

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

PUNA GEOTHERMAL VENTURE,)	
)	
)	
Employer,)	
)	
v.)	
)	Case No. 20-RC-078220
INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 1260,)	
)	
Petitioner.)	

**PUNA GEOTHERMAL’S EXCEPTIONS TO THE REGIONAL DIRECTOR’S
REPORT AND RECOMMENDATION REGARDING CERTAIN OBJECTIONS**

The Employer, PUNA GEOTHERMAL VENTURE, (“PGV” or “the Company”), pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, 29 C.F.R. § 102.69, submits the following exceptions to the Regional Director’s Report and Recommendation Regarding certain Objections.

1. To the finding that the Employer presented no meaningful evidence in support of Objection 11, Regional Director Report and Recommendation (“RDR”) at 4, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, shows that the Board’s rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV’s geothermal energy plant on Hawai’i Island.

2. To the finding that the Employer presented no meaningful evidence in support of Objection 12, RDR at 4, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, shows that the Board’s rulemaking initiatives regarding

the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

3. To the finding that the Employer presented no meaningful evidence in support of Objection 13, RDR at 4, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, shows that the Board's rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

4. To the finding that the Employer presented no meaningful evidence in support of Objection 14, RDR at 4, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, shows that the Board's rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

5. To the finding that the Employer presented no meaningful evidence in support of Objection 15, RDR at 4, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, shows that the Board's rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

6. To the finding that Employer Objection 16 is "inapplicable to the extent that it refers to [Objections 11-15, which are] unsupported by evidence," RDR at 4, because the

evidence of record, as well as further evidence of which the Board may properly take judicial notice, supports Objections 11-15 by showing that the Board's rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

7. To the finding that the Employer supported Objections 11-15 only through the presentation of a "single witness who saw and read the Board's *Employee Rights Notice* that the Employer apparently had voluntarily posted on a bulletin board at its plant," RDR at 4 n.3, because the Employer additionally presented evidence concerning the timing and circumstances of its posting of the Board's Employee Rights Notice based on the Board's encouragement to employers to do so, as well as further evidence of which the Board may properly take judicial notice, showing that the Board's rulemaking initiatives caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

8. To the finding that the employee witness's interpretation of the language in the Employee Rights Notice as indicating NLRB support for the Petitioner is "clearly unwarranted by the actual wording of the *Notice*," RDR at 4 n.3, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, concerning the language of the Notice and the timing and context of the Notice posting, supports a reasonable interpretation by employees that the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island.

9. To the finding that there is "no evidence whatsoever to support a conclusion that

any conduct by the Board or its agents created an impression of bias,” RDR at 4 n.3, because the evidence of record, as well as further evidence of which the Board may properly take judicial notice, supports Objections 11-15 by showing that the Board’s rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures caused bargaining unit employees to believe the NLRB was encouraging them to vote in favor of the Union in the May 14, 2012 certification election held at PGV’s geothermal energy plant on Hawai’i Island.

10. To the failure to find that NLRB’s rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures materially affected the results of the May 14, 2012 certification election held at PGV’s geothermal energy plant on Hawai’i Island because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

11. To the failure to find that NLRB’s rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures had a tendency to interfere with employee free choice in the May 14, 2012 certification election held at PGV’s geothermal energy plant on Hawai’i Island because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

12. To the failure to find that NLRB’s rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures gave an appearance of partiality in favor of union organizing because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

13. To the failure to find that the NLRB should have reasonably foreseen that its rulemaking initiatives regarding the Employee Rights Notice and expedited election procedures could present an appearance of partiality in favor of union organizing because such finding is

fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

14. To the failure to find that employee voters in the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island actually perceived the NLRB to be encouraging them to vote in favor of the Union because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

15. To the failure to find that the totality of circumstances surrounding the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island—including the NLRB's rulemaking initiatives and the repeated acts of employee coercion, on-site, off-site, and in the pre-election period, by a supervisor, his son, and the Union—destroyed laboratory conditions necessary for a free exercise of choice by employees and require a rerun election, because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

16. To the failure to find that the May 14, 2012 certification election held at PGV's geothermal energy plant on Hawai'i Island is invalid and should be overturned because it is the product of, or was otherwise directly affected by, NLRB rulemaking that has been deemed invalid and *ultra vires* by reviewing courts, because such finding is fully supported by the evidence of record and further evidence of which the Board may properly take judicial notice.

17. To the conclusion of law that Employer Objections 11-15 do not raise substantial and material issues of fact at least sufficient to warrant a hearing.

18. To the recommendation that the Board overrule Employer Objections 11-15 in their entirety because such recommendation is contrary to the evidence cited above in Paragraphs

1-17 and applicable precedent.

Respectfully submitted,

PUNA GEOTHERMAL VENTURE

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CERTIFICATE OF SERVICE

The undersigned counsel for the Employer, Puna Geothermal Venture, hereby certifies that she caused a true and correct copy of the foregoing EXCEPTIONS TO THE REGIONAL DIRECTOR'S REPORT AND RECOMMENDATION REGARDING CERTAIN OBJECTIONS to be served upon the following counsel of record on this 16th day of July, 2012, by U. S. Mail and electronic mail:

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