

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

In the matter of: )  
THE VINTAGE CLUB )  
Employer, )  
and )  
LABORERS' PACIFIC SOUTHWEST )  
REGIONAL ORGANIZING COALITION, )  
LABORERS' INTERNATIONAL UNION )  
OF NORTH AMERICA, AFL-CIO )  
Petitioner. )

Case Nos. 21-CA-077097  
21-RC-073752

**REQUEST FOR SPECIAL PERMISSION TO APPEAL AND  
APPEAL FROM THE REGIONAL DIRECTOR'S REPORT ON OBJECTIONS,  
AND ORDER CONSOLIDATING CASES, AND NOTICE OF HEARING**

**I. INTRODUCTION**

Pursuant to Sections 102.65(c) and 102.69(i) of the Rules and Regulations of the National Labor Relations Board ("NLRB" or "Board"), The Vintage Club ("Vintage" or "Employer") hereby requests special permission to appeal and appeals to the Regional Director's Report on Objections, and Order Consolidating Cases, and Notices of Hearing in case nos. 21-CA-077097 and 21-RC-073752 (See **Exhibit A.**) issued by Regional Director Olivia Garcia ("Regional Director") on September 28, 2012.<sup>1</sup> In the Report, the Regional Director concluded that Nos. 2, 3, and 5, of the Objections to the Election filed by the Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL-CIO ("Union"),

<sup>1</sup> All dates hereafter occurred in 2012 unless otherwise stated.

raised substantial and material issues of fact and ordered they be heard before an administrative law judge in conjunction with related unfair labor practice allegations in case no. 21-CA-077097.<sup>2</sup>

Vintage hereby requests special permission to appeal and appeals to the Regional Director's Report, Notice and Order. In regards to Objection No. 2, the Regional Director incorrectly concluded that Felipe Terrazas was a supervisor and/or agent within the meaning of Sections 2(11) and 2(13), respectively, of the National Labor Relations Act ("Act"), notwithstanding undisputed evidence demonstrating otherwise. Similarly, in regards to Objection No. 3, the Employer provided the Regional Director sufficient evidence that employee Ulyses Zendejas, an Irrigator, was not the Employer's agent at any relevant time. Therefore, it was unnecessary for the Regional Director to send these matters to a hearing.

In addition, the Regional Director incorrectly found that the unfair labor practice allegations in case no. 21-CA-077097 support the Union's Objection No. 5, a catch-all objection. The filing of an unfair labor practice is an improper way for a party to provide evidence in support of an objection. Moreover, the Union filed and withdrew these same ULP allegations before their time to file objections expired. They knowingly failed to include these unfair labor practices as objections to the election and, therefore, the Regional Director should not permit them to untimely include them.

Accordingly, the Regional Director should not have consolidated these matters and send them to a hearing.<sup>3</sup>

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<sup>2</sup> The Regional Director dismissed the Union's Objection Nos. 1 and 4.

<sup>3</sup> The Employer also timely and properly filed Exceptions to the Regional Director's Report and a Brief in Support of the Exceptions in this matter on October 12, 2012. The General Counsel filed a Motion to Reject These Exceptions on October 25. The Employer intends to file an Opposition to the Regional Director's Motion because it properly filed Exceptions in this matter.

## I. PROCEDURAL BACKGROUND

### A. The R-Case Petition (21-RC-073752)

The Union filed a petition for representation in this case on February 2, 2012. (R. 1, FN 2.)<sup>4</sup> The Regional Director approved a stipulated election agreement between the Employer and the Union on February 17,<sup>5</sup> to hold an election on March 9. (R. 1.)

On March 9, the Regional Director conducted the election. (R. 2.) 32 employees voted against the Union, 27 voted for them, and four employees' votes were challenged by the Union. (R. 3.) The Regional Director's Tally of Ballots demonstrated that the Employer won the election. (R. 3.)

On March 16, the Union filed five objections to the election. (R. 3.) The Union's objections state, in relevant part:

...

2. The Employer interfered with the fair operation of the election process [] and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots;

3. The Employer interfered with the fair operation of election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting [] unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go work the El Dorado Country Club, which is a union country club, instead of the Employer.

...

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<sup>4</sup>“(R. \_\_.)” references the Report by page attached as **Exhibit A**. The Regional Director's Report did not have line numbers and, therefore, the Employer is unable to reference them.

<sup>5</sup> The unit agreed to by the parties was “All full-time and regular part-time Landscape Foremen, Landscapers, Landscapers/ Spray Technicians, Golf Course Landscapers, Golf Course Landscapers/Tree Trimmers, Mechanics, Machine Operators, Machine Operators/Spray Technicians, Irrigator Foremen, and Irrigators employed by the Employer at its facility located at 75-001 Vintage Drive West, Indian, Wells, California.” (R. 1, FN2.)

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

(R. 2.)<sup>6</sup>

The Regional Director conducted an investigation on the objections from March through September. The Employer provided the Regional Director a position statement in response to the objections on March 25. (**Exhibit B.**) In the position statement, Vintage provided her sworn declarations that Felipe Terrazas was neither a supervisor and/or agent under the Act. (See Exhibit B.)

**B. The Unfair Labor Practice Charge (21-CA-077097)**

On February 28 and 29, the Union filed unfair labor practice charges in case nos. 21-CA-075484 and 21-CA-075584. In case 21-CA-075484, the Union Alleged the Employer, through its agents, solicited employees to sign a decertification petition. (**Exhibit C.**) In case no. 21-CA-075584, the Union contended that Vintage engaged in unlawful surveillance, threatened and intimidated employees because of their union activity, and solicited employees to sign a decertification petition. (**Exhibit C.**) The Union withdrew these charges in early March.

On March 20—4 days after the their deadline for filing objections—the Union re-filed with the Regional Director the allegations in case nos. 21-CA-075484 and 21-CA-075584 in case no. 21-CA-077097. The Regional Director conducted an investigation into these unfair labor practices concurrent with its investigation of the objections.

On May 4, the Board Agent sent to Employer's counsel a letter requesting evidence in

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<sup>6</sup>The Union withdrew Objections Nos. 1 and 4 on September 13.

response to the unfair labor practices. Vintage responded by letter on May 22. (**Exhibit D.**) On September 27, the Regional Director issued a Complaint and Notice of Hearing on this matter alleging that the Employer engaged in solicitation, interrogation, threats, surveillance, and intimidation in violation of Section 8(a)(1) of the Act. (R. 4-5.) The Union did not include these allegations in their Objections. (R. 2, 5.) The following day, the Regional Director issued his Report finding that the aforementioned Union objections raised “substantial and material issues of fact.” (R. 5.)

## **II. ARGUMENTS IN SUPPORT OF EXCEPTIONS**

### **A. The Regional Director Should Have Dismissed Objection No. 2 Because The Evidence is Undisputed That Felipe Terrazas is Neither a Statutory Supervisor nor Agent.**

The Regional Director failed to dismiss Objection No. 2 notwithstanding that the Employer provided her sufficient evidence establishing Terrazas was neither a supervisor and/or agent. (**Exhibit B, D.**) Vintage provided the Regional Director sworn declarations demonstrating that Terrazas did not perform any of the duties required of a statutory supervisor. (**Exhibit B.**) Moreover, there is no evidence Terrazas was ever the Employer’s agent. (**Exhibit B.**)

Section 2(11) of the Act states:

The term ‘supervisor’ means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

In the present case, Vintage—in its March 26 statement of position—gave the Regional Director undisputed declarations from General Manager Alfonso Castro and Golf Course Superintendent Lane Stave that Terrazas does not perform any of these duties. (**Exhibit B.**) As

stated in the declarations, Terrazas is solely responsible for maintenance of the golf course irrigation system, including lake levels and pump stations, semi-skilled grounds construction, and coordinating the other Irrigators' work. (**Exhibit B.**) He does not have the independent authority or the ability to effectively recommend that an employee be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined, or to responsibly direct them or to adjust their grievances. (**Exhibit B.**) Instead, Stave performs these duties. (**Exhibit B.**) Indeed, Terrazas provided a sworn affidavit to the Regional Director corroborating this evidence. (**Exhibit E.**)

Nor has the Employer held Terrazas as its agent nor was he, as the Regional Director described, "closely aligned with management." In Bio-Medical of Puerto Rico, 269 NLRB 827 (1984), the Board set out the principles of agency:

[I]n determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

Rather, responsibility attaches to the Petitioner if, applying the 'ordinary law of agency', it is shown that [putative agents] were acting in the capacity of Petitioner's agents. Thus, the determinative factor in establishing agency status is not authorization or ratification of the agent's acts by the principal, but rather the nature of the agency.

Id. at 828 (quoting 29 U.S.C. § 152 (13)). A significant factor for establishing apparent authority is whether employees could "reasonably have believed" that the agent was acting on behalf of the employer. United Mine Workers of America, District 29, 308 NLRB 1155, 1163 (1992), quoting Penn Yan Express, 274 NLRB 449 (1985).

There is simply no evidence that the Employer actually authorized Terrazas as its agent or ratified any acts by Terrazas as alleged by the Union in its unfair labor practices or the

Regional Director's Complaint and Notice of Hearing. As stated in Castro's and Stave's sworn declarations, Terrazas was directed solely to perform his duties as an Irrigation Foreman. **(Exhibit B.)** Vintage did not hold him out as its spokesperson or tell employees that he had the authority to speak on its behalf. **(Exhibit B.)** Terrazas himself did not present any evidence to the Region that he acted as the Employer's agent or was "closely aligned with management." **(Exhibit E.)**

Accordingly, the Board should dismiss the Union's Objection No. 2.

**B. Objection No. 3 Should Also Be Dismissed Because There is No Evidence that Ulysses Zendejas Acted as the Employer's Agent.**

The Regional Director contends that the Union presented evidence that on the day of the election Ulyses Zendejas acted as the Employer's agent and threatened employees that if they wanted a union that they should go work for another employer. The Employer provided the Regional Director undisputed evidence that none of Vintage's department managers or supervisors were present during the polling period and, therefore, could not have ratified Zendejas' alleged statements. **(Exhibit D.)** The Employer also presented the Regional Director undisputed evidence that Zendejas, an Irrigator, has never been authorized or held out as its agent. **(Exhibit D.)**

Indeed, even assuming the Zendejas was the Employer's agent at the time he made such statements—which he was not—his actions would have been protected under Section 8(c) of the Act. Under Section 8(c):

The expressing of any views, arguments, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this Act, if such expressions contains no threat of reprisal or force or promise of benefit.

Telling employees that they should go and work for a union employer if they want to be in a

union is not a threat of reprisal, force, or promise of benefit. The statement constitutes nothing more than an opinion protected under Section 8(c).

**C. The Board Should Overrule The Regional Director's Inclusion of the Union's Unfair Labor Practice Allegations as Support of Objection No. 5 Because the Union Should Not be Permitted to Untimely Supplement its Objections or Submit Unfair Labor Practices in Lieu of Proper Evidence in Support of Objections.**

In support of Objection No. 5, the Regional Director found that the Union's unfair labor practice charge in case no. 21-CA-077097 was provided as evidence in support of Objection No. 5, a catch-all objection. (R. 4- R. 5.) However, it was improper for her to make this finding. Moreover, the Union failed to include these allegations—of which they were fully aware—in its Objections and, therefore, the Regional Director is impermissibly allowing the Union to supplement them.

A party may challenge the validity of an election by filing objections within seven days after the election results are prepared. 29 C.F.R. 102.69. The objections must be couched in specific, non-conclusory terms sufficient to provide the opposing party with “meaningful notice” of the objectionable conduct alleged and an opportunity to present a defense. See Factor Sales, Inc., 347 N.L.R.B. 747, 748 (2006) (overruling petitioner's objection because it lacked “clear statement” of accusation against employer.) Moreover, “the mere presence in the record of evidence relevant to an unstated accusation ‘does not mean the [defending] party . . . had notice that the issue was being litigated.’” Factor Sales, 347 N.L.R.B. at 748 n.7 (quoting Conair Corp. v. N.L.R.B., 721 F.2d 1355, 1372 (D.C. Cir. 1983).) Therefore, the Union's Objection No. 5, which is a vague, catch-all allegation, fails to meet these requirements and should not even be considered.

In addition, the party filing objections must provide evidence establishing a prima facie

case in support of their allegations within seven days. Howard Johnson Co., 242 NLRB 1284 (1979). In this case, that evidence was to be provided to the Region by Friday, March 25. The evidence must include a list of witnesses and a brief description of the testimony of each. NLRB Rules and Regs. § 102.69; Heartland of Martinsburg, 313 NLRB 655 (1994). The filing of an unfair labor practice charge simply does not meet this standard. Indeed, the Employer is unaware of any case law that a union satisfies its evidentiary burden in support of its objections by filing a ULP charge. The Regional Director incorrectly decided that charge no. 21-CA-077097 was proper evidence in support of Objection No. 5.

Finally, where proper objections are filed, the Regional Director may conduct an investigation into the allegations made. If, however, “the investigation reveals circumstances which were not alleged by the objecting party but which were or reasonably could have been within its knowledge, the objections are overruled on procedural grounds.” See Rhone-Poulenc, Inc., 271 N.L.R.B. 1008, 1008 (1984) (allegations of misconduct not made in objections are ignored unless “objecting party demonstrates by clear and convincing proof that the evidence is not only newly discovered but was also previously unavailable”); Burns Int’l Security Svcs., Inc., 256 N.L.R.B. 959, 960 (1981) (Regional Director wrong to consider “supplemental” objections filed more than two months after election in absence of clear and convincing proof that objections were based on newly-discovered and previously-unavailable evidence.)

In this matter, it is clear the Union intentionally failed to include in its Objections the allegations in case no. 21-CA-077097. Prior to its deadline for filing objections, the Union filed and withdrew two ULP charges that contained the same allegations in case no. 21-CA-077097. The Regional Director—by now including them in the Union’s vague, catch-all phrase of Objection No. 5—is impermissibly permitting the Union to untimely supplement its objections.

The NLRB should prohibit the Regional Director from doing so and dismiss Union Objection No. 5.

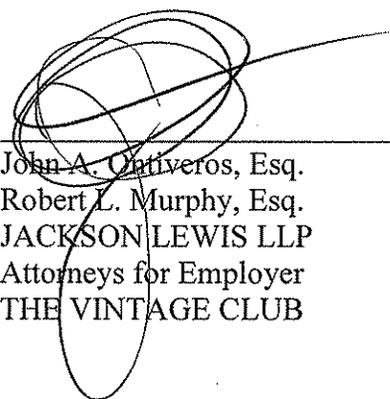
**II. CONCLUSION**

Based upon the foregoing, the Employer requests the NLRB dismiss Objection Allegation Nos. 2, 3, and 5, because they are without merit and do not warrant going to hearing.

Respectfully submitted this 26<sup>th</sup> day of October, 2012.

JACKSON LEWIS LLP

BY:



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Attorneys for Employer  
THE VINTAGE CLUB

# **EXHIBIT A**

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

THE VINTAGE COUNTRY CLUB

and

Case 21-CA-077097

LABORERS' PACIFIC SOUTHWEST  
REGIONAL ORGANIZING COALITION,  
LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, AFL-CIO

THE VINTAGE CLUB

Employer

and

Case 21-RC-073752

LABORERS' INTERNATIONAL UNION OF  
NORTH AMERICA, LOCAL 1184, AFL-CIO

Petitioner

**REPORT ON OBJECTIONS  
AND  
ORDER CONSOLIDATING CASES  
AND  
NOTICE OF HEARING**

This Report<sup>1</sup> contains my recommendations concerning objections filed by Laborers' International Union of North America, Local 1184, AFL-CIO (herein the Union or Petitioner) to the election conducted on Friday, March 9, 2012.<sup>2</sup>

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<sup>1</sup> This Report has been prepared under Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended.

<sup>2</sup> The Petition in Case 21-RC-073752 was filed on February 2, 2012. Pursuant to a Stipulated Election Agreement, the collective bargaining unit agreed upon in this matter is composed of: "All full-time and regular part-time Landscape Foremen, Landscapers, Landscapers/ Spray Technicians, Golf Course Landscapers, Golf Course

The Petitioner's objections allege that The Vintage Club (herein the Employer) engaged in the following conduct:

1. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election, segregating employees in the voting unit by area and directing these employees to the 4 voting sites.
2. The Employer interfered with the fair operation of the election a process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.
3. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting is unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go and work for the El Dorado Country Club, which is a union country club, instead of the Employer.
4. The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by denying the Union and its organizers access to the election site/polling place during the pre-election meeting as a show of force or power by the Employer in full view of the election observers and employees in the voting unit while the observers and employees were assembling to vote.
5. By the above and other conduct described in paragraphs 1-4, the Employer has interfered with and coerced eligible voters with regard to the exercise of their Section 7 rights under the National Labor Relations Act and destroyed the atmosphere necessary to conduct a fair election. The above coercive acts and other conduct taking place during the critical pre-election and actual voting period were sufficient to unlawfully affect the results of the election.

As set forth below, I conclude that Petitioner's Objections Nos. 2, 3, and 5 shall be considered at hearing, and herein Order and give Notice of such hearing.<sup>3</sup>

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<sup>3</sup> On September 13, 2012, the Petitioner submitted a request to withdraw Objections Nos. 1 and 4. After duly considering the matter, I hereby approve the Petitioner's request to withdraw Objections Nos. 1 and 4.

## Procedural Background

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 63 eligible voters, 27 cast ballots for, and 32 against, the Petitioner. There were zero void ballots. There were 4 challenged ballots, which number was insufficient to affect the results of the election at that time. The Petitioner timely filed objections, a copy of which was served on the Employer. A copy of the Petitioner's objections is attached hereto as Attachment A.<sup>4</sup>

## The Objections

### Petitioner's Objections

#### Objection No. 2

The Employer interfered with the fair operation of the election a process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.

In support of this objection, the Union proffered evidence that the Employer assigned Supervisor Felipe Terrazas as one of its observers during the election. Terrazas' ballot was challenged by the Union at the election, but, inasmuch as the challenges were not determinative, the status of Terrazas was not investigated through that procedure. During the investigation into the allegations contained in Case 21-CA-077097, I have determined that Terrazas is a supervisor within the meaning of the Act, and I have so alleged at Paragraph 5 of a Complaint and Notice of Hearing which issued on September 27, 2012. In the alternative, the Union has submitted evidence that Terrazas is "a person closely aligned with management."

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<sup>4</sup> On March 26, 2012, the Employer filed a Motion to Dismiss the Union's Objections, and the Petitioner filed its Opposition to the Motion thereafter. On April 5, 2012, the Region issued an Order Denying the Employer's Motion To Dismiss Petition. Thereafter, the Employer submitted a Request For Special Permission to Appeal from the Regional Director's Order Denying Employer's Motion to Dismiss Petition. On May 7, 2012, the Board denied the Employer's Appeal of the Regional Director's Order.

It is axiomatic that an employer may not use a supervisor or a person closely aligned with management as an election observer. Once that is established, the objecting party need not demonstrate "actual interference" and the absence of actual interference does not mean the objection is to be overturned. *Mid-Continent Spring Co.*, 273 NLRB 884 (1985) and cases cited therein.

The Employer denies that Felipe Terrazas is a supervisor or an agent or person closely aligned with management.

### **Objection No. 3**

The Employer interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election and in a hostile manner, telling employees in the voting unit who were known Union supporters and who were at or near the election site or who were passing by on their way to the polls to cast their ballots, that if they wanted the Union, they should go and work for the El Dorado Country Club, which is a union country club, instead of the Employer.

In support of this objection, the Union presented evidence that on the day of the election, Employer agent Ulyses Zendejas and an employee sat on a golf cart observing employees as they went in the building to cast their vote. As employees went in the building to vote, Zendejas threatened them and told them in a hostile manner that if they wanted a union to go work for El Dorado Country Club.

The Employer denies that Zendejas is an agent of the Employer.

### **Objection No. 5**

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

In support of this objection, the Union filed an unfair labor practice charge in Case 21-CA-077097. A Complaint and Notice of Hearing issued in that case on September 27, 2012, alleging

violations of Section 8(a)(1) of the Act, conduct which I have concluded could also be objectionable conduct. A copy of the Complaint and Notice of Hearing is attached hereto as Attachment B.

As noted in the Complaint at paragraphs 7 through 10, Employer supervisors and/or agents engaged in certain conduct which, if true, could warrant setting aside the election. The Employer agents and supervisors, as noted above, are set forth in paragraph 5 of the Complaint.

#### Conclusion

Inasmuch as the investigation of Petitioner's Objections Nos. 2, 3, and 5 raise substantial and material issues of facts, and inasmuch as it appears that the issues to be decided in resolving the Objections are the same as, or closely related to, issues involved in Case 21-CA-077097, which is being set for hearing, it is concluded that these issues can best be resolved after a hearing in conjunction with the related allegations in Case 21-CA-077097.

Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Petitioner's Objections Nos. 2, 3, and 5 and consolidate Case 21-RC-073752 for a hearing with Case 21-CA-077097.

Accordingly, pursuant to Sections 102.33 and 102.72 of the Board's Rules,

**IT IS HEREBY ORDERED** that Cases 21-CA-077097 and 21-RC-073752 be, and they hereby are, consolidated for the purposes of a hearing before an Administrative Law Judge.

**PLEASE TAKE NOTICE** that during the calendar call commencing at 1:00 p.m., PST, on the 5<sup>th</sup> day of November, 2012, at a location to be determined later, a hearing on the issues raised by Petitioner's Objections Nos. 2, 3, and 5 and the unfair labor practices alleged in the Complaint and Notice of Hearing in Case 21-CA-077097, will be conducted before a duly designated Administrative Law Judge of the Board, at which time and place the parties will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedures in Formal Hearings Held before the National Labor Relations Board in Unfair Labor

Practice Cases, is attached. The precise order of all cases to be heard during this calendar call will be determined no later than the close of business on the Friday preceding the calendar call.

**IT IS HEREBY REQUESTED** that the Administrative Law Judge designated for the purpose of conducting the hearing prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of said challenged ballots and objections. Within the times described by the Board's Rules, any party may file with the National Labor Relations Board, 1099 14<sup>th</sup> Street, N.W., Washington D.C., 20570, an original and seven copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

Dated at Los Angeles, California, on September 28, 2012.



Olivia Garcia  
Regional Director, Region 21  
National Labor Relations Board  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449

Attachments

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 North America, Local Union No. 1184, AFL-CIO

7 UNITED STATES OF AMERICA  
 8  
 9 BEFORE THE NATIONAL LABOR RELATIONS BOARD  
 10 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	)	BEHALF OF UNION
16 LABORERS' INTERNATIONAL UNION OF	)	
17 NORTH AMERICA, LOCAL UNION NO.	)	
18 1184, AFL-CIO,	)	
19	)	
20 Union.	)	

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

26 OBJECTIONS

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



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.

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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.

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19 Date: March 16, 2012

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

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By: Carlos R. Perez  
CARLOS R. PEREZ  
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International Union of  
North America, Local Union  
No. 1184, AFL-CIO

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

THE VINTAGE COUNTRY CLUB

and

Case 21-CA-077097

LABORERS' PACIFIC SOUTHWEST  
REGIONAL ORGANIZING COALITION,  
LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA, AFL-CIO

COMPLAINT  
AND  
NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by the Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL-CIO, herein called the Charging Party. It is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., (the Act), and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board), and alleges that The Vintage Country Club, herein called Respondent, has violated the Act as described below:

1. (a) The original charge in this proceeding was filed by the Charging Party on March 20, 2012, and a copy was served on Respondent by regular mail on March 22, 2012.
- (b) The first amended charge in this proceeding was filed by the Charging Party on September 4, 2012, and a copy was served on Respondent by regular mail on September 6, 2012.



2. (a) At all material times, Respondent, a California non-profit corporation with principal offices and a facility located at 75-001 Vintage Drive West, Indian Wells, California, herein called the facility, has been engaged in the operation of a private country club.

(b) In conducting its operations described above in paragraph 2(a), during the 12-month period ending August 31, 2012, a representative period, Respondent derived gross revenues in excess of \$500,000, excluding membership dues and initiation fees.

(c) During the period of time described above in paragraph 2(b), Respondent, in conducting its operations described above in paragraph 2(a), purchased and received at the 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. (a) At all material times, Laborers' International Union of North America Local No. 1184, Laborers' International Union of North America, AFL-CIO, herein called the Union, has been a labor organization within the meaning of Section 2(5) of the Act.

(b) At all material times, the Charging Party has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Tim Harder	Equipment and Facilities Supervisor
Felipe Terrazas	Irrigator Foreman

6. At all material times, the following individuals held the positions set forth opposite their respective names and have been have been agents of Respondent within the meaning of Section 2(13) of the Act:

Juan Renteria	Irrigator
Ulyses Zendejas	Irrigator

7. In about February 2012, Respondent, by Juan Renteria and Felipe Terrazas, at the facility, interrogated its employees about their union sympathies and activities by soliciting employees' signatures on an anti-union petition.

8. From about mid- February 2012 until March 9, 2012, Respondent, by Tim Harder, intimidated employees by prohibiting an employee from leaving the mechanics' shop area to perform work assignments because of the employee's union activity and support.

9. About February 22, 2012, Respondent, by Felipe Terrazas, between holes 2 and 7 at the facility:

- (a) Interrogated an employee about employees' union activities; and
- (b) Implicitly threatened employees with loss of benefits if they did not sign an anti-union petition.

10. About February 28, 2012, Respondent, by Ulyses Zendejas and Felipe Terrazas, at the gate to the facility, engaged in surveillance of employees by videotaping them while they were being handed union flyers..

11. By the conduct described above in paragraphs 7 through 10, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. 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 October 11, 2012, or postmarked on or before October 12, 2012.

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 through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. 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 answer 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 continue to be date

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 by means allowed under 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 during the calendar call commencing at 1 p.m. PST, on the 5th day of November, 2012, a hearing will be conducted at a 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. The precise order of all cases to be heard on this calendar call will be determined no later than the close of business on the Friday preceding the calendar call.

DATED at Los Angeles, California, this 27th day of September, 2012.

/s/Olivia Garcia  
Olivia Garcia, Regional Director  
Region 21  
National Labor Relations Board  
888 South Figueroa Street, Ninth Floor  
Los Angeles, CA 90017-5449

Attachments

# **EXHIBIT B**



Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis LLP 225 Broadway Suite 200 San Diego, CA 92101 Tel 619 573-4900 Fax 619 573-4901 www.jacksonlaw.com	ALBANY, NY ALBUQUERQUE, NM ATLANTA, GA AUSTIN, TX BALTIMORE, MD BIRMINGHAM, AL BOSTON, MA CHICAGO, IL CINCINNATI, OH CLEVELAND, OH DALLAS, TX DENVER, CO	DETROIT, MI GREENVILLE, SC HARTFORD, CT HOUSTON, TX INDIANAPOLIS, IN JACKSONVILLE, FL LAS VEGAS, NV LONG ISLAND, NY LOS ANGELES, CA MEMPHIS, TN MIAMI, FL MILWAUKEE, WI	MINNEAPOLIS, MN MORRISTOWN, NJ NEW ORLEANS, LA NEW YORK, NY NORFOLK, VA OMAHA, NE ORANGE COUNTY, CA ORLANDO, FL PHILADELPHIA, PA PHOENIX, AZ PITTSBURGH, PA PORTLAND, OR	PORTSMOUTH, NH PROVIDENCE, RI RALEIGH-DURHAM, NC RICHMOND, VA SACRAMENTO, CA SAINT LOUIS, MO SAN DIEGO, CA SAN FRANCISCO, CA SEATTLE, WA STAMFORD, CT WASHINGTON, DC REGION WHITE PLAINS, NY
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March 25, 2012

VIA ELECTRONIC MAIL & E-FILE

Olivia Garcia  
Regional Director  
National Labor Relations Board, Region 21  
888 S. Figueroa St., 9<sup>th</sup> Floor  
Los Angeles, CA 90017-5449

Re: The Vintage Club  
21-RC-073752

Dear Ms. Garcia:

The following is the statement of position for The Vintage Club in regards to the above-captioned matter.<sup>1</sup> This statement of position is in addition to our Answer to the Objections to Conduct Affecting the Result of the Election on Behalf of [the] Union and our Motion to Dismiss the Union's Objections ("Motion").

The Laborers' International Union of North America, Local No. 1184, AFL-CIO ("Union"), untimely filed their Objections to Conduct Affecting the Result of the Election on Behalf of [the] Union ("Objections") on March 19, 2012.<sup>2</sup> Furthermore, the Union's Objections are wholly without merit.

For the reasons stated herein, the Region should dismiss the Union's Objections and certify the results of the election it conducted on March 9.

**I. THE UNION FAILED TO TIMELY FILE THEIR OBJECTIONS.**

The Employer's Motion fully describes the reasons the Regional Director should dismiss the Union's Objections. However, the arguments in support of that Motion are worth repeating.

<sup>1</sup> The information set forth in this letter is based on our preliminary investigation and reflects our understanding of the events. Moreover, this letter includes only information of which we and our client are aware at this time. We and our client reserve the right to supplement, modify or correct the record, at any time, with additional or newly-discovered information.

<sup>2</sup> All dates hereafter occurred in 2012 unless otherwise stated.

The National Labor Relations Board ("NLRB") conducted an election in this matter on Friday, March 9, wherein 32 employees voted against the Union, 27 voted for them, and four employees' votes were challenged by the Union. (In reality, the Union feared these four employees were going to cast "NO" votes and on that basis challenged their ballots. Accordingly, it is likely the final tally would have been 36 "NO" and 27 "YES" votes.) The NLRB's Tally of Ballots demonstrated that the Employer won the election.

Under Section 102.69 of the Board's Rules and Regulations, the Union had seven calendar days from the date of the election to file objections, i.e., by 5:00 pm PST on Friday, March 16. The Union, however, failed to do so.

On March 16, 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 Union did not file anything. He further stated the Region was preparing the certification of the results of the election.

At approximately 2:45 pm on Monday, March 19, the Union faxed its Objections to the Region. (According to Mr. Medina, the Region replaced the fax machine with one that had toner.) Shortly thereafter, Mr. Medina informed our office that the Region considered the Union's Objections as being timely filed. On Wednesday, March 21, the Region printed from the original fax machine—for the first time—the Union's Objections allegedly sent on March 16.

It is abundantly clear the Union failed to timely file their Objections because the Region received the document after the March 16 deadline. 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. Indeed, the Region did not receive the original document until March 21.

The Union cannot defend that its untimely filing is excused because the 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, plain and simple.

The NLRB has confirmed that problems with a Region's fax machine does not excuse a late filing. For example, in South Atlantic Trucking, Inc., 327 NLRB 534, 534 (1999), it found that a document was not properly filed by facsimile notwithstanding the respondent's contention that the Region turned off its machine. The same rationale applies here.

For these reasons, the Region should dismiss the Union's Objections and certify the election. If the Region continues to process the Union's Objections—which it should not—it should nevertheless dismiss them because they are meritless.

## II. THE UNION'S OBJECTIONS ARE WITHOUT MERIT.

### A. The Union's Contention That the Employer Segregated Employees in the Voting Unit and Directed Them to the Voting Site Does Not Constitute Objectionable Conduct.

Union Objection No. 1 does not allege conduct sufficient to overturn an election because an employer is permitted to release its employees at different times to vote. Furthermore, the Vintage Club did not direct employees to the voting site. Union Objection No. 1 states:

The Vintage Country Club ("Employer"), by its officers, managers, supervisor, agents, and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the election, segregating employees in the voting unit by area and directing these employees to the voting site.

The Vintage Club is unaware of any case law prohibiting an employer from releasing its employees by department to vote. Indeed, Section 11330 et seq. of the NLRB Casehandling Manual, Part 2, Representation Proceedings, provides that arrangements should be made to release employees to vote to avoid "(a) undue disruption of production and (b) upsetting of the regular voting flow." The Union agreed to the Employer's method of releasing employees to vote. Moreover, it cannot establish any affect on the election because all of the eligible voters submitted a ballot.

Moreover, the Union's allegation that the Employer directed employees to the voting site is completely false. The Employer requested that one of the mechanics simply notify employees that the polls were open. (See Exhibit C, Decl. of Robert Murphy ¶ 4.) It did not direct employees to go to the voting site. (See Exhibit C, Decl. of Robert Murphy ¶ 4.) Indeed, the Employer's managers and supervisors did not speak to any of the eligible voters during the polling period. (See Exhibit A, Decl. of Al Castro, ¶ 6; Exhibit B, Decl. of Lane Stave ¶ 3; Exhibit C, Decl. of Robert Murphy ¶ 5.)

Accordingly, the Regional Director should dismiss Union Objection No. 1.

### B. The Employer's Election Observers Were Neither Supervisors and/or Agents.

Union Objection No. 2 erroneously contends the Employer's election observers were supervisors and/or agents as defined under Section 2(11) and 2(13), respectively, of the National Labor Relations Act ("Act"). Objection No. 2 alleges:

The Employer, by its officers, managers, supervisors, agents and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by, during the period immediately prior to and during the election, assigning various supervisors

and/or agents to the election site/polling place to watch the employees as they appeared at the election site to cast their ballots.

It is the Employer's understanding that the Union contends Irrigation Foreman Felipe Terrazas—an eligible voter and the Vintage Club's observer—was a supervisor and/or agent.

Mr. Terrazas is not an agent of the Company. The Vintage Club has never authorized him to be nor has it represented to employees that he is their agent. (See Exhibit A, Decl. of Al Castro, ¶ 7; Exhibit B, Decl. of Lane Stave ¶ 4.)

In addition, Mr. Terrazas is not a statutory supervisor. He is solely responsible for maintenance of the golf course irrigation system (including lake levels and pump stations), semi-skilled grounds construction, and coordinating the other Irrigators' work. Mr. Terrazas does not have the independent authority or the ability to effectively recommend that an employee be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined, or to responsibly direct them or to adjust their grievances. (See Exhibit A, Decl. of Al Castro, ¶ 7; Exhibit B, Decl. of Lane Stave ¶ 4.) Indeed, the Union agreed to include Irrigator Foremen in the unit.

**C. The Employer Did Not Communicate with Employees During the Polling Period and, if they Had, the Alleged Statements Would Have Been Protected Under Section 8(c) of the Act.**

The Union further alleged—albeit without any factual or legal support—that the Vintage Club interfered with the election's laboratory conditions by telling voters if they wanted to be in a union they should work for a unionized company. Objection No. 3 states:

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

The Union's Objection is wholly without merit because none of the Employer's managers or supervisors interacted with eligible voters during the polling period. (See Exhibit A, Decl. of Al Castro, ¶ 6; Exhibit B, Decl. of Lane Stave ¶ 3; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 5.) Nor did the Employer instruct anyone to make the aforementioned statement to eligible voters. (See Exhibit A, Decl. of Al Castro, ¶ 6; Exhibit B, Decl. of Lane Stave ¶ 3; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 5.)

Even if the Vintage Club's managers, supervisors, or agents made such statements to eligible voters—which they did not—their actions would have been protected under Section 8(c) of the Act. Under Section 8(c):

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this Act, if such expressions contains no threat of reprisal or force or promise of benefit.

Telling employees that they should go and work for a union employer if they want to be in a union is not a threat of reprisal, force, or promise or benefit. The statement constitutes nothing more than an opinion protected under Section 8(c).

**D. The Union's Contention That Union Organizers Were Denied Access to the Polling Place is False and Does Not Constitute Conduct Sufficient to Overturn an Election.**

Finally, the Union falsely contends the Vintage Club engaged in objectionable conduct by denying Union organizers access to the Employer's premises on election day. Objection No. 4 states:

The Employer, by its officers, managers, supervisors, agents and/or supporters, interfered with the fair operation of the election process and destroyed the necessary laboratory conditions by denying the Union and its organizers access to the election site/polling place during the pre-election meeting as a show of force or power by the Employer in full view of the election observers and employees in the voting unit while the observers and employees were assembling to vote.

The Vintage Club is a private, residential club. (See Exhibit A, Decl. of Al Castro, ¶ 3; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 6.) To gain admission, one must be a member or a homeowner carrying the necessary identification or, if an invitee, must be cleared in advance through a request to the Vintage Club's security. (See Exhibit C, Decl. of Robert Murphy, Esq., ¶ 6.)

Prior to the election, our office contacted Board Agent Medina to request the names of the Union representatives attending the election. (See Exhibit A, Decl. of Al Castro, ¶ 4.) The Union provided the names of only Michael Dea and Daniel Brenan. (See Exhibit A, Decl. of Al Castro, ¶ 4.) On the day of the election, ten additional, unidentified individuals showed up at the Vintage Club's security with Mr. Dea and Mr. Brenan. (See Exhibit A, Decl. of Al Castro, ¶ 5; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 7.) In addition to Mr. Dea and Mr. Brenan, the Employer allowed Union representative Fernando Soto to enter. (See Exhibit A, Decl. of Al Castro, ¶ 5; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 7.) The Union never verified the identities of the remaining nine individuals. (See Exhibit C, Decl. of Robert Murphy, Esq., ¶ 7.) None of the eligible voters witnessed the Employer deny these individuals access to the facility. (See Exhibit A, Decl. of Al Castro, ¶ 5; Exhibit C, Decl. of Robert Murphy, Esq., ¶ 7.)

The Union's contention that the Employer denied the Union's representatives access is false. The Vintage Club granted Mr. Dea, Mr. Brenan, and Mr. Soto—the only verified Union representatives—permission to enter. The Employer specifically requested the names of the Union's officials prior to the election, and the Union provided only two. It is clear the Union invited nine strangers to the facility to disrupt the election.

March 25, 2012

Page 6

In addition, the Employer's denial of access to these nine individuals did not occur in front of any unit employees. Therefore, the Union's contention that this conduct somehow affected employees' decision during the election is inaccurate.

Union Objection No. 4 is also inconsistent with the NLRB's guidelines. Section 11318.3 of the NLRB Casehandling Manual provides that Union representatives are entitled to access an employer's premises during an election solely to inspect the polling location and ballot box. It states in pertinent part:

During this preelection period, if not earlier, representatives of the parties should be permitted to inspect the polling place. Such representatives may be present during the preparation of the ballot box. Their objections should be disposed of in accordance with their merit. Finally, before the polls are opened, they should be asked to leave.

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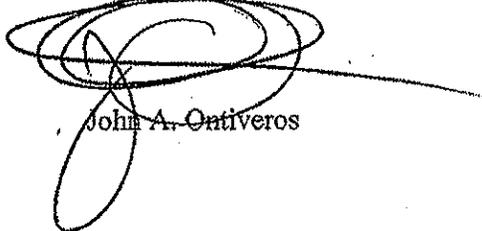
The Casehandling Manual says absolutely nothing about the Union's right to have an unlimited number of representatives present during an election.

### III. CONCLUSION

Based on the aforementioned evidence, the Regional Director should dismiss the Union's Objections and certify the results of the election. In the alternative, the Vintage Club is prepared to provide any additional affidavits or evidence the Region may require to assist it to dismiss the Objections. Please contact me immediately if you have any further questions.

Very truly yours,

JACKSON LEWIS LLP



John A. Ontiveros

Attachments

### DECLARATION OF ALFONSO CASTRO

I, ALFONSO CASTRO, declare as follows:

1. I am the Assistant General Manager for The Vintage Club in Indian Wells, CA. I have worked for The Vintage Club since approximately September 1998. I have personal knowledge of the facts contained in this declaration and, if called upon as a witness, I could and would competently testify thereto.
2. On March 9, 2012, the National Labor Relations Board conducted an election on the premises of the Vintage Country Club in Indian Wells, CA, in case no. 21-RC-073752. The Board Agent responsible for running the election was Al Medina. The pre-election conference with Mr. Medina was at 10:00 am PST on the Employer's premises. The election polling time was from 10:30 am to 11:30 am PST.
3. On March 8, 2012, I inquired with our counsel, John A. Ontiveros, Esq., as to the names of the representatives from the petitioning Union, Laborers International Union of North America, Local No. 1184, who would be attending the pre-election conference and the election. The Vintage Club is a private club and the property itself includes hundreds of private homes and condominiums. Consequently, The Vintage Club is a high security property and it employs security forces 24-hours a day. Prior to entering the club, non-members must be cleared by security.
4. I received information from Mr. Ontiveros that the only representatives from the union who would be attending would be Michael Dea and Daniel Brenan. He also notified me that Board Agent Medina would be attending. Accordingly, I provided these names to our security group.
5. At approximately 9:45 am on March 9, I was notified that approximately 12 individuals—including Dea and Brenan—were at the gate and were trying to enter the facility. None of these individuals were members of The Vintage Club or eligible voters, and, to the best of my knowledge, were not employees of the Petitioner with the exception of Fernando Soto.

Dea notified us that Soto was a Union representative and was needed to interpret on their behalf, so I permitted him to enter. None of these actions occurred in front of any eligible voters.

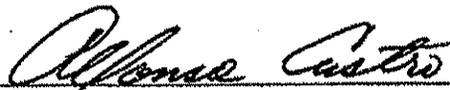
6. During the voting period from 10:30 am through 11:30 am PST, I drove the Union representatives back to the entrance of the facility. Thereafter, I had lunch with Robert Murphy, Esq., Evelyn Fragoso, and Simon Jara. At no point did I speak with or interact with any of the eligible voters during the polling period.

7. The Vintage Club selected Felipe Terrazas as its observer during the election. Mr. Terrazas is the Irrigation Foreman. He does not have the independent authority or the ability to effectively recommend that an employee be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined, or to responsibly direct employees or to adjust their grievances. In addition, The Vintage Club has not held out nor authorized Mr. Terrazas to act as its agent.

8. During the election, The Vintage Club released all of the eligible voters to vote during the election. To the best of my knowledge, all of the eligible voters submitted a ballot in this election.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

Executed this 22<sup>nd</sup> day of March, 2012, in Indian Wells, California.

  
\_\_\_\_\_  
Alfonso Castro

DECLARATION OF LANE STAVE

I, LANE STAVE, declare as follows:

1. I am the Golf Course Superintendent for The Vintage Club in Indian Wells, CA. I have worked for The Vintage Club for approximately 10 years. I have personal knowledge of the facts contained in this declaration and, if called upon as a witness, I could and would competently testify thereto.

2. On March 9, 2012, the National Labor Relations Board conducted an election on the premises of the Vintage Country Club in case no. 21-RC-073752. The Board Agent responsible for running the election was Al Medina. The pre-election conference with Mr. Medina was at 10:00 am PST on the Employer's premises. The election polling time was from 10:30 am to 11:30 am PST.

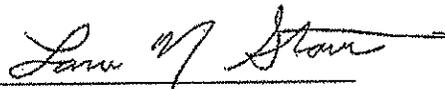
3. During the voting period from 10:30 am through 11:30 am PST, I left the premises and went to lunch. At no point did I speak with or interact with any of the eligible voters.

4. ~~X~~ The Vintage Club selected Felipe Terrazas as its observer during the election. Mr. Terrazas is the Irrigation Foreman. He does not have the independent authority or the ability to effectively recommend that an employee be hired, transferred, suspended, laid off, recalled, promoted, discharged, assigned, rewarded, or disciplined, or to responsibly direct them or to adjust their grievances. In addition, The Vintage Club has not held out nor actually authorized Mr. Terrazas to act as its agent.

5. ~~X~~ During the election, The Vintage Club released all of the eligible voters to vote during the election and were in no way restricted in their ability to vote. To the best of my knowledge, all of the eligible voters submitted a ballot in this election.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct to the best of my knowledge.

Executed this 22<sup>nd</sup> day of March, 2012, in Indian Wells, California.



Lane Stave

**DECLARATION OF ROBERT MURPHY, ESO.**

I, ROBERT MURPHY, declare as follows:

1. I am a partner in the San Diego office of the law firm of Jackson Lewis LLP and the senior partner responsible for all labor law matters relating to the Vintage Club of Indian Wells, California, ( hereinafter the "Club" or the "Employer"), I was present at the Club on March 9, 2012, during the union election and have personal knowledge of the events described below.

2. One of my responsibilities at the Club on the day of the election was to insure that the Employer complied with all legal requirements necessary to maintain the integrity of the election process. I have personally supervised over 50 elections as a legal representative of the employer and have almost 40 years of experience as a labor lawyer representing management.

3. The Club is located on several acres of land in Indian Wells, California. The unit in this case consists of employees who maintain the Club's golf course.

4. On the day of the election and during the period when the polls were open, these employees were actively working on the golf course or in the maintenance building where the election was held. Because most of the unit employees were spread out across the golf course and could not all be called in to vote at once without leaving the course unattended, and because, in some cases, it would take employees several minutes to travel from their work location to the voting area, we devised a release schedule and we asked one of the mechanics, who was himself in the unit, to use the radio to contact various groups of voters to let them know the polls were open. There was no segregation of employees by area or on any other basis. I have used a similar procedure in many elections and I am unaware of any legal principle or decision which makes such a procedure unlawful.

5. I attended the pre-election conference which ended a few minutes before the

polls opened and I returned to the polling area after the polls closed. Prior to the opening of the polls, I personally instructed all of the Employer's supervisors and agents to leave the polling area before the polls opened and not return until the polls had closed. I personally observed all of the supervisors and agents leave before the polls opened and I was present in the polling area after the polls closed when those same supervisors and agents returned. I did not speak to any of the eligible voters during the polling period.

6. The Club is a private facility which is not open to the public. To gain admission to Club property one must be a member or a homeowner carrying the necessary identification or, if an invitee, s/he must be cleared in advance through a request to Club Security so that there is a record of that clearance at the gate when the invitee arrives. Prior to the election, the Club inquired of Laborers Union Local 1184 (the "Union"), who they wanted to be cleared to enter the property on the day of the election. The Union provided two names, both of whom I knew to be union officials. Accordingly, those names were given to Security with instructions that they be allowed to enter.

7. Shortly before the polls opened, I received word that the two above-mentioned union officials had arrived at the Security gate together with "two truckloads" of unidentified men who were "demanding entry" to the Club. As I had no idea who these men were and they had not been cleared to enter, I advised the senior Union representative present, Michael Dea, who by that time had arrived at the polling area, that the unknown men would not be permitted to enter Club property. I also reminded Mr. Dea that if he had wanted us to allow additional representatives to be present for the pre-election conference and/or the vote count, he should have given us the names so that we could have made the necessary arrangements. Eventually, I agreed to Mr. Dea's request to allow a third Union representative, Mr. Fernando Soto, to enter after Mr. Dea advised me that Mr. Soto was their "translator". I also knew that Mr. Soto was, in fact, a union official. I did not have information about the unidentified "two truckloads" of men who had been denied entry. There were no eligible voters present during this interaction.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed this 24<sup>th</sup> day of March, 2012, in San Diego, California.

A handwritten signature in black ink, appearing to read 'Robert Murphy', written over a horizontal line.

Robert Murphy, Esq.

# **EXHIBIT C**

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-75484 Date Filed 2-28-12

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 The Vintage Country Club	b. Tel. No. 760-340-0500
d. Address (Street, city, state, and ZIP code) 75-001 Vintage Drive West Indian Wells, CA 92210	c. Cell No.
e. Employer Representative Tom Murphy General Manager	f. Fax No.
i. Type of Establishment (factory, mine, wholesaler, etc.) Country Club	g. e-Mail
j. Identify principal product or service Golf Course	h. Number of workers employed 30+

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) (3) 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)

Within the last six months, the Employer, by and through its agents, has solicited employees, during work hours, to sign a decertification petition against Laborers Local No. 1184 (Union), and additionally, threatened its employees with discipline and/or discharge if they decline or refuse to sign it.

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

Laborers Pacific Southwest Regional Organizing Coalition

4a. Address (Street and number, city, state, and ZIP code) 4401 Santa Anita Avenue, Ste. 214 El Monte, California 91731-1811	4b. Tel. No. 626-350-9403
	4c. Cell No.
	4d. Fax No. 626-350-9417
	4e. e-Mail

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)

Laborers' International Union of North America

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 Carlos R. Perez Carlos R. Perez, Attorney  
(signature of representative or person making charge) (Print/type name and title or office, if any)

Tel. No. 800-386-3860
Office, if any, Cell No.
Fax No. 213-386-5583
e-Mail

Address 3550 Wilshire Blvd., Ste. 2000, Los Angeles, CA 90010 2/27/2012 (date) cariosp@rac-law.com

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.

INTERNET  
FORM NLRB-561  
(2-00)

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD  
CHARGE AGAINST EMPLOYER

FORM EXEMPT UNDER 48 U.S.C. 3512

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
21-CA-075584	2-29-12

INSTRUCTIONS:

File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

<b>1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT</b>	
a. Name of Employer The Vintage Country Club	b. Tel. No. 760-340-0500
	c. Cell No.
d. Address (Street, city, state, and ZIP code) 75-011 Vintage Drive West Indian Wells, CA 92210	e. Employer Representative Tom Murphy General Manager
	f. Fax No. 760-773-4763
	g. e-Mail
	h. Number of workers employed 30+
i. Type of Establishment (factory, mine, wholesaler, etc.) Country Club	j. Identify principal product or service Golf Course
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 (1st subsections) (3) _____ 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) Within the last six months, the Employer, by and through its agents, has (1) engaged in unlawful surveillance of employees and organizers by documenting their identities and taking pictures of these individuals while engaged in union and/or other protected concerted activities; (2) threatening and intimidating employees of the unit who express their support for Laborers Local No. 1184; and (3) soliciting employees, during work hours, to sign a decertification petition against Local 1184 while misrepresenting to these employees the content and substance of the document that they are being asked to sign.	
3. Full name of party filing charge (if labor organization, give full name, including local name and number) Laborers Pacific Southwest Regional Organizing Coalition	
4a. Address (Street and number, city, state, and ZIP code) 4401 Santa Anita Avenue, Ste. 214 El Monte, California 91731-1611	4b. Tel. No. 626-350-9403
	4c. Cell No.
	4d. Fax No. 626-350-9417
	4e. e-Mail
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) Laborers' International Union of North America	
<b>E. DECLARATION</b>	
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.	
By <u>Carlos R. Perez</u> (Signature of representative or person making charge)	Carlos R. Perez, Attorney (Printtype name and title or office, if any)
Address 3550 Wilshire Blvd., Ste. 2000, Los Angeles, CA 90010	
2/28/2012 (Date)	
Tel. No. 800-386-3860	
Office, if any, Cell No.	
Fax No. 213-386-5583	
e-Mail carlosp@rac-law.com	

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PRIVACY ACT STATEMENT

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# **EXHIBIT D**



Representing Management Exclusively in Workplace Law and Related Litigation

Jackson Lewis LLP 225 Broadway Suite 200 San Diego, CA 92101 Tel 619-573-4900 Fax 619-573-4901 <a href="http://www.jacksonlewis.com">www.jacksonlewis.com</a>	ALBANY, NY ALBUQUERQUE, NM ATLANTA, GA BALTIMORE, MD BIRMINGHAM, AL BOSTON, MA CHICAGO, IL CINCINNATI, OH CLEVELAND, OH DALLAS, TX DENVER, CO	DETROIT, MI GREENVILLE, SC HARTFORD, CT HOUSTON, TX INDIANAPOLIS, IN JACKSONVILLE, FL LAS VEGAS, NV LONG ISLAND, NY LOS ANGELES, CA MEMPHIS, TN MIAMI, FL	MILWAUKEE, WI MINNEAPOLIS, MN MORRISTOWN, NJ NEW ORLEANS, LA NEW YORK, NY NORFOLK, VA OMAHA, NE ORANGE COUNTY, CA ORLANDO, FL PHILADELPHIA, PA PHOENIX, AZ PITTSBURGH, PA	PORTLAND, OR PORTSMOUTH, NH PROVIDENCE, RI RALEIGH-DURHAM, NC RICHMOND, VA SACRAMENTO, CA SAN DIEGO, CA SAN FRANCISCO, CA SEATTLE, WA STAMFORD, CT WASHINGTON DC REGION WHITE PLAINS, NY
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May 22, 2012

**VIA ELECTRONIC DELIVERY, E-FILING, AND U.S. MAIL**

Olivia Garcia  
Regional Director  
National Labor Relations Board  
Region 21  
888 South Figueroa St., Ninth Floor  
Los Angeles, CA 90017-5449

Re: The Vintage Club  
Case No. 21-CA-077097

Dear Ms. Garcia:

This letter sets forth the statement of position of The Vintage Club ("Vintage Club" or "Employer") in the above matter in response to the letter of May 4, 2012 from Board Agent Luis Anguiano that we did not receive until May 7.<sup>1</sup> This letter responds only to those allegations about which we have been specifically advised. Any allegation not specifically addressed is denied.<sup>2</sup>

The instant charge was filed by Laborers International Union of America, Local 1184 ("Charging Party" or "Union"), which the Union previously filed and withdrew on March 13. As Mr. Anguiano stated in his letter of May 11, the Charging Party alleges the Vintage Club engaged in 10 separate violations of Section 8(a)(1) of the Act.<sup>3</sup> All of the allegations are without merit and are another attempt by the Union to harass the Employer after losing the election on March 9.<sup>4</sup> Indeed, it is clear the Charging Party is

<sup>1</sup> The Region has inexplicably been sending correspondence in this case to our firm's Omaha office. Although we have corrected this matter on two prior occasions, the Region continues this practice. We recently filed a second notice of appearance and anticipate this will resolve the problem.

<sup>2</sup> The information set forth in this letter is based on our preliminary investigation and reflects our understanding of the events revealed and their relevance to your inquiry. Moreover, this letter includes only information of which we and our client are aware at this time. We and our client reserve the right to supplement, modify or correct the record, at any time, with additional or newly-discovered information.

<sup>3</sup> Four of these allegations—i.e., (b), (e), (f), and (g)—are identical to the Union's Objections to the Election.

<sup>4</sup> It is worth noting that our firm has argued in other matters before the Region that this Union has a penchant for abusing the NLRB's processes and procedures. We intend to file charges and provide evidence in support of that contention.



abusing the process and procedures of the National Labor Relations Board ("Labor Board") by alleging anything to "see what sticks." Nevertheless, the Vintage Club hereby responds to each of the Union's allegations.

In addition, in your letter of August 2, you asked for the Employer's position on possible 10(j) injunction relief. The Union has not asked for such relief. Moreover, it is unclear to the Vintage Club why the Region would seek an injunction because the Union has not alleged any unfair labor practices—such as a termination or unilateral change—that would necessitate such a remedial order. Moreover, the Employer lawfully won the election and a remedial order would be inappropriate.

### **I. General Background**

The Vintage Club is a non-profit, full-service country club located in Indian Wells, CA. It employs approximately 65 grounds and facility maintenance employees. Lane Stave is the Golf Course Superintendent and is responsible for all of the general duties described under section 2(11) of the National Labor Relations Act ("NLRA" or "Act"), including the hiring, disciplining, and discharging of employees.

Brian Duvall, Mountain Course Superintendent, Timothy Hardy, Equipment and Facilities Supervisor, and Gerad Nelson, Desert Course Superintendent, report to Stave and are responsible for overseeing the day-to-day activities of their respective employees. They do not possess any section 2(11) duties. Duvall, Hardy, and Nelson occasionally assist Stave in the investigation of disciplinary matters. However, Stave conducts all of the interviews and makes the determination regarding the level of employee discipline, if any.

On February 2, 2012,<sup>5</sup> the Charging Party filed a petition seeking representation of the Employer's full-time and part-time Landscape Foremen, Landscapers, Landscapers/ Spray Technicians, Golf Course Landscapers, Golf Course Landscapers/ Tree Trimmers, Mechanics, Machine Operators, Machine Operators/ Spray Technicians, Irrigator Foremen, and Irrigators. The parties—including the Union—agreed that none of the aforementioned employees were supervisors, and as a result, signed an election agreement on February 16.

Board Agent Al Medina conducted an election in this matter on Friday, March 9, wherein 32 employees voted against the Union, 27 voted for them, and four employees' votes were challenged by the Union. The NLRB's Tally of Ballots demonstrated that the Employer won the election. The Union filed objections to conduct that allegedly affected the results of the election.<sup>6</sup>

The Union filed five untimely objections, all of which are without merit. As noted herein, the Union refiled four of those five objections as unfair labor practices. On March 25, the Vintage Club submitted to the Region a position statement in response to those allegations.

<sup>5</sup> All dates hereafter occurred in 2012 unless otherwise stated.

<sup>6</sup> The Vintage Club has filed various objections to the timeliness of the Union's objections. The Employer maintains the Charging Party failed to timely object.

## II. Employer's Responses to Union's Unfair Labor Practice Allegations

### Allegation (a):<sup>7</sup> Tim Harder Prevented Pro-Union Mechanics from Leaving the Work Area

The Union alleges that in March 2012, Tim Harder changed mechanics' working conditions by prohibiting pro-union supporters from leaving the shop while allowing union supporters to move about freely. The Union's allegation is simply without merit.

Harder is not a statutory supervisor. He does not perform any of the required indicia under section 2(11) of the NLRA. It is Stave, not Harder, who hires, fires, transfers, and disciplines employees. Although Harder assists Stave with the investigation of employee discipline, his actions are ministerial. It is Stave who does the investigation, determines the level of employee discipline, and then issues his decision to the affected employee.

Moreover, the Union's allegation is inaccurate. Harder did nothing more than direct the employee to perform his assigned work duties. The Vintage Club assumes the Union is referring to mechanic Alejandro "Alex" Viurquez, who specializes in small machine repair. The small machines are located in the shop. Consequently, Viurquez must spend a large amount of his time in the shop to complete his work. In the three weeks prior to the election, Viurquez spent an unusual amount of time away from his work area for unexplained reasons. Harder simply told Viurquez to do his job. Viurquez' alleged union activity—if any—played absolutely no role in Harder's instructions.

### Allegations (b): On March 9, Stave Directed Employees to the Voting Site

The Union also alleges that on March 9, Stave held a meeting with eligible voters and segregated them into voting units. Their allegation is identical to Union Objection No. 1.

As the Employer stated in its position statement to the Region on March 25, Stave simply notified the employees that he was going to release them to vote in groups based on where they were working. The employees work in different locations of the facility—referred to as the Mountain and Desert areas—and the Employer regularly releases them as a group. For example, every day Stave releases the Desert group for lunch at a different time than the Mountain group. At no point did he ever tell employees that they had to vote. Indeed, the Union fully agreed to this method of releasing voters when the parties entered into the Stipulated Election Agreement.

The Vintage Club is unaware of any case law prohibiting an employer from releasing its employees by department to vote. Indeed, Section 11330 et seq. of the NLRB Casehandling Manual, Part 2, Representation Proceedings, provides that arrangements should be made to release employees to vote to avoid "(a) undue disruption of production and (b) upsetting of the regular voting flow." The Union cannot establish any affect on the election because all of the eligible voters submitted a ballot.

<sup>7</sup> The allegation letters correspond with the ones Mr. Anguiano provided in his letter of May 4.



*Allegations (c) and (i): In February, Employee Juan Renteria Coerced, Interrogated, and Threatened Employees*

The Union also contends that employee Juan Renteria coerced, interrogated, and threatened employees regarding their union activity. More specifically, the Charging Party alleges that on February 10, Renteria interrogated and coerced an unnamed employee about whether they had attended a meeting the prior evening. They further contend that sometime in February, Renteria threatened eligible voters with a loss of jobs and benefits.

Renteria is neither a statutory supervisor nor agent. He is a machine operator and reports to Bryan Duval. He does not oversee anyone's work. He does not perform any of the section 2(11) duties nor is he empowered to do so. The Vintage Club has never held him out as an agent. Thus, the Employer cannot be imputed with any statements he made to any employee, if any.

Moreover, the Employer is completely unaware of any conversations Renteria may have had with others about any matter involving the Union. The Employer did not ask him to do this, nor did it condone his behavior. Indeed, Renteria's conversation with a co-worker constituted nothing more than a protected conversation under the Act.

*Allegation (d): In Early February 2012 the Employer Granted Employees a Wage Increase in Order to Dissuade Them From Voting for the Union.*

The Union further contends that in early February 2012 the Vintage Club granted employees a wage increase to dissuade them from voting for the Union on March 9. The Employer is completely befuddled by the Union's allegation. Its Board of Directors approved a wage increase in late 2011. It then implemented the increase on January 2, which showed up on employees' paychecks two weeks later. The Union did not even file a petition in this matter until February 2, months after the Employer decided to grant the increase. The Vintage Club was wholly unaware of any union activity prior to its decision. Accordingly, it would have been impossible for it to grant a wage increase to dissuade how unit employees voted in the election.

*Allegations (e), (f) and (h): In March, the Employer by Employees Ulyses Zendejas and Lily \_\_\_ Electioneered and Surveilled Voters As They Entered the Polling Site*

The Charging Party also contends that on March 9 employees Ulyses Zendejas, an irrigator, and Lilia Aldaz,<sup>8</sup> a housekeeper, engaged in electioneering at the polls by telling pro-union supporters that if they wanted to be in a union they should go and work at a unionized facility (i.e., the El Dorado Country Club) and engaged in surveillance of employees walking into the polling area. The Charging Party further contends that on some date in March, Zendejas and Aldaz engaged in surveillance by videotaping employees and union organizers handing out fliers at the Employer's gate.

Much like Renteria, Zendejas and Aldaz, are neither supervisors nor agents as defined under the Act. The Vintage Club is again confused why the Union would contend that two eligible voters—who have

<sup>8</sup> The Board Agent did not provide this employees' last name. However, the Employer believes the Charging Party is referring to Lilia Aldaz.



absolutely no direct reports—could somehow be statutory supervisors. The Employer is wholly unaware of any conduct these employees engaged in on the day of the election as they were nowhere near the voting area when the polls were open. (See declarations provided by Stave, Al Castro, and Robert Murphy in support of position statement dated March 25.) It has also never held these employees' out as its agents.

In regards to the alleged videotaping, the Employer was unaware that employees Zendejas and Aldaz were going to engage in such behavior and never condoned it. The Vintage Club understands that Zendejas and Aldaz engaged in the alleged videotaping on a public sidewalk after their shift was over. Accordingly, the Employer had no obligation to stop them (nor could it, as the employees were engaged in protected, concerted activity).

*Allegation (g): In February, Employee Frederico Chavez Threatened Employees to Work for another Company.*

The Union further claims that in February, mechanic Frederico Chavez "threatened" bargaining unit employees by telling them they were ungrateful, did not belong there, and that they should go work for another Company. Again, Chavez—who has no direct reports—is neither a statutory supervisor nor agent and his alleged behavior cannot be imputed to the Employer.

Moreover, it appears that the Union is wholly unaware of what constitutes a violation of section 8(a)(1). Even if Chavez was a supervisor and/or agent—which he is not—his actions would have been protected under Section 8(c) of the NLRA. Under Section 8(c):

The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of this Act, if such expressions contains no threat of reprisal or force or promise of benefit.

Telling employees that they are ungrateful and should go and work for another company is not a threat of reprisal, force, or promise of a benefit. The statement constitutes nothing more than an opinion protected under Section 8(c).

*Allegation (f): In February and March 2012, Employees Juan Renteria and Felipe Terrazas Solicited Employees to Sign a Decertification Petition and Threatened Discharge if They Refused to Sign.*

Finally, the Charging Party alleges that employees Renteria and Felipe Terrazas solicited employees to sign a decertification petition and, if they failed to do so, threatened disciplinary action. As already discussed herein, Renteria is neither a statutory supervisor nor agent. The same is true of Terrazas, who is an irrigator foreman, but possesses absolutely no section 2(11) duties. The Vintage Club neither condoned nor assisted either employee in the creation or circulation of the petition. It had no actual knowledge that the petition even existed until Board Agent Anguiano informed them about it in his letter of May 4. Accordingly, the Employer was not responsible for the circulation of the petition and, therefore, did not violate the Act.

### III. 10(j) Injunctive Relief Is Completely Unwarranted In This Matter

The Regional Director also requested the Employer's position on whether a preliminary injunction against the Company is appropriate under Section 10(j) of the Act while the Board's possible proceedings on the unfair labor practice charges are underway. There is neither a legal nor factual basis for such an injunction.

Section 10(j) relief is an extraordinary remedy that will be granted only in situations where the effective enforcement of the Act is threatened by delays inherent in the Board's dispute resolution process. Szabo v. P\*I\*E\* Nationwide, Inc., 878 F.2d 207, 209 (7<sup>th</sup> Cir. 1989). In considering a request for 10(j) relief, the Ninth Circuit determines whether the requested relief is "just and proper." Miller v. California Pacific Med. Ctr., 19 F.3d 449, 456 (9<sup>th</sup> Cir. 1994). The just and proper standard incorporates traditional equitable principles for determining whether to grant a preliminary injunction. Those factors include the: (1) likelihood of the Board's success on the merits; (2) possibility of irreparable injury; (3) balance of hardships between the parties; and (4) whether the public interest will be advanced by the granting of injunctive relief. Id. at 456. These equitable principles should be applied in light of the purpose of this provision of the Act, which is to protect the integrity of the collective bargaining process and preserve the Board's remedial powers. Id. at 461.

The General Counsel is unlikely to succeed on any of the Charging Party's allegations. As the Employer has argued in its position statement, the Union's charges are wholly without merit. The Vintage Club has not engaged in any violations of the Act. It fully anticipates the Regional Director will dismiss the Union's allegations in their entirety.

With respect to the second factor enunciated by Miller, the "possibility" of irreparable injury to the petitioner, recent Ninth Circuit authority states that the 15-year-old Miller standard is no longer valid and should be higher. In American Trucking Ass'n v. City of Los Angeles, 559 F.3d 1046 (9<sup>th</sup> Cir. 2009), the court held there must be an actual "likelihood" of irreparable injury. Id. at 1052. In doing so, the Ninth Circuit followed a recent Supreme Court case, Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 172 (2008). Said the Ninth Circuit, "As the [Supreme] court explained, an injunction cannot issue merely because it is possible that there will be an irreparable injury to the plaintiff; it must be *likely* that there will be." American Trucking, 559 F.3d at 1052. (Emphasis added.)

In any event, the Region cannot establish that the Charging Party will "likely" or "possibly" suffer irreparable injury if it does not seek an injunction. It is my understanding the Region is considering the possibility of 10(j) because there has been an election in this matter. However, the appropriate process for resolving election misconduct is through the objections process, which the Union is currently pursuing.

In addition, the Charging Party has not alleged any hallmark violations such as the discharge of union activists or threats to shut down the facility. There is simply no possibility of irreparable harm worthy of a 10(j) injunction.

On the other hand, the Employer would suffer extreme hardship if it had to operate under a remedial order. It would be forced to spend money on legal fees and expenses to defend against the injunction.



Finally, as to the "public interest" in the issue, that interest is "to ensure that an unfair labor practice will not succeed because the Board takes too long to investigate and adjudicate the charge." Scott v. Stephen Dunn & Assoc., 241 F.3d 652, 657 (9<sup>th</sup> Cir. 2001). There is no evidence of any unfair labor practices at all, let alone some nefarious attempt on the part of the Employer to frustrate the Labor Board's election process. There is no threat of remedial failure. If an injunction were proper in this case, it would be proper in virtually all unfair labor practice proceedings—which is plainly not the law. See Weinberger v. Romero-Barcelo, 465 U.S. 305, 312-313 (1982) (Injunction is an equitable remedy that does not issue as a matter of course; "a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of the law.")

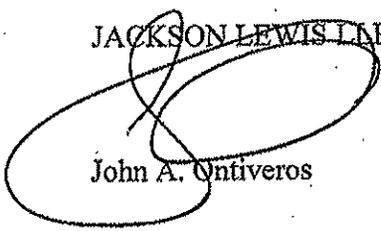
Accordingly, General Counsel should not seek a 10(j) injunction in this matter.

\* \* \*

For the foregoing reasons, no violations have been established and all of the charges should be dismissed, absent withdrawal. Also, 10(j) injunctive relief is not appropriate in this matter and should not be sought. Please call should you have questions or need further information.

Very truly yours,

JACKSON LEWIS LLP



John A. Ontiveros

JAO/jf

# **EXHIBIT E**



1 and Jesus Munoz (herein the 4 employees). They are all Irrigators. No other employees are  
2 under me.

3 A typical day for me involves reporting to work at 6:00 a.m. I punch in like other  
4 employees by inputting my number into the computer. Stave, Duval and Nelson don't have to  
5 punch in. After that, I go to the computer and check on both golf courses. In this regard, I  
6 check a field log to see if everything ran ok the previous night. The computer gives me a  
7 report as to whether anything went wrong like a power outage. I then reset the clocks if  
8 necessary. After this, I got to Building "C" for our usual morning meeting. Everyone attends  
9 this meeting, including irrigators, landscapers, etc. The daily morning meetings are conducted  
10 by Gerard Nelson Bryan Duval or Lane Stave, most frequently by the latter. I sometimes  
11 conduct the meetings once a week, on weekends, when there is no one else around.  
12 However, conducting the meeting involves reading what has already been written on the  
13 board. Usually, Stave, Duval or Nelson will write on the board what is the needed for the  
14 following day. I never write on the board. When Stave conducts the meeting, Duval and  
15 Nelson stand next to him. I stand nearby in case something is needed but not next to him.  
16 The board consists of 3 sections: Mountain, Desert and Landscape. Irrigation department is  
17 not included. However, all irrigators have to be present at the meeting in case something is  
18 needed. Everyone is required to be present at the daily meetings. There are approximately 60  
19 employees. Irrigators, including myself, sometimes are called to help clean the range and  
20 clean cart parts, clean streets, clean ~~the ground electric pumps~~ <sup>pump stations and well pumps F.T.</sup>, pick up trash and other basic  
21 duties. The daily meetings last between 5 and 10 minutes. Again, when I conduct the  
22 meetings on a weekend, I will remind people of their duties per the instructions on the Board.  
23 We have to do this because some people have problems following instructions. After the daily

F.T.

1 meetings, I go out and check irrigation. I drive the cart and make some inspections. I will  
2 check the pump stations and the nines. The 4 employees do the same. They get on their  
3 carts, do some inspecting and then proceed to work in their assigned areas. Ulyses Zendejas  
4 and Gabriel Lopez team up to work on the Mountain area while Jesus Vasquez and Jesus  
5 Munoz work in the Desert area.

6 I stay outside most of the day. I will go to the office about 2 times per day, in the  
7 morning to check the computer, and in the afternoon before I go home, in order to reset the  
8 irrigation timers. If I need to order parts, I will go in there, too. I don't have a desk. The  
9 irrigation computers are located in the supervisor's office. Stave and Duval share that office.  
10 That's where the computers for irrigation are kept. Anyone, including the other irrigators, can  
11 go in there. We all share the space. The parts that I order include tees, pipes, sprinklers, wire,  
12 valve, etc. I order them as needed. We keep some materials in stock; they are kept in the  
13 irrigation room, located in Building "C." The other 4 employees can order parts. However, we  
14 have to ask Superintendent Stave if the amount is significant. We are given a monthly sheet  
15 with the budget for irrigation. If we go over the amount, we need to consult with Stave. I  
16 mainly do the orders, but other irrigators can do that if I am not around.

17 I cannot fire, hire, transfer, suspend, lay off, promote, discharge. I can assign  
18 employees to do things based on what I am told by Superintendent Stave. I do prioritize the  
19 work of the 4 employees. I do not reward or discipline employees. Stave does that. Stave is  
20 always watching us, always communicating with us, he's always around. I have never been  
21 formally disciplined by Stave. However, a long time ago, I don't recall the date, he <sup>gave me</sup> ~~warned~~ <sup>FT</sup> me a  
22 because I didn't turn on the right water. I am not sure if that ~~warning~~ verbal warning went <sup>warn</sup>

1 into my personnel file. I have never reported employees to Stave. We have a tight crew in  
2 irrigation. I don't adjust employee's schedule or their grievances.

3 Bryan Duval and Gerard Nelson are Assistant Superintendents. They are supervisors.  
4 I don't consider myself a supervisor. The 4 employees are not supervisors. Duval, Stave and  
5 Nelson do not punch in when they get in and out of work like we do. They are paid on a salary  
6 basis. I am paid on an hourly basis. I make 20.63 dollars per hour. I don't attend supervisory  
7 meetings. I believe that supervisory meetings are held once a week. I don't know the place  
8 and time or dates they meet. Duval, Stave and Nelson interview candidates for employment; I  
9 have never interviewed candidates for employment. Duval, Stave and Nelson can fire and  
10 discipline employees. I am not sure if they can promote employees. They can assign work. I  
11 believe only Stave can transfer employees. I am not involved in the hiring process  
12 whatsoever. I do not recommend someone to be hired. I do not assess the technical skills or  
13 abilities of employees. Our work is very hands-on and most learn as we go.

14 While my main report contact is Stave, sometimes I report to Duval and Nelson. In this  
15 regard, if I need help, I will usually ask them for a guy or two. Sometimes, Duval and Nelson  
16 will tell me what to do. For example, they will tell me to turn off this water or turn off that water,  
17 etc. They could order me to do things without consulting with Stave. They have never  
18 disciplined me, but I believe they could. They could supervise me, but Stave is very hands-on  
19 with us in irrigation, so there is not much need for their supervision of us. Also, Stave has  
20 more knowledge regarding irrigation. Stave give me my evaluation. He determines my wage  
21 increases. Again, I don't promote or reward employees, including grating time off or overtime.  
22 I cannot authorize overtime. If employees need additional time to complete a project, I will ask  
23 Stave for permission. The employees will usually talk to me or go directly to Stave, whoever is

1 around. Because we work in a big area, sometimes it can become difficult to find people.  
2 Ultimately, however, only Stave can authorize overtime. I don't grant sick leave or vacation  
3 leave. Stave does that. If an employee is sick, they call the office. If no one picks up, they will  
4 leave a message. Messages are retrieved by Duval and Nelson. I will do it once a week, on a  
5 weekend when no other supervisor is around to see if someone is missing.

6 Stave puts together the vacation schedule. If an employee is asked to stay and work  
7 overtime they have to stay. I don't tell them they have to stay. I don't know how wage benefits  
8 and bonuses get determined. I have no say in that decision. I don't evaluate the 4 employees.  
9 Stave does that. He knows the guys. Stave and I know the 4 employees about the same. I  
10 don't give Stave my opinion as to the work performance of the 4 employees to help him write  
11 his evaluation. Stave meets with us as a group to communicate what is expected of us. He  
12 warns us of incidents. He communicates closely with us. He does not meet with me  
13 separately so that I can convey messages with the 4 employees.

14 If the 4 employees need help, I will help them. If I am unable to help them, I will ask  
15 Duval or Nelson for help. Employees are also able to contact Duval or Nelson or Stave  
16 directly. I am a foreman because I have more knowledge than most with respect to irrigation  
17 and because of my seniority. Also, I have a bit more schooling than the other guys and I am  
18 perhaps trusted more as a result. But I am a working foreman. I offer support if the 4  
19 employees need it. I also provide guidance in their job functions as needed. Generally,  
20 employees will come to me because of my 31 years seniority. They might perceive me as a  
21 supervisor but it's more because of my seniority rather than supervising authority.

22 I wear a uniform to work. Currently, I wear a white shirt with gray stripes, navy blue  
23 pants and a maroon hat. The 4 employees wear the same uniform. Duval and Nelson wear a

T.T.

1 uniform but it is different from ours. In this regard, theirs is slacks, polo shirt with a Vintage  
2 logo and golf shoes with flat bottoms.

3 The 4 employees are already assigned to their areas. I can't change their work areas.  
4 If one is missing and I need help in one area, I will usually do the work. If I'm busy, I will ask  
5 Nelson or Duval for help. I inspect the work of the 4 employees in irrigation, just to make sure  
6 it was done properly. As irrigation involves hydraulics and pipe sizing, they usually need  
7 support from me.

8 I have done some training, but usually when an employee is just starting. The training  
9 is hands-on. I don't develop training courses or any written materials. Our work is very hands-  
10 on.

11 If one of the 4 employees makes a mistake, we both get disciplined because it usually  
12 means that we both failed to communicate. However, I have never been disciplined and I am  
13 not aware that any of the 4 employees have been disciplined either. Usually, if a mistake  
14 happens, Stave will just talk to us. He also communicates with us frequently and alerts us as  
15 to how we can avoid making mistakes.

16 I believe my benefits are the same as other employees. I don't have access to parts of  
17 the facility that other employees don't have access to. I do get a free lunch at the cafeteria.  
18 Years ago, about 15 years ago, the then Superintendent said that I could get a free lunch. He  
19 did not say why. It could be because of my seniority or position at the company, I don't know.  
20 He didn't say. Since then I have always received a free lunch. Other employees don't get a  
21 free lunch. My hours are the same as other employees.

22 I sometimes act as an interpreter for the Employer from English to Spanish and vice  
23 versa when Supervisors are communicating with employees. Landscape Head Florentino

1 Reyna used to do the interpreting quite frequently. If he's not around, then I will do it. If I'm  
2 not around anyone who speaks both languages well could do it.

3 I usually work one day every weekend. On that day, I will clock in as usual. I will then  
4 conduct the daily meeting by reading to employees what's on the board. One of the  
5 supervisors writes what needs to be done that day the night before. Sometimes we work 8  
6 hours on weekends and sometimes we work half a day or 4 hours. The work is the same.  
7 Employees on that day will come to me for help with respect to various issues. If something  
8 needs to be done, it's all on the board, so I usually refer to that to remind employees what their  
9 jobs are. I don't make any decisions. If something comes up, I contact Stave, Duval or Nelson  
10 by telephone. I don't fill out a report as to what happened over the weekend. I report issues to  
11 the supervisors as soon as they happen.

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- 1 I don't have access to knowledge, data or records of employees.
- 2 That is all that I recall at this point.

I am being provided a copy of this Confidential Witness Affidavit for my review. If, after reviewing this affidavit again I remember anything else that is relevant, or desire to make changes, I will immediately notify the Board agent. I understand that this affidavit is a confidential law enforcement record and should not be shown to any person other than my attorney or other person representing me in this proceeding.

I have read this statement consisting of 8 pages, including this page, I fully understand its contents, and I certify that it is true and correct to the best of my knowledge and belief.

Felipe Tenagan

Subscribed and Sworn before me at

Los Angeles, California

This  18th  day of  July , 2012

Luis Anguiano   
 Board Agent, Luis A. Anguiano  
 National Labor Relations Board

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 October 26, 2012, I served true and correct copies of **RESPONDENT'S REQUEST**  
8 **FOR SPECIAL PERMISSION TO APPEAL AND APPEAL FROM THE REGIONAL**  
9 **DIRECTOR'S REPORT ON OBJECTIONS, AND ORDER CONSOLIDATING CASES,**  
10 **AND NOTICE OF HEARING** in this 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](mailto:carlosp@rac-law.com)

Michael Dea, Business Rept  
Laborers' International Union of North  
America, Local 1184, Laborers' International  
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15 Alvaro Medina, Board Agent  
16 Region 21  
17 888 South Figueroa Street, 9<sup>th</sup> Floor  
18 Los Angeles, CA 90017-5449

Region 21  
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Fax: (213) 894-2778

19 Email: [alvaro.medina@nlrb.gov](mailto:alvaro.medina@nlrb.gov)

E-mail: [NLRBRegion21@nlrb.gov](mailto:NLRBRegion21@nlrb.gov)  
*Regional Director: Olivia Garcia*

- 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  
October 26, 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).

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

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

  
\_\_\_\_\_  
Kimberly Coddington

4848-7048-4753, v. 1