*, 219 NLRB 592, 593 (1975) (factually accurate letter contained implied promise); *Westminster Community Hospital., Inc.*, 221 NLRB 185, 185 (1975), enfd. mem. 566 F.2d 1186 (9th Cir. 1977) (wage rate comparison contained implied promise).

In order to be found as objectionable, employer statements must reasonably be understood as a promise of benefits. See, e.g., *Newburg Eggs, Inc.*, 357 NLRB No. 171 (2011); *Noah's New York Bagels*, 324 NLRB 266, 267 (1997) (finding employer's request that employees give it a second chance not unlawful).

In assessing whether conduct interfered with the election "the Board considers the number of incidents, their severity, the extent of dissemination, the size of the unit and other relevant factors," *Archer Services*, 298 NLRB 312 (1990).

The facts are undisputed regarding the promotion of Alvarez to RN. Alvarez received his RN license before the election petition was filed and asked the Employer for a promotion to RN in October 2012, at which time he was told that there were no openings. On

December 16, well after the election, in keeping with past practice, Alvarez was promoted from LVN to RN. Union proffered witness Calderon admitted that she was not aware of employees being promised promotions to RN positions if they campaigned against the Union. Alvarez and Yeh testified that there was no such discussion or promise. Moreover, I find that Alvarez' alleged conversion to being an open Union opponent likely occurred after hearing Employer anti-Union campaign messages and disagreeing with the Union regarding its fliers. Accordingly, I find that the record does not establish that Alvarez was bribed or promised benefits.

Regarding the wage increase received by Trammell, the authenticity and accuracy of Trammell's evaluation form, pay change notice, and pay stubs are undisputed. Thus, I will rely on these documents. After reviewing these documents, Trammell changed her direct testimony, which I do not credit,[18] and acknowledged on cross-examination that she received her evaluation form on July 20 and that she had been paid at the new, higher wage rate since October 21. Both of these dates precede the filing of the election petition on October 29. Moreover, I credit and rely on the detailed testimony of Suehs and Yeh that the timing and handling of Trammell's evaluation and wage increase occurred pre-petition and were in keeping with Employer past practice, which Trammell also agreed with on cross-examination. Additionally, I find Trammell's testimony regarding McKinney's alleged comments on raises and Union dues to be unreliable. In addition to the reasons stated above, I do not credit this testimony of Trammell's inasmuch as the details of McKinney's alleged comments changed drastically between direct and cross-exanimation. Even if such was to be relied upon, I find that

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[18] Trammell's testimony on direct examination includes dates and pay raise numbers which are clearly contradicted by the documentary evidence and other credited testimony. Trammell's pay increase first appeared in her November 9 pay check, so her admission, that she did not notice the pay increase until after November 20 or 21, indicates that she did not pay close attention to the details of these incidents. Additionally, Trammell, who testified primarily in Spanish with the aid of a translator, admitted at hearing that her English comprehension is somewhat limited: "It's not too good. I'll tell you it's not too good. But it's enough for me to understand. Maybe I can understand maybe 85 or 90 percent." This further erodes the reliability of her testimony.

McKinney's alleged comments are not promises of wage increases. Rather, such comments were part of a discussion of past wage increases, possible future Union negotiated raises, and how such compare to Union dues rates, which are permissible under Section 8(c). Accordingly, I find that the record does not establish that Trammell was bribed or promised benefits.

Regarding the Employer's November 21 letter to employees offering reimbursement to employees for mileage if they drove to work to vote on their day off, no evidence was presented that payments offered to employees exceed actual transportation expenses or that any reimbursements were even made.[19] Accordingly, I find that the Employer's offer of mileage reimbursement does not constitute any promise of benefits or bribe.[20]

Next, employees Torres and Garcia testified that COO/CNO Yeh spoke to several senior mental health unit employees about raises and union dues. Garcia specifically said that Yeh commented to employees about past raises granted by the Employer, what the Union may have promised for the future, and how union dues would absorb part of any future raises. Torres testified that Yeh said when or "if" employees got a three percent raise through the Union, two percent would go to Union dues, leaving employees with a one percent net increase. The testimony of various witnesses and information on campaign fliers indicate that a primary focus of the election campaign was Employer raises over the last three years totaling between eight and nine percent, raises of up to nine percent in the new three-year Union contract at Coastal, and if Union dues of two percent would be a good investment. On cross examination, Torres

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[19] See *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), where the Board held that "monetary payments that are offered to employees as a reward for coming to a Board election and that exceed reimbursement for actual transportation expenses .... [constitute] objectionable conduct." Also see *Good Shepherd Home, Inc.*, 321 NLRB 426 (1996) (not objectionable where union reimbursed an employee based on a good-faith, reasonable estimate of his actual travel costs).

[20] Moreover, Zoerlein's testimony that he did not receive the November 21 letter does not establish that the offer was not extended to all unit members. See *Heintz Mfg. Co.*, 103 NLRB 768 (1953), and its progeny, which deem it not objectionable for a party to furnish transportation to bring voters to the polls, so long as the offer is available to all.

drastically changed her testimony regarding Yeh's alleged three percent "offer."[21] Torres testified that Yeh made her comments in English and she understood most, but not everything she said.[22] Accordingly, I do not credit Torres' original testimony about the "offer." Torres' testimony on cross-examination establishes that Yeh's comments were about the effect of union dues on hypothetical pay raises under a Union contract, with no promise of benefit if the Union was rejected. Rather, I credit Yeh's detailed and clear testimony regarding such conversations. Any reference to a three percent raise is in line with what employees had received in the past from the Employer and what Coastal employees may receive under their Union contract. Moreover, Torres was very unsure about who heard Yeh's comments.[23] Thus, even if Yeh's comment was found to be a promise of benefit, which is not my finding herein, the comment was

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[21] Regarding the "offer," on direct examination Torres testified:
Q Anything else that you remember Ada saying?
A "Well, we can give you three percent without any need for the Union."
Q What did -- did she say what she meant by, "We can give you three percent"?
A "Don't accept the Union."
Q That's what she said?
A Not exactly, but, "I offer you three percent."
Q What was she referring to when she said, "I offer you three percent"?
A In the next raise or the next evaluation she could give us a three-percent raise.

Later on cross-examination Torres testified:
19 Q And during this meeting is it your testimony that Ada Yeh told you what your raise would be in the future year without the Union?
A The offer, the offer.
Q What did she offer?
A Possibly that if you get a three percent increase, two percent goes to the Union and you only get one percent.
Q So Ms. Yeh was talking about a possibility that could happen if the Union was voted in, correct?
A Yes.
Q But Ms. Yeh didn't tell you what would -- certainly would happen one way or another, correct?
A No, that's correct.
Q And Ada Yeh didn't tell you what raises you would get in the future from Chapman if the Union was not voted in, correct?
A That's correct.

[22] Torres, who testified in Spanish with the aid of a translator, self-assessed her ability to speak English as "Not -- not so much. Not very well," and her ability to read or understand English as about 80 percent proficient. Later she testified that she understood Yeh's spoken English. These admissions undermine the reliability of her testimony.

[23] Regarding the others present, Torres mentioned different people the two times she was asked and qualified her recollections by saying "I believe," "maybe," and "I'm not sure." Of the three unit employees mentioned by Torres, none were presented as witnesses at hearing.

isolated, not widely disseminated, and de minimus when considered against the wide margin in the tally of ballots. *Archer Services*, supra. Accordingly, I find that Yeh's comments in the senior mental health unit do not constitute any promise of benefit or bribe.

With regard to comments made to subacute unit employees, Chavez and Yeh testified that Yeh spoke to employees about past raises given by the Employer and the Union contract at Coastal, but made no promises about future raises. Estrada, Salvaltierra and Alvarez, all attended subacute unit meetings, but offered no testimony about Yeh making any promise of benefit. Testimony from Chavez and Salvaltierra regarding alleged comments made by Ghan is too vague to be relied upon. Accordingly, I conclude that Yeh and Ghan's comments in the subacute unit do not constitute any promise of benefit or bribe.

For these reasons, I recommend that Union Objection Nos. 3 and 5 be overruled.

Voting Interference

Objection No. 4

The employer, by its agents, interfered with the rights of employees by singling out known Union adherents and publicly insulting them.

Objection No. 12

The employer, by its agents, questioned and polled employees regarding their support for the Union during critical period.

Objection No. 18

The employer, by its agents, engaged in surveillance of employees as they were voting in the National Labor Relations Board conducted election, interfering with the laboratory conditions necessary for the conduct of a fair election.

Objection No. 23

The employer, by its agents, campaigned at the polling places and in the line to the polling place by the NLRB conducted election.

Objection No. 24

The employer, by its agents, specifically the employer observers, kept lists of which employees voted in the NLRB election and communicated with eligible voters who were standing in line destroying the laboratory conditions necessary for the conduct of a fair election.

Objection No. 25

The employer, through its agents, interrogated workers about their support for the Union.

Objection No. 29

The employer, through its agents, escorted workers to the voting poll.

Objection No. 34

The employer's security force escorted workers to an elevator that lead to the polling place, where a CEO stood welcoming and campaigning to each voter before they entered into the polling place.

Objection No. 40

The employer, through its agents, were directly situated outside of the polling area and engaged in surveillance of voters.

Objection No. 44

The employer's security force agents intimidated eligible voters by shining flashlights in their eyes as they made their way to the polling area.

Objection No. 45

The employer's agents engaged in campaigning and electioneering to eligible voters who stood in line waiting to vote.

Inasmuch as they are related, I will consider Union Objection Nos. 4, 12, 18, 23, 24, 25, 29, 34, 40, 44 and 45 together. No evidence was presented at hearing in support of Union Objection Nos. 12, 23, 24, 25 or 45.[24]

The election was conducted on November 28, from 6:30 a.m. to 9:00 a.m. and 7:00 p.m. to 9:30 p.m., in the second floor education room, in the med.-surg unit, at the Employer's facility located at 2601 East Chapman Avenue, Orange, California (referred to herein as the "Hospital"). The lobby is located on the first floor at the front of the Hospital. The cafeteria is located on the first floor at the back of the Hospital, is about 30' x 20', and is open to Hospital staff and visitors to the Hospital.

In support of Union Objection No. 4, dealing with insults directed toward Union supporters, the Union presented Union Organizer Evangelina Quintana, a non-employee of the Employer, who testified that she had campaigned daily for the Union, in the Hospital cafeteria, for months leading up to the election.[25] Quintana stated that during the late afternoon or early evening on November 28, an Employer guard, who wore a bullet proof vest (Kyle Houraney), stood in the back of the cafeteria looking at her and "just laughing." No other details were provided about this incident.

In support of Union Objection No. 29, the Union presented unit employee Teresa Salvaltierra, Quintana, and non-employee Union organizer Ruth Calderon, who all testified about unit employee Juan Alvarez escorting employees to the polls on November 28. Salvaltierra testified that at about 8:00 a.m. and in the afternoon between polling sessions, she briefly saw

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[24] Regarding Union Objection No. 24, the Employer presented unit employee Philip Zoerlein who credibly testified that he served as election observer during both polling sessions and did not recall seeing any Employer observers writing down or keeping track of who voted or didn't vote [other than marking the *Excelsior* list].

[25] In the Report on Objections and Order Directing Hearing and Notice of Hearing, in support of Union Objection No. 4, the Union offered evidence of a unit employee being laughed at, but such evidence was not adduced at hearing.

Alvarez escorting people from outside the cafeteria back door to inside the Hospital.[26] Quintana testified that she saw Alvarez swipe his badge through the cafeteria time clock, between about 7:00 p.m. and 8:00 p.m., but doesn't know if he was clocking in or out.[27] Quintana testified that Alvarez used his cellphone to remind people to vote against the Union, and said the same to eligible voters who were in the cafeteria. Quintana stated that about five times Alvarez walked with an eligible voter down the hallway leading from the cafeteria toward the front of the Hospital. Quintana testified that she followed them about two or three times, and on one of those occasions, she saw Alvarez and one unidentified employee get onto the lobby elevator. Calderon testified that she also witnessed Alvarez campaigning with employees in the cafeteria and over his cellphone, but made no mention of him escorting employees out of the cafeteria. Calderon did mention that she did not see Alvarez go into the elevator at that time.

Alvarez testified that he did not escort anyone to the polling area during the morning polling session. Alvarez admitted that during the evening polling session, he escorted two voters from the cafeteria and up the elevator to show them where the polling area was. Alvarez also admitted giving voters directions to the polling area, but denied telling employees which way to vote. Alvarez also testified that the Employer did not ask him to recruit no votes.

With regard to Union Objection Nos. 18 and 34, the Union presented non-employee Union Organizers Ruth Calderon and Paul Norman, and Union Organizing Director Amado David, who all testified about alleged surveillance and about Employer CEO Don Kreitz' actions at the Hospital on November 28, which testimony is detailed below.

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[26] Salvaltierra testified that she did not understand what they were saying, because they were speaking in Spanish.
[27] Alvarez testified that he was to serve as election observer for the Employer, but did not because he arrived late. Regarding when Alvarez clocked in and out on November 28, I will rely upon his time detail report, which was received into evidence and indicates that Alvarez clocked in at 6:42 a.m., out at 8:55 a.m., back in at 6:39 p.m., and out again at 10:52 p.m.

Shortly after 6:30 a.m., Calderon saw Kreitz and one Employer guard by the lobby elevator, while employees got onto the elevator.[28] At that time, Calderon also saw another Employer guard inside the lobby front doors. For about 15 minutes between about 7:00 a.m. and 7:30 a.m., Norman saw between five and 10 unit employees waiting to get on the lobby elevator, while Kreitz and several other people walked in and out of the lobby front doors. According to Norman, Kreitz and the others would look around outside, as if they were "monitoring who was coming in and out." Norman also saw Employer Human Resources Manager Jo Anne Suehs walking around in the lobby at that time. Norman admitted that he does not know if the employees were going to vote or anything that might have been said in the lobby at that time. At about 8:55 a.m., as David made his way back to the polling area for the closing of the morning polling session, he took a photo of an unidentified man talking on a cellphone and looking down the hallway that leads to the cafeteria. David then took a photo of Kreitz at the lobby receptionist desk, where Kreitz asked the receptionist to make a public address announcement that the morning polls would close in five minutes. David testified that just before 9:00 a.m., approximately three times Kreitz talked to groups of employees as they waited about 30 seconds for elevator. David did not see Kreitz enter the elevator while the polls were open. After the polls closed at 9:00 a.m., David complained to the Board agent who was conducting the election about Kreitz standing in the lobby next to the elevator and about the unidentified man looking down the hallway. Just after 9:00 a.m., David saw Kreitz outside of the front lobby door.

Shortly before the polls re-opened at 7:00 p.m., David again saw Kreitz in the lobby. Just after 7:00 p.m., Norman saw Kreitz approach and speak to a couple of employees as they walked up to the lobby elevator, then they all walked into the administrative offices next to

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[28] Employees also use the second elevator at the Hospital, which is located near the critical care unit on the first floor. On the second floor, both elevators are about equidistant from the polling area.

the elevator. Norman stated that he did not know if these employees had already voted. At about the same time, Norman saw Houraney, Kreitz, and another unidentified man in the front of the Hospital. Houraney walked around the parking lot and talked to Kreitz. Over approximately 35 minutes, Norman saw Houraney and Kreitz come and go from the area in front of the Hospital. Norman stated that the three men were "basically watching everyone." Regarding Houraney, some unit employees asked Norman, "Who is this person?" Calderon stated that between about 7:00 p.m. and 8:30 p.m., she saw Kreitz, unidentified guards, and unidentified Employer managers in the cafeteria and walking up and down the hallway that leads from the cafeteria toward the front of the Hospital.

Norman stated that between about 8:00 p.m. to 8:15 p.m., he saw Kreitz, Houraney, and the same unidentified man standing in front of the lobby door.[29] Norman observed that the lobby was now dark, and the three men were "observing and just monitoring, walking backing and forth." Norman testified that some unit employees walked to lobby doors where the three men were and momentarily stopped before entering. Calderon came to the front of the Hospital at about 9:00 p.m. Calderon states that she saw Kreitz and about four guards facilitating the entry of unidentified persons through the side lobby door – none were turned away. David stated that also at about 9:00 p.m., out in front of the lobby, he spoke to Director of Bloodless Medicine Jason Shane, Director of Admitting Marjorie Fitzgerald, and Director of Plant Operations and Engineering Guillermo Buenrostro.[30] David saw a couple of employees there and complained to the three directors that the polls were still open so the front lobby doors

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[29] At hearing, the parties stipulated that Hospital visiting hours are from 8:00 a.m. to 8:00 p.m. and employees can enter the Hospital before and after visiting hours through a few different doors. As discussed below, just after 8:00 p.m. on November 28, the lobby was closed, lights were dimmed, and the front lobby doors were turned off and locked, but persons - primarily employees - were able to enter through a side lobby door, among other after-hours entrances.

[30] At hearing, the parties stipulated that Shane, Fitzgerald, and Buenrostro are supervisors as defined in Section 2(11) of the Act.

should remain open. David testified that they said they were there to let people in through the side lobby door. According to David, this continued until the polls closed at 9:30 p.m.

Regarding Union Objection Nos. 18 and 34, the Employer presented evidence through witnesses Director of Bloodless Medicine Jason Shane, and guards Kyle Houraney and Daniel Regalado. CEO Kreitz did not testify.

Shane testified that, among other duties, he manages compliance of the Employer's security subcontractor, U.S. Metro a.k.a. Metro Security Group, LLC. (herein Metro), which provides guard services to the Employer.[31] Shane stated that the guards' spend their time making rounds throughout the facility, making sure that doors are appropriately locked or unlocked, that the parking lots are secure, and responding to request for assistance. Shane added that these duties did not change during the critical period. Guards Kyle Houraney, Regalado, and Benjamin Horn corroborated Shane's testimony about guard duties and that the duties had not changed during the critical period. They also said that they were given no special instructions regarding their duties during the critical period, except to "keep the peace." Houraney and Regalado testified that their regular duties also include keeping an eye out for any suspicious activity. Regalado also stated that his rounds typically take him through the cafeteria and all the units, throughout the day. I credit this detailed, believable, and corroborated testimony, and will rely upon it throughout this report.

Shane testified that he was in front of the Hospital on November 28 to see if the parking lot was secure, due to the high traffic there. Shane confirmed that Fitzgerald and Buenrostro were also in front of the Hospital. Shane asked them if things looked peaceful and

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[31] At hearing, the parties stipulated that the guards who performed security services for the employer in critical period are agents of the Employer.

quiet. Shane testified that he pointed just one employee to the side lobby door, but he did not recall how many people entered there.

Regalado testified that he performed guard duties at the Hospital on November 28 from 8:00 a.m. to 6:00 p.m. Regalado stated that he was at the Hospital with Houraney for 10 to 15 minutes before he left, and he did not return that night. According to Regalado, once during the day he saw Kreitz near the gift shop that adjoins the lobby – Kreitz asked how things were going. Regalado did not recall seeing Kreitz near lobby elevator.

Houraney testified that he performed guard duties at the Hospital on November 28 from 6:00 p.m. to 12 Midnight. Houraney stated that between shortly after 8:00 p.m. and about 8:30 p.m., out in front of the lobby, he helped 10 to 12 employees get into the Hospital. Fitzgerald was also there.

Regarding Union Objection No. 40, the Union presented unit employees Mavile Suchite, Teresa Salvaltierra, Luis Estrada, Eugenia Torres, and Altagracia Trammell, Trammell's husband Lance Lee Trammell, Organizer Norman, and Organizing Director David, who all testified about alleged surveillance near the second floor polling area on November 28, which testimony is detailed below.

Estrada testified that he waited in line, in the hallway immediately outside the polling area, prior to voting during the morning polling session. While he waited in line, Estrada saw Director of Medical Surgical Unit Nancy McKinney walked past him then turn around and past again. Estrada stated that he did not see where McKinney came to or from, see her stop, or peer into polls. McKinney's office is located on the second floor, just a few feet from the polling area.

Torres testified that she served as an election observer during both polling sessions, and sat facing away from the door of the polling area. Torres stated that during the morning polling session, the only people she saw in the hallway outside of the polling area were the people that came in and voted. Torres testified that during the evening polling session, she saw a few unidentified persons pass by and heard unidentified persons conversing in the hallway outside the polling area. Torres stated that she saw McKinney pass by twice, but did not see her speak to anyone who was standing in line. On cross-examination, Torres testified that she did *not* see McKinney or any other supervisor or manager, when the polls were open, and she could not see down the hallway outside the polling area. On redirect examination, Torres changed her testimony again and said she saw McKinney pass in the hallway during the polling session. On re-cross examination, Torres explained that no one was voting when McKinney past by the polling area, because when people were in line to vote, they blocked her view of the hallway, and she would not have been able to see anyone pass by.

Altagracia Trammell testified that she arrived at the Hospital between about 6:00 p.m. and 6:30 p.m., went to the polling area, and immediately joined the line of 10 to 12 people waiting to vote. Altagracia Trammell testified that on the second floor, she saw McKinney standing next to the elevator, talking with an in-house supervisor, and walking from one side to the other, about 25 feet from the line of voters. Altagracia Trammell said "hi" to McKinney who replied in kind. Altagracia Trammell testified that while waiting in line to vote, she saw McKinney in the area for about 15 minutes. On cross-examination, Altagracia Trammell corrected her testimony to say that she observed McKinney in the area for about three to four minutes, during which she walked from the elevator, passed the polling area, and back to the elevator. Altagracia Trammell then confirmed that all of this occurred within 15 minutes of her

arrival to the Hospital that evening, and her interaction with McKinney was in the first five minutes that she was in line. Lance Trammell testified that upon arriving at the Hospital, they immediately went to the polling area, where they saw McKinney walk past two or three times within their first five minutes there. Lance Trammell stated that McKinney walked briskly and turned down an adjoining hallway, and that he saw her for a total of about 45 seconds. Lance Trammell estimated that there were about three employees in line in front of them, during the 10 to 15 minutes they waited in line.

Suchite testified that she saw no managers or supervisors on the second floor while she was there to vote.

Salvaltierra testified that she served as an election observer and saw no managers or guards on the second floor on November 28.

Organizing Director David testified that at the morning pre-election conference, the Union asked Employer to cover the glass door of the staffing office adjacent to polls. The Employer covered the glass door prior to opening of the polls. David stated that at the pre-election conference, the Board agent said supervisors should stay out of polling area, but did not define any no-electioneering zone.[32] Board "VOTING PLACE - NO ELECTIONEERING OR LOITERING" signs (herein voting place signs) were posted in the hallway immediately outside the second floor polling area. No evidence was presented that voting place signs were posted anywhere else in the Hospital. Norman credibly testified that the Board agent did not discuss no-electioneering zones.

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[32] I do not credit the rest of David's testimony about any no-electioneering zone or signage. The transcript clearly shows that David intentionally tried to not understand such questions on cross-examination, gave painfully contorted and non-forthcoming testimony to serve his own interests, often did not address the question asked, and ultimately admitted that he was forwarding his opinions, not facts. Such calls into question the credibility that can be assigned to any other testimony from David.

At the end of the morning voting session, David complained to the Board agent conducting the election about Kreitz standing in the lobby next to the elevator, the unidentified man looking down the hallway, and that the glass door was again uncovered. David admitted at hearing that he did not know who took paper down or if any manager or supervisor was in the staffing office while the polls were open.

Regarding Union Objection No. 40, Suehs gave credible, uncontroverted testimony that no voting place signs were posted on the first floor.

In support of Union Objection No. 44, the Union presented non-employee Union organizers Ruth Calderon and Myra Casas, who testified about guards intimidating unit employees by shining flashlights in their eyes on November 28, which testimony is detailed below.

As mentioned above, Calderon was at the front of the Hospital at about 9:00 p.m. – long after sunset and the end of visiting hours. On direct examination, Calderon testified that there were four guards shinning flashlights in the eyes of unit employees before letting them into the lobby. Later , on cross-examination, she testified that she saw two guards, Kyle and Trevor Houraney shining flashlights into people's eyes, but she did not recognize who they were. Calderon explained that she viewed this nighttime incident from the other side of Chapman Avenue, which is a couple hundred feet away. According to Calderon, CEO Kreitz was also present.

Casas testified that during the tally of ballots, when she and others were being let in through a side lobby door, she saw guard Trevor Houraney shine his flashlight into the face of an unidentified non-employee Union organizer. Casas stated that after the tally of ballots was completed, when she and others were being let out of the Hospital, she saw guards Kyle and

Trevor Houraney shine a flashlight in the face of an unidentified person. Calderon did not know if any unit employees observed these incidents.

Regarding Union Objection No. 44, the Employer presented guard Kyle Houraney who testified that after the tally of ballots was completed, he was patrolling the parking lot at about 10:20 p.m. or 10:25 p.m. According to Kyle Houraney, when a group of Union visitors did not respond to his verbal warnings to move for an oncoming car, he shined his flashlight at mid-body level and swung it side to side, which caused the group to move out of the way of the car. Then one of the Union visitors pulled out a cellphone and twice tried to take a picture of Kyle Houraney or the Hospital. Both times, Kyle Houraney shined his flashlight at his cellphone and told him that he can't take photos on Hospital property or of him. Houraney testified that other than this incident, he did not shine his flashlight in the face or the eyes of anyone on November 28.

Discussion of Objection Nos. 4, 12, 18, 23, 24, 25, 29, 34, 40, 44 and 45

When considering allegations of impermissible electioneering at the polls, the Board determines whether the conduct interfered with the free choice of voters, taking into consideration a number of factors, including: (1) the nature and extent of electioneering, (2) whether it was conducted by a party or by employees, (3) whether the conduct occurred in a designated no electioneering area, and (4) whether the conduct contravened the instructions of a Board agent. The Board also examines the nature and extent of the alleged electioneering. *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1119 (1982), enfd. 703 F.2d 876 (5th Cir. 1983). Therein, union officials distributed campaign literature and spoke to employees just outside a set of glass-paneled doors that opened from the parking lot into a corridor that led to the polling place. Accordingly, the Board held that the union's conduct was not objectionable, reasoning that the electioneering took place away from the polling place, was not directed at

employees waiting in line to vote, did not occur in a designated no-electioneering zone, and did not violate any instructions of the Board agent. The Board also relied on the fact that the glass-paneled doors, which remained closed throughout the polling, effectively insulated voters from the electioneering. See also *Harold W. Moore & Son*, 173 NLRB 1258 (1968) (no objectionable electioneering, where conversations were 30 feet from the building entrance, with voting area 30 feet inside entrance).

The Board has considered the potentially objectionable conduct by parties at polling places. In *Milchem, Inc.*, 170 NLRB 362 (1968), the Board ruled that an election will be set aside if party to the election engages in prolonged conversation with prospective voters waiting in line to cast their ballots, regardless of the content of the conversation.

An employer violates Section 8(a)(1), when it surveils employees engaged in Section 7 activity by observing them in a way that is out of the ordinary and thereby coercive. Indicia of coerciveness, include the "duration of the observation, the employer's distance from its employees while observing them, and whether the employer engaged in other coercive behavior during its observation." *Aladdin Gaming LLC*, 345 NLRB 585, 586 (2005). The same conduct may also be found to be objectionable. In this regard, the Board has considered whether the presence of party representatives constitutes objectionable surveillance. In *ITT Automotive*, 324 NLRB 609, 623-624 (1997), a judge held and the Board affirmed that the "continued presence" of supervisors and managers "at a location where the employees were required to pass in order to enter the polling area," as well as from where they observed the employees while waiting at the top of the stairs and on the balcony outside the door to the polling place, did interfere "with the employees' freedom of choice in the election." In *Performance Measurements Co.,* 148 NLRB 1657, 1659 (1964), the Board held that the continued presence of

the employer's president by the door to the polling place for prolonged periods and employees had to pass within 2 feet of him to gain access to the polls. Therein, the Board held that "the continued presence of the Employer's president at a location where employees were required to pass in order to enter the polling place" constituted objectionable conduct. Later, in *Electric Hose & Rubber Co.*, 262 NLRB 186, 216 (1982), the Board found as objectionable the presence of one supervisor 10 to 15 feet from the entrance of the voting area and the presence of two other supervisors in areas that employees had to pass in order to vote. The Board in *Electric Hose* concluded that the only plausible explanation for the supervisors' conduct was to convey to employees the impression of surveillance.

However, the Board has also found less problematic conduct as not objectionable. In *J.P. Mascaro & Sons*, 345 NLRB 637 (2005), the Employer president, who did not have an office at the location involved, stood in front of the facility for most of the day, about 30 feet from the front door of the facility, beyond which was a 10-foot wide hallway leading to the polling area. The president chatted and shook hands with employees. From his location, the president had no direct view of the polling area. Under *Boston Insulated*, supra, the Board concluded that such conduct did not constitute objectionable electioneering. Distinguishing the facts in *Mascaro* from those in *ITT Automotive*, *Performance Measurements*, and *Electric Hose*, the Board further ruled that such conduct did not constitute objectionable surveillance. Similarly, the Board in *Blazes Broiler*, 274 NLRB 1031, 1032 (1985) found no objectionable conduct in a union agent's sitting in a restaurant approximately 30 feet from the polling area because the agent had no direct view of the entrance to the voting area. The Board found that it was significant that although the agent "could see who entered the hallway leading to the banquet room ... [h]e had no way of knowing who was entering the hallway to vote ...."

In the case at hand, with regard to Union Objection No. 4, the record evidence indicates that a non-employee Union representative saw an Employer guard laugh at her. Clearly, such does not rise to the level of objectionable conduct.

Union Objection No. 29 deals with unit employee Juan Alvarez escorting employees to the polling area.[33] Salvaltierra gave non-specific testimony about Alvarez escorting people somewhere at 8:00 a.m. and in the afternoon between polling sessions. Inasmuch as there was no polling in the afternoon, such cannot constitute objectionable conduct. Alvarez gave detailed testimony regarding his conduct on November 28, and testified that he did not escort voters to the polls during the morning polling session. Accordingly, I credit Alvarez' testimony over Salvaltierra's testimony, which was almost entirely devoid of detail and, thus, cannot be credited.

Quintana testified that Alvarez escorted five voters, but she did not see him lead any of them all the way to the polling area. Alvarez testified that he escorted two voters from the cafeteria and up the elevator to show them where the polling area was. Because Quintana's knowledge in this regard is so limited, and because of the completeness of Alvarez' testimony, I must credit his version of events. Further, I rely on Alvarez' time detail report, which indicates that he was on the clock for the entire evening polling session. The hearing adduced no evidence that the Employer instructed Alvarez or was aware that he escorted any voters, or that the Employer knew that he was on the clock.

Regarding the escorting of employees and Alvarez' other activities, the record evidence does not establish that the Employer vested Alvarez with actual or apparent authority, i.e., that other "employees would reasonably believe that" Alvarez was "speaking and acting for

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[33] Alvarez' activities in and around the cafeteria will also be addressed in later objections.

management." *Pan-Oston Co.*, 336 NLRB 305, 306 (2001). Thus, Alvarez did not act as an Employer agent. However, elections may also be invalidated because of third party conduct which interferes with the right of employees to a free and uninhibited choice in the selection of a bargaining representative to such extent that it renders "a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802 (1984). Alvarez' alleged conduct does not approach that which could create a general atmosphere of fear and reprisal rendering a free election impossible. *O'Brien Memorial*, 310 NLRB 943 (1993).

In the case at hand, there is no evidence that Alvarez electioneered with the employees that he escorted to the polling area, or that he entered the polling area or any no-electioneering zone with them.[34] Moreover, there is no evidence of a *Milchem* rule violation or that Alvarez acted in defiance of instructions from a Board agent. *Boston Insulated*, supra. Also see, e.g., *Garner Aviation Service Corporation, et al.*, 114 NLRB 293. (1955) (not objectionable where a supervisor transported three employees to the polls and entered the election area with them, but left when asked to do so and did no electioneering); and *Miami Paper Board Mills, Inc., et al.*, 115 NLRB 1431 (1956). Accordingly, I cannot conclude that Alvarez' escorting of employees amounts to objectionable electioneering.

With regard to surveillance, in addition to his not being an agent of the Employer, there is no record evidence indicating that Alvarez saw employees in the polling area (other than possibly when he cast his own ballot), that he had a continued presence near the polls, or that he engaged in any coercive behavior. Thus, such conduct does not constitute objectionable surveillance of voters.

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[34] The hearing failed to adduce any evidence that the no-electioneering zone extended beyond the second floor education room, in the med.-surg unit, or beyond where voting place signs were posted in the hallway immediately outside the polling area, as shown in Employer Exhibit 12 – a photo of this hallway – that was received into evidence at hearing.

Moreover, having concluded that Alvarez escorted just two voters up to the second floor, and the tally of ballots indicates that the "yes" votes trail by 42 votes, such cannot provide a basis for setting aside the election. Finally, inasmuch as conduct which may have occurred in or around the cafeteria is distant from the polling area, I cannot conclude that escorting voters in or around the cafeteria is objectionable. See *Environmental Maintenance Solutions, Inc.*, 355 NLRB No. 58 (2010) (not objectionable where employee loitered near the polls, but not in the area where voters were lined up to get their ballots or waiting to vote, and engaged in conversations lasting up to two minutes – "Conversations away from the polling area are not subject to the strict rule against sustained conversations with prospective voters enunciated in *Milchem, Inc.*, 170 NLRB 362 (1968)."

Union Objection Nos. 18 and 34 chiefly deal with the presence of CEO Kreitz and guards in the lobby and front of the Hospital, and possible surveillance of voters on November 28. Union witnesses testified that they witnessed an Employer presence in or in front of the lobby as follows: Kreitz and two guards shortly after 6:30 a.m.; Kreitz and Manager Suehs for 15 minutes between about 7:00 a.m. and 7:30 a.m.; Kreitz speaking to employees from about 8:55 a.m. to 9:00 a.m.; Kreitz just after 9:00 a.m.; Kreitz just before 7:00 p.m.; Kreitz speaking to employees and walking with them into administrative offices just after 7:00 p.m.; Kreitz, guard Houraney, and an unidentified man just after 7:00 p.m.; Houraney in parking lot just after 7:00 p.m.; Houraney and Kreitz come and go from about 7:00 p.m. to 7:35 p.m.; Kreitz, guard Houraney, and an unidentified man from about 8:00 p.m. to 8:15 p.m.; Kreitz with about four guards at about 9:00 p.m.; and Kreitz with about three directors from about 9:00 p.m. to 9:30 p.m. Such testimony also included the incident with the unidentified man talking on a cellphone, and about Kreitz, unidentified guards, and unidentified Employer managers in the hallway that

leads from the cafeteria toward the front of the Hospital. No evidence was presented to rebut this testimony. In fact, Employer witnesses confirmed some of the above details.[35] Based on these facts, it appears that for about one to two of the five hours that the polls were open, Kreitz, Suehs, three directors, guards and/or unidentified persons were in or in front of the lobby area, and briefly in a hallway.[36] No evidence was presented about guards escorting employees. The hearing did not adduce evidence of employees engaging in protected concerted activities at these times and locations.

Under the *Boston Insulated* test, while it is not disputed that those mentioned immediately above are representatives of the Employer, there is no evidence that they electioneered in or in front of the lobby area or hallways. The same applies to the unidentified persons mentioned above. The "no electioneering" area did not extend beyond the part of the second floor hallway immediately outside the polling area. There is no evidence that these Employer representatives, guards and others were near the polling area while the polls were open or that they had any contact with voters waiting in line to vote. *Milchem*, supra. Also see, e.g., *U-Haul Co. of Nevada, Inc.*, 341 NLRB 195, 197 (2004) (although a union representative spoke to a small number of voters, his conduct did not violate *Milchem* rule where the conversations did not occur in an established no-electioneering zone, the voting area, or near the line of voters). Although David raised his concerns about Kreitz with the Board agent, there is no evidence that the Board agent issued any instructions restricting the presence of Employer representatives in or

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[35] Inasmuch as their testimony was detailed, forthcoming, internally consistent, corroborated by other witnesses, and highly plausible, I credit the testimony of Shane, Houraney and Regalado concerning guard duties and their actions during the critical period.

[36] As discussed below, there is little or no reliable evidence that more than one uniformed guard worked at the Hospital at any given time on November 27 or 28, other than possibly for a few minutes at their shift change times.

in front of the lobby area. Accordingly, there is no basis to find that Kreitz, guards or others mentioned above engaged in objectionable electioneering.

Regarding the allegation of surveillance, Kreitz' activities are strikingly similar to that of the employer president in *Mascaro*, and are clearly not as egregious as the conduct found objectionable in *ITT Automotive*, *Performance Measurements*, and *Electric Hose*. It is important to note that the conduct at issue did not occur on the same floor of the Hospital. Moreover, it is undisputed that unit employees are able to enter the Hospital from several different entrances at any time, and there are two elevators – one in the lobby and one by the critical care unit – that employees used to reach the second floor on November 28. Thus, there was no situation where employees had to pass Kreitz, guards or others in order to reach the polling area. Additionally, Norman's assertion that Employer representatives, guards and/or others were "monitoring," "watching," and "observing" people in front of the Hospital, did not include evidence of any record being made of what was allegedly surveilled. Moreover, as noted above, there is no evidence of employees engaging in protected concerted activities at these times and locations. Finally, the record evidence, detailed in later sections of this Report, indicates that after the end of visiting hours at 8:00 p.m. on November 28, the Employer had legitimate concerns about non-employees accessing the Hospital, and also wanted to insure employee access to the facility, especially during the last 90 minutes of the election. Based on reliable testimony from witnesses from both parties, I conclude that the most plausible explanation for the presence in front of the lobby after 8:00 p.m. was to help facilitate the ingress of employees into the Hospital. Thus, the record evidence does not establish that Employer representatives, guards or others engaged in objectionable surveillance.

Union Objection No. 40 asserts that Employer agents engaged in surveillance outside the polling area. Estrada offered credible testimony that he twice saw Director McKinney walk down the hallway where he was waiting in line to vote. Torres offered confused and self-contradictory testimony, which evolved during rounds of direct and cross examination. In the end, she settled on McKinney passing in the hallway while no one was in line to vote. Altagracia Trammell testified that prior to the opening of the evening polling session, she saw McKinney for about three to four minutes, in the hallway outside the polls. Trammell saw McKinney talk with an in-house supervisor, about 25 feet from where Trammell was in line with other voters, and also walk down the hallway and back again. Trammell's husband Lance testified that at that time he also saw McKinney briskly walk past two or three times. Employee Suchite and Union observer Salvaltierra testified that they saw no managers present when they were in the polling area. No witness testified that McKinney spoke to anyone waiting in line to vote or that she engaged in surveillance by notating anything. It's also important to note that McKinney's office is located on the second floor, just a few feet from the polling area.

Based on the evidence above, I find that McKinney briefly walked past the polling area several times on November 28, but there is no evidence that she electioneered near the polls, engaged in prolonged conversation with prospective voters waiting in line to cast their ballots, or engaged in surveillance of the voting process. Moreover, with McKinney's office and the elevators being so close to the polling area, it is highly probable that she would often walk by those places during her work day. Accordingly, McKinney's brief presence outside of the polling area does not rise to the level of objectionable surveillance.

The facts are undisputed regarding possible surveillance through the glass door of the staffing office adjacent to polls. At the pre-election conference, the Union asked Employer

to cover the glass door, which it did. At the end of the morning polling session, the glass door was again uncovered, and the Union complained about this to the Board agent. No evidence was presented regarding who uncovered the door, when it was uncovered, or if any manager or supervisor was in the staffing office while the polls were open. Accordingly, the facts related to this uncovered door provide no basis for finding objectionable surveillance. See *Patrick Industries, Inc.*, 318 NLRB 245 (1995) (three supervisors' presence in a location 72 feet from the voting booth for 20 minutes during the polling time was not sufficient evidence to find that their conduct was objectionable); and *Mountaineer Park, Inc.*, 343 NLRB 1473, 1484 (2004) (without evidence that the employer was stationed for an "extensive period of time," the Board could not find that there was a "continued presence," or that employees were required to pass by the employer in order to vote). Though there is no evidence of this, even if a supervisor was in the staffing office, the mere presence of a supervisor near the polls without more does not constitute election interference. *The Standard Products Company*, 281 NLRB 141, 164 (1986).

Union Objection No. 44 contends that Employer guards intimidated unit employees by shining flashlights in their eyes after sunset on November 28, in dark areas in front of the lobby. Calderon testified that from a great distance she saw two or four guards shine flashlights into the eyes of unknown persons. Such shifting and non-specific testimony cannot be relied upon. Casas testified that after the close of the final polling session, during the tally of ballots, a guard shined his flashlight into the face of an unidentified non-employee Union organizer and an unidentified person as they entered and exited the Hospital. No evidence was presented of any employee involvement with these incidents. The testimony of Houraney, which I have credited, establishes that he used his flashlight to direct pedestrians and obscure a photograph, and that he did not otherwise shine his flashlight in the face or the eyes of anyone on

November 28. Moreover, because the testimony of Casas and Houraney places such events after the close of the polls, no interference with the election can be found or inferred.

Based on the evidence above, I conclude that Employer guards used flashlights during the election for routine guard duties such as safety and security, which use cannot, in these circumstances, be found to be intimidating. Inasmuch as there is no evidence of any employee involvement with these incidents, such incidents cannot rise to the level of objectionable misconduct.

For these reasons detailed above, I recommend that Union Objection Nos. 4, 12, 18, 23, 24, 25, 29, 34, 40, 44 and 45 be overruled.

Threats

Objection No. 9

> The employer, by its representatives, informed employees that if they selected the Union to represent them, bargaining with the Union as their representative would be futile.

Objection No. 27

> The employer, by its agents, told employees they would lose their benefits if the Union won the election.

Inasmuch as they are related, I will consider Union Objection Nos. 9 and 27 together.

In support of Union Objection Nos. 9 and 27, the Union offered testimony from non-employee Union Organizer Quintana and unit employee Salvaltierra. The Employer offered rebuttal testimony from COO/CNO Yeh and related testimony from Human Resources Manager Suehs.

Quintana testified that one day between about November 7 and 14, at about 1:30 p.m., in the cafeteria, she witnessed a conversation between Union Organizer Calderon and

COO/CNO Yeh, in the presence of unit employee Salvaltierra, and other unidentified unit employees. Regarding Yeh's comments, Quintana first testified, "I do recall Ada [Yeh] saying that the Union was not going to, you know, go in at Chapman. She was going to make sure that it never went through. And she also stated that the Union will never bargain with Chapman ever again." Quintana then testified that Yeh said, "The Union will never come in here. I will make sure that it never comes in here." Calderon replied, "Don't be so sure." According to Quintana, Yeh then said, "We will never bargain with the Union ever again."

Counsel for the Employer asked Calderon if Yeh or other Employer managers made any comments to her about the Employer not bargaining with the Union? Calderon testified that neither Yeh nor other Employer managers ever told her that the Employer would not bargain with the Union. However, Calderon added that prior to October 2012, Eleanor Ghan, while working at Coastal, told Calderon that a unit at Coastal was going to be closed and moved to Chapman Hospital, because it was non-union. Calderon stated that no unit employees of the Employer heard that statement. Inasmuch as this alleged conversation occurred prior to the critical period and was not witnessed by unit employees, I cannot rely on it in support of any objection.

Counsel for the Union asked Salvaltierra if Yeh asked made any comments about what would happen if the Union won or didn't win? Salvaltierra replied, "She just told us that it's up to us if we want the Union or not," and that Salvaltierra did not recall anything else that Yeh said in this regard.

Yeh testified that she did not tell Union organizers in the presence of employees that the Employer would never bargain with the Union again. Yeh testified that her positive experience bargaining with the Union at Coastal proves that she would have no problem dealing

with the Union at the Employer. Numerous times, and in great detail, Yeh credibly testified that she told this to unit employees and Union representatives, including Quintana.[37]

Regarding Union Objection No. 27, Salvaltierra also testified that on an unidentified date, she saw Employer Educator JoAnne Bermudes call people into her office, but she was not present for any such conversations. According to Salvaltierra, one person later told her that Bermudes said that if they vote for the Union, they would lose their job. Inasmuch as this is uncorroborated hearsay evidence, I cannot rely on it in support of any objection.[38]

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[37] On March 8, 2013, counsel for the Employer filed with the undersigned Hearing Officer the Employer's Unopposed Motion To Correct Errors In Transcript, which Motion established that the Employer and Union agreed that the hearing transcript should be corrected at 2467:4, 2479:7, 2479:18 to reflect Yeh's actual testimony that she "can" work with the Union, which corrected testimony is consistent with the rest of her testimony. Accordingly, I hereby receive and adopt the Motion and shall rely on the transcript as corrected. A copy of the Motion is attached hereto as Exhibit A.

[38] Moreover, with regard to supervisor or agent status, Salvaltierra offered testimony about Bermudes' role in training employees on skills, and that Bermudes does not discipline or schedule employees. Salvaltierra gave vague testimony that one time Bermudes played a role in evaluating employees, but Salvaltierra could not recall the year in which this occurred. This is insufficient evidence to establish that Bermudes is a supervisor as defined in Section 2(11) of the Act.

In its post-hearing brief, the Union argued that if Bermudes was not found to be a supervisor, she should be found to be an agent of the Employer. In support of this, the Union cites *Mid-South Drywall Co., Inc.*, 339 NLRB 480 (2003), wherein the Board agreed with the judge's finding that a leadman was an agent of the respondent. The Board reasoned:

> "It is well established that where an employer places a rank-and-file employee in a position in which employees would reasonably believe that the employee speaks on behalf of management, the employer has vested that employee with apparent authority to act as the employer's agent, and the employee's actions are attributable to the employer. See *Pan-Oston Co.*, 336 NLRB 305, 305-306 (2001). In determining whether statements made by individuals to employees are attributable to the employer, the test is whether, under all the circumstances, the employees "would reasonably believe that the employee in question [alleged agent] was reflecting company policy and speaking and acting for management." *Zimmerman Plumbing & Heating Co.*, 325 NLRB 106 (1997), enfd. in relevant part 188 F.3d 508 (6th Cir. 1999), quoting Waterbed World, 286 NLRB 425, 426-427 (1987), enfd. 974 F.2d 1329 (1st Cir. 1992)."

Therein, the leadman was found to be an agent of the employer inasmuch as he often was the highest ranking employee present on jobsites that he ran, directed the employees' daily job activities, ordered materials, told employees what time to come to and leave work, communicated personnel decisions to employees, distributed checks to employees on the owners' behalf, kept track of employees' hours, answered questions on work duties throughout the day, informed the employees when to finish their work and go home, and was referred to as a "field supervisor."

Additionally, in its post-hearing brief, the Union argued that Yeh's alleged comments to employees, that any raise they may receive would have to be paid to the Union in dues, constitute threats of loss of benefits. Such evidence is detailed and discussed above in relation to Union Objection Nos. 3 and 5. However, Quintana testified that she did not hear Yeh make any statements to employees about wages with respect to if the Union were to win the election.

Discussion of Objection Nos. 9 and 27

In *Fieldcrest Cannon, Inc.*, 318 NLRB 470 (1995), the Board, agreeing with the administrative law judge, found an employer's statements that it "would not have to bargain in good faith if the Union won; that employees would have something to lose if the union came in; . . . that the Employer would go to the negotiating table with a blank piece of paper year after year; that it would tie up the Union in litigation for years; and that the employees would never get a contract" were "egregious" threats of futility in violation of Section 8(a)(1)). The Board has also found such conduct to be objectionable. See *Newburg Eggs, Inc.*, supra. (objectionable where the employer implied that, "it was futile for [employees] ... to vote for the Union"). However, regarding possible threats of futility, "[t]he Board has consistently held that, absent threats or promise of benefits, an employer may explain the advantages and disadvantages of

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The case at hand is easily distinguishable inasmuch as no evidence was proffered that Bermudes had any such duties. Rather, the only detailed information about Bermudes duties came through Human Resources Manager Suehs who testified that Bermudes is an educator for the Subacute Unit, and regulation requires educators in subacute units. According to Suehs, Bermudes instructs, trains and observes employees on their skills, but has no 2(11) authority. I credit this testimony inasmuch as Suehs, as the human resources manager, is uniquely qualified to give accurate and detailed testimony about employees' duties and responsibilities. Further, nothing in the record establishes that employees would reasonably believe that Bermudes spoke for the Employer or had apparent authority to do so. Accordingly, even if the hearsay evidence related to Bermudes was corroborated by witnesses, which it was not, the record does not establish that she is an Employer agent (or supervisor), and therefore the Employer cannot be held responsible for such alleged conduct. Finally, as phrased by Salvaltierra, the alleged threat is vague in nature.

collective bargaining in order to convince employees that they would be better off without a union." *Medieval Knights, LLC*, 350 NLRB 194 (2007).

With regard to threats of futility, statements are objectionable when, in context, they effectively threaten employees with the loss of existing benefits and leave them with the impression that what they may ultimately receive depends in large measure upon what the union can induce the employer to restore. *Plastronics, Inc.*, 233 NLRB 155 (1977).

In the case at hand, Quintana testified that she witnessed Yeh make a statement of futility in the presence of non-employee Union Organizer Calderon, unit employee Salvaltierra, and other unidentified unit employees. Calderon testified that she witnessed no such comments. Salvaltierra testified that all that Yeh said, regarding what would happen if the Union won, was that the choice was up to employees. Inasmuch as the statement of futility was not corroborated by the alleged witnesses, I discredit Quintana's testimony on that subject. Moreover, I credit Yeh's detailed testimony in which she denies having made the allegedly objectionable statements. Accordingly, the hearing has adduced no reliable evidence in support of Union Objection No. 9.

Regarding Union Objection No. 27, Yeh's campaign comments about Union dues being about two percent are consistent with the two percent rate cited in the Union's "Ask Ruth the Truth" flier and in the "Because YOU Asked...Volume 4" flier, which Suehs testified was produced by the Employer. Such campaign propaganda about union dues is verifiable by employees. See *Newburg Eggs, Inc.*, supra; *York Furniture Corp.*, 170 NLRB 1487 (1968) (dues-related comments occurring four days before an election did not invalidate the election, where such comments were campaign propaganda that could be independently verified); and *Kalin Construction Co.*, 321 NLRB 649, 652 (1996). Moreover, the hearing adduced no

evidence that Yeh told employees that any raise they would receive would have to be paid to the Union in dues. Accordingly, I find no evidence that Yeh's comments about Union dues constitute any objectionable threat of lost benefits.

For these reasons, I recommend that Union Objection Nos. 9 and 27 be overruled.

Campaign Postings and Board Neutrality

Objection No. 7

> The employer, by its agents, made material misrepresentations regarding National Labor Relations Board proceedings and/or material misrepresentations about the neutrality of the National Labor Relations Board.

Objection No. 16

> The employer, by its agents, made captive audience speeches to employees within 24 hours before the scheduled time of the Board conducted election.

Objection No. 38

> The employer, through its agents, posted anti-union flyers inside a locked Human Resources Bulletin Board, directly underneath the official NLRB election notice, while prohibiting pro-Union supporters from posting any pro-Union flyer on any bulletin board.

Inasmuch as they are related, I will consider Union Objection Nos. 7, 16 and 38 together. No evidence was presented at hearing in support of Union Objection Nos. 7 or 16.[39]

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[39] In the Report on Objections and Order Directing Hearing and Notice of Hearing, in support of Union Objection No. 7, the Union asserted that managers told employees on November 7 that they should sign their ballots. Attached thereto is a copy of a letter dated November 21, from CEO Kreitz, which was mailed to unit employees at home. The letter reads in relevant part, "I am concerned because some employees have reported being told to "write their name" on the ballot. Writing your name on the ballot will invalidate your vote and your selection. This is a **secret** ballot election and any ballots that have your name on them may not be counted. Please do NOT write on the ballot. Only mark an "X" in the Yes or No box." (Emphasis in original.) At hearing, Union-proffered witness Altagracia Trammell testified that on or about November 20 or 21, Director McKinney gave her an unmarked and unsigned sample ballot prepared by the Employer and told her, "This is how the voting is going to look like. You don't have to sign anything. You just have to put what you desire." Additionally, COO/CNO Yeh testified that at the Employer conducted "Town Hall Meetings" with unit employees on November 26. At the 9:30 a.m. meeting, employees said that they had been told to sign their ballot in the upcoming election. Yeh told them, "[D]on't sign

In support of Union Objection No. 38, the Union offered testimony from non-employee Union Organizers Ruth Calderon, Evangelina Quintana, and Paul Norman, and unit employee Eugenia Torres. For its part, the Employer presented Human Resources Manager Jo Anne Suehs and COO/CNO Ada Yeh regarding this objection.

The "Human Resources" bulletin board is an enclosed case, which is mounted on the wall of the hallway just outside the cafeteria. Photographs of the bulletin board received into the hearing record reveal that it has three glass doors, one lock, and measures about 72" x 36". Suehs testified that she posted the official Board Notice of Election inside the case. The Employer does not dispute that an anti-Union flier was posted inside the bulletin board. The flier, titled "Union Math=taking 2% of your $$ - Don't believe their promises..," compares information about past raises at the Employer, the Coastal collective-bargaining agreement, and two percent union dues, and ends with "VOTE NO." (Emphasis in original.)[40] The hearing adduced no evidence that anyone requested to post pro-Union fliers on Hospital bulletin boards, or attempted to do so.

Calderon testified that on November 23, 24 and 25 (Thanksgiving weekend), she observed an anti-Union flier posted inside the bulletin board, which she photographed. Calderon testified that she witnessed a few unit employees looking at the flier on the bulletin board, unit employees told her that they had seen the flier on the bulletin board, and she spoke to four to six

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the ballot, just mark what you want." Yeh described the secret ballot process to employees and showed them a poster-size version of the sample ballot. None of this evidence indicates that the Employer told employees to sign their ballots, or made material misrepresentations regarding Board proceedings and/or neutrality. No other evidence was presented on this issue.

Regarding Union Objection No. 16, after some initial confusion on the dates, Estrada testified that on November 26 at 9:00 p.m. he and other unit employees attended an anti-Union meeting at the Hospital. No other evidence was presented on this issue. Clearly, this meeting was conducted prior to the 24 hours before the scheduled time for an election. *Peerless Plywood Co.*, 107 NLRB 427, 429 (1954).

[40] The front side of the flier was the only portion visible when it was posted in the bulletin board. A copy of the front side of this flier is attached hereto as Exhibit B.

unit employees about this posted flier. Significantly, Calderon testified that she did not speak to the Employer about this posted flier. Calderon states she did not see who posted the flier, but noticed on Monday, November 26, at 11:00 a.m., that it was gone.

Quintana testified that on November 24 and 25, she observed the same anti-Union flier posted inside the Human Resources bulletin board. Quintana also took photographs of the flier, which overlapped the bottom of the official Board Notice.[41] Quintana stated that she never saw pro-Union fliers posted on bulletin boards at the Hospital because "they were never allowed." The Union elicited no additional evidence regarding this assertion.

Torres testified that she saw pro-Union and anti-Union fliers posted on the bulletin board in the medical-surgical unit, but provided no specifics about this.

Neither Calderon nor Quintana tried to open the bulletin board, but, according to Quintana, her young son tried to open it by pushing on it, but it did not open. Union Organizer Norman testified that he also saw the flier in the bulletin board, but did not know if it was locked.

Suehs testified that on or about Monday, November 26, she first became aware of the anti-Union flier in the bulletin board, when Employer Attorney Barbra Arnold notified her of it. Suehs stated that she immediately removed the flier. Suehs stated that she did not know who, besides her, had a key to the bulletin board, but it can be opened without a key. Suehs maintained that she did not know who produced the anti-Union flier or posted it inside the bulletin board. Suehs testified that she helped prepare Employer "Because YOU Asked" fliers, and she approved them before the Employer mailed them to employees' homes, but that she was not involved in the approval of other campaign documents. Suehs also stated that postings are

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[41] Copies of Calderon and Quintana's photographs were received into evidence at hearing.

not specifically addressed in the Employer's "Solicitation and Distribution" policy and, therefore, any flier could have been posted in Hospital cafeteria.[42]

Yeh testified that no one from the Union spoke to her about the anti-Union flier being inside the bulletin board.

Discussion of Objection No. 38

An employer "is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a 'threat of reprisal or force or promise of benefit.'" *NLRB v. Gissel Packing Co.*, supra.

Under *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982), the Board does not inquire into the truth or falsity of campaign material and does not set aside elections on the basis of misleading campaign statements. The only exception to this rule specified by the Board was that it would set aside an election where a party has used forged documents which render voters unable to recognize propaganda for what it is. *AWB Metal, Inc.*, 306 NLRB 109 (1992)

Extrinsic evidence such as the circumstances of the document distribution could be considered in analyzing whether the document has the tendency to mislead employees into believing that the Board favors one of the parties to the election. *Ryder Memorial Hospital*, 351 NLRB 214 (2007); *3-Day Blinds, Inc.*, 299 NLRB 110, 111 (1999); *Baptist Home for Senior Citizens*, 290 NLRB 1059, 1060 (1988). Circumstances may dictate whether campaign documents, of unknown origin, are likely to mislead employees into assuming the Board prepared such propaganda and that it endorsed the Petitioner. *Ryder* at 223.

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[42] A copy of the Employer's "Solicitation and Distribution" policy was received into evidence at hearing. My inspection of the policy corroborates Suehs' statement that postings are not addressed therein.

In the case at hand, it is undisputed that the anti-Union flier was posted inside the Human Resources bulletin board over the Thanksgiving weekend. However, the hearing adduced no evidence regarding who produced or posted the flier. The flier appears to be in the same format and amateur style of other campaign fliers, of unknown origin, which were received into evidence at hearing. This flier is altogether different than the "Because YOU Asked" fliers produced and distributed by the Employer. One difference is that the "Because YOU Asked" fliers clearly states that they are "distributed by Chapman Medical Center." Also, un-rebutted testimony indicates that the bulletin board can be opened without a key, so the flier could have been placed there by almost anyone. Based on the above facts, I cannot conclude that the flier was produced or posted inside the bulletin board by the Employer. It is significant that the Union did not inform the Employer about the posted flier and that Suehs took it down as soon as she became aware of it.

The flier does not contain any threat of reprisal or force, promise of benefit, or forgery, so no analysis under *Gissel* or *Midland* is necessary. Moreover, inasmuch as the flier does not contain any sample ballot, there is no need to consider it under *Ryder* (when a party utilizes facsimiles of official Board ballots, the Board's two-sentence disclaimer must be present on the ballot or a new election will be ordered).

The flier was posted next to the official Board Notice and does not clearly identify the party responsible for its preparation. However, given (1) the similarity between style and message of this flier and other campaign fliers, of unknown origin, which were used during the campaign, (2) the clear differences with the Employer's "Because YOU Asked" fliers, and (3) the obvious differences when compared to the official Board Notice, the flier would not have the tendency to mislead employees into believing that the Board favors one of the parties to the

election. *Ryder*, supra. Additionally, immediately above the flier, on the official Board Notice, appeared language confirming the Board's neutrality, which is now used in all elections. The Notice reads, in relevant part: "The National Labor Relations Board is an agency of the United States Government, and does not endorse any choice in the election." Accordingly, I conclude that this posted flier would not be likely to mislead employees into assuming the Board prepared the flier or that it endorsed any choice in the election. Rather, I conclude that employees who saw the posted flier could reasonably conclude that this was simply more campaign propaganda from interested parties or persons, not from the Board.

In light of the above facts and conclusions, even if the Employer had posted the flier or allowed it to be posted, which has not been shown to be the case, such campaign speech would not be objectionable. As noted by the Board in *Suburban Journals of Greater St. Louis, L.L.C.*, 343 NLRB 157, 159 (2004):

> An employer is permitted to compare its represented employees' wages and benefits with those of its unrepresented employees. *TCI Cablevision of Washington, Inc.*, 329 NLRB 700 (1999). Additionally, it is lawful for an employer to state its opinion, based on such a comparison, that employees would be better off without a union. *Langdale Forest Products Co.*, 335 NLRB 602 (2001).

Finally, no reliable evidence was presented regarding the assertion that the Employer prohibited employees from posting pro-Union fliers on Hospital bulletin boards.

Accordingly, I recommend that Union Objection Nos. 7, 16 and 38 be overruled.

Intimidation by Guards

Objection No. 43

> The employer increased the number of security guards that it normally employs in an effort to intimidate eligible voters.

In support of Union Objection No. 43, the Union offered testimony from non-employee Union Organizers Ruth Calderon, Evangelina Quintana, Paul Norman, Myra Casas, Lilly Dickinson, and Amado David, unit employees Teresa Salvaltierra, Mavile Suchite, Eugenia Torres, and Altagracia Trammell, and non-employee Lance Trammell. For its part, the Employer presented evidence through witnesses Director Jason Shane, Director of Materials Management Robert Becerra, unit employees Juan Alvarez, Geri Eyles and Philip Zoerlein, and three guards employed by Metro: Kyle Houraney, Daniel Regalado, and Benjamin Horn.

This testimony focused on how many guards were present at the Hospital at any given time, what uniforms and equipment they were wearing, and whether such would reasonably intimidate unit employees.

It is undisputed that the Employer has contracted for security services from Metro since at least early 2011. The "Security Services Agreement" (herein Agreement) between Metro and the Employer, and the Metro "Time Sheet Sign-In Sheets" for October 21 through December 1 (herein Time Sheets) were received into evidence at hearing. Shane testified that the Time Sheets are representative of the time sheets from both before and after the election. With the exception of some unbelievable claims made by some Union witnesses, the accuracy of these documents is undisputed. Additionally, Union witnesses offered little or no testimony about guard services at the Hospital for the time period prior to November 26. My inspection of the Time Sheets shows that typically on weekdays, one guard works from 6:00 p.m. to 10:00 p.m. and a second guard works from 10:00 p.m. to 6:00 a.m. A swing shift is also worked on Saturdays and Sundays. Typically on Tuesdays, Metro Supervisor Kyle Houraney performs administrative work on one shift, away from the Hospital, which was the case for his shift on

Tuesday, November 27. The Time Sheets showed that the following shifts were worked by guards at the Hospital on November 26, 27, and 28:

Monday, November 26
10:00 p.m. (November 25) – 6:00 a.m. – Trevor Houraney
6:00 p.m. – 10:00 p.m. – Daniel Regalado

Tuesday, November 27
10:00 p.m. (November 26) – 6:00 a.m. – Trevor Houraney
9:00 a.m. – 6:00 p.m. – Benjamin Horn
5:30 p.m. – 10:00 p.m. – Daniel Regalado
6:00 p.m. – 10:00 p.m. – Kyle Houraney (offsite administrative shift)

Wednesday, November 28
10:00 p.m. (November 27) – 6:00 a.m. – Trevor Houraney
8:00 a.m. – 6:00 p.m. – Daniel Regalado
6:00 p.m. – 12:00 a.m. – Kyle Houraney
10:00 p.m. – 6:00 a.m. (November 29) – Trevor Houraney

Monday, November 26

Regarding the number of guards on November 26, Quintana and Calderon testified about seeing one guard at the Employer's while they were there that day.

Tuesday, November 27

Regarding the number of guards on November 27, Suchite, Quintana and Casas made specific references to incidents involving only one guard. Calderon testified that she saw one guard in the lobby when she arrived at the Hospital at about 6:30 p.m. and later saw a different guard in the cafeteria. Additionally, Regalado, Horn, Eyles, and Zoerlein testified about situations involving only one guard.

Wednesday, November 28

Witnesses Norman, Suchite, Dickinson, Zoerlein, Altagracia Trammell, and Lance Trammell testified regarding guards, but made no specific and relevant reference to more than one guard being present at the Hospital at any given time on November 28. Similarly,

testimony only references one guard, Kyle Houraney, being involved with Casas and Dickinson when they were in the lobby after visiting hours had ended, which incident will be addressed in later objections.

Additionally, several witnesses state that between about 8:00 and 9:00 p.m., Kyle Houraney assisted with the incident when Quintana and Calderon were in the cafeteria after visiting hours had ended, which matter will be addressed in later objections. Witnesses Norman, Shane, Alvarez, and Becerra testified regarding this incident, but made no mention of more than one guard being involved or on duty at that time. Kyle Houraney testified that he was the only guard on duty at that time and that he was the only guard involved with this situation. Calderon testified that one guard was in the cafeteria for a period of time during this situation, but then left. Calderon and Quintana also referred to "guards" in or near the cafeteria, but provided no details about this. Salvaltierra states that she saw two guards involved with this situation, but provided no additional details about this. Casas stated that she saw Kyle Houraney on the patio outside the cafeteria, and claimed that she glimpsed Trevor Houraney inside the cafeteria when she quickly retrieved her purse from the cafeteria. None of this testimony about multiple guards involved with this incident is specific enough to be credited. Rather, I credit Kyle Houraney's detailed testimony about this incident.

Calderon provided vague testimony about having seen multiple guards at different times on November 28. She claims to have seen up to three guards between about 6:30 a.m. and 7:30 a.m., during the period when everyone was asked to leave the cafeteria so that the floor could be cleaned. Calderon offered no specifics to substantiate her claims, and vacillated, even on direct examination, about the number of guards she saw and if she was seeing the same guard, but just in different places. In this regard, Calderon admitted, "I'm not sure." Then she claimed

that during the afternoon, she saw a total of four or five guards in different locations, but never more than three at one time. Again, other than comments about "regular" uniforms, she offered no specifics, other than general locations, which sites changed during her testimony. Calderon testified that at about 7:00 p.m., she saw about four guards in the lobby, and more guards in the cafeteria, including Kyle Houraney, then clarified her testimony to say that they were in various locations, including in hallways talking to CEO Kreitz and other managers. Calderon said that these guards had changed into "riot gear." As mentioned above, Calderon gave un-credited testimony about two or four guards shinning flashlights in the eyes of unknown persons, as witnessed from a great distance, at about 9:00 p.m. Calderon's testimony in this regard cannot be credited, inasmuch as it was non-specific, self contradicted, overly emotional, and was specifically contradicted by other Union and Employer witnesses, and by the Time Sheets, which documents I find to be reliable.

Quintana gave detailed testimony which does not corroborate Calderon's testimony about multiple guards at the Hospital before 5:00 p.m. Quintana also stated that about three guards were inside the cafeteria, between about 5:00 p.m. and 8:00 p.m., and alternated with each other so that there was no time with no guard present, but also no time with more than one guard present. Quintana asserts that she saw a total of four of five guards at the Hospital on November 28, and testified, "They were in the cafeteria right when -- when -- at around 8 [p.m.], that's when I started seeing a lot more security guards." Quintana testified about a guard with a bulletproof vest also carrying a gun, which testimony is directly contradicted by Calderon and Casas. Quintana's testimony about the number of guards was non-specific, not corroborated by other Union and Employer witnesses or credited documents, and was not plausible regarding the unexplained elaborate alternating of guards in the cafeteria, which was not described by other

witnesses. The reliability of Quintana's recollections is also undermined by her vague assertions about a guard with a gun.

Casas testified about seeing guards at the Hospital in the early evening on November 28. Casas stated four times that she saw no guards in the cafeteria on November 28, but then she testified that she saw one guard in the cafeteria and in the lobby. Casas testified about Kyle and Trevor Houraney using flashlights near the lobby, after the polls closed at 9:30 p.m. Casas' testimony was vague, confused, and at times was evasive and non-responsive to questions.

Salvaltierra testified that on the morning of November 28, she saw three guards in the cafeteria dressed like they were "going to combat," two of which wore a holstered gun on their belt. Salvaltierra further testified that between about 12 Noon and 1:00 p.m. she saw five different guards outside of the Hospital, including two in front of the Hospital, and three in back of the Hospital, one of which was also in the cafeteria. Salvaltierra asserts that shortly before 7:00 p.m., she saw three guards. Salvaltierra's testimony about the number of guards was non-specific, not corroborated by other Union and Employer witnesses or credited documents, and was weakened by her definitive assertions about guards with guns.

Torres testified that she saw two guards in lobby on November 28, but she was confused as to the time of day and offered no other specifics other than a description of their uniform. Torres' testimony about the number of guards was non-specific and confused.

David testified that shortly before 7:00 p.m., he walked through the cafeteria and saw no guards there, but around 8:37 p.m., saw one guard in the lobby, and then saw three or more guards inside the cafeteria as he looked through the window in the exterior cafeteria door, but he wasn't very sure, and he provided no other details about this.

Altagracia and Lance Trammell testified that they were in the cafeteria between 7:00 p.m. or 8:00 p.m., with Calderon and Quintana, but only saw one guard who passed through a couple times. This testimony directly contradicts the testimony of Calderon and Quintana. I especially rely on the clear testimony of Lance Trammell because he is not affiliated with the Employer or Union.

As noted above, I find the testimony about multiple guards being at the Hospital at the same time to be unreliable.

Rather, I credit and shall reply upon the detailed, precise, and plausible testimony of Shane, and guards Kyle Houraney, Regalado, and Horn regarding guard staffing and duties. This detailed testimony revealed that such guard duties are reasonably performed by one person. Regalado testified that he performed guard duties at the Hospital on November 28 from 8:00 a.m. to 6:00 p.m. and the end of his shift overlapped for a few minutes with the start of Kyle Houraney's shift. Regalado and Kyle Houraney testified that for about five to 15 minutes at shift change times, guards handoff equipment and share operational information. Kyle Houraney testified that he worked at the Hospital on November 28 from 6:00 p.m. to 12 Midnight, and this was the only shift where more than one guard worked at the same time, which was from 10:00 p.m. to 12 Midnight, when Trevor Houraney also worked. Shane testified that he never requested more than one guard on duty at one time, during the critical period.[43] Testimony indicates that the Employer added one day guard shift on November 27 and 28 to cover when no other guard had been scheduled. Kyle Houraney testified that Shane requested to have a day shift (9:00 a.m. to 6:00 p.m.) added on November 27. Horn testified that Metro Supervisor Houraney called him to cover the 8:00 a.m. to 6:00 p.m. shift at the Hospital. Shane testified

[43] Shane testified that in the past, the Employer has requested that more than one guard be on duty at a time, including during a planned area power outage, a bomb scare, and when asphalt parking lots were being repaved.

that he requested to have a day shift (8:00 a.m. to 6:00 p.m.) added on November 28. Thus, there was one more guard shift on November 27 and 28 as compared to the other Tuesdays and Wednesdays between October 21 and December 1. Moreover, the testimony from Shane and the guards about when guards worked is corroborated by the Time Sheets, the authenticity of which is undisputed. Accordingly, I conclude that there is no reliable evidence to establish that there was more than one guard on duty, except for a few minutes during guard shift changes. I further conclude that the hours worked by guards at the Hospital on November 26, 27, and 28 were as shown on the Time Sheets.

With regard to why two guard shifts were added, I credit the uncontroverted testimony of Regalado and Horn that they were there to do their rounds as normal and to "keep the peace." It is undisputed that tensions and emotions were high during the week of the election and there were verbal confrontations in public areas of the Hospital between Union organizers and Hospital employees. As expected, on the day of the election there were many visitors to the Hospital and related safety concerns. The Employer has secured extra guards in the past to insure safety for its employees and patients. Clearly the Employer had strong justifications for adding a guard shift on November 27 and 28 to cover times when no other guard had been scheduled.

Concerns were raised at hearing that the individual guards who worked on November 26, 27, and 28 had never been seen before at the Hospital. The Time Sheets indicate that, with the exception of Horn, these guards worked many shifts at the Hospital from October 21 to the election: Kyle Houraney (seven shifts), Trevor Houraney (27 shifts), and Daniel Regalado (30 shifts).

Additionally, much testimony was offered at hearing regarding the uniforms and equipment worn by guards on the day of the election. Calderon testified that guards wore navy blue "regular dress uniforms," but at about 7:00 p.m., she saw guards "riot gear," including dark khaki green uniforms, bulletproof vests, batons, large flashlights, and either mace or gas. [44] Quintana testified that guards wore white collared shirt, black pants, belt, and black boots, but after 5:00 p.m. she saw a different guard also wearing a bulletproof vest and a gun.[45] Casas testified that while Kyle Houraney normally wore a blue "security uniform," on November 28 he wore "military style" dark green pants, long sleeve black shirt, black boots, a bulletproof vest, equipment belt with pouches, and a large can of pepper spray. Casas said she had previously seen Houraney carry a baton and a small canister of pepper spray, which by her description was about 25 percent smaller than the large can. She had not seen him wear a bulletproof vest before. Dickinson testified that before 12:00 Noon, she saw one guard dressed in black clothes, with equipment on a belt, including something like a walkie-talkie. Suchite testified that she saw guards wearing what looked like navy blue police uniforms, which she had seen guards wear for months before the election. Suchite added, "I didn't feel comfortable with taking my breaks with them there. Because I never saw any before and I thought it was the police . . . because that was the first time that I saw him. And he was wearing a dark blue uniform." Salvaltierra testified that on the morning of November 28, she saw three guards dressed like they were "going to

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[44] On cross-examination, when asked about who was wearing riot gear, Calderon said, "Well, I know Kyle. So I noticed Kyle. So the other ones, you know, I really I don't know them. It seems like I saw another one dressed the same as Kyle but I wouldn't be a hundred percent sure. But I definitely noticed Kyle in riot gear." Calderon added that Kyle Houraney had "like a bulletproof vest, that he either had Mace or gas or he had a baton. He had a very large flashlight that you could use as a baton . . . [that] looked like, you know, it was -- you know, how they carry them on their side, the police. It looked similar to that, yeah." Calderon then admitted that she viewed Kyle Houraney through the window in the exterior door in the cafeteria. Calderon admitted that she was not sure if she saw guards besides Houraney, with anything like pepper spray.

[45] Quintana testified that the third guard had "something like a gun . . . [o]n his belt;" and "It was in the shape of that. It seemed to me it was a gun." When asked about the parts of the gun that she saw, Quintana said she did not know what part of the gun the barrel is.

combat," which she described as being "like Army uniform and wearing -- holding all those like -- what do you call that -- those things in their waist and they have these flashlights and they have these -- like a gun in their waistline." According to Salvaltierra, two guards wore a holstered gun on their belt. Torres testified that she saw guards wearing the same black uniforms that she had seen before, but this time they also wore bulletproof vests. Norman testified that he saw one guard wearing "cargo pants, pockets and he actually had, like, riot gear on him." Norman added that this guard wore a belt with compartments and holster, from which a gun handle was visible, but did not see the rest of the gun or a [pepper] spray bottle.

Most of the testimony provided by Union and Employer witnesses regarding guard uniforms and equipment is uncontroverted. The guards wore security uniforms, with boots and an equipment belt with a flashlight and communications devices, and Kyle Houraney also wore a bulletproof vest.[46] However, some witnesses claimed that guards also carried guns, batons, pepper spray, mace, and/or gas. The witnesses who mentioned guns and batons were so noncommittal during this testimony, they appeared not to believe it themselves. They did not provide enough detail to overcome the credible testimony of Shane and the guards, and documentary evidence indicating that the guards do not carry guns or batons. Additionally, it's typically very noticeable when guards are wearing holstered guns or batons, but most witnesses did not testify about having seen this. Regarding pepper spray, mace, and/or gas, most witnesses did not mention this, and those who did provided few details. Casas claimed that Kyle Houraney had carried a baton and pepper spray in the past, but did not know if he had a baton with him on November 28. Regarding pepper spray, Casas claim that a slightly larger can was carried on November 28 is a distinction without a difference. Moreover, witness statements about "riot

[46] Testimony about more than one guard wearing a bulletproof vest is vague and disproven by the detailed and highly plausible testimony of Shane and Kyle Houraney, which I credit.

gear" and "going to combat" seem to be emotional exaggerations, which are not consistent with uncontroverted testimony about the guards' calm demeanor. Finally, Suchite's testimony about not feeling "comfortable," in response to a question about feeling "threatened," is not relevant or reasonable. She claimed her feeling was the result of seeing a guard dressed as she had seen guards dress before and, therefore, thought that the guard was a police officer. That kind of confused logic is not a reasonable reaction to such circumstances.

Employer witnesses Shane, Kyle Houraney, Regalado, and Horn all testified regarding guard uniforms and equipment. Shane testified that Metro uniforms include a black shirt and pants, a badge, and a utility belt containing a flashlight and cellphone. The security services Agreement reads, in relevant part, "Company [Metro] shall furnish Security Personnel at the Property completely outfitted with uniforms, pagers, and all necessary equipment as mutually agreed upon between Hospital and Company [Metro]. Security Personnel shall not carry weapons of any type, unless agreed to in writing by Hospital prior to the inception of any armed service. Shane testified that the Employer has a policy that the only persons allowed to carry weapons at the Hospital are state authorized peace officers. Metro guards are not state authorized peace officers, and they carry no weapons. Shane stated that pepper spray and mace are weapons. As the Employer's compliance manager with Metro, Shane observed what equipment the guards carried during the critical period, and, according to Shane, it was the same standard equipment that they had always carried. Shane stated that he has not seen Kyle Houraney carry pepper spray or mace, but has seen him consistently wear a leg holster to carry flashlights and other equipment. Shane testified that Kyle Houraney chooses to wear a bulletproof vest on his own, not at the direction of the Employer. Houraney confirmed that he

has worn a bulletproof vest outside of his shirt since about early 2012.[47] According to Houraney, he and the other guards wear a midnight navy blue patrol uniform, or a casual uniform, with a black shirt and green or tan pants. The uniforms include black boots, security patches, a Metro shield, and a "Sam Browne" police-style belt with equipment pouches that hold a radio, keys, gloves, and a Deggy patrol sensor pen. Houraney said that as a supervisor for Metro, he also has handcuffs in a pouch, but they are not visible, and he did not take them out on November 28. Houraney also has a police scanner radio with him. Houraney testified that the guards do not carry any weapons; they are not permitted to carry any weapons, guns, billy clubs, batons, mace, tasers, pepper spray, or anything like that. Regalado and Horn corroborated Shane and Houraney's testimony. All four witnesses testified that the uniforms and equipment did not change during the critical period.

In total, for the reasons stated above, this testimony that guards carried weapons or chemicals, or that guards other than Kyle Houraney wore a bulletproof vest lacks credibility and cannot be relied upon. Rather, I will rely on the detailed and plausible testimony of Shane, Houraney, Regalado and Horn, that no such equipment was used, except Kyle Houraney's bulletproof vest. Their testimony is also supported by documentary evidence, the Agreement, which I have found to be credible and relevant.

Discussion of Objection No. 43

The Board recognizes that an employer has the right to maintain security measures necessary to the furtherance of legitimate business during the course of union activity. See *National Steel & Shipbuilding Co.*, 324 NLRB 499, 501 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998); and *Quest International,* 338 NLRB 856 (2003) (employer's implementation of

[47] Houraney encouraged his guards to wear a bulletproof vest, but it is not required, and he didn't think any other guards had worn a vest before or during the critical period.

security measures that included a security guard and dog along with an armed off-duty police officer dressed in the security company's uniform was not objectionable as the guards and the dog were not near the polling area).

Unprecedented guard activity has been found to be objectionable in certain instances. In *Austal USA, LLC*, 349 NLRB 561, fn. 2 (2007), the Board held that the employer's placement of security guards at the gate of the plant on the morning of the election was objectionable. While the guards in *Austal* had more interaction with employees on election day, the judge found, and the Board affirmed, where there was no demonstrated need for the action, the stationing of a guard had no purpose other than intimidation. The unprecedented presence of uniformed guards at the plant entrance on the day of the election created an atmosphere that interfered with the employees' right to exercise their choice free from intimidation by the employer. In *Sprain Brook Manor Nursing Home*, 351 NLRB 1190, 1192 (2007), the Board concluded that the Employer had no legitimate explanation for calling police or for having additional security. Similar unprecedented use of security personnel was found as violative in *Beverly California Corp.*, 326 NLRB 232, 261 (1998).

The Union relies on *Villa Maria Nursing and Rehabilitation Center, Inc.*, 335 NLRB 1345, 1353 (2001) (as many as six guards at a time actively surveilling union leafleting not justified and found to be "intended to intimidate employees engaging in protected and union activities") in support of its contention that the Employer objectionably increased the number of guards at the Hospital. That matter is easily distinguished from the case at hand, inasmuch as the number of guards used at any one time at the Hospital did not increase, and, as discussed in other objections, guards did not engage in active surveillance of employee's engaged in protected concerted activities. Moreover, Regalado's credible testimony establishes that he told persons,

including Union Organizer Evangelina Quintana and Hospital employee Geri Eyles that the reason he was there was to keep peace. Thus, the Employer reasonably maintained its security procedures and past practices, which were necessary to address legitimate business and safety concerns on November 27 and 28.

Accordingly, I find no credible evidence to establish that the Employer objectionably increased the number of guards during the week of the election, or that the guards' uniforms or equipment was changed from past practice or otherwise would reasonably cause employees to be intimidated.

For these reasons, I recommend that Union Objection No. 43 be overruled.

Surveillance in Cafeteria

Objection No. 36

> The employer, through its agents, kept lists of workers who spoke with Union organizers.

In support of Union Objection No. 36, the Union offered testimony from non-employee Union Organizers Ruth Calderon, Evangelina Quintana, Myra Casas, Paul Norman, Amado David, and Lilly Dickinson, unit employees Teresa Salvaltierra, Mavile Suchite, Altagracia Trammell, and Lance Lee Trammell. For its part, the Employer presented COO/CNO Ada Yeh, Human Resources Manager Jo Anne Suehs, Director of Food and Nutrition Services Lynne Kiernan, Director of Bloodless Medicine Jason Shane, Guard Daniel Regalado, RN Geri Eyles, and unit employee Philip Zoerlein regarding this objection.

For months preceding the election, non-employee Union organizers accessed the Hospital by checking-in with the lobby receptionist and getting a visitor "cafeteria" sticker. They sat in the cafeteria and openly spoke with unit employees about supporting the Union.

Quintana testified that she campaigned for the Union, in the cafeteria, at the Hospital, from July, 2012 through the election, on a daily basis, from about 9:00 a.m. to 9:00 p.m. Calderon testified that she campaigned for the Union, in the cafeteria, at the Hospital, during most of November 2012, through the election, on a daily basis, from about 11:00 a.m. to 1:30 p.m. or 2:00 p.m. and from about 6:30 p.m. to 8:00 p.m. or 8:30 p.m. Casas testified that she campaigned for the Union, in the cafeteria, at the Hospital, only on November 27 and 28. Dickinson testified that she campaigned for the Union, in the cafeteria, at the Hospital, only on November 28.

The Union contends that starting during the week of the election, Employer guards and managers spent a lot of time surveilling employees engaged in protected activities with non-employee Union organizers, in the cafeteria.

Monday, November 26

On or about November 26, non-employee Union organizers distributed pizza and "vote yes" cupcakes to employees in cafeteria, in the presence of Employer managers and guards. There is no allegation that the Employer interfered with this activity. Quintana contends that a guard stood in the cafeteria and watched her for about three hours, but he did not write anything down. This was the first time that Quintana had a guard next to her in the cafeteria. Quintana asked the guard why he was right next to her for so long? According to Quintana, the guard told her that the security administrator had sent him there to watch what she was doing. Regalado, who worked on November 26, denies making such a statement. Quintana further testified that at about 4:00 p.m., on November 26 or 27, she saw an unidentified administrator,[48] sitting in the cafeteria for about 45 minutes, looking at her from about ten feet away, and taking

[48] Quintana testified that an unidentified employee told her that this person was an administrator. Quintana described her as being short with mid-long hair. Quintana said that this was the only time she saw this person.

notes every time an employee would come in and talk to Quintana. Quintana admitted that she never saw the notes.

Tuesday, November 27

Casas and Calderon testified that on November 27, they were distributing Union literature and talking to unit employees in the cafeteria during lunchtime. They state that during this time, Yeh sat facing them and typed on a laptop computer when they spoke with employees, but otherwise did not interact with the Union organizers or employees. Casas and Calderon acknowledged that they did not know what Yeh typed. Casas states that she saw that Yeh was on her email. According to Casas, Quintana and another Union organizer were also present.[49] Calderon testified that Yeh ate lunch while she typed on the laptop. Calderon states that she spoke with about four employees about what Yeh was doing.

Yeh testified that she did not observe employees talking with Union organizers, nor did she use any electronic device, in the cafeteria on November 27. Yeh also denied that she has a laptop computer, or brought one to the cafeteria during the critical period. Suehs, Kiernan, and Zoerlein state that they have worked with Yeh for years and never seen her with a laptop computer. Suehs' testimony, that there is no Wi-Fi access in the cafeteria, is uncontroverted.

Casas also testified that there was a guard in the cafeteria for the entire time between lunchtime and the evening.

Calderon testified that on November 27, between about 6:30 p.m. and 8:30 or 8:45 p.m., a guard stayed in the cafeteria and talked with her and other Union organizers.

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[49] Casas knows Calderon, but did not mention that she was present. Calderon testified that she was also present, but did not mention which other Union organizers were with her. Quintana, who Casas said was present, did not testify regarding this incident.

Suchite testified that on November 27, she went to the cafeteria three times, totaling less than 60 minutes, and each time saw a guard standing by the door as if he was "taking care of the place."

Evidence was also presented regarding incidents where guards and/or Employer management had to intervene in the cafeteria. Suehs testified that on November 27, the cafeteria was particularly congested with people, including many Union organizers and some of their children. Suehs states that she spoke to Calderon and Quintana about her concern that employees did not have a place to sit in this very small cafeteria, and safety concerns about too many chairs having been pulled up around small tables, which could block the exits.

Also during lunchtime on November 27, Casas had confrontations with employees in the cafeteria. Casas testified that two employees screamed and yelled at her to leave the Hospital, and argued that the claims on anti-Union fliers were true.

Casas also described how she and Zoerlein got into loud conversation about campaign issues and anti-Union fliers, to which Casas took offense. Casas testified that the guard said something like "if you guys are going to have this conversation, you'd better go outside;" but later testified, "Basically he's like you guys -- management told me you guys, you know, you need to walk outside if you want to keep on talking to them." Casas admitted that the guard made the comment in front of her and Zoerlein, but she claims the guard was only speaking to her. Casas and Zoerlein then went outside the cafeteria back door, finished their conversation, and returned to the cafeteria together. Zoerlein and Guard Horn testified that this conversation was getting too loud for inside the cafeteria, so Horn asked Casas and Zoerlein to take it outside. Horn stated that he escorted them outside of cafeteria, and continued his rounds outside of the Hospital. Horn confirmed that he just happened upon the incident while he was

doing his rounds – no one called him about this. Casas added that she and Zoerlein took their discussions outside the cafeteria at least one more time that day. Calderon testified that later that evening, Casas and Zoerlein were having a loud conversation about Union dues, so they voluntarily went outside to talk.

Casas had yet another confrontation with employees on November 27. It is undisputed that RN Geri Eyles, her daughter, and another employee were in the cafeteria for about 90 minutes, distributing to employees anti-Union fliers and 200 mini donuts that she had purchased. Casas, Calderon, Quintana, and Norman were also campaigning with employees there. Casas claims that Eyles yelled at them for about ten to 15 minutes that they were not welcome there and that they should leave. It is undisputed that Eyles telephone Yeh to come to the cafeteria, and also called the police and asked them to intervene in the situation. Shortly thereafter, Yeh arrived at the cafeteria and, according to Casas, Eyles told her that the Union organizers were harassing her and asked that they be removed. Casas told Yeh that they weren't bothering anyone, that the guard was dealing with the situation, and complained that Eyles was spending working time in the cafeteria. The guard then asked Eyles what was she doing there? It is undisputed that when Eyles replied that she was waiting for her ride, the guard suggested that she wait in the front of the hospital. All witnesses agree that Yeh said Eyles could stay in the cafeteria. Casas states, "[Yeh] asked security to have me escorted out of the cafeteria due to the fact that non-Union or non future Union employees were yelling at myself when I was having a discussion . . ." Eyles appeared upset and left. The Union organizers stayed.

Eyles testified that the confrontation started when Union organizers tried to take photographs of her.

Guard Regalado testified that he heard the disagreement between Eyles and Casas and "went to make sure everything was okay and nothing was out of hand;" and "I was there to keep the peace." Regalado stated that he told both to keep their disagreement calm and civil, non combative, because other people were also in the cafeteria. According to Regalado, he told them that he did not want any situations "that could be bad." Regalado contends that Yeh intervened and asked if Eyles could stay, to which he agreed.

Yeh testified that she was called to intervene in this very heated situation. Yeh described Eyles, Casas and Calderon as being very emotional. Yeh testified that she asked everyone to be cordial and professional, and said, "[E]motion is high but let's not go there. Let's just be respectful to each other. It will be over soon."

Wednesday, November 28

Several witnesses testified regarding alleged surveillance in the cafeteria on November 28. Dickinson states that she was in the cafeteria from about 9:30 a.m. to 12 Noon and there was one guard there the whole time. According to Dickinson, when non-employee Union organizers left the cafeteria, the guard would follow them. Dickinson asserts that the guard said that he was told to stay with them and know where they were at all times.[50]

Calderon and Quintana distributed box lunches to employees in the cafeteria during lunchtime. Calderon asserts that there was one guard inside cafeteria, one guard in the hallway outside cafeteria, and one guard by the back door of the cafeteria, who observed the Union organizers there. Calderon states that Union organizers and unit employees ate together in the cafeteria and talked about the guard presence. Quintana testified that she was in the cafeteria from 11:00 a.m. to 2:00 p.m., during which time she ate with unit employees and other Union

[50] It is undisputed that guards and Employer managers, on at least several occasions, escorted non-employee Union organizers to and from restrooms inside the Hospital.

organizers, while one guard stood by the back door watching them, and walked in and out of the cafeteria. About this guard, Quintana stated, "He kept going and coming back. But for the most part, he was there." Quintana testified that she saw guards making rounds, including through the cafeteria, but had not previously seen a guard in the cafeteria during lunch as much as that. Quintana again stated that although there was never more than one at a time, one guard would come in right as the other guard would leave. In this regard, Quintana testified, "They would stay longer. They would come in, stay minutes and then take off, or alternate." Norman states that he spent time in the cafeteria during this lunch period, and saw employees and Employer administrators eating there, but saw no guards. It is undisputed that managers ate in the cafeteria on November 28 and on prior dates. Record evidence established that Manager Kiernan regularly has work responsibilities in the cafeteria and that she cannot see into the cafeteria from her office.

Quintana further testified that at about 12 Noon an unidentified Employer "security administrator" told her that the Union organizers were taking up too much space in the cafeteria, during the crowded lunchtime.

Norman testified that in the evening, he witnessed a guard talking to an unidentified non-employee Union organizer "about how they should not have been stopping workers and things like that." On cross-examination, Norman stated that he only heard a little of this conversation, wherein the guard said that he was just making sure that the organizers weren't causing any disturbance. Calderon and Quintana, who were in the cafeteria during this time period, provide no corroboration about this. As noted in Objection No. 43, of the four guards Calderon claims to have seen at that time, Kyle Houraney was outside of the cafeteria back door and another was inside the cafeteria. She also contends that unidentified Employer managers

were in and out of the cafeteria. David testified that shortly before 7:00 p.m., he walked through the cafeteria and saw no guards there. Also noted above, Quintana stated that there were approximately three guards inside the cafeteria, between about 5:00 p.m. and 8:00 p.m., and they alternated with each other so that there was no time with no guard present, but also no time with more than one guard present. As discussed in Objection No. 43, Salvaltierra's testimony about guards in the cafeteria on November 28 cannot be credited. In Objection No. 43, I relied on the testimony of Norman, Altagracia and Lance Trammell that they saw one guard pass through the cafeteria a couple times between about 7:00 and 8:00 p.m.

Additionally, non-employee Union organizers assert that earlier in the critical period, there were other incidents where employees yelled at them in the cafeteria about campaign issues.

Regalado testified that he spent a total of about three hours in the cafeteria on November 27 and 28, but no more than 45 to 60 minutes at any one time. Regalado stated that he will "post up" in one place for a bit if there is a lot of activity or a lot of visitors. In such situations guards have stayed in the emergency room, the lobby, or in the cafeteria, to help insure that there are no problems. The rest of his time was spent doing his normal general rounds through all the units.

Manager Shane testified that he does not know of any guard staying in the cafeteria for a period of time while employees were in there having lunch, other than the time when a guard intervened when employees and the Union organizers got loud. Shane testified that guards were told, "There are strong opinions on both sides. Make sure they . . . stay peaceful. Since we're in the cafeteria, we didn't want anyone arguing either way, either side. Just keep it quiet and peaceful, since there are visitors there, too." Record testimony, supported

by reliable documentation, establish that the cafeteria is a public area, which visitors freely use, including family members of patients and other members of the public.

Finally, credible evidence was presented that unit employees witnessed most of the incidents described above.

Discussion of Objection No. 36

It is well settled that an employer's mere observation of open public union activity does not constitute unlawful surveillance. *Wal-Mart Stores, Inc.*, 350 NLRB 879 (2007) (no unlawful impression of surveillance where employee openly handed out a brightly colored union pen on the sales floor, then supervisor advised employees to take that activity into the breakroom). The test for determining whether an employer has created an impression of surveillance is whether the employees would reasonably assume from the employer's actions or statements that their union activities had been placed under surveillance. See *Wal-Mart Stores, Inc.*, 352 NLRB 815 (2008) (no violation unlawful impression of surveillance where interim manager worked alongside unit employees without any conduct that was out of the ordinary with respect to open union activity); *Waste Stream Management*, 315 NLRB 1099, 1124 (1994). Indicia of coerciveness include the duration of the observation, the employer's distance from its employees while observing them, whether the surveillance is an isolated act, and whether the employer engaged in other coercive behavior during its observation. *Wilshire Plaza Hotel*, 353 NLRB 304, 322 (2008); Sands *Hotel & Casino, San Juan*, 306 NLRB 172 (1992), enfd. sub nom. mem. *S.J.R.R., Inc. v. NLRB*, 993 F.2d 913 (D.C. Cir. 1993). Surveillance of protected activity, including via videotape, is lawful only if justified by legitimate concerns. *Smithfield*

Packing Co., 344 NLRB 1, 3 (2004); *National Steel & Shipbuilding Co.*, 324 NLRB 499 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998).

In numerous cases, the Board has found no violation or objectionable conduct where an employer observed open union activity. *Town & Country Supermarkets*, 340 NLRB 1410, (2004) (Board found no violation where an employer engaging in photographing or videotaping of open union activity demonstrated that it had a reasonable basis to have anticipated misconduct by the employees); *Aladdin Gaming, LLC*, 345 NLRB 585, 586-587, (2005) (no violation where supervisors presence in dining room was routine and they made 8(c) statements to employees with no coercive conduct, after hearing their open protected speech); *Days Inn Management Co., Inc.*, 306 NLRB 92 (1992) (no violation or objectionable conduct when supervisor observed open union campaigning with employees just outside the employer's facility, where (1) same activity had occurred every day for at least the month prior to the election, (2) supervisors also campaigned at same location, (3) supervisors did not engage in any photographing of employees, note-taking, or conversations with the union representatives, (4) supervisors did not visibly disrupt any contact with the union or physically block or impede any employee's access to the union representatives, and (5) there was no evidence that the employer was able to overhear conversations between employees and union representatives); *Roadway Package System*, 302 NLRB 961 (1991) (no violation where employer manager openly observed employees handbilling in front of the plant for 30 minutes, when employees had already openly engaged in handbilling activity for approximately 2-1/2 months); *Southwire Co.*, 277 NLRB 377, 378 (1985) (no violation where, for about 15 minutes, employer director observed several employees pass out union literature at plant gate). The Board has held that "[u]nion representatives and employees who choose to engage in their union activities at the Employer's

premises should have no cause to complain that management observes them." *Porta Systems Corporation*, 238 NLRB 192 (1978) (no violation where supervisors observed employees passing out union leaflets and talking to union organizers in employer's parking lot); *Milco, Inc., et al.*, 159 NLRB 812, 814 (1966) (no violation where foremen watched union representatives trespass outside employer property when handbilling employees, and blocked egress was reported); *Chemtronics, Inc.*, 236 NLRB 178 (1978) (no violation where employees met with union representatives in open view in employer parking lot and employer interrupted the meeting and directed union to leave); *Larand Leisurelies, Inc.*, 213 NLRB 197, 205 (1974) (no violation where employer observed open and public handbilling by employees and union agents leaving employer's facility); *Mitchell Plastics, Incorporated*, 159 NLRB 1574, 1576 (1966).

However, an employer may not do something "out of the ordinary" to give employees the impression that it is engaging in surveillance of their protected activities. *Sprain Brook Manor Nursing Home*, 351 NLRB 1190, 1191 (2007) (manager who never worked on Saturdays and who stood in doorway of building for 3 hours on a Saturday watching a union organizer distribute literature to employees engaged in unlawful surveillance); *PartyLite Worldwide Inc.*, 344 NLRB 1342, 1343 (2005) (supervisors observed employees receiving union literature for 15 minutes and could identify which employees accepted union literature); *Loudon Steel Inc.*, 340 NLRB 307, 313 (2003) (violation where manager in walking within a few feet of employees' vehicles approaching handbillers gave impression to employees that he was determining who was accepting handbills); *Fred'k Wallace & Son, Inc.*, 331 NLRB 914 (2000) (violation where employer asked employee about conversations openly conducted between employees and union organizers); *Carry Cos. of Illinois*, 311 NLRB 1058, 1072-1073 (1993) (employer representatives observed organizational activity for three hours and continued to

watch until union representatives left); *Nashville Plastic Products*, 313 NLRB 462, 464, 466-467 (1993) (supervisors' continuous scrutiny of union activities, outside the employer's facility, over a substantial period of time); *Kenworth Truck Co.*, 327 NLRB 497, 501 (1999) (supervisor observed union distributing handbills for an hour until left premises); *Impact Industries*, 285 NLRB 5 fn 2 (1987) (employer engaged in continuous scrutiny of employee activity over a substantial period of time); *Arrow Automotive Industries*, 258 NLRB 860, 861 (1981) (11 supervisors observed employees' involvement with union handbillers, Board found presence of so many supervisors highly unusual and presence was "deliberately calculated to show and demonstrate observation in numbers and forces").

In the instant matter, regarding the allegations of surveillance on November 26, Quintana's uncorroborated testimony about an unidentified administrator surveilling open Union activities in the cafeteria cannot be relied upon as a basis for setting aside the election. It is significant that the agency status of this unknown person was not established, and Quintana admitted that she never saw the notes allegedly taken.

As the election neared, there was increased campaigning in the cafeteria on November 27. Yeh offered detailed and plausible testimony that she regularly visits the cafeteria, but infrequently eats there, she does not have a laptop computer, and did not use any such device in the cafeteria. Several witnesses credibly testified that Yeh does not have a laptop computer. Casas and Calderon's testimony, regarding Yeh use of a laptop to surveil employees' protected activities, is vague, and lacks plausibility. After months of open campaigning by the Union in the Employer's cafeteria, it is unlikely that the day before the election the Employer's top official would decide to chill employee support for the Union by typing on a laptop as she ate her lunch. Casas and Calderon knew nothing more about what Yeh did with the computer, other

than that she was on email, and offered nothing regarding any contact between Yeh and employees during this alleged incident. In this regard, it is unlikely that Yeh would be using email in a location where there is no Wi-Fi access. There was even confusion over which Union organizers witnessed this alleged incident. Casas gave no testimony about this incident, and other potential witnesses were not presented. Thus, I conclude that the record evidence does not establish that Yeh surveilled employees or kept lists of employees who spoke to Union organizers. Moreover, the testimony of Union witnesses indicates that information about the alleged incident was not widely disseminated.

Casas, Calderon and Suchite gave non-specific testimony about guard presence in the cafeteria on November 27. In the discussion of prior objections, I credited the testimony of Shane, and guards Kyle Houraney, Regalado, and Horn regarding guard staffing and duties, which I rely upon here in concluding that guards did not have a continuous presence in the cafeteria. Rather, based on the record as a whole and the credited evidence therein, I conclude that guards kept to their regular patrols through the Hospital and only "posted" for any appreciable periods of time, when their regular duties required such.

In this regard, the disruptive behavior in the cafeteria on November 27 justified the extra time spent there by guards. It is noted that the Employer's Visitor Control Policies & Procedures, which was received into evidence, reads in relevant part, "At any time, visitors may be asked to leave if they become loud or unruly . . ." Suehs' uncontroverted testimony establishes that the large number of non-employee Union visitors in the cafeteria caused a safety problem, which required her intervention. Then Casas got into two or more loud verbal exchanges with Zoerlein, which were inappropriate for inside a cafeteria which is shared with family members of patients and other members of the public. Again, the evenhanded

intervention of a guard was required. Thereafter, there was yet another verbal confrontation, this time between Casas and Eyles, which resulted in a guard asking Eyles (a self-described open Union opponent) to leave the facility. Yeh also intervened and encouraged Casas and Eyles to calm down and be respectful of each other. Regalado gave unchallenged testimony that other people were present in the cafeteria during this incident. Regarding this incident, I credit the detailed, plausible, forthcoming, and complete testimony of Regalado, Eyles, and Yeh, and do not credit Casas' uncorroborated and unlikely claim that Yeh told the guard to escort her out of the cafeteria. Moreover, based on Casas' repeated involvement in these altercations, her sometimes exaggerated testimony as compared to Zoerlein and Eyles' objective testimony and calm demeanor, and Eyles' uncontroverted testimony that Union organizers tried to photograph her engaging in protected activity, I conclude that Casas was the instigator of these situations that required Employer intervention. For the reasons above, I conclude that extra time spent by guards in the cafeteria on November 27 was necessitated by the disturbances there. Further, inasmuch as the cafeteria is part of the guards normal rounds, guards had been making such rounds since long before the critical period, guards – not supervisors – were involved, guards did not engage in other coercive behavior, the same open Union activity had been occurring in the cafeteria for months, anti-Union employees were campaigning in the same area, and there was no evidence that the guards were able to overhear conversations between employees and Union representatives, I conclude that such guard presence was not out of the ordinary, and therefore is not objectionable. *Wilshire Plaza Hotel*, supra. Similarly, evidence regarding the presence of Suehs in the cafeteria on November 27 does not constitute objectionable conduct.

Regarding the presence of guards in the cafeteria on November 28, for the reasons described in earlier objections, I do not credit testimony which places more than one guard at a

time in the cafeteria area or testimony regarding guards alternating with each other. In this regard, Quintana, Norman, and David do not corroborate testimony about multiple guards or guards having a constant presence in the cafeteria. The distribution of box lunches, the large number of non-employee Union organizers present, and apprehension over a repeat of problems that occurred on November 27 are legitimate concerns which would justify a guard spending some time in the cafeteria on November 28. Just as discussed above, no indicia of coerciveness was present. Regalado's testimony that he spent about three hours in the cafeteria on November 27 and 28, due to problems there, is consistent with other credited evidence and does not, under the circumstances, establish conduct which is out of the ordinary or objectionable. *Smithfield Packing*, supra. As noted in the discussion of earlier objections, guards were given no special instructions regarding their duties during the critical period, except to "keep the peace." Norman gave vague testimony about a guard's comments to a non-employee Union organizer, which he clarified to reflect the guard's duty to help avoid disturbances at the Hospital. Finally, the fact that Union organizers – not employees – were escorted to and from the restroom, further indicates that unit employees were not the focus of the Employer's concerns.

Regarding the allegations of surveillance on November 26, Quintana offered vague testimony, which is not corroborated by Calderon or other witnesses. This includes Quintana's allegation that a guard told her that he was there to watch what she was doing. Because no evidence was presented that employees were present when this comment was made, such a comment, if made, could have no impact on employees. Further, as Regalado is a more believable witness, I credit his denial that he made such a comment. Even if such a comment was made, unusual circumstances existed in the cafeteria that day – the Union was distributing pizza and cupcakes to employees. Given that the Employer needs to insure that cafeteria

services continue to be available to typical visitors to the Hospital, it would not be out of the ordinary for the Employer to want to watch the Union's activities in the middle of its business operations in the cafeteria. Finally, Calderon's testimony that Employer guards were recruited to distribute Union "vote yes" cupcakes certainly does not support any allegation that Employer guards were interfering with Union activities.

With regard to the presence of Employer managers in the cafeteria, no reliable evidence established a constant presence, and the sporadic presence of managers was not out of the ordinary or accompanied by coercive conduct, and therefore is not objectionable.

The Union's reliance on *Villa Maria Nursing*, supra, in support of its contention that Regalado spent too much time in the cafeteria, is misplaced inasmuch as the cited case deals with unjustified surveillance by as many as six guards a time, which is not the case in this matter. Rather, *Alta Bates Summit Medical Center*, 357 NLRB No. 31 (2011) provides a similar situation to the case at hand, but is still easily distinguished. In that matter, the Board adopted the administrative law judge's finding of a surveillance violation when, for a whole day, newly contracted guards sat in the cafeteria next to two unit employees who were soliciting for a decertification petition, and carefully observed and listened to what occurred at the employees' table. On another full day, a further violation occurred when guards sat in the cafeteria next to two unit employees engaged in anti-union campaigning and took photographs of them. Human resources directed this conduct and instructed guards to also take written notes. The human resources manager also snatched handbills from the employees and questioned them about their activities. Such surveillance, accompanied by other related violations, is far more egregious than that which occurred in this matter, and such was found to be unaccompanied by any justified by any legitimate concerns.

Clearly, the Employer herein routinely and consistently used guard services, had legitimate concerns in the cafeteria, did not interfere with protected activities, and engaged in no associated coercive conduct. Under these circumstances, I conclude that employees would not reasonably assume from the employer's actions that their union activities had been placed under surveillance.

Accordingly, I recommend that Union Objection No. 36 be overruled.

Non-Employee Union Organizers Access to Hospital

Objection No. 14

The employer, by its agents, denied workers access to their Union representatives during the period proceeding [sic] the conduct of the NLRB election, while allowing anti-union supporters as well as managers and supervisors to campaign against the Union on work time and in work areas.

Objection No. 15

The employer, by its agents, created an atmosphere of fear and coercion, interfering with the laboratory conditions necessary for the conduct of a fair election.

Objection No. 33

The employer, through its agents, locked the entrances to the building where the voting took place, in an effort to prevent pro-Union supporters from voting.

Objection No. 41

The employer, through its agents, called the police, on multiple occasions, on election day, and threatened Union supporters and staff with arrest.

Objection No. 42

The employer, through its agents, assaulted Union organizers.

Inasmuch as they are related, I will consider Union Objection Nos. 14, 15, 33, 41 and 42 together. In support of these objections, the Union provided testimony from non-employee Union Organizers Ruth Calderon, Evangelina Quintana, Paul Norman, Amado David, Myra Casas, and Lilly Dickinson, and unit employees Teresa Salvaltierra and Mavile Suchite. Regarding these objections, the Employer proffered evidence through Human Resources Manager Jo Anne Suehs, Director of Food and Nutrition Services Lynne Kiernan, Director of Materials Management Robert Becerra, Lab Manager Lillian Barger, COO/CNO Ada Yeh, Director of Bloodless Medicine Jason Shane, Guard Kyle Houraney, and employees Geri Eyles, Juan Alvarez, and Philip Zoerlein.

These objections deal with three incidents on November 28, in which people, including non-employee Union organizers, were asked to briefly leave the cafeteria in the morning, and cause to leave the lobby and cafeteria after visiting hours had ended in the evening.

Clearing of the Cafeteria

The essential facts regarding the polishing of the cafeteria floor are not in dispute. Before 7:00 a.m. on November 28, Calderon and Quintana campaigned with unit employees in the cafeteria. During that time, cleaning personnel employed by a subcontractor started moving tables and chairs in the cafeteria so that the floor could be polished. The subcontractor schedules when the floor will be cleaned. All people in the cafeteria were asked to leave, except those working in the cafeteria at that time. Everyone left except Calderon and Quintana. A guard, Chef "Brian," Kiernan, and Suehs all asked Calderon and Quintana to leave, but they refused. No employees were present for this. During this time, Brian told about ten employees that they could not enter the Hospital through the cafeteria, because it was being cleaned, and advised them to go to another entrance. As noted in the discussion of earlier objections, there are

multiple ways for employees to enter the Employer's facility. When the polishing machines got near them, Calderon and Quintana left the cafeteria and stayed on the patio directly outside the cafeteria for about 30 minutes, until the polishing was complete, at which time they re-entered the cafeteria at about 8:00 a.m. As noted above, Hospital visiting hours start at 8:00 a.m.

Regarding this incident, Calderon also testified that Suehs "came in and told us we were trespassing and to get out and that they were going to call the cops." Calderon provides no other details about this, and such testimony was not corroborated by Quintana. Accordingly, I do not credit this testimony.

Suehs testified that she asked Calderon and Quintana to leave the cafeteria because the floor was going to be polished, and when they refused, she told them to lift their feet when polishing employee went by. Suehs then told the polishing crew to work around Calderon and Quintana. Finally, Suehs testified that she did not threaten to call police. Throughout the hearing, Suehs directly responded to questions with complete answers, which included relevant details that permitted the Hearing Officer to have a more complete understanding of what had happened and why. Suehs' genteel demeanor at hearing helped establish that she is a truthful witness. Accordingly, I credit Suehs' detailed and complete testimony.

Closing of the Lobby

The critical facts about the closing of the lobby at 8:00 p.m. on November 28 are not in dispute. At that time, the PBX operator turned off the front lobby sliding doors, dimmed the lobby lights, and posted a sign that visiting hours were over.[51] This is when Casas and

[51] In addition to the stipulation of the parties that visiting hours are 8:00 a.m. to 8:00 p.m., various Union and Employer proffered witnesses corroborated this and testified the lobby is shut down at 8:00 p.m., and an announcement is made to visitors that they should leave the Hospital at that time. The Employer's Visitor Control Policies & Procedures state, in relevant part, "PBX will announce at 7:45p.m. that visiting hours will be over at 8 p.m. Announce again at 8 p.m. that visiting hours are over." These Policies & Procedures also state, "Exceptions to these rules may be made on a case by case basis." However, according to these Policies & Procedures, the only

Dickinson walked up to the main lobby doors and the PBX operator opened the sliding doors for them. Just inside the lobby, Casas and Dickinson were stopped by several other individuals in the lobby, told that visiting hours were over, and were asked to leave. Casas and Dickinson said that they had a right to be inside the Hospital at that time because of the election, and refused to leave. Casas and others there were quite upset. Casas requested that the police be called. Shane called Kyle Houraney, who came and spoke to Casas and Dickinson. Houraney defused the situation by politely suggesting that he, Casas and Dickinson leave the lobby together, which they did. The police were not called. After having been involved in several altercations the day before, here Casas is in the middle of yet another confrontation which required Employer management and guard involvement. As mentioned in the discussion of earlier objections, this is when Employer representatives assisted some employees to enter the front of the Hospital, after the lobby was closed for the evening.

Closing of the Cafeteria

Most of the facts regarding the closing of the cafeteria are not in dispute. Calderon and Quintana campaigned in the cafeteria from about 5:30 p.m. until the cafeteria closed at the end of visiting hours at 8:00 p.m. At that time, Employer CEO Don Kreitz told Calderon and Quintana that visiting house were over and asked them to leave the cafeteria. Becerra later told them the same thing. Calderon and Quintana refused to leave and said that they had a right to be there, the election was still going on, and they wanted to keep campaigning in the cafeteria. Kreitz told them that if they did not leave, the police would be called. Shane called the City of Orange Police Department and asked for their assistance with visitors who

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exceptions to the visiting hours described are related to the needs of patients and their families, especially in critical medical situations. Witness testimony confirmed this practice. Testimony from witnesses that on occasion visitors to the Hospital have stayed later than 8:00 p.m. does not establish any change in policy or exception. Kyle Houraney, Yeh, and Shane testified that no exception was requested by or granted to the Union on November 28.

refused to leave the Hospital at the end of visiting hours. Several Employer managers stood by the cafeteria doors to make sure that no additional visitors would come into the cafeteria, while the situation was being resolved. At 8:37 p.m., Quintana emailed David, "its is getting physical in here;" and "They don't let us in or out!" Kyle Houraney let Casas into the cafeteria to retrieve her purse, and Quintana opened the door and let Norman into the cafeteria to talk to the police. Two other Union representatives tried to enter the cafeteria during this incident, but were not allowed. The managers allowed employees to enter the cafeteria. Several employees looked inside the cafeteria as they walked by. Two police officers arrived and spoke to both parties for about 15 minutes. Calderon and Quintana left the cafeteria at about 9:00 p.m. No one remained in the cafeteria at that time. Employer representatives did not touch any Union representatives.

There is disagreement over whether the Employer refused to let Quintana and Calderon leave the cafeteria. Both Quintana and Calderon testified that when visiting hours were over, they were asked to leave the cafeteria, but refused to do so, even after being told that the police would be called. Calderon testified, "[W]e were being held hostage until the cops came." Quintana contends that Kreitz told her, "If you don't want to leave, then you're going to have to stay here. We called the cops already." Quintana testified, "And I asked [Becerra] if I could leave. They said no, not until the cops got here." Becerra denied saying this, and denied that Kreitz told anyone that they could not leave. Significantly, no evidence was presented about anyone saying anything to the police about Quintana and Calderon being held in the cafeteria against their will, or about Quintana or Calderon attempting to walk out of the cafeteria. Norman testified that when he tried to enter the cafeteria through the back door, Becerra told him something like, "You can't come in. Nobody can come in." Moments later, Quintana let Norman in. Becerra testified that he let out whoever wanted out. Quintana is the only witness

that claims that the police decided that she could stay in the cafeteria, but she contradicted her own testimony by saying that she stayed in the cafeteria, "Until the police asked us to leave."

Salvaltierra served as an election observer for the Union in the morning and evening sessions. Salvaltierra testified that she left the evening polling session at about 8:00 p.m. and immediately tried to enter the cafeteria from the outside. Salvaltierra stated that a guard stopped her from entering cafeteria. According to Salvaltierra, when she asked why, the guard said it was because she was from the Union. No additional evidence was adduced about this conversation. Salvaltierra later re-entered the Hospital to attend the tally of ballots. In this same regard, Quintana testified that she saw one employee try to enter the cafeteria from the outside, but was asked to go around and enter through the other side. Calderon did not recall anyone being prevented from voting.

Discussion of Objection Nos. 14, 15, 33, 41 and 42

The general rule under the Supreme Court's *Lechmere* decision is that non-employee organizers are not entitled to engage in Section 7 organizing activity on the private property of others. *Lechmere, Inc. v. NLRB*, 502 U.S. 527, 533 (1992). Nonemployee union organizers "cannot claim even a limited right of access to a nonconsenting employer's property until 'after the requisite need of access to the employer's property has been shown.'" 502 U.S. at 534 (quoting *Central Hardware Co. v. NLRB*, 407 U.S. 539, 545 (1972)). No right of access exists unless the union meets its "'burden of showing that no other reasonable means of communicating its organizational message exists,'" and that burden "'is a heavy one,'" that will be met only where "'unique obstacles prevented nontrespassory methods of communication with the employees.'" Id. at 535 (quoting *Sears, Roebuck & Co., v. Carpenters*, 436 U.S. 180, 205–206 (1978)). Simply put, Section 7 "does not protect nonemployee union organizers except in the rare case where the 'inaccessibility of employees makes ineffective the reasonable attempts

by nonemployees to communicate with them through the usual channels.'" Id. at 537 (quoting *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105,112 (1956). Also see *The Research Foundation of the State University of New York at Buffalo*, 355 NLRB No. 170 (2010)

"It is well established that an employer may seek to have police take action against pickets where the employer is motivated by some reasonable concern, such as public safety or interference with legally protected interests." *Nations Rent, Inc.*, 342 NLRB 179, 181 (2004) (citing *Great* American, 322 NLRB 17, 21 (1996)). Moreover, an employer can take reasonable steps to prevent non-employees from trespassing onto private property. *Lechmere,* supra. Although police presence alone has not been considered sufficient consequence to require a new election, the election environment becomes tainted where the police "inject themselves into election issues" or "speak to any employees or voters during the election." *Louisville Cap Co.*, 120 NLRB 769, 771 (1958). Also see *Vita Food Products, Inc. of Maryland*, 116 NLRB 1215, 1219 (1956) (reason for police officer's presence on the day of the election, immaterial inasmuch as they did not inject themselves into the election nor did they speak to voters during the election).

The *General Shoe* doctrine holds that misconduct which creates an atmosphere which renders improbable a free choice will warrant invalidating an election, even though that conduct may not constitute an unfair labor practice. *General Shoe Corp.*, 77 NLRB 124 (1948).

Regarding the clearing of the cafeteria so that the floors could be polished, no evidence was presented that the timing of this was set to interfere with the Union or the election. Rather, Union organizers were requested to campaign elsewhere for a few minutes. This is exactly what happened when the Union organizers finally complied with the request, and went to

the cafeteria patio for about 30 minutes. There is no evidence of a departure from past practice or of disparate treatment.

Similarly, there is no evidence of a departure from past practice or of disparate treatment with regard to the closure of the lobby at the end of visiting hours. In accordance with its procedures and past practice, the Employer closed and locked the lobby at 8:00 p.m. There is scant evidence to suggest that the Employer does not routinely do this. As noted in the discussion of prior objections, after 8:00 p.m., the Employer took necessary steps to assist employees in entering the front of the Hospital. Emotions were high and Casas raised the issue of calling the police. By refusing to cooperate with the Employer's established procedure, Casas and Dickinson created a situation in which they had to be escorted out of the lobby.

The closure of the cafeteria provides another example of the Union organizers refusing to cooperate with the Employer's established procedure. At the end of visiting hours, Calderon and Quintana were asked to leave the cafeteria. They refused. Within minutes, four other Union representatives approached the cafeteria, and tried to enter. The Employer took measured steps to prevent more non-employee visitors from entering the cafeteria and further complicating the situation. Calderon and Quintana's statements that they were being held hostage and that things were getting physical are in-credible and totally unsupported by the record evidence. This "hostage" situation was not mentioned to the police, because it never happened. Quintana could not even keep her story straight about whether or not the police decided to allow her to stay in the cafeteria. If Calderon and Quintana are to be believed, they were first asked to leave, then they refused to leave, then they were prevented from leaving, then they were allowed to stay, and then they immediately left. Such testimony makes no sense and is discredited. Rather, I credit Becerra's consistent and plausible testimony that no one prevented

the Union organizers from leaving the cafeteria. When the incident was over, the cafeteria was empty, so there is no disparate treatment issue.

According to Norman, Becerra told him, "You can't come in. Nobody can come in." I find that the circumstances indicate that Becerra was referring to that moment at the cafeteria back door, not to anything more general. There is no evidence that this was heard by any employees.

The testimony regarding employee access to cafeteria after 8:00 p.m. indicates that numerous employees were allowed into the cafeteria, one employee was told to use a different entrance, and only Salvaltierra was turned away, but she later re-enter the Hospital to attend the tally of ballots. Inasmuch as Salvaltierra had twice served as an election observer that day, it is unlikely that she was seeking entrance through the cafeteria in order to vote. No evidence was presented that other employees witnessed or were aware of this situation. Such an isolated incident, unaccompanied by related coercive acts, cannot have affected the election. *Bon Appetit Management Co.*, 334 NLRB 1042, 1043 (2001) (finding isolated interrogation and threat by low-level supervisor not objectionable, citing, inter alia, the sharply lopsided vote). Other than this single instance, the Employer did not block the ingress and egress of unit employees.

Based on the facts herein, I conclude that the access granted to non-employee Union organizers was at the discretion of the Employer, which followed its procedures and past practice. No exception to the Employer's Visitor Control Policies & Procedures was requested or granted to the Union and there is no evidence of disparate treatment. The Employer took reasonable steps to deal with non-employees trespassing on private property, after the end of visiting hours, acted reasonably to address its legitimate operational responsibilities. Further,

there is no evidence or assertion that the Union was ever denied access to the cafeteria during visiting hours.

The actions of the Union representatives in not complying with the Employer's established procedures, led the Employer to call the police. *Lechmere,* supra. There is no evidence that the police injected themselves into election issues or spoke to any employees or voters during the election. *Louisville Cap*, supra. Comments made by Employer representatives about calling the police were not threats – they were noncoercive statements about the lawful actions the Employer may take to protect public safety or its legally protected interests. There is little or no evidence that employees heard any comments about calling the police.

The Employer's noncoercive conduct described above does not rise to the level of objectionable conduct under *General Shoe*, supra.

No evidence was adduced at hearing regarding any assault of Union organizers.

Herein, there is no assertion that the Union lacked reasonable means of communicating with unit employees other than in the cafeteria. *Lechmere,* supra.

Finally, while a few employees witnessed these situations, their numbers are not nearly enough to affect the election. Any possible negative effect is also diminished by the fact that the last two incidents took place shortly before the end of the day-long election.

Based on the foregoing, I cannot find that the Employer's actions related to the clearing of the cafeteria and closure of the of the lobby and cafeteria provide any basis for setting aside this election.

Accordingly, I recommend that Union Objection Nos. 14, 15, 33, 41 and 42 be overruled.

Disparate Enforcement of Solicitation and Distribution Policy

Objection No. 10

The employer, by its agents, gave support to anti-union employees.

Objection No. 13

The employer, by its agents, imposed a discriminatory, no-solicitation and/or discriminatory no-distribution rule on employees in a matter [sic] designed to interfere with conduct of a fair election.

Objection No. 17

The employer, by its agents, forced Union supporters, through discipline and the threat of discipline, to remove and take off pro-Union buttons and stickers, while allowing anti-Union supporters as well as managers and supervisors to wear buttons and stickers that contained anti-Union messages.

Objection No. 32

The employer paid anti-union supporter to recruit "no" votes, and to intimidate Union supporters.

Objection No. 35

The employer, through its agents, required workers to wear "Vote No" stickers.

Objection No. 37

The employer, through its agents, required workers to pass out anti-union flyers.

Objection No. 39

The employer, through its agents, discriminately enforced its no-solicitation and no-distribution rule by allowing anti-union supporters to engage in solicitation and distribution of anti-union literature on work time and in work areas, while denying Union supporters the same opportunity.

Inasmuch as they are related, I will consider Union Objection Nos. 10, 13, 17, 32, 35, 37 and 39 together. No evidence was presented at hearing in support of Union Objection Nos. 17 or 35.

In support of these objections, the Union provided testimony from non-employee Union Organizers Ruth Calderon, Evangelina Quintana, and Myra Casas, and unit employees Altagracia Trammell, Yolanda Garcia, Eugenia Torres, Teresa Salvaltierra and Mavile Suchite. Regarding these objections, the Employer proffered evidence through Human Resources Manager Jo Anne Suehs, Director of Food and Nutrition Services Lynne Kiernan, Lab Manager Lillian Barger, COO/CNO Ada Yeh, Director of Bloodless Medicine Jason Shane, Guards Benjamin Horn and Daniel Regalado, and employees Geri Eyles, Juan Alvarez and Philip Zoerlein.

Regarding Objection No. 32, Quintana and Calderon testified that on November 28, Alvarez reminded employees to vote, escorted a few employees toward the polls and, urged some employees to vote "no." As noted in the discussion of Objection No. 29 above, on November 28, Alvarez clocked in at 6:42 a.m., out at 8:55 a.m., back in at 6:39 p.m., and out again at 10:52 p.m. Also above, it was determined that Alvarez is not an agent of the Employer. No evidence was presented that Employer representatives were aware of Alvarez' activities while on the clock, or that he was on the clock, or directed or endorsed such activities. Accordingly, it cannot be concluded that the Employer paid Alvarez to campaign against the Union.

The Union has also asserted that Eyles was on the clock when she distributed donuts and anti-Union literature in the cafeteria on November 27. Eyles' time detail report, which was received into evidence, indicates that she did not clock in or out on November 27.

This is consistent with her testimony that she and the employee helping her, did not work on November 27. Eyles also denied that the Employer supported, directed, or endorsed such activities. This evidence is uncontroverted. No other credible evidence was presented regarding employees campaigning on working time.

Finally, regarding Objection No. 32, no evidence was presented regarding any intimidation of employees who were Union supporters.

Regarding Objection No. 37, Salvaltierra testified that on an unknown date, she saw Director of Subacute Unit Eleanor Ghan with a lot of copies of an anti-Union flier in the subacute unit nursing station. Salvaltierra stated that Ghan was "showing" the flier to employees. Counsel for the Union then asked Salvaltierra, "Okay. And you said you saw Eleanor *giving* it the people. And I asked what that meant. You said employees. Can you tell me what specifically you saw? First what you saw with respect -- how Eleanor was *giving*," to which Salvaltierra replied, "She's just *showing* it to the people, so the people are -- it is a lot, so the -- we -- they distribute it to everyone." [Emphasis added.] Salvaltierra then gave confusing testimony about Ghan showing, giving, or placing a flier or fliers on a desk of an identified non-unit employee, inside an activity room, which is also used as a break room. This confused testimony, some of which was elicited through questioning that mischaracterized earlier testimony, cannot be credited. Even if it were credited, which it is not, such provides no evidence that the Employer required anyone to pass out anti-Union fliers. No other non-hearsay evidence was presented in support of this objection.

In Objection No. 13, the Union contends that the Employer's Solicitation and Distribution Policy (herein Policy) is discriminatory. The Union has forwarded no argument regarding the validity of this Policy, which Policy does not appear to be facially invalid.[52]

With regard to Objection No. 39, the Union contends that the Employer disparately enforced its Solicitation and Distribution Policy.

It is undisputed that non-employee Union organizers were prohibited from distributing literature inside the Hospital. However, non-employee Union organizers were not prohibited from distributing pizza, "vote yes" cupcakes, box lunches, and weeples (small, fluffy

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[52] The Policy reads in relevant part:

POLICY

The solicitation and distribution of literature on Hospital property is prohibited except as expressly permitted by this Policy.

GUIDELINES

1. Persons Not Employees Of The Hospital:

Persons who are not employees of the Hospital may not solicit or distribute literature for any purpose on the premises of the Hospital, including building interiors, parking lots, driveways, or any other Hospital property. This prohibition does not apply to approved charitable activities or Hospital-sponsored activities directly related to our employee benefits package.

2. Hospital Employees:

Individuals who are employees of the Hospital may not solicit any employees, nor distribute literature, for any purpose during their working time or the working time of the employee being solicited. Working time means the period of time scheduled for the performance of job duties, not including mealtimes, break-times or other periods when employees are properly not engaged in performing their work tasks.

3. Areas Within Hospital's Facilities Where Solicitation And Distribution Are Never Permitted:

Solicitation and/or distribution of literature is always prohibited in immediate patient care areas, including, without limitation:

- patient rooms;
- operating and recovery rooms;
- nurse's stations;
- rooms where patients receive treatment, such as treatment rooms in emergency, radiology, radiation oncology, and other therapy rooms;
- corridors adjacent to patient rooms, operating and recovery rooms, and treatment rooms;
- sitting rooms on patient floors accessible to and used by patients;
- open locker areas visible to patient care areas.

THE DISTRIBUTION OF LITERATURE IS NEVER PERMITTED IN ANY WORK AREA.

4. Disciplinary Action:

Any employee who solicits for any purpose during working time and/or in any of the areas where solicitation is prohibited or who distributes literature any time in working areas will be subject to disciplinary action.

toy worn to support Union), inside the cafeteria. Evidence was also presented that, at times, non-employee Union organizers distributed pro-Union fliers in the cafeteria. It is uncontroverted that rare exceptions are made, pursuant to the Policy, and only for approved charitable activities or Hospital-sponsored activities directly related to employee benefits.

It is undisputed that employees distributed anti-Union literature in the cafeteria, during nonworking time. No evidence was presented that the Employer prohibited any employees from distributing pro or anti-Union literature. Such activity is allowed under the Policy and the Act. Even Quintana testified that she asked Yeh about the distribution of pro-Union fliers, to which Yeh replied that employees may distribute campaign fliers, but non-employee Union organizers could not. Suehs gave uncontroverted testimony that in 2012 she equally enforced the Policy, and did not discipline any employee for violating it.

Quintana stated that she saw anti-Union fliers left on tables in the kitchen and distributed in a hallway. Quintana also contends that about once a week she saw non-unit employees distribute anti-Union fliers in hallways and the lobby. Calderon also stated that she saw anti-Union literature on a bulletin board. Torres and Altagracia Trammell stated that they saw anti-Union literature left in employee break rooms. Salvaltierra stated that she saw employees distribute anti-Union fliers in a hallway. Salvaltierra also saw an unidentified medical records employee distribute anti-Union literature, in the Subacute Unit, for a couple of minutes, while Ghan was there. Torres stated that she saw an employee give some anti-Union fliers to another employee. Garcia stated that she saw employees show anti-Union literature to her during working time. Casas stated that an employee took pro-Union materials away from another employee. With regard to all of these alleged incidents, no evidence was presented about any Employer knowledge or involvement. Further, no reliable evidence was presented

regarding whether any of the employees involved were on working time or the dates on which these incidents may have occurred.

Zoerlein testified that he campaigned in the cafeteria during his break times and the Employer provided him no assistance or support. While Zoerlein admitted that he campaigned against the Union with kitchen employees during their working time, there is no evidence that the Employer was aware of this.

Suehs also testified that the Policy does not prohibit the posting of pro or anti-Union literature in the cafeteria. Evidence was also presented about isolated instances of pro and anti-Union fliers being posted in possible work areas. Calderon and Suchite testified that on an unknown date, an anti-Union flier was posted on the office door of Lab Manager Lillian Barger. No evidence was presented regarding who posted it or the Employer having endorsed the posting. Barger denied posting the flier and testified that she was out of the country for the second half of the critical period and, therefore, could not have been responsible for any such postings during that time. Yeh also denied seeing or posting the flier. Further, it is undisputed that Barger's office is also an employee lounge, which raises the possibility that the Policy would allow for such a posting at that location. Calderon states that she did not discuss this posting with the Employer.

Similarly, Quintana testified that on an unknown date, an Employer-produced anti-Union flier was posted on the dietary department bulletin board, which is located in the kitchen – a non-public area. Kiernan gave un-contradicted testimony that she does not restrict who posts on this bulletin board and she saw anti-Union fliers on the board. No evidence was presented regarding who posted the fliers. Quintana also testified that during the critical period, she saw an anti-Union flier posted in a hallway. Torres stated that she saw pro and anti-Union

literature posted on a Medical Surgical Unit bulletin board, and saw an anti-Union flier posted on a hallway door and on a door between the board room and the Critical Care Unit.

Salvaltierra testified that she saw anti-Union literature in the Subacute Unit nurses station when Ghan was also present. Salvaltierra also testified that almost every day she saw anti-Union fliers on the desk in the activities room, but did not see who placed them there.

Salvaltierra testified that no one from Employer management ever talked to her about the distribution of literature, but then stated that on another day, while she was on duty, Educator JoAnne Bermudes saw her giving fliers to a coworker, who was also on duty, and Bermudes told her something like she was "not allowed to distribute the fliers," "cannot give all the fliers to the employee" [sic], and/or "cannot leave the papers in the desk." Salvaltierra further testified, "[W]hen I became involved with the Union, every time she [Bermudes] saw, they told me that I cannot . . . give the flyers." Salvaltierra then gave confused testimony about whether incidents occurred during working time: "Yes, but it was not yet -- I didn't clock in yet on the that time. It was too early in the morning." Salvaltierra testified that this was the only time she was told not to distribute fliers. Bermudes is not alleged to have made any related threats. Also according to Salvaltierra, on another occasion, Bermudes approached her while she was talking to coworkers in the activity room, and told Salvaltierra that could not talk about the Union. No additional facts were offered.

Salvaltierra also contends that a charge nurse named "Joyce" commented to her that she cannot distribute Union literature.[53] No additional facts were offered.

With regard to Objection No. 10, the Union contends that the Employer gave support to employees who opposed the Union, but not to employees who supported the Union.

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[53] The parties agreed at hearing that charge nurses are not supervisors as defined in Section 2(11) of the Act.

It is undisputed that the anti-Union literature distributed by employees in the cafeteria was not produced by the Employer. Rather, the Employer mailed anti-Union literature to employees' homes.

As mentioned in the discussion of earlier objections, there were instances in the cafeteria where the Employer asked anti-Union employees to leave the cafeteria, but not non-employee Union organizers, and where both anti-Union employees and non-employee Union organizers were asked to take loud discussions outside of the cafeteria. Testimony regarding other occasions where non-employee Union organizers were allegedly asked to leave the cafeteria is far too vague to be considered as potentially objectionable.

Quintana testified that she was not aware of Employer management enforcing the Policy in a disparate manner or ever assisting employees with campaigning against the Union.

Calderon also stated that she did not witness Employer management talk to any bargaining unit employees about distribution of pro-Union literature.

Discussion of Objection Nos. 10, 13, 17, 32, 35, 37 and 39

Employers cannot infringe on the right of employees to engage in the distribution of literature in the employer's non-working areas during non-working times. *Stoddard-Quirk Mfg. Co.*, 138 NLRB 615, 621 (1962). It is well settled that off-duty employees have a right under Section 7 to disseminate union material in nonwork areas. See, e.g., *Holdings Acquisition Co. L.P. d/b/a Rivers Casino*, 356 NLRB No. 142 (2011); *Nashville Plastics Products*, 313 NLRB 462 (1993) (finding that employer violated Sec. 8(a)(1) by prohibiting off-duty employees from distributing union literature on company property).

An employer may prohibit nonemployee organizers from distributing union literature on company property, so long as the prohibition does not discriminate against the union

and the union has reasonable alternative means to communicate its message to the employees. *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 76 S.Ct. 679, 684-685 (1956).

In addition, employers are entitled to distribute campaign literature during a campaign. The involvement of supervisors in the distribution process does not, by itself, convert that lawful distribution into an unlawful one, and similarly is not objectionable. *Cast-Matic Corporation, d/b/a Intermet Stevensville*, 350 NLRB 1349, 1355 (2007). See *Jefferson Stores*, 201 NLRB 672, 673, 676–677 (1973) (employer's assistant manager lawfully distributed "vote no" cards to employees at the doors of the plant).

Regarding Objection No. 32, the above facts do not support a finding that the Employer paid employees to campaign against the Union or intimidate Union supporters.

Regarding Objection No. 37, the hearing record contains no credible evidence to support a conclusion that the Employer required employees to distribute anti-Union fliers.

The facts do not support the Union's assertion that the Employer's Solicitation and Distribution Policy is, on its face, objectionable. Thus, Objection No. 13 provides no basis for setting aside this election.

With regard to Objection No. 39, the Employer was within its rights to prohibit non-employee Union organizers from distributing literature inside the Hospital. *Babcock*, supra. The record evidence does not establish that the Employer prohibited any employees from distributing pro or anti-Union literature. Several witnesses gave factually limited testimony about isolated instances where the Policy may have been violated. Regarding employee distributions, no evidence was presented about any Employer knowledge or involvement with that. Where a supervisor was present, it was still unclear whether they witnessed anything. Accordingly, the Employer cannot be held accountable for such incidents. Similarly, inasmuch

as the Employer was unaware that employees campaigned during working time, on possibly a couple isolated occasions, it cannot be responsible for such incidents. Moreover, for many of these incidents, no evidence was proffered regarding whether working time or work areas were involved. Regarding the limited testimony about Ghan giving fliers to one non-unit employee, such is clearly de minimus at best. Ghan having or distributing campaign material is not objectionable. *Intermet Stevensville*, supra. Regarding postings, the record revealed no evidence of disparate treatment, who posted the literature in question, or that the Employer endorsed such postings.

Salvaltierra gave inconsistent and confused testimony regarding Bermudes telling her that she could not distribute campaign materials. By her own admission, this occurred when she was engaged in such conduct during working time. She later claimed it occurred off the clock. During her testimony, Salvaltierra failed to understand and answer straightforward questions and gave confused, self contradicting, and sometime vague accounts. Accordingly, I do not credit her testimony about her being told that she was not allowed to distribute materials. Moreover, this single alleged incident was isolated and unaccompanied by threats. Further, there is no evidence that Salvaltierra complained to Employer management about this restriction. Even if true, there is no evidence of dissemination, so such could not have had any significant impact on the a tally of ballots which shows a wide margin. Finally, as noted in the discussion of earlier objections, the hearing record does not establish that Bermudes is a supervisor or agent of the Employer. Similarly, Salvaltierra's testimony about "Joyce," who is not a supervisor, and about Ghan, who was allegedly present when anti-Union literature was in work areas, provide no basis to set aside the election.

Based on the facts above, the record does not establish that the Employer disparately enforced its Solicitation and Distribution Policy, as alleged in Objection No. 39.

Regarding Objection No. 10, the facts herein do not establish that the Employer gave support to employees who opposed the Union or denied support to employees who supported the Union.

Accordingly, I recommend that Union Objection Nos. 10, 13, 17, 32, 35, 37 and 39 be overruled.

Summary of Recommendations

Having made the above findings and conclusions with respect to the Union's objections, viewing the alleged objectionable conduct both individually and cumulatively, and upon the record as a whole, I recommend that Union Objection Nos. 1, 2, 3, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45, be overruled and a Certification of Results issue.

V. Right to File Exceptions

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on June 14, 2013, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-**

Government initiative, parties are encouraged to file exceptions electronically. If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.[54] A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions 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, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED at Los Angeles, California, this 31st day of May, 2013.

John J. Hatem
Hearing Officer, Region 21
National Labor Relations Board

[54] A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

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Attorneys for Respondent,
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UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 21

SERVICE EMPLOYEES INTERNATIONAL UNION, UNITED HEALTHCARE WORKERS-WEST, **Petitioner,** **and** **INTEGRATED HEALTHCARE HOLDINGS, INC. (CHAPMAN MEDICAL CENTER),** **Respondent.**	**Case No. 21-RC-092165**

EMPLOYER'S UNOPPOSED MOTION TO CORRECT ERRORS IN TRANSCRIPT

SUBMITTED TO HEARING OFFICER

JOHN HATEM

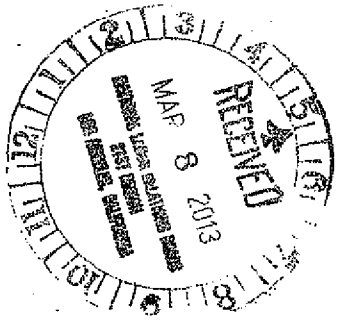

Exhibit A

JMBM | Jeffer Mangels Butler & Mitchell LLP

PRINTED ON RECYCLED PAPER

EXHIBIT A

EXHIBIT A

Gemoets, Travis M.

From: Monica Guizar [MGuizar@unioncounsel.net]
Sent: Tuesday, March 05, 2013 8:28 PM
To: DeSantis, Patricia
Cc: Gemoets, Travis M.; Hatem, John; Bruce Harland; Monica Guizar
Subject: RE: Chapman Medical Center, Inc., Case 21-RC-092165 [71632-0003]

Hello,
I have no objection to the Employer's request to make changes to the transcript at the lines indicated in the original email below.

Best,
Monica Guizar

-----Original Message-----
From: DeSantis, Patricia [mailto:PMD@JMBM.com]
Sent: Tue 3/5/2013 2:57 PM
To: Monica Guizar
Cc: Gemoets, Travis M.; Hatem, John
Subject: RE: Chapman Medical Center, Inc., Case 21-RC-092165

Monica,

We have received no response regarding the errors in transcription described below. Please advise if you are agreeable to these corrections.

Thank you,

From: Hatem, John [mailto:John.Hatem@nlrb.gov]
Sent: Wednesday, February 27, 2013 3:19 PM
To: DeSantis, Patricia; Monica Guizar
Cc: Gemoets, Travis M.
Subject: RE: Chapman Medical Center, Inc., Case 21-RC-092165

Please advise if both parties are in agreement regarding these proposed corrections.

John J. Hatem, Field Examiner

(213) 894-5244

P Please consider the environment before printing this email.

From: DeSantis, Patricia [mailto:PMD@JMBM.com]
Sent: Wednesday, February 27, 2013 11:55 AM
To: DeSantis, Patricia; Hatem, John
Cc: MGuizar@unioncounsel.net; davette.repola@avtranz.com; Gemoets, Travis M.
Subject: RE: Chapman Medical Center, Inc., Case 21-RC-092165

John,

We are reviewing the transcript and have found several errors in transcription. Some need to be corrected as the errors fundamentally change the meaning of what was actually said.

In response to multiple questions, Ada Yeh testified that she "can" work with SEIU, however, the transcript reflects "can't" at 2467:4, 2479:7, 2479:18.

The transcription appears to be correct for similar testimony by Ms. Yeh at 2501:16 and 2533:24-25 where the transcript reads "I can work with SEIU."

We request that the transcript be corrected at pages 2467:4, 2479:7, 2479:18 to reflect Ms. Yeh's testimony that she "can" work with SEIU.

Please contact us with concerns.

Patricia M. DeSantis
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CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1900 Avenue of the Stars, 7th Floor, Los Angeles, California 90067.

This is to certify that on this date I have served a true and correct copy of the **EMPLOYER'S UNOPPOSED MOTION TO CORRECT ERRORS IN TRANSCRIPT SUBMITTED TO HEARING OFFICER JOHN HATEM** in Case No. 21-RC-092165 via electronic filing through the National Labor Relations Board's website, www.NLRB.gov, upon:

John Hatem
Regional Director, Region 20
National Labor Relations Board
901 Market Street, Suite 400
San Francisco, CA 94103-1735

The **EMPLOYER'S UNOPPOSED MOTION TO CORRECT ERRORS IN TRANSCRIPT SUBMITTED TO HEARING OFFICER JOHN HATEM** was also served, via electronic mail, upon counsel of record for the Petitioner, as follows:

Monica T. Guizar, Esq. (Email: mguizar@unioncounsel.net)
Weinberg, Roger & Rosenfeld
800 Wilshire Boulevard, Suite 1320
Los Angeles, CA 90017
Tel: (213) 380-2344; Fax: (213) 443-5098

Executed on March 8, 2013 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Kathy Gould

JMBM | Jeffer Mangels Butler & Mitchell LLP

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EMPLOYER'S UNOPPOSED MOTION TO

Union Math=taking 2% of your $$
Don't believe their promises..

Chapman's History

Average Raises

- *2010* *3.0%*
- *2011* *2.5%*
- *2012* *2.7%*

---

3 years: 8.2%

<u>You</u> Keep ALL 8.2% of your increases vs…..

SEIU/Coastal Contract

Raises

Year 1: 2.0 -2% dues= *0%*

Year 2: 2.5-2% dues= *0.5%*

Year 3: 2.5-2% dues= *0.5%*

---

3 years: 1%

3 years: 7% -6% <u>Union Dues=1% left for you</u>

Is the union promising a "coastal" grid? No flexing? Talk is cheap but the union is not! Get those promises in writing.

********** ***VOTE NO*** **********

Exhibit B