

COMMONWEALTH OF PENNSYLVANIA

LABOR RELATIONS BOARD

* * * * *

IN THE MATTER OF THE *
EMPLOYEES OF THE UNIVERSITY* Nos.: PERA-R-17-355-W
OF PITTSBURGH * PERA-C-19-95-W

*

* * * * *

HEARING TRANSCRIPT

* * * * *

BEFORE: STEPHEN HELMERICH, Hearing Examiner

HEARING: Tuesday, May 14, 2019

9:01 a.m.

LOCATION: Piatt Place

301 Fifth Avenue

Room 2026

Pittsburgh, PA 15222

WITNESSES: Dennis R. Bachy, Casey Madden, Timothy
Barr, Shelby Brewster, Jeffrey Cech, Caitlin
Schroering, Emily Ackerman, Steven Suway

Reporter: Valerie B. Gregory

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P R O C E E D I N G S

HEARING EXAMINER: We're on the record in PERA-C-19-95W and PERA-R-17-355W, both entitled In the Matter of the Employees of the University of Pittsburgh.

My name is Stephen Helmerich. I'm the Hearing Examiner appointed to this matter. Counsel for Steelworkers, identify yourself, please.

ATTORNEY MANZOLILLO: Brad Manzolillo, M-A-N-Z-O-L-I-L-L-O, organizing counsel of the United Steelworkers.

ATTORNEY FISHER: Amanda Fisher, F-I-S-H-E-R, assistant general counsel for the United Steelworkers.

ATTORNEY HEALEY: Mike Healey, Healey, Block and Hornack in Pittsburgh, Pennsylvania.

HEARING EXAMINER: Counsel for the University?

ATTORNEY FARMER: Shannon Farmer, F-A-R-M-E-R. With me, my colleague, Jessica Federico, F-E-D-E-R-I-C-O, Ballard Spahr, LLP, S-P-A-H-R.

HEARING EXAMINER: She's admitted to practice before me. That's what we discussed,

1 practice before the Board.

2 Before we begin, do the parties agree
3 to stipulate that the University is a public
4 employer?

5 ATTORNEY FARMER: Yes.

6 ATTORNEY MANZOLILLO: Got you.

7 HEARING EXAMINER: And that the
8 Steelworkers are an employee representative pursuant
9 to the Act?

10 ATTORNEY FARMER: Yes.

11 ATTORNEY MANZOLILLO: Yes.

12 HEARING EXAMINER: I hereby
13 consolidate for the purposes of these proceedings
14 PERA-C-1995-W and PERA-R-17-355. There is
15 exceptions to the Board's conduct under the
16 PERA-R-17-355 number that was filed by the
17 Steelworkers. And then there was the separate
18 unfair practices charge filed by the Steelworkers in
19 the PERA-C-1995-W.

20 The following hearing and all its
21 exhibits would be consolidated and will be used for
22 both of those logically separate issues. And then
23 whatever order or document that I prepare, we'll
24 treat both of those at the same time.

25 Does anybody have any objections to

1 that?

2 ATTORNEY FARMER: No.

3 ATTORNEY MANZOLILLO: No, Your Honor.

4 HEARING EXAMINER: Okay.

5 The way we're going to proceed is
6 we're going to proceed first with the exceptions to
7 the Board's election conduct which was filed by the
8 Steelworkers. My investigations into past instances
9 where the Board had such exceptions filed is that
10 the Board - the Hearing Examiner in that matter took
11 an investigatory stance and did a direct - did an
12 investigation into the fact by calling witnesses on
13 Direct and introducing exhibits to investigate the
14 conduct of the Board. And then the parties were
15 able to Cross Examine the Board's witnesses.

16 I'm going to do that and then we'll
17 move on to the PERA-C-19-95W, which is a, quote,
18 unquote, typical unfair practice charge where the
19 Steelworkers will then move with the burden and
20 present their case. Does anybody - anyone have any
21 objections to having the hearing in that manner?

22 ATTORNEY FARMER: No.

23 ATTORNEY MANZOLILLO: NO.

24 HEARING EXAMINER: All right.

25 Would - the Steelworkers, would you

1 like to make an opening statement at this time?

2 ATTORNEY MANZOLILLO: Yes. On or
3 about December 17th, 2017, United Steel, Paper and
4 Forestry, Rubber, Manufacturing, Energy, Allied
5 Industrial and Service Workers International Union,
6 AFL-CIO, CLC, or the Union for short, filed a
7 petition to represent graduate assistants employed
8 by the University of Pittsburgh, a public employer
9 under the Public Employee Relations Act or PERA.

10 The Pennsylvania Labor Relations Board
11 or PLRB conducted a representation election April
12 15th through the 18th, 2019 among graduate employees
13 of the University of Pittsburgh to see if they
14 wished to be represented by the Union.

15 The vote was 675 in favor of
16 representation, 712 opposed, with approximately 14
17 unresolved challenged ballots. The Union filed
18 timely labor practice charge allegations against the
19 employer for conducting affecting the results of the
20 election pursuant to Subsection 95.58 of the PLRB's
21 rules and regulations, as well as objections to the
22 conduct of PLRB agents were conduct - conduct
23 affecting the results of the election pursuant to
24 Subsection 95.57 of the PLRB's rules and
25 regulations.

1 Article One of PERA provides that
2 public employees have a right to organize and choose
3 freely their representatives and that procedures
4 shall be established for the protection of these
5 rights. Article Four of PERA, again, codifies these
6 rights. Article Five of PERA gives the PLRB
7 authority to enforce these rights and to make,
8 amend, and rescind such rules and regulations as
9 necessary to achieve this.

10 Article Six of PERA grants the PLRB
11 authority to conduct secret ballot elections and
12 determine the desire of public employees to form a
13 union. It also requires the PLRB to establish rules
14 and regulations for the conduct of such elections
15 which ensure the secrecy of the ballots.

16 Article 12 of PERA establishes that
17 public employers are prohibited from interfering
18 with or restraining or coercing public employees in
19 the exercise of their rights.

20 Facts in this case shall establish
21 that the PLRB failed to conduct the election, in
22 this case, using rules and procedures that protect
23 the belief of public employees if they choose to
24 vote or not vote for a representative in confidence,
25 free from coercion or intimidation by their

1 employer.

2 The PLRB not only did not prohibit the
3 University from openly and independently tracking
4 who voted in the election, but the PLRB encouraged
5 it. Despite having a list of only 11 individuals
6 who they claim to challenge from the voter list, the
7 University poll watchers, who were all managerial or
8 supervisory, in violation of Section 95.52 of the
9 PLRB rules and regulations, were allowed to openly
10 and in plain view maintain an independent list of
11 everyone who voted in the election.

12 They were allowed to ask every voter
13 to read off and/or spell their names or ask the PLRB
14 to ask employees to do that, voters to do that.
15 They were able to view IDs of anyone they chose to
16 so that they could make sure that they were accurate
17 in tracking every single person who voted.

18 The PLRB agents conducting the
19 election actively assisted the University watchers
20 in carrying out this duty and made clear to voters
21 they were doing so.

22 While the objection-ability of this
23 type of conduct has never been litigated before the
24 PLRB, the National Labor Relations Board or NLRB for
25 short, has long held that such conduct that presumes

1 to coerce and intimidate voters is grounds by itself
2 for setting aside an election and directing a new
3 one in any context, and especially when the election
4 results are also very close such as in this case.

5 The NLRB recognizes that when an
6 employer or a union, for that matter, keeps an
7 independent list of who is voting, it will tend to
8 undermine the belief in voters that their vote is
9 confidential or that their choice to vote or not is
10 confidential.

11 For example, see case A.D. Julliard
12 and Company 110 NLRB 2197, Act 2199, Sound Refining
13 Inc., 267 NLRB 1301, Act 130102, Masonic Homes of
14 California, Inc., 255 NLRB 41, Act 48, and Mead
15 Coated Board, Inc., 337 NLRB 497.

16 The impact of this is especially clear
17 in a multi-day election such as the one held in this
18 case. Emails sent by agents of the employer during
19 the week further created a very clear impression
20 that the University was using information it
21 gathered through maintaining an independent list of
22 all voters was being closely reviewed and
23 scrutinized, and information was being shared
24 widely.

25 The PLRB's irregular and inconsistent

1 practices in checking whoever's ID was added to this
2 issue by creating an impression that international
3 students who voted were being especially closely
4 tracked.

5 The facts in this case shall also
6 establish that the University per top administrators
7 sent emails to all eligible voters in the days
8 immediately leading up to the election that either
9 directly or impliedly (sic) threatened withholding
10 annual raises of graduate students - graduate
11 employees voting for a union, threatened that future
12 raises would likely be smaller if graduate employees
13 voted to form a union, threatened substantially more
14 onerous working and academic conditions would be
15 likely if graduate employees voted to form a union,
16 and threatened futility and very limited scope of
17 willingness to bargain if graduate employees voted
18 to form a union.

19 Under vote PLRB case law and NLRB case
20 law, such conduct is unlawful. While the PLRB has
21 very little case law on election objections, the
22 NLRB has long established such threats as clear
23 grounds for setting aside election results and
24 directing a new election.

25 The PLRB has produced almost no case

1 law in dealing with the election objections, and the
2 ULP seeking a remedy of setting aside election
3 results while the NLRB has ruled on thousands of
4 such cases. Where the PLRB has very little to no
5 precedent, the PLRB generally turns to the NLRB for
6 guidance on how to proceed. The very limited PLRB
7 case law on election objections cites sustained
8 standards relied on by the NLRB.

9 For most ULPs such as threats, there's
10 an objective standard or if a statement has been
11 proven to have been made, it would have - if it
12 would have the tendency in general to restrain or
13 coerce employees of the exercise of their protected
14 rights, it is presumed to be unlawful. There's no
15 burden to establish a threat has actually produced a
16 specific outcome.

17 With regard to election objections,
18 while the NLRB does place the burden on the
19 objecting party to establish a material impact on
20 the election outcome, there is no requirement that
21 the objecting party actually produce intimidated
22 witnesses to testify that the vote was actually
23 changed by the election conduct.

24 The NLRB recognizes this would be
25 extremely difficult and would be problematic.

1 Instead, the NLRB finds that the
2 employee free choice has been compromised when the
3 election is tainted by conduct or statements that
4 tend to induce employees to vote, not based upon
5 conviction, but upon fear or on other improperly
6 induced consideration. See Pearson Education, Inc.,
7 336 NLRB 979, citing Ziegler Refuse Collection
8 versus NLRB, F.2d 1000 at 1005, Third Circuit.

9 The NLRB is particularly sensitive of
10 conduct when the results of an elections are close.
11 See Cambridge Tool and Manufacturing Company, 316
12 NLRB 716 and Hopkins Nursing Care Center, 309 NLRB
13 958.

14 In this analysis, the NLRB looked at
15 several factors in determining whether pre-election
16 or election conduct should lead to setting aside the
17 results. These factors include the number of
18 incidents and their severity, how many bargaining
19 unit members were exposed to the conduct, how likely
20 the conduct was to cause fear among bargaining unit
21 members and how soon the conflict occurred before
22 the election. See Avis Rent-A-Car System, 280 NLRB
23 580581.

24 Under such analysis but separately and
25 cumulatively, this conduct described above clearly

1 violates an employee's rights under PERA and is
2 grounds for setting aside the election results and
3 directing a new one in this case. And the Union
4 requests this be done.

5 The Union further requests that the
6 employer be required to conspicuously post an
7 electronic distributed notice informing bargaining
8 unit employees of its unlawful actions stating their
9 rights under PERA and making it clear it will
10 respect those rights going forward.

11 HEARING EXAMINER: Would you like to
12 defer, ma'am?

13 ATTORNEY FARMER: Yes.

14 HEARING EXAMINER: All right.

15 We'll go off the record for one
16 moment.

17 ---

18 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

19 ---

20 HEARING EXAMINER: Back on the record.
21 I've handed the parties the documents which I'll now
22 identify for the record.

23 PLRB 1 is an Order directing
24 submission of eligibility list dated 7 - March 7th,
25 2019 in PERA-R-17-355-W.

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(Whereupon, PLRB Exhibit 1, Order Directing Submission of Eligibility List, was marked for identification.)

HEARING EXAMINER: PLRB - PLRB 2 is the Order and Notice of Election dated March 29th, 2019 in PERA-R-17-355W.

(Whereupon, PLRB Exhibit 2, Order and Notice of Election, was marked for identification.)

HEARING EXAMINER: PERA (sic) 3A and 3B are emails both dated April 15th to Dennis Bachy from Steelworkers representatives.

(Whereupon, PLRB Exhibit 3A, Email 4/15/19, was marked for identification.)

(Whereupon, PLRB Exhibit 3B, Email 4/15/19, was marked for identification.)

HEARING EXAMINER: PLRB 4 is returns of election in PERA-R-17-355W.

(Whereupon, PLRB Exhibit 4, Returns of Election,

1 was marked for identification.)

2

3

HEARING EXAMINER: PLRB 5 is

4

stipulations by the party regarding challenged

5

ballots dated the - last date of May 2nd, 2019.

6

7

(Whereupon, PLRB Exhibit 5, Stipulations, was

8

marked for identification.)

9

10

HEARING EXAMINER: Do the parties have

11

any objection to the admission of these documents?

12

ATTORNEY MANZOLILLO: No.

13

ATTORNEY FARMER: No.

14

HEARING EXAMINER: All right. They're

15

admitted.

16

17

(Whereupon, PLRB Exhibit 1, Order Directing

18

Submission of Eligibility List, was admitted.)

19

(Whereupon, PLRB Exhibit 2, Order and Notice

20

of Election, was admitted.)

21

(Whereupon, PLRB Exhibit 3A, Email 4/15/19, was

22

admitted.)

23

(Whereupon, PLRB Exhibit 3B, Email 4/15/19, was

24

admitted.)

25

(Whereupon, PLRB Exhibit 4, Returns of Election,

1 was admitted.)

2 (Whereupon, PLRB Exhibit 5, Stipulations, was
3 admitted.)

4 ---

5 HEARING EXAMINER: Raise your right
6 hand for me.

7 ---

8 DENNIS BACHY,
9 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
10 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
11 FOLLOWS:

12 ---

13 HEARING EXAMINER: Say and spell your
14 name for us.

15 THE WITNESS: My name is Dennis Bachy.
16 Last name is spelled B-A-C-H-Y.

17 HEARING EXAMINER: What is your
18 position with the Labor Relations Board?

19 THE WITNESS: I'm an administrative
20 officer for the Pennsylvania Labor Relations Board
21 and I'm in charge of the Pittsburgh office.

22 HEARING EXAMINER: How long have you
23 been in that position?

24 THE WITNESS: Since 2002.

25 HEARING EXAMINER: Were you involved

1 in the recent University of Pittsburgh graduate
2 student election?

3 THE WITNESS: I was.

4 HEARING EXAMINER: What roles did you
5 play?

6 THE WITNESS: I was the Board agent in
7 charge of that election.

8 HEARING EXAMINER: What does that mean
9 - what does that mean?

10 THE WITNESS: If you go back to when
11 the case was filed, the first thing - one of the
12 first things that happens is we have a conference
13 call amongst the parties where I try and get them to
14 agree to go straight to an election. We had that in
15 this case probably sometime in early 2018. I don't
16 remember exactly when. Didn't work out. They went
17 to a hearing.

18 The Hearing Examiner issued an Order
19 directing submission of eligibility list early March
20 2019, and after that I contacted the parties -.

21 HEARING EXAMINER: Let me stop you.
22 My question is more what - being the officer in
23 charge of the election in more regular speech, what
24 does that mean?

25 THE WITNESS: Get the election set up,

1 get it conducted.

2 HEARING EXAMINER: Thank you.

3 When did you first become aware that
4 there would be an election in this matter?

5 THE WITNESS: When the Hearing
6 Examiner issued his order directing submission of
7 eligibility list.

8 HEARING EXAMINER: Me?

9 THE WITNESS: Yes, you.

10 HEARING EXAMINER: Is that PLRB 1?

11 THE WITNESS: It is.

12 HEARING EXAMINER: Okay.

13 Now, the ODSEL orders Pitt to submit a
14 list. Did they submit a list?

15 THE WITNESS: They did, by email and
16 an Excel spreadsheet.

17 HEARING EXAMINER: And then after that
18 list was submitted, what happened next?

19 THE WITNESS: I contacted the parties
20 to talk about time, date and place for an election.
21 Based on - because this was grad students at the
22 University of Pittsburgh, we wanted to conduct the
23 election before the end of the spring 2019 school
24 year, and we wanted to get it in before the finals
25 week.

1 So after discussing it with the
2 parties, we agreed to conduct the election on April
3 15, 16, 17 and 18.

4 HEARING EXAMINER: Who - when you say
5 discuss with the parties, can you remember who was
6 involved in these discussions?

7 THE WITNESS: Yeah, Shannon Farmer and
8 Brad Manzolillo.

9 HEARING EXAMINER: Who are both here
10 obviously?

11 THE WITNESS: Yes.

12 HEARING EXAMINER: Okay.

13 And there was a - there was an Order
14 and Notice of Hearing issued?

15 THE WITNESS: Yes.

16 HEARING EXAMINER: Is that PLRB 2?

17 THE WITNESS: It is.

18 HEARING EXAMINER: Okay.

19 Were you involved in the creation of
20 this document?

21 THE WITNESS: Yes. I met with a
22 University representative to look at some rooms.
23 The parties had discussed what they thought might be
24 appropriate rooms in an email exchange. And based
25 on that, the University provided floor spaces that

1 were available for those days, one in Posvar Hall.
2 They had a space in Cathedral Learning. They had a
3 space in the Engineering Building and they had the
4 space in the O'Hara Student Center.

5 After reviewing the spaces, I decided
6 that the spaces in Posvar and at the O'Hara's Center
7 were ideal for this election based on location and
8 size of the room, ease of access to the room,
9 handicapped access, things like that. And the
10 spaces in the Cathedral Learning and the Engineering
11 Building were going to be too small for my purposes.

12 HEARING EXAMINER: Can you pick up
13 Exhibit PLRB 2, which is the O&H? Look at page two.
14 There's four dates and locations. Is that - are
15 those the dates and the locations that the election
16 was actually held?

17 THE WITNESS: Yes, it was.

18 HEARING EXAMINER: Okay.

19 Did - during the creation of the O&H
20 and shortly after it was submitted, did the
21 Steelworkers bring any concerns to you?

22 THE WITNESS: They had - we had
23 initially discussed doing it in the Student Union
24 which I think was their preferred site, but that was
25 just not available. So the Posvar Hall is

1 relatively close to the student union, so we picked
2 that for a couple of the days based on availability.

3 HEARING EXAMINER: All right.

4 So the Notice of Hearing was issued
5 and the election obviously happened. So let's fast
6 forward to April 15th. Did anything happen before
7 the election on April 15th?

8 THE WITNESS: We arrived at Posvar.
9 We set up the polling location and then
10 approximately 15 minutes before the election started
11 at nine o'clock, we had a pre-election briefing. We
12 told the parties how we were going to proceed with
13 the election.

14 Folks were going to come in. They
15 were going to sign in. They would take their ballot
16 to - we had three polling booths set up. They would
17 mark their ballot, they would bring it back and put
18 it in a ballot box.

19 Before that and during that
20 pre-election briefing we also showed them an empty
21 ballot box. And then in front of them we taped it
22 up, got it ready and set it on the table.

23 We also met the watchers for both
24 parties at that time. Steelworkers, I believe, had
25 a concern about the watchers for the employer. They

1 thought they might be managers or supervisors, so I
2 asked a series of questions to the watchers for the
3 employer.

4 HEARING EXAMINER: And what did you
5 ask them?

6 THE WITNESS: I asked each of them if
7 they supervised grad students.

8 HEARING EXAMINER: And what did they
9 say?

10 THE WITNESS: Each of them said, no,
11 they did not.

12 HEARING EXAMINER: Did you ask them
13 anything else?

14 THE WITNESS: Yes. I asked them if
15 they supervised anybody. Each of them said yes.
16 They supervised clerical employees in their office.

17 HEARING EXAMINER: And did you ask
18 them anything else?

19 THE WITNESS: I asked them what they
20 did. It sounded to me like they were senior
21 clerical employees for administrators at the
22 University of Pittsburgh.

23 HEARING EXAMINER: And based upon your
24 investigation, what decision did you make with them?

25 THE WITNESS: I decided to allow them

1 as watchers because I didn't think it was going to
2 be coercive.

3 HEARING EXAMINER: Just to take a step
4 back, why were you concerned over their supervisory
5 status at all?

6 THE WITNESS: The Board has a rule and
7 regulation for not letting supervisors watch at
8 elections.

9 HEARING EXAMINER: Okay.

10 And just to go back, this pre-election
11 briefing, who was there on behalf of the parties,
12 not including the watchers?

13 THE WITNESS: Organizers for the
14 union, Brad Manzolillo and Jeff Cech and Stephanie
15 Hoogendoorn for the University.

16 HEARING EXAMINER: Are Hoogendoorn and
17 Cech here today?

18 ATTORNEY MANZOLILLO: Yes, they are.

19 ATTORNEY FARMER: Yes.

20 HEARING EXAMINER: Okay.

21 Now, let's move - did anything else
22 happen in the pre-election briefing before we move
23 in to the election proper?

24 THE WITNESS: Nope.

25 HEARING EXAMINER: Okay.

1 So now we're in - we're in Posvar
2 Hall.

3 Right?

4 THE WITNESS: We're in Posvar, yeah.

5 HEARING EXAMINER: Okay.

6 Can you describe, again - first, who
7 was there on behalf of the PLRB?

8 THE WITNESS: Myself, Joe Gralewski,
9 Rebecca McClincy and Kathy Owens.

10 HEARING EXAMINER: And then we'll -
11 when we take a break, we'll spell those for the
12 Hearing Examiner - for the court reporter. And then
13 what were their roles on that first day?

14 THE WITNESS: Each and every one of us
15 was a Board agent with the election. We had several
16 duties. Because of the way Posvar is set up, there
17 was a large room that was in the election order
18 where the voters were to enter and then there was
19 another large room behind it with a couple of
20 entrances where the polling location was actually
21 set up.

22 So one of our people sat in the large
23 room to make sure that anybody who walked in, we
24 would greet them, tell them this is where the
25 election is, send them back to the polling location.

1 And then we had one person basically
2 waiting around until somebody needed a break. And
3 then we had one person running our sign-in book and
4 issuing ballots to voters on the eligibility list.
5 And we had one person running our challenge station
6 who would issue ballots on any voter who was
7 challenged.

8 HEARING EXAMINER: And I think you
9 mentioned it again, but just again, how was the room
10 set up, those two rooms?

11 THE WITNESS: There was - in Posvar,
12 there's a large room. I think it was 2501. Yeah.
13 That was the room in the Order and then there was -
14 2500 was behind it. The reason I picked those two
15 rooms instead of having the one was because I
16 thought it might be possible we could have as many
17 as 100 or 200 voters at a time, and I wanted a large
18 space so that they would be able to congregate in
19 the polling location and not have to go in to the
20 hallway.

21 I felt that was going to be
22 particularly important if we got a lot of voters at
23 the end of the day so that they would - because our
24 policy is anybody who is in line by five o'clock
25 gets to vote. So I wanted to have a space large

1 enough to accommodate everybody. As it turns out,
2 it wasn't necessary, but that was our thinking.

3 HEARING EXAMINER: Now, thinking about
4 that first day and actually all four days, how -
5 what was the policy for - and what was the practice
6 with regards to checking names?

7 THE WITNESS: The - it was pretty much
8 hit or miss the first two days. Joseph Gralewski
9 and Kathy Owens have the title of representation
10 elections officers. They're the ones that go into
11 the field and conduct our elections. And our normal
12 procedure in a small election is to - or pretty much
13 any election, is to only ask for ID if we felt it
14 was necessary in order to find somebody on the voter
15 eligibility list.

16 Normally, they would just simply ask
17 them their name. They would say their name. You
18 would find their name on the list. They would sign,
19 they get a ballot, they'd go vote.

20 In this particular election, that's
21 the way that those two individuals did it. They
22 would only ask for ID if they were having trouble
23 finding their name on the list. And they would
24 occasionally ask them to spell their name if they
25 were still having trouble finding the name on the

1 list. And then if they didn't find their name on
2 the list, they'd send them to the challenge station.
3 We wanted to make sure that any voter who was on the
4 list didn't accidentally get challenged.

5 As far as myself and Rebecca McClincy,
6 we asked for IDs every time everybody that came up -
7 Pitt has a very nice ID with large letters that you
8 can see even with my old eyes, easily. So I was
9 able to use that. I would ask everybody for their
10 ID and set it down in front of me between the
11 watchers. And then check their name off the list,
12 hand them their ID and ballot back and then they
13 would go vote. That was Monday and Tuesday.

14 Wednesday, we made the decision that
15 we were just going to check everybody's ID because
16 it would make these go a little faster.

17 HEARING EXAMINER: Okay.

18 And that was followed?

19 THE WITNESS: That was followed by
20 everybody, yeah.

21 HEARING EXAMINER: You were - maybe I
22 asked you this. You were there all four days?

23 THE WITNESS: I was.

24 HEARING EXAMINER: 8:00 to 5:00?

25 THE WITNESS: Yeah, yeah, yeah. From

1 7:30 'til 5:30 or 6:00.

2 HEARING EXAMINER: I want to ask you
3 again - now think about the first day and then also
4 all four days, and then we'll eventually get to days
5 two, three and four. If you look at PLRB 4, which
6 is in front of you -.

7 THE WITNESS: Returns of election?

8 HEARING EXAMINER: Yeah. Line six, it
9 says 153 challenged ballots.

10 THE WITNESS: Yes.

11 HEARING EXAMINER: Can you describe to
12 me what challenged ballots are and what the process
13 PLRB followed on handling them during the election?

14 THE WITNESS: Yes. If a voter is not
15 on the eligibility list, that voter is challenged by
16 the Pennsylvania Labor Relations Board, and that
17 person is - in this particular election, because of
18 the size of it, we had a separate station for that
19 right - literally right next to the person signing
20 in the book. That person would take a step aside.

21 We checked IDs for each one of those
22 because we needed an accurate spelling of their
23 names so that we made sure. At the end of the
24 election, if the challenges could matter that we'd
25 be able to figure it out who these people are, they

1 would sign their name on a sheet next to their
2 printed name, in most cases. And then there would
3 be a spot who challenged them - it was either the
4 PLRB - a couple challenges were made by the employer
5 to folks on the list.

6 Then they would be given a ballot and
7 a small envelope that didn't have any way to
8 identify that person on it. They would take their
9 ballot, small envelope. They would go to the
10 polling booth. They would make their mark, they
11 folded up the ballot, put it in the small envelope,
12 came back to the challenge table. They were given a
13 large envelope that identified them. They put the
14 small envelope in the large envelope and they put
15 the large envelope in the ballot box.

16 HEARING EXAMINER: Okay.

17 Before I get to chain of custody with
18 the ballots, going back to that first day at Posvar
19 Hall and then I guess off to the second day, how
20 were the watchers set up?

21 THE WITNESS: The - if you were facing
22 the table as a voter, on the right side was the
23 Union watcher then there was the ballot box, then
24 there was the sign in sheet. And on Monday, Tuesday
25 and half of Wednesday, there was the challenge

1 location. And then on the far left was the
2 employer's watcher - as the voter would be facing
3 the table.

4 HEARING EXAMINER: And then both
5 parties had watch - just on the first day, both
6 parties have watchers there the entire day?

7 THE WITNESS: Yes.

8 HEARING EXAMINER: Okay.

9 THE WITNESS: They rotated them?
10 They had a series of watchers that
11 they rotated every few hours.

12 HEARING EXAMINER: All right.

13 And then I have one more question.
14 It's more of a general question on how you conducted
15 the election with regard to chain of custody. The
16 chain of custody of the ballots, what was the
17 procedure for a chain of custody of the ballots?

18 THE WITNESS: When a ballot box got
19 full, we taped the ballot box shut in front of the
20 watchers and - whichever watchers were there for the
21 parties. At the time we closed the ballot box, they
22 would sign over the tape. We'd put the ballot box
23 behind us in plain sight of everybody. And at the
24 end of the day, we did the same thing for the
25 remaining ballot box.

1 And then I would take the ballot
2 boxes. There were two on Monday, two on Tuesday,
3 three on Wednesday and two on Thursday, and I
4 brought them down to my office upstairs here in this
5 building.

6 HEARING EXAMINER: Okay.

7 THE WITNESS: And put them in my
8 office and locked them in.

9 HEARING EXAMINER: And we'll get to
10 the election term later, so going back to the first
11 day, did any Steelworker representative raise
12 concerns with you?

13 THE WITNESS: Not on the first day, I
14 mean, other than with the watchers.

15 HEARING EXAMINER: What was - what
16 concern was that?

17 THE WITNESS: With the watchers? They
18 had concerns that they were managers or supervisors.

19 HEARING EXAMINER: All right.
20 That was during the pre-election
21 briefing.

22 THE WITNESS: The pre-election
23 briefing, yes.

24 HEARING EXAMINER: If you look at PLR
25 3B - PLRB 3B?

1 THE WITNESS: Yes.

2 HEARING EXAMINER: This is an email to
3 you from Brad on April 15th. Did you get that email
4 that day?

5 THE WITNESS: That day, no, because I
6 didn't check my email until Friday. However, he -
7 on Tuesday morning before the election, he verbally
8 said the same thing.

9 HEARING EXAMINER: All right.
10 Before we get to that then, so
11 sticking with the first day, other than what you
12 mentioned, did anything else notable happen on that
13 first day?

14 THE WITNESS: No. It was pretty calm.
15 People came in, they voted, they left.

16 HEARING EXAMINER: All right.
17 Let's move to the second day of the
18 election which was the 16th of April.

19 THE WITNESS: Uh-huh (yes).

20 HEARING EXAMINER: It was in the same
21 building.

22 THE WITNESS: Yes. It was in Posvar.

23 HEARING EXAMINER: Same set up?

24 THE WITNESS: Exactly the same.

25 HEARING EXAMINER: Same PLRB

1 employees?

2 THE WITNESS: Yes.

3 HEARING EXAMINER: Okay.

4 And then the watchers rotated?

5 THE WITNESS: Yes.

6 HEARING EXAMINER: Did - now you were
7 mentioning Mr. Manzolillo brought something to your
8 attention. What was that?

9 THE WITNESS: He had said that they
10 had concerns that the employer had a list which they
11 were checking off in plain view of the students.
12 And I told him that we didn't have a rule against a
13 party having a list.

14 HEARING EXAMINER: And did anything
15 else come out of that conversation?

16 THE WITNESS: He expressed concern
17 that the list and the checking off of the list would
18 be intimidating. He found it - he thought they
19 would be intimidating to the voters. During my four
20 days there, I didn't see anybody that looked
21 intimidated at all.

22 HEARING EXAMINER: And did you take
23 any action with regard to Mr. Manzolillo's concerns?

24 THE WITNESS: I did not.

25 HEARING EXAMINER: So sticking on the

1 second day, which is - did anything else notable
2 happen on that day?

3 THE WITNESS: I went to lunch and when
4 I came back from lunch the watcher for the
5 Steelworkers brought to my attention that she felt
6 that Joe Gralewski was treating the watcher for the
7 employer better than he was treating the watcher for
8 the union.

9 HEARING EXAMINER: And then did you
10 investigate that at all?

11 THE WITNESS: I talked to Joe. He
12 said he was simply trying to maintain control. I
13 talked to the watcher. She told me that she asked a
14 question that she thought was substantially similar
15 to a question asked by the University watcher, and
16 the University's watcher was given an answer and she
17 was told to be quiet.

18 HEARING EXAMINER: And then what
19 happened next with regard to that?

20 THE WITNESS: Her shift was almost
21 over a few minutes later. I took her - we went into
22 1501. I asked her more about it. She basically
23 said that she felt that he wasn't treating her
24 properly. And I apologized on behalf of the Board
25 and for the rest of that day, I had Mr. Gralewski

1 greet voters in 1501. And then the polling location
2 was run by myself, Rebecca McClincy and Kathy Owens.

3 HEARING EXAMINER: Okay.

4 Anything else notable happen that day?

5 THE WITNESS: No. Again, another calm
6 election, other than the one incident. People came
7 in, they voted. They didn't look intimidated. They
8 put the ballot in the ballot box and they left.

9 HEARING EXAMINER: Moving to day
10 three, we changed locations?

11 THE WITNESS: Yes. On day three, we
12 went to the O'Hara Student Center. We were on the
13 second floor in the ballroom. We set up - once we
14 set up our polling location, we got there around
15 7L00 in the morning. We set up the polling location
16 for the day.

17 And unlike Posvar, O'Hara had a pair
18 of steps that came up onto a landing. And from that
19 landing, there was a double door into the ballroom
20 where we were located. You could clearly see the
21 polling area form the landing.

22 So I made the decision that we could
23 work this with three people instead of four because
24 we didn't need a greeting - or a greeter. And we
25 had a lot of work to do here in the office so I sent

1 Mr. Gralewski back to the office to run Board stuff
2 here. And we ran it with three people for most of
3 the day; myself, Rebecca McClincy, Kathy Owens, and
4 about one o'clock in the afternoon, Nate Bortner
5 came to lend us a hand.

6 HEARING EXAMINER: And who is he?

7 THE WITNESS: Nate Bortner is the
8 secretary for the Pennsylvania Labor Relations
9 Board.

10 HEARING EXAMINER: Okay.

11 Anything notable happen on day three
12 besides what you mentioned?

13 THE WITNESS: Nope. It was a nice,
14 calm election. People came in, they voted, they
15 left.

16 HEARING EXAMINER: Day four, where was
17 the location of day four?

18 THE WITNESS: Day four was located in
19 the O'Hara Student Center. Same setup as day three.
20 On day four, we had the four people that were
21 working at the end of day three and at around one
22 o'clock in the afternoon, Mr. Bortner went back to
23 Harrisburg. And it was myself, Rebecca McClincy and
24 Kathy Owens.

25 The only interesting things that

1 happened on day three - or I'm sorry, on day four,
2 were each of the watchers noticed something unusual
3 going on, and they brought it to my attention. I
4 don't remember which order it was in, but the
5 watcher for the Union saw some people taking
6 pictures or perhaps filming and brought it to my
7 attention.

8 I went out, asked them to stop taking
9 pictures or filming, asked them who they were. They
10 said they were with the Pitt News. I said you can't
11 take pictures of the polling area, but if you want
12 to go downstairs you can take whatever pictures you
13 want. They did so.

14 HEARING EXAMINER: And that was day
15 four, approximately what time?

16 THE WITNESS: Two o'clock in the
17 afternoon, approximately.

18 HEARING EXAMINER: After lunch?

19 THE WITNESS: Yes.

20 HEARING EXAMINER: All right.

21 THE WITNESS: Also on day four, the
22 employer watcher brought to my attention that there
23 was somebody standing in the doorway trying to talk
24 to people - talk to people as they left. I again
25 went up to that person. I told her she wasn't

1 allowed to be standing in the polling area. I asked
2 her who she was. She said she was a reporter for
3 the Pitt News doing an exit poll.

4 I said you can't do it in the polling
5 area. And she went down - outside of the view of
6 the polling area, I guess. I said, can you go do it
7 down on the downstairs or on the landing? And to
8 the best of my knowledge, she did so. She certainly
9 wasn't in the doorway any longer.

10 That's about it for fun things on
11 Thursday.

12 HEARING EXAMINER: Okay.

13 Now, we talked generally about a chain
14 of custody. What happened then to the ballots at
15 the end of day four?

16 THE WITNESS: End of day four, we
17 taped the boxes up and I brought them down to the
18 office here and stacked them with the others.

19 HEARING EXAMINER: And looking at PLRB
20 4 -

21 THE WITNESS: Uh-huh (yes).

22 HEARING EXAMINER: - do you remember
23 how this document was created?

24 THE WITNESS: Yeah, it was created at
25 the end - on April 26th, we canvassed the ballots.

1 We opened up all nine ballot boxes. We counted the
2 ballots. The ballots were counted by Joe Gralewski
3 and Kathy Owens. I was there as well overseeing
4 things. A number of reporters came in, so I talked
5 to the reporters and told them what they could or
6 could not do.

7 And at the - we kept handwritten
8 notes. Okay.

9 Let's step back. We - first, we
10 counted the ballots and made them in stacks of 50.
11 We put those stacks - once we had a stack of 50, we
12 put them in plain view of the parties. And this was
13 conducted in the courtroom across the hall from this
14 one.

15 And then at the end, we counted up all
16 the ballots, and we came up with the numbers of 675
17 for Steelworkers, 712 for no rep, which was a total
18 of 1,387 ballots, which was about 70 percent of the
19 voters. I figured we'd get about 60 to 70 percent
20 and we got almost 70 percent.

21 There was a 153 challenged ballots
22 that led up to 1,540 total ballots. And then
23 unfortunately, the challenged ballots could
24 interfere - could affect the outcome of the
25 election. So I talked to the attorneys and -.

1 HEARING EXAMINER: Well, let's not get
2 to that. Hold on one second. At the bottom, is
3 that, were Ms. Farmer and Mr. Manzolillo there?

4 THE WITNESS: Yes, they were both
5 there.

6 HEARING EXAMINER: All right.
7 And they signed at the bottom there?

8 THE WITNESS: They did, along with
9 Joseph Gralewski.

10 HEARING EXAMINER: Okay.

11 And then I think you were moving on to
12 PLRB 5 which is the stipulations on challenged
13 ballots?

14 THE WITNESS: Yeah. So I had a
15 telephone conference with the attorneys for the
16 parties, Brad and Shannon. And we outlined a
17 general procedure. We - the parties were able to
18 agree on three people who - both sides felt their
19 ballots should be canvassed. The parties agreed
20 that 139 - well, at the time it was a little bit
21 more. The University didn't decide whether or not
22 there was some people they wanted to add. But in
23 the end, it was a 139 challenged ballots would not
24 be canvassed. And then there were approximately 11
25 ballots that the parties would want to have a

1 hearing over if necessary. They couldn't agree on
2 those 11 names.

3 HEARING EXAMINER: All right.

4 THE WITNESS: I sent them a
5 stipulation by email. They signed it and mailed the
6 original back to me - or Steelworkers hand delivered
7 it.

8 HEARING EXAMINER: And I believe PLRB
9 5 is the one signed by everybody.

10 THE WITNESS: That's correct.

11 HEARING EXAMINER: Yeah. Okay.

12 At this time, we'll go off the record.
13 The parties can prepare to Cross Mr. Bachy. Okay?
14 Steelworkers will go first on Cross. Off the
15 record.

16 ---

17 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

18 ---

19 HEARING EXAMINER: Steelworkers Cross
20 Examination.

21 ---

22 CROSS EXAMINATION

23 ---

24 BY ATTORNEY MANZOLILLO:

25 Q. Hi, Mr. Bachy. Just a few - well,

1 several questions for you.

2 A. Whatever you need.

3 Q. Okay.

4 So you mentioned that you learned the
5 name of the University watchers in that pre-election
6 conference 15 -.

7 A. Monday, the 15th. That's correct.

8 Q. On Monday the 15th, which took place -
9 you learned that those names were on attendance -
10 prior attendance before the election started?

11 A. That is correct.

12 Q. And do you recall the names of the
13 watchers?

14 A. I do not.

15 Q. See if these names refresh your memory at
16 all.

17 A. Uh-huh (yes).

18 Q. Amy Tuttle.

19 A. Sounds right.

20 Q. Peggy King.

21 A. That sounds right.

22 Q. Amanda Brodish.

23 A. That sounds right.

24 Q. And Victoria Lancaster.

25 A. That sounds right, going by first names.

1 Q. Okay. Okay. Okay.

2 So I'm just going to move on from that.

3 Now, when did you first become aware the
4 University was keeping a list of people who were
5 voting?

6 A. As soon as the election started on the
7 15th.

8 Q. And how did you become aware of that?

9 A. I saw it.

10 Q. Okay.

11 And it was a full list of voters?

12 A. I didn't actually look at the list, but
13 it looked substantial, yes.

14 Q. And you mentioned that there was some
15 instances where voters were asked to repeat their
16 names, or spell their names?

17 A. Yes.

18 Q. Okay.

19 And this was done in the presence of the
20 rest of the voters in the polling area, if there
21 were any at the time?

22 A. Yes. If there was a line, it occurred in
23 front of the people that was standing in line.

24 Q. And wasn't one of the reasons you were
25 doing this to make sure that the University watchers

1 captured the name correctly?

2 A. We did it so that both watchers could
3 capture the name correctly. While I was aware at
4 the time that the Steelworkers had told me that they
5 were not going to challenge anybody - and the
6 University told me they had a few challenges. At
7 any time the parties could change their mind. It is
8 our normal practice that both watchers - we have -
9 we asked the people to say their name loud enough so
10 that both watchers can file a challenge to them.

11 And again, I understood that Steelworkers
12 said that they didn't have any challenges, but at
13 any time they could have changed that. So it was
14 done for the benefit of both watchers.

15 Q. Wasn't it clear that the University was
16 tracking every name?

17 A. The - what I could see, the University
18 had a list and it appeared they were making the
19 marks on the list, but I didn't actually see what
20 they were doing.

21 Q. Appeared to be doing that for every
22 person who voted?

23 A. That is correct.

24 Q. And -.

25 HEARING EXAMINER: Are you talking

1 about just the first day or generally across all
2 four days?

3 BY ATTORNEY MANZOLILLO:

4 Q. I should clarify that.

5 A. It was all four days.

6 Q. This took place across all four days,
7 okay.

8 Were you aware that the University
9 planned to challenge approximately 11 voters from
10 the list?

11 A. I knew that they had a small amount of
12 challenges, yes.

13 ATTORNEY MANZOLILLO: I'm actually
14 going to move to an exhibit to enter in to the
15 record.

16 ATTORNEY FARMER: Okay.
17 Do you have a copy for me?

18 ATTORNEY MANZOLILLO: Yes.

19 ATTORNEY FARMER: Okay.

20 HEARING EXAMINER: We can make copies
21 if you don't have any.

22 ATTORNEY MANZOLILLO: Yes.

23 HEARING EXAMINER: We got copies.

24 Okay. Off the record for a moment.

25

1 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

2

3 HEARING EXAMINER: All right.

4 We're back on the record. Union
5 Exhibit 1.

6

7 (Whereupon, Union Exhibit 1, Email 4/15/19, was
8 marked for identification.)

9

10 HEARING EXAMINER: Go ahead. Mr.
11 Manzolillo.

12 ATTORNEY MANZOLILLO: I'm just moving
13 to admit this as the parties have stipulated this
14 was the - the list of individuals the employer
15 indicated that they were going to challenge before
16 the election.

17 HEARING EXAMINER: Did you put one
18 copy up at the witness stand? Just because that's
19 going to be the Hearing Examiner's copy. Exhibit -1
20 is an email dated April 15th from Ms. Farmer to Mr.
21 Manzolillo. It's admitted into the record. Go
22 ahead.

23

24 (Whereupon, Union Exhibit 1, Email 4/15/19, was
25 admitted.)

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BY ATTORNEY MANZOLILLO:

Q. Mr. Bachy, is this your understanding of your approximate number of people that the University intended to challenge?

A. Yeah. I think I counted 12. That sounds about right. It was a small number, small being based on - we had 2,016 I believe, voters on the eligibility list.

ATTORNEY MANZOLILLO: Okay.

I move to admit this.

HEARING EXAMINER: It's admitted.

BY ATTORNEY MANZOLILLO:

Q. Now, you mentioned the University had a list. That list was not left with you at the end of each day.

Correct?

A. No. We had no control over it whatsoever.

Q. You were describing, I think starting to describe, on your Direct Examination that you had up - that you had a certain practice of how the election was conducted and where the watchers were placed Monday, Tuesday, and the first part of Wednesday. And then you said that up until

1 Wednesday at lunch. What changed Wednesday at
2 lunch?

3 A. Wednesday at lunch we had our - it was
4 our busiest voting time. It was approximately 12:15
5 and it got very loud to the extent that the watcher
6 that was sitting furthest away - in this case, it
7 was the University's watcher - was having trouble
8 hearing. So we were slowing the process down.

9 So what I did was I moved the challenge
10 spot to the outside of the table and I moved the
11 University's watcher next to the person running the
12 book. So that put them in equal distance with the
13 Steelworkers' watcher.

14 Q. Okay.

15 So - and what did you - and you said you
16 checked IDs regularly from that point on?

17 A. Yes. Probably starting - I said
18 Wednesday, but it probably actually started Tuesday
19 afternoon. We started checking every ID.

20 Q. So in the instances - once you moved the
21 watcher, the University watcher, next to you, -

22 A. Uh-huh (yes).

23 Q. - isn't it true that you would, just to
24 simplify the process, often just set the ID down
25 between yourself - you have the PLRB officer

1 checking the list and the University watcher who was
2 checking their list?

3 A. Yeah. That's correct. If you - as you
4 were signing in the book, and then there was, I
5 don't know, maybe a one-foot space between the PLRB
6 and the - the employer watcher.

7 I set - I set the ID in front of me and a
8 bit to the right. In my opinion, either watcher
9 could have seen it, but the University watcher was
10 interested and the Steelworkers' watcher was not.
11 So yeah, substantially, that's correct.

12 Q. And isn't it true the Steelworker watcher
13 was several feet over to your left where the PLRB
14 officer -?

15 A. No. The Steelworkers' watcher was
16 equally distant at that particular time, maybe a
17 foot away. There wasn't a lot of space. It was a
18 couple of tables approximately as large as the ones
19 that both counsels are sitting at now pushed
20 together. So the watcher would have been about as
21 far from me as co-counsel is from you.

22 Q. And isn't it correct that this was all -
23 that the University's watcher sitting next to the
24 PLRB officer and the ID being placed between them,
25 that that took place in clear view of the voters?

1 A. Yes. The voters could see.

2 Q. Okay.

3 And both observers or watchers had to
4 wear badge depicting they were a watcher.

5 Correct?

6 A. That is correct. Everybody that was
7 sitting at the table had a badge. They were small
8 sheets of white paper, and a Board agent had a Board
9 agent printed on it. The watchers said election
10 watcher.

11 Q. And now, you mentioned that the Union
12 raised concern about the - about this practice or
13 about the practice of the University tracking the
14 list on Monday morning or Tuesday morning, the 17th
15 - 16th?

16 A. Yes. The Union asked me if I got their
17 email from Monday night. I said I did not, and they
18 asked - they said we're aware of - and I'm
19 paraphrasing, that the University has a list and
20 that they're tracking it, and we think it might be
21 coercive. I said, yes, I know they have a list. We
22 permit either side of the party to have a list. And
23 I stated at that time that I didn't see anybody who
24 looked coerced on Monday.

25 Q. Did the Union raise this issue again -

1 that individual who spoke to you was -

2 A. Was you.

3 Right?

4 Q. - Brad, yes. And so - and so the
5 individual who spoke to you was myself, Brad
6 Manzolillo?

7 A. That is correct.

8 Q. And did I speak to you again on Wednesday
9 morning about this issue?

10 A. You may have. I don't recall.

11 Q. Do you recall a conversation where I
12 raised the issue about the University sending an
13 email and perhaps having - that there maybe some
14 escorting of - an email indicating that they were
15 aware -?

16 A. I believe you mentioned some emails.
17 That being completely out of the PLRB's control, if
18 I had said anything, it was like there's nothing I
19 can do about that.

20 Q. Do you recall indicating that - to the
21 Union that it was free to file objections of the
22 PLRB?

23 A. Yes. I do recall that now that you
24 refreshed my memory.

25 Q. Do you remember any of the Union

1 observers raising a concern about the list being
2 intimidating or coercive during the election
3 process?

4 A. I don't remember that at all.

5 Q. You mentioned you were in conversation
6 with a University, I mean a Union watcher who felt
7 they were being treated unfairly or differently than
8 the University watcher.

9 A. That is correct.

10 Q. And that was approximately lunchtime on
11 Tuesday, I believe?

12 A. Probably around 1:00 in the afternoon.

13 Q. So -.

14 A. Approximately.

15 Q. So that individual at that time, didn't
16 they also raise a concern about the list, that the
17 list can be intimidating?

18 A. That I don't recall.

19 Q. Okay.

20 A. My conversation with the Union watcher
21 was about the conduct of Mr. Gralowski and how she
22 was unhappy with the way she was being treated. So
23 I told her I would do what I could and I did. I put
24 him outside for the rest of that election and I had
25 him work in the Pittsburgh office for the final few

1 days.

2 So a concern was raised and I proactively
3 did something about it that I thought was fair to
4 all parties.

5 Q. And so you don't recall whether or not
6 she asked you that question?

7 A. I do not.

8 Q. Do you recall a conversation on Thursday
9 morning around the time the polls opened with Mr.
10 Nathan Bortner about the issue, about the University
11 keeping a list of voters?

12 A. No, I'm sorry. I don't recall that
13 conversation.

14 Q. Okay.

15 So you don't recall Mr. Bortner raising
16 that issue at all with you?

17 A. I do not.

18 Q. Okay.

19 HEARING EXAMINER: What was the
20 question about Mr. Bortner?

21 ATTORNEY MANZOLILLO: Did Mr. Bortner
22 - did he recall whether he had a conversation with
23 Mr. Bortner when Mr. Bortner raised concerns about
24 the University using a list.

25 HEARING EXAMINER: Go ahead.

1 BY ATTORNEY MANZOLILLO:

2 Q. I have a couple questions left. Okay.

3 Now, you mentioned that Tuesday - I'm
4 sorry, Thursday afternoon that some concerns were
5 raised to you about some photography taking place or
6 video recording taking place?

7 A. Yeah. Mid-afternoon, I'd say
8 approximately two o'clock, the Union watcher raised
9 a concern that somebody was taking pictures or
10 perhaps filming the election. I did not see that
11 from where I was seated, but he pointed it out to
12 me. They were kind of hidden behind the door.

13 I went out. I told them they weren't
14 allowed to film or take pictures of the polling
15 area. I asked them who they were. They told me
16 they were reporters from Pitt News. I told them if
17 they wanted to take pictures, they had to go
18 downstairs which - they left the area. I don't know
19 where they went after that.

20 Q. And you did that because - out of concern
21 that the voters might feel intimidated or coerced if
22 they knew they were being filmed?

23 A. The Board has a policy of not allowing
24 filming or picture taking in the polling area. I
25 was enforcing that policy.

1 Q. It's your understanding that policy
2 exists to prevent the sense of coercion or
3 intimidation or feeling that your confidentiality
4 may be lost.

5 A. No, my - yeah, the last part. My
6 understanding is we don't want - it would be
7 problematic in maintaining the secrecy of the
8 ballot.

9 Q. But they're not actually videoing the
10 actual ballot. They're just videoing the person who
11 is going in.

12 A. No - we - yeah. I mean, they were - from
13 where they were, they would not be able to see the
14 ballots.

15 Q. Okay.

16 So wouldn't the same concern arise about
17 confidentiality or whether the person attended
18 voting or not in an issue with the University
19 keeping its own independent list and taking it out
20 of the voting area? Wouldn't - if the concern is
21 that somebody could be photographed or videoed in or
22 around the polling, they would expose that they
23 voted or -?

24 A. That's not our concern as far as picture
25 taking. Our picture taking concern, I believe, is

1 because we want to maintain the secrecy of the
2 ballot.

3 HEARING EXAMINER: Is this - is this
4 in the PA Code, this regulation, or is this just
5 Board policy?

6 THE WITNESS: It's Board policy in a
7 verbal kind of sense.

8 HEARING EXAMINER: Okay.

9 THE WITNESS: It's not in the rules
10 and regs. It's not in the Code. It's not in the
11 statute.

12 HEARING EXAMINER: How elections are
13 run?

14 THE WITNESS: Yeah.

15 BY ATTORNEY MANZOLILLO:

16 Q. Now, you mentioned that you're able to -
17 your assessment was that nobody was intimidated
18 during the voting process?

19 A. Yes. I didn't see any voter who appeared
20 intimidated on any of the four days. That's
21 correct.

22 Q. And what are the - what's your basis for
23 determining whether somebody is intimidated?

24 A. It was based on an orderly conduct of the
25 election. The voters came in. They waited in line

1 to the extent that there was a line. They came up,
2 you know, they said their name, presented their ID.
3 They got a ballot. They marked the ballot. They
4 came back. I did not see any voter look at the
5 table where the - or where the - where we were
6 handing out the ballots and then turn around and
7 walk out.

8 I didn't see anybody who even - I didn't
9 see any concerned looks on anybody's faces.

10 Q. Did you ask anyone?

11 A. I did not.

12 Q. Or take any corrective steps?

13 A. No. I didn't ask anybody if they felt
14 intimidated or coerced.

15 Q. Okay.

16 Do you have any specific qualifications
17 that would allow you to assess whether people were
18 intimidated or not?

19 A. I have eyes.

20 Q. Okay.

21 HEARING EXAMINER: I'll judge the
22 credibility of his opinion. All right. Did you see
23 anybody balk at providing their identification?

24 THE WITNESS: I did not.

25 HEARING EXAMINER: Go ahead.

1 ATTORNEY MANZOLILLO: We don't have
2 anything further.

3 HEARING EXAMINER: I just want to
4 clear up just one thing on Direct for the facts.
5 We've been talking about lists. Functionally and
6 concretely, what was the PLRB's list during the
7 election?

8 THE WITNESS: We had a small binder
9 that had a list of every employee on the eligibility
10 list double spaced with tabs by alphabet so that we
11 could get to them quickly and they would have room
12 to sign their name.

13 HEARING EXAMINER: And there were any
14 one? PLRB only had one list?

15 THE WITNESS: We had one list with the
16 election, and we had a back up that we did not bring
17 to the election.

18 HEARING EXAMINER: And so that is
19 different from what the Steelworkers are asking
20 about now with regard to University's list?

21 THE WITNESS: Yes. The University
22 list was something that they brought.

23 HEARING EXAMINER: And did you notice
24 what form it was in? Was it paper? Was it
25 electronic?

1 THE WITNESS: It was paper.

2 HEARING EXAMINER: All right.

3 THE WITNESS: And they were making
4 marks with a pen.

5 HEARING EXAMINER: You can ask follow
6 up. I just asked that to clear up the record. Do
7 you have any follow up on that?

8 ATTORNEY MANZOLILLO: No, not at this
9 time.

10 HEARING EXAMINER: All right.

11 Ms. Farmer?

12 ATTORNEY FARMER: Thank you.

13 HEARING EXAMINER: We can take a break
14 if you want a break.

15 ATTORNEY FARMER: No. I'm good.

16 Thanks.

17 HEARING EXAMINER: All right.

18 ---

19 CROSS EXAMINATION

20 ---

21 BY ATTORNEY FARMER:

22 Q. How long have you worked for the PLRB?

23 A. Since 2002.

24 Q. Always in the same job title?

25 A. Yes. I've been the administrative

1 officer for the Pennsylvania Labor Relations Board
2 since November of 2002.

3 Q. And your training is as an attorney.

4 Is that right?

5 A. That's correct.

6 Q. How long have you been overseeing
7 elections for the PLRB?

8 A. Since spring of 2003, I oversaw - well,
9 it was a training period for about, I don't know,
10 maybe three months. And then all that summer of
11 2003, I oversaw the elections for the western part
12 of the Pennsylvania Labor Relations Board, anything
13 with a W on the back side of it.

14 Q. Okay.

15 And if - I know it's not an exact number,
16 but about how many elections have you been involved
17 in overseeing during your career with PLRB?

18 A. I'll call it 100 a year. Well, okay.
19 Since 2011, I've done it for the entire state, so
20 call that 100 a year and maybe 50 or so a year from
21 2002 to 2011.

22 Q. And -.

23 A. So 800 or 900.

24 Q. Okay.

25 And just again, total ballpark, roughly

1 how many of those would you say were in person
2 versus mail ballot?

3 A. Ninety-five (95) percent.

4 Q. In person?

5 A. Yes.

6 Q. And you were - you supervised the conduct
7 of this election.

8 Right?

9 A. That's correct.

10 Q. Okay.

11 And you directed the work of the other
12 PLRB staff who were at the election?

13 A. That's correct.

14 Q. You were present -?

15 A. Before, during and after.

16 Q. Okay.

17 And you - also, in addition to that, you
18 personally took shifts sitting at the table doing
19 the sign-in book?

20 A. That is correct. I took a shift at every
21 position that we had.

22 Q. In conducting this election, did you
23 follow the normal procedures that you had followed
24 in those other 800 or 900 elections?

25 A. Okay.

1 To clarify, I was not physically at most
2 of those elections. I am in charge of the election
3 process, but we have two elections officers to go
4 out. But to the extent that if they had a problem,
5 I would be there to call. I'd make a decision at a
6 polling area. I would inform them of my decision
7 and then they would enforce it. But I was not
8 physically at most of those elections.

9 Q. I understand.

10 And was the conduct of this election
11 consistent with the procedures that you employed at
12 those other elections through your direction?

13 ATTORNEY MANZOLILLO: Objection. Not
14 able - foundation that you would be able to know
15 what the procedures are.

16 HEARING EXAMINER: It's overruled. Go
17 ahead and answer the question.

18 THE WITNESS: Okay.

19 Yes. I would talk with the elections
20 officers at various times as to how they conduct the
21 various elections. It's not all of them. But yeah,
22 generally, they ask for a name, they say their name
23 and if there's a problem they check ID.

24 BY ATTORNEY FARMER:

25 Q. If one party has an objection to

1 something that happens during an election, is that
2 something you expect to be raised as soon as
3 possible so it could be addressed?

4 A. As soon as possible and whoever is in
5 charge of the election makes a decision at that time
6 as to which way we're going to go. We can tell a
7 party that they can have a watcher or they can't
8 have certain watchers. So they can do this, but not
9 that.

10 Q. And during the conduct of this election,
11 was there anything that happened that you considered
12 to be outside the PLRB's procedures other than the
13 people who were filming who you said you asked to
14 leave?

15 A. There was a Pitt News reporter that was
16 conducting an exit poll in the polling area. So
17 that was unusual.

18 Q. Anything else?

19 A. And I asked them to stop and they did.

20 Q. Anything else?

21 A. There was a - a bit of an altercation
22 amongst - but I wasn't actually there for this -
23 this is an after the fact, but I was told by the
24 watcher for the Union that she felt she was being
25 treating differently from the Employer's watcher.

1 And I discussed it with her and told her I'd do what
2 I could to fix it.

3 Q. And then you took steps to address that
4 problem?

5 A. I took steps. Yes, I did. Immediately.

6 ATTORNEY FARMER: How do you want to
7 mark the University exhibits?

8 HEARING EXAMINER: What would you like
9 to be called today?

10 ATTORNEY FARMER: Well, the Union is
11 using U.

12 HEARING EXAMINER: All right.
13 We can do Employer.

14 ATTORNEY FARMER: Without prejudice to
15 our position, of course, that -.

16 HEARING EXAMINER: You employ
17 somebody.

18 ATTORNEY FARMER: The graduate
19 students are not employees, yes.

20 HEARING EXAMINER: Well, you
21 stipulated you're a public employer.

22 ATTORNEY FARMER: That's true.

23 HEARING EXAMINER: Or you can do Pitt
24 1.

25 ATTORNEY FARMER: I already marked it.

1 HEARING EXAMINER: Okay.

2 Employer.

3 ATTORNEY FARMER: P is confusing, too,
4 because that sounds like petitioner.

5 HEARING EXAMINER: Thank you.

6 BY ATTORNEY FARMER:

7 Q. Okay.

8 I'm showing you what I've marked as
9 Employer's Exhibit 1. Have you seen this before?

10 ---

11 (Whereupon, Employer's Exhibit 1, Instructions
12 for Election Observers, was marked for
13 identification.)

14 ---

15 THE WITNESS: Yes.

16 BY ATTORNEY FARMER:

17 Q. Can you identify what this is?

18 A. This is a document that the Pennsylvania
19 Labor Relations Board sends to the parties.

20 Q. And this actually goes - is sent to the
21 parties with the Order and notice of election?

22 A. Yes.

23 Q. This is something that's prepared by the
24 PLRB?

25 A. That is correct.

1 Q. Okay.

2 Were you involved in the creation of this
3 document?

4 A. That's an ancient document. It was
5 created before my time.

6 Q. It says at the bottom it was revised in
7 2011.

8 HEARING EXAMINER: It might have been
9 1911. Go ahead.

10 BY ATTORNEY FARMER:

11 Q. Got you.

12 A. No. I was not involved in the revision.

13 Q. Okay.

14 In looking at it, do you believe that it
15 summarizes what the expectations are for election
16 observers?

17 HEARING EXAMINER: Did Steelworkers
18 get this document?

19 ATTORNEY MANZOLILLO: I don't recall.

20 HEARING EXAMINER: Did you get this
21 document?

22 THE WITNESS: I would have obviously
23 got it.

24 ATTORNEY FARMER: Yeah. It would have
25 came with the order and the direction of election.

1 THE WITNESS: I was reading. Could
2 you repeat your question?

3 BY ATTORNEY FARMER:

4 Q. Yes. I said do you believe that it
5 accurately summarizes what the expectations are for
6 election observers?

7 A. It accurately summarizes our expectations
8 for them.

9 Q. That's what I meant, the PLRB's
10 expectations.

11 A. Yes.

12 Q. Okay.

13 What's the purpose of having election
14 observers?

15 A. Maintain the fairness of the election.
16 Each party, make sure everything is - that the
17 election is conducted in a fair manner to their
18 particular party, I suppose. And to make sure the
19 secrecy of the ballot is maintained. That's my
20 understanding.

21 Q. And is - and one of the roles of
22 observers is to identify voters?

23 A. Yes. That's correct. It's - at an
24 onsite election, if somebody wants to make a
25 challenge, it has to be made through their election

1 watcher.

2 Q. Now, you said that you held a
3 pre-election briefing before the start of the
4 election on Monday morning?

5 A. That's correct.

6 Q. Is that customary?

7 A. We do it every time.

8 Q. Is it customary to have non-observer
9 representatives for the parties at that briefing?

10 A. Anybody can be there.

11 Q. And during the briefing in this - in this
12 instance, the University's watchers identified
13 themselves?

14 A. They did.

15 Q. Okay.

16 They gave their titles?

17 A. They did.

18 Q. And you said that you asked each of them
19 if they were supervisors?

20 A. I first asked them if they supervised
21 grad students, and then I asked them if they
22 supervised anybody.

23 Q. And you said that the Union's counsel
24 raised concerns. What was said by the Union's
25 counsel? And the specific Union counsel was Brad,

1 who is present.

2 HEARING EXAMINER: Thank you.

3 ATTORNEY FARMER: Yes, sir.

4 THE WITNESS: He raised concerns that
5 the employer's watchers might be managers or
6 supervisors, which prompted me to ask some specific
7 questions.

8 BY ATTORNEY FARMER:

9 Q. And after you asked those specific
10 questions, did Brad say anything else about the
11 watchers?

12 A. He didn't agree to them.

13 Q. Did you raise any concerns about the
14 identity of the watchers with me or any
15 representative of the University?

16 A. No. After I asked them the questions, I
17 allowed them to be watchers.

18 Q. And you didn't ask the University to get
19 different watchers?

20 A. I did not.

21 HEARING EXAMINER: Just to go back, we
22 do have on the record that Mr. Manzolillo sent an
23 email regarding the watchers. You asked him did he
24 say anything else about the watchers, and he said
25 no. But I just want to make sure we're all clear

1 that he did send an email which is 3B.

2 ATTORNEY FARMER: The email is not
3 about -.

4 HEARING EXAMINER: I'm sorry.
5 Continue on.

6 ATTORNEY FARMER: The email is not
7 about the watchers.

8 HEARING EXAMINER: All right.
9 Go ahead.

10 BY ATTORNEY FARMER:

11 Q. Okay.

12 Did you believe that the identity of the
13 watchers was consisted with PLRB policy?

14 A. No. They were supervisors, but I allowed
15 it anyway because it didn't seem that these
16 particular supervisors were going to be known to
17 anybody that - one of the parties did specifically
18 tell them, hey, this person works for the University
19 and supervises whoever. Once I determined they
20 didn't supervise grad students and it seemed to me
21 that they were not in any way close to the grad
22 students, that the grad students probably wouldn't
23 recognize it for the most part, I allowed them to be
24 watchers.

25 Q. And was this consistent with how watchers

1 were handled in the election that occurred among
2 graduate students at Penn State the prior year?

3 ATTORNEY MANZOLILLO: Objection,
4 relevance to this situation.

5 HEARING EXAMINER: Deferred. Go ahead
6 and answer it.

7 THE WITNESS: I don't think we asked
8 Penn State watchers those questions because I don't
9 believe the Union raised any concerns.

10 BY ATTORNEY FARMER:

11 Q. Do you recall, in connection with the
12 election that occurred at Penn State, graduate
13 students telling me that having University watchers
14 from the Office of the Dean of Graduate Studies was
15 fine as long as they didn't supervise graduate
16 students?

17 ATTORNEY MANZOLILLO: Same objection.

18 HEARING EXAMINER: Deferred. Go
19 ahead.

20 BY ATTORNEY FARMER:

21 Q. Do you recall that?

22 A. I don't recall that conversation.

23 Q. At any other time during the election,
24 were there any concerns raised about the conduct by
25 the University's watchers?

1 A. Other than the tracking of the - using
2 the list to track employees, I don't remember
3 anything off the top of my head.

4 Q. Did you see any actions done by the
5 University watchers that appeared to be coercive?

6 A. I did not.

7 Q. During the pre-election conference, did
8 you tell all of the watchers that if they couldn't
9 hear the name of the voter or the spelling, that
10 they can ask the person who was checking voters in
11 to repeat it?

12 A. It was actually Joe that said that, but
13 yes, that was said at the pre-election briefing.

14 Q. And you've testified that the PLRB
15 provides for a secret ballot election. How does it
16 do that?

17 A. We provide a polling location, and we
18 have polling booths that have screens on them. And
19 the - there's screens on three sides and there's an
20 opening on one side. The opening is away from the
21 area where the watchers, the Board agent and the
22 folks voting can't see behind there.

23 And we also arrange the polling location
24 in such a way when we have more than one that the
25 voters can't see what the voter is doing. We space

1 them - we try to space them far apart. We try to
2 space them in a line in such a way that the only
3 person that can see the ballot is the person that's
4 making the mark on it. Then they fold the ballot up
5 and they put it in the ballot box, and we maintain
6 control of the ballot box. And in this way, we
7 maintain the secrecy of the election.

8 Q. Is there any way for anybody to know how
9 the votes were cast on a given day during the
10 election?

11 A. No.

12 Q. Do you do count - do any count of the
13 ballots during the course of the election on a
14 multi-day election?

15 A. No, we don't. We seal the ballot boxes
16 and then we - on a case - in a normal election, we
17 do the count immediately. In a large election like
18 this, a multi-day election, we seal the ballot boxes
19 and then we have a date set aside where we open
20 them.

21 Before we open them, we have the parties
22 look at them to make sure that the integrity of the
23 ballot box has been maintained. In this particular
24 case, that was done, and the parties agreed that the
25 ballot boxes were sealed when we opened them.

1 Q. Does either or both parties keeping track
2 of who voted diminish the secrecy of the ballot?

3 ATTORNEY MANZOLILLO: Objection.
4 That's speculative, no basis.

5 HEARING EXAMINER: Say that again.

6 ATTORNEY FARMER: I said does either
7 or both parties keeping track of who voted diminish
8 the secrecy of the ballot?

9 HEARING EXAMINER: And you're asking
10 secrecy in terms of the Board's stated policy to
11 ensure secrecy?

12 ATTORNEY FARMER: Correct.

13 HEARING EXAMINER: I'm going to
14 overrule. Go ahead.

15 THE WITNESS: I don't see how it could
16 have.

17 BY ATTORNEY FARMER:

18 Q. Did - in this instance, did you have any
19 surprise that the University was keeping track of
20 who voted?

21 A. No, that wasn't a surprise. The surprise
22 was that the Union was not.

23 Q. Because it's common for both sides to
24 keep track?

25 A. Yes.

1 Q. But do you recall asking the Union's
2 counsel if they had a list to keep track?

3 A. I don't recall.

4 Q. Do you recall at some point during the
5 election being asked and saying words to the effect
6 of while this may not be prohibited under the
7 Federal Board, we don't have a rule against doing
8 this?

9 A. I don't recall that exact conversation,
10 but it sounds like something I would have said.

11 Q. Do you recall staff from the PLRB asking
12 you - actually asking the University watchers to
13 double check where the PLRB was having trouble
14 finding student names on the list so that every
15 eligible voter could vote?

16 A. We did do that, yes, several times. The
17 University - we were going to send somebody to the
18 challenge station, and the University said, hey,
19 they're on my list. We double checked our list and
20 in those cases, we found them. And instead of being
21 challenged, they were issued a vote. That happened
22 maybe three or four times.

23 Q. And is that part of the reason for having
24 watchers to help identify voters, to make sure that
25 every eligible voter votes and only eligible voters

1 vote?

2 A. Yes. That's one of the purposes,
3 especially in the small elections where everybody
4 knows everybody.

5 Q. You testified that there was a change in
6 the seating arrangements, I think you said around
7 lunchtime on Wednesday?

8 A. That's correct.

9 Q. Did the University watchers ask to move
10 closer?

11 A. They did not. They were having trouble
12 hearing, so I moved them closer.

13 Q. And that put them at the same relative
14 distance to the checking and as the Union observer
15 had been the entire time?

16 A. Yes.

17 Q. At any point, did you notify me or any
18 representative of the University that the Union had
19 complained about the University keeping track of the
20 voters?

21 A. I don't recall doing that, no.

22 Q. You - 3B is an email that you received
23 from the Union's counsel that was dated Monday
24 evening. You testified that you didn't see it until
25 Friday?

1 A. That's correct.

2 Q. And at that time, did you notice that
3 nobody from the University was copied on it?

4 A. I didn't notice that until just now.

5 Q. Okay.

6 Did you consult with the chief counsel of
7 the PLRB about any concerns raised by the Union
8 during the election?

9 HEARING EXAMINER: I'm going to stop
10 you there. We'll go off the record. I'm going to
11 think about that question.

12 ATTORNEY FARMER: Okay.

13 HEARING EXAMINER: All right. We'll
14 go off the record for ten minutes - eight minutes.

15 ---

16 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

17 ---

18 HEARING EXAMINER: Mr. Bachy, who was
19 your chief counsel for - what time period are you
20 asking about?

21 ATTORNEY FARMER: During the election.

22 HEARING EXAMINER: During the
23 election, okay, who was chief counsel at that time?

24 THE WITNESS: Warren Mowry.

25 HEARING EXAMINER: During the

1 election?

2 THE WITNESS: Oh, no. That was after.
3 Pete Lassey.

4 HEARING EXAMINER: And -.

5 THE WITNESS: Sorry.

6 HEARING EXAMINER: Besides being chief
7 counsel, did Pete Lassey have another role, another
8 formal role?

9 THE WITNESS: Oh. yeah. He's the
10 Board representative.

11 HEARING EXAMINER: Okay.

12 And what's the Board representative
13 generally -?

14 THE WITNESS: For a representation
15 petition, the Board representative is the person
16 that signs the election order. He's the only person
17 that can issue and sign an election order.

18 HEARING EXAMINER: His administrative
19 function - that's an administrative function?

20 THE WITNESS: Yes.

21 HEARING EXAMINER: All right.

22 Again, you talked to Mr. Lassey about
23 during the election?

24 THE WITNESS: The only thing I can
25 recall is -.

1 HEARING EXAMINER: Don't tell me if
2 you did, what it was. Just yes or no.

3 THE WITNESS: Yes.

4 HEARING EXAMINER: Okay.

5 Can you discern the difference between
6 talking to Mr. Lassey about legal issues concerning
7 the Board and talking to Mr. Lassey about
8 administrative policy questions you may have about
9 administrative - administering the election?

10 THE WITNESS: I believe I can do so.

11 HEARING EXAMINER: Right. You can ask
12 him about policy - discussions you had with Mr.
13 Lassey about policy discussions, but not about legal
14 discussions he had in his role as chief legal
15 officer but as his role of Board representative?

16 ATTORNEY FARMER: I was actually just
17 going to ask if he spoke with him. My question was
18 actually, did he speak with him about the Union's
19 objection to University maintaining -.

20 THE WITNESS: As Board representative?

21 ATTORNEY FARMER: I was actually
22 asking if he spoke to him about it at all, period.

23 HEARING EXAMINER: Okay.

24 Did you speak to him about - answer
25 the question.

1 THE WITNESS: No.

2 HEARING EXAMINER: There you go.

3 ATTORNEY FARMER: That's what I was
4 looking for.

5 HEARING EXAMINER: Well, if that comes
6 up again, we set the groundwork now -

7 ATTORNEY FARMER: Okay.

8 HEARING EXAMINER: - for what I think
9 proper questions are with regard to Mr. Mowry and
10 Mr. Lassey.

11 BY ATTORNEY FARMER:

12 Q. Thank you.

13 You testified that at some point you
14 started having the PLRB representative check all
15 student IDs. You said that was probably sometime
16 around Tuesday afternoon?

17 A. Yes.

18 Q. Okay.

19 Why did you do that?

20 A. It was easier.

21 Q. Why was it easier?

22 A. The University ID is - the name is nicely
23 printed so that you can easily visually see the
24 name. And it made it easier to find that person on
25 the list. Asking them their names and asking them

1 to spell their names was going slower at times.
2 Presenting the student ID made it a lot easier for
3 us to find their name on the list.

4 Q. Was anyone turned away for not having an
5 ID?

6 A. They were not.

7 Q. Before you went to the policy of checking
8 all of the IDs, did the PLRB target international
9 students when asking for IDs?

10 A. Absolutely not.

11 Q. Did any student complained about being
12 asked for their ID?

13 A. Not that I recall. Some students didn't
14 have a Pitt ID so they showed their driver's
15 license. And one student that I recall when I was
16 running the sign-in book didn't have an ID, and I
17 simply said, well, if you know your name, I'll let
18 you sign it. And they ended up showing me their
19 banking card.

20 Q. Okay.

21 Did you observe any University watcher
22 speak directly to any voter?

23 A. No. Any question that the University
24 watcher had would have been directed to the Board
25 agent running the book.

1 Q. Did you ever observe any University
2 watcher ask any student for ID?

3 A. No. That didn't happen.

4 Q. And did any University watcher ever ask a
5 student to repeat or spell their name?

6 ATTORNEY MANZOLILLO: Object. And Mr.
7 Bachy can't speak for all the agents.

8 HEARING EXAMINER: In your experience.
9 Just ask him in his experience.

10 BY ATTORNEY FARMER:

11 Q. In his experience - in your experience
12 did that happen?

13 A. Well, let me take a step back and tell
14 you how long I was there. I was directly there for
15 every minute of the election except for 40 minutes
16 on Tuesday and 40 minutes on Thursday. So other
17 than those times when I was at lunch on those two
18 days only, I was able to directly observe the
19 election. And could you ask your question again?

20 Q. Sure.

21 Did you - just to make sure that the
22 question is there, did you observe any University
23 watcher ask any student for ID?

24 A. No, they did not.

25 Q. Did you observe any University watcher

1 ask any student to say or spell their name?

2 A. No. They would have asked the Board
3 agent if they needed that.

4 Q. Did you ever see any University watcher
5 engage in any behavior that appeared to be
6 photographing voters?

7 A. I did not. I would have put a stop to it
8 if I had seen it.

9 Q. Did anybody complain to you that
10 University watchers appeared to be photographing
11 voters?

12 A. No. The only complaint about photography
13 was the Union watcher saw some people outside taking
14 pictures. We discussed that. It was Pitt News and
15 I sent them somewhere else.

16 Q. Did Union watchers sometimes have their
17 cell phones out while they were at the table?

18 A. Yes.

19 Q. Did PLRB staff sometimes have their cell
20 phones out while they were at the table?

21 A. Not while they were - when there was no
22 voters there? Okay. I'm going to go with yes. But
23 not when there were voters there.

24 Q. Is there any voter who left without
25 voting who was eligible to your knowledge?

1 A. I didn't see anybody leave without
2 voting.

3 Q. Did any voter make any complaints about
4 the conduct of the election to you or any PLRB staff
5 who reported it to you?

6 A. None of the voters, no.

7 Q. Did you observe any conduct by University
8 watchers that you considered to be improper?

9 A. No. I would have put a stop to it.

10 Q. Did the Union - did Brad come to the
11 election site each day?

12 A. In the morning and then in the evening,
13 before we opened the polls and after we closed the
14 polls.

15 Q. And did he speak to you about the
16 election each day?

17 A. Briefly, I mean, there was the Tuesday
18 morning conversation about lists. That's the one I
19 recall mostly. I mean, we may have briefly chatted
20 about things other than that, but I don't recall
21 directly.

22 Q. And was any representative of the
23 University present when you had these conversations?

24 A. The University had Stephanie Hoogendoorn
25 in the mornings and the evenings. She would have

1 been nearby. I don't know if she was within
2 earshot.

3 Q. Did you say anything to Stephanie or to
4 me about any concerns that were raised to you by
5 Brad at any point during the election?

6 A. I did not.

7 ATTORNEY FARMER: I have nothing
8 further.

9 HEARING EXAMINER: Would you like some
10 time for Redirect or Recross?

11 ATTORNEY FARMER: Oh, I'm sorry. Can
12 I ask one -?

13 HEARING EXAMINER: Yeah, go ahead.

14 ATTORNEY FARMER: I have one - sorry,
15 another question.

16 BY ATTORNEY FARMER:

17 Q. You testified that when voters came in
18 and were checked in, you had asked them to sign your
19 list?

20 A. That's correct.

21 Q. Okay.

22 The University watchers didn't ask the
23 students to sign anything. Did they?

24 A. They did not.

25 ATTORNEY FARMER: And nothing further.

1 HEARING EXAMINER: All right.
2 Would you like some time for Recross?
3 ATTORNEY MANZOLILLO: I have just a
4 few - .
5 HEARING EXAMINER: Go ahead.
6 ATTORNEY MANZOLILLO: Oh, you're going
7 to go?
8 HEARING EXAMINER: Well, I'm done on
9 the Direct.
10 ---
11 RECROSS EXAMINATION
12 ---
13 BY ATTORNEY MANZOLILLO:
14 Q. Now, Mr. Bachy, in your experience, the
15 employer is the party that's responsible for
16 selecting their observers.
17 Correct?
18 A. Yes. The employer selects the employer's
19 watcher, yes.
20 Q. It's not the Union's responsibility to
21 select the employer's watchers.
22 Correct?
23 A. Correct.
24 Q. The email - the PLRB Exhibit 3B -
25 A. Uh-huh (yes).

1 Q. - the email I sent, did you have a chance
2 to review that after you - on Friday after the
3 election?

4 A. Yes. I read it.

5 Q. And in that email, in fact, the Union
6 does raise a concern about the University watchers
7 being managerial.

8 Correct?

9 A. Would you care to direct my attention to
10 it?

11 Q. The last sentence of the first paragraph.

12 A. Oh, there we are. It's hard to find
13 things when you're looking real quick. I mean, it's
14 in the - it's in the email. And it was also raised
15 verbally at the pre-election brief on Monday.

16 Q. And that was in the presence of the
17 University representatives during the pre-election
18 conference on Monday?

19 A. It was in front of everybody and I
20 believe everybody heard it.

21 Q. Now, you spoke a little bit about your
22 experience with running elections. What percentage
23 are you actually at in person?

24 A. In person? A number so small that you
25 probably can't even count it, but I can give you the

1 exact number. The exact number is me being onsite
2 for an onsite election is three. Me being present
3 for a mail ballot election is pretty much any one
4 conducted in our office, but even that number is
5 probably under 50.

6 Q. Now, how many - how many multi-day
7 elections have you been involved with?

8 A. Two. I mean, as I was at the election
9 polling area or involved with in any capacity
10 whatsoever?

11 Q. Let me ask you. How many in person
12 multi-day elections were you involved with in
13 person?

14 A. When I was at the election site?

15 Q. Yes.

16 A. Two.

17 Q. All right.

18 So just counting mail ballots, how many
19 were you - have you been involved with, period?

20 HEARING EXAMINER: Multi-day?

21 ATTORNEY MANZOLILLO: Yeah.

22 HEARING EXAMINER: There's no multi-
23 day mail ballots at all, I think.

24 THE WITNESS: No, no, no, multi-day
25 elections?

1 HEARING EXAMINER: Yeah.

2 THE WITNESS: Anything in the west
3 since 2002 and anything in the state since 2011, I
4 don't have an exact number for.

5 BY ATTORNEY MANZOLILLO:

6 Q. Do you have an approximation of how many
7 of those had more than 2,000 voters?

8 A. Oh, more than 2,000 voters? One. The
9 Penn State election had 4 - we ran a couple of
10 elections for - those were mail ballots. We're not
11 counting mail ballots. Right? Okay. So over 1,000
12 voters? Two.

13 Q. How about over 500?

14 A. Maybe another ten.

15 Q. And how about over 100?

16 A. Over 100 people? We don't do those
17 multi-day,

18 Q. Okay.

19 How many elections have you had, period,
20 with over 100 people, just a rough estimate?

21 A. Twenty (20) percent.

22 Q. Okay.

23 A. I would say a typical number of folks in
24 an election is going to be a municipal election for
25 a road crew, and that's usually around ten. You'd

1 have to get to states and school districts and
2 things like that, so maybe 20 percent? Most of our
3 elections are small.

4 Q. Okay.

5 ATTORNEY MANZOLILLO: I don't have
6 anything further.

7 ATTORNEY FARMER: I just have one.

8 ---

9 RE CROSS EXAMINATION

10 ---

11 BY ATTORNEY FARMER:

12 Q. The - you testified that everyone had to
13 wear a badge that's provided by the PLRB?

14 A. Correct.

15 Q. And that the watcher just say watcher?

16 A. Election watcher.

17 Q. Election watcher. They don't say who
18 they're a watcher for, do they?

19 A. They do not.

20 ATTORNEY FARMER: Nothing further.

21 HEARING EXAMINER: All right.

22 At this time, is everyone finished
23 with Mr. Bachy?

24 ATTORNEY MANZOLILLO: Yes.

25 ATTORNEY FARMER: Yes.

1 HEARING EXAMINER: All right.

2 You can step down, sir. Thank you.

3 Now we can continue. You have the
4 burden for the exception to the Board's election.
5 You can continue with that or you can move in and
6 compline it with the UP. It's up to you.

7 ATTORNEY MANZOLILLO: We're going to
8 provide evidence combined.

9 HEARING EXAMINER: All right.

10 So the parties do you want to break
11 now or get started? It's only 11:15.

12 ATTORNEY MANZOLILLO: Just give us
13 about five minutes.

14 HEARING EXAMINER: All right.

15 We'll come back in five minutes, and
16 then we'll probably do a witness and then break for
17 lunch.

18 ---

19 (WHEREUPON, A SHORT BREAK WAS TAKEN.)

20 ---

21 HEARING EXAMINER: Warren Mowry was
22 the chief counsel during the election. It wasn't -
23 so I got that wrong. He was right on the stand. I
24 don't think it matters, Counsel.

25 All right.

1 ATTORNEY FARMER: I'm going to move in
2 my exhibit.

3 HEARING EXAMINER: Yeah, go ahead.

4 ATTORNEY FARMER: I move Employer's
5 Exhibit 1.

6 HEARING EXAMINER: Any objection to
7 this?

8 ATTORNEY MANZOLILLO: No.

9 HEARING EXAMINER: All right. That's
10 admitted.

11

12 (Whereupon, Employer's Exhibit 1, Instructions
13 for Election Observers, was admitted.)

14

15 HEARING EXAMINER: So go ahead with
16 your case, sir.

17 ATTORNEY MANZOLILLO: Union calls
18 Casey Madden.

19 HEARING EXAMINER: Raise your right
20 hand for me.

21

22 CASEY MADDEN,
23 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
24 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
25 FOLLOWS:

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HEARING EXAMINER: Your witness, sir.

Wait - spell your name for us.

THE WITNESS: C-A-S-E-Y, M-A-D-D-E-N.

HEARING EXAMINER: Okay.

Your witness, sir.

DIRECT EXAMINATION

BY ATTORNEY MANZOLILLO:

Q. Hi, Casey. Are you a graduate student at the University of Pittsburgh?

A. Yes.

Q. And were you any of a TATF GSA or DSR employed by the University during the spring semester of 2019?

A. Yes.

Q. So you were in the bargaining unit and eligible to vote?

A. Yes.

Q. Did you serve as the election observer slash watcher for the Union?

A. On Tuesday from 9:00 a.m. until 5:00 p.m., with an hour break around noon for lunch. And on Thursday from 9:00 a.m. until 5:00 p.m., with

1 about an hour and half break at 12:30 for lunch.

2 Q. Did you take any other breaks during the
3 day either?

4 A. There's a 15 minute break around 3:00
5 p.m.

6 Q. And you were replaced by other Union
7 observers during this time?

8 A. Correct.

9 Q. Okay.

10 So can you briefly describe what your
11 duties were as watcher?

12 A. Just to ensure that there was no sort of
13 coercive behavior happening or election viewing
14 happening within the polling location, that no one
15 was taking photographs, just to make sure that
16 things ran smoothly.

17 Q. Okay.

18 Can you describe where you were seated
19 relative to the PLRB agents and the University
20 watchers during the election?

21 A. On both days, I was sitting - if you were
22 looking at the table from behind, I was sitting to
23 the left of the Board agent. On Tuesday, the
24 University watcher was all the way across the table.
25 And on Thursday the watcher had been moved to the

1 right of the Board agent.

2 Q. How far were you from the - to the left
3 from the Board agent?

4 A. On Thursday?

5 Q. On Tuesday.

6 A. On Tuesday, two or three feet.

7 Q. Okay.

8 And how far on Thursday?

9 A. Two or three feet.

10 Q. There was some testimony that during -
11 well, I'll come back to that. Okay. So did you
12 keep a list tracking who voted while you were poll
13 watching?

14 A. No.

15 Q. And why not?

16 A. We were told not to keep a list as it may
17 appear coercive in some fashion.

18 Q. Who told you that?

19 A. The United Steelworkers' attorneys.

20 Q. So the Union didn't ask you to keep a
21 track or who voted either?

22 A. Correct. They asked us not to.

23 Q. Were there - so there were PLRB agents
24 who conducted the election. Do you remember any of
25 them?

1 A. I only remember first names. There was
2 Dennis, Joe, Kathy. And on Thursday there was a new
3 one name Nate.

4 Q. Okay.

5 A. There was someone else as well. I do not
6 remember her name.

7 Q. Okay.

8 Did you observe the University watchers
9 keeping an independent list of voted - of who voted?

10 A. I did.

11 Q. And what did you see?

12 A. They had a clipboard with a pretty large
13 stack of paper on it. And as voters would come in
14 and announce their names to the Board agent, the
15 Board agent would check their name off. The
16 University watcher would also rifle through their
17 stack of paper and they appeared to make some mark,
18 probably indicating the person who had voted.

19 Q. After every voter?

20 A. After every voter.

21 Q. And was this done openly in the present
22 of voters?

23 A. Yes.

24 Q. Now, did the PLRB agents ever ask voters
25 to repeat a name or to spell a name?

1 A. Yes.

2 Q. And how often was that?

3 A. Probably 20 percent of the time.

4 Q. And was this done in a widely audible
5 fashion so anybody in the polling area could hear?

6 A. Yes.

7 Q. Did you ever witness the University
8 watchers request the PLRB agents to have a name
9 repeated or to spell it?

10 A. Yes.

11 Q. How often was that?

12 A. Fairly often, especially when it got
13 busier and it was louder.

14 Q. And was this done in the present of
15 voters in an audible fashion?

16 A. Yes.

17 Q. Did the PLRB agents ever indicate why
18 they were having voters spell out their names?

19 A. Because they couldn't find their name in
20 the book or those - on some occasions. On other
21 occasions, it was specifically stated so that the
22 watcher could also get the name.

23 Q. Did you ever hear any of the University
24 watchers ask PLRB agents anything about how they -
25 how they were keeping tracks of name?

1 A. Yes. On Tuesday, I witnessed one of the
2 watchers asking Joe, I believe, if he had any sort
3 of tips or tricks for how to navigate the list
4 faster.

5 Q. And did you hear Joe give a response?

6 A. Yes. Joe indicated that oftentimes you
7 only need the first three letters of the last name.
8 That'll help you flip through it faster. And he
9 also instructed her to put Post-It notes as like
10 makeshift tabs on their lists. So those were
11 labeled A through Z, and they could just flip to
12 last names faster.

13 Q. And the - did the University follow that
14 practice themselves, the University watchers?

15 A. Yes.

16 Q. Okay.

17 You saw them keeping tabs or Post-It
18 notes on their list?

19 A. I saw them make the tabs and put them on
20 the list and use them.

21 Q. Okay.

22 And was this done visibly in front of
23 voters?

24 A. Yes.

25 HEARING EXAMINER: Was that Tuesday?

1 THE WITNESS: Yes.

2 BY ATTORNEY MANZOLILLO:

3 Q. Do you remember around what time on
4 Tuesday?

5 A. Before lunch.

6 Q. Now, you were there Tuesday even in the
7 afternoon. Did the - I should ask, did the - let me
8 rephrase this question. They're two different
9 questions.

10 Did any of the voters - did you ever
11 witness any voters express concern about the
12 anonymity being preserved?

13 A. Yes.

14 Q. While in the polling area they expressed
15 this?

16 A. Yes.

17 Q. And can you describe what happened?

18 ATTORNEY FARMER: Objection. Hearsay.

19 HEARING EXAMINER: Overruled. Well,
20 deferred. Let's see what he has to say.

21 THE WITNESS: There were some people
22 who asked at the first Board agent that they made
23 contact with like why do I have to say my name? I
24 thought this was anonymous. The Board agent would
25 then explain this is just to verify that you are on

1 the list of eligible voters. I saw a lot more
2 concern with challenged ballots.

3 ATTORNEY MANZOLILLO: Now -.

4 HEARING EXAMINER: Hold on, just one
5 second. There definitely is hearsay issues there if
6 you're going to use those statements in any way to
7 show coercion because you have no opportunity to
8 cross them.

9 ATTORNEY FARMER: Correct.

10 HEARING EXAMINER: However, we're
11 going to leave it in the record because it may be
12 useful for notice or other issues. And to hear how
13 the - how the PLRB responded to those issues is also
14 proper. Okay?

15 Go ahead.

16 BY ATTORNEY MANZOLILLO:

17 Q. And in those instances where people
18 raised - you heard them raise concern about
19 anonymity, were the University watchers -.

20 HEARING EXAMINER: Well, you said
21 persons and he said one person. Was it only one
22 person?

23 THE WITNESS: It was more than one
24 person.

25 HEARING EXAMINER: Okay.

1 BY ATTORNEY MANZOLILLO:

2 Q. Do you remember approximately how many?

3 A. I don't remember how many, but I would
4 guess - over the course of Tuesday and Thursday, I
5 saw probably over 15 people raise concern about
6 their anonymity.

7 Q. Okay.

8 And in each of these instances, was the
9 University watchers tracking who they were on their
10 list?

11 A. Yes.

12 Q. Was that open and visible to the voter?

13 A. Yes.

14 HEARING EXAMINER: Go back to when -
15 can you give another example - what example did you
16 use for something that they said?

17 THE WITNESS: Like when they first
18 approached the Board agent and were asked for their
19 names, just asking, why do I have to give my name?
20 I don't understand. I thought this was an anonymous
21 process.

22 HEARING EXAMINER: All right.

23 I know there's a hearsay objection on
24 that, and that's probably definitely hearsay to use
25 for their state of mind. However, I wanted to hear

1 how did PLRB respond to those comments?

2 THE WITNESS: They would explain that
3 they needed to offer up their name to verify that
4 they were eligible for a non-challenged ballot.

5 HEARING EXAMINER: Okay.

6 Go ahead.

7 BY ATTORNEY MANZOLILLO:

8 Q. Did the University challenge any voters
9 while you were observing?

10 A. Yes.

11 Q. How many?

12 A. One.

13 Q. And the list they were keeping, did that
14 - did that appear to have hundreds of names on it?

15 A. I would estimate over 1,000.

16 Q. Okay.

17 Now, did the - how many - how many
18 ballots did you witness the PLRB challenge?

19 A. Over 100.

20 Q. Did the PLRB agents ever discuss keeping
21 a list with you?

22 A. Yes. On Thursday morning in like the ten
23 minute window before the polls opened, I think
24 Nathan was his name, was the new Board agent who was
25 sitting next to me. He checked in with the

1 University watcher about getting their list
2 situated. And then he turned to me and asked me if
3 I would be working off a list as well.

4 Q. And what did you say?

5 A. I told him that I would not be working
6 off a list and I expressed concern to him that it
7 may be coercive to keep a list and I wasn't entirely
8 sure why the University was allowed to keep one.

9 Q. And what did Nathan do in response to
10 that?

11 ATTORNEY FARMER: Objection.

12 HEARING EXAMINER: Overruled. Go
13 ahead. Well, what's your objection?

14 ATTORNEY FARMER: Hearsay. There -
15 it's not -.

16 HEARING EXAMINER: Asked him what he
17 did and that's what he said. Go ahead and answer
18 the question. Did he do anything in response to
19 that?

20 THE WITNESS: He raised concern with
21 Dennis.

22 HEARING EXAMINER: You asked Dennis
23 about it and he didn't remember?

24 ATTORNEY MANZOLILLO: Yes, sir.

25 HEARING EXAMINER: All right.

1 Go ahead.

2 BY ATTORNEY MANZOLILLO:

3 Q. What did - did you overhear any of the
4 conversation?

5 A. What I overheard Dennis say was that it
6 wasn't a problem because voters weren't sure who in
7 the room was a PLRB employee or not. And they had
8 no way of knowing that the election watchers were
9 not PLRB employees.

10 HEARING EXAMINER: What you said
11 didn't make any sense to me. Can you say that
12 again?

13 THE WITNESS: Dennis said there was no
14 threat of coercion because the voters didn't know
15 that the election watchers were not PLRB employees.

16 HEARING EXAMINER: All right.

17 BY ATTORNEY MANZOLILLO:

18 Q. And the - you wore a badge depicting you
19 were an election watcher?

20 A. Yes.

21 Q. And did the University watcher do the
22 same?

23 A. Yes.

24 Q. Okay.

25 Now, did the PLRB agents ask voters for

1 IDs during the time you were observing?

2 A. Yes.

3 Q. Was it done on a consistent basis?

4 A. No.

5 Q. Okay.

6 So on Tuesday, the time you were
7 observing on Tuesday, did they appear to target any
8 particular demographic group and ask them for IDs?

9 A. They appeared to be disproportionately
10 asking people who appeared to be of either Asian or
11 Middle Eastern descent for their IDs.

12 Q. And was this before they gave their
13 names?

14 A. Yes.

15 Q. So they were asking preemptively?

16 A. Correct.

17 HEARING EXAMINER: That doesn't - that
18 doesn't make sense. What do you mean asking before
19 they gave their names?

20 ATTORNEY MANZOLILLO: Were they asking
21 -?

22 HEARING EXAMINER: When they walk -
23 when they walked up to the desk?

24 THE WITNESS: In most cases, the Board
25 agent was not asking for ID at all. In other cases

1 the moment they saw a person they were asking them
2 for ID.

3 HEARING EXAMINER: Okay.

4 Go ahead.

5 BY ATTORNEY MANZOLILLO:

6 Q. And you noticed that this - that - can
7 you say it again? What - what - if you notice a
8 particular demographic group being asked before they
9 stated their names for IDs?

10 A. It appeared to be people who were of
11 Asian or Middle Eastern descent.

12 Q. Okay.

13 Do you recall by Tuesday afternoon the
14 PLRB asking all voters for IDs?

15 A. They began to more consistently ask
16 people for IDs, but they were still not asking every
17 person.

18 HEARING EXAMINER: Just to go back.

19 In shorthand, you're alleging they were visually
20 profiling Asian and Middle Eastern students?

21 THE WITNESS: Yes.

22 HEARING EXAMINER: Okay.

23 Were you - is that something you were
24 on a lookout or thought of to be on the lookout for
25 before the election started, or is that just

1 something that jumped out to you and it became clear
2 to you even though you weren't expecting it?

3 THE WITNESS: That was something that
4 became clear to me despite not expecting it.

5 HEARING EXAMINER: All right.

6 So no one told you before the
7 election, hey, watch out. Make sure they don't
8 racially profile, visually profile, racially profile
9 the voters?

10 THE WITNESS: No one said anything
11 like that to me.

12 HEARING EXAMINER: Go ahead.

13 BY ATTORNEY MANZOLILLO:

14 Q. Now, how about on Thursday, did the
15 practice change in terms of checking IDs?

16 A. Yes. IDs were being checked
17 significantly more consistently. And oftentimes it
18 was like a preemptive thing. People weren't even
19 being asked for their names, to give their names or
20 to spell them. They were just looking at the IDs.

21 Q. Now did anything change in terms of the
22 placement of watchers between Tuesday and Thursday?

23 A. The University watcher moved from the far
24 right end of the table to directly next to the PLRB
25 agent.

1 HEARING EXAMINER: Far right, facing
2 the students coming in to vote?

3 THE WITNESS: Correct.

4 HEARING EXAMINER: All right.

5 BY ATTORNEY MANZOLILLO:

6 Q. Now, when the University - when the PLRB
7 agent asked for IDs, what did they do with those -
8 those IDs on Thursday?

9 A. They would take the ID and place it
10 directly between the Board agent and the University
11 observer.

12 Q. Now, you were sitting to the left of the
13 PLRB agent?

14 A. Correct.

15 Q. Could you see the IDs from where you were
16 sitting?

17 A. I could not.

18 Q. So when those IDs were being placed
19 between them, could you see what the parties were
20 doing?

21 A. I could see what the Board agent was
22 doing. I could not see what the University observer
23 was doing.

24 Q. Okay.

25 But they both were checking the ID?

1 A. Yes. Well, I could see that the
2 University observer was rifling through the list and
3 making marks on it.

4 Q. Okay.

5 While they - while they - while they had
6 the ID in front of them?

7 A. Right.

8 Q. Okay.

9 And was this done in the presence of
10 voters?

11 A. Yes.

12 Q. Was the process you described earlier of
13 disproportionate targeting of certain demographic
14 groups done in the presence of voters?

15 A. Yes.

16 Q. Did you observe the University watchers
17 using their phones in the polling area during the
18 election?

19 A. Yes.

20 Q. What did you see?

21 A. I saw during down times when there were
22 not voters in the room, they would be on their
23 phones. I don't know what they were doing on them.
24 When voters returned to the rooms, they were often
25 just leaving their phones out on the table.

1 Q. Were they out in plain view of the -?

2 A. Yes.

3 Q. Okay.

4 So I'm going to talk to you a little bit
5 about the weeks leading up to the campaign now.

6 HEARING EXAMINER: All right. So
7 we're switching - go ahead. Could you Cross on just
8 that?

9 ATTORNEY FARMER: I'd rather just do
10 it - I mean, they've been consolidated.

11 HEARING EXAMINER: All right.

12 ATTORNEY FARMER: And there's overlap.

13 HEARING EXAMINER: Go ahead. Just do
14 the whole thing at once then.

15 BY ATTORNEY MANZOLILLO:

16 Q. Okay.

17 So I'm going to show you some exhibits.

18 HEARING EXAMINER: Thank you ma'am.

19 BY ATTORNEY MANZOLILLO:

20 Q. Casey, there is an exhibit placed in
21 front of you called Union's Exhibit 2. Can you tell
22 us what that is?

23 ---

24 (Whereupon, Union Exhibit 2, Email 3/27/19, was
25 marked for identification.)

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THE WITNESS: It is an email from the
Vice Provost of Graduate Studies, Nathan Urban.

BY ATTORNEY MANZOLILLO:

Q. And is this an email that you received?

A. Yes.

Q. Is this an email, to your knowledge, that
was sent out to the entire eligible set of voters?

A. Yes.

HEARING EXAMINER: How would he know
that?

ATTORNEY MANZOLILLO: We have a
stipulation to that effect.

HEARING EXAMINER: Oh, okay.
Go ahead. Is that stipulation on the
record?

ATTORNEY FARMER: No.

HEARING EXAMINER: Why don't we talk
about that stipulation now?

ATTORNEY MANZOLILLO: Okay.

Well, the parties have stipulated that
Exhibit 2 was sent from the administration to all
eligible voters.

HEARING EXAMINER: You agree?

ATTORNEY FARMER: Yes. It might have

1 been - it might have been sent to additional people,
2 but at very least - there are some - there are some
3 emails that were sent to both graduate students who
4 were eligible and not. I can't, from looking at
5 this, specifically say that it was limited only to
6 eligible voters, but it included eligible voters.

7 HEARING EXAMINER: Mr. Urban's here.
8 We can ask him.

9 ATTORNEY FARMER: I mean, I don't know
10 specifically which ones went to which.

11 HEARING EXAMINER: So what are we
12 doing with this?

13 ATTORNEY MANZOLILLO: Are we agreeing
14 that they were sent at least -

15 ATTORNEY FARMER: Yeah, that's -.

16 ATTORNEY MANZOLILLO: - to the - all
17 eligible voters, to the parties?

18 HEARING EXAMINER: All right.

19 That's on the record. Go ahead. Are
20 we on 2 or 3?

21 ATTORNEY MANZOLILLO: That was 2.

22 HEARING EXAMINER: Okay.

23 Go ahead.

24 ATTORNEY MANZOLILLO: I'm going to
25 show you another. You have this?

1 HEARING EXAMINER: I have 2 and 3.

2 ATTORNEY MANZOLILLO: Okay.

3 HEARING EXAMINER: And I've got 4.

4 ATTORNEY MANZOLILLO: Well, why don't
5 we just hand out this whole packet?

6 HEARING EXAMINER: We'll go off the
7 record for one moment.

8 ---

9 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

10 ---

11 HEARING EXAMINER: All right.

12 Back on the record. The -.

13 ATTORNEY FARMER: I think there are
14 more.

15 HEARING EXAMINER: Back off.

16 ---

17 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

18 ---

19 HEARING EXAMINER: All right. Back on
20 the record. The Union has handed me a packet of
21 emails labeled Union Exhibits 2 through 10. Two is
22 entitled Graduate Unionization Effort dated 3/27/19.

23 Exhibit - Union Exhibit 3 is entitled
24 You Asked, We Answer: Stipends, Accommodations, and
25 Unionization dated Friday, 3/29/19.

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(Whereupon, Union's Exhibit 3, Email 3/29/19, was marked for identification.)

HEARING EXAMINER: Where is 4? Four is entitled Graduate Students: It's One Vote. Your Future. Why Leave it to Chance. Dated 4/4/19.

(Whereupon, Union's Exhibit 4, Email 4/04/19, was marked for identification.)

HEARING EXAMINER: Five is You Asked: What could I expect from a collective bargaining agreement if a union were - is certified? That's dated Friday 4/5/2019.

(Whereupon, Union's Exhibit 5, Email 4/5/19, was marked for identification.)

HEARING EXAMINER: Six is, You Asked: Can I Union Do That? Dated Wednesday 4/10/2019.

(Whereupon, Union's Exhibit 6, Email 4/10/19 Email, was marked for identification .)

1 HEARING EXAMINER: Seven, Union 7 is
2 entitled Please Vote: A Message from the Provost
3 dated Sunday 4/14/2019.

4 ---

5 (Whereupon, Union's Exhibit 7, Email 4/14/19, was
6 marked for identification.)

7 ---

8 HEARING EXAMINER: Union 8 is entitled
9 The Polls Are Open: Vote! Entitled - dated
10 4/15/2019.

11 ---

12 (Whereupon, Union's Exhibit 8, Email 4/15/19, was
13 marked for identification.)

14 ---

15 HEARING EXAMINER: Union's Exhibit 9
16 is entitled Good news, there's still time to vote,
17 dated 4/16/2019.

18 ---

19 (Whereupon, Union's Exhibit 9, Email 4/16/19, was
20 marked for identification.)

21 ---

22 HEARING EXAMINER: And Union 10 is
23 entitled Your Vote Matters. Vote Today. Dated
24 4/18/2019.

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(Whereupon, Union's Exhibit 10, Email 4/18/19,
was marked for identification.)

HEARING EXAMINER: And I believe that
the University is willing to stipulate that all of
these documents were set to eligible voters defined
by the ODSCL?

ATTORNEY FARMER: Correct.

HEARING EXAMINER: Okay.

They are all admitted. Go ahead with
your Direct.

(Whereupon, Union's Exhibit 2, Email 3/27/19, was
admitted.)

(Whereupon, Union's Exhibit 3, Email 3/29/19, was
admitted.)

(Whereupon, Union's Exhibit 4, Email 4/04/19, was
admitted.)

(Whereupon, Union's Exhibit 5, Email 4/05/19, was
admitted.)

(Whereupon, Union's Exhibit 6, Email 4/10/19, was
admitted.)

(Whereupon, Union's Exhibit 7, Email 4/14/19, was
admitted.)

1 (Whereupon, Union's Exhibit 8, Email 4/15/19, was
2 admitted.)

3 (Whereupon, Union's Exhibit 9, Email 4/16/19, was
4 admitted.)

5 (Whereupon, Union's Exhibit 10, Email 4/18/19,
6 was admitted.)

7 ---

8 BY ATTORNEY MANZOLILLO:

9 Q. So once again, Casey, Union Exhibit 2 in
10 March 27th. You received that email?

11 A. Yes.

12 Q. And Exhibit 3, March 29th, you received
13 that email?

14 A. Yes.

15 Q. Okay.

16 Now, using Exhibit 4, first of all, did
17 you receive this email?

18 A. I received this one as well.

19 Q. And if you look down, there's - the font
20 color on here, there's Learn More About
21 Unionization. Can you tell us - was that - was that
22 a link to anything else?

23 A. It was a link to a website run by the
24 University.

25 Q. So if you click this, it would take you

1 to that web - from section of that website?

2 A. Yes.

3 Q. Okay.

4 Union Exhibit 5, dated April 5th, was
5 that an email that you received?

6 A. Yes.

7 Q. Okay.

8 And Union Exhibit 6, dated April 10th,
9 was that an email that you received?

10 A. I received this one as well.

11 Q. Okay.

12 We have Union Exhibit 7 dated April 14th.
13 Did you receive that?

14 A. Yes.

15 Q. And if you see at the bottom, the very
16 bottom of the first page and top of the second page,
17 Learn All You Can in a slightly different font
18 color. Was that another webpage link?

19 A. Yes.

20 Q. And that took you to the University
21 webpage?

22 A. Yes.

23 Q. Okay.

24 Union Exhibit 8, dated April 15th, did
25 you receive this email?

1 A. I did.

2 Q. And look at the back page of this
3 exhibit. Get the Facts is in a different colored
4 font. Was that a link to the University's webpage?

5 A. Yes.

6 Q. And Union Exhibit 9 dated April 16th, did
7 you receive that email?

8 A. Yes.

9 Q. Okay.

10 And if you look at the second page of
11 that, there are several spots. Set the Record
12 Straight, Your Thoughtful Questions, What to Expect,
13 Supporting Graduate Students Success, all in
14 different colored fonts. Are those links to
15 sections of the University's webpage?

16 A. Yes.

17 Q. And finally Union Exhibit 10 dated April
18 18th, did you receive that email?

19 A. Yes.

20 Q. And if you look at the second page, well,
21 the first page there's a slightly different font,
22 compile their concerns. And on the second page near
23 the bottom, similarly, get the facts. Were those
24 also links to the University's webpage?

25 A. Yes.

1 Q. Okay.

2 ATTORNEY MANZOLILLO: We went through
3 2 through 10. So we may want to go off the record
4 again. We've got six more.

5 HEARING EXAMINER: Off the record.

6 ---

7 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

8 ---

9 HEARING EXAMINER: On the record.
10 Eleven (11) is a printout from a webpage entitled
11 Collective Bargaining Basics.

12 ---

13 (Whereupon, Union's Exhibit 11, Collective
14 Bargaining Basics, was marked for
15 identification.)

16 ---

17 HEARING EXAMINER: Union 12 is a FAQ
18 or FAQ election timing process.

19 ---

20 (Whereupon, Union's Exhibit 12, FAQ, was
21 marked for identification.)

22 ---

23 ATTORNEY FARMER: Just to be -

24 HEARING EXAMINER: Yeah?

25 ATTORNEY FARMER: - clear, other than

1 14, Union Exhibit 14, these are all of the - so, 12,
2 13, 15 and 16 -

3 HEARING EXAMINER: Yeah.

4 ATTORNEY FARMER: - are all sections -

5 HEARING EXAMINER: All right.

6 ATTORNEY FARMER: - of the same FAQ.

7 They just have different answers opened.

8 HEARING EXAMINER: I got it.

9 ATTORNEY FARMER: And they all have
10 different - they all have the same questions. They
11 just show different answers. It's all the same FAQ.

12 HEARING EXAMINER: Okay.

13 ATTORNEY MANZOLILLO: Yeah, I agree to
14 that.

15 HEARING EXAMINER: What did you say,
16 12 through what?

17 ATTORNEY FARMER: Twelve (12) - it's
18 not 13. So it's 12, 14, 15 and 16.

19 ATTORNEY MANZOLILLO: It's actually
20 12.

21 ATTORNEY FARMER: I'm sorry, not 14.
22 Sorry. 12, 15 and 16.

23 ATTORNEY MANZOLILLO: 12, 13, 15 and
24 16.

25 ATTORNEY FARMER: There we go. 14 is

1 not. I'm sorry. 12, 13, 15 and 16.

2 HEARING EXAMINER: Twelve (12), 13, 15
3 and 16.

4 ATTORNEY MANZOLILLO: No, no, no, no.
5 I stand corrected. It's 12, 13 and 16. You're
6 correct. 14 and 15 are different.

7 ATTORNEY FARMER: No, 15 is the same.

8 HEARING EXAMINER: All right.
9 Everyone be quiet and look at it.

10 ATTORNEY MANZOLILLO: I have two 14s.
11 That's why. Okay. Yeah, I agree. We also have one
12 -.

13 HEARING EXAMINER: Stop, stop, stop,
14 stop. Twelve (12), 15 and 16 are the FAQ?

15 ATTORNEY FARMER: And 13.

16 HEARING EXAMINER: And 13. All right.
17 12 - okay, for the record, 12, 13, 15 and 16 are all
18 unclasped sections of the FAQ. 14 is entitled Fact
19 Check Union Organization.

20

21 (Whereupon, Union's Exhibit 13, FAQ, was
22 marked for identification.)

23 (Whereupon, Union's Exhibit 14, Fact Check, was
24 marked for identification.)

25 (Whereupon, Union's Exhibit 15, FAQ, was

1 marked for identification.)

2 (Whereupon, Union's Exhibit 16, FAQ, was
3 marked for identification.)

4 ---

5 ATTORNEY FARMER: Wait, where does it
6 say Union Organization?

7 HEARING EXAMINER: Unionization.
8 Excuse me. Graduate Student Unionization Fact
9 Check. And is that it, after 16?

10 ATTORNEY MANZOLILLO: We have that
11 apparently we didn't make extra copies of.

12 ATTORNEY FARMER: Yeah. I have Union
13 Exhibit 17.

14 HEARING EXAMINER: All right.
15 We're off the record.

16 ---

17 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

18 ---

19 HEARING EXAMINER: Okay.

20 Back on the record. Seventeen (17) is
21 a continuation of the FAQ series.

22 ---

23 (Whereupon, Union's Exhibit 17, FAQ, was marked
24 for identification.)

25 ---

1 HEARING EXAMINER: Eleven (11)
2 through 17 are admitted.

3 ---

4 (Whereupon, Union's Exhibit 11, Collective
5 Bargaining Basics, was admitted.)

6 (Whereupon, Union's Exhibit 12, FAQ, was
7 admitted.)

8 (Whereupon, Union's Exhibit 13, FAQ, was
9 admitted.)

10 (Whereupon, Union's Exhibit 14, Fact Check, was
11 admitted.)

12 (Whereupon, Union's Exhibit 15, FAQ, was
13 admitted.)

14 (Whereupon, Union's Exhibit 16, FAQ, was
15 admitted.)

16 (Whereupon, Union's Exhibit 17, FAQ, was
17 admitted.)

18 ---

19 HEARING EXAMINER: The University has
20 stipulated that these were published on their
21 website.

22 ATTORNEY FARMER: Correct.

23 HEARING EXAMINER: All right.

24 Go ahead.

25 BY ATTORNEY MANZOLILLO:

1 Q. Casey, just looking at the Union's
2 Exhibit 12, is this a section of the University
3 webpage that's you've seen?

4 A. Yes.

5 Q. And can you sort of tell us how the
6 website works?

7 A. So you're presented with this list of
8 links that you can click on. When you click on them
9 they extend out into like a text block.

10 Q. Okay.

11 So if we look at the second page of
12 Exhibit 12, underneath what can be bargained, what
13 we see beneath that is what would expand when you
14 click on the bottom of page two?

15 A. Correct.

16 Q. So what's beneath the bold. Okay.

17 And these links we discussed earlier on
18 several exhibits, email exhibits, are they linked to
19 these webpages?

20 A. Yes.

21 Q. Okay.

22 ATTORNEY MANZOLILLO: Nothing
23 further.

24 HEARING EXAMINER: Cross Examination.
25 Cross and then lunch.

1 ATTORNEY FARMER: Huh?

2 HEARING EXAMINER: Cross and then
3 lunch.

4 ATTORNEY FARMER: Okay.

5 I need a couple of minutes.

6 HEARING EXAMINER: All right.

7 So we just do lunch?

8 ATTORNEY FARMER: I'm just saying it
9 might be more efficient.

10 HEARING EXAMINER: All right. Be back
11 at one everybody.

12 ATTORNEY FARMER: Okay.

13 HEARING EXAMINER: Sir, please do not
14 talk to anybody about your testimony.

15 Okay?

16 THE WITNESS: Okay.

17 HEARING EXAMINER: And we'll be back
18 at 1:00.

19 ---

20 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

21 ---

22 HEARING EXAMINER: You ready? Cross
23 Examination?

24 ATTORNEY FARMER: Thank you.

25 ---

1 CROSS EXAMINATION

2 ---

3 BY ATTORNEY FARMER:4 Q. When did you start as a graduate student
5 at Pitt?

6 A. Fall of 2017.

7 Q. What program are you in?

8 A. Graduate School of Public Health,
9 Behavioral and Community Health Sciences.

10 Q. In the Ph.D. program?

11 A. Master's.

12 Q. And what kind of program were you on in
13 the spring of 2019?

14 A. GSA.

15 Q. The - did you have an opportunity, when
16 you were sitting as a watcher, you said Tuesday and
17 Thursday. Did you come in contact with all of the
18 University watchers?

19 A. Yes.

20 Q. All four of them?

21 A. Yes.

22 Q. Okay.

23 Had you ever had to deal with any of them
24 as a graduate student?

25 A. I couldn't tell you.

1 HEARING EXAMINER: What do you mean by
2 deal with?

3 BY ATTORNEY FARMER:

4 Q. Did you know who they were other than as
5 University watchers?

6 A. No.

7 Q. And you never had any contact with them?

8 A. I couldn't tell you.

9 Q. Not that you recall?

10 A. Not that I recall.

11 Q. And you didn't hear any voter make any
12 comment about recognizing or knowing the watchers,
13 the University watchers, did you?

14 A. Not that I recall.

15 Q. Now, let's talk about the issue of IDs.
16 You - you said that about 20 percent of the time the
17 PLRB asked voters to repeat or spell their names.
18 Do you recall that?

19 A. Correct.

20 Q. Was that when the PLRB was not uniformly
21 checking IDs?

22 A. Correct.

23 Q. Okay.

24 And then at some point you said they
25 increased the frequency with which they were

1 checking IDs?

2 A. On Thursday.

3 Q. You never heard any Pitt observer ask any
4 student to see an ID. Did you?

5 A. They would ask the Board agent to ask the
6 student to repeat their name.

7 Q. Not to - you never heard any Pitt
8 observer ask any student to see an ID.

9 Right?

10 A. Correct.

11 Q. And you didn't hear any Pitt observer
12 directly ask a student to say or spell their name.

13 Right?

14 A. No, they asked the Board agents to do
15 that.

16 Q. And while you were there, did you see any
17 instances or observe any instances where the
18 University observers actually caught eligible
19 students whom the PLRB agent had missed when looking
20 at the list?

21 A. I don't remember that happening.

22 Q. You said that there were approximately 15
23 students who you heard raise concerns with the PLRB
24 about being required to give their names.

25 Is that right?

1 A. Concerns about anonymity.

2 Q. Okay.

3 Which was not wanting to give their
4 names.

5 Is that correct?

6 A. Names or IDs.

7 Q. Okay.

8 And did - were any of those voters turned
9 away?

10 A. Nobody was turned away.

11 Q. Did any of those voters leave without
12 voting?

13 A. I don't believe so.

14 Q. You testified that you believed that the
15 PLRB was profiling Asian or Middle Eastern appearing
16 students in asking for IDs.

17 Right?

18 A. Correct.

19 Q. Did you make a concern to anyone at
20 the -?

21 HEARING EXAMINER: I think I called it
22 profiling.

23 ATTORNEY FARMER: He agreed.

24 HEARING EXAMINER: Okay.

25 Go ahead.

1 BY ATTORNEY FARMER:

2 Q. Did you raise a concern to anyone at the
3 PLRB about that?

4 A. No.

5 Q. Did you raise a concern to anybody about
6 that during the election?

7 A. I can't recall.

8 Q. Were there instances where students
9 walked up and handed the PLRB, took their ID without
10 being asked?

11 A. There were some instances where students
12 just offered up their ID.

13 Q. Now, you said that when the PLRB was
14 checking IDs, they would put them down on the table
15 between the PLRB agent and the University watcher.

16 Right?

17 A. Correct.

18 Q. And you said that you couldn't see the
19 IDs.

20 Is that right?

21 A. Correct.

22 Q. Did you ever ask to see the IDs?

23 A. No.

24 Q. Did you ever ask to move closer to the
25 PLRB official so you can see or hear better?

1 A. No.

2 Q. You testified that the University
3 watchers sometimes had their phones out while there
4 was new - no voters and then they would sit them on
5 the table.

6 A. Correct.

7 Q. Is that right?

8 Okay.

9 And did you have your phone out when
10 there was no voters?

11 A. When there were no voters, yes.

12 Q. Okay.

13 And did PLRB staff have their phones out
14 when there was no voters?

15 A. Yes.

16 Q. And you didn't see anybody from the
17 University appearing to take pictures of students,
18 did you?

19 A. I couldn't tell what they were doing on
20 their phones.

21 Q. But you said their phones - they were
22 using their phones when there was no voters?

23 A. Yes.

24 Q. So did you see anything that appeared to
25 be taking pictures of voters?

1 A. I couldn't tell what they were doing on
2 their phones.

3 Q. Were they holding their phones up when
4 there were voters in front of the table?

5 A. No.

6 Q. And nobody complained that they thought
7 that they were being photographed, did they?

8 A. No, at least not to my knowledge. I
9 don't know who anyone would have complained to.

10 Q. Well, nobody complained in your hearing.
11 Nobody complained to you or to PLRB in your hearing?

12 A. Not within my earshot.

13 Q. Okay.

14 Now, the Union was asking people not at
15 the polling booth, but to tell them how they were
16 voting, weren't they?

17 A. I'm not understanding you.

18 Q. Well, the Union was asking people to tell
19 the Union whether - how they had voted, wasn't it?

20 A. Like after the facts in conversation with
21 friends, I believe people discussed how -.

22 Q. Or on social media or emails?

23 A. I don't recall any social media asking
24 how people voted.

25 Q. And you don't recall any emails saying

1 something like tell us you voted best or anything
2 like that?

3 A. It's possible.

4 Q. But you're not sure?

5 A. I don't check my email very often.

6 Q. Now, you checked your emails and got the
7 University -?

8 A. I checked my University email quite
9 often.

10 Q. I see. Got you. Got you.

11 Now, let's turn to those emails that you
12 sent. So turn to Union Exhibit 2. That's that
13 March 27th, 2019 email. Do you have that in front
14 of you?

15 A. Yes.

16 Q. What about this email, if anything, was
17 threatening or coercive?

18 ATTORNEY MANZOLILLO: Objection.

19 Objection. That's not relevant to this proceeding
20 at all.

21 ATTORNEY FARMER: It's not -.

22 ATTORNEY MANZOLILLO: The email
23 language speaks for itself. It's not about
24 subjective interpretation.

25 ATTORNEY FARMER: The Union is

1 complaining that these emails are so - from the
2 charge, the Union is claiming that these emails are
3 so threatening and coercive that it requires you to
4 overturn the election. How are we supposed to
5 defend that without being told what portion of it
6 the Union believes is threatening or coercive?

7 HEARING EXAMINER: Let me think about
8 it.

9 ATTORNEY MANZOLILLO: That's a legal -
10 you're asking upon a - asking a legal question.

11 HEARING EXAMINER: Yeah. As far as -
12 correct me if I'm wrong. It's subjective, Counsel.

13 ATTORNEY FARMER: But we still have to
14 know what portion.

15 HEARING EXAMINER: I know. Hold on.
16 It's correct it's an objective test.

17 Right?

18 ATTORNEY FARMER: I believe - I mean
19 some of the other cases describe it that way, but
20 it's the Union's burden to prove the conduct.

21 HEARING EXAMINER: Are we doing PLRB
22 law or are you guys thinking of NLRB?

23 ATTORNEY FARMER: PLRB has case law on
24 this and that's what's controlling.

25 HEARING EXAMINER: And then what

1 you're trying to figure out is to narrow down
2 exactly what parts of these 17 emails and webpages
3 was coercive?

4 ATTORNEY FARMER: And threatening.
5 Correct.

6 HEARING EXAMINER: Is this the best
7 witness for that?

8 ATTORNEY FARMER: I have no idea of
9 what other witnesses the Union intends to put on,
10 but they have to prove the threatening or coercive.
11 How can we defend if we don't even know what they're
12 claiming to be threatening?

13 HEARING EXAMINER: Go ahead.

14 ATTORNEY MANZOLILLO: We're not -
15 we're not -.

16 HEARING EXAMINER: Would you answer
17 that, Mr. Manzolillo?

18 ATTORNEY MANZOLILLO: We would - we're
19 not using these witnesses as evidence of their
20 coerciveness. We're using the language itself.

21 ATTORNEY FARMER: Again, I'm not
22 asking -.

23 HEARING EXAMINER: I think you can ask
24 him was he threatened or coerced by any of these
25 emails?

1 ATTORNEY FARMER: But that's not the -
2 that's not the issue here, whether he's subjected -
3 the question is the Union has not identified what
4 portions they believe to be threatening or coercive.
5 How can we respond and - respond to that and argue
6 to you what is or is not when they haven't even
7 identified what language in these communications is
8 threatening and coercive?

9 HEARING EXAMINER: Are you planning on
10 offering any more evidence to specify exactly what
11 parts -?

12 ATTORNEY MANZOLILLO: Certainly in our
13 briefs, which in our experience, they will have an
14 opportunity to respond to.

15 ATTORNEY FARMER: But how can we put
16 on -?

17 HEARING EXAMINER: Yeah. I understand
18 your objection.

19 ATTORNEY FARMER: Yeah. I mean, the
20 case is saying totality of the circumstances in
21 context, but I don't even know what it is that I'm
22 responding to.

23 ATTORNEY MANZOLILLO: The whole point
24 of objective test is to avoid having to have
25 individuals scrutinize whether they felt threatened.

1 ATTORNEY FARMER: And that's why I
2 wasn't asking him that. I mean, I'm just - he was
3 put up as a Union witness. I'm not asking whether
4 he subjectively -.

5 HEARING EXAMINER: Let's go off the
6 record.

7 ATTORNEY FARMER: Okay.

8 HEARING EXAMINER: And clear the room
9 except for the lawyers, please.

10 ---

11 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

12 ---

13 HEARING EXAMINER: All right. Is the
14 University finished with their Cross?

15 ATTORNEY FARMER: Yes.

16 HEARING EXAMINER: Any further Direct
17 of that witness?

18 ATTORNEY MANZOLILLO: No, I don't
19 think so.

20 HEARING EXAMINER: Okay.

21 I'm going to direct the University -
22 the Union now to please specify to the University
23 what parts of those Exhibits 2 through 17 are
24 specifically relevant to their case. Okay? Off the
25 record again.

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(WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

HEARING EXAMINER: In an off-the-record discussion at the direction of the Hearing Examiner, the parties - the parties discussed and the University - the Union showed the University more specifically what language the University communications support the Union's charges.

Is that correct?

ATTORNEY FARMER: That is correct.

ATTORNEY MANZOLILLO: Yes.

HEARING EXAMINER: All right.

And I believe you have another exhibit for us?

ATTORNEY MANZOLILLO: Yes.

HEARING EXAMINER: Eighteen (18)?

ATTORNEY MANZOLILLO: Yes.

HEARING EXAMINER: Eighteen (18) is a forwarded message entitled Three Things All STEM Students Should Know if a Union is Certified, dated April 4th, 2019.

(Whereupon, Union's Exhibit 18, Email 4/30/19,

1 was marked for identification.)

2 ---

3 HEARING EXAMINER: Any objections to
4 this?

5 ATTORNEY FARMER: No.

6 HEARING EXAMINER: All right.

7 It's admitted.

8 ---

9 (Whereupon, Union's Exhibit 18, Email 4/30/19,
10 was admitted.)

11 ---

12 ATTORNEY MANZOLILLO: We would want it
13 stipulated that this was sent to STEM students.

14 ATTORNEY FARMER: Yes.

15 HEARING EXAMINER: Just STEM students?

16 ATTORNEY FARMER: Correct.

17 ATTORNEY MANZOLILLO: Yes.

18 HEARING EXAMINER: Okay.

19 That is tested. All right. Would you
20 like to shoot off the record and get everyone back
21 in the room and carry on?

22 ATTORNEY FARMER: Yes.

23 ATTORNEY MANZOLILLO: Yes.

24 HEARING EXAMINER: All right.

25 So off the record.

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(WHEREUPON, A PAUSE IN THE RECORD WAS HELD.)

HEARING EXAMINER: The next witness
for the University - for the Union.

ATTORNEY HEALEY: We would - the Union
would call Tim Barr.

TIMOTHY BARR,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

HEARING EXAMINER: Spell your name for
us.

THE WITNESS: T-I-M-O-T-H-Y, Barr,
B-A-R-R.

HEARING EXAMINER: Okay.
Your witness.

DIRECT EXAMINATION

BY ATTORNEY HEALEY:

Q. Sir, can you state your name and address
for the record?

1 A. My name is Timothy J. Barr. I live at 38
2 - 3928 Nantasket Street, Pittsburgh, PA 15207.

3 Q. And have you been a graduate student
4 employed at the University of Pittsburgh?

5 A. Yes.

6 Q. And could you describe the time frame and
7 what positions you held?

8 A. I have been a graduate employee for the
9 last seven years. I have been on both TA and TF
10 contracts.

11 Q. And in what department or departments?

12 A. Department of Communication.

13 Q. Okay.

14 In the recent Union election, did you
15 serve as an election observer for the Union?

16 A. I did on Monday, the first day, from 9:00
17 a.m. to noon.

18 Q. Okay.

19 And on that first day, did you attend -
20 attend a pre-election conference?

21 A. Yes.

22 Q. And who conducted that conference?

23 A. That was the - Dennis from the PLRB,
24 along with the Union observers who were there, as
25 well as the University observers.

1 Q. And had you met the University observers
2 before?

3 A. I had not.

4 Q. And did they introduce themselves at some
5 point in that conference?

6 A. Yes.

7 Q. And from the introductions, were you able
8 to ascertain or did you hear what they said their
9 positions were?

10 A. They were various managerial positions.

11 Q. Okay.

12 You said somebody from the PLRB conducted
13 the pre-election conference. Was that Dennis Bachy
14 who testified earlier today?

15 A. Yes, it was.

16 Q. Okay.

17 During the pre-election conference, what
18 was talked about by Mr. Bachy?

19 A. He went over the norms and regulations
20 for what the observers would do, so things like no
21 photography, whether or not - he asked us whether we
22 would have challenges. We - the Union had no
23 challenges. The University did have challenges so
24 he went over that. He asked us to remove buttons,
25 election buttons, so it was those kinds of things

1 that were discussed.

2 Q. And did the University at that time in
3 your presence indicate approximately how many
4 challenges they had?

5 A. They did. I can't remember the exact
6 number, but I remember it being - I can't remember
7 the number, so I don't want to specify that, but
8 they did -.

9 Q. During that pre-election conference, did
10 any - Dennis Bachy or anyone from the PLRB talk
11 about lists of voters or tracking voters?

12 A. No, it was not discussed.

13 Q. Okay.

14 You served as an observer for - a watcher
15 for that morning.

16 Is that correct?

17 A. Correct.

18 Q. Did you keep a list of any sort?

19 A. No.

20 Q. Okay.

21 Could you observe whether or not
22 University watchers were keeping a list?

23 A. Yes, they were. I observed this, and the
24 - as we heard in previous testimony from Casey
25 Madden, we were at two separate ends of the table.

1 I was at the left end from - sitting behind the
2 table and the University observers at the far right
3 hand. And I saw that they had what appeared to be
4 two lists, so one short list or single sheet list
5 and another one which seemed to be kind of like
6 stapled or attached at the upper right-hand corner
7 that they were moving through and making marks on as
8 voters entered and voted.

9 Q. You said making marks. Just correct me
10 if I'm wrong, so someone with - they'd give a name,
11 and they would mark something - they would do some
12 kind of marking?

13 A. Yeah, after the name. So the voting
14 would happen, you know, later. So it was really -
15 they seemed to be marking down names on the list.

16 Q. How did they know of the names or hear of
17 the names?

18 A. So as a voter approached the table, the
19 Hearing Officer would ask them to find their name on
20 the list. And then they would say their name out
21 loud. And they would frequently explain to the
22 voter - they would say we have to say this loudly
23 enough so that both the Union and the University
24 observers can hear. And they would indicate, you
25 know, each of us respectively at the ends of the

1 table.

2 Q. And in the morning that you were there,
3 did they say it loudly enough so voters standing in
4 line could hear?

5 A. Definitely.

6 Q. While you were there, do you recall
7 either the Union or the University making any
8 challenges to any voters?

9 A. There were two balks, I call them
10 because -.

11 HEARING EXAMINER: B-A-L-K-S?

12 THE WITNESS: Yeah. The University
13 made an attempt to challenge and then it seemed that
14 after they got sorted out, something out, they
15 realized it wasn't on their list.

16 But there were two moments - one that
17 I remember because I knew the voter. And there was
18 another one where it seemed like there was a
19 challenge. And I don't - but there were moments
20 also where someone was not on the list and then the
21 PLRB asked them to move over to file a challenge
22 ballot.

23 BY ATTORNEY HEALEY:

24 Q. Okay.

25 Now, you said it appeared that the

1 University watchers had two lists.

2 Is that correct?

3 A. Yes. That's what I observed.

4 Q. From what you observed, were you able to
5 tell which list was a challenge list and which list
6 seemed to be a larger voter list?

7 A. I would infer that the short one was the
8 challenge list, and that the one - the larger one
9 was the one where everyone's names were.

10 Q. Now, while you were there, did you
11 observe people pulling out their IDs?

12 A. So people - we - and we had instructed
13 people beforehand in an instructional video to bring
14 their IDs with them. And I was under the impression
15 that IDs were required. So people were coming up to
16 the hearing agents with their IDs visible. Most of
17 the time, the hearing agent would say, you don't
18 need your IDs. They kind of kept repeating this,
19 you don't need your ID, you don't need your ID.

20 In some cases, though, the person would
21 approach with their ID and they would look at it.
22 And in those cases, it appeared to me that they were
23 doing those in cases where - the names, they were
24 having difficulty pronouncing names of people who
25 were of East Asian or South Asian descent. And so I

1 therefore asked Dennis about this at a moment where
2 there was a lull in the voters. And I said, why are
3 they not checking everyone's IDs? So he brought the
4 election order over to me. He seemed a little bit -
5 well, I don't want to speak to his state of mind,
6 but he brought the election order over to me and
7 said, see, it's up to my discretion whether or not
8 IDs have to be checked.

9 So I brought that to his attention, but
10 it ended up remaining kind of - it was not a
11 consistent practice between whose IDs were being
12 looked at and whose IDs were not being looked at.

13 Q. Did you have any conversation with anyone
14 from the PLRB concerning the use of lists by
15 University watchers?

16 A. The list I didn't bring up directly to
17 the PLRB. I did, immediately after voting on the
18 first day, bring it to the attention of Union
19 representatives because this seemed - we were
20 explicitly instructed this is something we should
21 not do. So I said why is this happening, you know?
22 Is this something that we - is this something that's
23 allowed?

24 Q. You did not keep a list.

25 Is that correct?

1 A. No. I did not keep a list, no.

2 Q. Did you see watchers, election observers
3 or watchers, will telephones out?

4 A. Yes.

5 Q. What, if anything, were any watchers
6 doing with telephones?

7 A. I couldn't say. Yeah.

8 Q. Leading up to the election, did you
9 receive emails from the University?

10 A. I did.

11 Q. Okay.

12 Right in front of you are Union Exhibits
13 2 through 10, and you've reviewed these -

14 A. Yes.

15 Q. - before taking the witness stand.
16 Is that correct?

17 A. Yes.

18 Q. Did you receive each and every one of
19 those emails -

20 A. I did.

21 Q. - at those times?

22 A. Yes.

23 Q. And did you read them?

24 A. Yes.

25 Q. While you were serving as an observer,

1 did you have a badge on?

2 A. Yes.

3 Q. And what did your badge say?

4 A. I believe it said election observer.

5 Q. Okay.

6 Did the University observers have badges
7 on?

8 A. They did.

9 Q. What - what did those say?

10 A. They said election observers.

11 Q. Okay.

12 Did they distinguish between the Union or
13 the University?

14 A. They didn't on the badges. There were
15 some times, informally, as I mentioned before, where
16 as the Board agent was explaining to the person why
17 they were saying their names so loudly, they said -
18 they would say, you know, both the University and
19 the Union, and they would kind of gesture with their
20 hands. So there were moments were they were
21 indicating that informally.

22 Q. Did the PLRB representatives have badges
23 on -

24 A. I think that they did.

25 Q. - if you can recall?

1 A. I think they did, yeah.

2 Q. Now, do you recall what those badges
3 said?

4 A. I don't remember what the exact - they
5 indicated that they were, you know, the election
6 officers.

7 ATTORNEY HEALEY: That's all I have on
8 Direct.

9 HEARING EXAMINER: Would you like a
10 moment, ma'am?

11 ATTORNEY FARMER: No. I think I'm
12 okay.

13 HEARING EXAMINER: All right. Cross
14 Examination.

15 ATTORNEY FARMER: Thanks.

16 ---

17 CROSS EXAMINATION

18 ---

19 BY ATTORNEY FARMER:

20 Q. Let's stick first with that badges
21 question. How big were these badges?

22 A. They were nametags.

23 Q. Like regular sort of like two by three or
24 whatever?

25 A. The kind that you buy when you want

1 people to see what name you have, yeah.

2 Q. Okay.

3 And they were provided by the PLRB?

4 A. Yes.

5 Q. Now, did you ever observe anybody from
6 the - any of the University observers asking any
7 students for their ID?

8 A. They asked the - it was audible to the
9 students when they asked the Board agents for people
10 to repeat their names.

11 HEARING EXAMINER: She's asking about
12 IDs.

13 THE WITNESS: Did - they never asked
14 directly a student to show ID, no.

15 BY ATTORNEY FARMER:

16 Q. Did you know any of the University
17 observers -

18 A. No.

19 Q. - before that?

20 And while you were - and you were just
21 there on Monday?

22 A. Yes.

23 Q. Did I get that right? Okay.

24 While you were there, were there
25 instances where the University observers actually

1 found names on the list that the PLRB officials had
2 missed, therefore letting the students vote as
3 eligible voters?

4 A. If I understand your question correctly,
5 you're asking whether - I'm sorry. Could you
6 rephrase the question?

7 Q. Sure. Absolutely.

8 So you testified the process was a
9 student would come up, either show their ID or just
10 be - give their name. The PLRB would look at the
11 list.

12 Right?

13 A. Right.

14 Q. Find the student's name on the list. If
15 the student's name is on the list, then they'd have
16 the student sign.

17 Is that right?

18 A. Correct.

19 Q. Okay.

20 What happened if the PLRB couldn't find
21 the student's name on the list?

22 A. If they couldn't find the student's name
23 on the list, they would ask them to file a challenge
24 ballot. And so they would move to the side. While
25 I was there on the first day, there was a little bit

1 of a kerfuffle about the correct procedure for that.
2 It hadn't been fully ironed out. And Dennis and I
3 believe, Joe left the room at one point to kid of
4 reorganize that procedure. But basically, they just
5 moved to the side, the side closer to the University
6 observer where there was someone else sitting with a
7 book, and they went through the challenge ballot
8 process.

9 Q. While you were there, the order was you,
10 the PLRB person who was checking in voters, then the
11 PLRB person who was doing challenge ballots, and
12 then the University observer?

13 A. Correct.

14 Q. All right. Okay.

15 Now, were there instances where the PLRB
16 didn't initially see somebody's name on the list and
17 would have challenged it, and the University
18 observer found the name on the list and pointed it
19 out the PLRB?

20 A. I don't remember that happening.

21 Q. Now, I want to understand on this
22 testimony about the - the IDs. So I believe you
23 said some students, because - the Union had told
24 people to bring ID and the University had also
25 communicated to students bring their IDs.

1 A. Right.

2 Q. And some students would walk in and just
3 have their IDs ready.

4 Right?

5 A. Right. Yes.

6 Q. And then you said, I believe, in some
7 instances or most instances, the PLRB while you were
8 there were just saying we don't need them.

9 Is that right?

10 A. Yeah. They were saying putting your IDs
11 away. We don't need them.

12 Q. Okay.

13 A. Yeah.

14 Q. Then I think you said in some instances
15 where the PLRB was having trouble understanding the
16 names, then they asked for ID. Is that what
17 happened?

18 A. I just want to be very specific about
19 what happened and what I observed.

20 Q. Okay.

21 A. So people were - most - many if not most
22 people were walking up with their IDs visible.

23 Q. Okay.

24 A. They were frequently saying to someone as
25 they were walking towards the desk to put their IDs

1 away. When someone - certain people approached with
2 the ID and they did not tell them to do that, and
3 they looked at their IDs. In those cases, I
4 observed that those were people mostly East Asian or
5 South Asian - of South Asian descent.

6 So they did not ask - there were a couple
7 occasions where they asked someone to show them
8 their ID after they had already asked their name,
9 and there was some confusion about the name. But in
10 most of the cases where I observed that, if the
11 person did already have their ID visible - but they
12 just didn't ask them to put it away.

13 Q. And how many times would you say that
14 that occurred?

15 A. I saw probably, in the course of being
16 there, 120 voters. I would say that probably
17 happened 20 times.

18 Q. Did any of those voters leave without
19 voting?

20 A. Not that I observed. I couldn't see
21 people - I don't know what people did because the
22 voting happened behind us, but -.

23 Q. Did any of - where any of those voters
24 turned away?

25 A. No one was turned away.

1 Q. Did any of - those voters, when they were
2 asked for their ID, did any of them refused and
3 walked out?

4 A. No one - again, no one was asked for
5 their ID. When I said that there were a couple
6 people, it was already after they had gone through a
7 list. There was like one or two cases where
8 someone's names was not audible to someone, so they
9 asked them to show the ID that they did have in
10 their hand but wasn't visible. So there weren't
11 cases were people were being asked for IDs where
12 they didn't already have in their hands.

13 HEARING EXAMINER: Are you aware of
14 anyone who left without voting?

15 THE WITNESS: No, I'm not.

16 HEARING EXAMINER: When - and I'm
17 asking the counsel here. When we say ID, everyone
18 is talking about Pitt ID. Right? The student ID?

19 ATTORNEY FARMER: Yeah. I believe
20 Dennis testified that there were a few students who
21 didn't have their student IDs who showed something
22 else.

23 HEARING EXAMINER: It was like a
24 bank card. Okay.

25 But no one's alleging PLRB or

1 University was asking for government identification.

2 Right?

3 ATTORNEY MANZOLILLO: No.

4 HEARING EXAMINER: Okay.

5 Go ahead.

6 BY ATTORNEY FARMER:

7 Q. Okay.

8 When you were sitting as a watcher, there
9 were times when you had your phone out.

10 Is that right?

11 A. Yes.

12 Q. And the PLRB staff sometimes had their
13 phones out as well?

14 A. Yes. We were instructed that that would
15 be fine during the pre-election briefing.

16 Q. To have your - it would be fine to have
17 your phones out?

18 A. When there were no voters in the room and
19 not to use it for photographic purposes.

20 Q. Okay.

21 And the University watchers complied with
22 those instructions.

23 Right?

24 A. As far as I am aware. I don't know
25 because I was only there for three hours.

1 Q. You didn't observe any conduct -

2 A. No.

3 Q. - by them that didn't comply with that?

4 A. No, I didn't.

5 Q. Okay.

6 Now, you testified that you received the
7 documents that were marked Union Exhibits 2 through
8 10.

9 Is that right?

10 A. Yes.

11 Q. Okay.

12 And during the time period leading up to
13 the election, the few weeks leading up to the
14 election, when you were receiving those emails, were
15 you also receiving emails or other communications
16 from the Union?

17 A. Yes, I was.

18 Q. Okay.

19 And those communications from the Union,
20 did they respond to statements that were being made
21 by the University in Exhibits 2 through 10 or
22 otherwise other similar statements?

23 A. There were instances where there was
24 attempts to clarify things that were being
25 communicated by the administration.

1 Q. And are you aware that the Union asking
2 people to tell the Union that they voted yes?

3 A. We - there were - people were asked
4 through house calls, you know, if they were allowed
5 to volunteer information.

6 HEARING EXAMINER: What's a house
7 call?

8 THE WITNESS: A house call would be,
9 you know, you would visit someone's house after a
10 day of voting when they had told us that they, you
11 know, had voted on that day. And we'd say, oh, did
12 you get a chance to vote? So they were basically
13 voting reminders with an opportunity to tell us how
14 they had voted.

15 BY ATTORNEY FARMER:

16 Q. And some people did that, right, told you
17 how they had voted?

18 A. Yes.

19 Q. Back to the voting for a second, you said
20 that you noticed about 20 people where the PLRB
21 officials didn't tell them to put their IDs away who
22 appeared to be of Asian or Middle Eastern descent.

23 A. I didn't say Middle Eastern. That was
24 the other witness, but yes.

25 Q. I apologize. Did you report a concern

1 over that to anyone at the PLRB?

2 A. As I said before, I didn't bring up the
3 concern as one of racial profiling. I brought up
4 the concern because I just wondered why are they -
5 why are they not checking everyone's IDs, which was
6 my way of bringing up that concern without - to the
7 PLRB at that moment. And then that's when I was
8 showed the election Order. So yes, I did.

9 ATTORNEY FARMER: Nothing further.

10 HEARING EXAMINER: Redirect?

11 ATTORNEY HEALEY: No questions.

12 HEARING EXAMINER: No further
13 questions, you can step down, sir. Our next
14 witness?

15 ATTORNEY MANZOLILLO: One thing on the
16 record real quickly is the Union forgot the - we are
17 withdrawing allegation 12 from the ULP.

18 HEARING EXAMINER: Okay.

19 ATTORNEY MANZOLILLO: In fact, we'll
20 call Shelby Brewster.

21 ---

22 SHELBY BREWSTER,
23 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
24 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
25 FOLLOWS:

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HEARING EXAMINER: Can you spell your name for us?

THE WITNESS: Shelby, S-H-E-L-B-Y, Brewster, B-R-E-W-S-T-E-R.

HEARING EXAMINER: Go ahead, sir.

ATTORNEY MANZOLILLO: Thank you. Just a minute here.

HEARING EXAMINER: I believe you testified at our last hearing.

Right?

THE WITNESS: I did. That's correct.

HEARING EXAMINER: Do you want five minutes?

ATTORNEY MANZOLILLO: Yeah, if we can have five minutes.

HEARING EXAMINER: Off the record, five minutes.

(WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

HEARING EXAMINER: We're back on the record. Witness has been sworn.

DIRECT EXAMINATION

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BY ATTORNEY MANZOLILLO:

Q. Okay.

Hi, Shelby. Can you tell us, were you a graduate student - are you a graduate student at the University of Pittsburgh?

A. Yes.

Q. And did you hold an appointment in the spring semester of 2019?

A. Yes.

Q. What was that?

A. A TF appointment.

Q. Okay.

So you were in the bargaining unit and eligible to vote?

A. Yes.

Q. And did you serve as an election observer for the Union?

A. I did.

Q. And what times and days would you serve in that role?

A. Wednesday, the 17th, all day with a short break in the middle of the day for lunch, and another short break in the afternoon.

Q. Okay.

1 Do you remember around when those breaks
2 were?

3 A. Lunch was noon-ish and then another break
4 in the three o'clock hour -

5 Q. Okay.

6 A. - for like 15 to 20 minutes.

7 Q. Okay.

8 And can you briefly describe what your
9 duties were when you were observing?

10 A. Yes. So to ensure that the election was
11 proceeding fairly, securing ballot boxes once they
12 were closed.

13 Q. And did you - where were you seated?

14 A. I was at the end of - one end of the long
15 table. There were several long tables together.
16 And the PLRB agent with the list was next to me for
17 the whole day.

18 Q. Okay.

19 And where was the University watcher?

20 A. At the beginning of the day, the
21 University observer was at the opposite end of the
22 table, so we had the two PLRB agents between us.
23 But that had changed after I came back from lunch.
24 And so I was seated at one end next to the PLRB
25 agent with the list. The University observer was

1 now seated on their other side, and the other PLRB
2 agent with the challenge ballots was at the end of
3 the table.

4 Q. Okay.

5 And did you keep a list of tracking the
6 voters while you were poll watching?

7 A. I did not.

8 Q. And why not?

9 A. It was my understanding that this can be
10 seen as a form of intimidation and jeopardize the
11 results of the election.

12 Q. And where did you get your understanding?

13 A. From the Union.

14 Q. Okay.

15 So the Union did not ask you to track the
16 voters?

17 A. Correct.

18 Q. Do you recall any of the PLRB agents who
19 conducted the election while you were watching?

20 A. I remember Dennis.

21 Q. Okay.

22 And did you observe the University
23 watchers keeping an independent list of who voted?

24 A. Yes.

25 Q. What did you see?

1 A. I saw a hefty stack of papers. I believe
2 it was on a clipboard with a blank sheet on the top
3 that the University observer was using to make a
4 mark after a voter said their name.

5 Q. And this was done after every voter?

6 A. Yes.

7 Q. And was - did this list appear to have
8 hundreds of names on it?

9 A. Yes.

10 Q. Did you ever ask - did they ever ask PLRB
11 agents to repeat a name or spell a name?

12 A. Yes.

13 Q. How often was this?

14 A. I couldn't say for certain the number,
15 whenever they had trouble hearing -

16 Q. Okay.

17 A. - the voters say their own name.

18 Q. And did this take place in front of the
19 voter in question?

20 A. Yes.

21 Q. In front of others in the voter poll -
22 the voters in the polling area?

23 A. Yes.

24 Q. Was it audible to anybody in that area?

25 A. Yes.

1 Q. Okay.

2 Did PLRB agents ask employees to spell
3 out their names?

4 A. Sometimes, yes.

5 Q. Okay.

6 Did they ever repeat these names that
7 they're spelling?

8 A. Sometimes, yes.

9 Q. Did it appear this would be done so the
10 University watcher could mark their names down?

11 A. Yes.

12 Q. Was this widely audible?

13 A. Yes.

14 Q. Widely visible?

15 A. Yes.

16 Q. Did they ever do this after the PLRB
17 agents asked them to do it?

18 A. Could you repeat that?

19 Q. Did they ever have a name spelled out
20 after a PLRB agent asked them - I'm sorry.

21 Did they ever do so after a University
22 watcher asked them - did they ever - did PLRB agents
23 ever ask anybody to spell it out?

24 A. Not that I recall.

25 Q. Okay. Okay.

1 Did you - PLRB agents ask voters for IDs?

2 A. Sometimes, yes.

3 Q. And was this done on a consistent basis?

4 A. No.

5 Q. What - what was inconsistent about it?

6 A. So there seemed to be very little - there
7 was not equal distribution of folks who were asked
8 for their ID upon approaching the table. At times,
9 they asked people to say their name. At times,
10 before asking them to say their names, they just
11 asked for their ID. And this often occurred with
12 students who read as not white.

13 Q. Okay.

14 HEARING EXAMINER: One witness said
15 Middle Eastern and Asian, and another said South
16 Asian and -

17 ATTORNEY FARMER: East Asian.

18 HEARING EXAMINER: - East Asian. In
19 your opinion, was there any other than not white?

20 THE WITNESS: I'm sorry. Can you
21 repeat that?

22 HEARING EXAMINER: In your opinion was
23 there any focus besides not white?

24 THE WITNESS: I mean there were a fair
25 amount of East Asian students who voted on the day

1 that I observed.

2 HEARING EXAMINER: And they - in your
3 opinion, from what you saw, the PLRB agents were
4 disproportionately focused on them with their
5 queries?

6 THE WITNESS: Insofar as they asked
7 for IDs before asking them to say their names.

8 HEARING EXAMINER: Okay.
9 Go ahead.

10 BY ATTORNEY MANZOLILLO:

11 Q. Okay.

12 So once the - you mentioned that after
13 lunch the position of the PLRB - I mean, the
14 University watcher had changed.

15 A. Yes.

16 Q. Did the practice of requesting IDs change
17 at that point?

18 A. Yes, insofar that I observed a PLRB agent
19 taking an ID from a student and setting it down
20 between themselves and the University observers, so
21 that the University observer could look at the ID
22 and find the name on their list.

23 Q. And so the University - it was in wide
24 view of the University observer?

25 A. Yes.

1 Q. Could you see it?

2 A. If I leaned around and looked, -

3 Q. Okay.

4 A. - since it was on my other side.

5 Q. And was this - was - this placing of the
6 ID in front of or near the University watcher so
7 they could see it, was that done in the presence of
8 voters?

9 A. Yes.

10 Q. And was that readily visible?

11 A. Yes.

12 Q. Did the University appear to mark down
13 names after an ID was put down?

14 A. Yes.

15 Q. And was that visible then to the voter?

16 A. Yes.

17 Q. And to any voter in the area?

18 A. Uh-huh (yes).

19 ATTORNEY MANZOLILLO: I don't think I
20 have anything further.

21 HEARING EXAMINER: Cross?

22 ---

23 CROSS EXAMINATION

24 ---

25 BY ATTORNEY FARMER:

1 Q. Were you familiar with any of the
2 University observers before that day?

3 A. Yes, because I had attended the election
4 conference on Monday.

5 Q. Before the election conference on Monday,
6 were you familiar with any of them?

7 A. No.

8 Q. None of the University observers asked
9 any students for ID?

10 A. Not that I recall.

11 Q. And none of the University observers
12 asked students to say or spell their names.

13 Right?

14 A. Not that I recall.

15 Q. No students were turned away by the PLRB
16 for not having IDs.

17 Correct?

18 A. Not that I recall.

19 Q. And did any student object to showing ID?

20 A. Not that I remember, no.

21 Q. Do you recall any students who were
22 eligible voters who left without voting?

23 A. I don't recall that, no.

24 Q. Did you raise a concern to anyone from
25 the PLRB that they appeared to be asking students of

1 Asian descent for their IDs more readily?

2 A. I did not.

3 Q. Did you raise a concern about that to
4 anyone during the election?

5 A. I expressed concern that IDs were being
6 asked for because when I had voted two days prior,
7 my ID was not checked.

8 Q. And who did you express that to?

9 A. Union representative.

10 Q. After the election?

11 A. During the election.

12 Q. But you didn't express that to Dennis or
13 anyone else from the PLRB?

14 A. No.

15 ATTORNEY FARMER: Nothing further.

16 HEARING EXAMINER: Okay.

17 Redirect?

18 ATTORNEY MANZOLILLO: Yeah. Just a

19 follow up -

20 HEARING EXAMINER: Sure.

21 ATTORNEY MANZOLILLO: - to a question
22 earlier.

23 ---

24 REDIRECT EXAMINATION

25 ---

1 BY ATTORNEY MANZOLILLO:

2 Q. Did - the list, the University watcher,
3 did you observe - you were at the initial
4 pre-election conference?

5 A. Yes.

6 Q. Was there a representative from the
7 University who was not a watcher there?

8 A. Yes.

9 Q. And did you ever see at any point the
10 watchers meet with this person?

11 A. Yes.

12 Q. And can you describe the situation?

13 A. So on Thursday following the ending of
14 voting, I observed the watcher who had been there
15 meeting with this person in the building where
16 voting had been taking place.

17 HEARING EXAMINER: I'm entirely
18 confused. What are you - what are we asking her
19 about?

20 ATTORNEY MANZOLILLO: If she saw the -
21 any of the University watchers meeting with the
22 University representative, and she's describing an
23 instance.

24 HEARING EXAMINER: All right, but this
25 is too vague for me.

1 ATTORNEY MANZOLILLO: Okay.

2 HEARING EXAMINER: Who's the
3 University rep?

4 BY ATTORNEY MANZOLILLO:

5 Q. Do you know the University rep's name?

6 A. I don't recall her name. No.

7 HEARING EXAMINER: Okay.

8 Can you describe the watcher
9 generally? What kind of person? Who was the
10 watcher speaking to?

11 THE WITNESS: The - I observed the
12 watcher speak with a woman who had been at the
13 pre-election conference, but who is not an observer.

14 HEARING EXAMINER: All right.

15 So was the University rep was - was it
16 20 years old, 50 years old?

17 THE WITNESS: Fifty (50).

18 BY ATTORNEY MANZOLILLO:

19 Q. Is the University representative in this
20 room?

21 A. Yes.

22 HEARING EXAMINER: Oh, great. Who is
23 it?

24 THE WITNESS: This woman back here.

25 HEARING EXAMINER: All right.

1 What's your name?

2 MS. HOOGENDOORN: Stephanie
3 Hoogendoorn.

4 HEARING EXAMINER: Okay.

5 Would the parties agree it was Ms.
6 Hoogendorf (sic)?

7 ATTORNEY FARMER: Yes.

8 HEARING EXAMINER: Okay.

9 MS. HOOGENDOORN: Doorn.

10 HEARING EXAMINER: Hoogendoorn. And
11 then the watcher, who was the -?

12 THE WITNESS: I don't know.

13 HEARING EXAMINER: Is the watcher in
14 the room?

15 THE WITNESS: I don't believe so, no.

16 HEARING EXAMINER: All right.

17 So now, the University is on notice of
18 what that allegation was.

19 ATTORNEY FARMER: Okay.

20 But can we - I'm sorry. I was
21 confused. Are you going to bring out the when,
22 Brad, because I was just confused on that?

23 ATTORNEY MANZOLILLO: Yes. Yes.

24 ATTORNEY FARMER: Okay.

25 Thank you.

1 BY ATTORNEY MANZOLILLO:

2 Q. What - did you ever see the - any of the
3 watchers meet with Stephanie with the list?

4 A. I believe so, yes.

5 Q. And when was that?

6 A. At the end of the voting on Thursday.

7 HEARING EXAMINER: Thursday was the
8 last day?

9 THE WITNESS: The - yes. Correct.

10 BY ATTORNEY MANZOLILLO:

11 Q. So it appeared to be with the list
12 meeting with her immediately after the vote?

13 A. Yes.

14 Q. Okay.

15 Did you ever see Stephanie with the list
16 at any other point around the election times?

17 A. Yes.

18 Q. When was that?

19 A. Wednesday morning before voting had
20 started.

21 Q. Where was she located?

22 A. Right outside the polling area.

23 Q. And she was reviewing what appeared to be
24 the same Board list?

25 A. Yes.

1 ATTORNEY MANZOLILLO: Nothing further.

2 HEARING EXAMINER: Okay.

3 Any Cross on that?

4 ATTORNEY FARMER: Yeah, just briefly.

5 ---

6 RE CROSS EXAMINATION

7 ---

8 BY ATTORNEY FARMER:

9 Q. Did you ever see Stephanie in the polling
10 area at any point during the election times?

11 A. No.

12 ATTORNEY FARMER: I have nothing
13 further.

14 HEARING EXAMINER: Okay.

15 Ma'am, you may step down.

16 THE WITNESS: Thank you.

17 HEARING EXAMINER: Thank you
18 testifying again. You had said you guys had someone
19 coming at 3:00, I overheard maybe?

20 ATTORNEY MANZOLILLO: Yeah, we've got
21 a couple people.

22 HEARING EXAMINER: Oh, you have people
23 now? Last time we had 800 exhibits. Now, we've got
24 25 or so.

25 ATTORNEY FARMER: Right. A bunch of

1 those were yours. So far, I only have one. Should
2 we just take a few minutes?

3 HEARING EXAMINER: All right. We'll
4 go off the record for a moment.

5 ---
6 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

7 ---
8 HEARING EXAMINER: Next witness?

9 ATTORNEY FISHER: The Union calls Jeff
10 Cech.

11 ---
12 JEFFREY CECH,
13 CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
14 HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
15 FOLLOWS:

16 ---
17 HEARING EXAMINER: Spell your name for
18 us.

19 THE WITNESS: J-E-F-F-R-E-Y, C-E-C-H.

20 HEARING EXAMINER: C-E-C-H. Okay.

21 Your witness then.

22 ---
23 DIRECT EXAMINATION

24 ---
25 BY ATTORNEY FISHER:

1 Q. Jeff, who is your employer?

2 A. The United Steelworkers.

3 Q. And what is your position or title?

4 A. I'm an organizer.

5 Q. And were you involved with the University
6 graduate student employee organizing campaign?

7 A. Yes.

8 Q. In what capacity?

9 A. As lead organizer.

10 Q. Do you know if the Union told its
11 election observers to keep a track of who was voting
12 during the election?

13 A. No. I'm aware that we did not.

14 Q. Okay.

15 And why did you not tell them to do that?

16 A. Because we believe that to be coercive
17 and unlawful surveillance.

18 Q. Did the Union reach out to potential
19 voters in any way?

20 A. Yes.

21 Q. And can you describe how the Union did
22 that?

23 A. So we reached out to people who had
24 indicated, either by signing a union authorization
25 card or a union support card or participate in one

1 of our collective actions or you know, showed
2 support in some other way. We got in touch with
3 those folks who we believed to be supporters.

4 Q. So prior to the election, you had to have
5 graduate students sign cards?

6 A. Yes.

7 Q. Okay.

8 And you reached out to them as prior card
9 signers?

10 A. Yes.

11 Q. And others, you said, who had indicated
12 support in other ways?

13 A. Yes.

14 Q. Did you reach out to any potential voters
15 beyond goes on our supporting list?

16 A. No, we only reached out to people who we
17 believed to be supporters in the immediate lead up
18 to the election, of course.

19 Q. Okay.

20 ATTORNEY FARMER: I'm sorry. I
21 didn't hear that last part.

22 HEARING EXAMINER: Yeah. I didn't
23 hear it either.

24 THE WITNESS: In the immediately lead
25 up to the election. Obviously, at one point we were

1 talking to Board people.

2 BY ATTORNEY FISHER:

3 Q. But in the weeks prior to the election -

4 A. Yes.

5 Q. - or during the election, you were
6 reaching out to supporters?

7 A. Yes.

8 Q. Okay.

9 And did the Union follow up with voters
10 or potential voters in any way during the weeks -
11 during the week of the election?

12 A. Yes. We reached out to people who we
13 spoke to prior to the election who had indicated
14 that they would be voting to confirm that they had
15 voted.

16 Q. And again, would that have been beyond
17 the supporter list?

18 A. No.

19 Q. Did at any point the Union ask people how
20 they voted?

21 A. In like face-to-face conversations, it
22 may have come up, but primarily our communications
23 were asking people to confirm that they had made it
24 to the polls after they had made a prior plan to do
25 so.

1 Q. At any point, did you send a follow up or
2 a reminder to those people?

3 A. Yes.

4 ATTORNEY FISHER: That's all I have.

5 HEARING EXAMINER: Cross Examination

6 ---

7 CROSS EXAMINATION

8 ---

9 BY ATTORNEY FARMER:

10 Q. I just want to make sure I understand.
11 Is it - so it's your testimony that in the weeks
12 leading up to the election, you were not
13 communicating with all eligible voters?

14 A. Primarily, we were focused on people who
15 were supporters. We did send some communications
16 out to a broader list. But to people who we were
17 turning out to vote, we were turning out people who
18 were - on our supporter list.

19 Q. And there was nothing that prohibited you
20 from sending additional communications to all
21 eligible voters if you had chosen to.

22 Right?

23 A. If we had chosen to, yes.

24 Q. Now, as I understood your testimony about
25 asking people how they voted, was it your testimony

1 that you were not keeping track of the number of
2 people who were voting yes?

3 A. I didn't answer a question to that fact.

4 Q. Okay.

5 So were you trying to keep track of how
6 many people you thought were voting yes?

7 A. Yeah. Our observers were giving us a
8 rough estimate of how many people they believe came
9 through the polls but we weren't, obviously keeping
10 an exact tally.

11 Q. Okay.

12 Who is that - who's Kim Garrett?

13 A. Kim is - she's in Human Genetics. She's
14 a - occupational and environmental health and she's
15 a graduate student.

16 HEARING EXAMINER: What's her role
17 with the Union?

18 THE WITNESS: Oh, she is a member of
19 the organizing committee.

20 BY ATTORNEY FARMER:

21 Q. And are you aware that she told the Pitt
22 News that as of Wednesday night, meaning during the
23 election, the organizers believed they had confirmed
24 at least 700 yes votes? Are you are of that?

25 A. I did. I read the article.

1 Q. And do you have any reason to doubt that
2 she said that to the Pitt News?

3 A. No.

4 ATTORNEY FARMER: We'll just mark that
5 as E-2.

6 ---
7 (Whereupon, Employer's Exhibit 2, Pitt News
8 Article, was marked for identification.)

9 ---
10 HEARING EXAMINER: Who's - who's Pitt
11 News? Is that a campus paper? Anybody know?

12 ATTORNEY MANZOLILLO: I think so.

13 HEARING EXAMINER: Do you know who
14 Pitt News is?

15 THE WITNESS: Yeah, undergraduate
16 student newspaper.

17 HEARING EXAMINER: Okay.

18 We'll call this Pitt News April 18th
19 Article, April 18th, 2019.

20 BY ATTORNEY FARMER:

21 Q. This is the article for the Pitt News
22 that we were just referring to?

23 A. Yes.

24 Q. And you read this at the time?

25 A. Yes.

1 ATTORNEY FARMER: I have nothing
2 further.

3 HEARING EXAMINER: Any objection to E-
4 2?

5 ATTORNEY MANZOLILLO: There's some
6 question to relevance, but we're not going to
7 object.

8 HEARING EXAMINER: It's admitted.

9 ---
10 (Whereupon, Employer's Exhibit 2, Pitt News
11 Article, was admitted.)

12 ---
13 HEARING EXAMINER: Although that one
14 comment is hearsay.

15 ATTORNEY FARMER: What's hearsay? Her
16 statement?

17 ATTORNEY MANZOLILLO: Yeah.

18 ATTORNEY FARMER: It's an admission by
19 a party. It's a party.

20 HEARING EXAMINER: It's not hearsay.

21 ATTORNEY MANZOLILLO: Not a party?

22 ATTORNEY FARMER: She'll represent if
23 she's a community organizer.

24 HEARING EXAMINER: She's not - he says
25 she's on the steering committee. Steering committee

1 that you said?

2 THE WITNESS: Organizing committee?

3 ATTORNEY MANZOLILLO: She's a
4 bargaining unit member, though.

5 THE WITNESS: Uh-huh (yes).

6 ATTORNEY MANZOLILLO: Not an employee
7 of the Steelworkers.

8 THE WITNESS: Not an employee of the
9 Union. Not a spokesperson.

10 HEARING EXAMINER: Any other questions
11 for him?

12 ATTORNEY FARMER: Not by me.

13 ATTORNEY MANZOLILLO: May we have just
14 a moment?

15 HEARING EXAMINER: Yeah. No one else
16 leaves. Go off the record.

17 ---

18 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

19 ---

20 HEARING EXAMINER: Back on the record.
21 Any further direct?

22 ATTORNEY FISHER: Yes, just a couple
23 questions on Redirect.

24 ---

25 REDIRECT EXAMINATION

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BY ATTORNEY FISHER:

Q. Looking at Employer Exhibit 2, the statement that we just looked at from Ms. Garrett, do you know if this was an authorized statement by the Union?

A. No. She made her - she speaks for herself.

Q. And do you know where this 700 number could have come from?

A. She's probably giving the number of people who told us that they had voted, not necessarily yes votes, because obviously we know how the vote went.

Q. So you testified earlier that in the weeks leading up to the election and during the election, we were asking our supporters to confirm if they voted?

A. Yes.

Q. Okay.

And so I think your testimony now was this was based on an assumption that the number of supporters who voted would have voted yes?

A. Yes.

Q. Okay.

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CAITLIN SCHROERING,
CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

HEARING EXAMINER: Say and spell your
name for us.

THE WITNESS: Caitlin Schroering,
C-A-I-T-L-I-N, S-C-H-R-O-E-R-I-N-G.

HEARING EXAMINER: Okay.
Go ahead.

DIRECT EXAMINATION

BY ATTORNEY FISHER:

Q. Hi, Caitlin. Are you a student at Pitt?

A. Yes, I am.

Q. And were you a TA, TF, GSA or GSR
employed by the University during the spring
semester of 2019?

A. Yes. I was and am a GSR.

Q. So you were in the bargaining unit and
eligible to vote?

A. Yes, I was.

1 Q. And did you serve as an election observer
2 or watcher for the Union?

3 A. I did.

4 Q. What times and days did you serve in this
5 role?

6 A. I served approximately between 12:00 noon
7 and 3:00 p.m. on Monday and from approximately 11:40
8 to - a.m. to 1:00 p.m. on Tuesday.

9 Q. Can you briefly describe what your duties
10 as a watcher were?

11 A. My main duty was simply to be present and
12 to make sure that as students came in and gave their
13 names, that their name were found and they were
14 given a ballot to vote. And if for some reason
15 there was a - they weren't on the list, that they
16 were given the proper procedure to receive a
17 challenge ballot so that they could cast that.

18 Q. Did you keep a list of everyone who voted
19 while you were poll watching?

20 A. No, I didn't.

21 Q. Is there any specific reason why you
22 didn't do this?

23 A. Yes. I mean, we were told not to do
24 that.

25 Q. Who told you note to do it?

1 A. Well, the Union did.

2 Q. Did the Union give any explanation as to
3 why?

4 A. Yeah. I mean, our whole stance is that
5 we wanted people to come vote, and that, well, one,
6 keeping a list is illegal, and two, I mean, it's -
7 because it could be perceived as intimidating to
8 students to track who's voting.

9 Q. While you were observing, were there PLRB
10 agents who conducted the election?

11 A. Yes, there were.

12 Q. And do you remember who they were?

13 A. I do. I don't remember full names.

14 Q. Do you remember their first names?

15 A. So Dennis and Joe and Rebecca. And the
16 fourth woman, I cannot remember her name.

17 Q. Were you present when the PLRB agents
18 first introduced themselves?

19 A. I was, yeah. We were - those of us
20 watching on the first day were instructed to get
21 there by 8:30 and we did that. So I was present for
22 the beginning introductions and instructions.

23 Q. And do you remember sort of - you said
24 you were instructed to be there at 8:30. Do you
25 remember what time those introductions happened?

1 A. A little later than that as I recall. We
2 were like - it was pressing right up to 9:00, so
3 8:45, 8:50.

4 Q. And were you also present when the
5 University watchers introduced themselves?

6 A. Yes, I was.

7 Q. And did that occur around the same time?

8 A. Right, it did.

9 Q. Did you observe University watchers
10 keeping a list of who voted?

11 A. I did, which was a surprise to me.

12 Q. And can you describe what you saw?

13 A. Well, they had a big - I mean, a very big
14 like folder with presumably the name of every single
15 graduate student and were checking off every single
16 name as people voted.

17 Q. You said presumably the name of every
18 graduate student. Why did you think it was the name
19 of every graduate student?

20 A. I mean, I guess, I didn't physically see
21 every single name in there, but I feel pretty
22 certain it was every graduate student because every
23 single person who came in and voted while I was
24 there, including myself, there would be - you know,
25 they would check the name off. And if they couldn't

1 hear the name the first time it was stated, they
2 would ask for it to be repeated. And sometimes it
3 was spelled multiple times, and then they would find
4 it and check it off and give the cue that they were
5 ready for us to proceed. So they were checking
6 names off.

7 Q. Okay.

8 So were the PLRB agents also maintaining
9 a list of voters?

10 A. Right. They were.

11 Q. Okay.

12 And so the PLRB agents were asking
13 employees for their names?

14 A. Yes.

15 Q. And you testified that at times, names
16 were asked to be repeated?

17 A. Right. I mean, so what would happen is,
18 you know, students would come in in some case. I
19 was kind of there during the lunch hour rush on
20 those two days, so there would be a line. And
21 people would come up and they would state their
22 name. And then the PLRB agent would try to find
23 their name, usually couldn't find it the first time
24 around, and so they would ask them to spell it, or
25 in some cases would ask for an ID and would look at

1 the ID and would find it. And then the University
2 person, most of the time, couldn't catch it the
3 first time and so would ask it to be repeated and
4 then the name would be spelled and repeated until
5 everyone got it checked off. And then we'd move on
6 to the next person.

7 Q. And when the University watcher asked for
8 it to be repeated, who was the University watcher
9 asking?

10 A. I mean, it was directed at the PLRB
11 agent. They alternated who was the person with the
12 - who was, you know, the main person taking the
13 names.

14 Q. And then the PLRB agent would ask the
15 student to repeat it?

16 A. That did happen a few times, but
17 sometimes the PLRB agent would repeat it or spell
18 it.

19 Q. Was this done audibly?

20 A. Yeah, definitely. It was audible to
21 everyone in the room.

22 Q. So voters in the room could hear names
23 being repeated?

24 A. Sure, yes.

25 Q. Or spelled?

1 A. Uh-huh (yes). Yes.

2 Q. Did the PLRB agents at any time ever
3 explain why they were audibly saying names or
4 audibly spelling names?

5 A. Not every time, but especially when there
6 was, you know, a line forming. I could tell that
7 people were getting antsy and kind of making faces
8 at each other in the room. And I observed a few
9 times when the PLRB agent directed to the student
10 when they had to ask them to repeat the name or when
11 they were spelling, you know, sorry, I just have to
12 make sure that the observer - and then pointed and
13 directed at the University observer - can also get
14 the name and check it off.

15 Q. Did the PLRB agent ask voters to see IDs?

16 A. That was inconsistent.

17 Q. Okay.

18 Can you describe the inconsistency or
19 what you observed?

20 A. What I observed is that initially, you
21 know, people would come in and they would just ask
22 for their name, and then we'd move on. But as
23 people would come in and the name was complicated,
24 and I mean, frankly, often if the student appeared
25 to be Asian or had a Hispanic name, they then would

1 just ask to like see the ID so that they could see
2 the spelling and find the name.

3 But if someone, you know, came in and was
4 like a white man and said my name is David Smith,
5 they didn't ask for ID.

6 Q. So you said - would they preemptively ask
7 some students for ID?

8 A. It was inconsistent. But they did start
9 preemptively asking some, yeah. They would start to
10 walk up and they would ask for the ID.

11 Q. And who again, were they preemptively
12 asking?

13 A. I mean people who looked to be Asian or
14 Hispanic.

15 Q. Did this take place in view of other
16 voters in the polling area?

17 A. Well, it did, I mean, because the - it's
18 not like people stood outside the room. A line
19 would form within the room. So whatever was
20 happening there was audible and visible to everyone
21 in the room. And at times that would be, I would
22 say, up to and over a dozen other students.

23 Q. You mentioned that you voted during the
24 election.

25 A. I did, yes.

1 Q. Were you asked for ID?

2 A. I wasn't, although I was anticipating
3 being asked for ID because that is how - what I was
4 instructed would happen. So I kind of had my ID out
5 and then when I went up, I stated my name and they
6 didn't really take my ID.

7 HEARING EXAMINER: What day did you -
8 what day did you vote?

9 THE WITNESS: I voted Monday early
10 like not long after 9:00 a.m. And actually, when I
11 went to vote, the University person observing was
12 like we have a challenge. And I stood there
13 quietly, and there was a few back and forth and
14 they're like, oh, never mind. Sorry. And I got to
15 vote.

16 BY ATTORNEY FISHER:

17 Q. Did you notice when you voted, when you
18 gave your name, did the University watcher check
19 your name off on a list?

20 A. Yes.

21 Q. Did you witness any challenge ballots
22 while you were observing?

23 A. I did.

24 Q. And did everyone - did anyone ever
25 mention to you how many people the University

1 intended to challenge?

2 A. Yeah. I mean, that was stated, I'm
3 pretty sure it was Joe who gave all of the like
4 introductions. And so around 8:50 a.m. on Monday,
5 kind of clarify, okay, the University of a list of
6 11 that their challenging. Correct? And then
7 looked to Brad and said, and you all aren't
8 challenging anyone. Correct? And that was affirmed
9 and we moved on.

10 Q. While you were observing, did you ever
11 ask any questions or raise any issues with any of
12 the PLRB agents?

13 A. I did, yes, twice.

14 Q. Can you describe those two issues?

15 A. Sure. Well, the first one occurred on
16 Monday and a student had come up and their name
17 wasn't on the list. So they were being given
18 instructions to cast a challenge ballot. And one of
19 - so that process the - another PLRB agent was
20 facilitating that, and had to fill out various
21 fields on the form envelope.

22 And so asked for the student's, you know,
23 appointment, title and the student said teaching
24 fellow and then the person, the PLRB agent, said,
25 oh, fellow. Well, fellow and teaching fellow are

1 very different. One is in the bargaining unit and
2 one isn't. So I turned to Dennis and said, may I
3 ask a question? And he said sure. And I said can
4 you make sure that it's clarified what their
5 appointment is because I'm hearing those two things
6 are very different.

7 So he did that and then once the room
8 cleared and there were no students in the room, he
9 said, you know, that was a great catch, make sure
10 you do that again. And also pass that on to the
11 other observers if something similar happens to do
12 that.

13 Do you want me to describe the second
14 interaction now?

15 HEARING EXAMINER: Yes.

16 THE WITNESS: Okay.

17 So then I - the next day something
18 similar happened, but this time Dennis was on lunch
19 break or something, and I did the same thing but to
20 Joe. And he yelled at me and told me that I was not
21 allowed to talk. And that was a little startling
22 because, A, I had been told previously to do that,
23 but also he had just let the University observer ask
24 a question that actually she directed to the student
25 and he didn't jump all over her.

1 HEARING EXAMINER: What did she ask
2 the student?

3 THE WITNESS: Same thing I was, to
4 clarify their appointment, you know, because that
5 was unclear.

6 HEARING EXAMINER: And you were
7 saying? I'm sorry.

8 THE WITNESS: So I decided, you know,
9 I'm observing, I was going to be silent. I finished
10 my shift and then afterwards outside of the room, I
11 did speak to Dennis about that issue. I don't know
12 if he -.

13 HEARING EXAMINER: What did Dennis say
14 to you, if anything?

15 THE WITNESS: Dennis told me that he
16 was sorry, that it was inappropriate, and if he
17 could send Joe home, he would, but he couldn't
18 because he needed four people. And I also, at that
19 point, made mention to him that I found it
20 inappropriate that the University was keeping a
21 list. But I left it at that because I needed to be
22 somewhere else, and I told him, you know, I needed
23 to get going. So that was - that was the limited
24 engagement.

25 HEARING EXAMINER: Okay.

1 Go ahead.

2 BY ATTORNEY FISHER:

3 Q. Sorry.

4 So two questions on that, the
5 conversation with Joe where he, I think you
6 testified told you that you couldn't -

7 A. Uh-huh (yes).

8 Q. - speak? Was that in the presence of
9 voters?

10 A. Yeah, it was.

11 Q. And you testified that you briefly raised
12 with Dennis during your conversation with Dennis
13 about the University tracking voters?

14 A. Uh-huh (yes).

15 Q. Can you describe more what you said to
16 Dennis at that time?

17 A. Yeah. Well, I mean, I knew - you know, I
18 had already sat through the day before and seen this
19 happen which was a surprise because my understanding
20 was that couldn't be done. And I knew that it -
21 that that was a point of concern that I think Brad
22 or somebody maybe brought up at the end of Monday or
23 early Tuesday. Right?

24 And so I wasn't really trying to spend
25 time engaging with him on it, but I just - he was

1 there, I'd already talked to him about this other
2 thing, and I told him that I thought it was
3 inappropriate. But we didn't get in a back and
4 forth about it. I - and then I was like I need to
5 get going, so bye.

6 Q. Did any PLRB agent ever ask you as an
7 observer if you were keeping a list of voters?

8 A. No.

9 Q. Did you ever hear any voters express
10 concerns about anonymity?

11 A. Within - within the voting room?

12 HEARING EXAMINER: Yes.

13 THE WITNESS: No, because I mean,
14 people aren't really talking in there. I mean, I
15 did have students express concern about anonymity
16 within - when I was out canvassing before the
17 election, but within that space, no.

18 BY ATTORNEY FISHER:

19 Q. Did you observe University watchers using
20 their phones in the polling area?

21 A. Yeah.

22 Q. And can you describe what you saw?

23 A. I mean, people had their phones out and
24 I, you know, kind of would have it out when there
25 was like not a lot of people in there. But even at

1 times when people were walking in, would check it -
2 checking, I don't know, texts, emails, who knows.
3 And I - I had kind of been told that we couldn't
4 have electronics, like to bring a book.

5 So I did finally ask if I could take my
6 phone, and I think it was Dennis was like, yeah, you
7 know, you can have your phone out, so - but everyone
8 had their phones out at one point or another.

9 Q. Okay.

10 Were you present after the close of the
11 election on Thursday?

12 A. I was, yes. I was - came back for when
13 the polls closed and was present in the room when
14 the boxes were being sealed.

15 Q. And when you left on Thursday, did you
16 see any of the University watchers leave?

17 A. Yeah, I did.

18 Q. And did you see where they went or where
19 the University - where any of the University
20 watchers went?

21 A. I mean, yeah. I - because I was also, -
22 we were on our way out and I observed the University
23 watcher meeting with someone that I have recognized
24 at many University-sponsored things. I think her
25 name is Stephanie, and they were sitting down with

1 each other within - you know, in that building.

2 Q. Did you see whether or not the University
3 watcher had the list during that meeting?

4 A. Yeah, she had it. Yeah, they had the
5 list.

6 Q. So sitting in front of you should be a
7 number of exhibits that have already been admitted.

8 A. Okay.

9 Q. Okay.

10 Actually, scratch that.

11 You testified that you did have people
12 raise concern about anonymity not during the
13 election, but I believe you said while you were
14 canvassing?

15 A. Uh-huh (yes).

16 Q. Can you describe those conversations?

17 A. Sure. I mean, well, I've been out, you
18 know, talking to other graduate students, canvassing
19 for years, months, right in this process. And many
20 times people would express concern about anonymity
21 about if they signed, you know, a union card, if
22 they signed anything that they didn't want to be
23 tracked or about voting. And then if their advisor
24 at the University could know which way they voted.

25 And so I would always assure people that,

1 you know, it's a secret ballot, and no one would
2 know how they voted or frankly, if they voted. That
3 it was just the PLRB that was tracking that to make
4 sure people couldn't vote once or twice.

5 So that's kind of the extent to those -
6 or those conversations that happened across the
7 course of that election.

8 HEARING EXAMINER: You told people
9 that the University would have no way of knowing if
10 they voted?

11 THE WITNESS: I told people that the
12 University would have no way of knowing if they
13 voted yes or no.

14 HEARING EXAMINER: Right.

15 THE WITNESS: I didn't have extensive
16 conversation with them about this. But -

17 HEARING EXAMINER: Okay.

18 THE WITNESS: - I also did not
19 anticipate - I thought it was illegal for the
20 University -

21 HEARING EXAMINER: I understand.

22 THE WITNESS: - or us in the room to
23 keep a list.

24 HEARING EXAMINER: I understand. I'm
25 just clarifying -

1 THE WITNESS: Yeah.

2 HEARING EXAMINER: - what your
3 testifying. Okay. Go ahead.

4 ATTORNEY FISHER: That's all.

5 HEARING EXAMINER: Cross Examination.

6 ---

7 CROSS EXAMINATION

8 ---

9 BY ATTORNEY FARMER:

10 Q. So you met the - excuse me, the
11 University watchers at that the pre-election
12 conference on Monday?

13 A. Correct. Yes.

14 Q. Did you know any of them before then?

15 A. Faces might be familiar, but no, I didn't
16 know them. I'd never seen them. I didn't -.

17 Q. Not anyone you had to interact with as a
18 graduate student?

19 A. No.

20 Q. And you didn't witness any University
21 observer asking any students for IDs, did you?

22 A. No.

23 Q. You testified that there were - there
24 were inconsistencies in how the PLRB asked students
25 for IDs preemptively. Is that a good description of

1 your testimony?

2 A. I think so, yes.

3 Q. Okay.

4 Did any students complain about being
5 asked for their ID?

6 A. There - there were - I mean, one student
7 complained about not being asked for the ID.

8 Q. Okay.

9 A. And I think there was a lot of just kind
10 of hesitancy and uncertainty, you know, about like
11 what was happening, because again, if you're in the
12 room voting and there's 15 other people in the room,
13 you observe that there's five or 15 different ways
14 of handling it. But no, in terms of verbal
15 expressions of discontent, I did not hear, but I saw
16 body language of what I would say uncertainty and
17 discomfort.

18 Q. And that was your interpretation -

19 A. That is -.

20 Q. - of the - of the voters?

21 A. Yes.

22 Q. Okay.

23 And no student complained to you about
24 being asked or not asked for their ID?

25 A. No. No one came up and spoke to me.

1 Q. Okay.

2 Did anybody leave without voting in -
3 while you were there?

4 A. Yes, actually.

5 Q. And was that somebody who was on the
6 eligible list?

7 A. Yes, they were.

8 Q. When did that occur?

9 A. I'm pretty sure this occurred Monday, but
10 frankly, it could have occurred Tuesday. The
11 student came in. They wanted to see a ballot. They
12 kind of looked at the ballot and then they like -
13 they left.

14 Q. So had the student even give their name?

15 A. They had given their name.

16 HEARING EXAMINER: Was there a sample
17 ballot available?

18 THE WITNESS: No. I don't think there
19 was.

20 HEARING EXAMINER: Well, what ballot
21 did they see?

22 THE WITNESS: They handed them a blank
23 ballot.

24 HEARING EXAMINER: That's what I
25 meant.

1 THE WITNESS: Oh.

2 HEARING EXAMINER: A sample ballot.

3 THE WITNESS: Okay.

4 ATTORNEY FARMER: So -.

5 HEARING EXAMINER: A blank ballot?

6 THE WITNESS: Yes.

7 HEARING EXAMINER: Okay.

8 BY ATTORNEY FARMER:

9 Q. So for instance, a student comes in.

10 A. Uh-huh (yes).

11 Q. Were they asked for their ID? Do you
12 remember?

13 A. As I recall, I don't think they were.
14 And also related to what I testified around, it was
15 a white man. So they weren't generally asking for
16 those IDs.

17 Q. So student gives their name, there - did
18 they sign on the list?

19 A. I don't believe they did.

20 Q. Okay.

21 And then they asked to see a ballot and
22 they left?

23 A. Correct.

24 Q. Were there any other students while you
25 were there who left without voting who were on the

1 eligible list?

2 A. Not in my presence.

3 HEARING EXAMINER: When you say - this
4 whole time you've been talking about IDs.

5 THE WITNESS: Uh-huh (yes).

6 HEARING EXAMINER: You've been
7 referring to school ID.

8 Correct?

9 THE WITNESS: Correct.

10 HEARING EXAMINER: All right.

11 BY ATTORNEY FARMER:

12 Q. And the incident that you described with
13 Joe, you testified that this occurred in the
14 presence of voters?

15 A. Yes.

16 Q. Where he told you that you weren't
17 allowed to speak?

18 A. Correct.

19 Q. Okay.

20 About how many voters would you say were
21 there at the time?

22 A. Two to five. It wasn't - you know, it
23 wasn't an empty time because there people in the
24 room, but it wasn't one of the huge like rushes.

25 Q. And what happened after he said that?

1 A. Well, we, you know, proceeded. They
2 proceeded with the election, and I decided I was
3 going to sit quietly. I think after there were no
4 voters in the room, he made a statement about, you
5 know, we can't have anyone talking. And I said,
6 well, you know, I understand that, but yesterday
7 Dennis told me to do what I did, and also that, you
8 know, the - I pointed out that the University person
9 had spoken and he hadn't jumped all over her.

10 HEARING EXAMINER: I just want to get
11 the timing down.

12 THE WITNESS: Yeah.

13 HEARING EXAMINER: You tried to say
14 something - what you were ask - you were clarifying
15 something about fellow versus teaching fellow?

16 THE WITNESS: Right. So that
17 distinction is important because a fellow is -.

18 HEARING EXAMINER: I know all about
19 it.

20 ATTORNEY FARMER: He's employed.

21 THE WITNESS: I know.

22 HEARING EXAMINER: And the - and you
23 started - you started to say something and then he -
24 characterized his response to you. I don't want to
25 put words in your mouth, so -.

1 THE WITNESS: Well, so then he just
2 looked at me and said you can't talk like.

3 HEARING EXAMINER: Okay.

4 Now, did a time lapse happen before
5 you further conversed with him or did you further
6 converse with after that?

7 THE WITNESS: No. I decided I was not
8 going to engage while there were students in the
9 room.

10 HEARING EXAMINER: Okay.

11 THE WITNESS: That didn't seem
12 appropriate. So then -.

13 HEARING EXAMINER: Okay.

14 So then there was a period of time?

15 THE WITNESS: Yes.

16 HEARING EXAMINER: All right.

17 That's what I didn't understand.

18 THE WITNESS: Yes.

19 HEARING EXAMINER: Okay.

20 THE WITNESS: Yes.

21 HEARING EXAMINER: So then a period of
22 time elapsed, and then this conversation where you
23 followed up with Joe happened?

24 THE WITNESS: Correct.

25 HEARING EXAMINER: Okay.

1 So continue there. Re-describe that
2 follow-up conversation, please.

3 THE WITNESS: I mean, it was - he - he
4 just, once there were - there was no one in the
5 room, made another comment about we can't - you
6 know, that you're not allowed to interact with
7 people. And I said something to the effect of,
8 well, okay, yesterday I did the same thing. I was
9 told to do that because it's an important
10 distinction between the two. And then also pointed
11 out that the University observer had been allowed to
12 speak.

13 And then I dropped it. I didn't want
14 to get in a back and forth. And as I testified
15 already, I then took it up with Dennis afterwards.

16 HEARING EXAMINER: Okay.

17 And then were you there the next day?

18 THE WITNESS: So what I just described
19 happened my second day of observing -

20 HEARING EXAMINER: Right.

21 THE WITNESS: - Tuesday. So no, I was
22 not there Wednesday.

23 HEARING EXAMINER: Okay.

24 BY ATTORNEY FARMER:

25 Q. So after you spoke to Dennis, you weren't

1 there at all.

2 A. Not in the -.

3 Q. Right?

4 A. Right. Other than coming back to like
5 watch the boxes be sealed on Thursday.

6 Q. I believe - on Thursday, after the
7 election -

8 A. Right.

9 Q. - closed. And Joe was not there?

10 A. No. I did not see him.

11 Q. Okay.

12 So after you had that follow-up
13 conversation with Joe and before you raised it with
14 Dennis - which was on your way out? Right? You
15 said -?

16 A. Uh-huh (yes).

17 Q. Okay.

18 During that time period, did you hear the
19 University observer have any direct communication
20 with students?

21 A. No, I didn't, but it was - that -
22 probably I had about I don't know, 45 minutes left.

23 HEARING EXAMINER: So to go back to
24 the initial when Joe cut you off.

25 THE WITNESS: Uh-huh (yes).

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HEARING EXAMINER: Back on the record.

EMILY ACKERMAN,

CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

HEARING EXAMINER: Spell your name for
us.

THE WITNESS: E-M-I-L-Y,
A-C-K-E-R-M-A-N.

HEARING EXAMINER: Go ahead.

DIRECT EXAMINATION

BY ATTORNEY MANZOLILLO:

Q. Emily, you are a graduate student at the
University of Pittsburgh?

A. I am.

Q. In what department are you in?

A. Chemical engineering.

Q. And how long have you been in the
department?

A. Four years.

1 Q. Four years.

2 I'm going to show you a couple of
3 exhibits. And I just want you to tell us if you
4 recognize these exhibits. First is marked Union
5 Exhibit 19.

6 ---

7 (Whereupon, Union's Exhibit 19, Email 4/30/19,
8 was marked for identification.)

9 ---

10 THE WITNESS: I do, yes.

11 BY ATTORNEY MANZOLILLO:

12 Q. And what is that?

13 A. It's an email from the engineering grad
14 student organization that we received that morning
15 or the afternoon, I guess, one of the days of the
16 election.

17 Q. Is that - the EGSO short, is that the
18 acronym for the -

19 A. Yes.

20 Q. - engineering grad student organization?

21 A. Yes, it is.

22 Q. And can you tell us, just briefly, what
23 EGSO is?

24 A. It's a student group. It's under Swanson
25 School of Engineering, and each department has a

1 representative and then there are some overarching
2 representatives; president, vice president, kind of
3 things. They do like student activities like career
4 building things, social activities and they're all
5 aimed at engineering graduates.

6 Q. Okay.

7 And I'm going to show you another.

8 A. Okay.

9 Q. This is marked Union Exhibit 20.

10 ---

11 (Whereupon, Union's Exhibit 20, Email 4/30/19,
12 was marked for identification.)

13 ---

14 BY ATTORNEY MANZOLILLO:

15 Q. Can you tell us what that is?

16 A. This is an email sent from the Department
17 chair of chemical engineering. We also got it that
18 day, I think the same day, and this went to my
19 department.

20 Q. So there's a date and time. Is that when
21 you received the email?

22 A. Yes, it is.

23 Q. Okay.

24 Thank you.

25 A. Yep.

1 Q. And so he's the chair of your department?

2 A. Yes.

3 Q. Okay.

4 ATTORNEY MANZOLILLO: I'm just going
5 to move for admission of Exhibit 19 and 20.

6 HEARING EXAMINER: Any objection?

7 ATTORNEY FARMER: So my only objection
8 to Union Exhibit 20 is that the email had a number
9 of attachments that are not included.

10 HEARING EXAMINER: What are the
11 attachments?

12 ATTORNEY MANZOLILLO: Attachments are
13 a video recording of -.

14 ATTORNEY FARMER: There's a
15 transcript.

16 ATTORNEY MANZOLILLO: Yeah, a
17 transcript of a video recording of both - myself and
18 Mr. Urban were separately invited by EGSO to speak
19 to engineering students.

20 HEARING EXAMINER: Do you want - you
21 think that would be a more complete exhibit?

22 ATTORNEY FARMER: Yes.

23 HEARING EXAMINER: Do we have it?

24 ATTORNEY FARMER: I have it.

25 HEARING EXAMINER: All right.

1 We'll go off the record for a moment
2 and show that to Mr. Manzolillo.

3 ---

4 (WHEREUPON, AN OFF RECORD DISCUSSION WAS HELD.)

5 ---

6 HEARING EXAMINER: Back on the record.

7 The objection is overruled as to the
8 attachments to Union Exhibit 20. You will have the
9 opportunity to move those exhibits in during your
10 case.

11 ATTORNEY FARMER: I'm just going to
12 confirm them with the witness on Cross Examination.

13 HEARING EXAMINER: That's fine.

14 ATTORNEY FARMER: Yeah, that's fine.

15 HEARING EXAMINER: Okay.

16 Continue on. 19 and 20 are admitted.
17 Continue on with your questions.

18 ---

19 (Whereupon, Union's Exhibit 19, Email 4/30/19,
20 was admitted.)

21 (Whereupon, Union's Exhibit 20, Email 4/30/19,
22 was admitted.)

23 ---

24 ATTORNEY MANZOLILLO: I have no
25 further Direct.

1 HEARING EXAMINER: Oh, wow. We're
2 back to where we were. Go ahead.

3 ATTORNEY FARMER: All right. Just
4 give me a second.

5 ---

6 CROSS EXAMINATION

7 ---

8 BY ATTORNEY FARMER:

9 Q. Ms. Ackerman, I'm showing you what is
10 marked as Exhibit 3.

11 ---

12 (Whereupon, Employer's Exhibit 3, Questions, was
13 marked for identification.)

14 ---

15 THE WITNESS: Okay.

16 BY ATTORNEY FARMER:

17 Q. When you received the email from Dr.
18 Little, it had two attachments to it.

19 A. Uh-huh (yes).

20 Q. Did you look at those attachments?

21 A. I did.

22 Q. Okay.

23 What I'm showing you is Employer Exhibit
24 3. That was one of the attachments.

25 A. Yes.

1 Q. Is that right?

2 A. Yes.

3 Q. I'm going to show you what's Employer
4 Exhibit 4.

5 ---

6 (Whereupon, Employer's Exhibit 4, Transcript
7 4/10/19, was marked for identification.)

8 ---

9 THE WITNESS: Okay.

10 BY ATTORNEY FARMER:

11 Q. Was that the other attachment?

12 A. I think so. I don't remember if it was
13 the full manuscript or not.

14 Q. Okay.

15 A. I'm pretty sure it was.

16 Q. And in fact, I'm just going to show you
17 what we've marked as - what the Union has previously
18 marked as Employer Exhibit 20.

19 A. Uh-huh (yes).

20 Q. In the email, does it reference that it
21 attached the transcript of the information session
22 that EGSO held?

23 A. Yes.

24 Q. Okay.

25 Thank you.

1 A. Yes.

2 HEARING EXAMINER: Okay.

3 Any objections to 3 and 4?

4 ATTORNEY MANZOLILLO: Yes. I'm
5 objecting of the basis of not knowing the purpose of
6 their conclusion with the exhibit, if there's any
7 planned argument based on any of the content of
8 these exhibits. We have a right to have that
9 pointed out to us.

10 HEARING EXAMINER: Do you have a
11 response, ma'am?

12 ATTORNEY FARMER: Yes. There's - so
13 the Union claims that there was - that this email
14 was improper. It's a specific paragraph in the ULP.
15 And if there's an allegation being made about this
16 email, I believe that there needs to be a complete
17 copy of what was being said if there's a claim that
18 this was threatening and coercive.

19 HEARING EXAMINER: Yeah. Overruled.
20 It's admitted. 3 and 4 are admitted.

21 ---

22 (Whereupon, Employer's Exhibit 3, Questions, was
23 admitted.)

24 (Whereupon, Employer's Exhibit 4, Transcript
25 4/10/19, was admitted.)

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HEARING EXAMINER: Anything else with
this witness?

ATTORNEY MANZOLILLO: No.

HEARING EXAMINER: All right.

Ma'am, thank you for testifying.

THE WITNESS: Thank you.

HEARING EXAMINER: Next witness.

ATTORNEY MANZOLILLO: Steve Suway.

HEARING EXAMINER: Raise your right
hand for me.

STEVEN SUWAY,

CALLED AS A WITNESS IN THE FOLLOWING PROCEEDING, AND
HAVING FIRST BEEN DULY SWORN, TESTIFIED AND SAID AS
FOLLOWS:

HEARING EXAMINER: Spell your name for
us.

THE WITNESS: Steven, S-T-E-V-E-N.
Suway, S-U-W-A-Y.

HEARING EXAMINER: Okay.

Go ahead.

DIRECT EXAMINATION

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BY ATTORNEY MANZOLILLO:

Q. And Steve, are you a graduate student at the University of Pittsburgh?

A. Not currently, no.

Q. Okay.

Were you as of the period of the election?

A. I was.

Q. Did you just graduate?

A. At the end of April. Correct.

Q. Congratulations.

A. Thank you.

Q. Okay.

So I just want to ask you, first of all, did you receive - I'm going to point you to Union Exhibit 18. Did you receive this email?

A. Yes, I did.

Q. And can you just tell us what STEM stands for?

A. STEM stands for science, technology, engineering and mathematics.

Q. So it's your understanding this went to the STEM students, this email?

A. Correct.

1 Q. Okay.

2 I'm going to show you another exhibit.
3 This was marked Union Exhibit 21.

4 ---

5 (Whereupon, Union's Exhibit 21, List, was
6 marked for identification.)

7 ---

8 BY ATTORNEY MANZOLILLO:

9 Q. Can you describe to us what that is?

10 A. This is a list of students in the
11 Chemical and Petroleum Engineering Department who
12 were eligible to vote during the election.

13 Q. And you compiled this list?

14 A. I did.

15 Q. Okay.

16 And so there were a total of how many?

17 A. I believe it was 48. It looks like maybe
18 it's - I'm not sure if this is a complete list.

19 Q. Yeah.

20 ATTORNEY MANZOLILLO: Okay.

21 We have another issue with - issue
22 with a copy of an exhibit. This exhibit should be
23 two sided.

24 HEARING EXAMINER: What we're going to
25 do is you'll submit to me by email -

1 ATTORNEY MANZOLILLO: Okay.

2 HEARING EXAMINER: - a PDF of the
3 complete Exhibit 21.

4 ATTORNEY MANZOLILLO: Okay.

5 And I will do that, and I have nothing
6 further for this witness.

7 HEARING EXAMINER: Can't Cross him on
8 it. Sorry. You can't Cross him on an incomplete
9 exhibit.

10 ATTORNEY FARMER: Yes.

11 HEARING EXAMINER: Do you have any
12 objection to 21?

13 ATTORNEY MANZOLILLO: We'll obviously
14 copy you on the same thing.

15 ATTORNEY FARMER: Yeah.

16 ATTORNEY MANZOLILLO: We can show you
17 the -.

18 ATTORNEY FARMER: Got you. Okay.

19 I mean, the student is, for what he
20 has claimed it to be, I think it's fine.

21 HEARING EXAMINER: All right.

22 So 21 is admitted with the
23 understanding that University will send to me for
24 the official record a PDF.

25

1 (Whereupon, Union's Exhibit 21, List, was
2 admitted.)

3 ---

4 ATTORNEY MANZOLILLO: You mean the
5 Union.

6 HEARING EXAMINER: Yeah, the Union.
7 The Union will send - why are they both U? The
8 Steelworkers will send to me a PDF for the document
9 by the end of the week.

10 All right. Cross?

11 ATTORNEY FARMER: Yes, thank you.

12 ---

13 CROSS EXAMINATION

14 ---

15 BY ATTORNEY FARMER:

16 Q. What - you said you graduated at the end
17 of April of 2019?

18 A. Correct.

19 Q. And what program were you in?

20 A. Neurobiology.

21 Q. So why did you compile Union Exhibit 21?

22 A. To establish the impact of the email sent
23 to the department.

24 Q. What department?

25 A. The Chemical Engineering Department.

1 Q. Are you part of -?

2 A. Chemical and Petroleum.

3 Q. Are you part of the Chemical Engineering
4 Department?

5 A. No, I'm not.

6 Q. Okay.

7 So the information contained on Union
8 Exhibit 21, you don't have any firsthand knowledge
9 of?

10 A. I guess not.

11 Q. Okay.

12 So how did you compile Union Exhibit 21?

13 A. We maintain a database. The organizers
14 maintain a database of the potential eligible voters
15 including their departments.

16 Q. And where did you get that information
17 about their departments?

18 A. It's offered on the Pitt website.
19 There's the directory. There's permanent listings.

20 Q. So you looked people up in the Pitt
21 directory, and then you compiled this list of the
22 people who the Union believed were in Chemical and
23 Petroleum Engineering?

24 A. That information was compiled. I just
25 pulled from it.

1 Q. Okay.

2 So you didn't even - you didn't even
3 enter this information in the database or look it up
4 yourself?

5 A. No.

6 Q. Okay.

7 So you went into a database that was
8 compiled by the Union of people who were in Chemical
9 and Petroleum Engineering who are eligible voters?

10 A. Correct. It's maintained by the
11 organizers.

12 Q. Okay.

13 And then you just basically pulled the
14 list of who the organizers believe are people in
15 Chemical and Petroleum Engineering who are eligible
16 to vote?

17 A. That's correct.

18 Q. Did you check the name of the students
19 against the official eligibility list?

20 A. I did.

21 Q. Okay.

22 But the eligibility list, of course,
23 doesn't have the Department information?

24 A. Correct.

25 Q. Okay.

1 And when did you do this?

2 A. A couple days ago.

3 Q. For purposes of this year?

4 A. Correct.

5 Q. So do you have any firsthand knowledge of
6 Union Exhibit 20?

7 A. Sorry. Which is 20?

8 Q. That's the email from Dr. Little.

9 A. I was not sent that email.

10 Q. Because you're not in - were never in
11 Chemical and Petroleum Engineering?

12 A. Correct.

13 Q. And I'm sorry. Did you receive Union
14 Exhibit 19?

15 A. And which is that?

16 Q. The email from EGSO.

17 A. This was also for the Chemical
18 Engineering Department? I'm sorry. I'm not sure
19 what you're referring to.

20 Q. No it's - do you know what EGSO is?

21 A. No. I think it was stated, but I don't
22 recall.

23 Q. Okay.

24 A. So I guess my answer is no.

25 Q. So I have - so the list that you compiled

1 as Union Exhibit 21, do you know how many of these
2 students, if any, actually voted?

3 A. No, I don't.

4 ATTORNEY FARMER: I have nothing
5 further.

6 HEARING EXAMINER: Redirect?

7 ATTORNEY MANZOLILLO: I have nothing
8 further.

9 HEARING EXAMINER: I'm losing it a bit
10 at the end of the day. What were you trying to show
11 with this list?

12 ATTORNEY MANZOLILLO: The exposure of
13 people - the number of people exposed to the -
14 emails from Little, Exhibit 20.

15 HEARING EXAMINER: All right.
16 Understood. All right. You can step down, sir.

17 Nothing else for today?

18 ATTORNEY MANZOLILLO: No.

19 HEARING EXAMINER: Would you like to -
20 call anyone out of order that's here?

21 ATTORNEY FARMER: No.

22 HEARING EXAMINER: Okay.

23 Because we have an hour and half until
24 -.

25 ATTORNEY FARMER: So are you done?

1 ATTORNEY MANZOLILLO: With the
2 exception of -.

3 ATTORNEY FARMER: But you're done in
4 your -.

5 ATTORNEY MANZOLILLO: We have somebody
6 -.

7 ATTORNEY FARMER: Tomorrow at 10:00.
8 Right.

9 HEARING EXAMINER: I know we have
10 somebody at ten o'clock.

11 ATTORNEY FARMER: Yes, who we're
12 taking out of order.

13 HEARING EXAMINER: Right.

14 ATTORNEY FARMER: It's fine. And we
15 will plan - I believe that we both plan to put on a
16 witness, but we thought the Union was going to take
17 all day. So we don't have -.

18 HEARING EXAMINER: All right.

19 Well, we've been going since 9:00 so
20 we can stop. All right. Off the record and we'll
21 be back here at nine o'clock.

22 * * * * *

23 HEARING CONCLUDED AT 3:36 P.M.

24 * * * * *

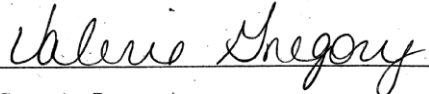
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CERTIFICATE

I hereby certify that the foregoing proceedings, hearing held before Hearing Examiner Helmerich, was reported by me on 05/14/19 and that I, Valerie Gregory, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 11th day of June, 2019



Court Reporter

Valerie Gregory