

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

LOCKHEED MARTIN SERVICES, INC.
Employer

and

Case 5-RC-16189

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS

Petitioner

HEARING OFFICER'S REPORT ON OBJECTIONS

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BEFORE:

Jennifer Matis, Hearing Officer
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PROCEDURAL BACKGROUND

Pursuant to a Decision and Direction of Election¹ issued by the Regional Director on February 8, 2008² a secret-ballot election was conducted, by mail. The mail ballots were sent to eligible voters on February 27th. The ballots were commingled and counted on March 24th with the following results:

Approximate number of eligible voters	1031
Void ballots	18
Votes cast for Petitioner	438
Votes cast against participating labor organization	438
Valid votes counted	876
Challenged ballots	9
Number of valid votes counted plus challenged ballots	885

Challenges are sufficient in number to affect the results of the election.

By agreement of the parties, the Region on April 28th opened and counted five of the original nine ballots that had been challenged. On the same date, the Region issued a Revised Tally of Ballots with the following results:

	<u>Original Tally</u>	<u>Challenged Ballots Counted</u>	<u>Final Tally</u>
Approximate number of eligible voters	1031		
Void ballots	18	0	18
Votes cast for Petitioner	438	2	440
Votes cast against participating labor organization	438	3	441
Valid votes counted	876		881
Challenged ballots	9		4
Number of valid votes counted plus challenged ballots	885		885

Challenges are sufficient in number to affect the results of the election.

¹ The unit is: "All full-time and regular part-time Flight Services Specialists I, II, III employed by the Employer; but excluding casual employees, office clerical employees and guards and supervisors as defined in the Act." The eligibility period is the payroll period ending Sunday, February 3, 2008.

² Unless otherwise noted, all dates hereafter refer to 2008.

The four ballots that remained challenged were challenged by the Petitioner. By letter dated May 2, 2008 the Employer agreed to sustain the four remaining challenges. Therefore, on May 5, 2008, the Regional Director issued a Revised Tally of Ballots with the following results:

Approximate number of eligible voters	1031
Void ballots	18
Votes cast for Petitioner	440
Votes cast against participating labor organization	441
Valid votes counted	881
Challenged ballots	0
Number of valid votes counted plus challenged ballots	881

Challenges are not sufficient in number to affect the results of the election.

On March 31st, Petitioner filed timely objections to conduct it alleges affected the results of the election.³ The Regional Director issued a Supplemental Decision and Notice of Hearing in this matter on May 5, 2008, in which he ordered that a hearing be conducted before a duly-designated hearing officer for the purpose of receiving testimony to resolve the issues of fact and credibility raised by Petitioner's Objection 3(a) regarding the sending of communiqués containing campaign propaganda.

Accordingly, a Hearing was held before the undersigned on May 13, 2008. At the Hearing, all parties were afforded a full and complete opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues raised by the objections. On the basis of my observations of the witnesses while testifying under oath, and the record in its entirety, including the exhibits and briefs of the parties, I make the findings of fact, resolutions of credibility, and recommendations set forth herein. In resolving credibility issues, I have taken

³ The petition was filed on January 3, 2008. The undersigned will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of filing of the petition and extends through the election. Goodyear Tire and Rubber Co., 138 NLRB 453 (1962).

into consideration such factors as the relative demeanor of the witnesses, partisan interest, guarded or indirect answers, conclusory and conflicting testimony, argumentativeness, ability to recall with accuracy and specificity, consistency, corroboration, and inherent probabilities and reasonable inferences in view of the record as a whole. See Bishop & Maco, Inc., 159 NLRB 1161 (1966). Based on my review and analysis, for the reasons detailed in this report, I am recommending that the Board overrule Petitioner's Objection 3(a).

OBJECTION 3(a)

During the period between the distribution of ballots to eligible voters and the tally of those ballots, the Employer electronically delivered several "communiqués" (a form of communication which the Employer requires employees to read and to acknowledge receipt of) to eligible voters in which the Employer included anti-union propaganda. These communiqués violated the Board's rules against captive audience meetings during the voting period.

FACTUAL FINDINGS

Most of the facts in this case are undisputed. The federal government contracts with the Employer to provide flight services previously provided by the Federal Aviation Administration. The flight services specialists perform a variety of pre-flight and in-flight services for pilots of aircraft. Depending on the level of certification they have achieved, the bulk of their duties involve "plugging in" at their workstation to receive calls from pilots. For instance, the pilots may seek assistance with clearances, current weather conditions, or instrument flight rule conditions.

The flight services specialists work out of approximately 18 flight service stations, including 3 hubs. Most of these flight service stations are manned 24 hours a day. The shifts vary from facility to facility, and a single facility may have six different shifts. Three flight services specialists from two different locations – the Ashburn hub and the Princeton, Minnesota flight service station – testified at the hearing. Their testimony established that (at least at these

two locations) the flight services specialists work at workstations in a large open room, likened to the NASA mission control center at the Kennedy Space Center. (Employer's Exhibit 2 is a photograph of the Ashburn hub.) The Ashburn hub is one of the Employer's larger facilities, with approximately 100 workstations for flight services specialists, 25 of which are dedicated to training. The Princeton, Minnesota facility has approximately 15 workstations. Each workstation is a large desk with three computer screens, plus a back-up computer.

Once on the clock, the flight services specialists receive a pre-duty briefing from the supervisors. They may check the "Read and Initial" binders for new items before they go to their workstations. The "Read and Initial" binders are traditional 3-ring binders kept in the supervisors' work area. They contain "Mandatory Briefing Items" (or "MBI") that must be read and initialed. The flight services specialists are orally briefed on all MBI; the initialed acknowledgment from the binder is entered into each employee's training record as written documentation. The binders also contain "Operationally Significant Items" (or "OSI") that must be read and initialed. The OSI are mandatory reading, but are not orally briefed or entered into employees' training records. The binders also contain other items that are not mandatory reading -- despite the name, flight services specialists are not required to read and initial all the documents in the "Read and Initial" binder.

When the flight services specialists are ready to begin taking calls from pilots, they will log on at a workstation and "plug in" their headsets. While they are speaking to pilots they are focused solely on the task at hand. Between calls, however, they may have periods of downtime in which they can address less time-sensitive tasks.

The work of the flight services specialists is highly information-dependent. Conveying job-critical and time-sensitive information to the flight services specialists on duty is the first

priority. In addition to the face-to-face briefings, Ashburn has a large "jumbo-tron" style screen displaying important information to all workstations. The Employer also has an "instant messaging" system to deliver job-critical, time-sensitive messages to the flight services specialists. These alerts cannot be turned off; all flight services specialists logged on at their workstations will instantaneously see these messages as they are sent.

The Employer also uses an email system, referred to as "FS21 Outlook," to communicate with the flight services specialists and to allow them to communicate with each other. They cannot access the system from home or from any other location. The FS21 Outlook system is internal to the Employer; it does not transmit emails from individuals or organizations outside the company. Unlike the other methods of communication described above, the Employer asserts that no job-critical or time-sensitive information is communicated by FS21 Outlook email. The flight services specialists have access to this email system only while logged in at their workstations during their shifts. They will access this email system before they "plug in" to take pilot calls or during downtime between calls. There is no evidence that they read their emails while off-the-clock or on break. Therefore, I find that FS21 Outlook emails are read on company time.

The three flight services specialists who testified each utilize the FS21 Outlook email system differently. David Khanoyan testified that he checks his email as soon as he logs on to the computer at the beginning of his shift. He leaves the FS21 Outlook program open while he takes calls from pilots; if left open, the system will notify Mr. Khanoyan with an audible tone when he has received a new email. Later, when he is not taking a call from a pilot or performing work, he will read the new email. Judith Brandes testified that she checks her email when she first arrives at work but does not leave the program open during her shift. She may recheck her

inbox later in the day to see if new emails have arrived during the shift. Frances Velasquez testified that she does not generally read her FS21 Outlook emails at the beginning of her shift. She testified that she checks her email about once every other week and does not read all the emails she receives. I credit all three witnesses' testimony in this regard. They each had credible explanations to support their testimony. Moreover, none of their testimony contradicts that of any other witnesses. Based on the above, I find that the flight services specialists check and read their FS21 Outlook emails at their discretion.

At the Hearing, the parties stipulated that on February 28, 2008, the day after the mail ballots were distributed to eligible voters, the Employer sent a communiqué (Joint Exhibit 2) to all flight services specialists via the FS21 Outlook email system. This is the communiqué referenced in Petitioner's Objection 3(a), and the only campaign message alleged to be objectionable.

The basic facts concerning this communiqué are undisputed. It was sent by Program Manager Ron Petro, who began sending "communiqués" to the flight services specialists when he took over his position in January of 2008. The first was sent on January 16th (Joint Exhibit 1). The communiqués were sent out as attachments to emails on the FS21 Outlook system by Communications Manager Nancy Causey. The subject heading of each of these emails indicated that a communiqué from Ron Petro was attached but did not indicate the specific content of the communiqué. Since January, Mr. Petro has distributed a communiqué to the flight services specialists about once a week.

Mr. Petro testified that the purpose of the communiqués is to inform the flight services specialists of current events and happenings and update them on management's efforts to fix

systems issues. The first communiqué on January 16th described the purpose of the messages and stated that they are not intended to be “training or a mandatory reading item.”

The Employer’s witnesses provided uncontested testimony that the employees are free to delete the communiqués without reading them, at least from the Employer’s point of view.⁴ Mr. Petro provided uncontested testimony that no job-critical or time-sensitive information is relayed through the communiqués. The Employer has no way of knowing if a flight services specialist deletes a communiqué (or any other FS21 Outlook email) without reading it. Although hard copies of at least some of the communiqués have been placed in the “Read and Initial” binder in the Ashburn hub, there is no evidence that they were mandatory reading. Therefore, I find that the communiqués (including the one sent February 28th) do not contain job-critical or time-sensitive information and are not mandatory reading.

Nonetheless, some flight services specialists reasonably feel obligated to read all emails sent to them by management. The three flight services specialists who testified at the hearing place differing levels of importance on reading the communiqués. Mr. Khanoyan and Ms. Brandes testified that they read all their emails, including the communiqués, and consider this an important aspect of their job. Ms. Velasquez testified that she does not read all of the communiqués and has not encountered any problems as a result. Although she arrived at the Ashburn hub after the January 16th communiqué was sent, the flight services specialist who trained her told her that the communiqués were optional reading. Again, I credit the testimony of all three witnesses in this regard. Mr. Petro testified that he hoped that the flight services specialists would consider his communiqués to contain helpful information. I find it credible

⁴ Thus, I find that the evidence does not support the contention, set forth in Petitioner’s Objection 3(a), that the communiqués are “a form of communication which the Employer requires employees to read and to acknowledge receipt of.”

that some employees would feel obligated to read all of Mr. Petro's emails, while others would not. Therefore, while the communiqués are not mandatory reading, I find that some employees reasonably feel obligated to at least skim through them.

The testimony established that the February 28th communiqué was typical of the weekly messages. The first paragraph of the message relates to a prospective raise in pay for certain employees as a result of changes to the contract with the FAA. The next ten paragraphs relate directly to the upcoming NLRB election. The last portion of the message is titled "AFSS Engineering Weekly Report" and includes information on an upcoming software security patch and other systems issues. Based on the testimony and documentary evidence, I find that the February 28th communiqué contains a message concerning the upcoming election, sandwiched between work-related information.

LEGAL ANALYSIS

As the objecting party, the Petitioner has the burden of providing sufficient evidence to substantiate its objections. Builders Insulation, Inc., 338 NLRB 794 (2003).

The Board's long-standing Peerless Plywood rule prohibits certain campaign speech before an election:

This rule shall be that employers and unions alike will be prohibited from making election speeches on company time to massed assemblies of employees within 24 hours before the scheduled time for conducting an election. Violation of this rule will cause the election to be set aside whenever valid objections are filed.

Peerless Plywood Company, 107 NLRB 427, 429 (1953). The Board went on to clarify that the rule "does not prohibit employers or unions from making campaign speeches on or off company premises during the 24-hour period if employee attendance is voluntary and on the employees' own time." See Peerless Plywood Company, 107 NLRB at 430.

The Board applied the Peerless Plywood rule to mail ballot elections in Oregon Washington Telephone Co., prohibiting election speeches on company time to massed assemblies of employees from the time and date on which the mail ballots are scheduled to be dispatched by the Regional Office until the terminal time and date prescribed for their return. See Oregon Washington Telephone, 123 NLRB 339, 341 (1959).

I find that the Petitioner has failed to substantiate its claim that the Employer violated the Peerless Plywood rule in this case. Accordingly, I shall recommend that the Board overrule Objection 3(a) in its entirety.

The communiqué in question has several elements of a violation of the Peerless Plywood rule, as applied in Oregon Washington Telephone.⁵ It was distributed and read on company time, as the flight services specialists only have access to the FS21 Outlook system while at their workstations. The parties stipulated that the communiqué was sent by email on February 28th, which definitively establishes that it was sent after the mail ballots were dispatched by the Region and before the date prescribed for their return.

Moreover, I find that the communiqué contained "campaign speech" within the meaning of Peerless Plywood and Oregon Washington Telephone. The communiqué directly referenced the upcoming election and attempted to discourage the employees from voting for the Petitioner. For instance, the communiqué included the following paragraph:

I sincerely believe that allowing a third party to insert themselves into the program at this point would deal a tremendous blow to the progress we are making. Contrary to what they are telling you, they have not been involved in or struggles or the progress we are making. They are late arrivals and they bring nothing of substance to our program. We don't need them. Our stakeholders are impressed with the progress we have made working together, and I want to see

⁵ The Objection relates only to the emailed version of the communiqué. The Petitioner does not contend that the Employer's distribution of hard copies of the communiqué in the "Read and Initial" binders was objectionable.

this continue. I am listening to what you are telling me and together we are making steady progress.

This type of partisan message falls squarely within the type of campaign speech that employers and unions are prohibited from making to massed assemblies of employees on company time under Peerless Plywood and Oregon Washington Telephone. See, e.g., Bro-Tech Corp., 330 NLRB 37, 39 (1999).

Much of the testimony at the hearing was directed at whether reading the communiqués was “voluntary” or “mandatory.” It is undisputed that the flight services specialists can delete or ignore Mr. Petro's communiqués without consequence from the Employer. I do not find this fact to be dispositive, however. By analogy, if this case involved a traditional speech to a massed assembly of employees rather than an email, the campaign speech would be objectionable despite the fact that the employees could avoid attending the meeting.

As the Board stated in Peerless Plywood, campaign speeches are permissible when employee attendance is “voluntary *and on the employees' own time.*” See 107 NLRB at 430 (emphasis added). Consequently, the issue of “voluntary” attendance only arises if the employees are attending on their “own time.” See Montgomery Ward & Co., Inc., 124 NLRB 343, 344 (1959). The Employer cites no case, and I am aware of no case, in which the Board has found a campaign speech on company time to be non-objectionable simply because employees could avoid it without consequence.⁶ On the

⁶ The Board's decision in Wate, Inc., 123 NLRB 301, 303 (1959) is distinguishable from the present case. In that case, the disputed campaign discussion was “voluntary” because it was initiated by the employees, not the employer. Furthermore, the campaign discussion at issue in Wate, Inc. was the continuation of a permissible captive-audience meeting that was scheduled to end before 24-hour Peerless Plywood period began, but extended into the 24-hour period when some of employees initiated further discussion with the employer after the meeting concluded. See also Nebraska Consolidated Mills, Inc., 165 NLRB 639 (1967) (declining to apply Peerless Plywood rule where a meeting accidentally extended into company time); Granite State Veneer, Inc., 123 NLRB 1497 (1959) (declining to apply the Peerless Plywood rule where captive-audience speech accidentally extended into proscribed period).

contrary, in at least one case the Board has affirmed the determination that an employer violated Peerless Plywood by holding a meeting on company time, even though the employees were explicitly told that the meeting was voluntary. See The Fluorocarbon Company, 168 NLRB 629, 656 (1967). Here, the undisputed testimony establishes that all Mr. Petro's communiqués contain work-related information and are read solely while the flight services specialists are "on the clock" and at their workstations. Therefore, the communiqué cannot be likened to campaign speeches in which employee attendance is "voluntary and on the employees' own time."

Of course, this case does not involve a traditional speech to a massed assembly but the distribution of a mass email. Thus, the dispositive issue here is whether the distribution of a mass email constitutes speech to a "massed assembly of employees" under Peerless Plywood and Oregon Washington Telephone. The Board has extended the definition of "massed assembly of employees" to include groups of employees who were not gathered together for the purpose of hearing a speech. In United States Gypsum Co., the Board found the use of a sound truck to broadcast campaign speech into the workplace to be a violation of Peerless Plywood, even though the employees were not under the control of the speaker and were not compelled to listen:

Thus, here the speeches could be clearly heard during working hours at locations in the plant where a number of employees were stationed. Furthermore, although the employees were not a massed assembly in the sense that they were gathered for the purpose of hearing the speeches, the employees who heard or could have heard the speeches were not isolated, but were working with or near each other, and the Petitioner in a planned and systematic fashion directed its campaign speeches at the employees during the entire day before the election. Accordingly, as the considerations operative in establishing the Peerless Plywood rule are here present in substance, albeit not in form, we are persuaded to reach the same result here.

115 NLRB 734, 735 (1956).

Significantly, however, the Board has never found any kind of written campaign “speech” to violate the Peerless Plywood rule. The Peerless Plywood decision specifically stated that it would not interfere with the rights of unions or employers to circulate campaign literature on or off the premises at any time prior to an election, nor will it prohibit the use of any other legitimate campaign propaganda or media. See 107 NLRB at 430; see also Pearson Education, Inc., 336 NLRB 979 (2001) (campaign poster); Andel Jewelry Corporation, 326 NLRB 507 (1998) (campaign flyer).

Of course, in 1953 the Board did not foresee the advent of technology allowing written campaign messages to be “broadcast” to numerous employees the way that a sound truck could broadcast oral speech. Today, however, it is commonplace for employers to use email messages, text messages, and instant messaging systems to communicate with employees. Thus, we are now faced with the relatively novel issue of whether an email message such as the Employer's communiqué should be treated like speech to a massed assembly of employees or like written campaign propaganda.

To my knowledge, there is only one Board case that addresses this question. In Virginia Concrete Corporation, Inc., the Board found that text messages broadcast to “mobile data units” mounted on the truck drivers' dashboards did not violate the Peerless Plywood rule. See 338 NLRB 1182, 1187 (2003). The message read, in its entirety, “Your Vote Counts. It's Your Future. Bring it to an End. Vote No.” See Virginia Concrete, 338 NLRB at 1195. The drivers could delete the message or scroll through to another message. The administrative law judge had found this message to be objectionable, finding it to be an “uninvited mass message.” See Virginia Concrete, 338 NLRB at 1196. The Board disagreed, finding the text message more analogous to written campaign literature than to a campaign speech or sound truck broadcast.

See Virginia Concrete, 338 NLRB at 1187. The Board noted that the message was not audible and the drivers could delete or scroll past it. Thus, the Board concluded, the message was analogous to campaign posters, to which Peerless Plywood does not apply. Finally, the Board noted that the message was sent to employees in their trucks, not to a massed assembly of employees, as in Peerless Plywood, or even to employees working with or near each other, as in United States Gypsum.

The Petitioner contends that the facts of this case are distinguishable from Virginia Concrete because the communiqué was “indisputably” sent to “a massed assembly of employees.” I disagree. Although the flight services specialists indisputably work in close proximity to one another, the Board has never held that proximity is sufficient to constitute a “massed assembly” under Peerless Plywood. Rather, my reading of Board law requires not only proximity but also timing. In Electro-Wire Products, Inc., the Board found no Peerless Plywood violation where the president of the company spoke individually to employees at their work stations, urging them to vote against the union. See 242 NLRB 960 (1979). Several employees testified that they overheard the remarks the president made to other employees working near them. Citing Associated Milk Producers, Inc., the Board held that this conduct was unlikely to create the “mass psychology” referred to in Peerless Plywood and could not be construed as a speech to a massed assembly. See Electro-Wire Products, 242 NLRB at 960; see also Associated Milk Producers, Inc., 237 NLRB 879 (1978). According to the Board, the repetitious nature, reach, location, and timing of these individual conversations did not amount to a speech made to all the employees collectively.

I find that the decisions in Electro-Wire Products and Associated Milk Producers are dispositive on this point. The Employer’s use of email does not create a “mass psychology” the

way a speech to a mass assembly does. While some flight services specialists may have read the communiqué at the same time, it would have been purely coincidental. This coincidence does not create a “massed assembly” any more than the overheard conversations in Electro-Wire Products. The “repetitious nature, reach, location, and timing” with which the communiqué was delivered was similar to the individual discussions in Electro-Wire Products. The only significant difference is that the Employer here avoided the burden of having the same conversation with individual employees by utilizing email technology. Despite the difference in technology, however, the result was equally repetitious – hundreds of separate copies of the email arriving in the inbox of each individual flight services specialist. There is no evidence that the Employer intended that any of the flight services specialists would read the message the exact moment it was delivered, and there is no evidence that any did so.⁷ Even assuming that all flight services specialists checked the FS21 Outlook system as soon as they sat down at their workstations, there is no indication that any of the flight services specialists – even on the same shift in the same facility – log on to their workstations at exactly the same time. Thus, while the Petitioner has demonstrated sufficient proximity for a massed assembly, it has failed to demonstrate sufficient simultaneity.

The Employer contends that email is a one-on-one communication, even if it is sent to multiple individuals at one time. I do not find it necessary to generalize about the nature of email as a form of communication in this case. It is possible that email, or other forms of

⁷ The facts here are distinguishable from those in Virginia Concrete in this regard. Whereas there the nature of the mobile data unit technology caused the campaign message to be visible to all truck drivers simultaneously, here the message only became visible after the flight services specialists checked their inbox and opened the communiqué. The Board did not need to reach this issue in Virginia Concrete, however, because it held the message to be unobjectionable on other grounds.

electronic text messaging, could be used as a form of mass communication.⁸ Under different factual circumstances, an electronic text message may be more analogous to a sound truck than traditional written campaign literature. The evidence here, however, demonstrates that the FS21 Outlook system is no more a form of mass communication than a mass mailing.

Finally, the Petitioner also contends that this case is distinguishable from Virginia Concrete because the flight services specialists, unlike the truck drivers, could not delete or skim the communiqué without the risk of missing important information. I disagree that Virginia Concrete can be distinguished on this basis. In Virginia Concrete, the Board explicitly stated that employees would not necessarily be exposed to the campaign message in the process of deleting or scrolling past the text message, comparing the message to a campaign poster. This is equally applicable to the “mixed use” communiqué as it does to the simple “Vote No” message in Virginia Concrete. While the flight services specialists may have been unlikely to delete the entire communiqué without reading it, they could read the other elements of the message and skim past the campaign-related message, just as the truck drivers could scroll past the “Vote No” text message. If anything, employees would be *more likely* to be exposed to the campaign message in scrolling past a simple “Vote No” message than in skimming Mr. Petro’s relatively more subtle campaign message. The Board has repeatedly and consistently found that exposing employees to a written message simply does not implicate the same concerns as an audible speech or broadcast. In Virginia Concrete, the Board found that doctrine equally applicable to an electronic text message. The comparison to written campaign propaganda comparison is no less apt here, regardless of the content of the communiqué.

⁸ For instance, a different result might be warranted if the disputed message had been sent via a mass “instant message” or “IM” that all employees were required to read immediately. The testimony establishes that the Employer does have an IM system to communicate with the flight services specialists, separate from the FS21 Outlook email system. It is undisputed that the Employer did not send any campaign-related messages by IM.

In sum, Peerless Plywood and Oregon Washington Telephone would clearly be inapplicable if the Employer's supervisors had left printed copies of the communiqué at each employee's workstation.⁹ I see no relevant difference in the fact that email was used instead of paper. As noted above, the campaign-related message in the communiqué was no less avoidable than it would have been in a hard copy. Moreover, the manner in which the communiqué was delivered was more akin to a mass mailing or individual conversations than a simultaneous speech or broadcast to a mass audience. Thus, I find that Petitioner has failed to meet its burden to prove that the Employer's distribution of the communiqué was objectionable.

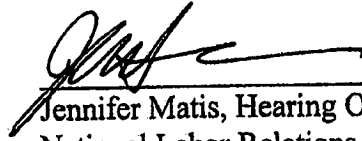
RECOMMENDATION

I recommend that Petitioner's Objection 3(a) regarding the sending of communiqués containing campaign propaganda be overruled in its entirety. Accordingly, I recommend that the appropriate Certification of Results issue.

Under the provisions of Secs. 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, D.C. within 14 days from the date of issuance of this Report and Recommendation. Exceptions must be received by the Board in Washington, DC, by **June 20, 2008**. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy on the other party and file a copy with the Regional Director for Region 5. The exceptions may be filed electronically through E-Gov on the Board's website, www.nlr.gov, but may not be filed by facsimile. If no timely exceptions are filed, the Board will adapt the recommendations set forth herein.

⁹ Indeed, the Petitioner does not contend that Employer violated the Peerless Plywood rule by keeping a printed copy of the February 28th communiqué in the "Read and Initial" binder during the proscribed period.

Dated at Baltimore, MD, this 6th day of June, 2008.



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