

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

ANNE L. SPERRY d/b/a CENTRAL
PACIFIC SPRINKLER COMPANY

Employer

and

Case 20-RD-2415

SHANE M. MORO

Petitioner

and

ROAD SPRINKLER FITTERS
LOCAL UNION NO. 669, U.A.,
AFL-CIO

REPORT ON CHALLENGED BALLOTS AND OBJECTIONS

On September 8, 2005, the Regional Director for Region 20 of the National Labor Relations Board (Board), issued a Report on Challenged Ballots and Objections in the captioned matter, and, finding that the challenged ballots and election objections raised substantial and material issues of fact that could best be resolved by a hearing, ordered that a hearing be conducted before an administrative law judge.

The hearing was held on October 5, 2005, in Sacramento, California. The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the Employer and counsel for the Union. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

Findings of Fact

1. Background

The decertification petition in Case 20-RD-2415 was filed on May 10, 2005.¹ Pursuant to a Stipulated Election Agreement approved by the Acting Regional Director on June 2, an election was held on June 10 among the Employer's employees in a unit comprised of all journeymen and apprentice sprinkler fitters. Upon the conclusion of the election the ballots were impounded pending disposition of a related unfair practice charge. On August 5, the ballots were counted, and the tally of ballots reflected that no ballots were cast for the Union, that 4 ballots were cast against the Union, that there were 5 challenged ballots, and that the

¹ All dates or time periods herein are within 2005 unless otherwise indicated.

challenged ballots were sufficient in number to affect the results of the election. On August 12, the Union filed timely objections to the election, as follows:

.5 Objection No. 1: During the critical period, the Employer, through its superintendent promised at least one bargaining unit employee that it would give the employees raises after the election if the Union was voted out.

10 Objection No. 2: During the critical period, the Employer, through its superintendent promised at least one employee that it would give the employees benefits after the election if the Union was voted out.

15 On September 30, the Regional Director issued a Stipulation Resolving Challenged Ballot to reflect the parties' stipulation that the challenge to one of the 5 challenged ballots should be sustained. Accordingly, as the four remaining challenged ballots were not sufficient in number to affect the results of the election, the challenged ballot issues became moot.

2. The Election Objections

20 As noted above, the Union's election objections allege that during the critical period the Employer's superintendent promised at least one bargaining unit employee that employees would receive raises and benefits after the election if the Union was voted out.

25 In support of these objections the Union subpoenaed and called as a witness Isaac Barnes, a current employee of the Employer, who had voted unchallenged in the election. Barnes began working for the Employer in late May, and voted in the election on June 10. Barnes testified that on the morning of August 9, some two months after the election, he abruptly quit his employment as a result of a verbal confrontation with Bill Conrado, the Employer's superintendent, concerning Barnes' attendance deficiencies. According to Barnes, Conrado would send him home if he arrived late to work, and Barnes became upset and quit when Conrado called him into the office and "tried to talk...some sense into me, I got upset with him."

30 Barnes testified that he immediately phoned Union Organizer Chuck Frame to ask if Frame could refer him to any jobs. Frame suggested that they meet for breakfast that very morning to discuss the matter, and they did so. Barnes testified that while he was really only interested in job prospects, Frame seemed interested in obtaining information regarding the election. Believing that Frame would be more receptive to helping him find a job if he would assist Frame by providing certain information, and, in addition, being very upset with Conrado, Barnes testified that he told Frame "pretty much anything he wanted to hear." In this context, Barnes admits answering Frame's questions about whether he had been promised benefits. Thus Barnes, in replying to Frame's inquiries, told Frame that Conrado had promised him benefits and raises. Barnes testified, however, that what he told Frame was simply not true, and that in fact Conrado did not promise him anything prior to the election. Further, according to Barnes, Frame pulled out a piece of paper and asked Barnes to write down everything he had told Frame. Barnes refused, "Because I knew it was BS and I didn't want it to get to that, I just wanted a job."

A day or two after this meeting with Frame, Barnes called Conrado and asked for his job back. He assured Conrado that his attendance would be satisfactory, and Conrado agreed to rehire him. He also mentioned that after quitting he had gone to the Union to look for work. It appears that Barnes returned to work about August 12, worked a few days, and then took a week off for personal reasons; thereafter he has worked without interruption. Barnes testified

that about a week after he had returned to work, Conrado came out to his job site and asked what he had done when he quit “because the votes have been held up.”² Barnes simply said that he had talked with a union representative about getting a job.

.5 Union Organizer Frame testified that during the meeting Barnes told him he quit because he was unhappy with the Employer “because he was promised things that he didn’t get and part of it was benefits, because he just had a new baby, and the other one was a raise.” Barnes told him that the promise about a raise had been made by Conrado. Frame testified he does not recall whether Barnes told him the promise about benefits was made by Conrado or by the
10 Employer’s owner, Anne Sperry, or the Employer’s manager, Clark Sperry. Regarding raises, Barnes said Conrado told him “that once the union was voted out that they can negotiate a raise with anybody, but won’t give them one until the union’s gone.” Frame testified that he is not sure if he asked Barnes during the meeting to sign a written statement, but did ask Barnes in the parking lot after the meeting whether Barnes “wanted to stand up and let the NLRB know”
15 what he had been promised. Apparently, Barnes declined.

Frame testified that he did not ask and Barnes did not tell him when the promises were made.

20 Superintendent Conrado testified that he made no promises to Barnes prior to the election regarding benefits or raises. The Petitioner in this case, employee Shane Moro, testified that he knew of no promises that had been made to employees by supervisors or managers regarding raises or benefits prior to the election. Ann Sperry and Clark Sperry both testified that they never spoke to any of the employees about increased raises or benefits in the
25 event the Union was voted out.

3. Conclusions and Recommendations

Assuming *arguendo* that Superintendent Conrado did tell Barnes he could expect
30 increased wages and benefits if the Union was voted out, the record does not show that such remarks were made during the critical pre-election period. As noted above, the election was held on June 10, and the ballots were not counted until August 5. Thus, the ballots had been impounded for nearly two-months, and during this interim period the results of the election were unknown. Conrado’s alleged statement to Barnes was “that once the union was voted out that
35 they can negotiate a raise with anybody, but won’t give them one until the union’s gone.” Significantly, Frame testified that he did not ask Barnes when Conrado made such a statement; nor does the record otherwise indicate when such a statement may have been made since both Barnes and Conrado testified that in fact no such statement was ever made. Relying on *Millard*

40 ² I credit Barnes’ testimony in this regard over the confusing testimony of Conrado, and find that this conversation occurred *after* Conrado had learned of the election objections implicating him; thus, it is clear that at the time of the conversation Conrado believed Barnes had provided the union representative with information forming the basis of the Union’s election objections.
45 Conrado testified that at some point he did ask Barnes whether he had gone to the Union and done “something stupid,” namely “lie” to the union representative. Although Conrado’s account of the conversation differs from Barnes’ account, I find both witnesses were recounting the same conversation, as the record does not indicate that there were two such conversations. Conrado placed the conversation both at the time he rehired Barnes (apparently prior to knowing about the election objections), *and* at about the same time he learned of the election objections. His confusing and contradictory testimony indicates that his recollection of the time sequence is simply inaccurate, and therefore I credit Barnes on this issue.

Refrigerated Services, Inc., 345 NLRB No. 95, slip op. at 2 (2005), the Union argues that since the alleged statement itself referenced a “vote,” an inference may be drawn that it was made during, rather than before or after, the critical period prior to the election. However, given the scenario of events herein, such a conclusion does not necessarily follow. Thus, if Conrado
 .5 made such a statement at all, it is just as likely that he made the statement after the June 10 election date, while the ballots were impounded and the results of the vote were unknown, as during the critical period before the election.

The Union, as the objecting party, has the burden of proof and must support its election
 10 objections with convincing evidence. *Consumers Energy Co.*, 337 NLRB 752 (2002). I find that the evidence presented does not establish that Conrado’s alleged statement was made during the critical pre-election period. Accordingly, I recommend that the Union’s objections be dismissed. Further, as it has been stipulated that the challenged ballots are no longer sufficient
 15 in number to affect the results of the election, I recommend that the Regional Director certify the results of the election.

Within fourteen (14) days from the issuance of this report, any party may file with the Board in Washington, DC an original and eight (8) copies of exceptions to this report with supporting brief, if desired. Immediately upon filling exceptions, the party filing same shall serve
 20 a copy thereof, together with a copy of any brief filed, on the other parties, Administrative Law Judge, and Regional Director. A statement of service shall be made to the Board simultaneously with the filing of exceptions. If no party files exceptions, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

25 Dated: Washington, DC November 9, 2005

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 Gerald A. Wacknov
 Administrative Law Judge