

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**CURALEAF MASSACHUSETTS, INC.
Employer**

and

Case 01-RC-336464

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 1445
Petitioner**

**DECISION AND
CERTIFICATION OF REPRESENTATIVE**

On April 5, 2023, the Board conducted an in-person secret-ballot election at the Employer's facility. The Petitioner obtained a majority of valid votes counted, by a margin of 12 votes, approximately 83% of valid votes cast. Challenges were not sufficient in number to affect the results of the election.

Pursuant to Section 102.69 of the Board's Rules, I have considered the exceptions filed by the Employer to the Hearing Officer's Report recommending that the sole objection presented at hearing be overruled. The Petitioner filed an answering brief opposing the Employer's exceptions, which has also been considered.

On review of the entire record, including the parties' briefs, I hereby adopt the Hearing Officer's findings and recommendations,¹ and find that a certification of representative should be issued.

¹ Notably, the Hearing Officer's ruling are free of prejudicial error. Second, the Hearing Officer applied the correct standard where conduct is attributable to a Board agent, the question is whether "the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enfd. 414 F. 2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970); see also *Physicians & Surgeons Ambulance Service*, 356 NLRB 199, 199 (2012), enfd. 477 Fed.Appx. 743 (D.C. Cir. 2012).

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers Union, Local 1445, and it is the exclusive representative of all the employees in the following bargaining unit:

Included: All full-time and regular part-time employees at the Employer's adult-use cannabis dispensary, operated by Curaleaf Massachusetts, Inc. and medical-use cannabis dispensary, operated by Curaleaf North Shore, Inc. at 425 Main Street in Oxford MA.

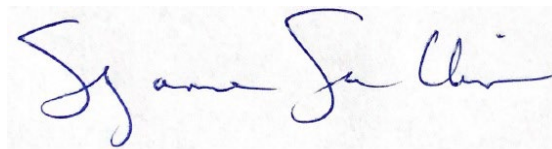
Excluded: Managerial employees, and guards, professional employees and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **AUGUST 6, 2024**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: July 23, 2024



Suzanne Sullivan, Regional Director
National Labor Relations Board
Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102

**UNITED STATES OF AMERICA
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CURALEAF MASSACHUSETTS, INC.

Employer

and

Case No. 01-RC-336464

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1445

Petitioner

**HEARING OFFICER'S REPORT AND
RECOMMENDATION ON OBJECTIONS**

I. INTRODUCTION

On April 5, 2024,¹ Region 1 of the National Labor Relations Board (Board) conducted an election to determine whether certain employees employed by Curaleaf Massachusetts, Inc. (Employer) at its 425 Main Street, Oxford, Massachusetts facility (Oxford facility) wished to be represented by the United Food and Commercial Workers International Union, Local 1445 (Petitioner). A majority of employees casting ballots in the election voted in favor of representation by the Petitioner.

The Employer filed objections contesting the results of the election, asserting that the Board Agent who conducted the election engaged in conduct that warrants setting aside the results of the election and conducting a rerun of the election. Because of the nature of the Employer's objections concerned conduct by a Board Agent of Region 1, the matter was transferred to the Board's Region 22 Office for hearing and decision by a Hearing Officer and Regional Director independent of Region 1.

After conducting the hearing and carefully reviewing the evidence and arguments made by the parties, I recommend that the Employer's Objections should be overruled in its entirety. The Employer has not met its burden of establishing that the Board Agent engaged in objectionable conduct affecting the results of the election.

¹ All dates hereinafter are 2024 unless otherwise specified.

II. PROCEDURAL HISTORY

Based on a representation petition filed by the Petitioner on February 23, and pursuant to a Stipulated Election Agreement executed by the parties and approved by the Regional Director of Region 1 on March 6, a manual, in-person secret ballot election was conducted on April 5 at the Employer's Oxford facility, to determine whether a Unit of certain employees employed by the Employer at the Oxford facility wished to be represented for the purposes of collective bargaining by the Petitioner.²

The tally of ballots prepared at the conclusion of the election shows the following:

Approximate number of eligible voters	18
Number of Void ballots	0
Number of Votes cast in favor of the Petitioner	15
Number of Votes cast against the Petitioner	3
Number of Valid Votes Counted	18
Number of Challenged Ballots	5
Number of Valid Votes Counted plus Challenged Ballots	23

As reflected above, the Petitioner obtained a majority of valid votes counted, by a margin of 12 votes, approximately 83% of valid votes cast. Challenges were not sufficient in number to affect the results of the election.

On April 12, the Employer timely filed four objections to conduct affecting the results of the election. On April 26, the General Counsel of the Board issued an Order transferring the case from Region 1 to Region 22 for further processing.

In accordance with Section 102.69 of the Board's Rules and Regulations, Series 8, as amended (Rules and Regulations), the Regional Director of Region 22 (Regional Director) conducted a preliminary investigation of the objections and on May 20, issued a Partial Decision on Objections and Notice of Hearing (Decision on Objections). In the Decision, the Regional Director overruled Objections 1, 2, and 3 as insufficient as a matter of law and ordered that Objection 4 be scheduled for hearing on the basis that Objection 4 raised substantial and material

² That voting unit consists of:

Included: All full-time and regular part-time employees at the Employer's adult-use cannabis dispensary, operated by Curaleaf Massachusetts, Inc. and medical-use cannabis dispensary, operated by Curaleaf North Shore, Inc. at 425 Main Street in Oxford MA.

Excluded: Managerial employees, and guards, professional employees and supervisors as defined in the Act.

factual issues, including issues of credibility, that can best be resolved based on record testimony taken at hearing.³ Objection 4 reads verbatim as follows:

The Board Agent conducting (the election) acted unlawfully and improperly by engaging in at least one *ex parte* telephone conversation with legal counsel for the Union before polling began on April 5, 2024.

On May 28, the Employer filed a Motion to Amend Objections to the Election, and Amended Objections. The Regional Director issued an Order Denying this Motion on May 31 and the Employer has to date filed no request to review this decision.

On June 7, as the Hearing Officer designated to conduct the hearing and to recommend to the Regional Director whether the Employer's Objection 4 warrants setting aside the election, I heard witness testimony and received into evidence relevant documents. All parties were afforded a full opportunity to participate, to cross examine witnesses, and to produce evidence bearing on the issues.

Also on June 7, following the conclusion of the hearing, the Employer filed with the Regional Director a Motion for Special Permission to Appeal the Hearing Officer's Ruling Denying Employer Permission to Take Testimony from National Labor Relations Board Agent [REDACTED] (Employer's Motion for Special Permission to Appeal) and an Appeal of the Hearing Officer's Ruling Denying Employer Permission to Take Testimony from National Labor Relations Board Agent [REDACTED] (Employer's Appeal).⁴ The Regional Director denied this Appeal on June 26 and the Employer has not to date filed a request to review this decision.⁵

³ The Employer has not as of the date of this Report filed a request for review of the Regional Director's decision to overrule Objections 1, 2, and 3.

⁴ The Employer argued during the Hearing that it should be permitted to take testimony from the Board Agent who conducted the election. This issue was decided by the General Counsel of the Board prior to the hearing. Specifically, the Employer asked the General Counsel to allow it to take testimony from the Board Agent and the General Counsel denied this request by a letter of May 25. My relevant ruling during the Hearing reflected that the issue had already been decided, and the Employer expressed its intention to appeal such ruling. Also on June 7, the Employer filed with the Regional Director a Motion for Extension of Time to File a Request for Special Permission to Appeal Hearing Officer's Ruling and Closing Record. The Regional Director denied this Motion on June 12.

⁵ Documents relevant to this Motion and Denial were incorporated into the Hearing Record as General Counsel Exhibit 2.

III. SUMMARY OF FACTS AND EVIDENCE

A. Witness Credibility

The Decision on Objections instructs me to resolve the credibility of witnesses who testified at the hearing and to make findings of fact. Unless otherwise specified, my summary of the record evidence is a composite of the testimony of all witnesses, including in particular testimony by witnesses that is consistent with other witness testimony, documentary evidence, or with undisputed evidence, as well as testimony that is uncontested.

The credibility analysis may rely upon a variety of factors, including, but not limited to, the context of the witness testimony, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Double D Construction Group*, 339 NLRB 303, 303–305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001), citing *Shen Lincoln-Mercury-Mitsubishi, Inc.*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings regarding any witness are not likely to be an all-or-nothing determination, and it is reasonable to conclude that a witness testified credibly regarding one fact but not on another. *Daikichi Sushi*, 335 NLRB at 622.

Credibility resolutions are based on my observations of the testimony and demeanor of witnesses and are more fully discussed within the context of the objections related to witnesses' testimony. Omitted testimony or evidence is either irrelevant or cumulative. Testimony contrary to my findings has been specifically considered and discredited.

B. Record Evidence

The Employer called three witnesses in support of its Objection 4 : the Employer's Senior Manager of Labor Relations [REDACTED], the Petitioner's Organizer [REDACTED], and Petitioner counsel Alexander Robertson. The Petitioner called no additional witnesses. All three witnesses testified in a clear, straightforward, and honest manner and, except as noted below, there were no substantive differences in their testimonies about the facts that underlie the Objection.

The election was held on April 5 at the Employer's Oxford facility. The single voting session took place between 1:30 pm and 3:30 pm in a basement office of the Oxford facility, which was the designated polling site.

Shortly after 1:00 pm on April 5, Board Agent [REDACTED] (Board Agent), who was assigned to run the election, convened representatives of the Employer and of the Petitioner in the polling site for the pre-election conference. There were five representatives present for the Employer, including the Employer's counsel Kaitlin Kaseta (Kaseta) and its Manager of Labor

Relations [REDACTED] ([REDACTED]), and two representatives present for the Petitioner, including Organizer [REDACTED] ([REDACTED]). Also present were the parties' chosen observers, including the Petitioner's observer [REDACTED] ([REDACTED]). The Petitioner's counsel Alexander Robertson (Robertson) was not present at the pre-election conference.

During the pre-election conference, the Employer's representatives announced that [REDACTED] was scheduled to work during the election hours and that he may face disciplinary action if he opted to remain as an observer rather than report to work. [REDACTED] called Robertson to inform him of the issue and Robertson in turn called the Board Agent on the latter's agency cell phone. Robertson testified that his intention in calling the Board Agent was to elicit more information about the position the Employer had taken on [REDACTED]'s service as an observer and to explore whether the parties could reach a resolution of the matter. The Board Agent, occupied with the pre-election conference and setting up of the polls, missed Robertson's call but called him back immediately after he noticed the missed call.

It is undisputed that the Board Agent returned Robertson's call at 1:19 pm while standing in the polling site within earshot and eyeshot of the other participants of the pre-election conference, and that Robertson picked up.⁶ Witness testimony about the first 30 seconds of this phone call is the evidence most germane to the Employer's Objection.

[REDACTED] and [REDACTED] both testified that they observed the Board Agent on the phone for a short period of time before Kaseta interrupted the call. Specifically, [REDACTED] recalled that the Board Agent was on the phone for about 30 seconds, during which time he heard the Board Agent say "[h]i, Alex", "yes they are", and nothing else, before Kaseta interrupted to demand to know with whom he was speaking. [REDACTED] did not hear what the Board Agent was saying but remembers that he was on the phone for between 5 to 10 seconds before Kaseta began yelling at him, demanding to know whether the Board Agent was speaking with the Petitioner's counsel and accusing him of having an *ex parte* conversation with Robertson.

Both [REDACTED] and [REDACTED] testified that after Kaseta interrupted the call, the Board Agent confirmed that he was speaking to the Petitioner's counsel and then stepped into an adjacent office with Kaseta. It is undisputed that the Board Agent and Kaseta continued this conversation with Robertson behind the closed door of this adjacent office.

Robertson testified consistently with [REDACTED] and [REDACTED], and adds perspective from the other end of the phone call. He estimated that he spoke to the Board Agent for about 10 to 15 seconds, during which time he explained to the Board Agent why he was calling. He then heard a voice in the background and the Board Agent paused the call. Robertson remembered that when

⁶ [REDACTED] testified that the office size was somewhere between ten to fifteen feet by twenty feet.

the Board Agent came back to the phone, Kaseta was also on the call, presumably by speaker. He testified that Kaseta accused him and the Board Agent of having an “*ex parte* conversation” and demanded that they include her in any future conversations. They also discussed the issue of whether [REDACTED] could serve as the Petitioner’s observer. It is undisputed that by the time this phone call ended, it had been decided that [REDACTED] would go back to work and that the Petitioner would call its alternate observer.

There is no evidence that the Board Agent made any effort to conceal his phone call to Robertson or that any voter witnessed the phone call or resultant interaction between the Board Agent and Kaseta.

Pursuant to the Employer’s objection about [REDACTED] serving as an observer, the Petitioner called an alternative observer, polls opened as scheduled, voters were enfranchised, and the ballots were cast and counted without issue.

IV. BURDEN OF PROOF AND THE BOARD’S LEGAL STANDARD FOR SETTING ASIDE ELECTIONS

It is well settled that “[r]epresentation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.” *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). The objecting party faces a heavy burden to present evidence that raises “substantial and material factual issues” in support of its objections. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992), citing Rules and Regulations, Section 102.69; *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989).

To meet its burden of establishing that an election should be set aside based on Board agent misconduct or procedural irregularities, the objecting party must present evidence that “raises a reasonable doubt as to the fairness and validity of the election.” *Durham School Services, LP*, 360 NLRB 851, 853 (2014), enfd. 821 F.3d 52 (D.C. Cir. 2016), citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enfd. 414 F.2d 999 (2d Cir. 1969), cert. denied 396 U.S. 1010 (1970); see also *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967); *Physicians & Surgeons Ambulance Service*, 356 NLRB 199, 199 (2012), enfd. 477 Fed.Appx. 743 (D.C. Cir. 2012).

For an act of a Board agent or a procedural irregularity to rise to the level of misconduct, it must be so egregious as to destroy confidence in the Board’s election process, or could reasonably be interpreted as impairing the election standards the Board seeks to maintain.” *Sonoma Health Care Center*, 342 NLRB 933, 933 (2004); *Jakel, Inc.*, 293 NLRB 615, 616 (1989), citing *Athbro Precision Engineering Corp.*, 166 NLRB at 966 (election was set aside when Board agent took ballot out of ballot bag and placed it into a challenge envelope at the

request of the Union without being able to verify the correct ballot was removed, thus giving reasonable doubt as to whether the proper vote was challenged); *Madera Enterprises*, 309 NLRB 774 (1992) (election set aside when Board agent broke signed seal on impounded ballot envelope outside the presence of parties and therefore compromised the integrity of the election process); see also, *Rheem Mfg. Co.*, 309 NLRB 459 (1992) (ballots marked outside polling hours not immediately placed in ballot box but done in view of observers and no signs of tampering did not interfere with the integrity of the election).

V. EMPLOYER'S OBJECTION 4 AND MY RECOMMENDATION

In Objection 4, the Employer states that the Board Agent conducting the election acted “unlawfully and improperly by engaging in at least one *ex parte* telephone conversation with legal counsel for the Union before polling began on April 5.”

The record testimony about the telephone call between the Board Agent and Robertson, as described and summarized above, comprises the entirety of evidence that the Employer offers in support of Objection 4. This evidence falls well short of raising reasonable doubt, or even suspicion, as to the fairness and validity of the election. Nor does it raise substantial and material issues that could possibly have interfered with the election.

As an initial matter, the Employer's claim that the Board Agent acted “unlawfully” is a serious accusation that warrants consideration apart from the broader objection. In Board proceedings, as in all proceedings under law, parties are bound to make non-frivolous claims that are legally sound and supported by the evidence. See, *In Re Bochner*, 322 NLRB 1096 (1997); *Tiidee Prod., Inc.*, 194 NLRB 1234, 1236 (1972) (“While we do not seek to foreclose access to the Board and courts for meritorious cases, we likewise do not want to encourage frivolous proceedings. The policy of the Act to ensure industrial peace through collective bargaining can only be effectuated when speedy access to uncrowded Board and court dockets is available.”) This is no such claim. The Employer failed to put forth even an iota of evidence that calls into question the legality of the Board Agent's actions, or any legal theory in support of the accusation. So void is the record of evidence of illegality that it is reasonable to ask whether the Employer, casually or carelessly, decided to include the word “unlawfully” to add color to the broader objection. Whatever its intention, the Employer lodges this accusation without offering a legal or factual basis and accordingly, I recommend that this part of the Objection be summarily overruled.

The Employer has also failed to establish that the Board Agent acted improperly or otherwise in any manner that raises reasonable doubt as to the fairness and validity of the election. Even viewing the record evidence in a light most favorable to the Employer, the evidence establishes that the Board Agent adhered faithfully to the procedural safeguards set forth in the Casehandling Manual and that the election results reflected the true desire of the voters. The

Board Agent opened the pre-election conference in a timely manner, with enough time for the Employer to raise its objection to [REDACTED]'s service as an observer and for the Petitioner to respond.⁷ When the Board Agent received a call from the Petitioner's counsel just 11 minutes before the polls were to open, and in line with his responsibility to try to resolve open issues before the election commenced, he immediately returned Robertson's call.⁸ Before he and Robertson had any substantive discussion about the observer issue, Kasetta was brought into the conversation. Neither the Board Agent nor Robertson registered any objection to her participation, and the Board Agent facilitated a conversation between the parties about the observer issue.⁹ The parties ultimately determined that [REDACTED] would return to work and that the Petitioner would designate an alternate observer. This was not the Petitioner's preferred arrangement but one necessary in order to ensure that the polls opened on time. Indeed, the polls did open as scheduled, voters were enfranchised, and the ballots were cast and counted without issue.

The Employer's central argument is that the phone conversation between the Board Agent and Robertson was improper merely because it began in a way that was "one-sided", or *ex parte*. This argument presumes that Board agents are prohibited from speaking to one party outside the presence of other interested parties in advance of the conduct of the election, including during the pre-election conference. The Employer presents no legal authority in support of this presumption and neither can any be found in Board law.

The Board's Rules and Regulations speak in detail about what types of *ex parte* communications with Board agents are not acceptable and the phone call at issue here is clearly not among them. In Subpart P (*Ex Parte Communication*) of its Rules and Regulations, the Board lists the specific types of proceedings where *ex parte* communication with an involved Board agent is prohibited.¹⁰ For example, interested parties may not have *ex parte* communications with a Board agent who will be involved in writing the decision in a pre-election hearing, from the time the hearing opens until the decision issues.¹¹ Each of the prohibited *ex parte* communications involves an on-the-record proceeding from which a formal

⁷ See, NLRB Casehandling Manual, Sec. 11318 (Preelection Conference).

⁸ See, *id.*, Sec. 11320 (Opening of Polls) (The polls should be opened at the time scheduled); Sec. 11310.1 (Observers – Generally) ("...care should be taken, in any doubtful case, to accord each party every opportunity for representation."); Sec. 11310.2 (Observers – Designation of Observers) ("...If a claim is made that an observer is ineligible to act, the matter should be discussed and the parties made aware that the use of an ineligible observer may result in the election being set aside through the objections process. However, the Board agent should not attempt to determine the eligibility of an observer.")

⁹ See, *id.*

¹⁰ See, 29 C.F.R. Sections 102.126 – 102.134.

¹¹ 29 C.F.R. Sec. 102.128 (a).

decision will flow.¹² An election is no such proceeding. Thus, the mere fact that the Board Agent and Robertson had a conversation in the pre-election period that was outside the Employer's presence does not support a conclusion that the Board Agent acted improperly or otherwise raise reasonable doubt as to the fairness and validity of the election.

Even if the Employer could convincingly argue that it was entitled to participate in the call between the Board Agent and Robertson, there is still no evidence to establish a "reasonable doubt as to the fairness and validity of the election." *Durham School Services, LP*, 360 NLRB at 853, citing *Polymers, Inc.*, 174 NLRB at 282. Within at least 30 seconds of inception of the phone call, Kaseta was brought into the call. There is no evidence that any eligible voters were aware that the Board Agent called Robertson, how Kaseta reacted to the call, or of the conversations that followed. Kaseta actively participated in the resolution of the observer issue, which was an issue raised entirely by the Employer. Not only does the record evidence fail to establish that the Board Agent favored the Petitioner, it shows the observer issue was resolved *against* the Petitioner's favor and so, could be understood to the contrary.

¹² See, 29 C.F.R. Sec. 102.128 (Types of on-the-record proceedings; categories of Board agents; duration of prohibition) : Unless otherwise provided by specific order of the Board entered in the proceeding, the prohibition of [ex parte communications set forth in] § 102.126 will be applicable in the following types of on-the-record proceedings to unauthorized *ex parte* communications made to the designated categories of Board agents who participate in the decision, from the stage of the proceeding specified until the issues are finally resolved by the Board for the purposes of that proceeding under prevailing rules and practices:

- (a) In a pre-election proceeding pursuant to Section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to Section 9(b) of the Act, in which a formal hearing is held, communications to the Regional Director and the Director's staff who review the record and prepare a draft of the decision, and Board Members and their staff, from the time the hearing is opened.
- (b) In a postelection proceeding pursuant to Section 9(c)(1) or 9(e) of the Act, in which a formal hearing is held, communications to the Hearing Officer, the Regional Director and the Director's staff who review the record and prepare a draft of the report or decision, and Board Members and their staff, from the time the hearing is opened.
- (c) In a postelection proceeding pursuant to Section 9(c)(1) or 9(e), or in a unit clarification or certification amendment proceeding pursuant to Section 9(b) of the Act, in which no formal hearing is held, communications to Board Members and their staff, from the time the Regional Director's report or decision is issued.
- (d) In a proceeding pursuant to Section 10(k) of the Act, communications to Board Members and their staff, from the time the hearing is opened.
- (e) In an unfair labor practice proceeding pursuant to Section 10(b) of the Act, communications to the Administrative Law Judge assigned to hear the case or to make rulings upon any motions or issues therein and Board Members and their staff, from the time the complaint and/or Notice of Hearing is issued, or the time the communicator has knowledge that a complaint or Notice of Hearing will be issued, whichever occurs first.
- (f) In any other proceeding to which the Board by specific order makes the prohibition applicable, to the categories of personnel and from the stage of the proceeding specified in the order.

There is simply no evidence that the Board Agent signaled bias, created the impression of impropriety, caused or oversaw procedural irregularities, or otherwise engaged in conduct that would raise reasonable doubt, or even suspicion, as to the fairness and validity of the election.¹³ Compare with, *Renco Electronics*, 330 NLRB 368 (1999) (A remark by a Board interpreter to an employee waiting in line to vote - Do you know where to put your yes vote? - could have inferred that the Board favored a yes vote and was then, destructive of the Board standard of impartiality); *Hudson Aviation Services*, 288 NLRB 870, (1988) (Board agent, in the presence of voters, had a loud argument with employer's supervisor, which "impermissibly put into a question the Board's neutrality in the election."); *Alco Iron Metal*, 269 NLRB 590 (1984) ((Board agent's instruction to the union's observer to translate "the procedure of voting to employees" was a delegation of an important part of the election process to the union's observer, conveyed the impression that the union, and not the Board agent, was responsible for running the election, and could "reasonably be interpreted as impugning the election standards" that the Board seeks to uphold). Accordingly, I recommend that the Employer's Objection 4 be overruled.

VI. CONCLUSION

Based on the foregoing and the record as a whole, I recommend that the Employer's Objection 4 be overruled. The Employer has not met its burden of establishing that the Board Agent's conduct raises a reasonable doubt as to the fairness and validity of the election, or otherwise raises substantial and material issues interfering with the election and warranting that it be set aside and that a rerun election be conducted.

Therefore, I recommend that an appropriate Certification of Representative issue that certifies that a majority of the valid votes counted plus challenged ballots were cast in favor of the Petitioner and that it is the exclusive representative of the Unit employees involved herein for the purposes of collective bargaining.

¹³ The Employer did not present any argument to the contrary in its closing statement. Instead, its only closing arguments related to issues that were not before me. It argued first that that the hearing record was incomplete because I, as the Hearing Officer, denied its request for the testimony of the Board Agent who conducted the election. In fact, it was the General Counsel, by a May 29 letter to the Employer, who had denied its request for such testimony and I ruled accordingly. The Employer repeated this argument in its June 7 Appeal of my ruling to the Regional Director which was, as mentioned above, denied on June 26. The Employer also argued in its closing statement that I, as the Hearing Officer, improperly refused to hear evidence related to a fifth objection that it attempted to file in its April 5 Motion to Amend Objections. The Regional Director fully considered and dismissed this this Motion prior to the hearing, on May 31.

VII. APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 22 by **July 15, 2024**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Pursuant to Section 102.5 of the Board's Rules and Regulations, exceptions must be filed by electronically submitting (E-Filing) through the Agency's website (www.nlr.gov), unless the party filing exceptions does not have access to the means for filing electronically or filing electronically would impose an undue burden. Exceptions filed by means other than E-Filing must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden. **Section 102.5(e) of the Board's Rules do not permit a request for review to be filed by facsimile transmission.**

Pursuant to Sections 102.111 – 102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business 5:00 p.m. EDT on the due date. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated: June 28, 2024.

/s/ Colleen P. Breslin /s/

Colleen P. Breslin, Hearing Officer
National Labor Relations Board, Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102