

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

THE VINTAGE CLUB,

Respondent,

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO.
1184, AFL-CIO

Petitioner.

Case No. 21-RC-073752

**REQUEST FOR SPECIAL PERMISSION
TO APPEAL AND APPEAL FROM
REGIONAL DIRECTOR'S ORDER
DENYING EMPLOYER'S MOTION TO
DISMISS PETITION [OBJECTIONS]**

**REQUEST FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM
REGIONAL DIRECTOR'S ORDER DENYING EMPLOYER'S MOTION TO DISMISS
PETITION [OBJECTIONS]**

Pursuant to Sections 102.65 and 102.67 of the National Labor Relations Board's Rules and Regulations, The Vintage Club ("Respondent") hereby requests special permission to appeal and appeals the Regional Director's Order Denying Employer Motion to Dismiss Petition [Objections]¹ ("Order"). The Respondent requests special permission to appeal and appeals because: the Regional Director's Order raises a substantial question of law as it departs from Board precedent; her decision in the Order regarding a factual issue is clearly erroneous and prejudicially affects Respondent; and, her Order has generally resulted in prejudicial error. Respondent makes this request for one simple reason: the Union missed their deadline for filing their objections and the Regional Director failed to dismiss them. Accordingly, Respondent requests that the National Labor Relations Board ("NLRB" or "Board") grant Respondent's

¹ The Regional Director's Order states that it is denying the Employer Motion to Dismiss Petition. However, the

special permission to appeal, and grant its appeal to dismiss the Union's Objections and certify the results of the election.

I. Procedural Background

On February 2, 2012,² Laborers' International Union of North America, Local Union No. 1184, AFL-CIO ("Union" or "Petitioner") filed a petition for recognition with Regional 21 of the NLRB. The Regional Director conducted an election in this matter on Friday, March 9. The Regional Director's Tally of Ballots demonstrated 63 employees voted in the election, whereby 32 voted against the Petitioner, 27 voted for Petitioner, and four ballots were challenged. The challenges were not determinative and, therefore, the Regional Director determined that a majority of ballots had not been cast for Petitioner.

The Union's deadline for filing their objections to the election was March 16, at 5:00 pm PST via facsimile, mail, or personal service, or by 11:59 PST via electronic filing. On that day, at approximately 2:52 pm, the Union allegedly attempted to fax objections to the NLRB. However, the Region did not receive them because its facsimile did not have toner. On Monday, March 19, at approximately 8:45 am, our office confirmed with Board Agent Al Medina that Region 21 did not receive any objections from the Union. However, later that day, at approximately 2:45 pm, the Region received via facsimile—for the first time—the Union's Objections. (According to the Region, they replaced the fax machine with one that had toner.) A copy of that document is attached as **Exhibit A**.

Employer's moving document was a Motion to Dismiss the Union's Objections. Based on her discussion in the Order, it is clear the Regional Director was referring to the Employer's Motion to Dismiss the Union's Objections.
2 All dates hereafter occurred in 2012 unless otherwise stated.

On Tuesday, March 20, the Region printed from the original fax machine—for the first time—the Union’s Objections allegedly sent on March 16. The Region then faxed that document to Respondent’s counsel later that day. A copy of that document is attached as **Exhibit B**.

On March 26, Respondent filed a Motion to Dismiss the Union’s Objections (“Motion”) with the Regional Director. On that same day, Counsel for the Union filed and served an Opposition to the Respondent’s Motion. Respondent then filed a reply to the Union’s Opposition on March 30. A copy of those documents are attached as **Exhibit C**.

On April 5, the Regional Director issued her Order (attached as **Exhibit D**) whereby she found that, notwithstanding the fact the Region did not receive the Union’s objections until three days after the deadline, the Union’s Objections were timely filed.

II. Argument

The Regional Director’s finding in her Order that the Union timely filed their objections should be overturned because it is clear the Region did not receive the document until three days after the deadline. Objections must be filed by the close of business on the seventh day after the tally of ballots has been prepared. NLRB Rules and Regs. Section 102.69(a). “The Regional Director is not authorized by the Rules to extend the time for filing objections.” NLRB Casehandling Manual Section 11392.2(a)(2). Section 102.114(f) of the Board Rules and Regulations states in pertinent part:

When filing...election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely serve a document will not be excused on the basis of a claim that the transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason. (Emphasis added.)

In this matter, the Region never received the Objections until March 19, nearly three days after the deadline.

~~The Regional Director's contention that the Union's late filing is excused because the Region did not have toner is in contravention of the Board's Rules and Regulations. As Section 102.114(f) makes clear, the filing party cannot claim that its "transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason." What the Regional Director fails to recognize in her Order is that the fax machine was "unavailable for any other reason" because it had no toner. She did not address this in her Order. Her contention that the Union submitted to her a document claiming the Objections were faxed on March 16 does not change the fact that the Region never received the actual document before the deadline.~~

The NLRB has confirmed that the mere submission of the Objections via facsimile does not satisfy Section 102.114(f). For example, in South Atlantic Trucking, Inc., 327 NLRB 534, 534 (1999), the Board held that a document was not properly filed by fax because the Region never received it as a result of turning off their machine. The same reasoning applies here.

The Regional Director distinguished this case in her Order, stating that it solely concerns the filing of an answer, not objections. However, the Board specifically discussed the standard under 102.114(f). Therefore, the case is applicable to the present matter.

Accordingly, Respondent respectfully requests that the NLRB grant Respondent's special permission to appeal, and grant its appeal to dismiss the Union's Objections and certify the results of the election.

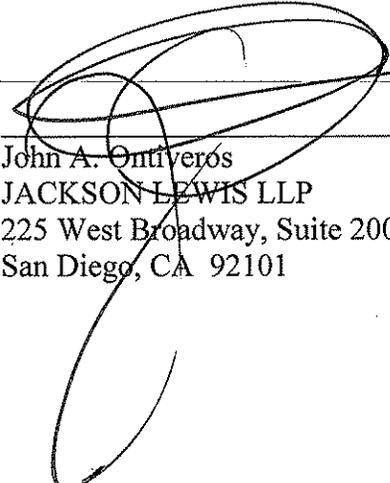
///

///

Dated: April 10, 2012

Respectfully submitted,

By:



John A. Ontiveros
JACKSON LEWIS LLP
225 West Broadway, Suite 200
San Diego, CA 92101

4852-3203-6367, v. 1

EXHIBIT A

1 ALEXANDER B. CVITAN (CSB 81746),
 2 CARLOS R. PEREZ (CSB 181647), Member of
 REICH, ADELL & CVITAN
 A Professional Law Corporation
 3 3550 Wilshire Blvd., Suite 2000
 Los Angeles, California 90010-2421
 4 Telephone: (213) 386-3860
 Facsimile: (213) 386-5583
 5 E-Mail: carlosp@rac-law.com
 Attorneys for Laborers' International Union of
 6 North America, Local Union No. 1184, AFL-CIO

7 UNITED STATES OF AMERICA
 8 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 9 REGION 21
 10

11 THE VINTAGE COUNTRY CLUB, 12 13 Employer, 14 and 15 LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 16 1184, AFL-CIO, 17 Union.) CASE NO. 21-RC-073752)) OBJECTIONS TO CONDUCT AFFECTING) THE RESULTS OF THE ELECTION ON) BEHALF OF UNION
---	--

18 Pursuant to Section 102.69 of the National Labor Relations
 19 Board's Rules and Regulations, as amended, Petitioner Laborers'
 20 International Union of North America, Local Union No. 1184, AFL-CIO
 21 ("Union"), hereby objects to conduct affecting the results of the
 22 election in the above-captioned matter for the following reasons:
 23

24 OBJECTIONS

25
 26 1. The Vintage Country Club ("Employer"), by its officers,
 27 managers, supervisors, agents and/or supporters, interfered with the
 28

1 fair operation of the election process and destroyed the necessary
2 laboratory conditions by, during the election, segregating employees
3 in the voting unit by area and directing these employees to the
4 voting site.

5
6 2. The Employer, by its officers, managers, supervisors, agents
7 and/or supporters, interfered with the fair operation of the election
8 process and destroyed the necessary laboratory conditions by, during
9 the period immediately prior to and during the election, assigning
10 various supervisors and/or agents to the election site/polling place
11 to watch the employees as they appeared at the election site to cast
12 their ballots.

13
14 3. The Employer, by its officers, managers, supervisors, agents
15 and/or supporters, interfered with the fair operation of the election
16 process and destroyed the necessary laboratory conditions by, during
17 the election and in a hostile manner, telling employees in the voting
18 unit who were known Union supporters and who were at or near the
19 election site or who were passing by on their way to the polls to
20 cast their ballots, that if they wanted the Union, they should go and
21 work for the El Dorado Country Club, which is a union country club,
22 instead of the Employer.

23
24 4. The Employer, by its officers, managers, supervisors, agents
25 and/or supporters, interfered with the fair operation of the election
26 process and destroyed the necessary laboratory conditions by denying
27 the Union and its organizers access to the election site/polling
28 place during the pre-election meeting as a show of force or power by

1 the Employer in full view of the election observers and employees in
 2 the voting unit while the observers and employees were assembling to
 3 vote.

4
 5 5. By the above and other conduct described in paragraphs 1-4,
 6 the Employer has interfered with and coerced eligible voters with
 7 regard to the exercise of their Section 7 rights under the National
 8 Labor Relations Act and destroyed the atmosphere necessary to conduct
 9 a fair election. The above coercive acts and other conduct taking
 10 place during the critical pre-election and actual voting period were
 11 sufficient to unlawfully affect the results of the election.

12
 13 WHEREFORE, for all the foregoing and any other reasons
 14 recognized by law, the Union respectfully requests that the Regional
 15 Director review and investigate the aforementioned conduct and set
 16 aside the results of the election or, in the alternative, order a
 17 hearing thereon.

18
 19 Date: March 16, 2012

CARLOS R. PEREZ, Member of
 REICH, ADELL & CVITAN
 A Professional Law Corporation

20
 21
 22 By: Carlos R. Perez
 23 CARLOS R. PEREZ)
 24 Attorneys for Laborers'
 25 International Union of
 26 North America, Local Union
 27 No. 1184, AFL-CIO
 28

EXHIBIT B

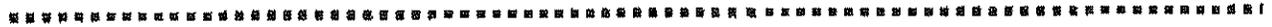


UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 21
888 S. FIGUEROA ST.
FL 9
LOS ANGELES, CA 90017-5449

FAX NO.: (213)894-2778

FAX TRANSMISSION COVER SHEET



DATE: March 20, 2012

TO: JOHN A. ONTIVEROS
JACKSON LEWIS, LLP

Fax: 402-301-7363

CARLOS R. PEREZ
REICH, ADELL & CVITAN

Fax: (213)386-5583

FROM: ALVARO MEDINA, Board Agent
Telephone: (213)894-5194

NUMBER OF PAGES INCLUDING THIS PAGE: 5

Original will NOT follow

Original WILL follow

RE: THE VINTAGE CLUB
Case 21-RC-073752

Attached is Notice of Filing of Objections ltr with copy of Objections

CONFIDENTIALITY NOTICE: OFFICIAL GOVERNMENT BUSINESS

This communication is intended for the sole use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this communication is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication may be strictly prohibited. If you have received this communication in error, please notify me immediately by telephone, and return communication to me at the address above via united states postal service. Thank you.



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

Resident Office:
555 W Beech St - Suite 418
San Diego, CA 92101-2939
Telephone: (619) 557-6184
Facsimile: (619) 557-6358

March 20, 2012

JOHN A. ONTIVEROS, ATTORNEY AT LAW
JACKSON LEWIS, LLP
655 W BROADWAY, STE 900
SAN DIEGO, CA 92101-8484

Re: THE VINTAGE CLUB
Case 21-RC-073752

NOTICE OF FILING OF OBJECTIONS
AND
REQUEST FOR ANSWER TO OBJECTIONS

Dear Mr. Ontiveros:

On March 16, 2012, THE VINTAGE CLUB, filed objections to the election in the above-captioned case. Pursuant to section 102.69(a) of the Board's Rules and Regulations, a copy of the objections is herewith served upon you.

The investigation of the objections has been assigned to Board Agent **Al Medina**. Please submit your answer to the objections to the assigned Board Agent no later than **Monday, March 26, 2012**. When received, your answer will be reviewed and arrangements will be made to interview any witnesses you may wish to present as well as review any documentary evidence.

Very truly yours,

Olivia Garcia
Regional Director

Enclosure: Copy of Objections

THE VINTAGE COUNTRY CLUB
75001 VINTAGE DR W
INDIAN WELLS, CA 92210-7304

OG/mf

1 ALEXANDER B. CVITAN (CSB 81746),
 2 CARLOS R. PEREZ (CSB 181647), Member of
 REICH, ADELL & CVITAN
 3 A Professional Law Corporation
 3550 Wilshire Blvd., Suite 2000
 Los Angeles, California 90010-2421
 4 Telephone: (213) 386-3860
 Facsimile: (213) 386-5583
 5 E-Mail: carlosp@rac-law.com
 Attorneys for Laborers' International Union of
 6 North America, Local Union No. 1184, AFL-CIO

7 UNITED STATES OF AMERICA
 8 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 9 REGION 21
 10

11 THE VINTAGE COUNTRY CLUB,)	CASE NO. 21-RC-073752
12 Employer,)	OBJECTIONS TO CONDUCT AFFECTING
13 and)	THE RESULTS OF THE ELECTION ON
14 LABORERS' INTERNATIONAL UNION OF)	BEHALF OF UNION
15 NORTH AMERICA, LOCAL UNION NO.)	
16 1184, AFL-CIO,)	
17 Union.)	

18 Pursuant to Section 102.69 of the National Labor Relations
 19 Board's Rules and Regulations, as amended, Petitioner Laborers'
 20 International Union of North America, Local Union No. 1184, AFL-CIO
 21 ("Union"), hereby objects to conduct affecting the results of the
 22 election in the above-captioned matter for the following reasons:
 23

24 OBJECTIONS

25
 26 1. The Vintage Country Club ("Employer"), by its officers,
 27 managers, supervisors, agents and/or supporters, interfered with the
 28

1 fair operation of the election process and destroyed the necessary
2 laboratory conditions by, during the election, segregating employees
3 in the voting unit by area and directing these employees to the
4 voting site.

5
6 2. The Employer, by its officers, managers, supervisors, agents
7 and/or supporters, interfered with the fair operation of the election
8 process and destroyed the necessary laboratory conditions by, during
9 the period immediately prior to and during the election, assigning
10 various supervisors and/or agents to the election site/polling place
11 to watch the employees as they appeared at the election site to cast
12 their ballots.

13
14 3. The Employer, by its officers, managers, supervisors, agents
15 and/or supporters, interfered with the fair operation of the election
16 process and destroyed the necessary laboratory conditions by, during
17 the election and in a hostile manner, telling employees in the voting
18 unit who were known Union supporters and who were at or near the
19 election site or who were passing by on their way to the polls to
20 cast their ballots, that if they wanted the Union, they should go and
21 work for the El Dorado Country Club, which is a union country club,
22 instead of the Employer.

23
24 4. The Employer, by its officers, managers, supervisors, agents
25 and/or supporters, interfered with the fair operation of the election
26 process and destroyed the necessary laboratory conditions by denying
27 the Union and its organizers access to the election site/polling
28 place during the pre-election meeting as a show of force or power by

1 the Employer in full view of the election observers and employees in
2 the voting unit while the observers and employees were assembling to
3 vote.

4
5 5. By the above and other conduct described in paragraphs 1-4,
6 the Employer has interfered with and coerced eligible voters with
7 regard to the exercise of their Section 7 rights under the National
8 Labor Relations Act and destroyed the atmosphere necessary to conduct
9 a fair election. The above coercive acts and other conduct taking
10 place during the critical pre-election and actual voting period were
11 sufficient to unlawfully affect the results of the election.

12
13 WHEREFORE, for all the foregoing and any other reasons
14 recognized by law, the Union respectfully requests that the Regional
15 Director review and investigate the aforementioned conduct and set
16 aside the results of the election or, in the alternative, order a
17 hearing thereon.

18
19 Date: March 16, 2012

CARLOS R. PEREZ, Member of
REICH, ADELL & CVITAN
A Professional Law Corporation

20
21
22 By: Carlos R. Perez
23 CARLOS R. PEREZ
24 Attorneys for Laborers'
25 International Union of
26 North America, Local Union
27 No. 1184, AFL-CIO
28

EXHIBIT C

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

THE VINTAGE CLUB,

Respondent,

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO.
1184, AFL-CIO

Petitioner.

Case No. 21-RC-073752

**MOTION TO DISMISS UNION'S
OBJECTIONS TO CONDUCT
AFFECTING THE RESULTS OF THE
ELECTION ON BEHALF OF [THE]
UNION**

MOTION TO DISMISS THE UNION'S OBJECTIONS

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, The Vintage Club ("Respondent") hereby moves to dismiss the Objections to Conduct Affecting the Results of [the] Election ("Objections") submitted by the Laborers' International Union of North America, Local Union No. 1184, AFL-CIO ("Petitioner" or "Union") on March 19, 2012, to Region 21 of the National Labor Relations Board ("NLRB"). The reason is simple: the Union filed their Objections after the deadline. Accordingly, Respondent requests that the Regional Director dismiss the Union's Objections and certify the results of the election.

The NLRB conducted an election in this matter on Friday, March 9, 2012.¹ The NLRB's Tally of Ballots demonstrated 63 employees voted in the election, whereby 32 voted against the Petitioner, 27 voted for Petitioner, and four ballots were challenged. The challenges were not

¹ All dates hereafter occurred in 2012 unless otherwise stated.

determinative and, therefore, the NLRB determined that a majority of ballots had not been cast for Petitioner.

The Union's deadline for filing their objections to the election was March 16, at 5:00 pm PST via facsimile, mail, or personal service, or by 11:59 PST via electronic filing. On that day, at approximately 2:52 pm, the Union allegedly attempted to fax objections to the NLRB. However, the Region did not receive them because its facsimile did not have toner. On Monday, March 19, at approximately 8:45 am, our office confirmed with Board Agent Al Medina that the NLRB had not received any objections from the Union. However, later that day, at approximately 2:45 pm, the NLRB received via facsimile—for the first time—the Union's Objections.

It is abundantly clear the Union failed to timely file their Objections because the NLRB did not receive the document until three days after the deadline. Objections must be filed by the close of business on the seventh day after the tally of ballots has been prepared. NLRB Rules and Regs. Section 102.69(a). "The Regional Director is not authorized by the Rules to extend the time for filing objections." NLRB Casehandling Manual Section 11392.2(a)(2). In addition, Section 102.114(f) of the Board Rules and Regulations states in pertinent part:

When filing...election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely serve a document will not be excused on the basis of a claim that the transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason. (Emphasis added.)

In this matter, the Region never received the Objections until March 19, nearly three days after the deadline.

The Union cannot defend that its untimely filing is excused because the NLRB's fax machine did not have toner. As Section 102.114(f) makes clear, the filing party cannot claim that

its "transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason." In this case, the NLRB's facsimile was "unavailable" because it had no toner.

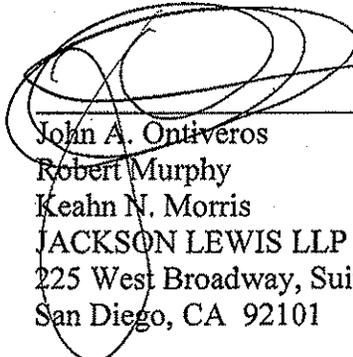
The NLRB has confirmed that the mere submission of the Objections via facsimile does not satisfy Section 102.114(f). For example, in South Atlantic Trucking, Inc., 327 NLRB 534, 534 (1999), the Board held that a document was not properly filed by fax because the Region never received it as a result of turning off their machine. The same reasoning applies here.

Accordingly, Respondent respectfully requests that the Regional Director grant the instant Motion and certify the results of the election.

Dated: March 26, 2012

Respectfully submitted,

By:



John A. Ontiveros
Robert Murphy
Keahn N. Morris
JACKSON LEWIS LLP
225 West Broadway, Suite 200
San Diego, CA 92101

3 **PROOF OF SERVICE**

4 I, the undersigned, declare that I am employed with the law firm of Jackson Lewis LLP,
5 whose address is 225 Broadway, Ste. 200, San Diego, CA 92101; I am over the age of eighteen
6 (18) years and am not a party to this action.

7 On March 26, 2012, I served true and correct copies of **MOTION TO DISMISS**
8 **UNION'S OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE**
9 **ELECTION ON BEHALF OF [THE] UNION** in this action as follows:

10 Carlos R. Perez, Esq.
11 Laborers International Union of North America
12 3550 Wilshire Blvd., Ste. 2000
13 Los Angeles, CA 90010
14 Tele: 510.637.3300
15 Fax: 510.637.3315
16 Electronic Mail: carlosp@rac-law.com

Michael Dea, Business Rept
Laborers' International Union of North
America, Local 1184, Laborers' International
Union of North America, AFL-CIO
72732 Ramon Road
Thousand Palms, CA 92276-3240

E-mail: msdea@laborers1184.com

- 14 by transmitting via facsimile or electronic notification the document(s) listed above to
15 the fax number or electronic address set forth above on this date before 11:59 p.m.
- 16 by placing the document(s) listed above in a sealed envelope with postage thereon fully
17 prepaid, in United States mail in the State of California at San Diego, addressed as set
18 forth above.
- 19 **BY PERSONAL SERVICE.** I caused said documents to be hand-delivered to the addressee on
20 March 26, 2012, via First Legal Services, pursuant to Code of Civil Procedure §1011.
- 21 **BY FEDERAL EXPRESS.** I deposited said document(s) in a box or other facility
22 regularly maintained by the express service carrier providing overnight delivery pursuant
23 to Code of Civil Procedure §1013(c).

24 I declare under penalty of perjury under the laws of the State of California that the above
25 is true and correct.

26 Executed on March 26, 2012 at San Diego, California.

27 
Jamie Fensterstock

1 CARLOS R. PEREZ (CSB 181647), Member of
REICH, ADELL & CVITAN
2 A Professional Law Corporation
3550 Wilshire Blvd., Suite 2000
3 Los Angeles, California 90010-2421
Telephone: (213) 386-3860
4 Facsimile: (213) 386-5583
E-Mail: carlosp@rac-law.com

5
6 Attorneys for Laborers' International Union of
North America, Local Union No. 1184, AFL-CIO

7
8 UNITED STATES OF AMERICA
9 BEFORE THE NATIONAL LABOR RELATIONS BOARD
10 REGION 21

11
12 THE VINTAGE COUNTRY CLUB,) CASE NO. 21-RC-073752
13 Employer,)
14 and) PETITIONER'S OPPOSITION TO
LABORERS' INTERNATIONAL UNION OF) RESPONDENT'S MOTION TO DISMISS
15 NORTH AMERICA, LOCAL UNION NO.)
16 1184, AFL-CIO,)
17 Union.)
18)

19
20
21
22 Petitioner Laborers' International Union of North America, Local
23 Union No. 1184 hereby opposes the motion of Respondent Vintage Club,
24 to dismiss the Union's objections to the election, as follows:

25 / / /

1 1. AT THIS STAGE, OBJECTIONS MAY NOT BE SUMMARILY DISMISSED BY
2 VIRTUE OF A MOTION FROM THE EMPLOYER

3 The Employer cites, generally, Section 102.69 of the National
4 Labor Relations Board's Rules and Regulations as the authority for
5 its motion. However, this section does not support or provide for
6 any authority for the Employer to file a motion to dismiss at this
7 early stage of the case. Pursuant to Section 102.69, Petitioner must
8 file its objections within 7 days of the date on which the tally of
9 ballots has been prepared. The election took place on March 9, and
10 the Union submitted its objection by fax on March 16, 2012.
11 Attachment A is a true and correct copy of the fax cover sheet to the
12 objections which includes a transaction report, verifying the
13 successful transmission of the Union's objections to the Board's fax
14 number of (213) 894-2778, at 2:51 p.m. Issues with the toner on the
15 Board's machine do not change the fact that the objections were
16 transmitted in a timely manner.

17 The Regional Director has accepted the objections as timely and
18 provided timely notice to the Employer. In doing so, the Regional
19 Director has not extended the time for filing objections, but merely
20 requested a second copy of what was already transmitted to the Region
21 on March 16. Given that the Regional Director has been provided with
22 proof of the transmission and has exercised her discretion to accept
23 the objections and thereafter, provided the Union with an opportunity
24 to provide evidence in support of the charges by the close of
25 business today, the Employer's motion should be denied.

26 / / /

1 2. AUTHORITY CITED BY THE EMPLOYER DOES NOT APPLY

2 In support of its argument, the Employer contends that the
3 Union's objections may be dismissed under the authority of South
4 Atlantic Trucking, Inc., 327 NLRB 534 (1999). This case is
5 distinguishable in that it does not relate to the filing of
6 objections, but rather, the filing of an answer. Generally, at the
7 time of the decision in 1999, answers to complaints could not be fax
8 filed. Id. Additionally, in South Atlantic, there was no indication
9 that the Respondent had transmitted the answer and produced, in
10 support of its position, a verifiable confirmation of the
11 transmission. To the contrary, it is only stated in the Board's
12 decision that the Respondent "contends that it unsuccessfully
13 attempted to fax its answer." Id. Here, unlike South Atlantic,
14 there is evidence that the document was successfully transmitted.

15 Additionally, and most conspicuously, the Board in South
16 Atlantic went on to address, extensively at p. 535, whether the
17 Employer had provided sufficient cause to explain the failure to file
18 a timely answer and its failure to address the allegations at issue
19 until service of a Notice to Show Cause. The affirmation of the
20 Board in that case was predicated on the Employer's extreme neglect
21 in failing to answer charges in a timely manner after extensive
22 notice of the proceedings had already been provided. Perhaps knowing
23 that this discussion would be contradictory to its goal of having the
24 objections dismissed, the Employer completely ignores this section of
25 the decision and argues, without express authority and even in
26 contradiction of South Atlantic, that the lack of toner is grounds to
27 certify the election results.

28

1 There simply is no authority for the result sought by the
2 Employer and no procedural basis by which summary dismissal of the
3 objections may be obtained at this time. For the reasons stated
4 herein, the Employer's motion should be denied, and the Union's
5 objections set for hearing.

6
7 Date: March 26, 2012

CARLOS R. PEREZ, Member of
REICH, ADELL & CVITAN
A Professional Law Corporation

9
10 By: Carlos R. Perez
11 CARLOS R. PEREZ
12 Attorneys for Laborers'
13 International Union of
14 North America, Local Union
15 No. 1184, AFL-CIO
16
17
18
19
20
21
22
23
24
25
26
27
28

Attachment A

ANSACTION REPORT

MAR/16/2012/FRI 02:52 PM

FAX(TX)

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	MAR/16	02:51PM	12138942778	0:00:46	4	OK	SG3 0194

REICH, ADELL & CVITAN
 A Professional Law Corporation
 3550 Wilshire Blvd., Suite 2000
 Los Angeles, California 90010-2421
 Tel: (213) 386-3860
 Fax: (213) 386-5583

FACSIMILE TRANSMISSION

This facsimile transmission is a confidential communication intended solely for the use of the addressee. It may also be protected from disclosure to others by virtue of the lawyer-client privilege of California Evidence Code § 952. If you are not the addressee, please destroy this fax and call us at (213) 386-3860, collect, to notify us that it was misdirected.

Client No: LCOF0.052

Date: March 16, 2012

No. of Pages Sent: 4 including cover sheet

Time:

CALL (213) 386-3860 IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES

PLEASE DELIVER TO: Olivia Garcia

FAX NUMBER: (213) 894-2778

FROM: Carlos R. Perez

REGARDING: The Vintage Country Club
21-RC-073752

COMMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 3550 Wilshire Blvd., Ste. 2000, Los Angeles, CA 90010.

I served the foregoing document described as **PETITIONER'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS** on the interested parties by transmission

the original

a true copy thereof

as follows:

John A. Ontiveros
JACKSON LEWIS LLP
225 West Broadway, Ste. 200
San Diego, CA 92101
OntiverosJ@jacksonlewis.com
FensterJ@jacksonlewis.com

Filed electronically with
Region 21

(By Mail) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California 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.

(By Email) I transmitted via electronic notification the document(s) listed above to the email addresses set forth above on this date.

(Federal Court) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2012** at Los Angeles, California.

Carlos R. Perez
CARLOS R. PEREZ

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

THE VINTAGE CLUB,

Respondent,

and

LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL UNION NO.
1184, AFL-CIO

Petitioner.

Case No. 21-RC-073752

**REPLY TO PETITIONER'S OPPOSITION
TO RESPONDENT'S MOTION TO
DISMISS THE UNION'S OBJECTIONS**

**REPLY TO UNION'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS**

The Vintage Club ("Respondent") hereby files this Reply to Petitioner's Opposition to Respondent's Motion to Dismiss submitted by the Laborers' International Union of North America, Local Union No. 1184, AFL-CIO ("Petitioner" or "Union") on Monday, March 26, 2012, to Region 21 of the National Labor Relations Board. The Union contends in its Opposition that: (1) the motion is impermissible because the Regional Director has accepted the objections as timely and provided timely notice to the Employer; and, (2) the authority cited by the Employer in its Motion is distinguishable. Petitioner's contentions, however, are without merit.

There is nothing in the Board's Rules and Regulations prohibiting an employer from filing a motion to dismiss a union's objections as being untimely filed with a Regional Director. The Regional Director has neither issued an Order nor Decision in this matter contending that the Union's objections were filed prior to the deadline. The Notice of Filing of Objections—which Respondent's counsel did not receive until March 21—constitutes nothing more than the

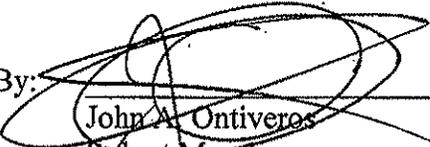
Regional Director's requirement under Section 102.69(a) of the Board's Rules and Regulations to serve Respondent with a copy of a party's objections. To file a Special Request to Appeal and Appeal to the National Labor Relations Board on this issue would be premature.

In addition, Union's counsel attempted—albeit unpersuasively—in its Opposition to distinguish South Atlantic Trucking, Inc., 327 NLRB 534 (1999) from this case. However, the Board in South Atlantic made quite clear that a party files a document via facsimile at its own peril. The NLRB in that case stated that a party cannot bypass the clear requirement under Section 102.114(f) of the Rules and Regulations—which Petitioner completely ignored in its Opposition—that the Region must have “receipt” of the document notwithstanding that the transmission could not be received because the fax machine is “off-line or busy or unavailable for any other reason.” (Emphasis added.)

Accordingly, Respondent respectfully requests that the Regional Director grant the Respondent's Motion and certify the results of the election.

Dated: March 26, 2012

Respectfully submitted,

By: 
John A. Ontiveros
Robert Murphy
Kleahn N. Morris
JACKSON LEWIS LLP
225 West Broadway, Suite 200
San Diego, CA 92101

3 **PROOF OF SERVICE**

4 I, the undersigned, declare that I am employed with the law firm of Jackson Lewis LLP,
5 whose address is 225 Broadway, Ste. 200, San Diego, CA 92101; I am over the age of eighteen
6 (18) years and am not a party to this action.

7 On March 30, 2012, I served true and correct copies of **REPLY TO PETITIONER'S**
8 **OPPOSITION TO RESPONDENT'S MOTION TO DISMISS THE UNION'S**
9 **OBJECTIONS** in this action as follows:

10 Carlos R. Perez, Esq.
11 Laborers International Union of North America
12 3550 Wilshire Blvd., Ste. 2000
13 Los Angeles, CA 90010
14 Tele: 510.637.3300
15 Fax: 510.637.3315
16 Electronic Mail: carlosp@rac-law.com

Michael Dea, Business Rept
Laborers' International Union of North
America, Local 1184, Laborers' International
Union of North America, AFL-CIO
72732 Ramon Road
Thousand Palms, CA 92276-3240

E-mail: msdea@laborers1184.com

- 14 by transmitting via facsimile or electronic notification the document(s) listed above to
15 the fax number or electronic address set forth above on this date before 11:59 p.m.
16 by placing the document(s) listed above in a sealed envelope with postage thereon fully
17 prepaid, in United States mail in the State of California at San Diego, addressed as set
18 forth above.
19 **BY PERSONAL SERVICE.** I caused said documents to be hand-delivered to the addressee on
20 March 30, 2012, via First Legal Services, pursuant to Code of Civil Procedure §1011.
21 **BY FEDERAL EXPRESS.** I deposited said document(s) in a box or other facility
22 regularly maintained by the express service carrier providing overnight delivery pursuant
23 to Code of Civil Procedure §1013(c).

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct.

23 Executed on March 30, 2012 at San Diego, California.

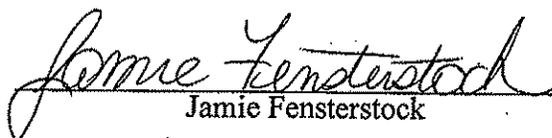
24 
25 Jamie Fensterstock
26 Jamie Fensterstock

EXHIBIT D

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE VINTAGE COUNTRY CLUB

Employer

and

Case 21-RC-073752

**LABORERS' INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL NO. 1184, AFL-CIO**

Petitioner

**ORDER DENYING EMPLOYER'S
MOTION TO DISMISS PETITION**

On March 16, 2012,¹ the Petitioner filed Objections to Conduct Affecting the Results of the Election. I notified the parties of such action on March 20. Subsequently the Petitioner submitted its summary evidence, and the Employer submitted its response to the objections.

As part of the Employer's response to the objections, it argued that the objections were not timely filed. On March 26, the Employer also filed a Motion to Dismiss the Union's objections, and the Union filed its opposition to the Motion thereafter.

The investigation into the filing of the objections disclosed that the Union submitted its objections with Region 21 by fax machine at 2:51 p.m. on March 16, the final day on which the objections could be filed. Attached hereto as Exhibit A, is a copy of the transmittal report printed out by Petitioner's fax machine on March 16. The

¹ All dates herein occurred in 2012 unless otherwise stated.

Petitioner's transmittal report establishes that 4 pages were transmitted to Region 21, and that the transmission was "ok."

Unbeknownst to Region 21 and the Petitioner, the Regional Office fax machine had run out of toner, and was therefore not printing out incoming transmissions. Region 21 was unable to replace the toner cartridge until March 20, but once it was replaced, the Region was able to establish that Petitioner had timely filed objections by fax machine on March 16. Thus, at the top of each page of the objections, which the Regional Office fax machine printed out on March 20, is the date (March 16) and time (2:52 p.m.) the transmission was accomplished. Attached hereto as Exhibit B, is a copy of the 3-page objections and cover sheet printed out by the Regional Office fax machine on March 20.

Section 102.114(f) of the *Rules and Regulations and Statement of Procedures* for the Board concerns the filing and service of documents by facsimile transmission. The Section, in part, states:

"When filing...election objections by facsimile transmission pursuant to this section, receipt of the transmitted document by the Agency constitutes filing with the Agency. A failure to timely file or serve a document will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or busy or unavailable for any other reason."

I have concluded that the Regional Office received Petitioner's objections on March 16. The Petitioner submitted the objections via fax and received a transmittal report indicating the transmission was "ok." Region 21's fax machine was on-line, not busy, and available to all parties.

The Employer relies upon *South Atlantic Trucking, Inc.*, 327 NLRB 534 (1999) for the basis of its argument that the Petitioner's objections should be rejected as untimely. However, *South Atlantic* concerns the failure of the Respondent to timely file

an Answer to Complaint. Pursuant to Section 102.114(g) of the *Board's Rules and Regulations*, an Answer to Complaint may not be filed by facsimile transmission. The Respondent in *South Atlantic* was given numerous opportunities to timely file an Answer to Complaint. The Respondent admitted that it had attempted transmission of its Answer at a time when the Regional Office was closed and the fax machine was turned off. Moreover, the Respondent did not attempt to serve the Answer in any other way until a week after the Answer was due.

In the instant case, the Petitioner filed its objections by fax to the Regional Office well before the office closed. The Regional Office fax machine was simply out of toner, and therefore could not print documents it had received. The Regional Office, however, was able to confirm that Petitioner's objections were timely filed by fax machine on March 16.

Accordingly, the Motion to dismiss the objections is hereby denied.

DATED at Los Angeles, California this 5th day of April, 2012.


Olivia Garcia, Regional Director
Region 21
National Labor Relations Board

ANSACTION REPORT

MAR/16/2012/FRI 02:52 PM

FAX (TX)

#	DATE	START T.	RECEIVER	COM.TIME	PAGE	TYPE/NOTE	FILE
001	MAR/16	02:51PM	12138942778	0:00:46	4	OK	SG3 0194

REICH, ADELL & CVITAN
A Professional Law Corporation
3550 Wilshire Blvd., Suite 2000
Los Angeles, California 90010-2421
Tel: (213) 386-3860
Fax: (213) 386-5583

FACSIMILE TRANSMISSION

This facsimile transmission is a confidential communication intended solely for the use of the addressee. It may also be protected from disclosure to others by virtue of the lawyer-client privilege of California Evidence Code § 852. If you are not the addressee, please destroy this fax and call us at (213) 386-3860, collect, to notify us that it was misdirected.

Client No: LCOF0.052

Date: March 16, 2012

No. of Pages Sent: 4 including cover sheet Time:

CALL (213) 386-3860 IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES

PLEASE DELIVER TO: Olivia Garcia

FAX NUMBER: (213) 894-2778

FROM: Carlos R. Perez

REGARDING: The Vintage Country Club
21-RC-073752

COMMENT

REICH, ADELL & CVITAN
A Professional Law Corporation
3550 Wilshire Blvd., Suite 2000
Los Angeles, California 90010-2421
Tel: (213) 386-3860
Fax: (213) 386-5583

FACSIMILE TRANSMISSION

This facsimile transmission is a confidential communication intended solely for the use of the addressee. It may also be protected from disclosure to others by virtue of the lawyer-client privilege of California Evidence Code § 952. If you are not the addressee, please destroy this fax and call us at (213) 386-3860, collect, to notify us that it was misdirected.

Client No: LCOF0.052

Date: March 16, 2012

No. of Pages Sent: 4 including cover sheet Time:

CALL (213) 386-3860 IF YOU DO NOT RECEIVE LEGIBLE COPIES OF ALL PAGES

PLEASE DELIVER TO: Olivia Garcia

FAX NUMBER: (213) 894-2778

FROM: Carlos R. Perez

REGARDING: The Vintage Country Club
21-RC-073752

COMMENT

1 ALEXANDER B. CVITAN (CSB 81746),
 2 CARLOS R. PEREZ (CSB 181647), Member of
 REICH, ADELL & CVITAN
 A Professional Law Corporation
 3 3550 Wilshire Blvd., Suite 2000
 Los Angeles, California 90010-2421
 4 Telephone: (213) 386-3860
 Facsimile: (213) 386-5583
 5 E-Mail: carlosp@rac-law.com
 Attorneys for Laborers' International Union of
 6 North America, Local Union No. 1184, AFL-CIO

7 UNITED STATES OF AMERICA
 8
 9 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 10
 11 REGION 21

11	THE VINTAGE COUNTRY CLUB,)	CASE NO. 21-RC-073752
12)	
13	Employer,)	OBJECTIONS TO CONDUCT AFFECTING
14	and)	THE RESULTS OF THE ELECTION ON
15	LABORERS' INTERNATIONAL UNION OF)	BEHALF OF UNION
16	NORTH AMERICA, LOCAL UNION NO.)	
17	1184, AFL-CIO,)	
18	Union.)	

18 Pursuant to Section 102.69 of the National Labor Relations
 19 Board's Rules and Regulations, as amended, Petitioner Laborers'
 20 International Union of North America, Local Union No. 1184, AFL-CIO
 21 ("Union"), hereby objects to conduct affecting the results of the
 22 election in the above-captioned matter for the following reasons:
 23

24 OBJECTIONS

25
 26 1. The Vintage Country Club ("Employer"), by its officers,
 27 managers, supervisors, agents and/or supporters, interfered with the
 28

1 fair operation of the election process and destroyed the necessary
2 laboratory conditions by, during the election, segregating employees
3 in the voting unit by area and directing these employees to the
4 voting site.

5
6 2. The Employer, by its officers, managers, supervisors, agents
7 and/or supporters, interfered with the fair operation of the election
8 process and destroyed the necessary laboratory conditions by, during
9 the period immediately prior to and during the election, assigning
10 various supervisors and/or agents to the election site/polling place
11 to watch the employees as they appeared at the election site to cast
12 their ballots.

13
14 3. The Employer, by its officers, managers, supervisors, agents
15 and/or supporters, interfered with the fair operation of the election
16 process and destroyed the necessary laboratory conditions by, during
17 the election and in a hostile manner, telling employees in the voting
18 unit who were known Union supporters and who were at or near the
19 election site or who were passing by on their way to the polls to
20 cast their ballots, that if they wanted the Union, they should go and
21 work for the El Dorado Country Club, which is a union country club,
22 instead of the Employer.

23
24 4. The Employer, by its officers, managers, supervisors, agents
25 and/or supporters, interfered with the fair operation of the election
26 process and destroyed the necessary laboratory conditions by denying
27 the Union and its organizers access to the election site/polling
28 place during the pre-election meeting as a show of force or power by

1 the Employer in full view of the election observers and employees in
2 the voting unit while the observers and employees were assembling to
3 vote.

4
5 5. By the above and other conduct described in paragraphs 1-4,
6 the Employer has interfered with and coerced eligible voters with
7 regard to the exercise of their Section 7 rights under the National
8 Labor Relations Act and destroyed the atmosphere necessary to conduct
9 a fair election. The above coercive acts and other conduct taking
10 place during the critical pre-election and actual voting period were
11 sufficient to unlawfully affect the results of the election.

12
13 WHEREFORE, for all the foregoing and any other reasons
14 recognized by law, the Union respectfully requests that the Regional
15 Director review and investigate the aforementioned conduct and set
16 aside the results of the election or, in the alternative, order a
17 hearing thereon.

18
19 Date: March 16, 2012

CARLOS R. PEREZ, Member of
REICH, ADELL & CVITAN
A Professional Law Corporation

20
21
22 By: Carlos R. Perez
23 CARLOS R. PEREZ
24 Attorneys for Laborers'
25 International Union of
26 North America, Local Union
27 No. 1184, AFL-CIO
28

3 **PROOF OF SERVICE**

4 I, the undersigned, declare that I am employed with the law firm of Jackson Lewis LLP,
5 whose address is 225 Broadway, Ste. 200, San Diego, CA 92101; I am over the age of eighteen
6 (18) years and am not a party to this action.

7 On April 10, 2012, I served true and correct copies of **REQUEST FOR SPECIAL**
8 **PERMISSION TO APPEAL AND APPEAL FROM REGIONAL DIRECTOR'S ORDER**
9 **DENYING EMPLOYER'S MOTION TO DISMISS PETITION [OBJECTIONS]** in this
10 action as follows:

11 Carlos R. Perez, Esq.
12 Laborers International Union of North America
13 3550 Wilshire Blvd., Ste. 2000
14 Los Angeles, CA 90010
15 Tele: 510.637.3300
16 Fax: 510.637.3315
17 Electronic Mail: carlosp@rac-law.com

Michael Dea, Business Rept
Laborers' International Union of North
America, Local 1184, Laborers' International
Union of North America, AFL-CIO
72732 Ramon Road
Thousand Palms, CA 92276-3240

E-mail: msdea@laborers1184.com

15 Alvaro Medina, Board Agent
16 Region 21
17 888 South Figueroa Street, 9th Floor
18 Los Angeles, CA 90017-5449

Region 21
888 South Figueroa Street, 9th Floor
Los Angeles, CA 90017-5449
Phone: (213) 894-5200

Fax: (213) 894-2778

E-mail: NLRBRegion21@nlrb.gov

Regional Director: Olivia Garcia

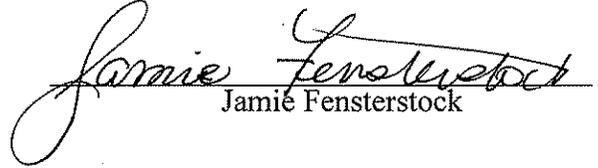
Email: alvaro.medina@nlrb.gov

- 19
- 20 by transmitting via facsimile or electronic notification the document(s) listed above to
the fax number or electronic address set forth above on this date before 11:59 p.m.
- 21 by placing the document(s) listed above in a sealed envelope with postage thereon fully
22 prepaid, in United States mail in the State of California at San Diego, addressed as set
forth above.
- 23 **BY PERSONAL SERVICE.** I caused said documents to be hand-delivered to the addressee on
April 10, 2012, via First Legal Services, pursuant to Code of Civil Procedure §1011.
- 24 **BY FEDERAL EXPRESS.** I deposited said document(s) in a box or other facility
25 regularly maintained by the express service carrier providing overnight delivery pursuant
to Code of Civil Procedure §1013(c).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 10, 2012 at San Diego, California.


Jamie Fensterstock

4849-5743-2335, v. 1