

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Washington, D.C.

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING
AND REHABILITATION

and

Case 21-CA-39575

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION

MOTION FOR SUMMARY JUDGMENT

Comes now Counsel for the Acting General Counsel, National Labor Relations Board, herein called the Board, and files this Motion for Summary Judgment requesting that the Board make findings of fact and conclusions of law, finding and concluding that Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation, herein called Respondent, has engaged in, and is engaging in, conduct in violation of Section 8(a)(1) and (5) of the Act, as alleged in the Complaint, and that the Board issue an appropriate order without the taking of oral testimony herein. In support of this Motion, Counsel for the Acting General Counsel shows as follows:

1. On June 3, 2009, SEIU, Service Employees International Union, herein called Union, filed a representation petition in Case 21-RC-21140, seeking to be certified as the collective-bargaining representative of certain employees of Respondent. A copy of this petition is attached and designated as Exhibit A.

2. On June 10, 2009, the Regional Director of the Board's Region 21 approved a Stipulated Election Agreement in Case 21-RC-21140, whereby Respondent and the Union agreed to an election in the following unit, herein called the Unit, which is an appropriate unit for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

A copy of this Stipulated Election Agreement is attached and designated as Exhibit B.

3. On July 7, 2009, the election in Case 21-RC-21140, was conducted under the direction and supervision of the Regional Director for Region 21 among Respondent's employees in the Unit. The ballots were counted on July 7, 2009, and revealed, out of 79 eligible voters, 56 votes cast for the Union, 16 votes cast against the participating labor organization, and one (1) challenged ballot. A copy of the tally of ballots is attached and designated as Exhibit C.

4. On July 14, 2009, Respondent filed 17 objections to the election. A copy of Respondent's objections is attached and designated as Exhibit D.

5. On August 7, 2009, Respondent withdrew objections 6, 10, 11, 12, 13, 14, 15, 16, 17, and its unnumbered objection.

6. On August 10, 2009, the Acting Regional Director of Region 21 issued a Report on Objections and Order Directing Hearing and Notice of Hearing for objection numbers 1, 2, 3, 4, 5, 7, 8 and 9. A copy of the Report on Objections and Order Directing Hearing and Notice of Hearing is attached and designated as Exhibit E.

7. A hearing was held on the objections on August 31, 2009, and September 1, 2009. The hearing officer issued her Hearing Officer's Report and Recommendations on Objections on September 24, 2009, recommending that Respondent's objections numbers 1, 2, 3, 4, 5, 7, 8 and 9 be overruled, and that a Certification of Representative issue. A copy of the Hearing Officer's Report and Recommendations on Objections is attached and designated as Exhibit F.

8. On October 5, 2009, Respondent requested an extension to file exceptions to the Hearing Officer's Report and Recommendations. On October 6, 2009, this request was granted by the Associate Executive Secretary giving Respondent until October 22, 2009, to submit exceptions and a brief in support. A copy of Respondent's October 5, 2009, letter is attached and designated as Exhibit G and a copy of the October 6, 2009, letter from the Associate Executive Secretary, is attached and designated as Exhibit H.

9. On October 22, 2009, Respondent filed Exceptions to Hearing Officer's Report and Recommendations on Objections and a Brief in support of the exceptions with the Board. A copy of the Exceptions is attached and designated as Exhibit I and a copy of the Brief is designated as Exhibit J.

10. On September 23, 2010, the Board issued a Decision and Certification of Representative, adopting the hearing officer's findings and

recommendations as modified, and certifying that a majority of the valid ballots had been cast for the Union and that it is the exclusive collective-bargaining representative for the Unit. A copy of the Board's Decision and Certification of Representative is attached and designated as Exhibit K.

11. By certified letter and electronic mail dated October 4, 2010, the Union requested Respondent initiate negotiations for a collective bargaining-agreement. A copy of this October 4, 2010, letter is attached and designated as Exhibit L.

12. By letter dated November 5, 2010, Respondent notified the Union that Respondent is refusing to meet to bargain for an agreement. A copy of this November 4, 2010, letter is attached and designated as Exhibit M.

13. On November 10, 2010, the Union filed the instant charge, alleging that Respondent refused to bargain with the Union for a collective-bargaining agreement. Copies of the charge, with Affidavits of Service attached, are attached hereto as Exhibit N and O, respectively.

14. On December 1, 2010, the Acting Director of Region 21 issued a Complaint and Notice of Hearing, alleging that Respondent failed and refused to bargain collectively with the Union in violation of Section 8(a)(1) and (5) of the Act. A copy of the Complaint, with Affidavit of Service attached, is attached and designated as Exhibit P.

15. On December 15, 2010, Respondent filed its Answer to Complaint, a copy of which is attached and designated as Exhibit Q.

(a) Respondent, in its Answer, denied the Union has been the exclusive collective-bargaining representative of its employees since September 23, 2010.

(b) Respondent, in its Answer, admits that the Union was certified as the exclusive collective-bargaining representative of the Unit on September 23, 2010.

(c) Respondent, in its Answer, admits that the Union made a request that Respondent bargain collectively with it as the exclusive collective-bargaining representative of the Unit.

(d) Respondent, in its Answer, admitted it has refused to recognize, meet or bargain with the Union.

(e) Respondent's Answer alleges as affirmative defenses that the certification was faulty, unsupported by the factual record, contrary to established law and public policy, and that it has no duty to bargain with the Union.

Counsel for the Acting General Counsel respectfully requests that the Board take official notice of all the documents described above and all other relevant documents in Case 21-RC-21140.

ARGUMENT

Respondent's Answer denies a very basic, easily proven allegation: that the Union is the Section 9(a) representative of the Unit. In response to this allegation, Respondent raises the defense that the certification of the Union was faulty. Counsel for the Acting General Counsel will show that Respondent's denial is frivolous and that Respondent's affirmative defense merely seeks to relitigate previously decided issues. Accordingly, the Board should grant summary judgment.

Respondent admits that the Board has certified the Union, but denies that the Union is currently the Unit's exclusive collective-bargaining representative. As mentioned, the Board certified the Union in a reported decision. Further, the very fact of certification shows that, despite Respondent's Answer, the Union has been and is currently the exclusive representative of the Unit employees for collective-bargaining purposes.

Respondent's denials of easily ascertainable facts, as well as its affirmative defense, merely attempts to relitigate the issues already raised in Case 21-RC-21140. Those issues were already considered and decided to be meritless by both the Hearing Officer and the Board. In a case involving similar circumstances, the Board noted:

It is well settled that, in the absence of any evidence unavailable at the time of the representation proceeding or any newly discovered evidence, the Board will not reconsider in a subsequent refusal-to-bargain proceeding, matters which have been disposed of in a prior, related representation case...

Pepsi-Cola Buffalo Bottling Co., 171 NLRB 157, 158 (1968). *See also, Pittsburgh Plate Glass v. NLRB*, 313 U.S. 146, 162 (1941).

In the instant case, Respondent does not affirmatively allege any newly discovered evidence in its Answer. Thus, Respondent has failed to establish the existence of any newly discovered or previously unavailable evidence of the type that would warrant a new hearing. As a general rule, when Respondent raises anew the same issues already raised in related representation proceedings, the Board grants a motion for summary judgment. *See, Pittsburgh Plate Glass, supra.*

Based on the above, the attached exhibits, and the record in Case 21-RC-21140, Counsel for the Acting General Counsel respectfully requests that the Board, without taking oral testimony, make findings of fact and conclusions of law finding that Respondent's conduct violated Section 8(a)(1) and (5) of the Act, as alleged in the Complaint, and issue an appropriate order remedying the unfair labor practices found to exist.

REQUESTED REMEDY

Counsel for the Acting General Counsel submits that the appropriate Order should, inter alia, provide the following:

Respondent, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the certified bargaining unit.

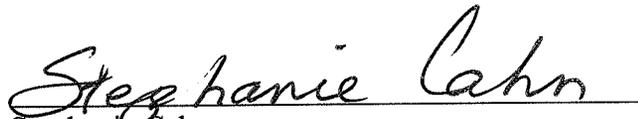
(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) On request, bargain in good faith with the Union, as the exclusive collective-bargaining representative of the Unit employees, regarding terms and conditions of employment for the period required by *Mar-Jac Poultry*, 136 NLRB 785

(1962) and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility copies of the Notice to Employees delineating the unfair labor practices found.


Stephanie Cahn
Counsel for the Acting General Counsel
Region 21
National Labor Relations Board

DATED at Los Angeles, California this 17th day of December, 2010.

STATEMENT OF SERVICE

I hereby certify that Counsel for the Acting General Counsel's Motion for Summary Judgment was submitted by E-Filing to the Executive Secretary of the National Labor Relations Board on December 17, 2010, and that copies of the same were served by e-mail on the same date on the following parties;

David S. Durham, Attorney at Law
Howard Rice Nemerovski Canady Falk & Rabkin
Three Embarcadero Center, Seventh Floor
San Francisco, CA 94111
(E-mail: ddurham@howardrice.com)

Jimmy O. Valentine, In House Counsel
SEIU, United Long Term Care Workers
Union, Local 6434
2515 Beverly Boulevard
Los Angeles, CA 90057
(E-mail: JimmyV@seiu-ultcw.org)

Eileen B. Goldsmith, Attorney at Law
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
(E-mail: egoldsmith@altber.com)



Stephanie Cahn
Counsel for the Acting General Counsel
National Labor Relations Board
Region 21

EXHIBIT A

INTERNET
FORM NLRB-502
(2-08)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 21-RC-21140	Date Filed 6-3-09

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

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)

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 (REMOVAL OF REPRESENTATIVE) - 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 (REMOVAL OF OBLIGATION TO PAY DUES) - 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: **Covenant Care, LLC/Huntington Park Nursing** Employer Representative to contact: **Jennifer Sherwood** Tel. No.: **323-589-5941**

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): **6425 Miles Ave. Huntington Park. CA 90255** Fax No.:

4a. Type of Establishment (Factory, mine, wholesaler, etc.): **Nursing Home Center** 4b. Identify principal product or service: **Health Care** Cell No.:

e-Mail:

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

Included: **CNA'S, RNA'S, ACTIVITIES, DIETARY, DIETARY AIDS, HOUSEKEEPERS, LAUNDRY, MAINTENANCE,**

Excluded: **ALL OTHER EMPLOYEES, PROFESSIONAL EMPLOYEES, GUARDS, SUPERVISORS, MANAGEMENT, SOCIAL SERVICES, MEDICAL RECORDS, AND LVN'S.**

6a. Number of Employees in Unit: Present **60** Proposed (By UC/AC):

6b. Is this petition supported by 30% or more of the employees in the unit? Yes No *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. Request for recognition as Bargaining Representative was made on (Date) _____ 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: _____ Tel. No.: _____ Date of Recognition or Certification: _____
Cell No.: _____ Fax No.: _____ e-Mail: _____

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? Yes No

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

11c. The Employer has been picketed by or on behalf of (Insert Name) _____, a labor organization, of (Insert Address) _____ 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	Address	Tel. No.	Fax No.
		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number)
SEIU, Service Employees International Union

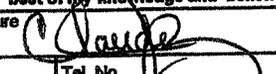
14a. Address (street and number, city, state, and ZIP code): **2515 Beverly Blvd. Los Angeles, CA 90057**

14b. Tel. No. EXT: **213-216-3187** 14c. Fax No.: **213-368-0699**

14d. Cell No.: **213-819-6596** 14e. e-Mail: **claudiaj@seiu-ultcw.org**

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization)
SEIU/Healthcare

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

Name (Print): **Claudia Juarez** Signature:  Title (if any): **Organizer**

Address (street and number, city, state, and ZIP code): **2515 Beverly Blvd. Los Angeles, CA. 90057** Tel. No.: _____ Fax No.: _____

Cell No. **213-819-6596** e-Mail: **claudiaj@seiu-ultcw.org**

WILLFUL FALSE STATEMENTS ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
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 unfair labor practice 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 voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT B

FORM NLRB-652
(5-96)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

The parties agree that a hearing is waived, that approval of this Agreement constitutes withdrawal of any notice of hearing previously issued in this matter, that the petition is amended to conform to this Agreement, and further **AGREE AS FOLLOWS:**

1. **SECRET BALLOT.** A secret-ballot election shall be held under the supervision of the Regional Director in the unit defined below at the agreed time and place, under the Board's Rules and Regulations.
2. **ELIGIBLE VOTERS.** The eligible voters shall be unit employees employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements, and employees in the military services of the United States who appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period for eligibility, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. The employer shall provide to the Regional Director, within 7 days after the Regional Director has approved this Agreement, an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc., 156 NLRB 1236 (1966), North Macon Health Care Facility, 315 NLRB 359 (1994).*
3. **NOTICE OF ELECTION.** Copies of the Notice of Election shall be posted by the Employer in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.
4. **ACCOMMODATIONS REQUIRED.** All parties should notify the Regional Director as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, and request the necessary assistance.
5. **OBSERVERS.** Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.
6. **TALLY OF BALLOTS.** Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.
7. **POSTELECTION AND RUNOFF PROCEDURES.** All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.
8. **RECORD.** The record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.
9. **COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (Insert commerce facts.)
The Employer, Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation, a California limited liability company, with a facility located at 6425 Miles Avenue, Huntington Park, California, the only facility involved herein, is engaged in the operation of a nursing care facility. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$100,000 from the operation of its nursing facility and, during the same period of time, purchased and received goods, supplies or materials valued in excess of \$5,000, which goods were shipped directly to the Employer's Huntington Park, California facility from points located outside the state of California.

FORM NLRB-652
(5-96)

10. WORDING ON THE BALLOT. When only one labor organization is on the ballot, the choice shall be "Yes" or "No". If more than one labor organization is on the ballot, the choices shall appear as follows, reading left to right or top to bottom. (If more than one labor organization is on the ballot, any labor organization may have its name removed by the approval of the Regional Director of a timely written request.)

First
Second.
Third.

11. PAYROLL PERIOD FOR ELIGIBILITY -
THE PERIOD ENDING Saturday, May 30, 2009

12. DATE, HOURS, AND PLACE OF ELECTION.

DATE: Tuesday, July 7, 2009

HOURS: 6:30 a.m. to 8:30 a.m. and 2:30 p.m. to 4:30 p.m.

PLACE: At the Employer's facility located at 6425 Miles Avenue, Huntington Park, California.

13. THE APPROPRIATE COLLECTIVE-BARGAINING UNIT.

Included: All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California;

Excluded: All other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK
NURSING AND REHABILITATION
(Employer)

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION
(Labor Organization)

By [Signature] 6/10/09
(Name) (Date)
[Signature]
(Title)

By _____
(Name) (Date)

(Title)

Recommended:
[Signature] 6/10/09
(Board Agent) (Date)

Date approved June 10, 2009
[Signature]
Regional Director, National Labor Relations Board

Case 21-RC-21140

FORM NLRB-652
(5-96)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
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2. ELIGIBLE VOTERS. The eligible voters shall be unit employees employed during the payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements, and employees in the military services of the United States who appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period for eligibility, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. The employer shall provide to the Regional Director, within 7 days after the Regional Director has approved this Agreement, an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc., 156 NLRB 1236 (1966), North Macan Health Care Facility, 315 NLRB 359 (1994).*

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4. ACCOMMODATIONS REQUIRED. All parties should notify the Regional Director as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, and request the necessary assistance.

5. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

6. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

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8. RECORD. The record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

9. COMMERCE. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c). (Insert commerce facts.)

The Employer, Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation, a California limited liability company, with a facility located at 6425 Miles Avenue, Huntington Park, California, the only facility involved herein, is engaged in the operation of a nursing care facility. During the past 12 months, a representative period, the Employer derived gross revenues in excess of \$100,000 from the operation of its nursing facility and, during the same period of time, purchased and received goods, supplies or materials valued in excess of \$5,000, which goods were shipped directly to the Employer's Huntington Park, California facility from points located outside the state of California.

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Excluded: All other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK
NURSING AND REHABILITATION
(Employer)

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION
(Labor Organization)

By _____
(Name) (Date)

(Title)

By [Signature] 6/8/9
(Name) (Date)
Organizer
(Title)

Recommended:
[Signature] 6/10/09
(Board Agent) (Date)

Date approved June 10, 2009
[Signature]
Regional Director, National Labor Relations Board

Case 21-RC-21140

[Signature]

EXHIBIT C

**COVENANT CARE, LLC d/b/a HUNTINGTON
PARK NURSING AND REHABILITATION**

Employer

and

**SEIU, SERVICE EMPLOYEES INTERNATIONAL
UNION**

Petitioner

DATE FILED
06/03/2009

Case No. 21-RC-21140

Date Issued 7/07/2009

Type of Election:
(Check one)

- 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 73
2. Number of Void ballots 0
3. Number of Votes cast for PETITIONER 56
4. Number of Votes cast for _____
5. Number of Votes cast for _____
6. Number of Votes cast against participating labor organization(s) 16
7. Number of Valid votes counted (sum of 3, 4, 5, and 6) 72
8. Number of Challenged ballots 1
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 73
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 PETITIONER

For

For

EXHIBIT D

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

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION,

Employer,

v.

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION,

Petitioner.

NLRB Case No. 21-RC-21140

**EMPLOYER'S OBJECTIONS TO CONDUCT OF ELECTION
AND CONDUCT AFFECTING RESULTS OF ELECTION**

David S. Durham
Gilbert J. Tsai
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20th Floor
San Francisco, CA 94108.2693
415.433.1940
Attorneys for Employer
COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION

July 14, 2009

Pursuant to the National Labor Relations Board Rules and Regulations, including Section 102.69(a) thereof, COVENANT CARE, LLC d/b/a HUNTINGTON PARK NURSING AND REHABILITATION (hereinafter "Employer") hereby files the following Objections to the Conduct of the Election and Conduct Affecting Results of the Election conducted by the National Labor Relations Board at the Employer's Huntington Park, California facility on July 7, 2009.

The bases of these Objections include, but are not limited to, the following:

1. The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by verbally and physically threatening, coercing and intimidating employees in the exercise of their Section 7 rights.
2. The Union and its agents, representatives, and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper electioneering, including but not limited to, conversations with eligible voters in the polling place, immediately outside the polling area, and in the line of march to the polls during voting times.
3. The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper surveillance, conversations, coercion, intimidation, and pressure during the critical period and during the polling session.
4. The Union and its agents, representatives and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by visibly monitoring employees as they entered and left the polling area.

5. The Union, through its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by restraining and coercing employees in the exercise of their rights under Section 7 by utilizing statutory supervisors to force or coerce employees into supporting the Union.

6. The Union, through its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in other objectionable conduct.

7. Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by forcing and coercing employees to support the Union.

8. Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by threatening, coercing and intimidating employees to support the Union.

9. The Board, through its agents, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing, acquiescing, condoning and ratifying misconduct of the Union, its agents, representatives and/or supporters in and around the polling area, including but not limited to, failing to protect the privacy of the polling area, failing to cease conversations between the Union, its agents, representatives and/or supporters and eligible employees in and around the polling area and/or in the line of march to the polls, and allowing the Union to visibly monitor employees as they entered and left the polling area.

10. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to follow Board procedures in regard to the conduct of the representation election.

11. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to provide a secure ballot box for the election.

12. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to provide a secure place for the blank ballots.

13. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to ensure the secrecy and security of the ballots.

14. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by compromising the integrity of the ballot box.

15. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to retain physical custody of the ballot box during voting times when said box was unsealed.

16. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by failing to retain physical custody of the blank ballots.

17. The Board, through its agents, interfered with the fair operation of the election process and destroyed laboratory conditions by engaging in other objectionable conduct.

By the foregoing and other unlawful misconduct, the Union and its agents,

representatives and/or supporters, and the Board and its agents destroyed the necessary laboratory conditions and interfered with the holding of a free and fair election among the eligible employees on July 7, 2009 and such conduct substantially and materially affected the outcome of the election.

Dated: July 14, 2009

A handwritten signature in black ink, appearing to read "David S. Durham", written over a horizontal line.

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 Case name: Covenant Care, LLC Huntington Park
 Case number: 21-RC-21140

Filing Party: Employer

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Attached Documents

Document Description	File Type	File Name
Election Objection	PDF	Covenant Care - Objections.pdf

EXHIBIT E

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

COVENANT CARE, LLC d/ba
HUNTINGTON PARK NURSING
AND REHABILITATION

Employer

and

Case 21-RC-21140

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION

Petitioner

REPORT ON OBJECTIONS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING

This Report¹ contains my recommendations regarding the Employer's objections to the election conducted on July 7, 2009.² The Employer's objections allege that 1) representatives of SEIU, Service Employees International Union, (herein Union or Petitioner), threatened, coerced and intimidated employees; 2) Union representatives conversed with employees outside the polls; 3) Union representatives engaged in surveillance; 4) Union representatives monitored employees as they entered and left the polling area; 5) Union representatives utilized statutory supervisors to force or coerce employees to support the Union; 6) Union representatives engaged in other unspecified objectionable conduct; 7) statutory supervisors forced or coerced employees to support the Union; 8) statutory supervisors threatened, coerced and intimidated employees to support the Union; 9) the Board Agent allowed the Union representatives' actions alleged above; 10) the Board Agent did not follow Board procedures during the election; 11) the Board Agent did not provide a secure ballot box; 12) the Board Agent did not provide secure place for the blank ballots; 13) the Board Agent did not ensure the secrecy and security of ballots; 14) the Board Agent compromised the integrity of the

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² The collective-bargaining unit agreed appropriate in this matter is composed of: "All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act."

ballot box; 15) the Board Agent did not retain physical custody of the ballot box; 16) the Board Agent did not retain physical custody of blank ballots; 17) the Board Agent engaged in other unspecified objectionable conduct; and Unnumbered Objection) other unspecified objectionable conduct.

As described below, I conclude that the Employer's Objection Nos. 1, 2, 3, 4, 5, 7, 8 and 9, shall be considered at a hearing.³

Procedural History

The petition in this matter was filed on June 3, 2009.⁴ The tally of ballots served on the parties at the ballot count conducted on July 7⁵, showed that of approximately 79 eligible voters, 56 cast ballots for, and 16 against the Petitioner. There were zero void ballots and one challenged ballot, which was insufficient in number to affect the results of the election. The Employer timely filed objections to the conduct of the election, a copy of which is attached hereto as Attachment A. The Objections were timely served upon the Petitioner.

The Objections and Analysis

Objection No. 2

The Union and its agents, representatives, and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper electioneering, including but not limited to, conversations with eligible voters in the polling place, immediately outside the polling area, and in the line of march to the polls during voting times.

Objection No. 3

The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper surveillance, conversations, coercion, intimidation, and pressure during the critical period and during the polling session.

³ On August 7, 2009, the Employer requested permission to withdraw Objections 6, 10, 11, 12, 13, 14, 15, 16, 17 and its Unnumbered Objection. The request is hereby approved.

⁴ All dates herein are in 2009, unless otherwise noted.

⁵ The election was conducted in the television room/Miles lounge at the Employer's facility, from 6:30 a.m. to 8:30 a.m. and 2:30 p.m. to 4:30 p.m.

Objection No. 4

The Union and its agents, representatives and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by visibly monitoring employees as they entered and left the polling area.

Objection No. 9

The Board, through its agents, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing, acquiescing, condoning and ratifying misconduct of the Union, its agents, representatives and/or supporters in and around the polling area, including but not limited to, failing to protect the privacy of the polling area, failing to cease conversations between the Union, its agents, representatives and/or supporters and eligible employees in and around the polling area and/or in the line of march to the polls, and allowing the Union to visibly monitor employees as they entered and left the polling area.

Inasmuch as they are related, I will consider Employer's Objections Nos. 2, 3, 4 and 9 together. In support of these objections, the Employer proffered declarations from Employer Vice President of Human Resources and Risk Management Debbie Nix and four unit employees, hereinafter referred to as Witness A, Witness B, Witness C and Witness F.⁶

Vice President Nix states that on the day of the election, at the pre-election conference, the Board Agent warned the representatives of the parties present that there should be no campaigning in or around the polling area or directed at people who were walking to the polls. Shortly after the polls opened at 6:30 a.m., from the window of the Director of Nursing's office, Nix observed Union Organizer Claudia Juarez and an unidentified Union representative on the sidewalk near the driveway to the Employer's parking area. Nix states that Juarez had a clipboard and highlighter pen in her hands. According to Nix, as day shift employees arrived for work, the Union representatives beckoned them to come and speak with them, of which at least 30 employees did. Nix asserts that Juarez appeared to make a mark on a paper on the clipboard when employees approached. Nix contends that the Union representatives gave coffee and hugs to some of the employees and clapped and cheered as the voters entered the building at the Employer's facility. Nix admits that she could not hear the prolonged conversations. Additionally, Nix states that during the 2:30 p.m. to 4:30 p.m. polling session, she saw the same Union representatives engaged in the same activity as described above.

Witness A states that during the 2:30 p.m. to 4:30 p.m. polling session, she saw unidentified Union representatives standing near the front and the back entrances to the building at the Employer's facility, where they called out to employees, spoke with them and hugged them, sometimes with more than one employee at a time. Witness A also saw unidentified Union

⁶ The declarations of Witnesses C, D, E, G and H, were written in Spanish and proffered by the Employer without English translations.

representatives speaking to employees as they entered the building at the Employer's facility, on the morning of the election.

Witness B asserts that on the day of the election, Union supporters met with employees outside the doors to the building at the Employer's facility, and urged employees to vote "yes".

Witness C contends that on the morning of the election, she saw unidentified Union representatives meet with employees outside of the doors to the building at the Employer's facility. Witness C asserts that the Union representatives waited for employees, walked with them as they passed and also hugged them.

Witness F states that on the morning of the election, she saw unidentified Union representatives gathered outside of the doors to the building at the Employer's facility and they stared at her. According to Witness F, when she left work that day, four or five unidentified Union representatives stared at her. Witness F states that both incidents made her uncomfortable and caused her to avoid the Union representatives.

The Employer contends that the above conduct destroyed the laboratory conditions of the election and constitute objectionable conduct under Milchem, Inc., 170 NLRB 362 (1968), Peerless Plywood Co., 107 NLRB 427, 429 (1954) and Performance Measurements Co., Inc., 148 NLRB 1657 (1964). The Employer further contends that Juarez's conduct outside the Employer's facility, alleged above, is objectionable under Masonic Homes of California, Inc., 258 NLRB 41, 48 (1981).

In response to all of the Employer's Objections, the Petitioner contends that it is unaware of any objectionable conduct in this matter.

Objection No. 5

The Union, through its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by restraining and coercing employees in the exercise of their rights under Section 7 by utilizing statutory supervisors to force or coerce employees into supporting the Union.

Objection No. 7

Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by forcing and coercing employees to support the Union.

Objection No. 8

Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by threatening, coercing and intimidating employees to support the Union.

Inasmuch as they are related, I will consider Employer's Objections Nos. 5, 7 and 8 together. In support of these objections, the Employer proffered declarations from Employer Executive Director Carol Treadway, Witness B, Witness C, and one unit employee, hereinafter referred to as Witness D.

Witness D states that on an unknown date in June, an identified unit employee told her that she should attend the Union meeting scheduled for 5:00 p.m. that day and that she was going to pick her up to go to the meeting. According to Witness D, her supervisor, Employer Activities Director Rosa Urbina, then told her that although her shift ends at 6:00 p.m., she would let her leave at 4:00 p.m. if she attended the Union meeting. Witness D asserts that after Urbina left the conversation, the employee told Witness D that she would hit and fall on her if she told anyone where the Union meeting was being conducted. Witness D contends that she did not complain to Urbina about the employee's comment since she did not think Urbina would discipline the employee because they are good friends.

Witness D further states that on an unknown date, Director Urbina told her that if she voted for the Union she would receive free medical benefits, better salary, and get more respect from the Employer. Witness D contends that Urbina told her that if she did not support the Union, "everyone" would be discharged. When Witness D told Urbina that she would make her own decision regarding the Union, Urbina indicated that she did not like this response. Witness D asserts that after that conversation, Urbina began to ignore Witness D. Witness D further contends that the incidents described above caused her to feel intimidated by Urbina, fearful about expressing her opinions against the Union, and caused her to believe that her employment would be at risk if Urbina thought that she was not in favor of the Union.

Witness B states that Witness D told her that Director Urbina told Witness D that she needed to vote for the Union, which made her feel intimidated.

Director Treadway states that Employer Activities Director Rosa Urbina supervises unit activities assistants and certified nursing assistants (herein "CNAs"), conducts performance evaluations, interviews job applicants and makes effective recommendations about whether or not to hire them, has the authority to discipline and discharge employees, and attends management meetings with other department heads, including the Director of Nursing.

Additionally, Witness C asserts that on an unknown date, Charge Nurse Liz Soltero, an alleged supervisor, was a bit rude with her and assigned her a very difficult job duty. According to Witness C, when she asked Soltero why she was treating her that way, Soltero said that she did not need her help. Witness C states that same day her co-workers ignored her. Witness C contends that these events made her feel bad and worried.

The Employer contends that the actions of supervisors described above constitute objectionable conduct under Delchamps, Inc., 210 NLRB 179 (1974).

Objection No. 1

The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by verbally and physically threatening, coercing and intimidating employees in the exercise of their Section 7 rights.

In support of Employer's Objection No. 1, the Employer proffered declarations from Witness A, Witness B, Witness C, Witness D and Witness F and four unit employees, hereinafter referred to as Witness E, Witness G, Witness H and Witness I. The Employer contends that the employees described below as having engaged in objectionable conduct are agents of the Union.⁷

Witness A states that during the weeks before the elections, Union supporters told employees that if the Union came in and they had not voted for the Union, they would lose their seniority or be discharged. Witness A contends that at the pre-election conference on July 7, Union Organizer Claudia Juarez gave her some "very bad looks."

Witness B states that employees called her a traitor and said that she looked like a rat, purportedly because she served as an election observer for the Employer. Witness B contends that many times before the election, she heard employees say that employees would be discharged if they did not support the Union. She also states that people offered her rides to Union meetings.

Witness C states that she told employees that she did not desire Union representation. Later, in early June, unit employee Ana Puglas [Pugglias] told her that she had to vote for the Union, because the Employer would contract new employees if the Union lost. According to Witness C, on or about June 15, Puglas told her that she had to vote for the Union, and if the Union won, Witness C would be one of the first employees to go because she did not support the Union.

Witness E states that during the last weeks before the election, an employee told her that pro-Union employees could "put a trap" to cause her discharge if she did not support and vote for the Union, and that such employees had previously destroyed an employee's career. Witness E asserts that another employee told her that if she did not support the Union, she would be treated like a dog.

Witness F states that in June, employees told her to vote for the Union, but when she expressed an opposing view, the employees became angry and again insisted that she support the Union. Witness F further states that a group of approximately four pro-Union CNA and housekeeping employees, told anti-Union employees, including witness F: "There goes another

⁷ Unless otherwise specified, the foregoing evidence proffered by the Employer failed to identify the names of the persons involved or the dates of the alleged incidents.

employee that does not support the Union.” Witness F asserts that on or about July 1, at about 9:00 p.m., a woman called her home and told her 11-year-old daughter, who had answered the telephone, that Witness F was a “traitor,” which caused her daughter to cry.

Witness G states that a group of CNAs told her that she should vote for the Union if she wanted to protect her job and that they felt bad for her because if she lost her job, she would not be able to find a new one because she is old. Witness G further states that she did not attend any Union meetings, and, therefore, employees loudly commented in front of her that those who did not support the Union would lose their jobs.

Witness H states that on a day before July 7, unit employee Jose Vasquez accused her of not supporting the Union. According to Witness H, this occurred in the presence of some employees who then verbally attacked Witness H for not supporting the Union and told her: 1) that if she did not vote for the Union she would be discharged, and 2) that she was not going to be able to get a new job because she is old. Witness H further contends that she heard Jose Vasquez tell a Union representative: “This is the one that does not support the Union.” Witness H states that she responded that her opinion regarding the Union only concerned her, and then Vasquez accused her of being rude, while the Union representative stared at her. Also according to Witness H, a group of CNAs told her that they support the Union to protect her job and told her that she was going to be discharged if she did not support the Union. Later, Witness H contends, a housekeeper told her that a lot of employees were upset with Witness H because she did not support the Union. Lastly, Witness H declared that employee Maria Ruellas ordered her to clean an office even though she had just finished cleaning it, and that someone put a large amount of what appeared to be red Jell-O in a restroom sink just before she was assigned to clean it. Witness H speculates that the later incident may have been a trap to cause her discharge, because of her opinions about the Union.

Witness I states that on or about July 12, her supervisor informed her that a resident she had “checked on” during her prior shift had passed away, and that employees, alleged to be Union supporters, reported that the resident appeared to have been deceased for many hours. Witness I contends that although her supervisor saw her check on the resident on or about July 15, employee Maria Galindo, an alleged Union supporter, purportedly told people that the resident passed away because Witness I failed to check on him. Witness I also states that employees told other employees that she does not support the Union. Witness I declared that Union supporters discussed ways to cause her discharge. Lastly, Witness I asserts that she did not receive “free gifts,” which the Union distributed to other employees, because Union supporters labeled her as not supporting the Union.

Additionally, Witnesses A, B, C, E, F, G, H and I would testify that certain incidents mentioned above caused them to feel intimidated, threatened, frightened, sad and stressed, caused them to fear for their jobs, caused them to fear attacks upon their persons and vehicles, and made it difficult for them to express their opinions against the Union.

The Employer contends that the above conduct by third party individuals and/or Union agents objectionably interfered with the right of employees to have a free and uninhibited choice of bargaining representative, inasmuch as such interference rendered “a free election impossible,” and that such conduct was authorized, or at least ratified, by the Union. Westwood

Horizons Hotel, 270 NLRB 802 (1984); U.S. Electrical Motors, 261 NLRB 1343 (1982); Orleans Manufacturing Co., 120 NLRB 630, 633 (1958); and Cal-West Periodicals, 330 NLRB 599 (2000).

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Employer's Objections Nos. 1, 2, 3, 4, 5, 7, 8 and 9 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Employer's Objections Nos. 1, 2, 3, 4, 5, 7, 8 and 9.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by Employer's Objections Nos. 1, 2, 3, 4, 5, 7, 8 and 9.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of Employer's Objections Nos. 1, 2, 3, 4, 5, 7, 8 and 9. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.⁸

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on August 18, 2009, and such consecutive days thereafter until concluded, at 9:00 a.m., PDT, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on August 10, 2009.



Peter Tovar
Acting Regional Director
Region 21
National Labor Relations Board

⁸ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.

EXHIBIT F

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

**CONVENANT CARE, LLC d/b/a
HUNTINGTON PARK
NURSING AND REHABILITATION**

Employer

and

Case 21-RC-21140

**SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION**

Petitioner

**HEARING OFFICER'S REPORT AND
RECOMMENDATIONS
ON OBJECTIONS**

This report contains my findings and recommendations regarding the objections filed by the Employer, Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation, based on evidence submitted at a hearing directed by the Acting Regional Director of Region 21 of the National Labor Relations Board.

As set forth in detail below, I recommend that the Employer's objections 1, 2, 3, 4, 5, 7, 8 and 9 be overruled and that the Petitioner, SEIU, Service Employees International Union (herein Petitioner or Union), be certified as the unit employees' exclusive collective bargaining representative.

PROCEDURAL BACKGROUND AND HISTORY

On June 3, 2009¹, the Petitioner filed the petition in this matter seeking to represent certain employees of the Employer. Pursuant to a Stipulated Election Agreement approved by the Regional Director in this matter on June 10, an election by secret ballot was conducted under his direction and supervision on July 7, by an agent of the National Labor Relations Board.² The Tally of Ballots served on all the parties at the conclusion of the balloting showed the following:

Approximate number of eligible voters	79
Number of void ballots	0
Number of votes cast for Petitioner.....	56
Number of votes cast against participating labor organization.....	16
Number of valid votes counted.....	72
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	73

On July 14, the Employer timely filed objections to the conduct of the election. By its objections, the Employer seeks to void the election and to have a new election ordered. The Acting Regional Director issued and served upon the parties his Report on Objections and Order Directing Hearing and Notice of Hearing, and concluded that the issues raised by Employer’s Objection Nos. 1, 2, 3, 4, 5, 7, 8 and 9 could best be resolved after a hearing. Pursuant thereto, a hearing on Employer’s Objection Nos. 1, 2, 3, 4, 5, 7, 8 and 9 was conducted in Los Angeles, California on August 31 and September 1. At the hearing, all parties were given a full opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues.

¹ Hereafter all dates are 2009 unless indicated otherwise.
² Two polling sessions were held that day, one from 6:30 a.m. to 8:30 a.m. and the second from 2:30 p.m. to 4:30 p.m.

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

II. PREFACE

It is noted that the recitation of facts in this report is, unless otherwise indicated, is 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, including each party's oral argument on the record.³

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. Instead, 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 the hearing. *3-E Company v. NLRB*, 26 F.3d 1, 3, 146 LRRM 2574, 2575 (1st Cir. 1994); *NLRB v. Brooks Camera, Inc.*, 691 F.2d 912, 915, 111 LRRM 2881, 2883 (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 only been partially credited. *Kux Manufacturing Co. v. NLRB*, 890 F.2d 804, 132 LRRM 2935 (6th Cir. 1989); *NLRB v. Universal Camera Corp.*, 179

³ Briefs were not filed in this matter.

F.2d 749, 754, 25 LRRM 2256 (2nd Cir. 1950), *rev'd on other grounds*, 340 U.S. 474, 27 LRRM 2373 (1951).

III. THE OBJECTIONS

Board Standards

“[B]allots cast under the safeguards provided by Board procedure [presumptively] reflect the true desires of the participating employees.” *NLRB v. Zelrich Co.*, 344 F.2d 1011, 1015 (5th Cir. 1965). Thus, the burden of proof on parties seeking to have a Board-supervised election set aside is a “heavy one.” *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir. 1974), cert denied, 416 U.S. 986 (1974); see also *NLRB v. First Union Management*, 777 F.2d 330, 336 (6th Cir. 1985)(per curiam). This burden is not met by proof of misconduct, but “[r]ather, specific evidence is required, showing not only that unlawful acts occurred, but also that they interfered with the employees’ exercise of free choice to such an extent that they materially affected the results of the election.” *NLRB v. Bostik Div., USM Corp.*, 517 F.2d 971, 975 (6th Cir. 1975) (quoting *NLRB v. White Knight Mfg. Co.*, 474 F.2d 1064, 1067 (5th Cir. 1973). Objectionable conduct must have occurred during the “critical” pre-election period, which in the present case, is from the date the petition was filed, June 3, to and including the date of the election, July 7. *Ideal Electric & Mfg. Co.*, 134 NLRB 1275 (1961).

Objection No. 2

The Union and its agents, representatives, and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper electioneering, including but not limited to, conversations with eligible voters in the polling place, immediately outside the polling area, and in the line of march to the polls during voting times.

Objection No. 3

The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by engaging in improper surveillance, conversations, coercion, intimidation, and pressure during the critical period and during the polling session

Objection No. 4

The Union and its agents, representatives and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by visibly monitoring employees as they entered and left the polling area.

Objection No. 9

The Board, through its agents, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by allowing, acquiescing, condoning and ratifying misconduct of the Union, its agents, representatives and/or supporters in and around the polling area, including but not limited to, failing to protect the privacy of the polling area, failing to cease conversations between the Union, its agents, representatives and/or supporters and eligible employees in and around the polling area and/or in the line of march to the polls, and allowing the Union to visibly monitor employees as they entered and left the polling area.

Objection Nos. 2, 3, 4 and 9 will be considered together, inasmuch as they involve like or related conduct. In support of these objections, the Employer presented Vice President of Human Resources and Risk Management Debbie Nix who provided the majority of the testimony on these objections, as well as employees Lila Loya and Rosa Cerpas.

Facts

The Employer's Huntington Park facility is a skilled nursing facility with 99 beds. It is open every day of the year, 24 hours a day. The Employer has approximately 100

employees on staff, 80 of whom are in the bargaining unit. The facility consists of one building located between Templeton Street and Miles Avenue. There are two entrances to the facility, however employees usually enter from the Templeton Street side of the building because there is more parking. As employees (or anyone else for that matter) enter the facility on Templeton Street, they must walk through a driveway which leads to the parking lot and then to the entrance to the building. There is also an entrance to the facility right off Miles Avenue.

The polling place on July 7 was located in the Miles Lounge inside the Employer's building, in what appears to be the furthest point possible from the entrance on Templeton Street. In order for an employee who entered the facility on the Templeton Street side to reach the Miles Lounge, that employee would walk inside the building down a long hallway and then make a left or a right to enter the polling area. Nix estimated this would take an individual about 2 to 3 minutes to walk.

According to Nix, at the pre-election conference prior to the start of the first polling session, which began at 6:30 a.m., the Board agent instructed the parties not to campaign in or around the polling area while the polls were open or to campaign directly at people who were walking to the polls. Right before the polls opened Nix went to the Director of Nursing's office which is close to the entrance on the Templeton Street side of the facility. Nix stayed in this office during the first polling session. The office has tinted windows, which allows someone on the inside to see outside, but not someone on the outside to see inside. In addition, when Nix was in there, the blinds were drawn, but were slightly open so she was able to see the driveway entrance to the facility on Templeton Street.

Around 6:30 a.m. on July 7, while in the Director of Nursing's office, Nix glanced out the window and saw Union organizer Claudia⁴ along with another union organizer whose name Nix did not recall, but whom she recognized as being present during the pre election conference. Claudia and this other organizer were standing on the sidewalk slightly to the right (from Nix's point of view) outside the entrance to the driveway, which is approximately 40 feet from the entrance to the facility, which is near the Director of Nursing's office. Nix noticed that Claudia had a clipboard in her hand and a yellow highlighter marker in the other hand. In the two pictures Nix took during the first polling session, the clipboard is not visible in either picture. The highlighter is visible in one picture and Claudia appears to be looking down at something with the highlighter on it.

Nix testified that she was in the Director of Nursing's office for the entire first polling session and continually glanced out the window for a total of 75% of the time she was in there. While looking out the window, Nix saw Claudia periodically glance down at her clipboard as each individual approached with the highlighter in her hand pointed as if she were "checking off" something. Nix admitted she did not see the clipboard or what Nix was actually writing with her highlighter.⁵ Nix also testified that some, but not all of the employees who entered on the Templeton Street side would go over to Claudia and speak with her as for at least 5 minutes. However Nix also admitted that employees could have been going over and talking to other employees who were with Claudia, and not necessarily Claudia directly. Nix also admitted that she could not hear any of the conversations.

Employee Lilia Loya testified that on the day of the election she did not see any employees

⁴ Nix did not testify to Claudia's last name, but the Report on Objections and Order Directing Hearing notes her last name as Juarez and the petition in this case is signed by a Claudia Juarez with the title of Organizer.

⁵ Employee Denecia Martir Cruz testified that after the election on about July 27 or 28, at her other job, an employee from another facility told her about a list she had seen of people who did not vote in favor of the Union and Cruz' name was on it. Cruz never saw this list.

talking to “union supporters” as they entered the building from the Templeton Street entrance. Nix stated that Claudia was on the sidewalk until the polls closed around 8:30 a.m.

Nix attended the pre-election conference for the second polling session around 2:00 p.m. that day. During that pre-election conference, Nix did not bring up to anyone, including the Board agent, that she had seen Claudia and the other union organizer outside the facility during the first polling session.

During the second polling session, around 2:25 p.m., Nix went back to the Director of Nursing’s office. At some point, Nix looked out the window and saw Claudia along with a different union organizer from the morning. Nix described what she saw in the afternoon as similar to what she saw during the first polling session. However Nix failed to mention that Claudia had a clipboard or highlighter during the second polling session. Nix testified that Claudia and the other union organizer were in the same location as the first polling session for about 20 minutes, then they moved down the street to a shaded area where they spoke to employees. Employee Rosa Cerpas testified that during the second polling session, when she went outside she saw a group of people wearing purple talking and hugging on the Templeton side of the facility. Cerpas did not recognize any of the people as Union representatives.

Nix stated that during the second polling session, she saw Claudia and the other Union organizer standing outside the building until about 4:15 p.m. Although Nix testified that every employee who walked into the building that day entered on the Templeton Street side and walked by Claudia, employees Denecia Martir Cruz and Florita Briseno testified they entered the facility that day through the Miles Avenue entrance. Nix admitted that from where Claudia was standing, she would not be able to see employees who entered the facility on the Miles Avenue entrance.

Nix' testimony on the number of employees she saw speaking with Claudia was confusing, and Nix never testified to the number of employees she saw speaking with Claudia during the first polling session. However it appears that based on her testimony, Nix saw a total of approximately 30 employees (mostly in groups) with Claudia during both polling sessions on July 7. Nix was not certain that the employees were actually speaking with Claudia versus speaking to other employees with Claudia present. Contrary to Nix' assertion that she generally knew all the bargaining unit members, Nix' ability to distinguish employees in the bargaining unit from other employees or union organizers is suspect. Prior to the election Nix visited the facility about once every other month, and in about June she visited there about 2 days a week, however there is no evidence that she had any contact with employees during those visits. As an example, in one of the pictures, Employer exhibit 3, there is a woman in a shawl whom Nix was unable to positively identify as either an employee of the Employer or a Union organizer.

Analysis of Objection Nos. 2, 3, 4 and 9

The Employer raises several arguments as to why the conduct described above regarding Union organizer Claudia Juarez is sufficient to overturn the election. The first argument concerns the *Michem, Inc.*, 170 NLRB 362 (1968). The *Michem* rule proscribes "sustained conversation with prospective voters waiting to cast their ballots, regardless of the content of the remarks exchanged..." Id at 362. The Board noted that, "this does not mean that any chance, isolated, innocuous comment or inquiry by an employer or union official to a voter will necessarily void the election." Id at 363. Here, *Michem* does not apply as the conduct by the Union organizer did not take place in the polling area with employees who were waiting to cast their ballots. Rather, the evidence shows that Claudia was more than 40

feet from the polling area, could not see the polling place, and was not speaking to employees who were in the polling area or in line waiting to vote. See *Harold W. Moore d/b/a Harold W. Moore & Son*, 173 NLRB 1258 at 1258 (1968).

Boston Insulated Wire & Cable Co., 259 NLRB 118, 118-119 (1982) sets forth certain rules to evaluate alleged impermissible electioneering which occurs at or near the polls. The Board determines whether the conduct, under the circumstances, “is sufficient to warrant an inference that it interfered with the free choice of voters.” This involves several factors including whether the conduct occurred within or near the polling place, the extent and nature of the alleged electioneering, and whether it is conducted by a party to the election or by employees. The Board has also relied upon whether the electioneering is conducted within a designated “no electioneering” area or contrary to the instructions of the Board agent. Applying these factors to the situation here shows that no impermissible electioneering occurred.

First, as discussed above, the conduct by Claudia did not occur within or near the polling place. Second, the evidence demonstrates at best, that employees were speaking to other employees with Claudia present, but the substance of the conversations is unknown. The evidence is not conclusive that Claudia was the one doing the talking with employees. Further, based on the testimony it is quite possible that some of the employees who were talking around Claudia may have already voted or may not have been in the bargaining unit. I question Ms. Nix’ ability to recognize the bargaining unit members based on her inability to identify individuals in the photographs she had taken as well as the lack of evidence that she spent any time with the bargaining unit employees on a regular basis. Third, Claudia was not in an area which was designated as “no electioneering” or contrary to the Board agent’s

instructions. The Board agent's instructions were not to campaign in or around the polling area, and Claudia was outside the facility on the sidewalk-not anywhere near the polling area.

The Employer also argues that the Union kept some kind of list and was checking off names during the election. The evidence does not support this assertion. Rather, the evidence demonstrates that during the first polling session, Claudia had a clipboard in one hand and a highlighter in the other hand and appeared to be making marks from time to time. There is no evidence what was on the clipboard or what marks Claudia was making. There is also no evidence that employees were aware of what was on the clipboard or inferred that Claudia was making a list of voters. The Employer's argument that Claudia was keeping a list of voters is far fetched because there is no evidence what, if anything was on the clipboard. Further if the Employer's claims were true, from where Claudia was standing she would not be able to observe who went into the polling area to vote to keep an accurate list of voters. The case the Employer cites, *Masonic Homes of California, Inc.*, 258 NLRB 41, 48 (1981) found that a list of voters kept by an observer are "improper if employee voters know, or reasonably can infer, that their names are being recorded." Here since there is no evidence that a list was being kept or that employees even suspected that such a list was being kept, this argument fails.⁶

The Employer also claims that this conduct violates the rule in *Peerless Plywood*, 107 NLRB 427 (1954). In *Peerless Plywood*, the Board established a rule that, "employers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election." *Id* at 429. Here the evidence does not even come close to establishing that the

⁶ There is no evidence connecting what, if anything, on Claudia's clipboard was related to a list that employee Cruz heard about (but did not see) from a co-worker at another job.

Union was making an election speech to massed assemblies of employees. Rather, as discussed above, the evidence is that over the course of the two polling sessions, employees came over to Union organizer Claudia, another organizer and employees and had conversations. There is no evidence that Claudia spoke directly with the employees or that she gave an election speech. Even the Employer admits it does not know what, if anything, Claudia said. Thus, there is insufficient evidence demonstrating that the Union violated the *Peerless Plywood* rule.

Although the Employer did not mention this theory in its closing argument, in its objections, the Employer alleges that these facts amount to a violation of *Performance Measurements Co., Inc.*, 148 NLRB 1657 (1964). In *Performance*, the Board found objectionable conduct by the company president who was near the door to the entrance to the polls and for some time was sitting at a table 6 feet away from the entrance. These facts are not similar to the ones involving Claudia. First, employees did not have to pass by Claudia to get to the polling place. Employees could, and some did, enter on the Miles Avenue side and thus avoided Claudia altogether. Second, Claudia was not positioned anywhere near the polling place and was not visible to voters who chose to vote. Thus, the Union's conduct did not interfere with employees' free choice.

Therefore, I recommend that Objection Nos. 2, 3, 4 and 9 be overruled.⁷

Objection No. 5

The Union, through its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by restraining and coercing employees in the exercise of their rights under Section 7 by utilizing statutory supervisors to force or coerce employees into supporting the Union.

⁷ As I am overruling these objections, the Union's waiver argument need not be considered.

Objection No. 7

Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by forcing and coercing employees to support the Union.

Objection No. 8

Interference with the fair operation of the election process and destruction of the laboratory conditions occurred due to statutory supervisors restraining and coercing employees in the exercise of their rights under Section 7 by threatening, coercing and intimidating employees to support the Union.

Facts

Objection Nos. 5, 7 and 8 will be considered together as they all pertain to one conversation as recounted by Employer witness Denecia Matir Cruz. Cruz is an activities assistant supervised by Section 2(11) Supervisor Rosa Urbina.⁸ Sometime around the end of May, early June, Cruz was approached by Urbina and activities assistant Norma Ramirez. The conversation, in Spanish, began with Urbina and Ramirez going back and forth about who would talk to Cruz. Finally Norma Ramirez said she would and grabbed Cruz by the arm and took her to the corner in the television room. Urbina then left. Ramirez proceeded to tell Cruz about a meeting that day at 5:00 p.m. about the union at someone's home. Then Cruz recalled that Ramirez said if she attended the meeting, and if she told the Employer about what happened at the meeting, Ramirez said she would be waiting for her outside and would "beat the crap out of you." Ramirez did not beat or attempt to beat Cruz up. Cruz did not speak to Urbina about her conversation with Ramirez. However, Cruz told two or three co-workers what Ramirez had said. Cruz did not mention to them about Urbina's involvement.

⁸ The parties stipulated that Rosa Urbina is a supervisor within the meaning of Section 2(11) of the Act and supervises two employees.

There was some testimony about Ramirez telling Cruz if she wanted to attend the meeting, she would be able to get off work early that day, as Cruz was scheduled to work until 6:00 p.m. Cruz testified that at some point that day Urbina told her she could leave an hour early to attend the meeting. However, based on Cruz' conflicting answers, it is unclear if Cruz asked Urbina for permission to leave early, Urbina approached Cruz and told her she could leave early or if Cruz actually left early that day to attend the Union meeting.⁹

Analysis of Objection Nos. 5, 7 and 8

In an objections case, the burden is on the objecting party to prove its case. A Board conducted representation election is presumed to be valid. *Tyson Fresh Meats, Inc.*, 343 NLRB 1355 (2004); *Progress Industries*, 285 NLRB 694, 700 (1987). Thus, an objecting party must demonstrate not only that the conduct occurred, but also that the conduct interfered with the free choice of employees to such a degree that it has materially affected the results of the election. *Tyson Fresh Meats, Inc.*, *supra*. See also, *Sonoma Health Care Center*, 342 NLRB 933 (2004).

Here the Employer has failed to establish that the conduct interfered with the free choice of employees. First, as the Union pointed out in its closing argument, the Employer has failed to conclusively establish that this conversation between Ramirez and Cruz occurred during the critical period, which runs from June 3 through July 7. Cruz testified the conversation took place around the end of May, early June, so it is entirely possible this incident occurred outside the critical period, and thus is not objectionable.

⁹ Neither Rosa Urbina nor Norma Rodriguez who are both still employed by the Employer testified.

Second, assuming that this conduct did occur during the critical period, the evidence is insufficient to find it materially affected the results of the election. The Employer, in its objections cited only one case, *Delchamps, Inc.*, 210 NLRB 179 (1974), in support of these objections. That case is not similar to the circumstances here, as in *Delchamps*, the supervisors joined the union and solicited employees to join as well. The supervisors were also on the union organizing committee and solicited signature for cards. More on point is *Harborside Health Care, Inc.* 343 NLRB 906 (2004) where the Board established a two step inquiry to apply in objections cases based on pro-union supervisory conduct:

1) Whether the supervisor's pro-union conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. This inquiry includes (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the pro-union conduct and (b) an examination of the nature, extent and context of the conduct in question.

2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

Applying these factors to the evidence, the conduct is not objectionable. Looking at the first prong, the only pro-union conduct that can be attributed to Urbina is her letting Cruz leave an hour early to attend the union meeting. However, as noted above, the evidence is murky regarding the circumstances of Cruz leaving early. Also, Urbina was not present when Ramirez spoke with Cruz. Although Urbina may have been there when Ramirez first

approached Cruz, Urbina was not present during the conversation, and it is unknown what, if anything Urbina knew Ramirez was going to tell Cruz. Also, the Employer failed to present Urbina, a statutory supervisor still employed by the Employer to substantiate the claim. I find it odd that the Employer failed to call Urbina as a witness and did not present any reason why it did not call Urbina. Although I'll draw short of finding an adverse inference, *International Automated Machines*, 285 NLRB 1122, 1123 (1987), I find the lack of Urbina's testimony casts doubt on the Employer's argument. Further, there is no evidence that Urbina exhibited other "pro-union" conduct to Cruz or any other employee other than what Cruz testified about.

As for the second prong, this conduct as recounted by Cruz took place at least a month prior to the election (and as discussed above potentially outside the critical period), Cruz did not tell any other employee about Urbina's role in her conversation with Ramirez, making it an isolated incident and not one widely disseminated to the unit. Also, the Union won by 40 votes, hardly a close margin. As a result, the conduct did not interfere with employees' free choice in the election or affected the outcome and is not objectionable. Therefore I recommend that Objection Nos. 5, 7 and 8 be overruled.

Objection No. 1

The Union and its agents, representatives and/or supporters interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by verbally and physically threatening, coercing and intimidating employees in the exercise of their Section 7 rights.

Facts

The Employer presented numerous witnesses who testified about various comments they heard either directly or indirectly from their co-workers about what would happen to people who did not vote for the Union in the election. I'll go over them one by one. First,

there is the threat described above by Norma Ramirez to Denecia Cruz that she would beat the crap out of her if she went to the Union meeting and told the Employer about it. Cruz relayed this conversation to two or three of her co-workers, telling one of her co-workers that she did not know if Ramirez was serious or joking when she made her comment. Second, Certified Nurse Assistant Lilia Loya testified that sometime prior to the July 7th election she heard comments that employees would get fired if they did not vote for the Union. Loya did not testify specifically who she heard this from and answered no when asked if any of her co-workers made any threats to her about the Union. Loya also testified that she was called a traitor because she agreed to be the observer for the Employer at the election. Third, central supply employee Rosa Cerpas testified that no employees who support the Union ever said anything to her about the Union. Cerpas said that sometime prior to the election, she indirectly heard that employees who didn't vote and who had been there the longest would be fired. She also heard comments that if someone is not with the Union, then they can look for another job. Cerpas stated that despite these indirect comments, she was not nervous about going to work or that anybody would try and get her fired.

Fourth, Cook Guadalupe Garcia testified that she was told by co-workers who supported the Union, if she did not vote for the Union, she would be set up and "kicked out." Garcia heard this sometime around the end of May, early June from a co-worker. When probed further Garcia admitted that she overheard this statement when the co-worker was speaking to another group of employees, and that Garcia's name was not mentioned. Garcia said she was also threatened by pro-union co-workers that they could do something to her car if she did not support the Union. Garcia further testified that on a few occasions just prior to the election, after Garcia told a co-worker she did not like the Union, the co-worker told her

she shouldn't say anything negative about the Union, and she should shut up and not give any explanations. Fifth, CNA Julie Valladares testified that no co-workers made any threats to her directly about her not supporting the Union. However, she sort of contradicted herself when she later testified that one employee directly told her she would be terminated if she was not with the Union, and then that she heard that same comment from other people. It is not clear when Vallarades heard these comments.

Sixth, RNA Florita Briseno testified that she had never been threatened because of her views against the Union. Although Briseno stated that she heard indirectly from employees who support the union that either you support the Union or you won't have good wages. Seventh, Nurse's assistant Jeronima Rodriguez testified that in June or July on two occasions, once in about June and once about two weeks before the election, a co-worker told her she should vote for the Union, because if she did not then she would be one of the first ones to get kicked out/fired. Lastly, housekeeper Maria Hernandez testified that in June or July a few of her co-workers talked to her about the Union. One co-worker told her that if she is not in favor of the Union, then she will be fired for being old, but if she supported the Union, then the Union would help her out. Also, three of Hernandez' co-workers told her that they could not stand her because of her decision to support the Employer.

Analysis of Objection No. 1

In its closing argument, the Employer seemed to concede that these comments were all made by employees and were not in any way adopted or ratified by the Union. As Employer counsel stated in his oral argument, "The Board has long recognized the coercive impact of third-party threats on the electorate." Even if the Employer somehow claims these employees

were agents of the Union, the burden of proving an agency relationship is on the party asserting its existence. *Technodent Corp.*, 294 NLRB 924, 925-926 (1989) and *Millard Processing Services*, 304 NLRB 770, 771 (1991). Here the Employer has failed to provide any evidence that the Union was involved in these threats whatsoever, or demonstrated any Union agent involvement or knowledge of these comments among employees. Thus, the analysis of this objection is to be evaluated under a third party standard. Under this standard, set forth in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984), the objecting party must establish that the third-party conduct during the election was so aggravated as to create a general atmosphere of fear and reprisal rendering a fair election impossible.

In assessing the seriousness of such threats, the Board considers 1) the nature of the threat itself; 2) whether the threat encompassed the entire bargaining unit; 3) whether reports of the threat were widely disseminated within the unit; 4) whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat; and 5) whether the threat was “rejuvenated” at or near the time of the election. } Further, the Board accords less weight to a conduct by a nonparty versus a party because neither “unions nor employers can prevent misdeeds...by persons whom they have no actual control.” *NLRB v. Griffith Oldsmobile*, 455 F2d 867, 870 (8th Cir. 1972) enfg. 184 NLRB 722 (1970).

Here most of the testimony demonstrated very few, if any “threats” made by employees. Three employees answered no when asked if they had ever been threatened by pro-union co-workers.¹⁰ Many of the statements employees testified that they heard (either directly or indirectly) could hardly be considered threats, such as being called a traitor or

¹⁰ These employees are Rosa Cerpas, Julie Valladares and Florita Briseno.

being told to shut up. Several employees testified that the statements they heard were indirect, basically rumors,¹¹ hardly enough to overturn an election.

Three employees¹² testified about direct statements made to them by other employees that can all be considered as some type of threat concerning losing employment if the individual did not vote/support the Union. These threats are not connected with any violence, rather just a statement about termination if they do not support the Union. The Board has held generally that threats of job loss for not supporting the union, made by one employee to another, are not objectionable, and that such statements can be readily evaluated by employees as being beyond the control of the employees and the union. See *Duralam, Inc.*, 284 NLRB 1419 fn. 2 (1987), and cases cited therein.

Another direct statement was the one Cruz testified about regarding her co-worker telling her she would basically beat her up if she attended a union meeting and revealed what happened there to the Employer. Cruz told about two of her co-workers about this encounter. This isolated threat is not enough to overturn the election. The Board recognizes that in a hotly contested election, “a certain measure of bad feeling and even hostile behavior is probably inevitable.” *Cal-West Periodicals*, 330 NLRB 599,600 (2000). The Board has found that threats to “kick ass” were not objectionable, See *Leasco, Inc.* 289 NLRB 549 fn. 1 (1988). Here, even Cruz was not sure if Ramirez was serious or joking. Further there was no evidence that Ramirez followed up her statement (which has not been demonstrated that it took place in the critical period) with further similar comments or initiated any actions consistent with her statement.

¹¹ The evidence does not clearly explain what employees meant by “indirect statements” other than the employee did not hear it directly from the source.

¹² The three employees are Guadalupe Garcia, Jeronima Rodriguez and Maria Hernandez.

The remaining statements concern Garcia's testimony that she was told that something could happen to her car if she did not support the Union. This is more of a prediction than an actual threat as the statement was "something could happen" not that something definitely would happen. Further, the evidence does not show how many times a co-worker told Garcia something could happen to her car, the context of that conversation, or when this conversation took place.

Based on all the evidence, it is difficult to find that there was a general atmosphere of fear and reprisal as a result of any of these statements (putting aside that some of them may be outside the critical period). In fact, Cerpas testified that she was not fearful as a result of any of the comments she heard. Also the Employer did not submit any evidence that these statements were widely disseminated among the Employer's employees. The witnesses failed to testify if they told anyone else about these statements they heard. Under such circumstances, I find that the alleged threats would not reasonably tend to interfere with the employees' free and uncoerced choice in the election. Thus, I recommend the Employer's Objection No. 1 be overruled.

IV. SUMMARY OF RECOMMENDATIONS

The undersigned, having made the above findings and conclusions, viewed the alleged conduct individually and cumulatively, and upon the record as a whole, recommends that the Employer's objection nos. 1, 2, 3, 4, 5, 7, 8 and 9 be entirely overruled, and that a Certification of Representative issue.

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 **October 08, 2009, 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.¹³ 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.

¹³ 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.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.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 24th day of September, 2009.

Handwritten signature of Stephanie Cahn in cursive, enclosed in a circular stamp.

Stephanie Cahn, Hearing Officer
National Labor Relations Board
Region 21
888 S. Figueroa Street, 9th Floor
Los Angeles, CA 90017

EXHIBIT G

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN

A Professional Corporation

October 5, 2009

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VIA ELECTRONIC FILING

Office of the Executive Secretary
National Labor Relations Board
1099 14th Street, N.W.
Washington, D.C. 20570-0001

Re: *Covenant Care, LLC dba Huntington Park Nursing and Rehabilitation, 21-RC-21140*
Request for Extension of Time to File Exceptions

Dear Executive Secretary:

Pursuant to National Labor Relations Board Rules and Regulations Section 102.69(j)(3), the Employer hereby requests an extension of two additional weeks to file its exceptions to the Hearing Officer's Report and Recommendations on the Employer's Objections, issued on September 24, 2009. However, we were not made aware of the Report until September 29, 2009, when the Corporate office of Covenant Care received a copy of the report which had been mailed to the individual facility involved. While a copy of the Report was forwarded to me by my client on September 29, to my knowledge we have never received a service copy from the Region as we have not been able to locate any such document.

Under Sections 102.69(c)(2) and (c)(4), a party may file exceptions within 14 days from the date of the issuance of the report. Thus, the current deadline for Employer's exceptions and supporting brief is October 8, 2009. Due to conflicting professional commitments, it will not be possible to prepare and file the Exceptions and brief within that time frame. Since receiving the Report, I have been in day long negotiation sessions with the SEIU on September 30 and October 1 and I am in the process of preparing a brief in an arbitration matter. On October 8 I am leaving for New Orleans to attend parents weekend at Tulane University, returning October 11. I have negotiations on October 12, 14 AND 21. During that time period I also have to respond substantively to 3 new unfair labor practice charges in Region 32 involving another employer. Accordingly, I request that the deadline be extended to October 22.

Office of the Executive Secretary
National Labor Relations Board
October 5, 2009
Page 2

I have called Linda Lye, counsel for the Union regarding this request. She was not in the office and according to the person who answered the phone, she is not expected back until Thursday, October 8. I left a substantive voice mail seeking her position on this request. As of the time of the sending of this request, I have not heard back from Ms. Lye. As is reflected in the enclosed proof of service, copies of this request are being served electronically upon the Regional Director as well as counsel for the Union.

Thank you for your attention to this matter.

Sincerely,



David S. Durham

cc: Peter Tovar, Acting Regional Director, Region 21
Linda Lye, Esq.

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PROOF OF SERVICE

I, Jill Hernandez, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On October 5, 2009, I served the following document(s) described as **REQUEST FOR EXTENSION TO FILE EXCEPTIONS TO THE HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON THE EMPLOYER'S OBJECTIONS:**

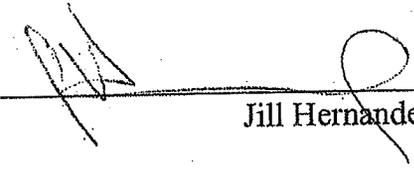
- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Peter Tovar
Acting Regional Director
National Labor Relations Board
Region 21
NLRBRegion21@nlrb.gov

Linda Lye, Esq.
llye@altshulerberzon.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on October 5, 2009.



Jill Hernandez

EXHIBIT H



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570-0001**

October 6, 2009

Re: Covenant Care, LLC d/b/a
Huntington Park Nursing & Rehabilitation
Case 21-RC-21140

Date for receipt of Exceptions and Brief in Support in Washington, D.C. is
extended to October 22, 2009.

A handwritten signature in black ink that reads "Henry S. Breitenicher". The signature is written in a cursive style.

Henry S. Breitenicher
Associate Executive Secretary

cc: Parties
HSB/lma

EXHIBIT I

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 21

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION,

Employer,

v.

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION,

Petitioner.

Case 21-RC-21140

**EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND
RECOMMENDATIONS ON OBJECTIONS**

David S. Durham
Gilbert J. Tsai
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
415.434.1600
Attorneys for Employer
COVENANT CARE, LLC d/b/a HUNTINGTON
PARK NURSING AND REHABILITATION

October 22, 2009

Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation (hereinafter “Employer”) hereby files the following Exceptions to the Hearing Officer’s Report and Recommendations on Objections issued in this matter on September 24, 2009.

<u>Exception No.</u>	<u>Page</u> ¹	<u>EXCEPTION</u>
1	3	To the Hearing Officer’s “preface” in its entirety
2	3	To the Hearing Officer’s attempt to make a credibility resolutions and findings of fact through boilerplate statements rather than on individual findings of fact and conclusions of law.
3	3	To the Hearing Officer’s statement of the law that the burden on a party seeking to have a Board-supervised election set aside is a “heavy one.”
4	3	To the Hearing Officer’s reliance upon the <i>Harlan # 4 Cole Co. v. NLRB</i> , and <i>First Union Management</i> cases.
5	4	To the Hearing Officer’s statement of the law that in order to be objectionable, the objecting party must show that a conduct actually interfered with the employee’s free exercise of choice.
6	4	To the Hearing Officer’s incorrect reliance upon the <i>NLRB v. Bostik Div., USM Corp.</i> and <i>White Knight Mfg. Co.</i> cases.
7	4	To the Hearing Officer’s reliance upon the <i>Ideal Electric & Manufacturing</i> case.
8	4	To the Hearing Officer’s failure to fully analyze all objectionable conduct, whenever committed, in order to determine whether the necessary “laboratory conditions” for a free and fair election were compromised.
9	4	To the Hearing Officer’s unsupported finding that in order to reach the voting place, the employee would have to walk down a “long” hallway.
10	6	To the unsupported finding that the voting place was “farthest point possible” from the entrance on Templeton Street.
11	7	To the Hearing Officer’s unsupported conclusion that Nix “admitted she did not see the clipboard” as Claudia Juarez was “checking off” something.

¹References to “Page” are to page numbers in the Hearing Officer’s Report and Recommendations on Objections.

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
12	7	To the Hearing Officer's unsupported finding that Nix testified that "some but not all of the employees" who entered on the Templeton Street side went over to Claudia Juarez to speak with her for at least five minutes.
13	7	To the unsupported finding that Nix "admitted" that employees could have been going over and talking to other employees who were with Claudia, and not necessarily Claudia directly.
14	8	To the Hearing Officer's apparent reliance on the fact that Nix did not mention Claudia's misconduct which occurred during the first voting session during the pre-election conference before the second session.
15	8	To the Hearing Officer's finding that Nix did not mention in her testimony that Claudia had a clipboard during the second session.
16	8	To the Hearing Officer's failure to note that Nix' testimony is undisputed that Claudia had a clipboard and highlighter visible when she was outside the building during the second session.
17	8	To the Hearing Officer's Failure to find that Claudia had a clipboard visible during the second session and that Claudia looked down and appeared to be checking off names as eligible voters walked up to her.
18	8	To the Hearing Officer's inaccurate summary of Nix' testimony, specifically that she testified that every employee who walked into the building on election day entered through the Templeton Street side, when in fact she testified that <i>most</i> employees entered on the Templeton side.
19	8	To the Hearing Officer's apparent reliance on the fact that from where Claudia was standing during the second session, she could not see employees entering on the Miles Avenue side.
20	9	To the Hearing Officer's description of Nix' testimony regarding the number of employees she saw speaking with Claudia as "confusing."
21	9	To the Hearing Officer's incorrect summary of Nix' testimony that she never testified to the number of employees she saw speaking with Claudia during the first session.
22	9	To the Hearing Officer's failure to find that Nix testified (and that her testimony was undisputed) that she estimated that she saw Claudia speak with 30-40 employees during the course of the day, and 15-20 employees during the afternoon session.

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
23	9	To the Hearing Officer's failure to find that Claudia spoke with 30-40 employees during the course of the day, and 15-20 employees during the afternoon session.
24	9	To the Hearing Officer's incorrect summary of Nix' testimony that she was not certain that employees were actually speaking with Claudia as opposed to speaking with other employees with Claudia present.
25	9	To the Hearing Officer's Failure to find that Claudia engaged in prolonged conversations with a significant number of eligible voters during the second voting session while employees were in the line of march to the polls.
26	9	To the Hearing Officer's conclusion that Nix' ability to distinguish employees in the bargaining unit from other employees and from union organizers was suspect.
27	9	To the Hearing Officer's conclusion that there was no evidence that Nix had any contact with unit employees during her visits to the facility.
28	9	To the Hearing Officer's legal conclusion that the <i>Milchem</i> rule does not apply.
29	9	To the Hearing Officer's conclusion that Claudia's conversations did not take place in the polling area with employees who were waiting to cast their ballots.
30	10	To the Hearing Officer's misplaced reliance upon the <i>Howard W. Moore d/b/a Howard W. Moore & Son</i> case.
31	10	To the Hearing Officer's misapplication of <i>Boston Insulated Wire & Cable Co.</i> case.
32	10	To the Hearing Officer's incorrect application of the factors set out in the <i>Boston Insulated Wire</i> case.
33	10	To the Hearing Officer's incorrect conclusion that in applying the <i>Boston Insulated Wire</i> factors to the situation here, it shows "that no impermissible electioneering occurred."
34	10	To the Hearing Officer's failure to conclude that impermissible electioneering occurred.

**Exception
No.** **Page¹**

EXCEPTION

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| 35 | 10 | To the Hearing Officer's unsupported conclusion that the conduct by Claudia did not occur within or near the polling place. |
| 36 | 10 | To the Hearing Officer's failure to conclude that the conduct by Claudia did occur near the polling place, or in the "no electioneering" zone. |
| 37 | 10 | To the Hearing Officer's failure to conclude that the conduct by Claudia occurred in the "line of march to" to the polls and was therefore objectionable. |
| 38 | 10 | To the Hearing Officer's unsupported conclusion that "at best the evidence demonstrates that employers were speaking to other employees with Claudia present, but the substance of the conversations is unknown." |
| 39 | 10 | To the Hearing Officer's failure to conclude that the evidence established that Claudia as well as the other agent of the union were in fact engaged in "prolonged" conversations with employees during polling times in no-electioneering areas and in the line of march to the polls. |
| 40 | 10 | To the Hearing Officer's apparent reliance upon the irrelevant fact that the content of the conversations is unknown. |
| 41 | 10 | To the Hearing Officer's unsupported conclusion that the evidence was not conclusive that Claudia was the one doing the talking with employees. |
| 42 | 10 | To the Hearing Officer's failure to conclude that Claudia as well as the other union agent were in fact engaged in prolonged conversations with the employees |
| 43 | 10 | To the Hearing Officer's unsupported finding that it is quite possible that some of the employees who were talking around Claudia may have already voted or may have not been in the voting unit. |
| 44 | 10 | To the Hearing Officer's unsupported conclusion that Claudia was not in the area designated as a "no electioneering" zone or did not act contrary to the board agent's instructions. |
| 45 | 10 | To the Hearing Officer's failure to conclude that Claudia was in the area designated as a "no election hearing zone" and she acted contrary to the board agent's instructions. |

**Exception
No. Page¹**

EXCEPTION

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| 46 | 11 | To the Hearing Officer's failure to conclude that the board agent's instructions were to prohibit all campaigning and not just "direct" campaigning. |
| 47 | 11 | To the Hearing Officer's conclusion that Claudia engaged in the conduct in question while she was "not anywhere near the polling area." |
| 48 | 11 | To the Hearing Officer's failure to find that Claudia was near the polling area or in the "line of march" to the polls. |
| 49 | 11 | To the Hearing Officer's unsupported conclusion that the evidence does not support the employer's assertion that the union kept some kind of list and was checking off names during the election. |
| 50 | 11 | To the Hearing Officer's failure to find that Claudia was keeping a list and checking off names during the election. |
| 51 | 11 | To the Hearing Officer's unsupported summary of the evidence that Claudia appeared to be making "marks from time to time." |
| 52 | 11 | To the Hearing Officer's failure to conclude that Claudia made obvious and apparent check marks on her clipboard as employees passed by or spoke with her. |
| 53 | 11 | To the Hearing Officer's failure to conclude that employees would reasonably believe that they are being kept track of by Claudia by this action. |
| 54 | 11 | To the Hearing Officer's unsupported conclusion that there was no evidence as to what was on the clipboard or what marks Claudia was making. |
| 55 | 11 | To the Hearing Officer's failure to conclude, based on the evidence, that Claudia appeared to be making check marks on the clipboard. |
| 56 | 11 | To the Hearing Officer's unsupported conclusion that there was no evidence that employees were aware of what was on the clipboard. |
| 57 | 11 | To the Hearing Officer's failure to conclude that employees would reasonably believe that their names were being checked off the clipboard as they approached or walked by Claudia. |
| 58 | 11 | To the Hearing Officer's incorrect conclusion that there was no evidence that Claudia was making a list of voters. |

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
59	11	To the Hearing Officer's failure to conclude that the evidence established that Claudia was in fact making a list of voters.
60	11	To the Hearing Officer's gratuitous comment that the employer's argument that Claudia was keeping a list of voters is far-fetched.
61	11	To the Hearing Officer's failure to conclude that employer's argument that Claudia was keeping a list of voters is supported by substantial evidence contained in the record as a whole.
62	11	To the Hearing Officer's reliance upon her finding that there was no evidence as to what, if anything, was on the clipboard, when in fact the actual contents of the clipboard are irrelevant to the issues before the Board.
63	11	To the Hearing Officer's unsupported conclusion that from where Claudia was standing, she would not be able to observe who went into the polling area.
64	11	To the Hearing Officer's failure to conclude that from where Claudia was standing, she would reasonably be able to observe who went into the polling area, as she was standing the "line of march" to the polls.
65	11	To the Hearing Officer's misapplication of the <i>Masonic Homes of California</i> case.
66	11	To the Hearing Officer's unsupported conclusion that there was no evidence that a list was being kept or that employees even suspected that such a list was being kept.
67	11	To the Hearing Officer's failure to conclude that the evidence supported a finding that a list was in fact being kept, and that employees would have reason to believe that a list was being kept.
68	11	To the Hearing Officer's unsupported conclusion that the evidence does not establish that the union was making an election speech to mass assemblies of employees.
69	11	To the Hearing Officer's failure to conclude that the evidence does establish that the union was making an election speech to mass assemblies of employees.
70	12	To the Hearing Officer's unsupported conclusion that there was no evidence that Claudia spoke directly to the employees.

**Exception
No.**

Page¹

EXCEPTION

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| 71 | 12 | To the Hearing Officer's failure to conclude that the evidence established overwhelmingly that Claudia spoke directly to the employees. |
| 72 | 12 | To the Hearing Officer's misapplication of board law in apparently requiring that an actual "speech" be given in order for conversations during the 24-hour period to be a violation of the <i>Peerless Plywood</i> rule. |
| 73 | 12 | To the Hearing Officer's reliance upon the irrelevant fact that the employer does not know what Claudia said to the voters. |
| 74 | 12 | To the Hearing Officer's unsupported conclusion and inaccurate statement that the employer admitted that it did not know "if anything" was said by Claudia, when the evidence establishes clearly that Claudia spoke with eligible voters. |
| 75 | 12 | To the Hearing Officer's conclusion that there was insufficient evidence demonstrating that the union violated the <i>Peerless Plywood</i> rule. |
| 76 | 12 | To the Hearing Officer's failure to conclude that the substantial evidence contained within the record as a whole demonstrated that the union violated the <i>Peerless Plywood</i> rule. |
| 77 | 12 | To the Hearing Officer's misapplication of the <i>Performance Measurements Co.</i> case. |
| 78 | 12 | To the Hearing Officer's unsupported conclusion that the facts in the instant case are not similar to the ones in <i>Performance Measurements Co.</i> |
| 79 | 12 | To the Hearing Officer's unsupported conclusion that employees did not have to pass by Claudia to get to the polling place. |
| 80 | 12 | To the Hearing Officer's application of the wrong legal standard that in order to be objectionable, employees must necessarily pass by Claudia to get to the polling place. |
| 81 | 12 | To the Hearing Officer's failure to find that substantial numbers of employees must necessarily pass by Claudia in order to get to the polling place. |
| 82 | 12 | To the Hearing Officer's failure to find on the basis of the evidence in record that large portions of the bargaining unit would be forced to pass by Claudia in order to enter the building and go to the voting area. |

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
83	12	To the Hearing Officer's reliance upon the irrelevant fact that it was conceivably possible for employees not to pass by Claudia when the record evidence establishes that the vast majority of the employees who were coming in to vote did in fact or must pass by Claudia in order to enter the building and go to vote.
84	12	To the Hearing Officer's unsupported conclusion that Claudia was not positioned anywhere near the polling place and was not visible to voters who chose to vote.
85	12	To the Hearing Officer's failure to find that Claudia was positioned near the polling place and in the "line of march" to the polling place and was clearly visible to voters who chose to vote.
86	12	To the Hearing Officer's unsupported conclusion that the union's conduct did not interfere with the employees' free choice.
87	12	To the Hearing Officer's failure to conclude that the union's conduct did interfere with the employees' free choice.
88	12	To the Hearing Officer's recommendations that objections in Nos. 2, 3 and 4 be overruled.
89	12	To the Hearing Officer's failure to recommend that objections 2, 3 and 4 be sustained and that a new election be ordered.
90	13	To the Hearing Officer's apparent reliance on the fact that Ramirez did not actually beat up or attempt to beat up Cruz.
91	13	To the Hearing Officer's apparent reliance on the fact that Ramirez did not speak with Urbina about Ramirez' threat.
92	13	To the Hearing Officer's failure to find that Cruz was too intimidated to speak with Urbina about the Ramirez threat.
93	14	To the Hearing Officer's incomplete summary of the testimony regarding Urbina's conversations with Ramirez.
94	14	To the Hearing Officer's failure to find that supervisor Rosa Urbina volunteered to let Cruz off from work an hour off early in order to attend a union meeting.

**Exception
No.**

Page¹

EXCEPTION

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| 95 | 14 | To the inaccurate summary of Cruz's testimony that "at some point in the day" she was told that she "could leave an hour early to attend the meeting." |
| 96 | 14 | To the Hearing Officer's failure to find that Cruz testified that her supervisor offered to let Cruz off from work an hour early in order to attend a union meeting, and that Cruz did not request permission to leave work early. |
| 97 | 14 | To the Hearing Officer's unsupported conclusion that Cruz's testimony was conflicting. |
| 98 | 14 | To the Hearing Officer's failure to conclude that Cruz's testimony was consistent and clear. |
| 99 | 14 | To the Hearing Officer's unsupported conclusion that it was "unclear if Cruz asked Urbina for permission to leave early, or Urbina approached Cruz and told her she could leave early, or if Cruz actually left early that day to attend the union meeting." |
| 100 | 14 | To the Hearing Officer's failure to find that Urbina approached Cruz and told her she could leave early. |
| 101 | 14 | To the Hearing Officer's apparent reliance on the irrelevancy as to whether Cruz actually left early that day to attend the union meeting. |
| 102 | 14 | To the Hearing Officer's misapplication of the <i>Tyson Fresh Meats, Inc.</i> and <i>Progress Industries</i> cases. |
| 103 | 14 | To the Hearing Officer's articulation of an incorrect legal standard, specifically that in order to be objectionable, the conduct must have actually interfered with free choice of employees to such a degree that it materially affected the results of the election. |
| 104 | 14 | To the Hearing Officer's misapplication of the <i>Sonoma Health Care Center</i> case. |
| 105 | 14 | To the Hearing Officer's failure to apply the correct legal standard. |
| 106 | 14 | To the Hearing Officer's failure to articulate the correct legal standard, namely that in order to be objectionable, the conduct must be such that tends to interfere with the election; no actual proof of interference is necessary. |

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
107	14	To the Hearing Officer's unsupported conclusion that the employer has failed to established that the conduct alleged in objections 5, 7 and 8 interfered with the free choice of the employees.
108	14	To the Hearing Officer's failure to find that the conduct alleged in objections 5, 7 and 8 interfered with the free choice of employees.
109	14	To the Hearing Officer's failure to conclude that the conduct alleged in objections 5, 7 and 8 tended to interfere with the free choice of employees.
110	14	To the Hearing Officer's finding that the employer failed to "conclusively" establish that the conversation between Ramirez and Cruz occurred during the critical period which runs from June 3 to July 7.
111	14	To the Hearing Officer's application of the improper legal standard that the employer's burden is to "conclusively" establish the facts supporting its objections.
112	14	To the Hearing Officer's failure to apply the preponderance of evidence standard.
113	14	To the Hearing Officer's application of the incorrect legal standard that in order to be objectionable, the conduct must have taken place after June 3.
114	14	To the Hearing Officer's conclusion that the conversation between Ramirez and Cruz was not objectionable.
115	14	To the Hearing Officer's failure to conclude that the conversation between Ramirez and Cruz was objectionable and interfered with the election.
116	15	To the Hearing Officer's conclusion that there was insufficient evidence that the conduct alleged in objections 5, 7 and 8 materially affected the results of the election.
117	15	To the Hearing Officer's conclusion that the <i>Delchamps</i> case is distinguishable.
118	15	To the Hearing Officer's conclusion that the case in issue is not similar to the circumstances in the <i>Delchamps</i> case.

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
119	15	To the Hearing Officer's failure to conclude that the <i>Delchamps</i> case is applicable and supports a conclusion that the election must be set aside.
120	15	To the Hearing Officer's conclusion that the conduct alleged in objections 5, 7 and 8 was not objectionable.
121	15	To the Hearing Officer's failure to conclude that the conduct alleged in objections 5, 7, and 8 was in fact objectionable and required the setting aside of the election.
122	15	To the Hearing Officer's inaccurate summarization of the evidence in the case that Urbina's conduct was merely that of "letting" Cruz leave an hour early to attend the union meeting, when in fact she urged her to attend.
123	15	To the Hearing Officer's unsupported conclusion that the evidence is "murky" regarding the circumstances of Cruz leaving early.
124	15	To the Hearing Officer's reliance upon the irrelevant fact that Urbina was not present when Ramirez threatened Cruz.
125	16	To the Hearing Officer's unsupported conclusion that it is unknown what if anything Urbina knew Ramirez was going to tell Cruz.
126	16	To the Hearing Officer's failure to conclude based upon the evidence that Urbina knew precisely what Ramirez was going to tell Cruz and that Urbina left it to Ramirez to do her "dirty work," i.e., the threats of physical violence.
127	16	To the Hearing Officer's misplaced reliance upon the fact that the employer failed to present Urbina, to substantiate its claim, when in fact it was the union that bore the burden of refuting the evidence placed into evidence.
128	16	To the Hearing Officer's misreliance upon the <i>International Automated Machines</i> case.
129	16	To the Hearing Officer's unsupported finding that the lack of Urbina's testimony cast doubt upon the employer's argument.
130	16	To the Hearing Officer's failure to conclude that Urbina was equally available to the union and the employer, through the subpoena process.

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
131	16	To the Hearing Officer's failure to conclude that the union's failure to subpoena Urbina cast an adverse inference upon the union's defenses.
132	16	To the Hearing Officer's inaccurate conclusion that there was no evidence that Urbina exhibited other "pro-union" conduct to Cruz or any other employee.
133	16	To the Hearing Officer's reliance upon the irrelevant standard as to whether or not Urbina engaged in other pro-union, coercive conduct.
134	16	To the Hearing Officer's inaccurate conclusion that Cruz did not tell any other employee about Urbina's role in her conversation with Ramirez.
135	16	To the Hearing Officer's apparent reliance upon the irrelevant factor of whether Cruz repeated Urbina facts regarding Urbina's role to other employees.
136	16	To the Hearing Officer's failure to assume that such coercive conduct was repeated in light of the small size of the bargaining unit and the closeness and proximity of bargaining unit employees.
137	16	To the Hearing Officer's misplaced reliance upon the margin of victory.
138	16	To the Hearing Officer's unsupported conclusion that the conduct did not interfere with employee free choice or affected the outcome of the election.
139	16	To the Hearing Officer's failure to conclude that the conduct did interfere with employee free choice in the election and affected the outcome of the election.
140	16	To the Hearing Officer's application of the wrong legal standard by apparently requiring that the evidence established actual interference, rather than interference which "tends" to interfere with the election.
141	16	To the Hearing Officer's conclusion that the conduct alleged in objections 5, 7 and 8 was not objectionable.
142	16	To the Hearing Officer's failure to conclude that the conduct alleged in objections 5, 7 and 8 was objectionable.
143	16	To the Hearing Officer's recommendation that objections 5, 7 and 8 be overruled.

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
144	16	To the Hearing Officer's failure to recommend that objections 5, 7 and 8 be sustained and that a new election be ordered.
145	19	To the Hearing Officer's unsupported conclusion that most of the testimony demonstrated very few, if any, threats made by employees.
146	19	To the Hearing Officer's failure to conclude that the threats made by employees created an atmosphere of fear of retaliation which interfered with the election to tended to interfere with the election.
147	19	To the Hearing Officer's conclusion that the Board has generally held that threats of job loss for not supporting the union made by one employee to another are not objectionable.
148	19	To the Hearing Officer's application of <i>Duralam, Inc.</i> to facts in this instant matter.
149	20	To the Hearing Officer's conclusion that the threat made to employee Cruz was "isolated."
150	20	To the Hearing Officer's conclusion that the threat made to Cruz, which was repeated to two of her co-workers was isolated.
151	20	To the Hearing Officer's conclusion that the threatening statement made by Cruz was insufficient to overturn the election.
152	20	To the Hearing Officer's failure to conclude that the threat made to Cruz was sufficient to overturn the election, or at the very least was, in conjunction with other objectionable conduct, sufficient to overturn the election.
153	20	To the Hearing Officer's misplaced reliance upon the <i>Cal-West Periodicals</i> case.
154	20	To the Hearing Officer's reliance upon the <i>Leasco, Inc.</i> case.
155	20	To the Hearing Officer's reliance upon the irrelevant fact of whether or not Ramirez actually followed up upon her threat.
156	21	To the Hearing Officer's dismissal of the threat made to Garcia.
157	21	To the Hearing Officer's unsupported conclusion that it was merely a "prediction" and not a "threat."

<u>Exception No.</u>	<u>Page¹</u>	<u>EXCEPTION</u>
158	21	To the Hearing Officer's apparent application of an incorrect legal standard, that in order to be objectionable, the evidence must be shown through evidence that the predicted event would "definitely" happen.
159	21	To the Hearing Officer's unsupported conclusion that the evidence does not show when the co-worker told Garcia that something could happen to her car.
160	21	To the Hearing Officer's unsupported failure to find that there was a general atmosphere of fear of reprisal as the result of the statements.
161	21	To the Hearing Officer's application of the incorrect legal standard that it is the burden of the employer to show actual dissemination, when dissemination in such small unit is presumed.
162	21	To the Hearing Officer's finding that the threats alleged in objection no. 1 would not reasonably tend to interfere with the employees free and uncoerced choice in the election.
163	21	To the Hearing Officer's failure to find that the alleged threats would reasonably tend to interfere with the employee's free and uncoerced choice in the election.
164	21	To the Hearing Officer's recommendation that employer's objection no. 1 be overruled.
165	21	To the Hearing Officer's failure to recommend that the employer's objection no. 1 be sustained, that the election be set aside and that a new election be ordered.
166	21	To the Hearing Officer's recommendations that the employer's objection nos. 1, 2, 3, 4, 5, 7, 8 and 9 be entirely overruled and that a certification of representative issue.

- 167 21 To the Hearing Officer's failure to recommend that employer objection
nos. 1, 2, 3, 4, 5, 7, 8 and 9 be sustained, that the election be set aside and
that a new election be ordered.
- 168 *Passim* To the Hearing Officer's Report in its entirety.

Dated: October 22, 2009

Respectfully submitted,



David S. Durham
HOWARD RICE NEMEROVSKI CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
415.434.1600
Attorneys for Employer
COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION

W03 179700004/U12/1591710/v2

1 **PROOF OF SERVICE**

2 I, Jill Hernandez, declare:

3 I am a resident of the State of California and over the age of eighteen years and not a
4 party to the within-entitled action; my business address is Three Embarcadero Center,
5 Seventh Floor, San Francisco, California 94111-4024. On October 22, 2009, I served the
6 following document(s) described as **EMPLOYER'S EXCEPTIONS TO HEARING**
7 **OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS:**

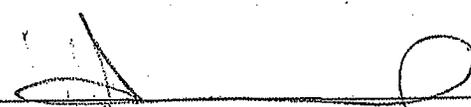
- 8 by transmitting via facsimile the document(s) listed above to the fax
9 number(s) set forth below on this date before 5:00 p.m.
- 10 by placing the document(s) listed above in a sealed envelope with postage
11 thereon fully prepaid, in the United States mail at San Francisco, California
12 addressed as set forth below.
- 13 by transmitting via email the document(s) listed above to the email address(es)
14 set forth below on this date before 5:00 p.m.
- 15 by placing the document(s) listed above in a sealed Federal Express envelope
16 and affixing a pre-paid air bill, and causing the envelope to be delivered to a
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20 Peter Tovar
21 Acting Regional Director
22 National Labor Relations Board
23 Region 21
24 NLRBRegion21@nlrb.gov

25 Linda Lye, Esq.
26 llye@altshulerberzon.com

27 I am readily familiar with the firm's practice of collection and processing
28 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
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I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed at San Francisco, California on October 22, 2009.



Jill Hernandez

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A Professional Corporation

EXHIBIT J

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

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION,

Employer,

v.

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION,

Petitioner.

Case 21-RC-21140

**BRIEF IN SUPPORT OF EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S
REPORT AND RECOMMENDATIONS ON OBJECTIONS**

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October 22, 2009

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I. INTRODUCTION

This case involves an election conducted on July 7, 2009, among a unit of service and maintenance employees employed at Huntington Park Nursing and Rehabilitation Center (hereinafter "the Employer" or "Huntington Park"), a skilled nursing facility located in Huntington Park, California. The petitioner is the Service Employees International Union (hereinafter "Union"). The Regional Director of Region 21 directed that a hearing be held on Employer Objections 1, 2, 3, 4, 5, 7, 8 and 9 to resolve substantial and material issues raised by the Objections. The hearing was held on August 31 and September 1 before Hearing Officer Stephanie Cahn, who issued a Report recommending that the Employer's Objections be overruled and that the Union be certified.

The Employer submits that the record evidence shows that the election was conducted in an atmosphere of fear and coercion, created by union agents, by the voters' fellow employees and indeed by the Employer's own supervisor, so extreme and pervasive that the holding of a free and fair election was rendered impossible. In issuing her Report, the Hearing Officer made findings of fact completely unsupported by the record and misapplied applicable Board precedent. Accordingly, it should not be adopted by the Board.

II. ARGUMENT

A. General Legal Standards.

The Board has long held that coercive and intimidating conduct that creates an atmosphere which renders improbable a free choice in an election can warrant overturning the election. *See Sewell Mfg. Co.*, 138 NLRB 66 (1962), *supp. by* 140 NLRB 200 (1962); *General Shoe Corp.*, 77 NLRB 124 (1948), *enf. by* 192 F.2d 504 (6th Cir. 1951). Coercion, intimidation, and surveillance during the voting process itself is a strict liability offense that warrants overturning the election. *See Milchem, Inc.*, 170 NLRB 362 (1968); *accord. Electric Hose & Rubber Co.*, 262 NLRB 186, 216 (1982); *Star Expansion Indus. Corp.*, 170 NLRB 364, 364-65 (19689); *Performance Measurements Co., Inc.*, 148 NLRB 1657, 1659 (1964); *supp. by* 149 NLRB 1451 (1964); *Claussen Baking Co.*, 134 NLRB 111, 112 (1961); *Detroit Creamery Co.*, 60 NLRB 178, 179-80 (1945).

The Board is responsible for assuring that its elections are conducted under laboratory conditions. *See General Shoe Corp.*, 77 NLRB 124 (1948). In assessing whether conduct interfered with the necessary laboratory conditions, the test always remains an objective one — whether the conduct has a tendency to interfere with employee free choice. *Hopkins Nursing Care Center*, 309 NLRB 958 (1992). Further, it is the Board's responsibility to safeguard its elections from conduct that may affect the voter's free choice. *Star Expansion Industries Corp.*, 170 NLRB 364, 365 (1968). Therefore, the Board is "especially zealous" in ensuring that the actual conduct of an election is free of intrusions. As the Board

explained in *Milchem, Inc.*, 170 NLRB 362 (1968), the companion case to *Star*:

“The final minutes before an employee casts his vote should be his own, as free from interference as possible.”

B. Union Representatives Interfered With The Fair Operation Of The Election Process And Destroyed The Requisite Laboratory Conditions By Having Prolonged Conversations With Employees In The Line of March To The Polls. (Objections 2, 3, 4 and 9).

i. Legal Standards.

In *Milchem, Inc.*, 170 NLRB 362 (1968), the Board instituted a broad prophylactic rule against any prolonged conversation in the polling area. *Id.* at 362. The strict rule against such conduct is applied without regard or inquiry in the nature of the conversation. *Id.* at 362, 363. In fact, under *Milchem*, the actual content of a union agent’s speech to an employee is irrelevant. In *Biomedical Applications of Puerto Rico*, 269 NLRB 827, 829-30 (1984), the Board only required a finding that a party was present in proximity of the polling area, irrespective of what was discussed, to warrant setting aside an election. Consistent with the Board’s policy against polling place interference, the Board has applied the *Milchem* rule to conduct that occurs near the polling place or in the line of march to the polls as well. *Star*, 170 NLRB at 365; *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1118-19 (1982); *NLRB v. Carroll Contracting Ready Mix, Inc.*, 636 F.2d 111, 112-13 (5th Cir. 1981) (election results set aside where union-supporting employees engaged in electioneering outside of the polling place).

ii. Facts.

Beginning at approximately 6:25 a.m. (polls opened at 6:30 a.m.), two Union organizers stationed themselves in the line of march to the polls and engaged in prolonged conversations with employees on their way into the facility. The facility in Huntington Park has two entrances, on Miles Avenue and another on Templeton Street. The employee parking lot is located on the Templeton Street side, so the majority of employees enter the building on this side. (Tr. 15:11-13). The parking lot has a single driveway; employees who arrive to work on foot, those that drive into the parking lot, and those who are dropped off to work on Templeton all walk through the driveway if they wish to enter the building on the Templeton Street entrance. (Tr. 17:16-18:4). Few employees use the Miles Avenue entrance because it contains limited parking, and because Miles Avenue is a busy street. (Tr. 16:5-10).

During the July 7th election, Union organizer Claudia Juarez and another Union representative stationed themselves next to the single driveway into the Templeton Street parking lot. As employees approached, the Union representatives would wave them over to talk with them. (Tr. 28:14-20). Juarez spoke with almost everybody that walked into the facility on July 7 — approximately 30 or 40 employees. (Tr. 30:21-31:1). These conversations (with both individual employees and also groups of employees) lasted at least five minutes, and some lasted “much longer” than that. (Tr. 31:2-11). Juarez would also hug the employees, and, as they walked into the building (presumably to

vote), the Union organizers would cheer, clap, and raise their fist. (Tr. 31:23-32:3). This appeared to please some employees, but others would simply walk into the building hurriedly. (Tr. 32:11-14).

iii. The Hearing Officer's Factual Findings Were Unsupported or Otherwise Flawed.

The Employer takes exception to several of the findings made by the Hearing Officer. The Hearing Officer inaccurately summarized Debbie Nix's testimony, resulting in an baseless, but adverse, credibility determination. The Hearing Officer claimed Nix testified that "every employee who walked into the building that day entered on the Templeton Street side" and that employees Denecia Martir Cruz and Florita Briseno contradicted this testimony because they testified to entering the facility through Miles Avenue. (Report, p. 8). However, Nix was clear in her testimony that Templeton Street was the "primary entrance" for employees, though not the "sole" entrance, because it has a parking area, and because Miles is a busy avenue. (Tr. 16:5-10). She also noted that some employees might use the Miles Street entrance "but it would be unusual for staff to enter that door." (Tr. 47:13-15). Thus, Nix's testimony was not contradicted.

Second, the Hearing Officer stated that Claudia was "not anywhere near the polling area." This factual statement fails to recognize that the Templeton Street entrance being monitored by Claudia and the other organizer was the main entrance used by all employees who were eligible to vote. Nix testified that the majority of employees used the entrance, then went directly into the facility, where the polling place was located. Claudia was near the polling place because the

entrance was in the line of march to the polls, and also because it was only a short walk from the entrance to the polling area.

iv. The Hearing Officer's Legal Conclusions Were Flawed.

First, the Hearing Officer found that the *Milchem* rule did not proscribe the conduct by the Union organizers because the conduct "did not take place in the polling area with employees who were waiting to cast their ballots." (Report, p. 9). Although the Hearing Officer cited *Milchem* for this proposition, she failed to recognize that the Board does not merely prohibit electioneering at the polls; it also prohibits electioneering near the polls, and especially in the line of march to the polls. *Claussen Baking Company*, 134 NLRB 111 (1961). Nix testified that

Second, the Union's conduct outside the polling area while the polls were open also constituted an impermissible "captive audience" speech in violation of the standards set out by the Board in *Peerless Plywood Co.*, 107 NLRB 427, 429 (1954). *Peerless* forbids the parties from giving election speeches to groups of employees within 24 hours before scheduled election times. *Peerless* is not limited to "a formal speech in the usual sense." Here, the meetings outside the building involved groups of up to five or six employees, not including the Union organizer. (Tr. 53:18-54:8). The meetings occurred within 24 hours of the polling, and were "mandatory" in the sense that they made employee participation impossible to avoid.

The Hearing Officer placed great reliance on Debbie Nix's testimony that she did not hear any of the conversations between the Union representative and the employees coming into the facility. (Report, pp. 7, 10, 12). This reliance is problematic. Under the *Milchem* rule, what a union representative actually says to employees in the line of march to the polls is irrelevant — no prolonged conversation, regardless of the subject, is allowed. In cases such as *Biomedical Applications*, the Board overturned an election based on a finding that a party was present in proximity of the polling area, irrespective of what was discussed. 269 NLRB 827, 829-30 (1984). This misapplication of Board precedent is yet another reason not to adopt the Hearing Officer's Report.

C. Union Representatives Interfered With The Fair Operation Of The Election Process And Destroyed The Requisite Laboratory Conditions By Appearing To Check Employees' Names Off of a List. (Objections 2, 3, 4 and 9).

i. Legal Standards.

The Board has long recognized the coercive impact of lists maintained by parties to the election where the potential voters would be aware of the activity. In *Masonic Homes of California*, 258 NLRB 41, 48 (1981), the Board stated:

The Board and courts long have held that voting in Board cases must be free of any impropriety, and that employees must be permitted to cast their ballots in secret, in complete freedom, and without fear of reprisal or discipline. Activity that reasonably can be construed as improper is proscribed whether or not the activity is, in fact, improper. Impropriety has taken many forms in the cases, and one such is the keeping of lists of voters. Such lists are improper if employee voters know, or reasonably can infer, that their names are being recorded. (Emphasis added).

ii. Facts.

While one of the Union organizers, Claudia Juarez, was speaking with employees entering the facility through the Templeton Street driveway, she carried a clipboard with paper on it, and a yellow highlighter marker. (Tr. 26:15-20). Juarez would make a “check-off” motion using her highlighter and the clipboard as each individual approached. (Tr. 29:19-30:11). The clipboard, and the “check-off” motion, was visible to employees. (Tr. 30:12-15). The obvious implication was that if one did not come over to hear the Union’s improper *Milchem* sales pitch, he or she would be labeled as a traitor, subject to future harassment and intimidation. This implication would be made to eligible voters irrespective of the actual contents of Claudia’s clipboard.

In this situation, the concern that Union organizers were keeping a list is exacerbated by the testimony of Denecia Martir Cruz. According to Cruz, a co-worker at another company told her that a Union representative had shown her a list of Huntington Park employees who did not support the Union (and that Cruz was “number one” on the list). (Tr. 78:4-19). As a result, it was reasonable for employees to infer that their names, and positions on unionization, were being recorded by the Union.

iii. The Hearing Officer’s Factual Findings Were Unsupported Or Otherwise Flawed.

The Hearing Officer made several incorrect findings on this issue in its Report. First, although the Hearing Officer acknowledges the undisputed testimony that the Union representative glanced at her clipboard and made a

“checking” motion with her highlighter “as each individual approached,” she inaccurately pointed out that “Nix admitted she did not see the clipboard.” (Report, p. 7). The Hearing Officer also inaccurately stated that Nix “failed to mention that Claudia had a clipboard or highlighter during the second polling session.” (Report, p. 8). Neither of these assertions is correct; Nix explicitly stated that she saw the clipboard during both the morning and afternoon sessions. (See Tr. 45:6-11 (“Q: You testified that when you saw Claudia with what you believed to be a clipboard and a highlighter pen in her hand that she was making marks when employees approached. Was she doing this continuously throughout the morning polling session? A: Um hum. Yes.”); Tr. 61:22-62:1 (“Q: And did you notice whether or not Claudia had a clipboard during the second session? A: Yes, she did. O: Okay. How about a highlighter? A: Yes.”) (emphasis added).

iv. The Hearing Officer’s Legal Conclusions Were Flawed.

The Hearing Officer placed great reliance on the lack of evidence regarding “what was on the clipboard or what marks Claudia was making.” (Report, p. 11). Such reliance, again, misconstrues Board law. As set forth above, the Board clearly emphasized that “activity that reasonably can be construed as improper is proscribed whether or not the activity is, in fact, improper.” *Masonic Homes*, 258 NLRB at 48. Thus, even if Nix did not see the specific contents of clipboard or what the Union representative was writing with her highlighter, the Hearing Officer’s conclusion missed the point — as long as

employees could reasonably infer that the Union was recording the names of employees, the damage was done.

D. Statutory Supervisor Rosa Urbina's Open Support Of The Union Had a Coercive Effect on Employees, Destroying the Requisite Laboratory Conditions. (Objections 5, 7, 8).

i. Legal Standards.

The Board has long recognized that a manager or supervisor's participation in union organizing activities will taint a union majority. *See, e.g., Evergreen Healthcare, Inc. v. NLRB*, 104 F.3d 867, 873 (6th Cir. 1997); *Delchamps, Inc.*, 210 NLRB 179 (1974); *WKRG-TV, Inc.*, 190 NLRB 174, *enf'd.* 470 F.2d 1302 (5th Cir. 1973). Indeed, a supervisor's participation in the union's organizing drive, assistance to, and support of a union may be found to deprive employees of the opportunity to exercise free choice in selecting a collective-bargaining representative. *See NLRB v. Island Film Processing Co., Inc.*, 784 F.2d 1446, 1451 (9th Cir. 1986). A supervisor's conduct may improperly interfere with elections if it could reasonably tend to have a coercive effect or is likely to impair an employee's choice. *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004).

ii. Facts.

Here, statutory supervisor Rosa Urbina exhorted her subordinate, employee Denecia Martir Cruz, to support the Union. Urbina is the Director of Activities at Huntington Park Nursing Center. (Tr. 65:20-23). She directly supervises two Activities Assistants in their work by assigning them classes, group

activities, or individual room visits. (Tr. 67:1-6). She also has the authority to grant them time off. (Tr. 67:7-13). The parties stipulated that Rosa Urbina is a statutory supervisor of Activities Assistants. (Tr. 67:22-24).

Sometime in late May or early June, Rosa Urbina and an Activities Assistant, Norma Rodriguez, were having a conversation within earshot of the other Assistant, Denecia Martir Cruz. (Tr. 94:9-16). Urbina told Norma "You go ahead and talk to her, you go ahead and tell her. Are you afraid?" Norma responded "No, I'm not afraid, I'm just going to say it to her." (Tr. 70:10-16).

Norma and Urbina then called Cruz over into a corner of the dining room, and Norma informed her that there was going to be a union meeting at someone's home. (Tr. 72:17-25). A few hours later, Urbina told Cruz that she was scheduled to leave at 6:00 p.m., but that she could leave at 5:00 p.m. if she would attend the union meeting. (Tr. 73:4-7). Cruz did not ask permission to attend the meeting. (Tr. 73:14-17).

Norma told Cruz that she would bring her to the meeting, but that if Cruz mentioned any of the meeting topics while at work, Norma was going to have her "beaten up outside in the parking lot." (Tr. 73:24-74:4). Cruz did not mention this threat to her supervisor, Urbina, because she knew that Urbina supported Norma, as well as the Union. Urbina had told Cruz that the Union was "good" and that it would bring "more benefits," "more money" and "more respect." (Tr. 75:10-13). Cruz's supervisor also told her that if she did not support the Union, she would "have to leave [her] job." (Tr. 75:17-20). Cruz was

so intimidated by this behavior¹ that she told at least one of her co-workers, Lilia Loya. (Tr. 103:20-104:8).

iii. **The Hearing Officer's Incorrectly Relied on *Ideal Electric* to Exclude Evidence of Supervisor Misconduct.**

The Hearing Officer claimed that the Employer failed to conclusively establish that the conversations between Ramirez and Cruz, and between Cruz and her supervisor, which occurred in "late May or early June," occurred during the critical period, which the Hearing Officer alleged runs from June 3 through July 7. However, the Union initially filed its election petition on May 21,² and only withdrew it on June 3, the day the Union filed the instant election petition.³ The Employer submits that the critical period for analyzing union misconduct began from the time the Union filed its initial election petition on May 21, and that the Hearing Officer's reliance on *Ideal Electric* to disregard any conduct before June 3 demonstrated an improper understanding of law and the unique circumstances of this case.

In *Ideal Electric Co.*, 134 NLRB 1275 (1961), the Board set the commencement of the "critical period" at the filing of the election petition, in an attempt to ensure that the Board would not be forced to consider matters that occurred during a period too remote in time from the election. The Board has

¹The parties stipulated that Cruz was intimidated by her supervisor's comments in support of the Union, and that the comments inhibited Cruz from discussing her union views with other employees. (Tr. 98:6-17).

²See Exhibit A, attached herein, NLRB Case. 21-RC-21136, filed on May 21, 2009.

³See Exhibit B, attached herein, Letter from Acting Regional Director noticing Petitioner's withdrawal request made on June 3, 2009.

subsequently strayed from a stringent interpretation of the *Ideal Electric* rule on several occasions. In *Dresser Industries*, 242 NLRB 74 (1974), the employer had threatened employees during the prepetition period with a loss of benefits if the union was elected. The prepetition conduct continued within the critical period, prompting the Board to hold that the rule in *Ideal Electric* does not preclude consideration of prepetition conduct where it “adds meaning and dimension to related postpetition conduct.” See also *Cedars-Sinai Medical Center*, 342 NLRB 596 (2004) (noting that Board considers whether threats were sufficiently similar in nature, and related to, postpetition threats to warrant reliance under principles set forth in *Dresser Industries*); *The National League of Professional Baseball Clubs*, 330 NLRB 670 (2000) (although the Board, in most cases, will not set aside an election based only on conduct which occurred prior to petition, it will consider prepetition conduct that is directly related to postpetition conduct).

Consideration of prepetition conduct is especially relevant where, as here, the union withdrew its initial petition and later filed a second petition. The Board has held that where the hiatus between petitions constitutes “a significant period” of time, conduct occurring during the hiatus can be disregarded. *Carson Int'l*, 259 NLRB 1073 (1962). However, where a second petition is filed “immediately on the heels” of the withdrawal of the first petition, the Board has indicated that it would make an exception to the *Ideal Electric* rule, and would consider the alleged misconduct because the critical period began on the date of the filing of the first petition. *Id.* (citing *Monroe Tube Co.*, 220 NLRB 302, 350

(1975) (*enf. denied on other grounds*, 545 F.2d 1320 (2d Cir. 1976). Here, the Union filed its election petition on the same day it withdrew its earlier petition, June 3.

In keeping with the Board in *Carson Int'l*, the unique procedural background of this case necessitates a more-liberal reading of *Ideal Electric*, such as the Board adopted in *Dresser* and reiterated in *Cedars-Sinai Medical Center* and *The National League of Professional Baseball Clubs*. Even if any misconduct occurred before the alleged critical period beginning on June 3, 2009, the prepetition conduct was directly similar to postpetition conduct. Further, the evidence demonstrates that any prepetition misconduct occurred after May 2009, which was after the *first* election petition had been filed by the Union. Because the Union did not withdraw this election petition until June 3, 2009 (when it filed its second petition), the pre-election requirement for “laboratory conditions” was always in effect, and the Union cannot “wipe the slate clean” as to previous misconduct simply by withdrawing and re-filing an election petition. A strict reading of *Ideal Electric* is not warranted in this case, and all evidence of union misconduct occurring in late May should be considered.

iv. The Hearing Officer’s Relied On Several Unsupported Factual Findings.

The Hearing Officer found the lack of the supervisor’s testimony to cast “doubt” on the Employer’s argument, faulting the Employer for not calling the supervisor as a witness. The Employer already presented the testimony of Denecia Martir Cruz, who testified that her supervisor exhorted her to attend a

Union meeting, offered (without being asked) to excuse Cruz from work early to attend the meeting, and informed Cruz that she would have to “leave her job” if she did not support the Union. The parties even stipulated that Denecia Martir Cruz felt “intimidated” by her supervisor’s pro-union comments and that her supervisor’s comments inhibited her from discussing her views about the Union. As explained above, the relevant legal standard places the burden on the Employer to show that the supervisor’s support of the Union had a coercive effect — the Employer clearly met this burden with Cruz’s testimony as well as the stipulation. Thus, the Employer had nothing left to prove, and should not have been required to call Urbina as a witness.

Second, the Hearing Officer incorrectly stated that “Cruz did not tell any other employee about Urbina’s role in her conversation with Ramirez, making it an isolated incident” (Report, p. 16). It was an error, of course, for the Hearing Officer to assume that the supervisor’s intimidation of Cruz was an “isolated incident” without having any testimonial basis. The greater error, however, is that Cruz specifically mentioned that she told several employees about her conversations with Ramirez and Urbina, in direct contrast to the Hearing Officer’s finding. See Tr. 96:3-5 (“Q: Now, did you tell any of your coworkers what Norma had said to you? A: Just to two or three people.”). Employee Lilia Loya also testified that Cruz told her about the intimidation by her supervisor:

[Cruz] works in activities and she was going on vacation and the election was going to be held. She said something about her supervisor telling her that she has to go to the [union] meeting. She was telling me, “I don’t want to go to the meeting and she wanted for me to go.

She told me to clock out early so they can come and pick me up and take me to the meeting.” (Tr. 103:25-104:6) (emphasis added).

Third, the Hearing Officer inaccurately summarized Cruz’s testimony as “conflicting” and stated that it was “unclear” if Cruz asked Urbina for permission to leave early. (Report, p. 14). Nowhere in Cruz’s testimony does she suggest that she approached her supervisor to ask for time off — instead, the facts are clear that, without even being told by Cruz about the Union meeting, Urbina offered to let Cruz off work early to attend the meeting. In fact, Cruz explicitly denied asking Cruz permission to leave work early: “Q: So, did you ask Rosa Urbina permission to leave early? A: No, she told me to clock out and that I could leave.” (Tr. 73:8-9).

v. The “Small Plant” Doctrine Requires a Presumption That Employees Knew About Supervisor Misconduct .

In analyzing Cruz’s dissemination of the physical threat by Rodriguez, as well as the supervisor’s support of the Union, in a facility the size of Employer (approximately 80-90 employees), the “small plant” doctrine presumes that the employees had general knowledge of the threat, even if witnesses do not specifically testify thereto. *See, e.g., Willow Ridge Living Center v. N.L.R.B.*, 104 F.3d 867 (6th Cir. 1997) (“In a small bargaining unit (only 48 employees) it is *reasonable to infer* the charge was common knowledge”) (repudiated on different grounds by *N.L.R.B. v. Webcor Packaging, Inc.*, 118 F.3d 1115 (6th Cir. 1997)). In any event, Cruz specifically testified that she told other employees about the threats made against her by Rodriguez and Urbina.

E. The Union and Its Supporters Destroyed The Requisite Laboratory Conditions Through Their Threats, Coercion, And Intimidation of Co-Workers. (Objection 1).

i. Legal Standards.

Elections can be invalidated based on the conduct of third parties which interferes with the right of employees to have a free and uninhibited choice of bargaining representative if the interference renders “a free election impossible.” *Westwook Horizons Hotel*, 270 NLRB 802 (1984); *U.S. Electrical Motors*, 261 NLRB 1343 (1982). Employees can be third parties for this purpose. *Cal-West Periodicals*, 330 NLRB 599 (2000).

The atmosphere of fear and intimidation surrounding this election stifled a robust debate on the issues involving the election and made a free and fair election impossible.

ii. Facts.

A statutory supervisor (and her agent) was not the only source of threats to eligible voters. Co-workers in support of the Union also engaged in threatening behavior by telling anti-union employees that they would be fired if they did not support the Union, threatening to “set them up” for termination, telling them that anti-union employees were on a “list,” calling them “traitors,” and otherwise creating an atmosphere where it was clear that anti-union views were not tolerated.

For example, in June, Lilia Loya heard at least three or four comments from union supporters that employees who did not vote “yes” for the

Union would be fired. (Tr. 107:14-17). Rosa Cerpas was told, on approximately five occasions, that “if someone is not with the Union, then they can look for a job elsewhere.” (Tr. 111:19-112:8). Jeronima Rodriguez was told that if she didn’t vote, she was “going to be one of the first ones who are going to get ‘kicked out.’” (Tr. 136:19-22). Maria Hernandez was told that if she’s not in favor of the Union she would be “fired for being old.” (Tr. 143:2-3). Julie Valladares was also told by a co-worker that if she did not support the Union, she would be fired. (Tr. 128:1-8).

Guadalupe Garcia, a cook at Huntington Park, was threatened that if she did not vote for the Union, co-workers would set “some sort of trap” which would frame her to be fired. (Tr. 121:8-14). In fact, “almost everyone” in the kitchen, approximately 9 or 10 employees, threatened her for not supporting the Union. (Tr. 122:7-14).

Even more egregious threats, besides termination, were made to anti-union employees. The 11-year-old daughter of RNA and eligible voter Florita Briseno, received a telephone call at home calling her mother “a traitor” and that “your mom is going to be in a lot of trouble.” (Tr. 133:1-112). Lilia Loya was also called a “traitor” and told that she looked like a rat because she was an observer during the election on July 7th. (Tr. 101:4-8). In addition, Demesia Martir Cruz was told by a co-worker at another company, that a Union representative had shown her a list of Huntington Park employees who did not

support the Union, and that Cruz was “number one” on the list. (Tr. 78:4-19). All of the aforementioned employees were eligible to vote in the July 7th election.

In addition to threatening anti-union co-workers with physical violence, job loss, and other forms of ostracism, Union supporters also attempted to silence the Union’s critics. For example, on one occasion, Lilia Loya was told to “be quiet, we you’re with corporate” when she mentioned to two union supporters that she was “thankful” for her job. (Tr. 193: 7-19). When another employee, Guadalupe Garcia, attempted to express anti-union views, a Union supporter (and co-worker) told her “Don’t say that” and that if she “didn’t want trouble,” should shouldn’t express her point of view. (Tr. 122:19-24).

iii. The Hearing Officer Under-Assessed The Magnitude of Threats Made By Co-Workers.

The Hearing Officer miscounted the number of employees who testified about threats concerning job termination. The Report cites three employees – however, at least six employees testified at the hearing that coworkers alleged they would be fired if they did not support the Union. This testimony is cited above, and highlights the atmosphere of reprisal that was prevalent among anti-Union employees during the critical period.

iv. The Hearing Officer’s Legal Conclusions Were Flawed.

The Hearing Officer dismissed the threats of job termination, citing *Duralam, Inc.*, 284 NLRB 1419 fn. 2, calling them “readily evaluated . . . as being beyond the control of the employees and the Union.” (Report, pg. 20). This finding overlooks the fact that the employees are not sophisticated individuals who

understand the exact mechanism by which pro-Union employees, and the Union itself, would achieve their goal of terminating anti-Union employees. In fact, in response to cross-examination, one employee even admitted that she did not know which individuals had the power to terminate employees: “Q: Who fires people at the Covenant Care facility in Huntington Park? A: I don’t know. Q: Is it the Administrator? A: No.” (Tr. 147:4-8). Further, as described above, at least two of the employees testified that co-workers had the ability to “set them up” for termination; this ability puts job loss squarely within the control of pro-Union employees.

Second, the Hearing Officer dismissed the threat of physical violence made by Norma Ramirez against Denecia Martir Cruz, based on the Board’s statement in *Cal-West Periodicals*, 300 NLRB 599, 600 (2000), that “a certain measure of bad feeling and even hostile behavior is probably inevitable.” *Cal-West*, however, was based on a single incident where a group of pro-union employees told a single employee that he better vote “yes” for the Union, and threatened to hurt him if he crossed a picket line. *Id.* at 599. No other allegation of threats or coercion was made during the campaign. The Hearing Officer’s analogy to this case is misplaced. When Rodriguez’s threat is viewed in context with the threats of other co-workers and the intimidation by Cruz’s supervisor, it is clear that her threat cannot be ignored.

Third, the Hearing Officer continued to point out that some of the threatening and coercive events complained of by employees may be outside the

critical period — however, as pointed out above, the critical period began on May 21. As a result, none of the misconduct can be disregarded.

F. The Hearing Officer Failed To Consider The Totality of The Circumstances.

The applicable standard for analyzing pre-election misconduct whether it creates an atmosphere of fear and reprisal that impairs employee free choice. *See Sewell Mfg. Co.*, 138 NLRB 66 (1962), *supp. by* 140 NLRB 200 (1962); *General Shoe Corp.*, 77 NLRB 124 (1948), *enf. by* 192 F.2d 504 (6th Cir. 1951). This standard requires an analysis of the totality of the circumstances alleged to have rendered a free and fair election impossible. *See, e.g., Contech Division, SPX Corporation v. N.L.R.B.*, 164 F.3d 297 (1998) (totality of circumstances reviewed to warrant setting aside election). Yet, the Hearing Officer's Report analyzed each threatening and coercive incident in isolation to conclude that Employer's objections had no merit. Even if each threat, on its own, was not enough to create an atmosphere of fear and reprisal at Employer's facility, when assessed in its totality, it becomes obvious that employees were not allowed to voice anti-Union views and felt intimidated from voting against the Union.

Here, in the month leading up the election, employees were told that they had to support the Union, or be fired. Sometimes these threats were ambiguous; other times, employees knew that their co-workers would try to "set them up" for termination. Some co-workers attempted to follow through with these threats, as exhibited by the testimony of Guadalupe Garcia and Maria Hernandez. Employees who attempted to speak out against the Union were

labeled "traitors," called "rats," and told to keep quiet. One employee even received a threatening telephone call at home. Another was threatened with physical violence, and later told by her supervisor to clock out early and attend a Union meeting. This employee, who had been intimidated from making comments about the Union by the behavior of her supervisor and co-worker, later told several employees about this incident.

The atmosphere of coercion continued during election day. Union representatives stood at the main entrance used by employees, made motions as if "checking" names off a list, and engaged in prolonged conversations with employees. In conjunction with Denecia Martir Cruz's testimony regarding rumors of a list of anti-Union employees, it was reasonable for employees to infer that their names had been recorded.

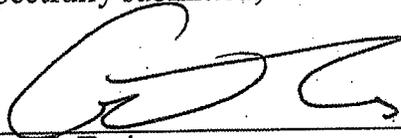
The totality of the circumstances confirms that employees endured coercion and threats from Union agents throughout the critical period and even on the day of the election.

III. CONCLUSION

Contrary to the recommendations contained in the Hearing Officer's Report, the election in this case was tainted by severe misconduct which interfered or tended to interfere with the right of the Employees, guaranteed by the Act, to make their selection in an atmosphere free of threats, coercion, surveillance and improper influence. Accordingly, the Employer respectfully requests that the Board set aside the election and order that a new election be held.

October 22, 2009

Respectfully submitted,



Gilbert J. Tsai
HOWARD RICE NEMEROVSKI
CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
415.434.1600
Attorneys for Employer
COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING
AND REHABILITATION

W03 102009-179700004/1593233/v2

EXHIBIT A

MAY-22-2009 11:51

NLRB REGION 21

2138942778 P.08

FORM EXEMPT UNDER 44 U.S.C.

INTERNET FORM NLRB-902 (2-08)

UNITED STATES GOVERNMENT NATIONAL LABOR RELATIONS BOARD PETITION

DO NOT WRITE IN THIS SPACE Case No. 21-RC-21136 Date Filed 5-21-09

INSTRUCTIONS: Submit an original of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located.

The Petitioner alleges that the following circumstances exist and requests that the NLRB proceed under its proper authority pursuant to Section 9 of the NLRA.

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...

2. Name of Employer: Covenant Care, LLO/Huntington Park Nursing Employer Representative to contact: Jennifer Sherwood Tel. No. 323-589-5941

3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code) 6425 Miles Ave. Huntington Park, CA 90255

4a. Type of Establishment (Factory, mine, wholesaler, etc.) Nursing Home Center 4b. Identify principal product or service Health Care

5. Unit involved (In UC petition, describe present bargaining unit and attach description of proposed clarification.) Included: CNA'S, RN'S, ACTIVITIES, DIETARY, DIETARY AIDS, HOUSEKEEPING, LAUNDRY, MAINTENANCE, JANITORS & CENTRAL SUPPLIES Excluded: ALL OTHER EMPLOYEES, PROFESSIONAL EMPLOYEES, GUARDS, SUPERVISORS, MANAGEMENT, SOCIAL SERVICES, MEDICAL RECORDS, AND LVN'S.

7a. [] Request for recognition as Bargaining Representative was made on (Date) 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 Tel. No. Date of Recognition or Certification Cell No. Fax No. e-Mail

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? Yes [] No [X] 11b. If so, approximately how many employees are participating?

11c. The Employer has been picketed by or on behalf of (insert Name) organization, of (insert Address) 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)

13. Full name of party filing petition (if labor organization, give full name, including local name and number) SEIU, Service Employees International Union

14a. Address (street and number, city, state, and ZIP code) 2516 Beverly Blvd. Los Angeles, CA 90057 14b. Tel. No. EXT 213-216-3187 14c. Fax No. 213-368-0699 14d. Cell No. 213-819-8586 14e. e-Mail claudiaj@seiu-ulcwo.org

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization) SEIU Healthcare

I declare that I have read the above petition and that the statements are true to the best of my knowledge and belief. Name (Print) Claudia Juarez Signature Title (if any) Organizer Address (street and number, city, state, and ZIP code) 2516 Beverly Blvd. Los Angeles, CA. 90057 Tel. No. Cell No. 213-819-8586 Fax No. eMail claudiaj@seiu-ulcwo.org

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

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 unfair labor practice and related proceedings or litigation.

EXHIBIT B

RECEIVED

JUN - 8 2009

LITTLER MENDELSON



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 21
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449
Telephone: (213) 894-5204
Facsimile: (213) 894-2778
Website: www.nlr.gov

Resident Office:
555 W Beech Street - Suite 418
San Diego, CA 92101-2939
Telephone: (619) 557-6184

June 4, 2009

David S. Durham, Attorney at Law
Littler Mendelson
650 California Street, 20th Floor
San Francisco, CA 94108

Re: Covenant Care, LLC/Huntington
Park Nursing
Case 21-RC-21136

Dear Mr. Durham:

Pursuant to the Petitioner's withdrawal request made on June 3, 2009, the petition in the above matter, with my approval, has been withdrawn.

Very truly yours,

William M. Pate, Jr.
Acting Regional Director

cc: Covenant Care, LLC/Huntington
Park Nursing
6425 Miles Avenue
Huntington Park, CA 90255

Claudia Juarez, Organizer
Service Employees International Union
2515 Beverly Boulevard
Los Angeles, CA 90057

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PROOF OF SERVICE

I, Jill Hernandez, declare:

I am a resident of the State of California and over the age of eighteen years and not a party to the within-entitled action; my business address is Three Embarcadero Center, Seventh Floor, San Francisco, California 94111-4024. On October 22, 2009, I served the following document(s) described as **BRIEF IN SUPPORT OF EMPLOYER'S EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS**:

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- by transmitting via email the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Peter Tovar
Acting Regional Director
National Labor Relations Board
Region 21
NLRBRegion21@nlrb.gov

Linda Lye, Esq.
llye@altshulerberzon.com

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on October 22, 2009.



Jill Hernandez

EXHIBIT K

NOT TO BE INCLUDED
IN BOUND VOLUMES

LPH
Huntington Park, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING AND
REHABILITATION

Employer

Case 21-RC-21140

and

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board¹ has considered objections to an election held July 7, 2009, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 56 votes for and 16 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's

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

findings² and recommendations as modified below, and finds that a certification of representative should be issued.

² The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

In response to the Employer's exceptions, we correct three minor misstatements in the hearing officer's report, none of which affects our findings as to the objections, all of which we overrule. (1) With respect to the list-keeping objections, Employer vice president Debbie Nix testified to having seen Union organizer Claudia Juarez holding a clipboard and highlighter during both morning and afternoon voting sessions, contrary to the hearing officer's report. (2) With respect to the electioneering and list-keeping objections, the hearing officer recited Nix's statement that every employee who walked into the Employer's facility on the day of the election entered on the Templeton Street side and walked by Juarez. Other credited testimony and Nix's own clarifications show that this was not so. Nothing, however, turns on this: the hearing officer did not base any credibility or factual findings on the overbroad portion of Nix's testimony, and we resolve the pertinent objections based on the Union organizers' distance from the polling place, which is undisputed. (3) With respect to the Employer's objections to supervisor Rosa Urbina's pronoun conduct, the hearing officer found that "it is unclear if [employee Denecia Martir] Cruz asked Urbina for permission to leave early" for a union meeting or if Urbina gave her permission unsolicited. Having reviewed the record, we agree with the Employer that Urbina's offer was unsolicited. Given the Employer's failure to show that the incident occurred within the critical period, however, the question of who initiated the discussion is not determinative.

The Employer operates the nursing and rehabilitation facility at issue, whose nursing assistants and other aides and assistants sought Union representation. The representation petition giving rise to this election was filed on June 3, 2009.³ As stated above, the Union won the July 7 election by a 40-vote margin, and the Employer filed objections. The hearing officer grouped those objections as follows: (1) electioneering and list-keeping by Union organizers during polling (Objections 2, 3, 4, and 9); (2) prounion conduct by a supervisor during the union campaign (Objections 5, 7, and 8); and (3) threats and intimidation by employees during the union campaign (Objection 1).

As the hearing officer stated, we do not lightly set aside the results of a Board-supervised election, and the burden is on the objecting party - here, the Employer - to demonstrate that objectionable conduct occurred and that it reasonably tended to have a material effect on the outcome of the election. *Oak Hill Funeral Home & Memorial Park*, 345 NLRB 532, 536 (2005); *Antioch Rock & Ready Mix*, 327 NLRB 1091, 1092 (1999).

1. We adopt the hearing officer's analysis and overruling of the electioneering objections under *Milchem, Inc.*, 170 NLRB 362 (1968), and *Boston Insulated Wire &*

³ All dates are in 2009 unless otherwise stated.

Cable Co., 259 NLRB 1118 (1982), *enfd.* 703 F.2d 876 (5th Cir. 1983).⁴ Regarding the Employer's reliance on *Peerless Plywood*, 107 NLRB 427 (1953), we agree with the hearing officer that it is not applicable as the Union organizers were not shown to be making election speeches to massed assemblies; however, we also find that employees' participation was not shown to be on company time and was in no way mandatory.⁵

2. We adopt the hearing officer's conclusion that Union organizer Claudia Juarez did not engage in objectionable conduct by creating a list of employees during the polling. Neither Nix nor any other witness established that Juarez had a list of voters on her clipboard, let alone that she consistently checked off

⁴ Regarding *Boston Insulated Wire*, the hearing officer found that there was no electioneering in violation of the Board agent's instructions because Juarez was not in or around the polling area. We find that Juarez also did not violate the Board agent's instruction not to campaign directly to people walking to the polls. Even assuming that the conversations outside the building constituted campaigning, the Employer has not shown that employees approaching the building were actually on their way to the polling place.

⁵ The Employer appears to have abandoned its argument that Juarez' conduct was also objectionable under *Performance Measurements Co.*, 148 NLRB 1657 (1964), but in any event, that case involved materially different facts.

their names as they approached.⁶ But even if we were to assume that Juarez was checking off a list of employees' names, list-keeping objections typically involve election observers keeping a list of voters within the polling place. Juarez' distance from the polling place and her inability to see who entered it made it impossible for her to determine who was a voter and negates any inference that employees reasonably could have thought she was making a list of employees who voted.⁷

3. In adopting the hearing officer's overruling of the Employer's objections alleging prounion conduct by supervisor Rosa Urbina, we emphasize that it is the Employer's obligation, as the objecting party, to

⁶ There was no testimony that any employee witnessed any checking-off motions by Juarez. Cf. *Masonic Homes of California*, 258 NLRB 41, 48 (1981) (as to observers, list-keeping is objectionable only "if employee voters know, or reasonably can infer, that their names are being recorded.")

⁷ The Employer argues in the alternative that employees would believe Juarez was making a list of employees who were unwilling to hear her alleged electioneering, for purposes of later retaliation. In so arguing, however, the Employer relies entirely on speculation, not on evidence. The Employer offers no basis for finding that reasonable employees, pre-election, could have believed Juarez was creating an "enemies list." Employee Cruz' testimony that, several weeks after the election, she was told about a list of nonsupporters of the Union does not support the objection, because this post-election information could not have affected employees' free choice at the time of the election. *Mountaineer Bolt*, 300 NLRB 667 (1990).

demonstrate that the objected-to conduct occurred during the critical period. *Accubuilt, Inc.*, 340 NLRB 1337, 1338 (2003). The Employer has not done so here.

The critical period began on June 3. Cruz testified that Urbina made an unsolicited offer for Cruz to leave work early to attend a union meeting in "late May or early June," which is not sufficient to demonstrate with certainty that it was within the critical period. Under *Accubuilt, supra*, uncertainty about whether the conduct occurred during the critical period provides a basis for overruling the objection.⁸

Cruz testified that Urbina had made other statements in favor of the Union. The hearing officer appears to have implicitly discredited this testimony, as she found that Urbina engaged in no prounion conduct other than offering to let Cruz leave early for the Union meeting. But even assuming Urbina made those statements, Cruz gave no time frame for those remarks. Thus, the Employer failed to show they were made during the critical period.

4. The Employer also failed to show that alleged threats and intimidation by coworkers occurred during the

⁸ Because Urbina's prounion conduct was not shown to have occurred during the critical period, we need not assess whether it was objectionable as a substantive matter.

critical period. As the hearing officer found, many of the employee comments on which the Employer relies are not objectionable under Board precedent.⁹ We are thus left with three statements: (1) coworker Ramirez' threat to beat up Cruz in late May or early June; (2) an unspecified person's warning to employee Guadalupe Garcia, at an unspecified time, that "something could happen to [Garcia's] car";¹⁰ and (3) a statement in an anonymous phone call, made at an unspecified time, to employee Florita Briseno's daughter that her mother was "going to be in a lot of trouble."¹¹

⁹ The hearing officer properly relied on Board precedent that, during contested campaigns, "[a] certain measure of bad feeling and even hostile behavior is probably inevitable." *Cal-West Periodicals*, 330 NLRB 599, 600 (2000). Name-calling and general rudeness are not objectionable threats. *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1124 fn. 6 (2003); *Teamsters Local 299 (Overnite Transportation Co.)*, 328 NLRB 1231, 1231 fn. 2 (1999). We further agree with the hearing officer's conclusion that the employees could disregard threats of job loss made by their coworkers because they understand that the coworkers and the Union are unable to carry out such threats. *Duralam, Inc.*, 284 NLRB 1419, 1419 fn. 2 (1987), and cases cited therein.

¹⁰ Contrary to the hearing officer, we do not find that the use of "could," rather than "would," precludes this statement from being considered a threat. We do, however, agree with the hearing officer that the record lacks necessary evidence about the statement's context, timing, and possible repetition.

¹¹ The hearing officer did not address the statement regarding Briseno, perhaps because of its vagueness. We do not condone anonymous phone calls that scare children, and we analyze this statement as a threat, despite its vagueness, in order to give the Employer's

The absence of evidence demonstrating that these statements were made during the critical period is fatal to the Employer's reliance on them.¹² *Accubuilt*, supra. The Employer has not established the existence of a general

objection thorough consideration. Nonetheless, as discussed, we find the evidence insufficient to demonstrate that the statement was objectionable.
¹² Contrary to the Employer's contention that the hearing officer failed to consider the aggregate effect of the allegedly objectionable conduct, no threatening or intimidating conduct was shown to have occurred during the critical period, and therefore there is no aggregate conduct to consider.

We do not reach the Employer's belated contention that the filing date of an earlier petition, filed on May 21 but withdrawn on June 5, should be considered as the start of the critical period. The Employer first asserted this argument in its exceptions brief, long after the hearing record closed, and the supporting documents it attaches to its brief were not offered as evidence at the hearing. By rule, those documents are not part of the record. NLRB Rules and Regulations § 102.69(g)(1)(i). Even if we were to view the Employer's argument on this issue as a motion to reopen the record and admit the attached documents, the Employer has not shown extraordinary circumstances justifying its failure to present the withdrawn petition sooner. NLRB Rules and Regulations § 102.48(d)(1). Even if we considered and agreed with the argument to expand the critical period it would be of no avail. Ramirez' threat to Cruz and supervisor Urbina's offer to release Cruz from work to attend a union meeting are the only acts that would clearly fall within the earlier critical period urged by the Employer. That conduct is insufficient to warrant setting aside the election results

atmosphere of fear and reprisal under *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984).¹³

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for SEIU, Service Employees International Union, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C. , September 23, 2010.

Wilma B. Liebman, Chairman

Mark Gaston Pearce, Member

Brian E. Hayes, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

¹³ Nor is there any basis for finding the third-party employee conduct attributable to the Union and therefore applying the party standard.

MLRB REGION 21
LOS ANGELES, CA

2010 SEP 28 AM 9:08

EXHIBIT L



United Long Term Care Workers®

October 4, 2010

Dave Ashley
VP of Operations, West Region
27072 Aliso Creek Road, Suite 100
Aliso Viejo, CA 92656

Dear Mr. Ashley,

Pursuant to our election of July 7, 2009 and the recent certification and recognition by the National Labor Relations Board on September 23, 2010, of the employees at the Huntington Park Nursing Center, located at 6425 Miles Ave, Huntington Park, CA 90255 to join the Union, we are making this formal request to initiate negotiations for a collective bargaining agreement. Therefore, in preparation for negotiations, SEIU-ULTCW will require important information from you that will enable the Union to effectively represent our members.

In order to expedite this process, the Union is available to meet to begin bargaining on the following dates:

**Thursday, November 11, 2010 at 10am;
Tuesday, November 16, 2010 at 10am; or
Wednesday, November 17, 2010 at 10am**

Please confirm which of these dates you are available to meet and begin bargaining.

Please provide the following necessary information as soon as possible, but not later than 15 days from this notice in electronic format (Microsoft Excel Spreadsheet preferred). Please e-mail the information to me, at Jimmyv@seiu-ultcw.org. If it is not possible to send this data via e-mail, please send the necessary information on CD-Rom or hard copy directly to:

**Jimmy Valentine
SEIU ULTCW
2515 Beverly Blvd.
Los Angeles CA 90057**

Los Angeles Office:
2515 Beverly Blvd
Los Angeles, CA 90057
Phone 1-888-373-3018
Fax (213) 368-0699

Sacramento Office:
1127 11th Street, Suite 523
Sacramento, CA 95814
Phone (916) 446-1851
Fax (916) 441-1974

Oakland Office:
440 Grand Avenue, Suite 250
Oakland, CA 94610
Phone 1-888-373-3018
Fax (510) 834-6134

San Bernardino Office:
195 N Arrowhead Ave,
San Bernardino CA 92408
Phone 1-888-373-3018
Fax (909) 386-7739

Watsonville Office:
10 Alexander Street
Watsonville, CA 95076
Phone 1-888-373-3018
Fax (831) 724-9717

Please send the following information for each employee (listed separately) for the following facilities:

Huntington Park Nursing Center

- 1) Bargaining Unit Information (include directly employed and subcontracted employees)
 - a. Employee Name
 - b. Gender
 - c. Age
 - d. Address/City/Zip
 - e. Home Phone Number
 - f. Date of Hire
 - g. Termination Date (if applicable)
 - h. Job Classification.
 - i. Category/Employee Status (i.e., Full-time, Part-time, On-Call).
 - j. Employer (company name, subcontractor name)
 - k. Base hourly rate of pay
 - l. Shift differential and other premiums, listed separately for each employee
 - m. Regular Hours Worked for Calendar year 2009
 - n. Overtime Hours Worked for Calendar year 2009
 - o. Double-time Hours Worked for Calendar year 2009
 - p. Vacation Hours paid for Calendar year 2009
 - q. Holiday Hours paid for Calendar year 2009
 - r. Sick Leave Hours paid for Calendar year 2009
 - s. Other paid leave paid for Calendar year 2009 (e.g. bereavement, jury duty)
 - t. Dates of wage increases during Calendar year 2009
 - u. Amount of wage increases during Calendar year 2008, 2009 and 2010 (if applicable)
 - v. Health plan coverage elected (no insurance, ee only, ee plus spouse, ee plus dependent, or ee plus family).

- 2) Benefit Information
 - a. Summary Plan description for each benefit provided by the company, or in the contract (Health, dental, vision, retirement, etc.)
 - b. Copy of any additional fringe benefit information/documents provided to employees.

- c. Premium costs (total, employer portion, employee portion) for all benefit plans and coverage levels (ee only, ee plus spouse, ee plus dependent, or ee plus family) for the current year and the previous 2 years.
- d. Number of bargaining unit employees participating in each level of coverage (ee only, ee plus spouse, ee plus dependent, or ee plus family) for each type of benefit.
- e. If the health plan for bargaining unit employees is part of a comprehensive health plan that includes non-bargaining unit personnel, please describe any difference in benefit levels between bargaining unit and non-bargaining unit personnel.
- f. Rate of contribution to SEIU pension plan for 2009 (Hourly rate in dollars, or list percentage if applicable. If none, list zero. Include dates contributions changed)
- g. Name of retirement/401(k) plan if other than SEIU and hourly rate of contribution for 2008 and 2009

3) Facility-Specific Information

- a. A copy of current employee personnel handbook or any written house rules and administrative personnel policies that have been issued during the term of the agreement.
- b. Patient census from 1/1/2009– current date (M-cal, Medicare, Private Pay, HMO, etc and total)
- c. State Unemployment Insurance (SUI) rate for 2008 and 2009 (varied % on first \$7,000/calendar year)
- d. Workers' Compensation premium rate per \$100 of payroll for 2008 and 2009
- e. Liability insurance premium rate for 2008 and 2009 and what type of plan is it (third party, self-insured, etc.)

4) Cost Information

- a. Copy of the calendar year 2009 Long Term Care Facility Integrated Disclosure and Medi-Cal Cost Report
- b. Copy of any special certifications required by current state regulations for Medi-Cal reimbursement.
- c. Changes in private pay, managed care, and all other non-Medi-Cal daily rates and the effective date(s) of such changes for the preceding two years.

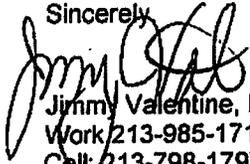
The Union believes that all of the above information is necessary in order for it to carry out its statutory duty under the National Labor Relations Act and assumes that you will cooperate in having this information prepared for the Union's analysis.

Obviously, we are not asking you to rewrite all the documents that we have requested but simply request copies of current, existing documents that govern the current situation at your facility. Please advise if you cannot provide this information within 15 days.

Again please let me know which of the above dates you are available to meet and begin negotiations within 5 days of receiving this notice.

Thank you for your anticipated cooperation.

Sincerely,



Jimmy Valentine, Esq.
Work 213-985-1710
Cell 213-798-1797
jimmyv@seiu-ultcw.org

cc: Kristin Eldridge
Charles Hoffman
Louis Jamerson

EXHIBIT M



November 5, 2010

Mr. Jimmy Valentine
SEIU ULTCW
2512 Beverly Blvd.
Los Angeles, CA 90057

Dear Mr. Valentine,

Regarding your letter of October 4, 2010, we believe that the certification issued in this matter was erroneous, faulty and contrary to law. Accordingly we decline your offer to meet at this time.

Sincerely,

A handwritten signature in black ink that reads "Debbie Nix". The signature is written in a cursive, flowing style.

Debbie Nix
Vice President, Human Resources

Cc: Charles Hoffman

EXHIBIT N

INTERNET
FORM NLRB-501
(2-08)UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER**DO NOT WRITE IN THIS SPACE**

Case

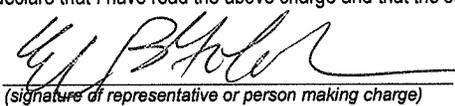
21-CA-39575

Date Filed

11-10-10

INSTRUCTIONS:

File an original 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 Covenant Care LLC d/b/a Huntington Park Nursing & Rehabilitation	b. Tel. No. 949-349-1200 c. Cell No. f. Fax No. 949-349-1900 g. e-Mail h. Number of workers employed
d. Address (Street, city, state, and ZIP code) 6425 Miles Ave. Huntington Park, CA 90255	e. Employer Representative Debbie Nix 27071 Aliso Creek Rd., Suite 100 Aliso Viejo CA 92656
i. Type of Establishment (factory, mine, wholesaler, etc.) nursing home	j. Identify principal product or service long term care
k. 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) (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.	
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) The NLRB issued a Decision and Certification of Representative in this matter on September 23, 2010. See Attachment A hereto. The Employer states that it refuses to bargain because it believes that the certification is "erroneous, faulty, and contrary to law." See Attachment B hereto. The Employer's refusal to bargain with the Union violates section 8(a)(5).	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) SEIU United Long Term Care Workers Union, Local 6434	
4a. Address (Street and number, city, state, and ZIP code) Jimmy Valentine 2515 Beverly Blvd. Los Angeles CA 90057	4b. Tel. No. (213) 985-1710 4c. Cell No. 4d. Fax No. (213) 360-0699 4e. e-Mail jimmyv@seiu-ultcw.org
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) Service Employees International Union, CTW, CLC	
6. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By  (signature of representative or person making charge)	Eileen B. Goldsmith, Atty. for ULTCW (Print/type name and title or office, if any)
Address 177 Post St., Suite 300, San Francisco, CA 94108	Tel. No. (415) 421-7151 Office, if any, Cell No. Fax No. (415) 362-8064 e-Mail egoldsmith@altber.com
	11/10/10 (date)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)**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 unfair labor practice 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 voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT O

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

COVENANT CARE LLC d/b/a
HUNTINGTON PARK NURSING
& REHABILITATION

and

SEIU UNITED LONG TERM CARE
WOKERS UNION, LOCAL 6434

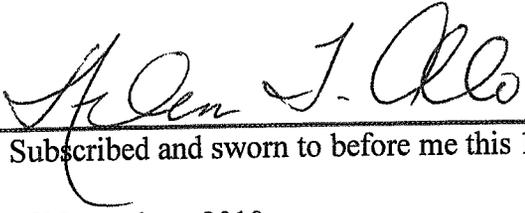
CASE 21-CA-39575

DATE OF MAILING November 12, 2010

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

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

Debbie Nix, Vice President of Human
Resources & Risk Management
Covenant Care LLC d/b/a Huntington Park
Nursing & Rehabilitation
6425 Miles Avenue
Huntington Park, CA 90255


Subscribed and sworn to before me this 12th day
of November, 2010.

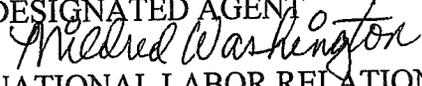
DESIGNATED AGENT

NATIONAL LABOR RELATIONS BOARD

EXHIBIT P

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

COVENANT CARE, LLC d/b/a HUNTINGTON
PARK NURSING AND REHABILITATION

and

Case 21-CA-39575

SEIU, UNITED LONG TERM CARE
WORKERS UNION, LOCAL 6434

COMPLAINT
AND
NOTICE OF HEARING

SEIU, United Long Term Care Workers Union, Local 6434, herein called Local 6434, has charged that Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Sec. 151, et seq., herein called the Act. Based thereon, the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, herein called the Board, issues this Complaint and Notice of Hearing and alleges as follows:

1. The charge in this proceeding was filed by Local 6434 on November 10, 2010, and a copy was served by regular mail on Respondent on November 12, 2010.

2. (a) At all material times, Respondent, a California limited liability company, with a facility located at 6425 Miles Avenue, Huntington Park, California, has been engaged in the operation of a nursing care facility.

(b) During the 12-month period ending June 10, 2009, a representative period, Respondent, in conducting its business operations described above in paragraph 2(a), derived gross revenues in excess of \$100,000 and purchased and received at its Huntington Park, California facility goods valued in excess of \$5,000 directly from points outside the State of California.

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

4. At all material times, Local 6434 has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, SEIU, Service Employees International Union, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

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

All full-time and regular part-time certified nursing assistants (CNAs), restorative nursing assistants (RNAs), activities assistants, dietary assistants, housekeepers, laundry aides, maintenance employees, and central supply employees employed by the Employer at its facility located at 6425 Miles Avenue, Huntington Park, California; excluding all other employees, LVN's, professional employees, social services employees, medical records employees, guards and supervisors as defined in the Act.

7. (a) On September 23, 2010, the Union was certified as the exclusive collective-bargaining representative of the Unit.

(b) Since September 23, 2010, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

8. (a) On or about October 4, 2010, the Union, by letter, requested that Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(b) Since on or about November 5, 2010, Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the Unit.

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

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

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be received by this office on or before December 15, 2010, or postmarked on or before December 14, 2010. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically by using the E-Filing system on the Agency's website. In order to file an answer electronically, access the Agency's website at

<http://www.nlr.gov>, click on **E-Gov**, then click on the **E-Filing** link on the pull-down menu. Click on the “File Documents” button under “Regional, Subregional and Resident Offices” and then follow the directions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency’s website informs users that the Agency’s E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency’s website was off-line or unavailable for some other reason. The Board’s Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing.

Service of the answer on each of the other parties must still be accomplished in conformance with the requirements of Section 102.114 of the Board’s Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT if necessary, a hearing will be conducted at a time, date and location to be determined later before an Administrative Law Judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

DATED at Los Angeles, California, this 1st day of December, 2010.



William M. Pate
Acting Regional Director, Region 21
National Labor Relations Board
888 South Figueroa Street, Ninth Floor
Los Angeles, CA 90017-5449

Attachments

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

COVENANT CARE, LLC d/b/a HUNTINGTON
PARK NURSING AND REHABILITATION

and

SEIU, SERVICE EMPLOYEES
INTERNATIONAL UNION

Case 21-CA-39575

DATE OF MAILING December 1, 2010

AFFIDAVIT OF SERVICE OF Complaint and Notice of Hearing with Form NLRB-4668 Attached

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by postpaid regular mail and or certified mail upon the following persons, addressed to them at the following addresses:

Debbie Nix, Vice President of Human
Resources and Risk Management
Covenant Care LLC d/b/a Huntington Park
Nursing and Rehabilitation
6425 Miles Avenue
Huntington Park, CA 90255
(7003 0500 0004 8022 6878)

Jimmy O. Valentine, In House Counsel
SEIU, United Long Term Care Workers
Union, Local 6434
2515 Beverly Boulevard
Los Angeles, CA 90057

David S. Durham, Attorney at Law
Howard Rice Nemerovski Canady Falk & Rabkin
Three Embarcadero Center, Seventh Floor
San Francisco, CA 94111

Eileen B. Goldsmith, Attorney at Law
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108

Mildred Washington

Subscribed and sworn to before me this 1st
day of December, 2010.

DESIGNATED AGENT

Relia Ayala

NATIONAL LABOR RELATIONS BOARD

7003 0500 0004 8022 6878

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

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(Endorsement Required) Here

Restricted Delivery Fee

DEBBIE NIX VICE PRESIDENT OF HUMAN
RESOURCES AND RISK MANAGEMENT
COVENANT CARE LLC d/b/a HUNTINGTON PARK
NURSING AND REHABILITATION
6425 MILES AVENUE
HUNTINGTON PARK CA 90255

EXHIBIT Q

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

COVENANT CARE, LLC d/b/a HUNTINGTON
PARK NURSING AND REHABILITATION,

and

Case 21-CA-39575

SEIU, UNITED LONG TERM CARE
WORKERS UNION, LOCAL 6434

RESPONDENT'S ANSWER
TO COMPLAINT
AND NOTICE OF HEARING

Pursuant to Sections 102.20 and 102.21 of the National Labor Relation Board's Rules and Regulations, Respondent Covenant Care, LLC d/b/a Huntington Park Nursing and Rehabilitation hereby answers the Board's Complaint and Notice of Hearing as follows:

BOARD ALLEGATIONS

1. Admit.
- 2(a). Admit.
- 2(b). Admit.
3. Admit.
4. Admit.
5. Admit.
6. Admit.
- 7(a). Admit.
- 7(b). Deny.
- 8(a). Admit.
- 8(b). Admit.

9. Deny.

10. Deny.

RESPONDENT'S FIRST AFFIRMATIVE DEFENSE

The certification of the Union was faulty, unsupported by the factual record, contrary to established law and public policy, and therefore void.

RESPONDENT'S SECOND AFFIRMATIVE DEFENSE

Respondent had no duty to bargain with the Union.

December 14, 2010

Respectfully submitted,



Gilbert J. Tsai
HOWARD RICE NEMEROVSKI
CANADY
FALK & RABKIN
Three Embarcadero Center, 7th Floor
San Francisco, CA 94111-4024
415.434.1600
Attorneys for Respondent
COVENANT CARE, LLC d/b/a
HUNTINGTON PARK NURSING
AND REHABILITATION

1 **PROOF OF SERVICE**

2 I, Jill Hernandez, declare:

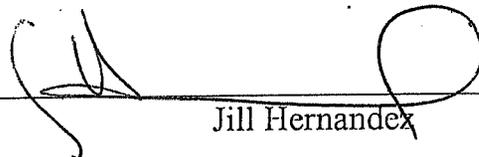
3 I am a resident of the State of California and over the age of eighteen years and not a
4 party to the within-entitled action; my business address is Three Embarcadero Center,
5 Seventh Floor, San Francisco, California 94111-4024. On December 14, 2009, I served the
6 following document(s) described as **RESPONDENT'S ANSWER TO COMPLAINT**
7 **AND NOTICE OF HEARING**:

- 8 by transmitting via facsimile the document(s) listed above to the fax
9 number(s) set forth below on this date before 5:00 p.m.
- 10 by placing the document(s) listed above in a sealed envelope with postage
11 thereon fully prepaid, in the United States mail at San Francisco, California
12 addressed as set forth below.
- 13 by transmitting via email the document(s) listed above to the email address(es)
14 set forth below on this date before 5:00 p.m.
- 15 by placing the document(s) listed above in a sealed Federal Express envelope
16 and affixing a pre-paid air bill, and causing the envelope to be delivered to a
17 Federal Express agent for delivery.
- 18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.

20 Linda Lye, Esq.
21 Altshuler Berzon LLP
22 177 Post Street, Suite 300
23 San Francisco, CA 94108

24 I am readily familiar with the firm's practice of collection and processing
25 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal
26 Service on that same day with postage thereon fully prepaid in the ordinary course of
27 business. I am aware that on motion of the party served, service is presumed invalid if
28 postal cancellation date or postage meter date is more than one day after date of deposit for
mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at San Francisco, California on December 14, 2010.

24 
25 _____
26 Jill Hernandez

27 W03 179700004/1635367/v1

HOWARD
RICE
NEMEROVSKI
CANADY
FALK
& RABKIN
A Professional Corporation