

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

WMC-SA, INC., A CALIFORNIA CORPORATION,  
D/B/A WESTERN MEDICAL CENTER SANTA ANA

Employer

and

Case 21-RC-20936

CALIFORNIA NURSES ASSOCIATION (CNA)

Petitioner

REPORT ON OBJECTIONS  
AND  
ORDER DIRECTING HEARING  
AND  
NOTICE OF HEARING

This Report<sup>1</sup> contains my Order regarding the Petitioner's Objections to the election conducted on December 27 and 28, 2006.<sup>2</sup> The Petitioner's Objections allege that the Employer **1)** interrogated employees about why they supported the Petitioner, **2)** threatened employees with the loss of the right to self-schedule and other favorable terms and conditions of employment, **3)** threatened and/or retaliating against employees because of their support for the Petitioner, **4)** surveilled employees or created the impression of surveillance, **5)** electioneered near the polling area, **6)** provided assistance to individual employees and third parties who were engaged in an anti-union campaign, **7)** by its election observers, made written notations when employees presented themselves to vote and/or relayed information on the voting by telephone, **8) and 9)** created an atmosphere of fear by making false and disparaging statements about the Petitioner, and **10)** committed unspecified objectionable acts. As described below, I conclude that the Petitioner's Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 shall be considered at a hearing, and herein Order and give Notice of such hearing.

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<sup>1</sup> This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

<sup>2</sup> As described in the Consent Election Agreement approved in this matter, the collective-bargaining unit agreed appropriate in this matter is composed of: "Included: All full-time, part-time, and per diem Registered Nurses, including those who serve as relief charge nurses, employed by the Employer at its hospital facility located at 1001 North Tustin Avenue, Santa Ana, California; Excluded: All other employees, confidential employees, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities or are employed by another entity, employees of outside registries and other agencies supplying labor to the Employer, already represented employees, regularly assigned charge nurses, guards, managers and supervisors as defined in the Act."

## **Procedural History**

The petition in this matter was filed on November 16, 2006. The tally of ballots served on the parties at the ballot count conducted on December 28, 2006 showed that of approximately 420 eligible voters, 149 cast ballots for, and 170 against, the Petitioner. There were one void ballot and four challenged ballots, which were insufficient in number to affect the results of the election. The Petitioner timely filed objections to the conduct of the election, a copy of which is attached hereto as Attachment A. The Objections were timely served upon the Employer.

## **The Objections and Analysis**

### **Objection No. 1**

The employer, Western Medical Center-Santa Ana, Inc., d/b/a Western Medical Center Santa Ana (“WMCSA”), through its supervisors and/or agents, coercively interrogated employees about, inter alia, why they supported the union, and thus interfered with laboratory conditions and made a free election impossible.

The Petitioner asserts that one unit employee, hereinafter referred to as Witness A, would testify in support of Petitioner’s Objection No. 1.

Evidence has been presented that on an unknown date in the week of December 18, 2006, the Burn ICU Manager asked a unit employee if they had authorized the Petitioner to put their photo into a Petitioner brochure distributed at the Employer.

### **Objection No. 2**

The employer, WMCSA, through its supervisors and/or agents, interfered with laboratory conditions, and made a free election impossible, by informing, implying, or threatening that employees would suffer onerous consequences, including, but not limited to, the loss of the right to self-schedule and other favorable terms and conditions of employment, if the union won the election.

### **Objection No. 3**

The employer, WMCSA, through its supervisors and/or agents, created an atmosphere of fear and intimidation, interfered with laboratory conditions, and made a free election impossible, by threatening to retaliate and/or retaliating against employees in their

terms and conditions of employment because of their activities on behalf of CNA and because they engaged in concerted activities with other employees of the employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage support for CNA.

Inasmuch as they are related, I will consider Petitioner's Objections Nos. 2 and 3 together. The Petitioner asserts that two unit employees, hereinafter referred to as Witness B and Witness C, would testify in support of Petitioner's Objections Nos. 2 and 3.<sup>3</sup>

Witness B would testify that on or about December 20, 2006, Dr. Zona, an alleged agent of the Employer, told unit employees that if they voted for the Petitioner, they could not come to their work unit's holiday party.

Witness C would testify that on an unknown date(s) in the period between November 16, 2006 and December 26, 2006, Surgery and Recovery Services Manager Bridget King and unidentified 7<sup>th</sup> floor charge nurses<sup>4</sup> told unit employees that they would lose the right to do self-scheduling if they voted for the Petitioner.

#### **Objection No. 4**

The employer, WMCSA, through its supervisors and/or agents, engaged in surveillance of employees' union activity or created the impression of surveillance, both on and off the hospital premises, and thus created an atmosphere of fear and intimidation, interfered with laboratory conditions, and made a free election impossible.

The Petitioner asserts that Petitioner Representatives Carla Saporta, Alex Camacho, Deborah Burger, Roy Hong, Andrew Pontius, Sue Cannon, and Tracey Ledbetter, and one unit employee, hereinafter referred to as Witness D, would testify in support of Petitioner's Objection No. 4.

Andrew Pontius, Sue Cannon, Tracey Ledbetter, and Deborah Burger would testify that on various dates between November 24, 2006 through December 26, 2006, an unidentified surgery and recovery services manager and/or the operating room charge nurse surveilled Petitioner meetings with unit employees in the OR/PACU/OPS break room.

Carla Saporta would testify that on approximately 3 to 5 occasions, between about November 28, 2006 though about December 12, 2006, while the Petitioner met with unit employees in Conference Room 5, an unidentified Employer security guard pulled open the room divider, increasing the opening from the cafeteria into Conference Room 5 from about one foot

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<sup>3</sup> In support of Objection No. 3, the Petitioner presented evidence, which was also presented in support of its charge in Case 21-CA-37597. That charge was withdrawn on February 22, 2007. The Petitioner has since withdrawn such evidence as it may relate to Objection No. 3.

<sup>4</sup> The Petitioner asserts that Employer charge nurses are supervisors as defined in Section 2(11) of the Act.

to eight to ten feet, thereby eliminating all privacy. Roy Hong would also testify that on various dates between November 28, 2006 through December 12, 2006, unidentified Employer security guards surveilled Petitioner meetings with unit employees in Conference Room 5, at the Employer's facility, from a nearby bench in the adjoining the cafeteria. Roy Hong would testify that on or about November 29, 2006, at approximately 12 midnight, an unidentified ICU manager, trauma manager, and house supervisor surveilled a Petitioner meeting with unit employees in Conference Room 5, at the Employer's facility, from their nearby table in the adjoining the cafeteria.

Carla Saporta, Alex Camacho, and Deborah Burger would testify that on December 15, 2006, unidentified supervisors surveilled a Petitioner meeting with unit employees at a Mimi's Cafe restaurant.

Witness D would testify that on or about November 20, 2006, Kelly Wopershall, the Mother-Baby Unit manager, created an impression of surveillance among unit employees by leaving a July 16, 2006 letter at the nurses' station and in the break room, with highlighting (allegedly done by Wopershall) on the name of every Mother-Baby Unit registered nurse whose name and signature appeared therein as one of the "WMCSA RNs for CNA."

#### **Objection No. 5**

The employer, WMCSA, through its supervisors and/or agents, created an atmosphere of fear and intimidation, interfered with laboratory conditions, and made a free election impossible by engaging in campaign activity within close proximity to the polls on the election days

The Petitioner asserts that Petitioner Representatives Roy Hong and Chito Quijano would testify in support of Petitioner's Objection No. 5.

Roy Hong and Chito Quijano would testify that on December 27, 2006, for about one hour during each of the voting sessions from 6:30 a.m. to 8:30 a.m. and from 6 p.m. to 9 p.m., unit employee Sherwood Cox, an alleged agent of the Employer, positioned himself on the sidewalk outside the main entrance to the Employer's facility to distribute leaflets there and so that he would see every unit employee who entered the hospital from the outside in order to vote.

#### **Objection No. 6**

The employer, WMCSA, through its supervisors and/or agents, provided assistance to individual employees and third parties who were pursuing an anti-union campaign, and thus created an atmosphere of fear and intimidation, interfered with laboratory conditions, and made a free election impossible.

The Petitioner asserts that Petitioner Representatives Andrew Pontius, Sue Cannon, and Tracey Ledbetter, and three unit employees, hereinafter referred to as Witness E, Witness F and Witness G, would testify in support of Petitioner's Objection No. 6.

Witness E, Witness F and Witness G would testify that on or about December 22, 2006, the Employer knowingly permitted employees, during their work time, to visit the Mother-Baby Unit to campaign against the Petitioner, with unit employees who were working there.

Petitioner Representatives Andrew Pontius, Sue Cannon, and Tracey Ledbetter would testify that on various dates between November 24, 2006 and December 26, 2006, the Employer permitted an openly anti-Petitioner unit employee to loiter, during their work time, in the OR/PACU/OPS break room, where these Petitioner representatives were meeting with unit employees. Additionally, on unknown dates, the Employer permitted an openly anti-Petitioner unit employee to campaign against the Petitioner, during their work time.

### **Objection No. 7**

The employer, through its election observers, engaged in conduct destroying the integrity of the election process and created a coercive atmosphere in the polling area by making written notations when employees presented themselves to vote and/or by relaying information on the voting by telephone.

The Petitioner asserts that two unit employees, hereinafter referred to as Witness H and Witness I, would testify in support of Petitioner's Objection No. 7.

Witness H would testify that Employer election observer Maureen Bollin used an Employer-supplied cell phone during the 6:30 a.m. and 8:30 a.m. polling session, on December 27, 2006. Witness H complained about this to the Board agent, who directed that the cell phone be put away. Later during that polling session, an unidentified man (dressed in casual street clothes) came into the polling room, whispered something to Bollin, and left without voting. Still later during that polling session, a unit employee entered the polling room, handed Bollin another Employer-supplied cell phone, and announced to Bollin, as she voted, words to the effect of "Here's another vote for you." Unit employees were in the polling room during some of these events.<sup>5</sup>

Witness I would testify that on December 27, 2006, either during the 2:30 p.m. and 4:00 p.m. polling session or the 6:00 p.m. and 9:00 p.m. polling session, Employer election observer Lisa Moores highlighted something she was reading, while voters were in the polling room. Witness I complained about this to the Board agent, who instructed the observers that there would be no more writing. Witness I would testify that on December 28, 2006, during the 2:30 p.m. and 4:00 p.m. polling session, Employer election observer Eleanor Martin drew a

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<sup>5</sup> Attached hereto as Attachment B is a copy of the Instructions to Election Observers used at the election, which prohibits cell phone use by observers.

diagram, while voters were in the polling room. Witness I complained about this to the Board agent.

### **Objection No. 8**

False and disparaging statements associating CNA with property damage, and harassment and intimidation of RNs by telephone and invasive home visits, made by third parties and widely disseminated shortly before the election, created such a generalized atmosphere of confusion and fear of reprisal as to render impossible a free election.

### **Objection No. 9**

In the alternative, the employer, WMCSA, through its supervisors and/or agents, created an atmosphere of fear and intimidation, interfered with laboratory conditions, and made a free election impossible, by, on the days of the election, fabricating and disseminating false and disparaging rumors associating CNA with threatening conduct including property damage, harassment, and intimidation allegedly carried out by CNA representatives against WMCSA employees who opposed unionization.

Inasmuch as they are related, I will consider Petitioner's Objections Nos. 8 and 9 together. The Petitioner asserts that Petitioner Representative Roy Hong, Witness D, two unit employees, hereinafter referred to as Witness J and Witness K, and unidentified unit employees would testify in support of Petitioner's Objections Nos. 8 and 9.

Petitioner Representative Roy Hong would testify that Employer Human Resources Director Gwen Chambers informed the Petitioner that at 7:30 a.m., on December 27, 2006, a unit employee claimed that she had received five or six harassing phone calls, from a caller who allegedly identified herself as being from the Petitioner, and was later visited at home by two unidentified, female Petitioner representatives, whom the unit employee ordered to leave. Unidentified unit employees would testify that they heard that the Petitioner had been harassing unit employees by phone and home visits.

Witness J would testify that on or about December 28, 2006, at about 10:00 a.m., they saw Charge Nurse Teresa Cargle talking with unit employee Sherwood Cox, a known anti-Petitioner activist. Witness K would testify that on or about December 28, 2006, shortly after 10:00 a.m., Cargle told Witness K that the Petitioner had punctured or slashed the tires on an emergency room registered nurse's car. Witness D and Witness G would testify they heard from an employee of the Employer that Petitioner organizers had slashed employees' car tires and "keyed" Sherwood Cox's car. Unidentified unit employees would testify that by mid-day on December 28, 2006, they heard that these same statements repeated elsewhere at the Employer's facility.

While Petitioner's Objections Nos. 8 and 9 reference "false" statements attributed to the Employer, the objections focus on the allegation that the statements created "a generalized atmosphere of confusion and fear of reprisal" and "an atmosphere of fear and intimidation, [which] interfered with laboratory conditions." Inasmuch as the Board does not "probe into the truth or falsity of the parties' campaign statements,"<sup>6</sup> any hearing on such statements shall be strictly limited to how they may have created "an atmosphere calculated to prevent a free and untrammelled choice by the employees." General Shoe Corp., 77 NLRB 124 (1948); Cal-West Periodicals, 330 NLRB 599 (2000); Westwood Horizons Hotel, 270 NLRB 802 (1984); Robert Orr-Sysco Food Services, 338 NLRB 614 (2002); Associated Rubber Co., 332 NLRB 1588 (2000); and Diamond State Poultry Co., 107 NLRB 3, 6 (1954), *inter alia*.

### **Objection No. 10**

By the above and other conduct, the employer, WMCSA, has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights and has interfered with their ability to exercise a free and reasoned choice in the election.

The Petitioner submitted no evidence in support of Petitioner's Objection No. 10, which alleges that Employer engaged in unspecified objectionable acts. The Board has long held that parties filing objections must present specific and timely evidence in support of their objections. Star Video Entertainment L.P., 290 NLRB 1010 (1988); and Goody's Family Clothing, 308 NLRB 181 (1992).

Accordingly, I hereby overrule Petitioner's Objection No. 10 in its entirety.

For its part, the Employer simply denies the allegations in each Petitioner objection.

### **Conclusion**

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Petitioner's Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 can best be resolved by a hearing.<sup>7</sup> Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Petitioner's Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

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<sup>6</sup> See Midland National Life Insurance Co., 263 NLRB 127, 130 (1982).

<sup>7</sup> Petitioner's Objection No. 10 has been overruled.

## ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by Petitioner's Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Regional Director as to the disposition of Petitioner's Objections Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.

## NOTICE OF HEARING

PLEASE TAKE NOTICE that, on Tuesday, March 20, 2007, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PST, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on March 2, 2007.

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James F. Small  
Acting Regional Director  
Region 21  
National Labor Relations Board