

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

VALLEY POWER SYSTEMS NORTH, INC.  
Employer

and

Case 32-RD-1533

TERRANCE J. MECHAM, AN INDIVIDUAL  
Petitioner

and

OPERATING ENGINEERS LOCAL UNION NO. 3,  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, AFL-CIO  
Union

*Lawrence H. Stone, Esq., (Jackson Lewis LLP)*  
of Los Angeles, California, for the Employer.

*Terrance Mecham, Pro Se,* of Alameda, California,  
for the Petitioner.

*Michael D. Nelson, Esq., (Law Offices of Michael D. Nelson)*  
San Francisco, California, for the Union.

**ADMINISTRATIVE LAW JUDGE'S REPORT ON OBJECTIONS**

Jay R. Pollack, Administrative Law Judge: Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director for Region 32 entered a Supplemental Decision and Notice of Hearing, and ordered a hearing before an Administrative Law Judge. I heard the matter in Oakland, California, on February 25, 2009.

The Representation Petition in this matter was filed by Terrance J. Mecham, an individual, herein called the Petitioner or Mecham, on April 20, 2007. On November 7, 2008, the Regional Director Region 32 issued a Decision and Direction of Election ordering an election in the following unit:

All persons regularly employed by Valley Power Systems North, Inc. at its facility located at 1775 Adams Ave., San Leandro, California, including only those classifications set out in Section 07.00.00 of the November 1, 2004 through October 31, 2007, collective bargaining agreement between the Union and Sierra Detroit Diesel Allison, d/b/a Stewart and Stevenson (leadmen/foremen, power generation technicians, field servicemen, shop mechanics, scheduled service technicians, parts leadmen/foremen. Partsmen,

warehousemen, utilitymen yardmen, steam cleaners, stock clerks, packers, deliverymen, and warehousemen trainees) excluding all other employees, office and clerical employees, guards, salesmen, professional employees, technical and engineering employees, shop maintenance and janitorial employees, plant sweeper and sweeper operations, grounds keepers, and supervisors as defined in the LMRA of 1947 (as amended).

On December 5, 2008, an election by secret ballot was conducted on in the appropriate unit above.

The Tally of Ballots served on all the parties at the conclusion of the balloting showed the following results:

Approximate number of eligible voters	30
Number of void ballots	0
Number of votes cast for Operating Eng. Local # 3	0
Number of votes cast against participating labor organization	8
Number of challenged ballots	22
Number of valid votes counted plus challenged ballots	30

Thereafter, Operating Engineers Local Union No.3, International Union of Operating Engineers, AFL-CIO, (the Union) filed timely objections to the election; a copy of which was served on the Union by the Region. On February 11, 2009, the Regional Director issued a Supplemental Decision and Notice of Hearing in which he sustained 14 of the 22 challenged ballots. The Director overruled the challenges to six of the challenged ballots and made no ruling as to the remaining two challenges. The Director dismissed the Union’s objections to the election except one objection which was set for hearing. The Regional Director set for hearing the following objection filed by the Union:<sup>1</sup>

The Petitioner kept lists of which employees voted in the NLRB election destroying the laboratory conditions necessary for the conduct of a fair election.

The Union presented Michael Croll, business representative/organizer, who testified that he served as the Union’s observer at the election. Croll testified that during the election he heard a beeping sound and then observed the Petitioner, who served as his own observer, holding a cell phone. Croll objected and the Board agent told the petitioner to turn off the phone. The Union contends that the petitioner was texting the names of voters into his phone.

However, Mecham, the Petitioner, testified that his only cell phone does not have texting capacity. Mecham credibly testified that after all the voters had voted, he turned on the phone to ascertain the time of day because he does not wear a watch. When Croll objected, Mecham turned off the phone. Mecham did not text the names of voters into the phone.

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<sup>1</sup> The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits, with due regard for the logic of probability, the demeanor of the witnesses, and the teachings of *NLRB v. Walton Manufacturing Company*, 369 U.S. 404, 408 (1962). As to those witnesses testifying in contradiction to the findings herein, their testimony has been discredited, either as having been in conflict with credited documentary or testimonial evidence or because it was in and of itself incredible and unworthy of belief.

Board policy has long prohibited the keeping of lists of persons who have voted in an election. *International Stamping Co.*, 97 NLRB 921 (1951). Observers may keep a list of those they intend to challenge but may not keep lists of those voting. *Cerock Wire & Cable Group*, 273 NLRB 1041 (1984). See also *Avante at Boca Raton, Inc.*, 323 NLRB 555 (1997). While the Union contends that Mecham may have made a list in his telephone, the credible evidence reveals that he did not. Rather, after the voters had voted, Mecham turned on his phone to check the time. When told to turn off the phone, Mecham did so. The phone did not have texting ability and Mecham did not type any list into the phone. Accordingly, this objection is dismissed.

### Conclusions and Recommendations

I recommend that the Union's objections to conduct affecting the results of the election be overruled and that the results of the election be certified.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended:

### ORDER<sup>2</sup>

The Union's objections to conduct affecting the results of the election in the above matter are overruled. The Regional Director for Region 32 shall certify the results of the election.

Dated, Washington, D.C. March 23, 2009

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Jay R. Pollack  
Administrative Law Judge

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<sup>2</sup> Any party may, under the provisions of Sec. 102.69 of the Board's Rules and Regulations, file exceptions to this Report with the Board in Washington, D.C., within fourteen (14) days from the issuance of this Report. Immediately upon filing of such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the Regional Director. Exceptions must be received by the Board in Washington, D.C. by April 6, 2009.