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8 UNITED STATES OF AMERICA
9 NATIONAL LABOR RELATIONS BOARD

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11 GOOD SAMARITAN HOSPITAL,) Case No. 31-RD-1555
12 Employer,)
13 v.) **SEIU, UNITED HEALTHCARE**
14 ALLEN SMITH,) **WORKERS --WEST'S EXCEPTIONS**
15 Petitioner,) **TO THE ADMINISTRATIVE LAW**
16 and) **JUDGE'S REPORT AND**
17 SEIU, UNITED HEALTHCARE WORKERS –) **RECOMMENDATIONS ON**
18 WEST,) **OBJECTIONS TO CONDUCT**
19 Union.) **AFFECTING THE RESULTS OF THE**
20) **ELECTION**
ALJ: Gregory Z. Meyerson

21 Respondent, SEIU, United Healthcare Workers – West¹ (the “Union”) takes the following
22 exceptions to the Report and Recommendations of the Administrative Law Judge (“ALJ”) issued
23 on November 30, 2007 in the above-referenced case.

24	<u>Number</u>	<u>Reference to Decision</u>	<u>Exception Taken</u>
25	1.	Pages 5-7	The ALJ’s consideration of evidence regarding incident involving the Petitioner and Union organizer David Ronquillo,

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27 ¹ The Union’s name is SEIU, United Healthcare Workers – West.

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- given that such conduct was not offered in support of either the employer's or Petitioner's objections.
2. Page 5 The ALJ's finding that Mr. Ronquillo was removed from the campaign by the Union.
3. Page 6 The ALJ'S finding that the Union did not offer any explanation for not calling Mr. Ronquillo as a witness.
4. Page 6 The ALJ's finding that Mr. Ronquillo approached the Petitioner and said, "You're the enemy. You're destroying the what we're doing here"; that Mr. Ronquillo gestured angrily with his fist clenched, raised his voice, and got into a "combative posture" six inches from the Petitioner's face; and that this incident occurred in the presence of five or six employees, some of whom were bargaining unit members.
5. Page 6 The ALJ's finding Mr. Ronquillo was involved in a "similar incident" with Barbara Ceazan.
6. Page 6 The ALJ's finding that Mr. Ronquillo was "almost screaming" at Ms. Ceazan during the September 28, 2006 incident.
7. Pages 6, 15-16 The ALJ's finding and legal conclusion that "oral and physical threats" allegedly made by Ronquillo toward the Petitioner, alleged "oral harassment" by Ronquillo toward Ms. Ceazan, and alleged harassment by Michelle Collins toward Marcos Morgana constitutes objectionable conduct.
8. Pages 6, 15-16 The ALJ's finding and conclusion that the September 2006 incident between Ronquillo and the Petitioner "was very significant."
9. Page 7 The ALJ's finding that Ronquillo "sought out" the Petitioner and in the presence of other bargaining unit members and addressed him as the enemy.
10. Page 7 The ALJ's finding that Ronquillo assumed a combative posture with his fist clenched, standing only 6 inches from the Petitioner, and that "only the separation of the two men by a bargaining unit employee prevented a fist fight."
11. Page 7 The ALJ's finding that Ronquillo was trying to instigate a physical altercation with the Petitioner.
12. Pages 7, 15-16 The ALJ's finding and conclusion that Ronquillo's actions "had a significant impact on other unit employees."
13. Page 7, 15-16 The ALJ's finding and conclusion that other bargaining unit members assumed that if Ronquillo "was bold enough to verbally and physically attack" the Petitioner, then "the Union would not hesitate to seek to harm other less prominent who

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also opposed the Union.”

14. Pages 7, 15-16 The ALJ’s finding consideration of evidence regarding incident involving Marcos Morgana and Michelle Collins, given that such conduct was not offered in support of either the employer’s or Petitioner’s objections.
15. Pages 7, 15-16 The ALJ’s finding and conclusion that the incident involving Ms. Collins and Mr. Morgana was significant and served “to remind employees of the Union’s expressed threat to harm” the Petitioner.
16. Pages 7, 15-16 The ALJ’s finding and conclusion that the alleged altercation between Ronquillo and the Petitioner was likely widely disseminated, had the potential to be long lasting, and to affect a significant number of bargaining unit members.”
17. Page 7 The ALJ’s finding that the Petitioner was “highly credible” and that his testimony was “high truthful.”
18. Page 7 The ALJ’s finding that the Petitioner neither exaggerated nor embellished his testimony.
19. Page 7 The ALJ’s finding that the Petitioner’s “personal sense of morality would not permit him to engage in any outright fabrication.”
20. Page 7 The ALJ’s finding that Mr. Morgana was credible.
21. Page 7 The ALJ’s failure to find that Claudia Rodriguez’s testimony was credible.
22. Page 8 The ALJ’s finding that Ms. Rodriguez offered the Petitioner a job with the Union, purple scrubs, and a place as the keynote speaker at a Jesse Jackson rally if he abandoned the decertification effort.
23. Page 7 The ALJ’s finding that Ms. Rodriguez’s testimony was confusing and inconsistent.
24. Page 7 & fn. 8 The ALJ’s finding that Ms. Rodriguez had apparent authority to make job offers on behalf of the Union.
25. Pages 7, 16 The ALJ’s finding that the Petitioner’s version of events is supported by the fact that, several weeks after the alleged offer but days before the election, he and the anti-Union committee circulated, mailed and posted campaign propaganda to the employees that referenced the alleged offer.

- 1 26. Pages 7-8 The ALJ's finding that Ms. Rodriguez's subsequent actions
2 establishes the veracity of the Petitioner's allegations.
- 3 27. Pages 8, 16 The ALJ's finding and conclusion that the possibility of a job
4 offer with the Union, purple scrubs and the opportunity to
5 speak at a Jesse Jackson rally were items of considerable value.
- 6 28. Page 8 The ALJ's finding that the alleged offer was widely
7 disseminated to bargaining unit members through campaign
8 propaganda.
- 9 29. Page 8 The ALJ's legal conclusion that the Board has held that "even
10 where the promise is made to only one employee, where the
11 information is disseminated to a determinative number of unit
12 employees, the setting aside of the election is required."
- 13 30. Page 8 The ALJ's finding that although the promise of a job offer was
14 allegedly made only to the Petitioner, "virtually every
15 bargaining unit member was placed on notice of the potential
16 for financial benefits in exchange for supporting the Union."
- 17 31. Pages 8, 16 The ALJ's finding and conclusion that eligible voters "were
18 coerced into supporting the Union" because the Petitioner was
19 allegedly offered a job, purple scrubs, and an opportunity to
20 speak at the Jesse Jackson rally if he abandoned the
21 decertification effort.
- 22 32. Page 16 The ALJ's conclusion that the alleged objectionable conduct
23 reasonable could have prevented employees from freely and
24 fairly exercising their choice in the election.
- 25 33. Page 16 The ALJ's conclusion that the alleged job offer to Petitioner
26 "would likely have made certain voters also consider
27 abandoning the decertification effort and, thus, coerced them in
28 their exercise of freedom of choice in the election."

Dated: December 14, 2007

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: Bruce A. Harland
BRUCE A. HARLAND
Attorneys for Union

114020/477341

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 14, 2007, I served upon the following parties in this action:

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copies of the document(s) described as:

SEIU, UNITED HEALTHCARE WORKERS --WEST'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION; and SEIU, UNITED HEALTHCARE WORKERS --WEST'S BRIEF IN SUPPORT OF ITS EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

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.

I certify under penalty of perjury that the above is true and correct. Executed at Alameda, California, on December 14, 2007.


Rhonda Fortier-Bourne

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