

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

ECOLOGY SERVICES, INC. ECOLOGY SERVICES  
CURBSIDE COLLECTION SERVICES, LLC,  
ECOLOGY SERVICES ANNE ARUNDEL COUNTY  
CARTAGE, LLC, A SINGLE EMPLOYER

Employer

and

CASE 5-RC-16235

TEAMSTERS LOCAL UNION NO. 311,  
A/W INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, AFL-CIO

Petitioner

**REPORT ON OBJECTIONS**

Pursuant to a Stipulated Election Agreement<sup>1</sup> approved by the undersigned on June 30, 2008,<sup>2</sup> a secret-ballot election was conducted on July 30 with the following results:

Approximate number of eligible voters	192
Void ballots	3
Votes cast for Petitioner	71
Votes cast against participating labor organization	77
Valid votes counted	148
Challenged ballots	0
Number of valid votes counted plus challenged ballots	148

Petitioner filed timely objections to conduct affecting the results of the election on August 5.<sup>3</sup>

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<sup>1</sup> The unit is: All full-time and regular part-time drivers and helpers employed by Ecology Services, Inc., Ecology Services Curbside Collection Services, LLC, and Ecology Services Anne Arundel County Cartage, LLC, a single employer, at its Pasadena, Maryland facility; but excluding dispatchers, mechanics, office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

<sup>2</sup> Unless otherwise noted, all dates are 2008.

<sup>3</sup> The petition was filed on June 18. The undersigned will consider on its merits only that alleged interference that occurred during the critical period that begins on and includes the date of the filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

## **THE OBJECTIONS**

### **Objection 1**

Petitioner has requested withdrawal of Objection 1. Accordingly, the undersigned approves the withdrawal of Objection 1.

### **Objection 2**

During the critical period, on the date of the election, the Employer, by its supervisors and agents, engaged in surveillance of lawful Union handbilling activity. By this conduct, the Employer improperly affected the free choice of the employees in voting for or against representation by the Petitioner.

In support of Objection 2, Petitioner relies on the statement of its organizer, Kenneth Kelm. Mr. Kelm states that he, along with Petitioner's President Neil Dixon and Business Agent Penny Arhar, were distributing handbills to employees arriving at work, outside the gate of the Employer's facility, during the hours of 5:00 am to 6:30 am, on July 30, 2008. Mr. Kelm further states that two individuals, a white female named Ruth and a black male named Howard<sup>4</sup> who identified themselves as supervisors and managers of the Employer, were standing in the road watching the Union representatives, observing which employees took the handbills.

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

### **Objection 3**

The Employer did not comply with the requirement to post the Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election. This contributed to the fact that only approximately 75% of eligible employees voted.

In support of Objection 3, Petitioner submitted the following statement:

I am an employee of Ecology Services. I worked on Monday, July 28, 2008 and Tuesday, July 29, 2008. I entered the trailer at least two times on both days – one time in the morning to punch in and the other time in the afternoon to punch out. The NLRB Notice to Employees was not posted on either day, on any of the times that I was in the trailer. The first time that I saw the Notice to Employees posted near the white

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<sup>4</sup> Last names are unknown.

scratchboard and another Notice to Employees posted on the opposite wall was on the morning of the election, July 30, 2008.

This statement is signed by twelve employees, including Employees A, C and E.

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

#### **Objection 4**

The Employer instructed certain employees that they did not have to work on the day of the election in order to dissuade the employees from exercising their right to vote. This contributed to the fact that only approximately 75% of eligible employees voted.

In support of Objection 4, Employee A states that his/her supervisor instructed him/her that it was not mandatory for him/her to come in to vote on July 30 and that s/he was told s/he would be off work with pay on July 30.<sup>5</sup>

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

#### **Objection 5**

The Employer did not notify employees that the day of the election was a work day until after employees completed their work day on the day before the day of the election, in order to dissuade the employees from exercising their right to vote.

In support of Objection 5, Petitioner relies on the statements of Employees A, C, D and E.

Employee A states that at 1:30 p.m. on July 29, s/he witnessed another Unit employee write on the white bulletin board in the trailer that it was mandatory for employees to work on Wednesday July 30. At the time this employee wrote this on the board, approximately 70% of the employees had already gone home for the day. Employees A, C, D and E state that on the afternoon of Tuesday July 29, there was no notice written on the white bulletin board in the trailer indicating that it was mandatory for employees to work the next day of July 30, the date of the election. These employees state the first time they saw a written notice that July 30 was a work day was on the morning of July 30. The words "Everyone Must Work Tomorrow 7/30/08, Mandatory" and "Todos Trabajan Manana" were written on the board.

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<sup>5</sup> The Tally of Ballots reflects that 78.6% of the eligible employees voted

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

**Objection 6**

The Employer provided an inaccurate Excelsior list that contained approximately 24 wrong addresses. This was an effort to prevent the Petitioner from communicating with these employees, which constituted approximately 12% of the eligible employees.

In support of Objection 6, Petitioner relies on the statement of Petitioner's President Neil E. Dixon. Mr. Dixon states that after receiving the Excelsior list, he sent out a mailing to all eligible voters and thirty of those letters were returned due to wrong addresses.<sup>6</sup>

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

**Objection 7**

The NLRB refused to allow employees that were in line at 6:00 a.m. to vote during the 5:00 a.m. to 6:00 a.m. session of the election on July 30, 2008, thereby disenfranchising voters.

In support of Objection 7, Employee B states that on the day of the election at 6:30 a.m., the NLRB Board agent instructed people standing in the voting line that they could not vote because the voting time was over.

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

**Objection 8**

The NLRB Agent and an eligible voter got into a verbal confrontation in front of other eligible voters which spoiled the laboratory conditions under which NLRB elections must be run.

In support of Objection 8, Petitioner relies on the statement of Employee B, which states that on July 30, during the election, there was a loud, face to face confrontation between the Board agent and an employee, while other employees were in line to vote.

The Employer denies the alleged conduct occurred and/or that the conduct is objectionable.

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<sup>6</sup> This represents 15.5% of the eligible employees

As a result of the filing of Objection 8, I initiated an investigation into the conduct of the election. With regard to the confrontation described in Objection 8, the Region's investigation revealed that a large individual, later identified as an employee, approached the Board agent during the first polling period. While standing very close to the Board agent, this individual, in a loud voice, and using profanity, took issue with the manner in which the Board agent had spoken to him. At times, the individual leaned closer toward the Board agent so as to give the Board agent the impression that the individual might strike him. When the Board agent asked the individual to leave, he did so. Approximately 20 employees, waiting in line to vote, witnessed this confrontation.

### **Additional Unalleged Conduct**

As a result of the Region's investigation into the incident described in Objection 8, I became aware of additional conduct in and around the polling area, during the voting period, which I must consider in evaluating the integrity of the election, and ultimately the question of whether the election should be set aside. Although this additional conduct is not specifically set forth in Petitioner's objections, "where the Regional Director's investigation pursuant to timely filed objections uncovers matter relating to the conduct of a Board agent or the functioning of Board processes sufficient to cause the election to be set aside, the Board will consider such matter even if not within the scope of the objections timely filed." *Richard A. Glass Co.*, 120 NLRB 914, 916 (1958).

There were two scheduled voting sessions: a one-hour period from 5 to 6 AM; and a two-hour period from 1 to 3 PM. In reaching their agreement over the election arrangements, the parties anticipated that a small group of drivers would vote during the morning session, and the large bulk of the remaining employees would vote during the afternoon session. Contrary to anyone's expectation,<sup>7</sup> almost all the voters appeared at the morning session. What followed was the result of too many employees

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<sup>7</sup> The Employer speculates the employees all showed up at the morning session because they were encouraged to do so by the Petitioner and its supporters, that Petitioner's motive for doing so was to create the very atmosphere "where it could fabricate a 'laboratory conditions' objection to keep in its back pocket," and Petitioner should not be allowed to profit by it. No evidence was submitted to support this assertion. I would further note the conduct that is the subject of consideration herein was not specifically raised by the Union in its objections, rather it became evident through the investigation that I initiated.

attempting to vote in too short a time, with an insufficient number of Board personnel to control all the activity in and around the polling area.

The election was held in a trailer on the Employer's grounds, containing a time clock, water cooler, microwave, and two administrative/supervisory offices. The trailer appeared to be the location from which the Employer ran its operations for that facility. In addition to the high volume of voters, the Board agent coped with a large number of Spanish-speaking employees who did not speak or understand English and had difficulty identifying themselves, and a large number of voters who had to be challenged. This slowed down the voting process and caused a long backup of employees waiting in line that extended outside the trailer. Throughout the polling period, employees entered the trailer to punch in at the time clock, get water, and use the microwave, and the Board agent was not successful in stopping this activity. Employees congregating around the outside of the trailer commingled with those waiting in line to vote, and refused several requests by the Board agent to move away from the trailer.<sup>8</sup> Employees waiting in line to vote conversed with each other, and those who spoke Spanish apparently did not understand, and did not comply, with the Board agent's requests to stop talking. Campaign leaflets were continually deposited all over the polling area, and the Board agent's efforts to remove such materials promptly were only marginally successful due to all the other activities he was attempting to monitor. At the conclusion of the morning polling period, approximately 50 employees still remained in line to vote, and the Board agent extended the polling period. It was after this point that the confrontation described in Objection 8 occurred. Shortly after that confrontation, other employees entered the trailer and went into one of the administrative/ supervisory offices. When the Board agent asked them to leave, they cursed at him on their way out; this too was witnessed by employees waiting in line to vote.

"In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish those conditions; it is also our duty to determine whether they have been fulfilled. When, in the rare extreme case, the standard drops too low, because of our fault or that of

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<sup>8</sup> Employees responded to one such attempt with cursing.

others, the requisite laboratory conditions are not present and the experiment must be conducted again.”  
*General Shoe Corp.*, 77 NLRB 124, 127 (1948). It is the responsibility of the Board to ensure that its elections are properly conducted; the Board’s role in the conduct of elections must not be open to question. *New York Telephone Co.*, 109 NLRB 788, 790 (1954). The Board has long held that a Regional Director may set aside an election based on conduct discovered during his investigation.<sup>9</sup> However, once a Regional Director discovers evidence which shows that the election has been tainted, he has no discretion to ignore such evidence, and it is reversible error if he fails to set aside the election.<sup>10</sup> Where there is an irregularity which concerns an essential condition of an election and such irregularity causes question of a sufficient number of ballots to affect the outcome of the election, in order to maintain the standards of the Board, the only alternative is to set the election aside and direct a new one.<sup>11</sup>

While the authority of the Regional Director to set aside an election is clear, including in those instances where the alleged misconduct was not specifically raised by any party’s objections, my authority in this regard is one that I do not consider lightly. But the atmosphere in which this election was conducted, considered in light of the narrowness of the results, is one that I find deeply troubling. Without apportioning blame on any party or any individual, the totality of the circumstances surrounding the conduct of this election shows the Board agent was overwhelmed by the circumstances and lost control of the election process. The conduct of a Board agent must be beyond reproach and must not tend to destroy confidence in the integrity of the election process.<sup>12</sup> Conduct by a Board agent which tends to destroy confidence in the Board’s election process, or which could reasonably be interpreted as impugning the election standards we seek to maintain, is a sufficient basis for setting aside the election.<sup>13</sup> It is clear in the instant case that the Board agent was overwhelmed by circumstances beyond his control, which led to the Board’s loss of control over the polling process. The facts show this was evident to the

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<sup>9</sup> *American Safety Equip. Corp.*, 234 NLRB 501 (1978); see also *White Plains Lincoln Mercury, Inc.*, 288 NLRB 1133, 1136 (1988). See also *Richard A. Glass Co.*, 120 NLRB at 916

<sup>10</sup> *American Safety*, NLRB at 501.

<sup>11</sup> *Whatcom Security Agency, Inc.*, 258 NLRB 985 (1981), citing *New York Telephone Co.*, 109 NLRB 788 (1954).

<sup>12</sup> *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967).

<sup>13</sup> *Kerona Plastics Extrusion Co.*, 196 NLRB 1120 (1972).

voters, who responded to the Board agent's multiple attempts to reassert control with noncooperation, and even cursing. The Board agent's loss of control of the election process was compounded by the conduct described above in Objection 8. Thus, a loud and threatening confrontation took place in the polling area, between the Board agent and an employee, in the presence of employees who had not yet cast their ballots. Such intimidating conduct, in the polling area itself, must be considered in terms of its potential to affect employee free choice, as well as its impact on the confidence of all in the election process.

In considering whether the circumstances herein warrant setting aside the election, it is not necessary to place blame on any party or any individual.<sup>14</sup> An objective assessment of the conduct of the election shows it fell far short of the Board's standards for laboratory conditions. Examining the closeness of the results, and all the conduct in and around the polling area, including the conduct in Objection 8 which my own investigation confirms took place, I find the cumulative effect of all the conduct had great potential to have affected the outcome of the election.<sup>15</sup> Further, it was of a nature such as to destroy confidence in the integrity of the election itself, for both the employees and the parties. Such findings necessitate setting aside the election. Accordingly, I recommend setting aside the election and directing a second election, based on my findings relevant to Objection 8 and the Region's investigation of the additional unalleged conduct.

### **SUMMARY**

In summary, I approve the withdrawal of Petitioner's Objection 1. I have recommended the election be set aside and a second election be directed based on my findings in connection with Objection 8 and the additional unalleged conduct revealed through the Region's investigation. In view of my recommendation, it is unnecessary to rule on the merits of Petitioner's Objections 2 through 7.

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<sup>14</sup> cf. *Al Long, Inc.*, 173 NLRB 447, 448 (1969).

<sup>15</sup> Over 21% of the bargaining unit did not vote. While this could be explained by any of a number of reasons, it could also have been due to the conditions in and around the polling area itself.

However, in the event my recommendation is not accepted by the Board, I would direct a hearing on all the objections, including the additional unalleged conduct described herein.

Dated at Baltimore, Maryland this 29th day of August 2008.

(SEAL)

/s/WAYNE R. GOLD

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Wayne R. Gold, Regional Director  
National Labor Relations Board, Region 5  
Appraiser's Store Building  
103 S. Gay Street, 8<sup>th</sup> Floor  
Baltimore, MD 21202

Under provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report, if filed, must be filed with the Board in Washington, D.C. Under provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of objections and which are not included in the Report, are not a part of the record before the Board unless appended to exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of the evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding. Exceptions must be received by the Board in Washington by **September 12, 2008**. The exceptions may be filed electronically through E-Gov on the Board's website, [www.nlr.gov](http://www.nlr.gov), but may not be filed by facsimile.

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