

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 18 – SUBREGION 30**

ROGERS MEMORIAL HOSPITAL, INC.

Employer

and

**NATIONAL UNION OF HEALTHCARE
WORKERS (NUHW)**

Petitioner

Case 18-RC-380431

**REGIONAL DIRECTOR DECISION AND
CERTIFICATION OF REPRESENTATIVE**

I affirm the Hearing Officer's recommendation that the evidence is insufficient to prove any objectionable conduct and that the objections should be overruled. Accordingly, I am issuing a Certification of Representative.

I. PROCEDURAL HISTORY AND OVERVIEW

On February 4, 2026, National Union of Healthcare Workers (NUHW) (the Union or Petitioner) filed a petition seeking to represent certain professional and nonprofessional employees of Rogers Memorial Hospital, Inc. (the Employer).¹ Pursuant to a Decision, Order Severing Cases, and Direction of Elections, a *Sonotone* election was conducted at the Employer's Lincoln Center Clinic in West Allis, Wisconsin on April 22. After it was determined that a majority of the voters in the professional voting group voted to be included in the overall unit with the nonprofessional employees, their votes were counted together with the votes of the nonprofessional employees.² The tally of ballots prepared at the conclusion of the election for the overall unit showed that out of approximately 68 eligible voters, 53 votes were cast for, and 4 votes were cast against the Petitioner, with 9 challenged ballots, an insufficient number to affect the results of the election.

On April 29, the Employer filed two timely objections alleging conduct affecting the results of the election. On May 5, the Region issued an Order Directing Hearing and Notice of Hearing on Objections, and a hearing was held over five days, on May 27 and June 2-5, via Zoom. On July 7, the Hearing Officer issued a Report on Objections, recommending that the Employer's objections be overruled and that the Petitioner be certified.

¹ All dates hereafter occurred in 2026, unless otherwise noted.

² A description of all the voting groups and a full recitation of the balloting procedure is contained in the Hearing Officer's Report.

On July 21, the Employer timely filed nine exceptions to the Hearing Officer's Report on Objections, asserting that the Hearing Officer's Report is fundamentally flawed in its application of law to the record evidence and in its credibility determinations, and asserting that the Hearing Officer excluded relevant evidence that prejudiced the Employer's ability to prove its case. The Petitioner did not file an answering brief.

I have carefully considered the hearing transcript, exhibits, the Hearing Officer's Report, the Employer's exceptions, and relevant Board precedent. I conclude that the Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. I also affirm all credibility findings, consistent with the Board's long-established rule that a Hearing Officer's credibility resolutions may only be disturbed where the "clear preponderance of all the relevant evidence" demonstrates they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957).³ The Hearing Officer's Report contained detailed factual findings, and thus, a comprehensive recounting of the facts underlying the dispute is unnecessary. For the reasons described below, I agree with the Hearing Officer's recommendation to overrule the Employer's two objections and further find that the Hearing Officer appropriately quashed the Employer's subpoenas.

The discussion in this decision will be organized as follows. First, I will address the Employer's exceptions, starting with the exceptions related to Objection 1, followed by the exceptions related to Objection 2. I then address the exceptions related to the Hearing Officer's rulings on the Employer's subpoenas. Last, I address Exception 9, which alleges that the totality of the Hearing Officer's findings and rulings denied the Employer a fair hearing.⁴ The discussion of the exceptions will be followed by my Conclusion. The Certification of Representative is at the end.

II. THE EMPLOYER'S EXCEPTIONS AND MY RULINGS

A. Exceptions Related to Objection 1

The full text of Objection 1 is as follows:

The National Union of Healthcare Workers ("NUHW") engaged in intentional interference with the election by orchestrating the trespass onto Rogers Memorial Hospital, Inc.'s ("Rogers") property by former employees clearly not permitted to vote in the election or be in secure areas of Rogers' property. With the assistance of current employees, these former employees surreptitiously accessed sensitive patient areas resulting in a significant disruption of Rogers' business operations.

The Employer's exceptions specific to Objection 1 will be grouped and analyzed as follows: (1) the Employer's exceptions to the Hearing Officer's application of the relevant legal standards for setting aside an election and to the Board's policy regarding employees' right to vote pursuant to the challenged ballot procedure (Ex. 1, 2, and 5); (2) the Hearing Officer's

³ The Employer's one exception related to a specific credibility determination made by the Hearing Officer is discussed further below in Section II, Subsection A. 2.

⁴ To the extent a specific contention, exception, or factual circumstance is not addressed in the below discussion, I have concluded that the Hearing Officer adequately addressed that item or issue and that her conclusion requires no comment on my part.

credibility determinations related to the conversation at the front desk (Ex. 3); and (3) Stephani Lohman's agency status (Ex. 4).⁵

1. The Employer's exceptions to the Hearing Officer's application of the relevant legal standards for setting aside an election and to the Board's policy regarding employees' right to vote pursuant to the challenged ballot procedure (Ex. 1, 2, and 5)

The Employer contends that the Hearing Officer erred in her application of the Board's legal standard set forth in *Taylor Wharton Division*, 336 NLRB 157 (2001), by ignoring the cumulative totality of circumstances and finding that the vote was "not close," and by failing to apply the "laboratory conditions" standard set forth in *Gen. Shoe Corp.*, 77 NLRB 124, 142 (1948). (Ex. 1). The Employer also argues that the Hearing Officer improperly attributed the employees' alleged trespass to the Employer (Ex. 5); and improperly faulted the Employer for not giving written notice barring former employees from its property and imposed an "affirmative obligation" on the Employer to notify terminated employees that they did not have access (Ex. 2).

As an initial matter, the Hearing Officer did not err but correctly applied the Board's objective test from *Cambridge Tool & Mfg. Co., Inc.*, 316 NLRB 716 (1995), to determine whether to set aside an election based on alleged party conduct. As the Hearing Officer noted, the principal question is whether the conduct of a party has "the tendency to interfere with employees' freedom of choice." *Id.* at 716. The Hearing Officer also appropriately considered the nine-factor test set forth in *Taylor Wharton Division*, *supra*, to determine whether the alleged misconduct has the tendency to interfere with employees' freedom of choice: she appropriately analyzed and weighed each factor, cumulatively evaluated them, and concluded that they weighed against finding that the alleged misconduct had a tendency to interfere with employee free choice.

Further, I affirm the Hearing Officer's finding that there was no evidence that Stephani Lohman, Heather Cunningham, or Dr. Gunjan Khandpur engaged in misconduct when they came to vote in the election. As found by the Hearing Officer: they did not enter surreptitiously; they did not enter patient treatment rooms, employee offices, or any sensitive areas; they did not disrupt business or have any altercations with management, patients, or other employees; and they did not engage in any threatening or coercive conduct. They simply entered through the public entrance, were escorted to the polling area, cast their challenged ballots, and immediately left the building.

With regard to weighing the factors, contrary to the claim in Ex. 1, the Hearing Officer did not put improper weight on the closeness of the vote, but rather, she considered that factor as one of the nine factors set forth in *Taylor Wharton*. Nor did the Hearing Officer conflate, as alleged in Ex. 1, the closeness of the vote with the Board's *General Shoe* doctrine, which provides that conduct "which renders improbable a free choice will sometimes warrant

⁵ The Employer did not appear to raise any exceptions concerning the Hearing Officer's findings that the allegations underlying Objection 1 did not constitute impermissible electioneering or a violation of the *Milchem* rule. In any event, I affirm her findings and conclusion that neither of these violations occurred. Any subpoena-related concerns related to Objection 1 are discussed further below in Section II, Subsection C.

invalidating an election, even though that conduct may not constitute an unfair labor practice.” *Id.* at 126. Because there is no evidence of misconduct, and the factors weigh against any interference with free choice, there was no disruption of the laboratory conditions dictated by the *General Shoe* doctrine.

I also do not find any merit to the Employer’s claims in Ex. 5 that the Hearing Officer “erroneously” attributed the employees’ “trespass” to the Employer, nor to the Employer’s claims that it had a lawful right to exclude the terminated employees from its property to vote in the election.

It is important to note at the outset that the Hearing Officer appropriately found that Lohman, Cunningham, and Dr. Khandpur were permitted to vote in the election subject to challenge. The Hearing Officer properly relayed the Board’s policy that employees who are the subject of pending unfair labor practice proceedings alleging unlawful discharges, such as the three discharged employees in this case, are permitted to vote in elections subject to challenge. The Hearing Officer appropriately cited, among other cases, *Dura Steel Co.*, 111 NLRB 590, 591–592 (1955), and the NLRB Casehandling Manual, Part 2, Representation Proceedings (September 2025) (“Discharged employees who state that they believe they have been unlawfully terminated may be allowed to vote subject to challenge...If the Board agent knows that such individuals may try to vote, they should inform the employer and ensure that such individuals are not excluded from the employer’s premises and thus the polls”).

Given this longstanding policy, the Hearing Officer also appropriately made two additional findings. First, it is axiomatic from this policy that the presence of such discharged employees at an employer’s facility to participate in the voting process cannot constitute misconduct that could interfere with free choice. Second, even if the Union was involved in planning or “orchestrating” how the former employees would access the facility to vote, it cannot be misconduct for the Union to be involved in planning something that does not itself constitute misconduct.

In Ex. 5, the Employer contends that the Board’s policy does not require the Employer to affirmatively facilitate access to its premises to permit a discharged employee to vote subject to challenge. This is incorrect. Although employers generally have the right to exclude discharged employees from their premises, the Board has been clear that alleged discriminatees should not be excluded from an employer’s premises for the purpose of voting. See, e.g., *Dura Steel* and the NLRB Casehandling Manual, *supra*. In its exception, the Employer has cited to no Board case law that refutes this principle or holds that it has the right to exclude employees for this purpose. The Employer’s reliance on *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112 (1956), which deals with the right of union organizers to access private property, is not germane to this explicit situation dealing with voting eligibility where the Board already has a governing procedure.⁶

I also do not agree, as the Employer asserts in Ex. 2, that the Hearing Officer imposed an obligation on the Employer to expressly notify Lohman, Cunningham, and Dr. Khandpur in writing that they were barred from the property, or that the Hearing Officer found that the failure of the Employer to do so excused the alleged misconduct. The Hearing Officer did not impose

⁶ *Hudgens v. NLRB*, 424 U.S. 507 (1976), cited by the Employer, is likewise, inapposite as it involves the right of striking employees, who are engaged in primary picketing, to access a privately-owned shopping center.

any such obligation. Instead, in her discussion of the evidence, the Hearing Officer merely made the factual finding, after assessing the totality of the evidence, that the Employer did not notify the three discharged employees in writing that they were not permitted access to the premises. Subsequently, in her analysis weighing the factors related to Objection 1, which starts at the bottom of page 9 of her report, the Hearing Officer did not cite to any failure of the Employer to give written notice as an element in her determination that factors 7 and 9 weighed heavily against a finding of interference; rather, the core of her analysis, which I affirm, is that under Board law, the discharged employees had the right to come on the property and vote subject to challenge. The misconduct in 7 and 9 is attributable to the Employer because of its insistence on its ability to exclude the three discharged employees from voting, which is a right, in the circumstances of this case, it simply did not have. It was on this basis that the Hearing Officer made her findings related to factors 7 and 9. The Hearing Officer did not improperly shift or impose any burdens. Indeed, the Board has explicitly held that an employer who usurps the Board's authority to make an eligibility determination pursuant to the challenged ballot process will be found to have interfered with the Board's orderly election process. *Ace Letter Serv. Co.*, 187 NLRB 581 (1970) (Board directed a new election where the employer prevented employees it claimed were terminated, and the union claimed were laid off, from accessing the premises in order to vote.).⁷

In sum, the Hearing Officer appropriately weighed the *Taylor Wharton* factors and appropriately reached the conclusion that the conduct of the employees in exercising their right to vote pursuant to the Board's challenged ballot procedure did not tend to interfere with employee free choice.⁸

2. Credibility determinations regarding the conversation at the front desk (Ex. 3)

In Ex. 3, the Employer contends that the Hearing Officer erred in crediting the testimony of Lohman, Cunningham, Dr. Khandpur, and O'Connor regarding the conversation at the front desk over the testimony of Security Guard Brian Uhl, arguing that Uhl was a disinterested witness employed by a third-party security firm with no connection to either party and that his testimony was corroborated by Vice President of Compliance Steven Hertig.

A postelection hearing officer is required to evaluate the credibility of witnesses and explain his or her credibility findings in the Hearing Officer's Report. This evaluation should include, among other things, to what extent the witness' testimony contradicted the testimony of other witnesses and internal inconsistencies. The hearing officer may evaluate the inherent

⁷ See also, *Pinter Bros.*, 227 NLRB 921, 921 (1997) (Employer "interfered with the exercise of the free and untrammelled choice" when it refused to admit four discriminatee employees, which it had discharged or laid off, to its premises for the purpose of voting in the election.); see, further, the Board's recent decision in *Frito-Lay, Inc.*, 375 NLRB No. 18, slip op at 1, n. 1 (July 30, 2026) (Board acknowledged the employer's right to exclude a terminated employee from its premises when he tried to engage in campaign activities, but found that the employee, whose discharge was subject to the grievance procedure, remained eligible to vote under challenge in the manual election on the employer's premises.)

⁸ As I noted towards the beginning of this section, the three discharged employees engaged in no misconduct on the morning they came to the Employer's facility and voted. Although I have affirmed the Hearing Officer's *Taylor Wharton* factor analysis, an alternative argument could be made that given the absence of any misconduct, the factors did not even need to be reached, and Objection 1 should be overruled outright.

probability of events in assessing consistency or the truthfulness of the witness and may discredit a witness in part and credit a witness in part. See, *Hearing Officer's Guide, Section L, 3* and *Universal Camera v. NLRB*, 340 U.S. 474 (1951). The Board has long held that a hearing officer's credibility findings in proceedings of this kind can only be reversed by the "clear preponderance of all the relevant evidence." *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957).

I find that the Hearing Officer fulfilled her obligations by evaluating the witnesses' credibility and detailing her reasonings in her report, which included appropriate considerations, including to what extent Uhl's testimony was supported by, or contradicted by, the testimony of other witnesses. Notably, the Hearing Officer did not discredit Uhl outright. Rather, she evaluated his testimony that one of the women said *either* "I forgot my ID" *or* "I don't have my ID," and credited the "or" statement that was corroborated by other witnesses.

I also note that in Ex. 3, the Employer highlights the inconsistencies surrounding Uhl's testimony by pointing out that Uhl initially reported to Hertig that the women said they "forgot" their badge, whereas Uhl later testified with an "or" statement. This reinforces the appropriateness of the Hearing Officer's reliance on other witnesses' testimony to evaluate the inherent probability of events.

Based on the foregoing, I affirm the Hearing Officer's credibility findings.

3. Lohman agency status (Ex. 4)

The Employer claims in Ex. 4 that the Hearing Officer erred in finding there was insufficient evidence that Lohman was an agent of the Union and excepts to the fact that the Hearing Officer nonetheless assumed, for the purposes of the report and its analysis, that Lohman was an agent. The purpose of the proceeding was to ascertain whether there was objectionable conduct, not to determine agency status. Agency status is the framework through which said conduct can be analyzed. Here, the Hearing Officer conducted the analysis regarding Lohman's alleged conduct under the party-conduct standard, which is what would have been employed if Lohman was affirmatively found to be an agent, as alleged by the Employer. Based on that analysis, the Hearing Officer found there was no evidence of objectionable conduct. I therefore find there is no merit to the exception.

B. Exceptions Related to Objection 2

The full text of Objection 2 is as follows:

The NUHW engaged in intentional interference with the election by orchestrating the disruption to the election process and Rogers' operations by encouraging employees to dress up in inappropriate costumes and dance around in patient areas during the election. This too resulted in patients being dysregulated and an assault on premises.

The Employer's exceptions specific to Objection 2 will be grouped and analyzed as follows: (1) applicable legal standard regarding the costume-wearing conduct (Ex. 8); and (2) electioneering (Ex. 1, 6, 7, and 8).

1. Applicable legal standard (Ex. 8)

The Employer contends in Ex. 8 that, even under the third-party conduct standard applied by the Hearing Officer, the costume-wearing activity of employees Kate Zolandz and Angela King was part of the “cumulative destruction of laboratory conditions on election day,” and that the Hearing Officer failed to cumulatively consider all of these events. Specifically, the Employer contends that the costumes were directly linked to the Union; the costume-wearers visited offices of eligible voters during the break between polling sessions; that one of the costume-wearers testified the purpose was to “celebrate that we got the vote;” and that the incident resulted in a patient becoming dysregulated, resulting in an incident with security.

As an initial matter, the Hearing Officer evaluated all of the relevant facts including, among other things, that Zolandz wore a cape over a Union T-shirt that had Union buttons on it, and that the two employees walked around the third floor during the break between voting sessions and interacted with other employees who were eligible to vote, at which time Zolandz referred to King’s unicorn costume as a “union-corn.”⁹ She, further, appropriately applied the pertinent facts to the standard set by the Board in *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). Specifically, the Board will set aside an election based on third-party conduct only when the misconduct “was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible.” *Id.* I affirm the Hearing Officer’s findings that the conduct was not sustained, as it only lasted 30 minutes, and there was no record evidence that the costume-wearing conduct involved any threat, physical violence, or intimidation, or in any way constituted coercive behavior. Accordingly, the Hearing Officer properly found that while the conduct was arguably boisterous, it was not the type of conduct that would create a general atmosphere of fear and reprisal.¹⁰ See *Cargill, Inc. v. NLRB*, 851 F.3d 841, 850-51 (8th Cir. 2017) (conduct by employees who engaged in loud, boisterous conversations during the voting session, shouting profanities while waiting in line to vote; briefly chanting, “Yes we can” in Spanish; and booing a coworker known to have voted against the Union was insufficient to establish a general atmosphere of fear and reprisal).

Insofar as the Employer contends the Hearing Officer failed to consider the employees’ motives or intent, such as their testimony that the purpose was to “celebrate that we got the vote” or that their actions were to bring “levity” on election day, the Hearing Officer correctly noted that the test is an objective standard.¹¹ Thus, the appropriate question is not as to their motives, but whether the conduct itself—which actually occurred—created a general atmosphere of fear

⁹ The Hearing Officer credited King and Zolandz’s un rebutted testimony that they did not dance while in costume, and the Employer did not except to that finding.

¹⁰ Objection 2 does not name either Zolandz or King as agents of the Union, and the Hearing Officer noted that neither of these individuals had been alleged as Union agents or representatives by the Employer. In Ex. 8, the Employer merely speculates that if it had been able to review excluded communications these could have demonstrated the Union’s involvement in the costume-wearing activity, triggering the less stringent party standard. However, because the costume-wearing did not constitute coercive conduct, any potential involvement of the Union with the costume-wearing has no legal bearing. Indeed, the Employer utterly fails to establish how two employees wearing costumes (regardless of their agency status) for a limited period of time away from the polling location while the polls were closed is in any way coercive of voters’ right to freely select whether or not to be represented by a labor organization under *any* standard, including the less stringent party standard. As a result, the Hearing Officer appropriately excluded evidence, both testimony and subpoenaed documents, related to potential involvement by the Union, as well as any costume-wearing employees’ planning activities with coworkers.

¹¹ An objective standard also applies under the party conduct standard.

and reprisal that interfered with the election. As a result, I affirm the Hearing Officer's findings that underlying motives and subjective responses are not material to the analysis.¹²

Finally, with respect to the incident involving a patient, the Hearing Officer considered the record evidence which culminated in a patient swearing at and throwing a yogurt cup towards a security guard. The Hearing Officer appropriately analyzed the conduct under the third-party standard and concluded the Employer failed to establish any factual or logical connection between the patient's actions and the claim that the conduct was "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible."

In sum, the Hearing Officer correctly applied the third-party conduct standard to the conduct alleged in Objection 2, appropriately considered the facts and evidence which were material to the analysis, and correctly concluded that the conduct did not render a free election impossible.

2. Electioneering (Ex. 1, 6, 7, and 8)¹³

The Employer asserts in Ex. 1 that the Hearing Officer applied an artificially narrow geographic limitation in her electioneering analysis by finding that costumes worn on the third floor and in the lobby were not "at or near the polls" because the voting took place on the second floor, and argues, instead, that given the modern reality of electronic communications and social media, the relevant inquiry should be whether the conduct reached and influenced eligible voters, not merely whether it took place in the immediate physical proximity of the ballot box.

I affirm the Hearing Officer's application of *Boston Insulated Wire & Cable*, 259 NLRB 1118, 118-119 (1982), with respect to electioneering, in which the Board affirmed the precedent that it prohibits electioneering "at or near the polls," but that a four-part test is applied to determine whether electioneering at or near the polls interfered with employees' free choice. Insofar as the Employer argues that this analysis is overly narrow and should be expanded, the Employer is arguing a novel legal theory and offers no Board law in support of this contention. The Hearing Officer appropriately applied the standard as it exists, and I affirm her conclusion that no impermissible electioneering took place.¹⁴

C. Exceptions Related to Subpoenas (Ex. 1, 3, 5, 6, 7, and 8)

The Employer excepts to the Hearing Officer's decision to revoke its subpoenas duces tecum to the Union, Lohman, and several other employees. That subpoena, as limited by the Employer in its Opposition to the Union's Petition to Revoke, generally seeks communications

¹² For this reason, I also affirm the Hearing Officer's rulings excluding any evidence, including potential subpoenaed documents, that would be proffered to establish motivation or subjective reactions by coworkers.

¹³ The Hearing Officer correctly stated in the Report on Objections that Objection 2 does not allege that electioneering occurred. However, during the hearing, the Employer argued that the conduct constituted impermissible electioneering. Therefore, in the Report on Objections, the Hearing Officer analyzed the objection on the basis of "even if the electioneering allegation was within the scope of the objections," and applied the legal theory accordingly.

¹⁴ Further, as the current standard contemplates conduct at or near the polls, electronic or social media communications are not material, and any subpoena requests aimed at obtaining such were properly quashed by the Hearing Officer.

between and amongst the Union and employees regarding the three discharged employees' presence on the Employer's property and the use of costumes by two other employees on the date of the election. The Employer argues that this information is relevant and necessary to establish agency status for these five employees, characterizing the revocation of the subpoenas as the "most fundamental flaw" in the Hearing Officer's underlying decision.

The issue raised by the Employer's subpoenas, as correctly recognized by the Hearing Officer, is that they seek employee information that is generally protected by Section 7 of the Act. In *National Telephone Directory Corp.*, 319 NLRB 420 (1995), the Board established a balancing test for determining whether such a subpoena should be revoked. That test considers, on the one hand, that the "confidentiality interests of employees" engaged in Section 7 activity has "long been an overriding concern to the Board," and that an employer who directly questions employees regarding such subjects is generally found to violate the Act. *Id.* at 421; *see Dilling Mech. Contractors, Inc.*, 357 NLRB 544, 546 (2011) ("The Board zealously seeks to protect the confidentiality interests of employees because of the possibility of intimidation by employers who obtain the identity of employees engaged in organizing") (quoting *Wright Electric*, 327 NLRB 1194, 1195 (1999), *enforced*, 200 F.3d 1162 (8th Cir. 2000).

On the other hand, however, the Board recognizes the due process concerns afforded to employers in Board proceedings, and that these rights generally include the right to "test the credibility" of witnesses using relevant documentary information. *National Telephone*, 319 NLRB at 421. In other words, as the Board summarized in *Guess?, Inc.*, the appropriate inquiry is whether the Employer's "need for the information outweighs the employees' rights under Section 7 of the Act." 339 NLRB 432, 434 (2003). Thus, I will first summarize the Employer's stated need for the information, and then I will analyze whether that need outweighs the employees' rights under the Act.

The Employer asserts in Ex. 6 that the subpoenaed information would include "[c]ommunications that evidence coordination of a trespass, that demonstrate knowledge of the Employer's property-access restrictions, that show planning of election-day conduct (including costumes), and that reveal the dissemination of information about these events to eligible voters who had not yet voted." The Employer further argues in Exception 7 that, in revoking the subpoena, the Hearing Officer ignored "how communications function in 2026," and specifically that the subpoenaed electronic communications were the primary means of dissemination regarding allegedly objectionable activities between eligible voters. The cumulative effect of these errors, according to the Employer, improperly limited its ability to establish the agency status of the disputed voters in support of Objection 1 and of the costume-wearers in Objection 2, and the dissemination and coordination of the conduct alleged in Objections 1 and 2.

Unfortunately, the authority cited by the Employer in its briefing provides little, if any, help in balancing these competing interests. The D.C. Circuit's decision in *Ozark Automotive Distributors, Inc. v. NLRB*, 779 F.3d 576 (D.C. Cir. 2015), however, arguably provides the strongest support for the Employer's position here. In that case, the employer subpoenaed information to establish the agency status of an employee who had allegedly engaged in objectionable conduct by threatening his coworkers with job loss and other adverse consequences if they voted against the union in an upcoming election. *Id.* at 578. The court held that the Board erred in quashing the subpoena because the Board did not appropriately weigh the employer's interests against the confidentiality interests of the employee. *Id.* at 586. The court

noted that the agency status of this employee was central to resolving the objection, and that at least some of the information sought (such as the date and times of phone calls) did not implicate any confidentiality interests. *Id.* at 581-82. Because the employer was precluded from fully examining all information relevant to agency status, and the question of agency status was “critical” to the validity of the Employer’s objection, the court overturned the Board’s decision.

The facts of this case largely mirror those of *Ozark Automotive*, with one crucial distinguishing fact: the subpoenaed information (to the extent it exists) does not impact the merits of the underlying objections. And this key distinction makes all the difference in this matter, as the D.C. Circuit held in *Veritas Health Services, Inc. v. NLRB*, 895 F.3d 69 (D.C. Cir. 2018), *enforcing* 362 NLRB 283 (2015). In *Veritas*, the subpoena at issue sought, among other items, internal union communications to determine whether the union had unreasonably delayed scheduling initial bargaining with the employer. The court found that this information was “irrelevant” to the issue at hand, as the union’s three-month delay in scheduling an initial bargaining session was legally insufficient to establish the Employer’s argument (regardless of what the internal communications demonstrated). *Id.* at 81.

The same result obtains here. Regardless of whether Lohman or other terminated voters were acting as Union agents or not, their conduct was not objectionable under Objection 1. Similarly, regardless of the amount of dissemination and coordination between the costume wearers, their co-workers, and the Union, their actions do not constitute objectionable conduct nor improper electioneering under Objection 2.¹⁵ Thus, the subpoenaed information sought by the Employer could not affect the merits of my determinations. Accordingly, consistent with *Veritas Health Services*, these exceptions are overruled.

D. Exceptions Related to Objections 1 and 2 (Ex. 9)

The Employer contends in Ex. 9 that the cumulative effect of the Hearing Officer’s errors denied the Employer a fair hearing. I have concluded that the Hearing Officer’s rulings made at the hearing are free from prejudicial error, I have affirmed all the Hearing Officer’s findings and conclusions related to both objections, and I have found there is no merit to any of the Employer’s exceptions. Accordingly, the Employer’s cumulative-error argument necessarily fails.

III. CONCLUSION

Based on the above and having carefully reviewed the entire record, the Hearing Officer’s Report and recommendations, and the exceptions and arguments made by the Employer, I overrule the objections, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

¹⁵ As noted previously in footnote 10, the Employer’s speculative claim that the subpoenaed communications could be used to establish agency status for the costume wearers has no merit as it fails on both procedural and substantive grounds. On the procedural front, the Employer failed to allege, in either its initial Objections or in its Exceptions, that the costume wearers held any status, such as primary conduits of communications between the Union and employees, evincing agency status. And on the substantive front, the costume-wearing was simply not coercive under any standard, rendering agency status moot.

IV. CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for NATIONAL UNION OF HEALTHCARE WORKERS (NUHW), and that it is the exclusive representative of all the employees in the following bargaining unit:

All full-time, regular part-time, and per diem professional and nonprofessional employees employed by the Employer in the following job classifications at the Employer's Lincoln Center Clinic located in West Allis, Wisconsin: Nurse Practitioner, Physician Psychiatrist, Therapists I (including without limitation Therapist 1 Hourly and Therapist 1 Hourly SUD); Therapist II (including without limitation Therapist 2 Hourly and Therapist 2 Hourly SUD); Experiential Therapists (including without limitation Experiential Therapist II and Experiential Therapist Music Movement); Registered Nurse IOP PHP (Intensive Outpatient Programs; Partial Hospitalization Programs); Behavioral Specialist; Case Specialists (including without limitation Case Specialist and Case Specialist SUD); Case Manager MHAR (Mental Health Addiction Recovery), Clinical Support Coordinator I; Clinical Support Coordinator II; Behavioral Health Technician I; Behavioral Health Technician II, *excluding* managerial employees, confidential employees, and supervisors as defined in the National Labor Relations Act.

However, "lead therapist" or "dietician" are neither included in nor excluded from the bargaining unit covered by this certification, in as much as the parties did not agree on the inclusion or exclusion of "lead therapist" or "dietician" but agreed to vote them subject to challenge and resolution of their inclusion or exclusion was unnecessary because their ballots were not determinative of the election results.

The professional employees did wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining.

V. 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 October 29, 2026. 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, and must be accompanied by a statement

explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. 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: October 15, 2026

/s/ Jennifer A. Hadsall

Jennifer A. Hadsall, Regional Director
National Labor Relations Board
Region 18
Federal Office Building
212 Third Avenue South, Suite 200
Minneapolis, MN 55401-2657