

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

**THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF
NEW YORK,**

Employer,

-and-

**GRADUATE WORKERS OF
COLUMBIA-GWC, UAW.**

Petitioner.

Case No. 02-RC-143012

**COLUMBIA’S EXCEPTIONS TO THE
HEARING OFFICER’S REPORT AND RECOMMENDATIONS**

The Trustees of Columbia University in the City of New York (“Columbia”) respectfully submits the following exceptions to the Hearing Officer’s March 6, 2017 Report and Recommendations on Objections (“RRO”) in the above-captioned case overruling Columbia’s objections to the conduct of the election, pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board.

1. Exception is taken to the finding, for which there is no support in the record, that there were “many students involved in the organizing campaign who did not know Rosenstein because students organized other students.” RRO at 9.

2. Exception is taken to the finding, for which there is no support in the record, that “there is no evidence regarding how many voters would know [Maida Rosenstein]” from when she

“spoke to students about organizing....” RRO at 9.

3. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “The Employer alleges that the mere presence of the Union agents on the second floor of Earl Hall at various times throughout the election is objectionable. The evidence does not support such a finding.” RRO at 10.

4. Exception is taken to the finding, for which there is no support in the record, that “Union agents remained on the second floor of Earl Hall in a seating area for approximately thirty minutes every two hours throughout the election[,]” to the extent that the evidence showed that Union agents were present for longer than thirty minutes. RRO at 10.

5. Exception is taken to the finding, for which there is no support in the record, that “the record does not show the extent to which voters recognized the Union agents or were aware of their presence in Earl Hall during the election.” RRO at 10-11.

6. Exception is taken to the finding, for which there is no support in the record, that “many voters would not necessarily know Rosenstein.” RRO at 11.

7. Exception is taken to the finding, for which there is no support in the record, that “voters had to turn right immediately to go up the stairs to the polling place.” RRO at 11.

8. Exception is taken to the finding, for which there is no support in the record, that “[a]lthough voters had to pass through the same room, they could walk up the stairs without walking directly past the union agents.” RRO at 11.

9. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]he Board has distinguished the presence of employer agents

from the presence of union agents at a polling site, finding that the mere presence of union agents is not necessarily coercive[,]” to the extent that the governing case law has found Union agents’ presence coercive when it is in a location where voters must pass in order to vote. RRO at 12.

10. Exception is taken to the finding, for which there is no support in the record, that “[t]he conduct of the Union agents in this case was even less intrusive given that the Union agents did not speak to voters and were not necessarily known to voters.” RRO at 12 n. 9.

11. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that the ruling of “the Administrative Law Judge who heard Nathan Katz on remand” was “consistent with Board precedent.” RRO at 12.

12. Exception is taken to the finding, for which there is no support in the record, that [t]here is no evidence that the Union agents in the present case engaged in coercive or otherwise objectionable conduct in or around Earl Hall during the election.” RRO at 13.

13. Exception is taken to the finding, for which there is no support in the record, that “there is no evidence in this case that the Union agents behaved in any manner to call attention to themselves.” RRO at 13.

14. Exception is taken to the finding, for which there is no support in the record, that “there is no evidence regarding how many voters walked through the Earl Hall lobby while Rosenstein was present.” RRO at 13.

15. Exception is taken to the finding, for which there is no support in the record, that “the Employer has not demonstrated that either Rosenstein or Blanchard was known or recognizable to voters.” RRO at 13.

16. Exception is taken to the finding, for which there is no support in the record, that “[t]he Employer asserts that the ‘union agents surrounded the only entrance to the polls,’ but, as discussed, the evidence demonstrates otherwise.” RRO at 13.

17. Exception is taken to the finding, for which there is no support in the record, that “The Union agents did not approach the entrance to the polling place during the election.” RRO at 13.

18. Exception is taken to the finding, for which there is no support in the record, that Union agents “did not interfere with any voters waiting to vote.” RRO at 13.

19. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer’s first objection.” RRO at 14.

20. Exception is taken to the finding, for which there is no support in the record, that “most people seem not to notice the iphone at all. None of the voters appear concerned by the iphone.” RRO at 16.

21. Exception is taken to the finding, for which there is no support in the record, that the Board Agent “does not look at the iphone during this time.” RRO at 16.

22. Exception is taken to the finding, for which there is no support in the record, that “[t]here is no evidence that the conduct of either Freyman or Cai created an atmosphere of fear and reprisal which would require setting aside this election.” RRO at 17.

23. Exception is taken to the finding, for which there is no support in the record, that “none appear upset by [the iPhone].” RRO at 17.

24. Exception is taken to the finding, for which there is no support in the record, that “[t]here is no record evidence to demonstrate that there was a general atmosphere of fear and reprisal or that employees might have felt surveilled.” RRO at 17.

25. Exception is taken to the finding, for which there is no support in the record, that “[t]here is no evidence suggesting that the videotaping in the present case was more coercive.” RRO at 18.

26. Exception is taken to the finding, for which there is no support in the record, that “Neither Freyman nor Cai's conduct rises to such a level which would create an atmosphere of fear and reprisal that would render a free election impossible.” RRO at 18.

27. Exception is taken to the finding, for which there is no support in the record, that “there is no evidence that the Board Agent in the video was aware of this conduct. Thus, the evidence does not support the Employer's assertion of the "Board Agent's knowing disregard of surveillance inside Earl Hall." RRO at 18.

28. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer's second objection.” RRO at 14.

29. Exception is taken to the finding, for which there is no support in the record, that “they were able to determine the correct address....” RRO at 21.

30. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “This exhibit also includes notes from interviews with observers Shewanna House and Theresa Smith, but there is no evidence regarding the accuracy of

those notes. Accordingly, I do not rely on that part of the exhibit.” RRO at 21 n.13.

31. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “I rejected the Employer's offer of additional notes taken by Union representatives who did not testify to authenticate the notes. Moreover, those notes were not corroborated by testimony.” RRO at 21 n.13.

32. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]his Casehandling Manual section does not, however, override the Regional Director's discretion by requiring use of identification in large or complex elections.” RRO at 23.

33. Exception is taken to the finding, for which there is no support in the record, that “[t]here is no evidence regarding the extent of this prohibition, how many voters produced identification at the polls, or how many did not.” RRO at 23.

34. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]hese few examples do not demonstrate that there were widespread irregularities that could have affected the results of this election, which the Petitioner won by a large margin.” RRO at 23.

35. Exception is taken to the finding, for which there is no support in the record, that observers were “able to determine the correct voter by using the address.” RRO at 24.

36. Exception is taken to the finding, for which there is no support in the record, that “Stincone also testified that she was able to verify the identity of voters without the use of identification.” RRO at 24.

37. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]he lack of employees' full name on the list left the election in Avondale vulnerable to a greater degree of uncertainty, which was magnified by the fact that the employees wore badges containing only their first names.” RRO at 24.

38. Exception is taken to the characterization of *Avondale*, that “The court found that an analysis of the marked Excelsior list showed "suspicious voting involving hundreds of ballots." RRO at 25.

39. Exception is taken to the misstatement of Columbia' position, for which there is no support in the record, that “Avondale does not, as the Employer contends, affirmatively require the use of voter identification.” RRO at 25.

40. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “in contrast to the facts of Avondale, the record evidence here does not raise a reasonable doubt as to the validity of this election.” RRO at 26.

41. Exception is taken to the finding, for which there is no support in the record, that [t]he Employer has presented evidence regarding only four voters” involved in instances of voter fraud or confusion. RRO at 26.

42. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]hese few examples of alleged voting irregularities do not call the results of this election into question.” RRO at 26

43. Exception is taken to the finding, for which there is no support in the record and is contrary to governing case law that “[t]he Employer has not demonstrated that there is a reasonable

doubt as to the validity of this election due to the voter identification issue.” RRO at 26.

44. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer's third objection.” RRO at 26.

45. Exception is taken to the characterization of the testimony, for which there is no support in the record, that “[a]t one point, Employer observer Marlin stated she could not recall if there was something propping the door open or if the door was open by itself, Tr. at 69, but later testified that it was a heavy door and that ‘something was holding it open.’ Tr. at 81.” RRO at 32.

46. Exception is taken to the finding and conclusion, for which there is no support in the record, that “Marlin was unable to recall many details pertaining to this objection.” RRO at 33.

47. Exception is taken to the finding and conclusion, for which there is no support in the record, that “[w]ith regard to the door, I generally credit the testimony of Prins over that of Catapano and Marlin.” RRO at 34.

48. Exception is taken to the finding, for which there is no support in the record, that:

Prins testified in a straightforward manner and his testimony provided a much greater amount of detail and specificity than that of Catapano or Marlin regarding the door. As to whether the door was propped open by something, Prins's testimony was very clear on this point. By contrast, Catapano testified that she did not recall anything holding the door and Marlin's testimony was very vague, although she eventually conceded that something was holding the door open. Prins's testimony was also very clear that he saw the door actually swing closed and that he saw the Board Agent reopen the door and replace the garbage pail in front of it. By contrast, Marlin's testimony regarding the time the door was closed was evasive and lacked specificity. RRO at 34-35.

49. Exception is taken to the finding and conclusion, for which there is no support in the record, that “[i]n the present case, there is no evidence that the lack of challenged ballot envelopes or the closing of the door require setting this election aside.” RRO at 35.

50. Exception is taken to the finding and characterization of the standard, for which there is no support in the record or governing case law, that “the evidence does not show that possibly disenfranchised voters could have affected the results of the election, in which the Petitioner prevailed by more than 900 votes.” RRO at 35-36.

51. Exception is taken to the finding, for which there is no support in the record, that “[t]he evidence also shows that almost all, if not all, of those voters returned after 3 p.m. on December 7, when additional challenged ballots were delivered to the site.” RRO at 36.

52. Exception is taken to the finding, which is contradicted by evidence improperly excluded from the hearing, that “even if none of the voters had returned, the Employer has not demonstrated that more than ten possible voters were affected by the lack of challenged ballot envelopes, a number far too small to affect the results of the election.” RRO at 36.

53. Exception is taken to the finding, for which there is no support in the record, that “[e]ven assuming the door was closed for ten minutes as Marlin testified, there is no evidence that any voters were dissuaded from voting by the fact that the door was closed.” RRO at 36.

54. Exception is taken to the finding, for which there is no support in the record, that “[t]he record shows that there was a voting sign clearly visible outside the room.” RRO at 36.

55. Exception is taken to the finding and characterization of the standard, for which there is no support in the record or governing case law, that “[g]iven the Petitioner's margin of

victory in the tally of ballots, the Employer has not demonstrated that a determinative number of voters could have been disenfranchised.” RRO at 36.

56. Exception is taken to the finding and characterization of the standard, for which there is no support in the record or governing case law, that “[n]or is there any evidence of ‘accompanying circumstances’ suggesting that the vote could have been affected by the suspension of polling.” RRO at 37.

57. Exception is taken to the finding and characterization of the standard, for which there is no support in the record or governing case law, that “given the Petitioner's large margin of votes over the Employer, there is no plausible argument that it is impossible to know if the conduct could have affected the election.” RRO at 37.

58. Exception is taken to the finding and characterization of the standard, for which there is no support in the record or governing case law, that “[t]here are approximately 400 eligible voters on the Excelsior list for the CUMC location, so a vast majority of voters on the list would have to be disenfranchised to affect the results of the election.” RRO at 37.

59. Exception is taken to the finding and conclusion, for which there is no support in the record or governing case law, that The Employer has not shown that this election should be set aside because the votes of those possibly excluded could have been determinative, there were accompanying circumstances suggesting that the vote could have been affected by the suspension of polling, or that it is impossible to determine whether the suspension could have determined the outcome as required under Jobbers Meat Packing Co., 252 NLRB 41, supra.” RRO at 37.

60. Exception is taken to the finding and characterization of the cases, for which there is no support in the record or governing case law, that Columbia “relies on three cases which are distinguishable from the present case.” RRO at 37.

61. Exception is taken to the finding, characterization of the cases and the conclusion, for which there is no support in the record or governing case law, that “[i]n each of these cases, there is evidence of irregularities that could potentially have affected the results. The Employer in this case has failed to present evidence of conduct that could possibly have affected the election results.” RRO at 38.

62. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer's fifth and sixth objections.” RRO at 38.

63. Exception is taken to the recommendation and conclusion, for which there is no support in the record and is contrary to governing case law, that “[t]he Employer has failed to demonstrate that any alleged objectionable conduct occurred which could have affected the results of this election, in which the Petitioner prevailed by more than 900 votes.” RRO at 39.

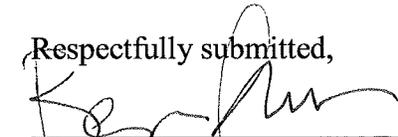
64. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer's objections in their entirety.” RRO at 39.

65. Exception is taken to the recommendation, for which there is no support in the record and is contrary to governing case law, regarding “overruling the Employer's objections.” RRO at 39.

66. Exception is taken to the recommendation “that the Petitioner be certified as the exclusive bargaining representative....” RRO at 39.

Dated: New York, New York
March 17, 2017

Respectfully submitted,



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**UNITED STATES OF AMERICA
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AFFIDAVIT OF SERVICE OF: Columbia University's Exceptions to the Hearing Officer's Report and Recommendations

I hereby certify that, on the 17th day of March 2017, I served the above-entitled document(s) by the methods indicated below, upon the following persons at the following addresses:

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