UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 13
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March 11, 2025

Jesus Ramirez, Organizer
International Union of Operating Engineers, Local 399
2260 South Grove Street
Chicago, IL 60616
jramirez@iuoe399.com

Re: Advocate Health and Hospitals Corporation, d/b/a Advocate South Suburban Hospital
Case 13-RC-359590

Dear Mr. Ramirez:

Enclosed is a copy of the objections to the election in the above matter that Advocate Health and Hospitals Corporation, d/b/a Advocate South Suburban Hospital filed on March 10, 2025.

Pursuant to Section 102.69 of the Board's Rules and Regulations, if I determine that the evidence described in the objecting party's offer of proof could be grounds for setting aside the election if introduced at a hearing, I will transmit to the parties and their designated representatives a Notice of Hearing scheduling a hearing before a hearing officer. The hearing will be set for **March 25, 2025** or as soon as practicable thereafter, unless the parties agree to an earlier date or I consolidate this proceeding with an unfair labor practice proceeding before an administrative law judge. The hearing will continue from day to day until completed unless I conclude that extraordinary circumstances warrant otherwise.

If you have any questions or wish to discuss this matter, please contact Field Examiner Christina Mols, whose telephone number is (312)353-7608 and email address is christina.mols@nlrb.gov.

Very truly yours,

/s/ Angie Cowan Hamada

Angie Cowan Hamada
Regional Director

Enclosure: Copy of Objections

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 13

Advocate Health and Hospitals Corporation,
d/b/a Advocate South Suburban Hospital

Employer,

and Case No. 13-RC-359590

International Union of Operating Engineers, Local 399

Petitioner.

EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION

Pursuant to Section 102.69(a) of the National Labor Relations Board's Rules and Regulations, the Employer, Advocate Health and Hospitals Corporation, d/b/a Advocate South Suburban Hospital ("Advocate" or the "Company") respectfully submits the following objections to conduct of the Petitioner, International Union of Operating Engineers, Local 399 (the "Union") that undermined the fairness and objectivity of this election. Further, these proceedings were conducted under an unconstitutional scheme which restricted the Company's constitutional rights.

On February 4, 2025, the Union filed a representation petition captioned as case no. 13-RC-359590. The Parties entered into a Stipulated Election Agreement, and the Regional Director issued an order for a manual election, to be held on Tuesday, March 4, 2025, at Advocate's South Suburban Hospital location. The included employees were listed as "[a]ll full-time and regular part-time Stationary Engineers, Maintenance Technicians, Maintenance Trades Specialists, Biomedical Equipment Technicians, and Imaging Equipment Technicians employed by the Employer at its facility currently located at 17800 South Kedzie Ave., Hazel Crest, IL." Additionally, the Parties agreed that others were permitted to vote, including the Engineer Lead,

Maintenance Mechanic Lead, and Biomedical Equipment Technician Lead, but these votes were subject to challenge because their "eligibility has not been resolved."

OBJECTIONS

The actions of Petitioner, its agents, supporters, and employees disrupted the laboratory conditions necessary to ensure employee free choice and to protect the rights of every eligible voter under the National Labor Relations Act (the "Act") to such a degree that the election results should be overturned and the Regional Director should direct that a second election be held.

The five-business-day period for filing objections following the election ends on March 11, 2025. The Employer submits the following timely objections:

OBJECTION NO. 1

The National Labor Relations Board (the "Board") will not have a quorum that permits the Regional Director to certify the election results or rule on the Employer's Objections pursuant to Section 3(b) of the Act. Challenges to Member Wilcox's position on the Board are currently going through litigation, likely resulting in a stay of the Order from the US District Court for the District of Columbia. [1] This decision would result in the Board only having two members. At that point, the Board would be unable to certify the election or rule on these Objections.

When the Board has no quorum, the Regional Director lacks authority to investigate objections or certify the election results. *New Process Steel, L. P. v. NLRB,* 560 U.S. 674 (2010). Pursuant to Section 3(b) of the Act, the Board must maintain three Board Members "at all times" to constitute a quorum for purposes of effecting its power authorized by the Act. *See* 29 U.S.C. § 153(b); *New Process Steel*, 560 US 680-681.

[1] The U.S. District Court for the District of Columbia reinstated Member Wilcox on March 5, 2025. *See Wilcox v. Trump, U.S. District Court for the District of Columbia*, No. 1:25-cv-00334. This decision is likely to be appealed to the D.C. Circuit Court, where the Court may stay the Order until it reaches a final decision on the matter.

In the absence of a Board quorum, the Regional Director lacks statutory authority to investigate objections or certify the results, or otherwise engage in representation case procedures, including investigating objections or conducting the objections process. If the D.C. Circuit Court decides to stay the order of reinstatement of Member Wilcox, the Board will lack this statutory authority.

Regional directors cannot maintain permanent authority over RC cases, including in the absence of a Board quorum, because Section 3(b) expressly grants parties challenging regional director decisions in RC cases Board review. The Board's interpretation of Section 3(b) allows regional directors to certify results under the guise that it satisfies the Act's policy objective (i.e., unnecessary halting of RC cases when a quorum lapses). The implication of the Board's argument is that when the Board loses quorum, a party's express statutory right to seek review before the Board is lost. Of course, the Board does not have the authority to ignore the statutory language and the rights of parties afforded by that language, yet that is what it is doing.

The D.C. Circuit's decision in *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), holds that the Board's delegees have no authority to act when the Board lacks a quorum. There, though not an RC case, the court reasoned that the fundamentals of agency law necessarily prohibit a delegee from exercising authority that the delegator itself cannot exercise. *Id*. at 472-472; see also Restatement (Third) of Agency § 3.07(4) (2006) (an agent's delegated authority terminates when the powers belonging to the entity that bestowed the authority are suspended). The *Laurel Baye* court held as follows:

> It must be remembered that the delegee committee does not act on its own behalf. The statute confers no authority on such a body; it only permits its creation. The only authority by which the committee can act is that of the Board. If the Board has no authority, it follows that the committee has none. The delegee's authority to act on behalf of the Board therefore ceased the moment the Board's membership dropped below its quorum requirement of three members.

Id. (emphasis added).

Prior decisions examining this issue, including *UC Health v. NLRB*, 803 F.3d 669 (D.C. Cir. 2015), relied upon the circuit *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) deference to the Board's interpretation of the statute and the impact of the Board's loss of quorum on its delegated authority. In July 2024, the Supreme Court overruled the *Chevron* doctrine in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), thus, undermining the continued validity of *UC Health* and other related case law supporting the contention that regional directors hold permanent authority in the absence of a quorum. *See* e.g., *Hospital of Barstow, Inc. v. National Labor Relations Board*, 897 F.3d 280 (D.C. Cir. 2018). The Board's reliance on such vulnerable case law cannot override Advocate's objection on this basis.

OBJECTION NO. 2

The Board tainted the electoral laboratory conditions when it subjected Advocate to an unconstitutional interpretation of the Act under *Amazon.com Services LLC*, 373 NLRB No. 136 (2024), which materially and substantially impaired its ability to lawfully communicate facts, opinions, experience and viewpoints on unionization to all its employees on paid time in required meetings.

The election process violated Advocate's and its employees' First Amendment rights and the takings clause of the Fifth Amendment when it required Advocate to participate in an election under an unconstitutional interpretation of the Act by restraining Advocate from lawfully communicating facts, opinions, experience, and viewpoints on unionization to all its employees on paid time in required meetings.

In November 2024, the Board in *Amazon.com Services LLC*, overturned *Babcock v. Wilcox Co.*, 77 NLRB 577 (1948), which recognized the free speech right of an employer, pursuant to Section 8(c) of the Act, and an employer's absolute right to direct its workforce and share its lawful

opinions, experience, facts, viewpoint and other information on unionization with employees on working time. For over 75 years, *Babcock* recognized and protected an employer's free speech rights under Section 8(c) of the Act to mandate that employees spend their paid time in such meetings where the employer did not threaten, interrogate, punish, or promise benefits to employees. The *Amazon.com Services LLC* decision relied on the faulty premise that mandatory employee meetings inherently coerce employees and infringed upon employees' right to engage in protected concerted activity. To the contrary, the Board's new standard for voluntary meetings disenfranchises both employers from communicating to all its employees in a forum they know will be heard and employees who will not hear their employers' views on unionization.

The Board's decision in *Amazon.com Services LLC* created a communication vacuum that restricted employees' right to free choice because the new standard deprived Advocate of communicating views, arguments, or opinions on unionization in written, printed, graphic, or visual form, free from threats of reprisal, force, or promise of benefit, that all employees would not and did not otherwise receive.

OBJECTION NO. 3

Maintenance Mechanic Lead Dennis Swatek ("Swatek") compromised conditions necessary for a free and fair election. Swatek is a supervisor within the meaning of Section 2(11) of the Act. Swatek has supervisory authority over unit employees, and he attended union meetings where employees in the unit were present. His participation created an atmosphere where employees could have reasonably felt pressured to support the union or feared their stance on unionization would impact their standing in the workplace. His presence resulted in ongoing and uninterrupted surveillance of Section 7 activities. Swatek's involvement and active and open

support in union activities improperly influenced employee free choice and materially affected the election outcome.

HEARING REQUESTED: The Employer requests a hearing on the genuine issues of material facts raised by these Objections, which will be supported by competent evidence that will be timely submitted to the Regional Director by the Board's Rules and Regulations. Based on the evidence presented, the Employer requests that March 4, 2025, election results be set aside and a rerun election conducted.

DATED: March 10, 2025

Respectfully submitted,

ADVOCATE HEALTH AND HOSPITALS CORPORATION, D/B/A ADVOCATE SOUTH SUBURBAN HOSPITAL

By:/s/ *Kevin J. Kinney*

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CERTIFICATE OF SERVICE

I certify that on the 10th day of March, 2025, a copy of the foregoing Objections to union Conduct Affecting the Results of the Election and corresponding Offer of proof, was *electronically filed* on the NLRB's website at http://www.nlrb.gov. I further hereby certify that on the 10th day of March 2025, a true and correct copy of the foregoing **EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION AND OFFER OF PROOF** was served via email, upon:

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/s/ Kevin J. Kinney
Attorneys for Employer