

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

**OPPOSITION TO REGIONAL DIRECTOR'S MOTION TO REJECT  
EMPLOYER'S EXCEPTIONS AND BRIEF IN SUPPORT OF EXCEPTIONS TO  
THE REGIONAL DIRECTOR'S REPORT ON OBJECTIONS AND ORDER  
CONSOLIDATING CASES AND NOTICE OF HEARING**

**I. INTRODUCTION**

The Vintage Club ("Vintage" or "Employer") hereby submits this Opposition to General Counsel's Motion to Rejection Employer's Exceptions and Brief in Support of Exceptions to the Regional Director's Report on Objections, and Order Consolidating Cases, and Notice of Hearing ("Motion"). The Regional Director's Motion fails because Vintage is permitted by the Rules and Regulations of the National Labor Relations Board to file Exceptions to her Report on Objections, Order Consolidating Cases, and Notice of Hearing ("Report"). Moreover, the Employer has filed a Request for Special Permission to Appeal and Appeal of the Regional Director's Report and, thus, the Motion is moot.

## **II. PROCEDURAL BACKGROUND**

The Laborers' Pacific Southwest Regional Organizing Coalition, Laborers' International Union of North America, AFL-CIO ("Union") filed a petition for representation in this case on February 2, 2012.<sup>1</sup> Regional Director Olivia Garcia ("Regional Director") held an election in this matter on March 9, wherein she issued a Tally of Ballots demonstrating that the Union did not receive a majority of the ballots cast. On March 16, the Union filed objections to the election.

The Regional Director issued her Report on September 28, wherein she concluded that three of the Union's five objections raised substantial and material issues of fact. She ordered that an administrative law judge hear the objections in conjunction with the Union's unfair labor practice allegations in case no. 21-CA-077097.

On October 12, the Employer timely and properly filed Exceptions and a Brief in Support of Exceptions to the Regional Director's Report. The Union never replied to the Employer's Exceptions. The General Counsel filed its Motion on October 25. Vintage hereby opposes the Motion.

## **III. ARGUMENT**

### **A. The Employer is Entitled under Sections 102.69(c)(2) and (4) of the Board's Rules and Regulations to file Exceptions to the Regional Director's Report.**

The Regional Director's contention in her Motion that the Employer does not have a right to take exception to her Report under the Board's Rules and Regulations is without merit. Section 102.69(c)(1) of the Boards Rules and Regulations states that the Regional Director is vested with the authority to conduct an investigation on timely filed objections. After concluding her investigation, the Regional Director is required to "issue[] a report on objections and

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

challenges” whereafter “the parties shall have the rights set forth in paragraph [102.69](c)(2)” to file exceptions within 14 days of the date of the Report. NLRB Sections 102.69(c)(2) and (4).

In this matter, the Regional Director issued her Report on September 28, wherein she determined that two of the Union’s objections had merit and warranted a hearing. She also concluded that the Union’s unfair labor practices—which the Union filed three days after filing its objections—were properly submitted as evidence in support of its final, catch-all objection. The Employer timely filed Exceptions and a Brief in Support of its Exceptions challenging the Report on October 12. (The Union never replied to the Employer’s Exceptions.)

The Regional Director contends the Employer was not permitted to take exceptions to her Report. However, she does not cite to any authority. The Rules and Regulations unequivocally state, as discussed above, that a party may take exception to a Regional Director’s Report within 14 days after being issued. The Employer is unaware of any case law or rule limiting its ability to file exceptions in this case.

The Vintage took exception to the Regional Director’s rationale in her Report that the Union’s objections raised material and substantial issues of fact. Generally, a Regional Director is required to dismiss objections where the Union has not provided any evidence in support of them. Section 11394.3 of the Board’s Casehandling Manual reads, in pertinent part:

...

The Regional Director should clearly set forth in the report or supplemental decision the objective factors demonstrating that the election should or should not be vacated. *Where the Regional Director, having obtained the facts alleged by the parties, concludes that there are no disputed facts or that objections can be resolved without the need to resolve disputed facts; or where the Regional Director in effect assumes the facts alleged in the objections but concludes as a matter of law that the facts do not present substantial grounds for setting aside the election, a report or supplemental decision should issue and no hearing is required.*

NLRB v. Air Control Products of St. Petersburg, Inc., 335 F.2d 245 (5<sup>th</sup> Cir. 1964); Whitney Museum of American Art, 636 F.2d 19 (2<sup>nd</sup> Cir. 1980).

(Emphasis added.)

As more fully discussed in the Employer's Exceptions, Vintage contends that the Regional Director failed to follow this rationale and improperly ordered the Union's objections to a hearing. Accordingly, the Regional Director's Motion is without merit.

**B. The Regional Director's Motion is Moot and Should Be Dismissed as the Employer Filed a Request for Special Permission to Appeal and Appeal to the Regional Director's Report.**

In her Motion, the Regional Director contends the only way the Employer could appeal her Report is through a special appeal to the Board. Vintage respectfully disagrees with her interpretation of the Board's Rules and Regulations. Nevertheless, on October 26, the Employer timely filed and served a Request for Special Permission to Appeal and Appeal of the Regional Director's Report. Accordingly, the Regional Director's Motion is moot and should be dismissed.

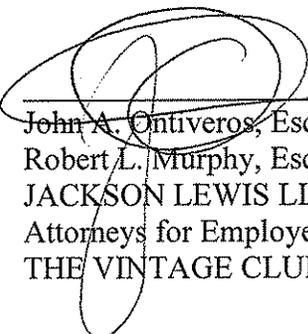
**IV. CONCLUSION**

Based on the foregoing, the Employer requests the NLRB dismiss the Regional Director's Motion.

Respectfully submitted this 29<sup>th</sup> day of October, 2012.

JACKSON LEWIS LLP

BY:

  
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Attorneys for Employer  
THE VINTAGE CLUB

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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 29, 2012, I served true and correct copies of **OPPOSITION TO**  
8 **REGIONAL DIRECTOR'S MOTION TO REJECT EMPLOYER'S EXCEPTIONS AND**  
9 **BRIEF IN SUPPORT OF EXCEPTIONS TO THE REGIONAL DIRECTOR'S REPORT**  
10 **ON OBJECTIONS AND ORDER CONSOLIDATING CASES AND NOTICE OF**  
11 **HEARING** in this action as follows:

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*Regional Director: Olivia Garcia*

- 21  by transmitting via facsimile or electronic notification the document(s) listed above to  
22 the fax number or electronic address set forth above on this date before 11:59 p.m.  
23  by placing the document(s) listed above in a sealed envelope with postage thereon fully  
24 prepaid, in United States mail in the State of California at San Diego, addressed as set  
25 forth above.  
26  **BY PERSONAL SERVICE.** I caused said documents to be hand-delivered to the addressee on  
27 October 29, 2012, via First Legal Services, pursuant to Code of Civil Procedure §1011.

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**BY FEDERAL EXPRESS.** I deposited said document(s) in a box or other facility regularly maintained by the express service carrier providing overnight delivery pursuant to Code of Civil Procedure §1013(c).

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

Executed on October 29, 2012 at San Diego, California.

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

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