UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LIFESOURCE

and **CASE 13-CA-91617**

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS

COUNSEL FOR THE ACTING GENERAL COUNSEL'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Sections 102.24 and 102.50 of the Rules and Regulations of the National Labor Relations Board, Counsel for the Acting General Counsel moves to transfer this case to the Board and moves for summary judgment. Respondent Lifesourece has refused to bargain with Local 881, United Food and Commercial Workers (the "Union") in order to test the Board's recent certification of that Union as the exclusive collective bargaining representative of Respondent's drivers. Thus, the case presents no genuine issues as to any material fact and the Acting General Counsel is entitled to judgment as a matter of law.

In support of this Motion, Counsel for the Acting General Counsel states the following:

1. On February 17, 2012, in Case 13-RC-74795, the Union filed a Petition pursuant to Section 9(c) of the Act seeking to represent all regular full-time and part-time sales associates employed by Respondent at its Rosemont, Illinois facility. A copy of the Petition is attached as Exhibit 1.

2. Pursuant to the parties' Stipulated Election Agreement, an election was conducted on March 30, 2012. The Tally of Ballots for the election showed 11 votes were cast for the Union, 9 votes were cast against the Union, 1 void ballot and no challenged ballots. A copy of the Tally of Ballots is attached as Exhibit 2.

3. On April 6, 2012, Respondent filed timely Objections to certain conduct that occurred during the period in which the election polls were opened.

4. On May 7, 2012, the Region issued a Report on Objections overruling Respondent's objections. No hearing was conducted. A copy of the Report on Objections and its attachments are attached as Exhibit 3.

5. On May 21, 2012, Respondent filed exceptions to the Regional Director's determination and supplemented its exceptions also on said date. Copies of Respondent's exceptions and its supplemental exceptions are attached as Exhibits 4 and 5.

6. On September 19, 2012, the Board issued a Decision and Certification of Representative, adopting the Regional Director's findings and recommendations, and certifying the Union as the exclusive collective bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

A copy of the Board's decision is attached as Exhibit 6.

7. Pursuant to the Board's certification, the Union requested to meet and bargain with Respondent over the terms and conditions of employment for the Unit employees in a letter dated October 3, 2012. A copy of this written request is attached as Exhibit 7.

8. In a letter dated October 15, 2012, Respondent refused to bargain with the Union because the union's certification was invalid. A copy of this letter is attached as Exhibit 8.

9. Pursuant to an unfair labor practice charge filed by the Union on October 18, 2012, the Regional Director issued a Complaint and Notice of Hearing on November 1, 2012, alleging Respondent violated Section 8(a)(1) and (5) of the Act by refusing to recognize and bargain with the Union. Copies of the unfair labor practice charge, the Complaint and Notice of Hearing, and affidavits of service for those documents are attached as Exhibits 9 and 10, respectively.

10. On November 15, 2012, Respondent filed an Answer to the Complaint, a copy of which is attached hereto as Exhibit 11.

11. In its Answer, Respondent admitted all allegations of the Complaint concerning its failure to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit and that the basis for its conduct was to test the certification that the Board issued in 13-RC-74795. In its affirmative defenses, Respondent argued that the Union was improperly certified due to the alleged improprieties occurring at the election that had a coercive effect on the election's outcome, the Region's departure from Board policy and procedure, and the Region's failure to conduct a post-election hearing on the objectionable

conduct. All matters raised by Respondent in its Answer were addressed and resolved by the Board in its Decision and Certification of Representative, referred to above.[1]

12. Accordingly, because Respondent seeks to test the Board's certification of the Union, no genuine issues of fact are present in this case and summary judgment as a matter of law for the Acting General Counsel is appropriate.

WHEREFORE, Counsel for the Acting General Counsel respectfully moves that the Board grant the Motion to Transfer Proceedings to the Board and Motion for Summary Judgment, find all of the allegations of the Complaint to be true, and issue an appropriate Decision and an Order requiring Respondent to bargain in good faith with the Union, on request, for the period required by *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized collective bargaining representative in the certified Unit.

DATED at Chicago, Illinois, this 26th day of November, 2012.

Christina B. Hill
Counsel for the Acting General Counsel
National Labor Relations Board
Region 13
209 S. LaSalle St., Suite 900
Chicago, IL 60604
Phone: 312-886-3600
Fax: 312-886-1341
E-mail: Christina.hill@nlrb.gov

[1] Respondent also failed to affirmatively deny or admit the Union's status as a labor organization or its status as the exclusive collective-bargaining representative of the Unit as alleged in paragraph 5 of the Complaint.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion for Summary Judgment has been served this 26th day of November 2012, in the manner indicated, upon the following parties of record:

ELECTRONIC MAIL

Respondent

(Legal Representative)

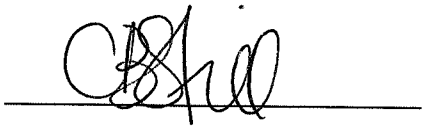
RONALD J. ANDRYKOVITCH, Esq.
COHEN & GRIGSBY, P.C.
625 LIBERTY AVE
PITTSBURGH, PA 15222-3110
Phone: (412)297-4936
Mobile Phone: (724)640-0773
Email: randrykovitch@cohenlaw.com
Fax: (412)209-1847

Petitioner

(Legal Representative)

JONATHAN D. KARMEL
THE KARMEL LAW FIRM
221 N LA SALLE ST
Suite 1307
CHICAGO, IL 60601-1206
Phone: (312)641-2910
Email: jon@karmellawfirm.com
Fax: (312)641-0781

SUSAN GEORGELOS, ADMINISTRATIVE ASSISTANT TO LOCAL PRESIDENT
LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS
10400 W HIGGINS RD STE 500
ROSEMONT, IL 60018-3712
Phone: (847)294-5064
Email: susangeorgelos@881ufcw.org
Fax: (847)759-7109



Christina B.Hill
Counsel for Acting General Counsel
National Labor Relations Board
Thirteenth Region
209 S. LaSalle, Suite 900
Chicago, IL 60604

EXHIBIT 1

INTERNET FORM NLRB-502 (2-08)

FORM EXEMPT UNDER 44 U.S.C.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
PETITION

DO NOT WRITE IN THIS SPACE	
Case No. 13-RC-074795	Date Filed 2/17/12

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

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

1. PURPOSE OF THIS PETITION (If box RC, RM, or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.) (Check One)

- [X] RC-CERTIFICATION OF REPRESENTATIVE - A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.
- [ ] RM-REPRESENTATION (EMPLOYER PETITION) - One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner
- [ ] RD-DECERTIFICATION (REMOVAL OF REPRESENTATIVE) - A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.
- [ ] UD-WITHDRAWAL OF UNION SHOP AUTHORITY (REMOVAL OF OBLIGATION TO PAY DUES) - Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.
- [ ] UC-UNIT CLARIFICATION- A labor organization is currently recognized by Employer, but Petitioner seeks clarification of placement of certain employees. (Check one) [ ] In unit not previously certified [ ] In unit previously certified in Case No. _____
- [ ] AC-AMENDMENT OF CERTIFICATION- Petitioner seeks amendment of certification issued in Case No. _____ Attach statement describing the specific amendment sought.

2. Name of Employer: LifeSource	Employer Representative to contact: Diane Merkt	Tel. No. 847-298-9660
3. Address(es) of Establishment(s) involved (Street and number, city, State, ZIP code): 5505 Pearl St., Rosemont, IL 60018		Fax No.
4a. Type of Establishment (Factory, mine, wholesaler, etc.): Sales	4b. Identify principal product or service: coordinates blood drives	Cell No.
		e-Mail

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

Included: All regular full-time and part-time sales associates

Excluded: All supervisors and security guards as defined in the Act

6a. Number of Employees in Unit: Present 22; Proposed (By UC/AC)

6b. Is this petition supported by 30% or more of the employees in the unit?* [X] Yes [ ] No
*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER Item 7a or 7b, whichever is applicable)

7a. [ ] Request for recognition as Bargaining Representative was made on (Date) _____ and Employer declined recognition on or about (Date) _____ (If no reply received, so state)

7b. [ ] Petitioner is currently recognized as Bargaining Representative and desires certification under the Act.

8. Name of Recognized or Certified Bargaining Agent (If none, so state): NONE		Affiliation
Address	Tel. No.	Date of Recognition or Certification
	Cell No.	Fax No. / e-Mail

9. Expiration Date of Current Contract, If any (Month, Day, Year): N/A	10. If you have checked box UD in 1 above, show here the date of execution of agreement granting union shop (Month, Day and Year)
11a. Is there now a strike or picketing at the Employer's establishment(s) involved? Yes [ ] No [X]	11b. If so, approximately how many employees are participating? N/A

11c. The Employer has been picketed by or on behalf of (Insert Name) _____ a labor organization of (Insert Address) _____ Since (Month, Day, Year) _____

12. Organizations or individuals other than Petitioner (and other than those named in items 8 and 11c), which have claimed recognition as representatives and other organizations and individuals known to have a representative interest in any employees in unit described in Item 5 above. (If none, so state)

Name	Address	Tel. No.	Fax No.
NONE		Cell No.	e-Mail

13. Full name of party filing petition (If labor organization, give full name, including local name and number): Local 881 United Food and Commercial Workers

14a. Address (street and number, city, state, and ZIP code): 10400 W. Higgins Rd., Suite 500, Rosemont, IL 60018	14b. Tel. No. 847-294-5064 EXT	14c. Fax No. 847-759-7107
	14d. Cell No.	14e. e-Mail

15. Full name of national or international labor organization of which Petitioner is an affiliate or constituent (to be filled in when petition is filed by a labor organization): United Food and Commercial Workers International

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

Name (Print): Jonathan D. Karmel	Signature: Jonathan D. Karmel	Title (if any): Attorney
Address (street and number, city, state, and ZIP code): The Karmel Law Firm, 221 N. LaSalle Street, Suite 1307, Chicago, IL 60601	Tel. No. 312-641-2910	Fax No. 312-641-0781
	Cell No. 708-204-1574	eMail: jon@karmellawfirm.com

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

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary. However, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT 2

FORM NLRB-760
(7-10)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed
Feb 17, 2012

LIFESOURCE
EMPLOYER

AND

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS
PETITIONER

Case No 13-RC-074795

Date Issued 03/30/2012

City ROSEMONT State IL

Type of Election:
(Check one:)

- [x] Stipulation
- [ ] Board Direction
- [ ] Consent Agreement
- [ ] RD Direction
  Incumbent Union (Code)

(If applicable check either or both:)

- [ ] 8(b) (7)
- [ ] Mail Ballot

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows

1 Approximate number of eligible voters 22

2 Number of Void ballots 1

3 Number of Votes cast for PETITIONER 11

4. Number of Votes cast for

5 Number of Votes cast for

6 Number of Votes cast against participating labor organization(s) 9

7 Number of Valid votes counted (sum 3, 4, 5, and 6) 20

8 Number of challenged ballots 0

9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 20

10 ~~Challenges are (not) sufficient in number to affect the results of the election~~

11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for PETITIONER

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above We also acknowledge service of this tally

For EMPLOYER

For PETITIONER

For

EXHIBIT 3

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LIFESOURCE

Employer

and

Case 13-RC-074795
Stipulation

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS
Petitioner

REPORT ON OBJECTIONS

This report contains my findings and recommendations regarding the Employer's objections to conduct affecting the results[1] of the election[2] conducted under the direction of the Regional Director for Region 13 of the National Labor Relations Board on March 30, 2012, among the Employees in the Stipulated Unit[3]. The Employer, on April 6, 2012, filed timely objections to conduct affecting the results of the Election, a copy of which was served on the Petitioner, and a copy of which is attached hereto as Exhibit 1.

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, after reasonable notice to all parties to present relevant evidence, the undersigned conducted an investigation of the Objections, has carefully considered the relevant evidence, and hereby issues this Report on Objections.

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[1] The tally of ballots shows that there were approximately twenty-two eligible voters. Eleven ballots were cast for the Petitioner and nine ballots were cast against the participating labor organizations, one ballot was void, and there were zero challenged ballots.

[2] The election was conducted pursuant to a petition filed on February 17, 2012, and a Stipulated Election Agreement approved on February 29, 2012. The payroll eligibility date for the election was February 25, 2012.

[3] All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility currently located at 5505 Pearl

Objection #1 (Part 1) *During the election on March 30, 2012, the assigned Board Agent failed to maintain the required laboratory conditions by failing to maintain the integrity of the voting area by permitting the Observers to leave the voting place without securing or taping the ballot box.*

The evidence presented by the Employer in support of this objection does show that both observers were allowed to leave the voting location together on two occasions during the election. On the first occasion, both observers were absent from the voting area for approximately ten minutes to go to the cafeteria. The second occasion involved both observers being absent for approximately five minutes while they went to the restroom. During both occasions in which the observers were absent, the Board Agent allowed the ballot box to remain open. No evidence was offered or received that any irregularities occurred during these two times when the observers were absent.

The Board has upheld elections in which election procedures were not strictly followed, but in which there was no reason to doubt the validity of the elections themselves. For example, in ***Sawyer Lumber, LLC***, 326 NLRB 1331 (1998), the employer filed objections alleging, *inter alia*, that the integrity of the election was compromised because during the election, the observers and the Board Agent conducting the election took breaks and left the polling area, leaving the open ballot box in the polling area. The Board found that these allegations "amount to little more than speculation about the possibility of irregularity and, thus, do not raise a reasonable doubt as to the fairness and validity of the election." ***Id.*** at 1332. In the instant case, similarly, there is no evidence presented to suggest that there were any irregularities or the election was otherwise compromised as a result of the unsealed ballot box that was left with the Board Agent.

Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

Objection #1 (Part 2) *During the election on March 30, 2012, the assigned Board Agent failed to maintain the required laboratory conditions by failing to maintain the integrity of the voting area by allowing voters to view the Excelsior list to see who voted.*

The evidence presented by the Employer in support of this objection shows that during the election the Excelsior list was placed in plain view between the two observers sitting at the designated voting table. Voters walked up to the table and pointed out, and on, their names on the Excelsior list being used by the observers to mark employees who had already voted.

In the National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings, under ***Section 1132.12 Procedure at Checking Table***, it states, "At the checking table are a set of observers, who sit behind the table, and a Board agent, who sits at one end. Before them is the part of the voting list applicable to that table. The approaching voters should be asked to call out their names, last names first, as they reach the table. They may also be asked for other identifying information, as necessary. Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity and no one questions his/her voting status, each observer at the checking table should make a mark beside the name. Once a voter has been identified and checked off, the observers —or one of them designated by the others — should indicate this to the Board agent, who will then hand a ballot to the voter."

The actions engaged by the Board Agent as described by the Employer were consistent with the procedure outlined in National Labor Relations Board Casehandling Manual, Part Two, Representation Proceedings. The Employer contends that leaving the voting list in view of voting employees interferes with the free expression of employees' choice. Even assuming an employee did see the list of employees as the Employer asserts, there is no evidence suggesting

that this did, or could have, compromised or interfered with the election or free expression of the employees' choice.

Objection #1 (Part 3) *During the election on March 30, 2012, the assigned Board Agent failed to maintain the required laboratory conditions by failing to maintain the integrity of the voting area by leaving the voting place herself without securing the ballots.*

The evidence presented by the Employer in support of this objection states the following sequence of events pertaining to this objection. Around 11:00 a.m. during the election, the Board Agent stated that she was going to use the washroom. The Board Agent then secured the ballot box by taping the opening of the box and having both observers initial over the tape. The Board Agent left the room with the ballot box for approximately 10 minutes. The observer does not recall if the Board Agent took the unmarked ballots with her. Regardless of the location of the unmarked ballots, neither observer handled any ballots, both observers remained at the polling area table, and no one came in to the polling area during the Board Agent's short absence. When the Board Agent returned, the ballot box was shown to the observers who viewed their initials over the tape, and then the Board Agent removed the tape from the box and voting resumed. The Tally of Ballots that issued at the conclusion of the election did not reflect any discrepancy between the number of ballots cast and the number of employees marked off on the voter eligibility list.

While the Board has ruled that it is better procedure for the Board Agent to retain custody of the unmarked ballots at all times, the evidence in the instant case establishes that during the short time required for the Board Agent to use the restroom facilities, no one observed anyone handling the unmarked ballots. The ballot count as reflected in the Tally of Ballots also fails to

reflect any improper conduct with the ballots as the numbers are consistent with the records of those who voted. Accordingly, there could not have been any effect on the election. ***General Electric Company (Clock and Timer Department)***, 119 NLRB 944 (1957); ***Anchor Coupling Co., Inc.***, 171 NLRB 1196 (1968); and ***International Union of Electrical, Radio and Machine Workers [Athbro Precision Engineering Corp.]*** **v.** ***N.L.R.B.***, 67 LRRM 2361, 57 LC § 12, 440 (D.C.D.C., 1968).

Objections #2 and #3 relate to Objection #1 as discussed above. Objection #4 is a "catch all" objection and the Employer has not offered or presented evidence on any other alleged objectionable conduct beyond what has already been discussed.

CONCLUSION

On the basis of the foregoing, it is the conclusion and the recommendation of the undersigned that Employer Objections be overruled in their entirety, and that a Certification of Representative should issue.[4]

Dated at Chicago, Illinois this 7th day of May, 2012.

/s/ Peter Sung Ohr
Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, Suite 900
Chicago, Illinois 60604

[4] Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by May 21, 2012. Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in this report, are not part of the record before the Board unless appended to the exceptions or opposition thereto that the party filed with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying on the evidence in any subsequent unfair labor practice proceeding.

EXHIBIT 1

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

LIFESOURCE,	)	
Employer,	)	
and	)	
UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 881,	)	**Case 13-RC-74795**
Petitioner.	)	

EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

AND NOW COMES LifeSource, by and through its attorneys Cohen & Grigsby, P.C., and hereby files the following Objections to Conduct Affecting the Results of the Election in the above-captioned case:

1. During the election on March 30, 2012, the assigned Board agent failed to maintain the required laboratory conditions by failing to maintain the integrity of the voting area, by, *inter alia,* (1) permitting the Observers to leave the voting place without securing or taping the ballot box, (2) allowing voters to view the Excelsior list to see who voted; and (3) leaving the voting place herself without securing the ballots.

2. The above actions and inactions of the assigned Board agent violated both the National Labor Relation Boards ("NLRB") Casehandling Manual, Part 2, Representation Proceedings, as well as NLRB Form-722, which governs conduct of Observers during an election.

3. The aforementioned violations were not merely technical violations of NLRB rules and regulations, but also had a material effect on the election as they

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Employer's Objections to Conduct Affecting the Results of the Election has been served via U.S. first class mail, postage prepaid, this 6th day of April, 2012, upon:

Local 881, United Food and Commercial Workers
10400 W. Higgins Rd., Suite 500
Rosemont, IL 60018–3712

Local 881, United Food and Commercial Workers
c/o Jonathan D. Karmel. Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1307
Chicago, IL 60601–1206

s/ Ryan W. Columbo
Ryan W. Columbo

EXHIBIT 4

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIFESOURCE	)	
	)	
and	)	**Cases 13-RC-074795**
	)	
LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS	)	
	)	

RESPONDENT'S EXCEPTIONS TO
REPORT ON OBJECTIONS OF REGIONAL DIRECTOR FOR REGION 13

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board ("Board"), Respondent, LifeSource ("LifeSource" or "Company"), by and through its counsel, John E. Lyncheski, Ronald J. Andrykovitch, Ryan W. Colombo, and Cohen & Grigsby, P.C., submits the following Exceptions to the Report on Objections ("Report") of the Regional Director for Region 13 ("Regional Director") in the above-captioned case.

1. LifeSource excepts to the Regional Director's findings and conclusion as to LifeSource's first objection wherein he concludes, "there is no evidence presented to suggest that there were any irregularities or the election was otherwise comprised as a result of the unsealed ballot box that was left with the Board Agent (while the observers were permitted to leave the polling station twice for ten (10) minutes each time). (Rep. 2)[1] This conclusion is not only mistaken, but logically cannot be reached without a hearing involving testimony from the Board Agent, Observers for both parties and eligible voters. Indeed, *Sawyer Lumber, LLC,* 326 NLRB 1331 (1998), the sole case cited by the Regional Director in support of his conclusion, occurred **after** the parties had the benefit of a hearing. Therefore, it is premature for the Regional Director in the instant case to conclude, without LifeSource having the benefit of

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1 References to the Regional Director's Report are indicated as "(Rep. __)."

subpoena or a hearing, that "no evidence" exists to suggest that the irregularities compromised the result of the election and deprived employees of their freedom of choice without interference. Further, because the Board Agent, in contravention of form NLRB-722, permitted both of the observers to leave the room for approximately ten (10) minutes twice during the election, while leaving the ballot box unsecured, it is unknown whether any voters came to vote during either of the periods where both observers were absent, and, if so, whether they were turned away or permitted to vote. It is undisputed that at least one eligible voter did not cast a ballot. Further, it is unknown if either party engaged in impermissible electioneering at the polling both while the observers were absent. The entire purpose of having observers was contravened. Notably, the Regional Director's Report on Objections makes no reference to form NLRB-722, which requires that observers, *inter alia*, (1) "see that each voter deposits the ballot in the ballot box," and (2) "see that each voter leaves the voting area immediately after depositing the ballot." Contrary to the Report on Objections issued by the Regional Director, the required laboratory conditions for an election to proceed under were, at the very least, jeopardized by the Board Agent permitting the observers to leave the polling area twice for a period of ten (10) minutes each time without securing the ballot box. As such, and as further explained below, the Report on Objections of the Regional Director should be overturned and a new election be ordered, or, at the very least, a hearing must be held to determine the veracity of the Regional Director's aforementioned findings and conclusion regarding the effects of the Board Agent's actions on the outcome of this extremely close election. *See e.x. Harry Lunstead Designs, Inc.*, 270 NLRB 1163 (1984) (holding that Board Agent's commission of several deviations from Board rules for conducting an election interfered with the conduct of the election and as such a new election was ordered.).

2. LifeSource excepts to the Regional Director's findings and conclusion regarding LifeSource's third objection wherein he concludes that "there could not have been any

effect on the election" despite the Board Agent leaving the room while failing to secure the ballots, simply because: (1) "neither observer handled the ballots," (2) "no one came into the polling area during the Board Agent's short absence," and (3) the "tally of ballots...did not reflect any discrepancy between the number of ballots cast and the number of employees marked off on the voter eligibility list." (Rep. 4). None of these explanations support the conclusion that "there could not have been any effect on the election." (Rep. 5). To the contrary, as the Regional Director's Report on Objections points out, "it is better procedure for the Board Agent to retain custody of the unmarked ballots at all times." The reason for this, which was not noted at all in the Regional Director's Report on Objections, is that, in cases such as this, where **no one** has any idea where the ballots are, there is a high likelihood of tampering or perceived tampering with the ballots and interference with the employees' free choice and Section 7 rights. For example, the issue of "chain voting," wherein an individual could have pre-marked a ballot and coerced someone to turn it in, would not be picked up by the fact that the, "tally of ballots...did not reflect any discrepancy between the number of ballots cast and the number of employees marked off on the voter eligibility list." (Rep. 4). Conversely, such a finding supports a theory that chain voting possibly occurred, as no one can account for the whereabouts of the ballots during the time the Board Agent left the voting room without taking and securing the ballots. Thus, the Regional Director's statement that, "[r]egardless of the location of the unmarked ballots, neither observer handled any ballots, both observers remained at the polling area table, and no one came in to the polling area during the Board Agent's short absence" (Rep. 4) only serves to confirm that if the ballots left with the Board Agent, and the Agent inadvertently set one down somewhere, the possibility of real or perceived chain voting exists.[2] Therefore,

[2] The Regional Director also errors as a factual matter when he describes the Board Agent's ten (10) minute absence, during which the whereabouts of the Ballots are unaccounted for, as a "short absence." (Rep. 4). Suffice to say that a lot can happen to ballots in ten (10) minutes as it would only take someone seconds to swap ballots, mark a vote on a ballot, or engage in any number of illicit actions that have the effect of depriving the employees' of their free choice.

contrary to the findings of the Regional Director, the Board Agent's failure to retain custody of the unmarked ballots at all times destroyed the required laboratory conditions by failing to maintain the required integrity of such ballots. Therefore, and as explained more fully below, the Report on Objections of the Regional Director should be overturned and a new election should be ordered, or at the very least, a hearing must be held to determine the whereabouts of the ballots during the Board Agent's absence, and whether or not any "chain voting" or other improprieties actually or could have occurred in order to fully preserve the employees' Section 7 rights. *See e.x. Fresenius USA Manufacturing, Inc.,* 352 NLRB 679 (2008), discussed *infra,* wherein the Board ruled that the Board Agent's mishandling of ballots necessitated a new election, particularly because the results of the election were close.

3. LifeSource excepts to the Regional Director's findings and conclusion to LifeSource's second objection wherein he states that: (1) "the actions engaged (in) by the Board Agent as described by the employer were consistent with the procedure outlined in the (NLRB) Casehandling Manual, Part Two, Representation Proceedings (for excelsior lists)"; and (2) that "[e]ven assuming an employee did see the list of employees as the Employer asserts, there is no evidence suggesting that this did, or could have, compromised or interfered with the election or free expression of the employees' choice." (Rep. 3-4). Neither of the Regional Director's conclusions is supported by the facts of the case. First, the Regional Director quoted from the NLRB's Casehandling Manual, Part Two, Representation Proceedings, Section 1132.12 Procedure ("NLRB manual") at Checking Table to support his conclusion that the Board Agent followed the proper procedure for handling the excelsior list. This section, as quoted by the Regional Director, states that, "At the checking table are a set of observers, who sit behind the table, and a Board agent, who sits at one end. Before them is part of the voting list applicable to that table. The approaching voters should be asked to call out their names, last names first, as they reach the table. They may also be asked for other identifying information, as necessary.

Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity and no one questions his/her voting status, each observer at the checking table should make a mark beside the name. Once a voter has been identified and checked off, the observers -- or one of them designated by the others -- should indicate this to the Board agent, who will then hand a ballot to the voter." However, nothing in the above-quoted passage from the NLRB manual supports the Regional Director's conclusion that the Board Agent's actions "were consistent with the procedure outlined" in the NLRB manual. To the contrary, the NLRB manual, with good reason, does not contemplate voters either easily viewing, or studying the excelsior list, nor interacting with it, both of which happened in this case as the voters approached the list, looked at it, and pointed out their names on the list. Second, the Regional Director's unfounded conclusion that such knowledge on the part of the voters as to who had voted "could not have" compromised or interfered with the election or free expression of the employees' choice is not supported by the undisputed facts. The "could not have" finding is based on pure surmise. For example, if employee A noticed that employee B, C, and D had not yet voted because he had studied the excelsior list when he voted, he could easily go to employee B, C, and D and convince them, or coerce them, into voting in the manner he preferred, or simply voting when they otherwise would have abstained. In such a close election, where the final tally was 11-9 and the change of one "Yes" vote to a "No" vote could swing the election in the other direction, employees being allowed to openly view the list of those who have and have not yet voted is not a matter that can be dismissed by a simple unfounded statement that such knowledge "had no effect" on the election. Without further evidence and a hearing that amounts to pure speculation. To the contrary, the knowledge the voters were given access to by the way the excelsior list was openly displayed by the Board Agent is analogous to allowing a voter or party representative to keep a list of who has voted -- an action explicitly prohibited by Board precedent. *See* NLRB Casehandling Manual, § 11322.1 (prohibiting observers from making lists

of those who have voted); *Sound Refining, Inc.,* 267 NLRB 1301 (1983) ("Contrary to the Regional Director, we find that Barber's listkeeping violated the Board's prohibition against the keeping of any list...of employees who have or have not voted.") Further, the open presentment of the marked up excelsior list to all voters means that employees knew that lists of those who had and had not voted was likely kept. Employee knowledge that a list of voters may be kept by an individual is likewise prohibited by NLRB precedent. *See Sound Refining, supra* ("if 'it was either affirmatively shown or could be inferred from the circumstances, that the employees knew their names were being recorded'" the election should be set aside."). Clearly then, and as explained further below, the Report on Objections of the Regional Director should be overturned and a new election be ordered, or, at the very least, a hearing must be held to determine whether or not permitting voters to maintain lists by way of the agent's open display of the marked up excelsior list had, or could have had, an effect on the outcome of this extremely close election and/or in any way may have interfered with the employees' Section 7 rights.

4. LifeSource excepts to the Regional Director's refusal to order a new election. Due to the multitude of irregularities that occurred during the election, and the closeness of the election, the Regional Director should have ordered a new election.

First, the Regional Director considered LifeSource's objections in a vacuum and did not consider the cumulative effect that the multitude of irregularities which occurred during this election had on the voters. Rather, the Regional Director only considered each of LifeSource's objections one by one. Particularly glaring is the fact that the Regional Director did not make a determination on the cumulative effect of the multitude of the irregularities, given that the election result would change by the swing of only **one vote.** While the Regional Director casts off each of LifeSource's objections one by one as somehow being *de minimus,* more is required. Indeed, the Board has held that, "As such, the fact that there is no showing of actual interference

with the free choice of any voter, or that no objection was raised at the time of the election, is of no moment. As this Board said "...confidence in, and respect for, established Board election procedures cannot be promoted by permitting the kind of conduct involved herein to stand. Election rules which are designed to guarantee free choice must be strictly enforced against material breaches in every case, or they may as well be abandoned." *International Stamping Co.,* 97 NLRB 921 (1951) (internal quotations/citations omitted). In particular, the Board and courts have held that closer scrutiny applies and new elections should be ordered when a multitude of irregularities are found, particularly in a close election. In *Fresenius USA Manufacturing, Inc.,* 352 NLRB 679 (2008) the Board was confronted with an issue, similar to that raised in LifeSource's third objection, wherein the Board considered the issue of a board agent who failed to secure "the ballots in a way to assure against any tampering, mishandling, or damage." Following a hearing (which hearing was not even conducted in the instant case) the hearing officer, similar to the Regional Director in the instant matter, "acknowledged that the Board Agent's handling of the ballot count did not comport with Board guidelines. He nonetheless found that these irregularities were not objectionable absent evidence that they actually affected the election results," and called the objections "speculative." *Id.* The Board, however, disagreed. The Board began its analysis by noting that it "goes to great lengths to ensure that the manner in which an election was conducted raises no reasonable doubt as to the fairness and validity of the election." *Id.* (internal quotations/citations omitted). While noting that there is not a "per se rule that...elections must be set aside following any procedural irregularity," and that more than "mere speculative harm" must be shown to overturn an election, the Board "will set aside an election, however, if the irregularity is sufficient to raise a reasonable doubt as to the fairness and validity of the election." *Id.* (internal quotations/citations omitted). The Board then held that the employer's objections relating to the fact that the "Board agent did not secure the ballots against tampering or mishandling" were sufficient to put into

question the outcome of the election. The Board noted that its "election procedures are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative challenge procedure. *Id.* (internal quotations/citations omitted). The Board then held that, "[w]e find it unnecessary to pass on whether the irregularities in this election, considered separately or in various combinations, would warrant setting aside the election. Rather, reviewing all the facts in this case, we find that the cumulative effect of these irregularities ... raises a reasonable doubt as to the fairness and validity of the election. This is especially so considering the closeness of the election, where even one mistake in the distribution or counting of the ballots could have altered the election outcome.") (internal quotations/citations omitted). The Board therefore set aside the election, as it should in the case of LifeSource, and ordered a second election. This precedent should be viewed as controlling in the instant proceeding.

In *RJR Archer, Inc.,* 274 NLRB 335 (1985), the Board held that "[d]uring a representation election the Board must provide a laboratory in which an experiment can be conducted, under conditions as nearly ideal as possible." *Id.* (internal quotations/citations omitted). The Board then considered the fact that numerous irregularities had arisen during the election, and held that, "... when viewed cumulatively (the irregularities) created an atmosphere ... in which a fair election could not be conducted." *Id.* (internal citations omitted). The Board further found that a new election should be held because not only were there multiple/cumulative irregularities, but also because the election was close. The Board held that the multitude of irregularities coupled with the close outcome warranted a new election and held that, "In these circumstances, especially where the election results were so close, we do not view the election as reflecting the free choice of the employees." *Id. See also, Cedars-Sinai Medical Center,* 342 NLRB 596 (2004) n. 21; *NLRB v. Service American Corporation,* 841 F.2d 191 (7th Cir. 1988);

Trimm Associates, Inc. v. NLRB., 351 F.3d 99 (3d Cir. 2003); wherein the Board and Circuit courts have held that additional scrutiny must be applied to objections when the vote is close.

5. LifeSource excepts to the Regional Director's failure to order an evidentiary hearing. Not only should the multitude of serious, material election improprieties that occurred warrant a new election on the record as it currently exists, but also it was an error for the Regional Director to not, at the very least, hold an evidentiary hearing to determine the veracity of his largely uncorroborated conclusions. This is particularly true here, where the Regional Director admitted that best practices were not followed in regards to how the election was conducted, no testimony was taken from any voters, the Board Agent, or the Union Observer -- despite a request from LifeSource to interview her, and the election result could be changed decided by a change of **one vote.**[3] As such, LifeSource has clearly raised substantial and material issues of fact to support a prima facie showing of objectionable conduct and as such is entitled under both Board and Circuit Court law to a hearing. Indeed, a "Regional Director is **required** under the Board's rules to direct a hearing if the objecting party raises substantial and material issues of fact to support a prima facie showing of objectionable conduct." *NLRB v. Service American Corporation,* 841 F.2d 191, 197 (7th Cir. 1988) (emphasis added). The Board has similarly held that, "the Board's Rules and Regulations make clear that ex parte investigations are not to be used to resolve substantial and material factual issues particularly where the factual issues turn on credibility. Rather, the rules specifically provide that a hearing **shall** be conducted with respect to those objections or challenges which the Regional Director

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[3] The fact that LifeSource was unable to obtain a statement from the Union Observer, Board Agent, or voters also weighs heavily in favor of ordering a hearing. *See Trimm Associates, Inc. v. NLRB,* 351 F.3d 99, 106 (3d Cir. 2003) (holding that the "inherent constraints on discovery" prior to a hearing weight heavily in favor of conducting a hearing when a party raises substantial issues that, if resolved favorably, would warrant setting aside the election.) LifeSource requested of the Union observer that she submit to an interview concerning the election day events, but she declined.

concludes raise substantial and material factual issues." *Erie Coke & Chemical Company,* 261 NLRB 25 (1982). *Id.* (emphasis added, internal quotations/citations omitted). As such, the Board in *Erie, supra,* required that,"the resolution of these conflicts by the Regional Director was improper and requires that we remand this proceeding for a further hearing." *Id.* (internal quotations/citations omitted).

Indeed, the Regional Director's conclusions in this case were drawn nearly entirely by way of a very few ex parte interviews and without providing LifeSource the opportunity for a hearing or a compulsory process to obtain evidence. This is impermissible not only under the Board law cited above, but also under the law of the Seventh Circuit. *See NLRB v. Lovejoy Industries, Inc.,* 904 F.2d 397 (7th Cir. 1990) ("If the regional director thought he could resolve disputes and draw inferences on the basis of ex parte interviews with a few of Lovejoy's employees, without offering the employer either a hearing or compulsory process to obtain evidence, he was mistaken ... the regional director **must hold a hearing** when the employer presents facts sufficient to support a prima facie showing of objectionable conduct, that is, of misconduct sufficient to set aside the election under the substantive law of representational elections." *Id.* at 399-400 (emphasis added, internal quotations/citations omitted). Moreover, a party is not required to establish that its objections must be sustained before obtaining an evidentiary hearing. *Id.* Indeed, "[t]he whole purpose for the hearing is to inquire into the allegations to determine whether they are meritorious; it makes little sense to expect the employer to prove its case, especially without power of subpoena, to the Regional Director before a hearing will be granted." *NLRB v. Service American Corporation,* 841 F.2d 191, 197 (7th Cir. 1988) (quoting *J-Wood/A Tapan Div.,* 720 F.2d 309, 315 (3d Cir. 1983)). *See also Saint Gobain Abrasives, Inc.,* 342 NLRB 434 (2004) ("The Regional Director's finding ... was made without a hearing. The result is that the employees are deprived, at least for now, of their Section 7 rights on the question of union representation...we have no lack of trust in our

Regional Director. Rather, we simply rely on the traditional rule that genuine factual issues require a hearing."); *and Testing Service Corporation,* 193 NLRB 332 (1971) (directing Region 13 to hold a hearing and holding that, "since a factual question has been raised, we shall order that a hearing be held ...") Because LifeSource has set forth numerous instances of objectionable conduct, which, if true, are more than sufficient to set aside the election, it has clearly established that not only should a new election be conducted, but, at the very least, a hearing must be held before a valid Certification of Representative can issue. Such irregularities as set forth above include, *inter alia,* (i) the high possibility of employees making lists of those who have voted with employees having knowledge of the same, (ii) the mystery regarding what the Board Agent did with the ballots when she left the polling location for approximately ten (10) minutes and (iii) what occurred in the polling location when both observers were absent two (2) times during the election for a total of twenty (20) minutes.

Further, the fact that the change of **one vote** would change the outcome of the election, coupled with the numerous irregularities and lack of evidence supporting the Regional Director's Report on Objections, mandates that LifeSource **at least** have the benefit of a hearing. Numerous courts have held that when an election is "close", and it does not get any closer than **this** election, that a hearing **must be** held even if only minor misconduct is alleged to have occured. "The necessity for a hearing is particularly great when an election is close, for under such circumstances, **even minor misconduct cannot be summarily excused on the ground that it could not have influenced the election."** *See Trimm Associates, Inc. v. NLRB,* 351 F.3d 99, 103-104 (3d Cir. 2003) (quoting and citing, *NLRB v. Bristol Spring Mfg. Co.,* 579 F.2d 704, 707 (2d Cir. 1978) (emphasis added); *NLRB v. Gooch Packing Co.,* 457 F.2d 361, 362 (5th Cir. 1972); and *NLRB v. Valley Bakery, Inc.,* 1 F.3d 769, 773 (9th Cir. 1993)) (emphasis added). Therefore, because the Regional Director noted that irregularities occurred during the election, but "summarily excused" them, without the benefit of testimony from material witnesses, on the

ground that it "could not have influenced the election" the Report on Objections of the Regional Director must be overturned and a new election must be ordered, or, at the very least, a hearing must be held before a valid Certification of Representative can issue.

6. LifeSource excepts to the appropriateness of the Regional Director's Order. Because of the numerous improprieties that occurred in an election where a change of **one** vote changes the outcome, and because LifeSource has presented **at least** a prima facie showing that objectionable conduct occurred, the election should be set aside and a new election should be ordered or, at the very least, a hearing must be conducted to permit LifeSource to prove its case and determine the veracity of the Regional Director's questionable findings and conclusions.

Respectfully submitted,

s/ John E. Lyncheski

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Counsel for LifeSource

Dated: May 21, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of RESPONDENT'S EXCEPTIONS TO REPORT ON OBJECTIONS OF REGIONAL DIRECTOR FOR REGION 13 has been served upon the following via Federal Express this 21st day of May, 2012, upon:

Local 881, United Food and Commercial Workers
10400 W. Higgins Rd., Suite 500
Rosemont, IL 60018-3712

Local 881, United Food and Commercial Workers
c/0 Jonathan D. Karmel, Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1307
Chicago, IL 60601-1206

s/ John E. Lyncheski
John E. Lyncheski

EXHIBIT 5

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIFESOURCE	)	
	)	
and	)	**Cases 13-RC-074795**
	)	
LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS	)	
	)	

EMPLOYER'S SUPPLEMENTAL EXCEPTIONS AND APPENDIX TO REPORT ON OBJECTIONS OF REGIONAL DIRECTOR FOR REGION 13

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board ("Board"), Employer, LifeSource ("LifeSource" or "Company"), by and through its counsel, John E. Lyncheski, Ronald J. Andrykovitch, Ryan W. Colombo, and Cohen & Grigsby, P.C., submits the following Supplemental Exceptions and Appendix to the Report on Objections ("Report") of the Regional Director for Region 13 ("Regional Director") in the above-captioned case.

1. LifeSource excepts to the Regional Director's findings and conclusion as to LifeSource's first objection wherein he concludes, "there is no evidence presented to suggest that there were any irregularities or the election was otherwise comprised as a result of the unsealed ballot box that was left with the Board Agent (while the observers were permitted to leave the polling station twice for ten (10) minutes each time). (Rep. 2)[1] This conclusion is not only mistaken, but logically cannot be reached without a hearing involving testimony from the Board Agent, Observers for both parties and eligible voters. Indeed, *Sawyer Lumber, LLC,* 326 NLRB 1331 (1998), the sole case cited by the Regional Director in support of his conclusion, occurred **after** the parties had the benefit of a hearing. Therefore, it is premature for the

[1] References to the Regional Director's Report are indicated as "(Rep. __)."

Regional Director in the instant case to conclude, without LifeSource having the benefit of subpoena or a hearing, that "no evidence" exists to suggest that the irregularities compromised the result of the election and deprived employees of their freedom of choice without interference. Further, because the Board Agent, in contravention of form NLRB-722, permitted both of the observers to leave the room for approximately ten (10) minutes twice during the election, while leaving the ballot box unsecured, it is unknown whether any voters came to vote during either of the periods where both observers were absent, and, if so, whether they were turned away or permitted to vote. It is undisputed that at least one eligible voter did not cast a ballot. Further, it is unknown if either party engaged in impermissible electioneering at the polling both while the observers were absent. The entire purpose of having observers was contravened. Notably, the Regional Director's Report on Objections makes no reference to form NLRB-722, which requires that observers, *inter alia*, (1) "see that each voter deposits the ballot in the ballot box," and (2) "see that each voter leaves the voting area immediately after depositing the ballot." Contrary to the Report on Objections issued by the Regional Director, the required laboratory conditions for an election to proceed under were, at the very least, jeopardized by the Board Agent permitting the observers to leave the polling area twice for a period of ten (10) minutes each time without securing the ballot box. As such, and as further explained below, the Report on Objections of the Regional Director should be overturned and a new election be ordered, or, at the very least, a hearing must be held to determine the veracity of the Regional Director's aforementioned findings and conclusion regarding the effects of the Board Agent's actions on the outcome of this extremely close election. *See e.x. Harry Lunstead Designs, Inc.*, 270 NLRB 1163 (1984) (holding that Board Agent's commission of several deviations from Board rules for conducting an election interfered with the conduct of the election and as such a new election was ordered.).

2. LifeSource excepts to the Regional Director's findings and conclusion regarding LifeSource's third objection wherein he concludes that "there could not have been any effect on the election" despite the Board Agent leaving the room while failing to secure the ballots, simply because: (1) "neither observer handled the ballots," (2) "no one came into the polling area during the Board Agent's short absence," and (3) the "tally of ballots...did not reflect any discrepancy between the number of ballots cast and the number of employees marked off on the voter eligibility list." (Rep. 4). None of these explanations support the conclusion that "there could not have been any effect on the election." (Rep. 5). To the contrary, as the Regional Director's Report on Objections points out, "it is better procedure for the Board Agent to retain custody of the unmarked ballots at all times." The reason for this, which was not noted at all in the Regional Director's Report on Objections, is that, in cases such as this, where **no one** has any idea where the ballots are, there is a high likelihood of tampering or perceived tampering with the ballots and interference with the employees' free choice and Section 7 rights. For example, the issue of "chain voting," wherein an individual could have pre-marked a ballot and coerced someone to turn it in, would not be picked up by the fact that the, "tally of ballots...did not reflect any discrepancy between the number of ballots cast and the number of employees marked off on the voter eligibility list." (Rep. 4). Conversely, such a finding supports a theory that chain voting possibly occurred, as no one can account for the whereabouts of the ballots during the time the Board Agent left the voting room without taking and securing the ballots. Thus, the Regional Director's statement that, "[r]egardless of the location of the unmarked ballots, neither observer handled any ballots, both observers remained at the polling area table, and no one came in to the polling area during the Board Agent's short absence" (Rep. 4) only serves to confirm that if the ballots left with the Board Agent, and the Agent inadvertently set one down somewhere, the possibility of real or perceived chain voting exists.[2] Therefore,

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[2] The Regional Director also errors as a factual matter when he describes the Board Agent's ten
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contrary to the findings of the Regional Director, the Board Agent's failure to retain custody of the unmarked ballots at all times destroyed the required laboratory conditions by failing to maintain the required integrity of such ballots. Therefore, and as explained more fully below, the Report on Objections of the Regional Director should be overturned and a new election should be ordered, or at the very least, a hearing must be held to determine the whereabouts of the ballots during the Board Agent's absence, and whether or not any "chain voting" or other improprieties actually or could have occurred in order to fully preserve the employees' Section 7 rights. *See e.x. Fresenius USA Manufacturing, Inc.*, 352 NLRB 679 (2008), discussed *infra,* wherein the Board ruled that the Board Agent's mishandling of ballots necessitated a new election, particularly because the results of the election were close.

3. LifeSource excepts to the Regional Director's findings and conclusion to LifeSource's second objection wherein he states that: (1) "the actions engaged (in) by the Board Agent as described by the employer were consistent with the procedure outlined in the (NLRB) Casehandling Manual, Part Two, Representation Proceedings (for excelsior lists)"; and (2) that "[e]ven assuming an employee did see the list of employees as the Employer asserts, there is no evidence suggesting that this did, or could have, compromised or interfered with the election or free expression of the employees' choice." (Rep. 3-4). Neither of the Regional Director's conclusions is supported by the facts of the case. First, the Regional Director quoted from the NLRB's Casehandling Manual, Part Two, Representation Proceedings, Section 1132.12 Procedure ("NLRB manual") at Checking Table to support his conclusion that the Board Agent followed the proper procedure for handling the excelsior list. This section, as quoted by the

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(10) minute absence, during which the whereabouts of the Ballots are unaccounted for, as a "short absence." (Rep. 4). Suffice to say that a lot can happen to ballots in ten (10) minutes as it would only take someone seconds to swap ballots, mark a vote on a ballot, or engage in any number of illicit actions that have the effect of depriving the employees' of their free choice.

Regional Director, states that, "At the checking table are a set of observers, who sit behind the table, and a Board agent, who sits at one end. Before them is part of the voting list applicable to that table. The approaching voters should be asked to call out their names, last names first, as they reach the table. They may also be asked for other identifying information, as necessary. Once a voter's name has been located on the eligibility list, all observers are satisfied as to the voter's identity and no one questions his/her voting status, each observer at the checking table should make a mark beside the name. Once a voter has been identified and checked off, the observers -- or one of them designated by the others -- should indicate this to the Board agent, who will then hand a ballot to the voter." However, nothing in the above-quoted passage from the NLRB manual supports the Regional Director's conclusion that the Board Agent's actions "were consistent with the procedure outlined" in the NLRB manual. To the contrary, the NLRB manual, with good reason, does not contemplate voters either easily viewing, or studying the excelsior list, nor interacting with it, both of which happened in this case as the voters approached the list, looked at it, and pointed out their names on the list. Second, the Regional Director's unfounded conclusion that such knowledge on the part of the voters as to who had voted "could not have" compromised or interfered with the election or free expression of the employees' choice is not supported by the undisputed facts. The "could not have" finding is based on pure surmise. For example, if employee A noticed that employee B, C, and D had not yet voted because he had studied the excelsior list when he voted, he could easily go to employee B, C, and D and convince them, or coerce them, into voting in the manner he preferred, or simply voting when they otherwise would have abstained. In such a close election, where the final tally was 11-9 and the change of one "Yes" vote to a "No" vote could swing the election in the other direction, employees being allowed to openly view the list of those who have and have not yet voted is not a matter that can be dismissed by a simple unfounded statement that such knowledge "had no effect" on the election. Without further evidence and a hearing that amounts

to pure speculation. To the contrary, the knowledge the voters were given access to by the way the excelsior list was openly displayed by the Board Agent is analogous to allowing a voter or party representative to keep a list of who has voted -- an action explicitly prohibited by Board precedent. *See* NLRB Casehandling Manual, § 11322.1 (prohibiting observers from making lists of those who have voted); *Sound Refining, Inc.*, 267 NLRB 1301 (1983) ("Contrary to the Regional Director, we find that Barber's listkeeping violated the Board's prohibition against the keeping of any list...of employees who have or have not voted.") Further, the open presentment of the marked up excelsior list to all voters means that employees knew that lists of those who had and had not voted was likely kept. Employee knowledge that a list of voters may be kept by an individual is likewise prohibited by NLRB precedent. *See Sound Refining, supra* ("if 'it was either affirmatively shown or could be inferred from the circumstances, that the employees knew their names were being recorded'" the election should be set aside."). Clearly then, and as explained further below, the Report on Objections of the Regional Director should be overturned and a new election be ordered, or, at the very least, a hearing must be held to determine whether or not permitting voters to maintain lists by way of the agent's open display of the marked up excelsior list had, or could have had, an effect on the outcome of this extremely close election and/or in any way may have interfered with the employees' Section 7 rights.

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determination on the cumulative effect of the multitude of the irregularities, given that the election result would change by the swing of only **one vote.** While the Regional Director casts off each of LifeSource's objections one by one as somehow being *de minimus,* more is required. Indeed, the Board has held that, "As such, the fact that there is no showing of actual interference with the free choice of any voter, or that no objection was raised at the time of the election, is of no moment. As this Board said "...confidence in, and respect for, established Board election procedures cannot be promoted by permitting the kind of conduct involved herein to stand. Election rules which are designed to guarantee free choice must be strictly enforced against material breaches in every case, or they may as well be abandoned." *International Stamping Co.,* 97 NLRB 921 (1951) (internal quotations/citations omitted). In particular, the Board and courts have held that closer scrutiny applies and new elections should be ordered when a multitude of irregularities are found, particularly in a close election. In *Fresenius USA Manufacturing, Inc.,* 352 NLRB 679 (2008) the Board was confronted with an issue, similar to that raised in LifeSource's third objection, wherein the Board considered the issue of a board agent who failed to secure "the ballots in a way to assure against any tampering, mishandling, or damage." Following a hearing (which hearing was not even conducted in the instant case) the hearing officer, similar to the Regional Director in the instant matter, "acknowledged that the Board Agent's handling of the ballot count did not comport with Board guidelines. He nonetheless found that these irregularities were not objectionable absent evidence that they actually affected the election results," and called the objections "speculative." *Id.* The Board, however, disagreed. The Board began its analysis by noting that it "goes to great lengths to ensure that the manner in which an election was conducted raises no reasonable doubt as to the fairness and validity of the election." *Id.* (internal quotations/citations omitted). While noting that there is not a "per se rule that...elections must be set aside following any procedural irregularity," and that more than "mere speculative harm" must be shown to overturn an election,

the Board "will set aside an election, however, if the irregularity is sufficient to raise a reasonable doubt as to the fairness and validity of the election." *Id.* (internal quotations/citations omitted). The Board then held that the employer's objections relating to the fact that the "Board agent did not secure the ballots against tampering or mishandling" were sufficient to put into question the outcome of the election. The Board noted that its "election procedures are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative challenge procedure. *Id.* (internal quotations/citations omitted). The Board then held that, "[w]e find it unnecessary to pass on whether the irregularities in this election, considered separately or in various combinations, would warrant setting aside the election. Rather, reviewing all the facts in this case, we find that the cumulative effect of these irregularities ... raises a reasonable doubt as to the fairness and validity of the election. This is especially so considering the closeness of the election, where even one mistake in the distribution or counting of the ballots could have altered the election outcome.") (internal quotations/citations omitted). The Board therefore set aside the election, as it should in the case of LifeSource, and ordered a second election. This precedent should be viewed as controlling in the instant proceeding.

In *RJR Archer, Inc.*, 274 NLRB 335 (1985), the Board held that "[d]uring a representation election the Board must provide a laboratory in which an experiment can be conducted, under conditions as nearly ideal as possible." *Id.* (internal quotations/citations omitted). The Board then considered the fact that numerous irregularities had arisen during the election, and held that, "... when viewed cumulatively (the irregularities) created an atmosphere ... in which a fair election could not be conducted." *Id.* (internal citations omitted). The Board further found that a new election should be held because not only were there multiple/cumulative irregularities, but also because the election was close. The Board held that the multitude of irregularities coupled with the close outcome warranted a new election and held that, "In these

circumstances, especially where the election results were so close, we do not view the election as reflecting the free choice of the employees." *Id. See also, Cedars-Sinai Medical Center,* 342 NLRB 596 (2004) n. 21; *NLRB v. Service American Corporation,* 841 F.2d 191 (7th Cir. 1988); *Trimm Associates, Inc. v. NLRB.,* 351 F.3d 99 (3d Cir. 2003); wherein the Board and Circuit courts have held that additional scrutiny must be applied to objections when the vote is close.

5. LifeSource excepts to the Regional Director's failure to order an evidentiary hearing. Not only should the multitude of serious, material election improprieties that occurred warrant a new election on the record as it currently exists, but also it was an error for the Regional Director to not, at the very least, hold an evidentiary hearing to determine the veracity of his largely uncorroborated conclusions. This is particularly true here, where the Regional Director admitted that best practices were not followed in regards to how the election was conducted, no testimony was taken from any voters, the Board Agent, or the Union Observer -- despite a request from LifeSource to interview her, and the election result could be changed decided by a change of **one vote.**[3] As such, LifeSource has clearly raised substantial and material issues of fact to support a prima facie showing of objectionable conduct and as such is entitled under both Board and Circuit Court law to a hearing. Indeed, a "Regional Director is **required** under the Board's rules to direct a hearing if the objecting party raises substantial and material issues of fact to support a prima facie showing of objectionable conduct." *NLRB v. Service American Corporation,* 841 F.2d 191, 197 (7th Cir. 1988) (emphasis added). The Board has similarly held that, "the Board's Rules and Regulations make clear that ex parte

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[3] The fact that LifeSource was unable to obtain a statement from the Union Observer, Board Agent, or voters also weighs heavily in favor of ordering a hearing. *See Trimm Associates, Inc. v. NLRB,* 351 F.3d 99, 106 (3d Cir. 2003) (holding that the "inherent constraints on discovery" prior to a hearing weight heavily in favor of conducting a hearing when a party raises substantial issues that, if resolved favorably, would warrant setting aside the election.) LifeSource requested of the Union observer that she submit to an interview concerning the election day events, but she declined.

investigations are not to be used to resolve substantial and material factual issues particularly where the factual issues turn on credibility. Rather, the rules specifically provide that a hearing **shall** be conducted with respect to those objections or challenges which the Regional Director concludes raise substantial and material factual issues." *Erie Coke & Chemical Company,* 261 NLRB 25 (1982). *Id.* (emphasis added, internal quotations/citations omitted). As such, the Board in *Erie, supra,* required that,"the resolution of these conflicts by the Regional Director was improper and requires that we remand this proceeding for a further hearing." *Id.* (internal quotations/citations omitted).

Indeed, the Regional Director's conclusions in this case were drawn nearly entirely by way of a very few ex parte interviews and without providing LifeSource the opportunity for a hearing or a compulsory process to obtain evidence. This is impermissible not only under the Board law cited above, but also under the law of the Seventh Circuit. *See NLRB v. Lovejoy Industries, Inc.,* 904 F.2d 397 (7th Cir. 1990) ("If the regional director thought he could resolve disputes and draw inferences on the basis of ex parte interviews with a few of Lovejoy's employees, without offering the employer either a hearing or compulsory process to obtain evidence, he was mistaken ... the regional director **must hold a hearing** when the employer presents facts sufficient to support a prima facie showing of objectionable conduct, that is, of misconduct sufficient to set aside the election under the substantive law of representational elections." *Id.* at 399-400 (emphasis added, internal quotations/citations omitted). Moreover, a party is not required to establish that its objections must be sustained before obtaining an evidentiary hearing. *Id.* Indeed, "[t]he whole purpose for the hearing is to inquire into the allegations to determine whether they are meritorious; it makes little sense to expect the employer to prove its case, especially without power of subpoena, to the Regional Director before a hearing will be granted." *NLRB v. Service American Corporation,* 841 F.2d 191, 197 (7th Cir. 1988) (quoting *J-Wood/A Tapan Div.,* 720 F.2d 309, 315 (3d Cir. 1983)). *See also Saint*

Gobain Abrasives, Inc., 342 NLRB 434 (2004) ("The Regional Director's finding ... was made without a hearing. The result is that the employees are deprived, at least for now, of their Section 7 rights on the question of union representation...we have no lack of trust in our Regional Director. Rather, we simply rely on the traditional rule that genuine factual issues require a hearing."); *and Testing Service Corporation,* 193 NLRB 332 (1971) (directing Region 13 to hold a hearing and holding that, "since a factual question has been raised, we shall order that a hearing be held ...") Because LifeSource has set forth numerous instances of objectionable conduct, which, if true, are more than sufficient to set aside the election, it has clearly established that not only should a new election be conducted, but, at the very least, a hearing must be held before a valid Certification of Representative can issue. Such irregularities as set forth above include, *inter alia,* (i) the high possibility of employees making lists of those who have voted with employees having knowledge of the same, (ii) the mystery regarding what the Board Agent did with the ballots when she left the polling location for approximately ten (10) minutes and (iii) what occurred in the polling location when both observers were absent two (2) times during the election for a total of twenty (20) minutes.

Further, the fact that the change of **one vote** would change the outcome of the election, coupled with the numerous irregularities and lack of evidence supporting the Regional Director's Report on Objections, mandates that LifeSource **at least** have the benefit of a hearing. Numerous courts have held that when an election is "close", and it does not get any closer than **this** election, that a hearing **must be** held even if only minor misconduct is alleged to have occured. "The necessity for a hearing is particularly great when an election is close, for under such circumstances, **even minor misconduct cannot be summarily excused on the ground that it could not have influenced the election."** *See Trimm Associates, Inc. v. NLRB,* 351 F.3d 99, 103-104 (3d Cir. 2003) (quoting and citing, *NLRB v. Bristol Spring Mfg. Co.,* 579 F.2d 704, 707 (2d Cir. 1978) (emphasis added); *NLRB v. Gooch Packing Co.,* 457 F.2d 361, 362 (5th Cir.

1972); and *NLRB v. Valley Bakery, Inc.*, 1 F.3d 769, 773 (9th Cir. 1993)) (emphasis added). Therefore, because the Regional Director noted that irregularities occurred during the election, but "summarily excused" them, without the benefit of testimony from material witnesses, on the ground that it "could not have influenced the election" the Report on Objections of the Regional Director must be overturned and a new election must be ordered, or, at the very least, a hearing must be held before a valid Certification of Representative can issue.

6. LifeSource excepts to the appropriateness of the Regional Director's Order. Because of the numerous improprieties that occurred in an election where a change of **one** vote changes the outcome, and because LifeSource has presented **at least** a prima facie showing that objectionable conduct occurred, the election should be set aside and a new election should be ordered or, at the very least, a hearing must be conducted to permit LifeSource to prove its case and determine the veracity of the Regional Director's questionable findings and conclusions.

Respectfully submitted,

s/ John E. Lyncheski

John E. Lyncheski
Ronald J. Andrykovitch
Ryan W. Colombo
COHEN & GRIGSBY, P.C.
625 Liberty Avenue
Pittsburgh, Pennsylvania 15222-3152
(412) 297-4900

Counsel for LifeSource

Dated: May 21, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of EMPLOYER'S SUPPLEMENTAL EXCEPTIONS AND APPENDIX TO REPORT ON OBJECTIONS OF REGIONAL DIRECTOR FOR REGION 13 has been served upon the following via Federal Express this 21st day of May, 2012, upon:

Local 881, United Food and Commercial Workers
10400 W. Higgins Rd., Suite 500
Rosemont, IL 60018-3712

Local 881, United Food and Commercial Workers
c/o Jonathan D. Karmel, Esq.
The Karmel Law Firm
221 N. LaSalle St., Suite 1307
Chicago, IL 60601-1206

s/ John E. Lyncheski
John E. Lyncheski

APPENDIX A

STATE OF ILLINOIS :
: ss:
COOK COUNTY :

AFFIDAVIT OF JOANNE HALL

I, Joanne Hall, business address c/o LifeSource, 5505 Pearl St. Rosemont, IL 60018, hereby state as follows:

1. On or about March 30, 2012, I served as an election Observer for an election conducted by the National Labor Relations Board ("NLRB") between LifeSource and the United Food and Commercial Workers, Local 881.

2. During the election, I noticed several irregularities by the assigned NLRB Board agent, including: (1) permitting me and the other Observer to leave the voting area for extended periods of time without securing or taping the ballot box; (2) allowing voters to view the Excelsior list to see who votes; and (3) leaving the voting place herself without giving instructions regarding the security of the unused ballots.

3. Both the other Observer and myself were allowed to leave the voting location together twice during the election, once to go to the cafeteria for which we were absent from the voting area for approximately ten minutes and once to go to the restroom for a period of approximately five minutes. Neither time did the assigned Board Agent tape or otherwise secure the ballot box or the ballots during our absence.

4. During the election, the Excelsior list was placed between myself and the other Observer in clear view of the voters. In fact, when voters walked in, some of them walked right up to the table and pointed to their names on the Excelsior list. Voters, therefore, could clearly see the names of those who had and had not yet voted.

4.17.12

5. Around 11 a.m., the Board Agent herself left the polling location for a period of approximately ten minutes. While she put tape over the slots of the ballot box and had the other Observer and I initial it, she took only the ballot box with her and returned with only the ballot box. I did not notice her take the ballots themselves with her.

I have read the above statement consisting of five (5) typed paragraphs and I swear that it is true to the best of my knowledge and belief.

Joanne Hall

Joanne Hall 4-17-12

Sworn to and subscribed before me this 17th day of April, 2012.

Lisa Kriskovich

Notary Public
My Commission Expires:

OFFICIAL SEAL
LISA KRISKOVICH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/30/16

EXHIBIT 6

NOT INCLUDED
IN BOUND VOLUMES

PGB
Rosemont, IL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIFESOURCE
Employer

and

Case 13-RC-074795

LOCAL 881, UNITED FOOD AND
COMMERCIAL WORKERS
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on March 30, 2012, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of ballots shows 11 for and 9 against the Petitioner; there was 1 void ballot. The Board has reviewed the record in light of the exceptions and brief, and has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 881, United Food and Commercial Workers, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed

by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

Dated, Washington, D.C., September 19, 2012.

Mark Gaston Pearce, Chairman

Richard F. Griffin, Jr., Member

Sharon Block, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

EXHIBIT 7

881UFCW
a VOICE for Working Families
UNITED FOOD and COMMERCIAL WORKERS INTERNATIONAL UNION
10400 W. HIGGINS RD., SUITE 500 / ROSEMONT, ILLINOIS 60018-3705
Phone (847)294-5064 / Fax (847)759-7106 / www.local881UFCW.org

October 3, 2012

Mr. Marc Bertman
LifeSource
5505 Pearl Street
Rosemont, IL 60018

Dear Mr. Bertman:

As you know, Local 881 UFCW won the representation election in case 13-RC-074795.

We are demanding that you bargain with us concerning your employees within the established unit.

I would suggest the following dates to meet with you:

October 29, 2012	November 5, 2012
October 31, 2012	November 6, 2012

Please contact me at the union office at (847) 294-5064 ext. 364, so that we may select a mutually agreeable time and place.

Looking forward to hearing from you soon.

Sincerely,

Jeff Jayko
Director of Collective Bargaining
Local 881 UFCW

JJ:gjs

cc: Brad Powell
Harry Grow

SENT VIA CERTIFIED MAIL - #7007 0220 0000 9331 1377

EXHIBIT 8

LIFESOURCE
Chicagoland's Blood Center

October 15, 2012

Jeff Jayko, Director of Collective Bargaining
Local 881 UFCW
10400 W. Higgins Road, suite 500
Rosemont, IL 60018-3705

Re: LifeSource

Dear Mr. Jayko:

We are in receipt of your October 3, 2012 letter in which you demand to schedule dates for bargaining.

It is LifeSource's position that the union certification is not valid for the reasons made clear in its objections to the conduct of the NLRB election. Therefore we decline your invitation to schedule bargaining.

Sincerely,

Diane Merkt
Vice President of Administration and
Chief Compliance Officer

5505 Pearl Street | Rosemont, IL 60018-5317
www.lifesource.org | 1.877.LIFESOURCE | 1.877.543.3768
1796430.v1

ITxM
The Institute for Transfusion Medicine

EXHIBIT 9

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
13-CA-091617	10/18/12

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
Lifesource

b. Tel. No.
(877) 543-3768

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
5505 Pearl St., Rosemont, Il 60018

e. Employer Representative
Marc Bertman

g. e-Mail

h. Number of workers employed

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Sales

j. Identify principal product or service
Blood Drives

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* (5) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

By letter dated October 15, 2012, the Employer has unlawfully refused to bargain with the Union

See attached Exhibit A.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Local 881, United Food and Commercial Workers Union

4a. Address *(Street and number, city, state, and ZIP code)*
10400 West Higgins Road, Suite 500
Rosemont IL 60018-3705

4b. Tel. No.
(847) 294-5064

4c. Cell No.

4d. Fax No.
(847) 759-7109

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)*
United Food and Commercial Workers International Union

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 _____ Jonathan D. Karmel, attorney
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address THE KARMEL LAW FIRM
221 N. LaSalle St., Suite 1307
Chicago, IL 60601

10/18/2012
(date)

Tel. No.
(312) 641-2910

Office, if any, Cell No.

Fax No.
(312) 641-0781

e-Mail
jon@karmellawfirm.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.

October 15, 2012

Jeff Jayko, Director of Collective Bargaining
Local 881 UFCW
10400 W. Higgins Road, suite 500
Rosemont, IL 60018-3705

Re: LifeSource

Dear Mr. Jayko:

We are in receipt of your October 3, 2012 letter in which you demand to schedule dates for bargaining.

It is LifeSource's position that the union certification is not valid for the reasons made clear in its objections to the conduct of the NLRB election. Therefore we decline your invitation to schedule bargaining.

Sincerely,

Diane Merkt
Vice President of Administration and
Chief Compliance Officer

5505 Pearl Street | Rosemont, IL 60018-5317
www.lifesource.org | 1.877.LIFESOURCE | 1.877.543.3768
1798430.v1

Exhibit A

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

LIFESOURCE Charged Party and **LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS** Charging Party	**Case 13-CA-091617**

AFFIDAVIT OF SERVICE OF CHARGE AGAINST EMPLOYER

I, the undersigned employee of the National Labor Relations Board, state under oath that on October 19, 2012, I served the above-entitled document(s) by post-paid regular mail upon the following persons, addressed to them at the following addresses:

MARC BERTMAN
LIFESOURCE
5505 PEARL ST
DES PLAINES, IL 60018-5317

October 19, 2012
Date

Denise Gatsoudis, Designated Agent of NLRB
Name

Signature

EXHIBIT 10

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

LIFESOURCE

and **CASE 13-CA-91617**

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS

COMPLAINT AND NOTICE OF HEARING

Local 881, United Food and Commercial Workers, herein called the Union, has charged that Lifesource, herein called Respondent, has been engaging in unfair labor practices as set forth in the National Labor Relations Act, 29 U.S.C. Section 151 et seq. Based thereon the Acting General Counsel, by the undersigned, pursuant to Section 10(b) of the Act and Section 102.15 of the Rules and Regulations of the National Labor Relations Board, issues this Complaint and Notice of Hearing and alleges as follows:

I

The charge in this proceeding was filed by the Union on October 18, 2012, and a copy was served by regular mail on Respondent on October 19, 2012.

II

(a) At all material times, Respondent, a not-for-profit coporation with an office and place of business in Rosemont, Illinois, herein called Respondent's facility, has been engaged in the business of providing services related to whole and processed blood products.

(b) During the past calendar year, a representative period, Respondent, in conducting its business operations described above in paragraph II(a), purchased and received at its Rosemont, Illlinois facility goods, products, materials, and services valued in excess of $50,000 directly from points outside the State of Illinois.

(c) 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.

III

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

IV

At all material times, the following individuals held the positions set forth opposite their 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:

Diane Merkt	Vice President of Administration and Chief Compliance Officer

V

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

> All full-time and regular part-time Account Managers and Team Account Managers in the Recruitment department employed by the Employer at its facility located at 5505 Pearl Street, Rosemont, Illinois; but excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) On September 19, 2012, the Union was certified by the Board as the exclusive collective-bargaining representative of the Unit.

(c) At all times since September 19, 2012, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit.

VI

(a) On October 3, 2012, the Union, by letter, requested that Respondent meet to bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit.

(b) Since about October 15, 2012, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(c) Respondent's purpose in refusing to bargain is to test the certification the Board issued in Case 13-RC-74795.

VII

By the conduct described above in paragraph VI, Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act, and affecting commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged in paragraphs VI and VII, the Acting General Counsel seeks an Order requiring Respondent to bargain in good faith with the Union, on request for the period required by *Mar Jac Poultry Company, Inc.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit. The Acting General Counsel seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

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, November 15, 2012, or postmarked on or before November 14, 2012.** Unless filed electronically in a pdf format, 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.nlrb.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 document need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature be submitted to the Regional

Office by traditional means within three (3) business days after the date of electronic filing.

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

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT, if necessary, **on a date and time to be determined** at **209 South LaSalle Street, Chicago, Illinois**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Chicago, Illinois, this 1st day of November, 2012.

/s/ Peter Sung Ohr

Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

Attachments
Document8 October 31, 2012

FORM NLRB 4338
(6-90)

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

Case 13-CA-091617

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

(1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).

(2) Grounds must be set forth in ***detail***;

(3) Alternative dates for any rescheduled hearing must be given;

(4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and

(5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

MARC BERTMAN
LIFESOURCE
5505 PEARL STREET
DES PLAINES, IL 60018-5317

RONALD J. ANDRYKOVITCH, ESQ.
COHEN & GRIGSBY PC
625 LIBERTY AVE., 29TH FL
PITTSBURGH, PA 15222-3152

JONATHAN D. KARMEL
THE KARMEL LAW FIRM
221 N. LA SALLE STREET, SUITE 1307
CHICAGO, IL 60601-1206

LOCAL 881, UNITED FOOD AND
COMMERCIAL WORKERS
10400 W. HIGGINS ROAD
ROSEMONT, IL 60018-3705

UNITED STATES OF AMERICA
BEFORE THE NATIONAL ALBOR RELATIONS BOARD
REGION 13

LIFESOURCE

and **Case 13-CA-091617**

LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS

AFFIDAVIT OF SERVICE OF: Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached)

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on November 1, 2012 , I served the above-entitled documents by **certified mail,** as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

MARC BERTMAN
LIFESOURCE
5505 PEARL STREET
DES PLAINES, IL 60018-5317

CERTIFIED MAIL

RONALD J. ANDRYKOVITCH , ESQ.
COHEN & GRIGSBY PC
625 LIBERTY AVE., 29TH FL
PITTSBURGH, PA 15222-3152

CERTIFIEDMAIL

JONATHAN D. KARMEL
THE KARMEL LAW FIRM
221 N. LA SALLE STREET, SUITE 1307
CHICAGO, IL 60601-1206

CERTIFIED MAIL

LOCAL 881, UNITED FOOD AND
COMMERCIAL WORKERS
10400 W. HIGGINS ROAD
ROSEMONT, IL 60018-3705

November 1, 2012
Date

Denise Gatsoudis
Name

/s/ Denise Gatsoudis
Signature

EXHIBIT 11

UNITED STATES OF AMERICA
Before The
NATIONAL LABOR RELATIONS BOARD
REGION 13

LIFESOURCE	)	
	)	
and	)	**Case 13-CA-91617**
	)	
LOCAL 881, UNITED FOOD AND COMMERCIAL WORKERS	)	
	)	

ANSWER AND DEFENSES TO COMPLAINT AND NOTICE OF HEARING

And now comes LIFESOURCE ("Respondent"), by and through its attorneys, Cohen & Grigsby, P.C., and files this Answer and Defenses to the Complaint and Notice of Hearing ("Complaint") in the above-captioned matter as follows:

ANSWER

1. The averments of paragraph 1 of the Complaint are admitted in part. By way of further response, the Respondent did not receive a copy of the charge until October 23, 2012.

2. The averments of paragraphs 2(a)-(c) of the Complaint are admitted.

3. The averments of paragraph 3 of the Complaint constitute conclusions of law to which no response is required.

4. The averments of paragraph 4 of the Complaint are admitted.

5(a) The averments of paragraph 5(a) constitute conclusions of law to which no response is required.

5(b) The averments of paragraph 5(b) constitute conclusions of law to which no response is required. By way of further response, a representative election held on March 30, 2012 in which the outcome was decided by **one** (1) vote. Due to a variety of irregularities including (i) the high possibility of employees making lists of those who have voted with employees having knowledge of the same, (ii) the unknown whereabouts of election ballots when the Board agent left the polling location for approximately ten (10) minutes, and (iii) the Board agent permitting both observers to leave the polling location two (2) times during the election for a total of twenty (20) minutes, depriving LifeSource of any information regarding what occurred at the polling location during such times that occurred during the election, the Respondent filed timely objections on April 6, 2012. Despite these grave irregularities, the Regional Director overruled the objections without the benefit of conducting a hearing. In fact, the Regional Director's conclusion was reached almost exclusively by way of very few *ex parte* interviews. In response, the Respondent filed Exceptions to the Regional Director's Findings. However, the NLRB, without any analysis, simply adopted the decision of the Regional Director and improperly issued the Certificate of Representative for Case No. 13-RC-74795 on September 19, 2012.

5(c) The averments of paragraph 5(c) constitute conclusions of law to which no response is required. To the extent a responsive pleading is required, the averments of paragraph 5(c) are denied.

6(a) It is admitted that, on October 3, 2012 the Union sent a written correspondence to the Respondent, which is a document that speaks for itself. As such, no further response to the averments of paragraph 6(a) is required.

6(b) The averments of paragraph 6(b) are admitted. By way of further response, the NLRB improperly issued the Certificate of Representative and the Respondent is therefore under no obligation to recognize and/or bargain with the Union.

6(c) The averments of paragraph 6(c) are admitted. Moreover, the NLRB improperly issued the Certificate of Representative under existing applicable legal precedent. By way of further response, Respondent herein incorporates by reference its answer to paragraph 5(b).

7. The averments of paragraph 7 constitute conclusions of law to which no response is required. To the extent a responsive pleading is required, the averments of paragraph 7 are denied. By way of further response, Respondent herein incorporates by reference its Answer to paragraph 5(b).

A responsive pleading is not required to the WHEREFORE paragraph on page 3 of the Complaint. To the extent a responsive pleading is deemed necessary, Respondent denies that the Acting General Counsel is entitled to any of the relief prayed for in the WHEREFORE paragraph on page 3 of the Complaint.

DEFENSES

FIRST DEFENSE

The NLRB Certification in this case is invalid because of the numerous improprieties that occurred in an election where a change of **one** (1) vote changes the outcome. Such improprieties included, *inter alia,* (i) the high possibility of employees making lists of those who have voted with employees having knowledge of the same, (ii) the unknown whereabouts of election ballots when the Board agent left the polling location for approximately ten (10)

minutes, and (iii) the Board agent permitting both observers to leave the polling location two (2) times during the election for a total of twenty (20) minutes, depriving LifeSource of any information regarding what occurred at the polling location during such times. As such, LifeSource has presented at least a *prima facie* showing that objectionable conduct occurred, and the election should be set aside and a new election should be ordered or, at the very least, a hearing must be conducted to permit LifeSource to prove its case and determine the propriety of the NLRB's issuance of a Certificate of Representative.

SECOND DEFENSE

The NLRB Certification in this case is invalid because the numerous election irregularities and improprieties described in the First Defense had a coercive effect on the outcome of the election, which was decided by a mere **one** (1) vote.

THIRD DEFENSE

The NLRB Certification in this case is invalid because the Regional Director did not follow pertinent NLRB guidance practice, policy and procedures, as well as Board and Federal Court precedent, in not ordering a new election and/or not conducting a hearing.

FOURTH DEFENSE

The NLRB Certification in this case is invalid because the NLRB, without any analysis, adopted the Regional Director's Report and thus issued the Certificate of Representative without providing LifeSource with a hearing to resolve important factual issues surrounding the numerous improprieties that plagued the election.

WHEREFORE, for the reasons set forth above, the Complaint should be dismissed.

Respectfully submitted,

s/ Ronald J. Andrykovitch

Ronald J. Andrykovitch
John E. Lyncheski
Ryan W. Colombo

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Counsel for LifeSource

Dated: November 15, 2012

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and Defenses to Complaint and Notice of Hearing has been served via Electronic and U.S. first class mail, postage prepaid, this 15th day of November, 2012, upon:

Jonathan D. Karmel Esq.
jon@karmellawfirm.com.com
The Karmel Law Firm
221 N. LaSalle St., Suite 1307
Chicago, IL 60601

s/ Ronald J. Andrykovitch
Ronald J. Andrykovitch