UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

AFFILIATED COMPUTER SERVICES, INC.	)	
Employer	)	
and	)	Case No. 29-RC-11709
COMMUNICATION WORKERS OF AMERICA	)	
Petitioner	)	

SUPPLEMENTAL DECISION ON OBJECTIONS

On January 13, 2009,[1] Communication Workers of America, herein called the Petitioner or the Union, filed a petition in this matter seeking to represent certain employees employed by Affiliated Computer Services, Inc., herein called the Employer or ACS.

Pursuant to a Decision and Direction of Election, issued by the undersigned on May 1, an election by secret ballot was conducted on May 28 among the employees in the following unit:

> All full-time and regular part-time customer service representatives ("CSRs") and clerks employed by the Employer in its tag processing department, violations department and correspondence department, all CSRs employed in the Employer's Staten Island walk-in center and the Staten Island call center, receptionists and facilities clerks employed in the facilities department, monitor clerks employed at the Staten Island call center, refund coordinators, NSF coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, payroll coordinators, junior reciprocity analysts, work leaders, correspondence department analysts, PA class mismatch transaction analysts, Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, Port Authority accounts analysts, all employed by the Employer at its facility located at 1150 South Avenue, Staten Island, New York, herein called the Staten Island facility, but excluding all other employees, managers, executives, supervisors

[1] All dates hereinafter are in 2009 unless otherwise indicated.

as defined in Section 2(11) of the Act, confidential employees, guards, trainers, junior systems analysts, performance monitoring analysts, Vector system test administrators, junior LAN administrators, junior and senior quality assurance analysts, junior business analysts, workforce analysts, senior systems analysts, report production leads, senior LAN administrators, deposit clerks employed at the Employer's facilities located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and all other employees employed by the Employer in locations other than Staten Island.

The ballots were impounded at the conclusion of the election because the Board had not ruled on the Employer's Request for Review of the Decision and Direction of Election. On June 18, the Board denied the Employer's Request for Review.

On June 26, the ballots were counted at the Regional Office. The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	293
Number of void ballots	1
Number of ballots cast for the Petitioner	144
Number of votes cast against participating labor organization	126
Number of valid votes counted	270
Number of challenged ballots	2
Number of valid votes counted plus challenged ballots	272

Challenges are not sufficient in number to affect the results of the election. A majority of the valid votes counted plus challenged ballots has been cast for the Petitioner.

On July 6, the Employer filed timely objections to conduct affecting the results of the election. The Employer's objections are attached hereto as Exhibit A.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Employer's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The

undersigned also caused an independent investigation to be conducted. The investigation revealed the following:

Objections Nos. 1, 2, 3, and 7

In its first objection, the Employer alleges that during the critical period prior to the election, the Petitioner physically and verbally intimidated, coerced, and threatened bargaining unit employees with injury and other acts of retribution, if they voted for the Employer in the election. In its second objection, the Employer alleges that during the critical period prior to the election, the Petitioner offered bargaining unit employees unlawful inducements to vote for the Petitioner. In its third objection, the Employer alleges that during the critical period, the Petitioner destroyed campaign literature prepared by the Employer before the Employer could distribute it to employees. In its seventh objection, the Employer alleges that during the critical period before the election, "just prior to the election," the Petitioner trespassed on the Employer's facility and disrupted an Employer-sponsored captive audience meeting for the purpose of coercing bargaining unit employees into voting for the Petitioner. The Petitioner asserts that these objections lack merit.

In support of its first objection, the Employer provided an affidavit from a unit employee employed at the Employer's Staten Island facility. According to this employee's affidavit, about one week prior to the election, s/he was wearing a "Vote No" button on the work floor. According to the affidavit, two "Union supporters verbally intimidated" the employee about the button. The affidavit continues, stating that the "Union supporters" were trying to draw the employee into an argument, and that the employee "ultimately had to walk away to avoid their continued intimidating behavior." The affidavit does not identify the Union supporters or provide any specific information regarding their "intimidating" behavior.

The Board has held that an objecting party must provide probative evidence in support of its objections; it is not sufficient to rely on mere allegation or suspicion. See Allen Tyler & Son, Inc., 234 NLRB 212, 212 (1978) ("In the absence of any probative evidence, [the Board] shall not require or insist that the Regional Director conduct a further investigation simply on the basis of a 'suspicious set of circumstances'"). In Audubon Cabinet Company, 119 NLRB 349 (1957), the employer filed objections alleging, inter alia, that the union had "threatened, intimidated, and coerced" employees. In its offer of proof, the Employer identified witnesses but did not provide any specific evidence about what would be their testimony. The Board found that this offer of proof was not sufficient to warrant further investigation: "Objections, to merit investigation by a Regional Director, must be reasonably specific in alleging facts which prima facie would warrant setting aside an election. . . . In our opinion, the mere allegation that the Petitioner threatened, intimidated, and coerced employees constitutes a general conclusion devoid of any specific content or substance, which fails to satisfy the Board's requirement of reasonable specificity in the filing of objections." Audubon Cabinet, 119 NLRB at 350-51. Here, the Employer has not provided any evidence that the conduct in question is attributable to the Petitioner, as the affidavit fails to identify the "Union supporters."[2] Further, the Employer has offered no evidence beyond its mere conclusory allegations that these unidentified individuals "verbally intimidated" an employee. Such evidence, lacking any specificity, is not sufficient to establish a prima facie case supporting an objection, and does not warrant further investigation under Board law.

With regard to its second, third, and seventh objections, the Employer has not produced any evidence showing that the Petitioner engaged in the conduct alleged therein. It is incumbent on the

[2] The Employer's evidence does not establish that these alleged intimidating comments were made by actual agents of the Union and not pro-union employees. Conduct of employees is generally not attributable to a party and must be evaluated under the Board's standard for third-party conduct. See In re Cornell Forge Co., 339 NLRB 733 (2003); Associated Rubber Co., 332 NLRB 1588 (2000). Third-party conduct may serve as a basis on which to set aside an election if that conduct is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free

party filing objections to provide evidence sufficient to prove a prima facie case within seven days of the date for filing objections. See Craftmatic Comfort Mfg. Corp., 299 NLRB 514 (1990). If the Regional Director does not receive timely evidence in support of objections, those objections should be overruled. See Star Video Entertainment L.P., 290 NLRB 1010 (1988). In order to support objections adequately, a party must do more than "rely on its bare allegations." Lange and Perkins LLC d/b/a The Daily Grind, 337 NLRB 655, 656 (2002). A party must at least identify its witnesses and provide a description of the evidence the named witnesses could provide. See id. In this case, the Employer has not provided any information in support of its second, third, and seventh objections.

The Employer has failed to provide sufficient evidence in support of its first, second, third, and seventh objections. Accordingly, I overrule these objections.

Objections Nos. 4, 5, and 6

In its fourth objection, the Employer alleges that during the critical period, the Petitioner disseminated pro-union correspondence from state and federal elected officials which mislead employees into believing that the government encouraged employees to vote for the Petitioner. In its fifth objection, the Employer alleges that these elected officials coerced employees' exercise of free choice in the election by suggesting that they would use their authority to influence the flow of public funds for projects favorable to employees if they voted for the Petitioner or divert funds from such projects if employees voted against the Petitioner. In its sixth objection, the Employer alleges that these elected officials "insinuated" that the employees would be threatened with layoff if the Employer continued implementation of its "activity-based" compensation system. The Petitioner asserts that these objections lack merit.

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election impossible." Westwood Horizons Hotel, 270 NLRB 802, 803 (1984). The Employer has presented no

The Employer provided affidavits from four employees. These employees testified that they received copies of letters from two elected officials during the campaign. They also testified that, in mid-March, "union supporters" distributed copies of a letter from United States Congressman Michael McMahon, dated March 17, which was addressed to Lynn Blodgett, the Employer's CEO. In this letter, McMahon stated that he was concerned about the "relations" between the Employer and its employees. McMahon further stated that "it has come to my attention that ACS has recently trimmed the benefits you provide to this workforce and that salary structures have been altered. Additionally, I have been informed that management is attempting to dissuade workers from joining the [Union.] This is discouraging news and I hope that it is not accurate." A copy of this letter is attached hereto as Exhibit B.

The four employees further testified that a few days later, "union supporters" distributed an undated letter from New York State Senator Diane Savino addressed to ACS employees. In this letter, Savino expressed concern that the Employer was introducing a new compensation plan which could result in layoffs. She stated that she would work to make sure that ACS employees were treated fairly. She also stated that she knew that employees would soon decide whether they wanted to be represented by the Petitioner. This letter continued, "I have worked closely with the CWA for years, and have known them to be a union that fights each and every day for their members." A copy of this letter is attached hereto as Exhibit C.

On the back of this letter was a Union flyer entitled "Multiple Test" telling employees that the Union expected a decision from the Labor Board shortly and that employees would be voting in a matter of weeks. A copy of this flyer is attached hereto as Exhibit D.

The Employer also provided an affidavit from Margaret Cino, its Vice President and a Senior Corporate Counsel. According to Cino, in late March and early April, managers at the

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evidence that the conduct alleged in this objection created such an atmosphere.

Employer's Staten Island facility found copies of these two letters in the break room and around the Staten Island facility. Cino notes that although McMahon's letter was addressed to Blodgett, the Employer never received a copy of this letter directly from McMahon. This led her to contact McMahon's office in order to ascertain whether McMahon's letter was genuine. Cino states that on April 14, a member of McMahon's staff confirmed that the letter was genuine and that it had been sent to the Employer by mail.

On April 6, Ken Philmus, the Employer's Vice President and Managing Director, sent responses to McMahon and Savino in which he stated that ACS considered employee relations critical. He specifically disputed Savino's assertions about possible layoffs. These letters were also posted at the Employer's facility. Copies of these letters are attached hereto as Exhibit E.

In addition, on April 8, Cino held group meetings with bargaining unit members in order to address issues that had been raised by McMahon and Savino's letters.

On April 22, Savino responded to Philmus's letter. She disputed Philmus's assertions regarding possible layoffs at ACS. In addition, she stated that she agreed with Philmus's assertion that unionization was an important issue and that employees had the right to hear both sides. To that end, she invited the Employer to participate in an open meeting with representatives of the Petitioner to discuss the issues of the campaign. A copy of this letter is attached hereto as Exhibit F.

The four employees testified that in mid-April, "union supporters" distributed a copy of this April 22 letter from Savino. Cino states that she received reports that Union representatives and off-duty employees were distributing this letter. On the back of this letter was a flyer from the Petitioner accepting Savino's invitation to an open meeting with the Employer. A copy of this flyer is attached hereto as Exhibit G.

According to Cino, on May 1, the Employer posted a response to Savino's letter in which it declined Savino's invitation to the meet with the Petitioner. The Employer did not provide a copy of this posting.

According to Cino, the Employer subsequently received a second letter from Congressman McMahon in which he stated that he had heard that the Employer has conducted many mandatory meetings with employees regarding the election. He urged the Employer to maintain a balanced approach and not to prejudice employees. The Employer does not assert and has presented no evidence that this letter was distributed to employees. A copy of this letter is attached hereto as Exhibit H.

Finally, the Employer submitted a letter addressed to Blodgett from New York City Council Member Kenneth Mitchell dated May 22. In this letter, Mitchell expressed his concern that the Employer had reduced employees' benefits and discouraged employees from joining the Union. According to Cino, the Employer only received a copy of this letter after the election. The Employer does not allege and has presented no evidence that this letter was distributed to employees. A copy of this letter is attached hereto as Exhibit I.

Discussion

In its fourth objection, the Employer alleges that the Petitioner distributed pro-union correspondence from elected representatives that mislead employees into believing that the government actively encouraged a vote in favor of union representation.

According to the four employee witnesses who provided affidavits, they received the March 17 letter from McMahon and two letters from Savino with Union flyers copied on the backs of these letters. None of these employees identified the person or persons who gave them these letters,

stating only that they had received these letters from "union supporters."[3] In her affidavit, Cino states that she received reports that Union representatives and off-duty employees were distributing the second letter from Savino dated April 22: however, the Employer provides no direct evidence that Union representatives did so. In fact, Cino does not identify the source of these reports. However, Petitioner campaign flyers were printed on the reverse sides of Exhibits C and F.

Assuming the Petitioner distributed all these letters, the Employer has not established that the Petitioner engaged in objectionable conduct. Although the Employer alleges that the distribution of these letters misled employees into believing that McMahon and Savino favored the Petitioner in this election, in my view such claims are, at most, misrepresentations contained in campaign propaganda. The Board has long held that such misrepresentations do not constitute grounds for setting aside an election. See Midland National Life Insurance Co, 263 NLRB 127 (1982); see also TEG/LVI Environmental Services, Inc., 326 NLRB 1469 (1998). In such cases, the Board will not consider the accuracy of campaign claims, but will allow employees to evaluate such claims for themselves. Midland National Life Insurance Co., 263 NLRB at 130, 133. The Board will intervene only in cases where voters could not recognize the material as propaganda, such as in the case of forgery. The Board has specifically declined to find as objectionable allegations that a party has created an impression that the government favors one party in an election. See Lance Investigation Service, Inc., 257 NLRB 135 (1981); Filmlab Services, Inc., 232 NLRB 339 (1977); Rabco Metal Products, Inc., 225 NLRB 236 (1976). The Board has held that misrepresentations about the neutrality of the Board itself are not objectionable. Riveredge Hospital, 264 NLRB 1094 (1982); see also TEG/LVI Environmental Services, Inc., 326 NLRB 1469, supra.

[3] As discussed above in connection with the Employer's first objection, the Employer's evidence does not establish that Union agents distributed these letters as opposed to pro-union employees, which is not attributable to a party and must be evaluated under the Board's standard for third-party conduct. See In re Cornell Forge Co., 339 NLRB 733 (2003); Associated Rubber Co., 332 NLRB 1588 (2000), supra.

In this case, it is clear that these letters were easily understood by employees as campaign propaganda. In fact, the two letters from Savino were accompanied by Union flyers. There is no evidence that these letters were forgeries. In fact, Cino admits that the Employer confirmed that McMahon's March 17 letter was genuine. Additionally, the Employer had ample opportunity to respond to the assertions contained in these letters, as evidenced by the fact that the Employer responded to McMahon and Savino, posted its written responses for employees to read, and held group meetings with employees to address issues raised by these letters.

As for the May 12 letter from McMahon and the May 22 letter from Mitchell, there is no evidence that these letters were ever distributed to unit employees. Absent such evidence, the Employer has not met its evidentiary burden with regard to this correspondence. Again, even assuming that the Employer could establish that these letters were distributed to employees by the Petitioner, these letters constitute campaign misrepresentations which will not serve as grounds for setting aside this election. See Midland National Life Insurance Co., 263 NLRB 127, supra.

For the reasons explained above, I overrule the Employer's fourth objection.

In its fifth objection, the Employer alleges that these elected officials coerced employees' exercise of free choice in the election by suggesting that they would use their authority to influence the flow of public funds for projects favorable to employees if they voted for the Petitioner or divert funds from such projects if employees voted against the Petitioner. In its sixth objection, the Employer alleges that these elected officials "insinuated" that the employees would be threatened with layoff if the Employer continued implementation of its "activity-based" compensation system.

In these objections, the Employer alleges that the conduct of elected representatives affected the election. Third-party conduct may serve as a basis on which to set aside an election, but only if that conduct is "so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." Westwood Horizons Hotel, 270 NLRB 802, 803 (1984); see also Phoenix

Mechanical, 303 NLRB 888 (1991); PPG Industries, Inc., 350 NLRB 225 (2007). In evaluating whether threats made by third-parties are objectionable under this standard, the Board will consider whether the threat encompassed the entire bargaining unit, whether the threat was disseminated widely within the unit, whether the person making the threat was capable of carrying it out, whether it is likely that employees acted in fear of this party's capacity to carry out the threat, and whether the threat was "rejuvenated" close in time to the election. Westwood Horizons Hotel, 270 NLRB at 803. The Employer has not established a prima facie case that the letters from the elected officials created such a general atmosphere of fear and reprisal.

The Employer presents no evidence that McMahon or Savino's letters created any fear or concern of reprisal among employees in the bargaining unit. Neither official suggested that he or she would attempt to divert public funds based on the outcome of this election. While Savino expressed concern that the Employer might layoff employees, this is clearly not a threat that Savino is attempting to carry out, or would be able to carry out, should employees vote against the Petitioner. There is no evidence that any employee acted in fear due to these letters from McMahon and Savino. For these reasons, I overrule the Employer's fifth and sixth objections.

Objection No. 8

In its eighth objection, the Employer alleges that just prior to the election, the Petitioner contacted employees at their homes and misled them about the impact of impounding the ballots in this election in order to deter employees from voting. The Petitioner asserts that this objection lacks merit.

In support of this objection, the Employer provided an affidavit from a unit employee. This employee stated that the day before the election, s/he received a telephone call at home from a Union representative who told him/her that since the ballots were going to be impounded, it did not

matter who s/he voted for or even if s/he voted at all. The employee stated that s/he believes this Union representative contacted other unit employees, but had not asked any other employees if they were contacted by the Union.

The alleged statement to a unit employee that his or her vote did not matter because the ballots would be impounded is a misrepresentation regarding the election process. As explained above, misrepresentations during campaigns are not objectionable. Midland National Life Insurance Co, 263 NLRB 127 (1982); see also TEG/LVI Environmental Services, Inc., 326 NLRB 1469 (1998), supra. The Board has specifically found that misrepresentations about the impact of an employee's particular vote are not objectionable. For example, in Community Hospital Inc. of East St. Louis, 251 NLRB 1080 (1980), the Board found that it was not objectionable for an employer to urge employees to vote no and advise employees that "failure to vote is an automatic yes vote." See also County Line Cheese Co., 265 NLRB 1519, 1519 (1982) (in which the Board found that it was not objectionable for an employer to tell employees that if the union got a majority of the votes in the election, it would be "extremely difficult, if not impossible, to ever get the union out of their plant.").

Further, the Employer's evidence in support of this objection establishes only that the Petitioner misrepresented the impact of impounding the ballots in this election to one bargaining unit employee. For the reasons discussed above, I overrule this objection.

Objections Nos. 9, 10, and 11

In its ninth objection, the Employer alleges that the Regional Office failed to maintain the proper chain of custody procedures with regard to the impounded ballots cast in this election, providing a reasonable basis for concluding that the election process itself was flawed. In its tenth objection, the Employer alleges that the Regional Office failed to preserve evidence, thereby

creating an inference that this evidence, if properly preserved, would have established that the election process itself was flawed. In its eleventh objection, the Employer alleges that during the ballot count on June 26, the tape securing the seal on two of the envelopes containing impounded ballots was loose, which compromised the integrity of the seal on these envelopes and created a reasonable inference that the ballots were not properly sealed and that they were not properly safeguarded by the Board. The Petitioner asserts that these objections lack merit.

The Employer offered an affidavit and an attorney declaration in support of these objections. Scott Ryan, the Employer's Vice President of Human Resources for its Transportation Solutions Group, who was present at the election and at the ballot count, testified by affidavit that he attended the pre-election and post-election conferences for the two polling sessions of the May 28 election.[4] Ryan stated that at the end of the first polling session, he observed the Board Agents conducting the election sealing the ballot box with tape and he signed his name over the tape on the box. Before the beginning of the second polling period, Ryan states that he observed his signature across the tape sealing the ballot box before that tape was removed. At the close of the election, the Board Agents conducting the election took the ballots out of the ballot box and placed the ballots into impounded ballot envelopes.[5] Once the ballots were in the envelopes, the Board Agents sealed the envelopes with tape. Ryan states that he signed over the tape. The Board Agents left the facility with the impounded ballot envelopes. He could not recall what the Board Agents did with the empty ballot box.

Ryan was also present at the June 26 ballot count at the Regional Office, as was Nancy Morrison O'Connor, an attorney for the Employer who provided a declaration in support of these objections. According to Ryan, at the count, the Board Agent conducting the count removed the

[4] The election was scheduled to take place from 7:00 a.m. to 10:30 a.m. and again from 1:00 p.m. to 4:00 p.m. at the Employer's Staten Island, New York facility.

[5] Form NLRB-5126.

nine impounded ballot envelopes from a larger envelope. Ryan stated that he had not seen the larger envelope before and he noted that the date on the larger envelope was May 29, yet the election date was May 28. Before the impounded ballot envelopes were opened, the parties were given an opportunity to inspect the nine impounded ballot envelopes. According to Ryan's affidavit, the tape on two of the impounded ballot envelopes had loosened. Ryan stated that the tape looked as if it could have been removed and reaffixed. Ryan does not indicate whether the envelopes themselves remained sealed, how much of the tape was loosened, whether his and other signatures over the seals on these envelopes had been disturbed, or whether the envelopes contained any other irregularities. In her declaration, O'Connor stated that the tape on two of the impounded ballot envelopes had "loosened." However, O'Connor did not provide any additional information about the seals on the envelopes, the signatures over the seals, or the envelopes themselves.

O'Connor further states that at the June 26 count, she requested to videotape the count, requested copies of the impounded ballot envelopes, a copy of the larger envelope in which the impounded ballot envelopes had been sealed, a copy of the case file, a copy of the safe's log, to view the Region's safe, and the original ballot box used during the election. According to O'Connor, the Regional Director denied these requests.

The Petitioner provided two affidavits in support of its position that these objections lack merit. Ed Luster, the Petitioner's president, who was present at the May 28 election, provided an affidavit in which he testified that when the ballots were impounded, the Board Agents conducting the election emptied the ballot box and distributed the ballots into impounded ballot envelopes. The Board Agents then sealed the flaps on the envelopes with glue and asked the parties to sign the envelopes over the seals. The Board Agents then sealed the envelopes with tape. Luster stated that the Employer did not object to the manner in which the ballots were impounded.

Atul Talwar, an attorney for the Petitioner who was present at the June 26 count, also provided an affidavit. According to Talwar, he had an opportunity to inspect the impounded ballot envelopes before they were opened, and the nine envelopes were all sealed. The tape covered the signatures over the seals on these envelopes. The signatures were properly aligned on each of the envelopes. According to Talwar, the tape on two of the envelopes had "wrinkled" and lifted off the surface of those two envelopes. Talwar states that this occurred on only two envelopes. According to Talwar's affidavit, the area of tape that had loosened from these two envelopes did not exceed more than one centimeter[6] in length on either envelope. Talwar stated that the ballots were on 8.5" by 11" paper, and the vast majority of the ballots were folded in fourths. He explained that no ballot this size could have fit through the opening in the tape on either envelope. Talwar also stated that the remaining tape on these two envelopes "was clearly undisturbed and showed no indication of having been unsealed at any time" prior to the count.

The independent investigation established that at the conclusion of the election on May 28, the Board Agent in charge of the election took possession of the impounded ballots envelopes and returned to the Regional Office the following day, May 29. The Region's records show that upon returning to the Regional office, this Board Agent gave the nine impounded ballot envelopes to the Region's election clerk who placed all nine of the impounded ballot envelopes into a larger envelope. The election clerk wrote the case name, the case number, the words "impounded" and "9 envelopes" and the date, May 29, on the larger envelope and placed the ballots in the top drawer of a locked file cabinet.[7] There was no seal on the larger envelope. A copy of this larger envelope, showing the case name, case number and date, is attached hereto as Exhibit J. The election clerk

[6] 0.3937 inch.

[7] The envelope also contained the words "& all counted ballots." This notation was made by the election clerk after the count when the ballots, the impounded ballot envelopes and the larger envelope were returned to the locked file cabinet.

placed a memorandum in the case file stating that the impounded ballots in this case had been safely stored in this file cabinet. A copy of this memorandum is attached hereto as Exhibit K.[8]

The independent investigation also established that all nine of the impounded ballot envelopes that were placed in the safe were sealed and secured with transparent tape. Copies of the front and back of each impounded ballot envelope that were made by the election clerk before securing them in the safe, in accordance with routine office procedure, are attached hereto as Exhibit L.

The independent investigation also established that on the morning of the count, the Assistant Regional Director authorized the removal of the ballots from the safe for the count. A copy of the Regional safe log, indicating that the ballots could be removed on June 26, is attached hereto as Exhibit M.

On June 26, the ballots were opened and counted at the Regional office. Both parties were present during the count. The independent investigation established that the number of ballots counted was equal to the number of check marks on the Excelsior list marked by the parties during the election.

On June 26, the Region received a letter from O'Connor in which she requested that "all documents and evidence concerning the conduct of the election . . . be preserved in order to enable the employer . . . the opportunity to review the conduct of the election." In this letter, O'Connor specifically requested that the ballot box used during the election be preserved. A copy of this letter is attached hereto as Exhibit N.

On June 29, the Region received a second letter from O'Connor that included a five page attachment requesting various information relating to the election and Agency procedures. A copy of this letter is attached hereto as Exhibit O.

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[8] Obviously, the May 27, 2009 date on this memorandum is incorrect.

On July 1, the undersigned responded to O'Connor's letters, stating, in part:

> As noted to you previously, all existing materials related to the election are being preserved in accordance with routine Agency case handling procedures. As for the ballot box, pursuant to normal procedures, after the closing of the polls, the parties were given an opportunity to observe the box being opened, emptied of all ballots and the ballots then transferred into impounded ballot envelopes. The empty box was then discarded at your client's premises. At the time, [the Employer's attorney] raised no problem with the ballot box or the seal.

This letter also advised O'Connor that with regard to the information she requested, under Section 102.118 of the Board's Rules and Regulations, such request must to be made to the General Counsel. The Region is not aware that the Employer has made any request to the General Counsel pursuant to this provision of the Board's Rules and Regulations. A copy of the undersigned's letter is attached hereto as Exhibit P.

On July 1, the Employer commenced an action in federal district court seeking a temporary restraining order against the Region seeking to restrain the Region from destroying or damaging any materials related to this election. On that date, the undersigned sent a letter to the Employer stating that the Region would not destroy, damage, alter, supplement, or fail to safeguard any materials used in this election. A copy of this letter was also sent to the district court. A copy of this letter is attached hereto as Exhibit Q.

The Region is aware of no further action in this matter.

Discussion

The Employer's ninth objection alleges that the Region failed to adhere to the proper chain of custody procedures with regard to the ballots that were cast in this election.

Section 11340.9(b) of the Board's Casehandling Manual provides that when ballots are impounded, those ballots

> should be removed from the ballot box in the presence of the parties' representatives. The impounded ballots should then be placed into one or more of the Form NLRB-5126 envelopes. After sealing the Form NLRB-5126 envelope(s), the Board agent and the parties representatives should sign their

names across the flap. The flap should then be secured with transparent tape in such a manner as to ensure against accidental opening.

Sections 11344.1 and 11344.2 of the Manual further provide:

11344.1 Determinative Challenged and Questioned Interpretation Ballots

Upon the Board agent's return to the Regional, Resident, or Subregional office, the envelope(s) Form NLRB-5126 containing determinative challenged ballots and/or questioned interpretation ballots must be stored promptly. Sec. 11340.9(a) describes the procedure for preparing these envelopes after the ballot count.

A photocopy of the face of the envelope(s) and a memorandum stating where the ballots have been stored should be placed in the case file. The envelope(s) must then be stored in the office safe.

The Regional Director, officer-in-charge, or resident officer is the custodian of the safe. The Regional Director may designate others as agents for this purpose, but the ultimate responsibility remains with the Regional Director, officer-in-charge, or resident officer.

A log should be maintained by the Regional Director, officer-in-charge, resident officer or the duly designated agent concerning the challenged ballots that are stored in the safe. If a designated agent is appointed, the Regional Director should set forth the name of the designated agent in this log and this designation should be signed by the Regional Director.

When the large envelope(s) containing ballots is to be removed from the safe, the following procedure must be followed. The parties should be advised and provided an opportunity to be present at the opening of the large envelope(s). *Paprikas Fono*, 273 NLRB 1326 (1984). The Regional Director, officer-in-charge, resident officer, or designated agent will make an entry in the log showing the removal from the safe and this removal entry will be signed by one of the aforementioned persons. The log should indicate the reason for the removal, the date of the removal, the Board agent to whom the envelope is released, and the nature of the contents authorized to be removed (e.g., all determinative challenged ballots or the identity, as shown on the large envelope, of the challenged ballots that are authorized to be removed).

As indicated above, the large envelope(s) should not be opened unless the parties have been allowed the opportunity to be present. In addition, when some, but not all, of the challenged ballots are removed from the large envelope for the purpose of counting, such removal shall be done at the count in the presence of the parties' representatives who choose to be present.

The Board agent should put a memorandum in the case file recording the number of ballots removed, their identity, their disposition, and the number of ballots remaining in the large envelope. A copy of the memorandum is to be placed in the large envelope, which should again be secured in the manner described above by the Board agent and the parties' representatives at the count and placed in the safe.

11344.2 Impounded Ballots

Impounded ballots (Sec. 11340.9(b)) are to be secured in the same manner as determinative challenged ballots. Sec. 11344.1.

The Region's records establish that the Board Agents conducting the election did not deviate from these procedures. The Board Agents removed the ballots from the ballot box, placed them into impounded ballot envelopes, sealed the envelopes, had the parties sign over the seal, and taped the envelopes over the signatures. A Board Agent took possession of the impounded ballots and upon returning to the Regional office on May 29, gave the envelopes to the election clerk who placed the nine impounded ballot envelopes into a larger envelope and secured them in the Regional office safe (a locked filing cabinet), where they remained until the count on June 26.

The Employer has presented no evidence that the Region deviated from these procedures prescribed in the Board's Casehandling Manual. As explained above, it is incumbent on the party filing objections to provide evidence sufficient to prove a prima facie case within seven days of the date for filing objections. See Craftmatic Comfort Mfg. Corp., 299 NLRB 514 (1990); Star Video Entertainment L.P., 290 NLRB 1010 (1988), supra. An objecting party must provide probative evidence in support of its objections; it is not sufficient to rely on mere allegation or suspicion. See Allen Tyler & Son, Inc., 234 NLRB 212 (1978), supra.

The Employer argues that the Region did not follow the proper chain of custody procedures because the impounded ballot envelopes were stored in a larger envelope in the Region's safe. Ryan noted that he had never seen the larger envelope before the count on June 26 and that it bore the date May 29 instead of May 28. The fact that the nine impounded ballot envelopes were kept together in a larger envelope in the Regional safe does not establish that the Region failed to follow the Casehandling Manual's procedures with regard to custody of the ballots.

The independent investigation revealed that Regional personnel closely followed the procedures set out in the Casehandling Manual. The Board Agents conducting the election

correctly impounded the ballots, sealing the impounded ballot envelopes, having the parties sign over the seal, and then securing the seals with tape. Upon the lead Board Agent's return to the office, the election clerk made copies of the impounded ballot envelopes, placed the impounded ballot envelopes into a larger envelope and secured them in the Regional safe, and prepared a memorandum stating that the ballots had been stored in the safe. Prior to the count of the ballots, the Assistant Regional Director made an entry in this log authorizing and stating the reasons for removing the ballots from the safe. The Employer's attempt to create a "suspicious set of circumstances" is not sufficient to support this objection. See Allen Tyler & Son, Inc., 234 NLRB at 212. For these reasons, I recommend overruling the Employer's ninth objection.

In its tenth objection, the Employer alleges that the Region failed to preserve evidence by which the Employer can raise and support its objections, thus creating an impression that this evidence would establish that the Region failed to follow proper procedures. The Employer argues that the Region failed to preserve crucial evidence to the extent that it failed to maintain the ballot box used during the election and that the Region has not produced the documents requested by O'Connor.

With regard to the ballot box, the independent investigation revealed that the ballot box was emptied and discarded at the Employer's facility on May 28 after the ballots were transferred into impounded ballot envelopes. Thus, the empty box was in the Employer's control to preserve or discard. The Employer does not explain why an empty ballot box, which contained no ballots after the election, and which Ryan inspected before being discarded, would establish a breach of election procedures or have an impact on the election results. Again, the Employer attempts to raise an objection by implying that there was a "suspicious set of circumstances." As explained above, such inference and conclusory allegations are not sufficient to support valid objections. Allen Tyler & Son, Inc., 234 NLRB at 212, supra; see also Lange and Perkins LLC d/b/a The Daily Grind, 337

NLRB 655, 656 (2002) (requiring a party to present more evidence than "its bare allegations"), supra; Craftmatic Comfort Mfg. Corp., 299 NLRB 514 (1990), supra.

With regard to the Region's failure to produce the information requested by O'Connor, the Employer presents no evidence that the Region destroyed or discarded any evidence in this case. To the contrary, the Region assured the Employer and the court that it has preserved, and will continue to preserve, all materials related to this election. Moreover, despite having been advised of the proper procedure under the Board's Rules and Regulations for obtaining Board testimony or documents, it has not availed itself of this procedure. Because the Employer has presented no evidence in support of this objection, I overrule the Employer's tenth objection.

In its eleventh objection, the Employer alleges that the tape covering the seal on two of the impounded ballot envelopes had loosened, giving rise to the inference that the envelopes were not properly sealed or safeguarded by the Region between the election and the count.

As noted above, Ryan, O'Connor, and Talwar all stated that the tape on two of the impounded ballot envelopes had become "loosened" from the envelopes themselves. Ryan stated that it looked as if the tape "could have been completely detached from the envelopes and then slightly reaffixed." O'Connor provided no specifics other than that the tape on two envelopes had become loosened. Talwar, however, testified that the tape had become loosened on only a small part of each envelope, measuring no more than a centimeter, or less than half an inch, on either envelope. In addition, Talwar noted that the signatures across the seals on each envelope had not been disturbed. Further, Talwar noted that given the size of the ballots, a ballot could not have fit through the area where the tape had become loose. In addition, Talwar observed that on both envelopes, the remaining tape had remained sealed and that the envelopes showed no indication of having been opened. It is also noteworthy that no evidence was presented suggesting that any of the ballots were tampered with, and the number of ballots counted equaled the record of those cast.

The Board's election procedures are intended to provide "those safeguards of accuracy and security thought to be optimal in typical election situations." Polymers, Inc., 174 NLRB 282, 282 (1969). These procedures "are designed to ensure both parties an opportunity to monitor the conduct of the election, ballot count, and determinative ballot procedure." Paprikas Fono, 273 NLRB 1326, 1328 (1984). The Board recognizes that strict compliance with its election procedures does not guarantee the validity of an election; similarly, deviation from these procedures does not necessarily require setting aside an election. See St. Vincent's Hospital, LLC, 344 NLRB 586, 587 (2005) (stating that there is no "per se rule that . . . elections must be set aside following any procedural irregularity."). "The question which the Board must decide in each case in which there is a challenge to the conduct of the election is whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election." Polymers, 174 NLRB at 282. When conducting such an inquiry, the Board "requires more than mere speculative harm to overturn an election." Transportation Unlimited, 312 NLRB 1162 (1993); see also J.C. Brock Corp., 318 NLRB 403, 404 (1995).

The Board has upheld elections in which election procedures were not strictly followed, but in which there was no reason to doubt the validity of the elections themselves. For example, in Sawyer Lumber, LLC, 326 NLRB 1331 (1998), the employer filed objections alleging, inter alia, that the integrity of the election was compromised because during the election, the observers and the Board Agent conducting the election took breaks and left the polling area, leaving the open ballot box in the polling area.[9] The Board found that these allegations "amount to little more than speculation about the possibility of irregularity and, thus, do not raise a reasonable doubt as to the fairness and validity of the election." Id. at 1332. While the Board noted that it did not take lightly

[9] The ballot box was never left unattended or in the exclusive possession of the employer or the union in that case.

the importance of safeguarding the ballot box and the ballots, absent evidence "of any security breach involving the ballot box or the ballots, [or] evidence that the integrity of the election was compromised in any way," the Board upheld the election. Id. The Board also noted that, as in the instant case, the number of ballots counted equaled the number of names checked by the observers on the Excelsior list. Id.; see also Queen Kapiolani Hotel, 316 NLRB 655 (1995) (finding that a ballot box had been adequately sealed during a split session election, that the box was sealed in the presence of the parties, that there was no allegation or evidence that the box had been tampered with, and, as here, that the number of ballots counted equaled the number of names the election observers checked off on the Excelsior list).

Polymers also involved the securing of ballots between a split session election. In that case, the Board agent conducting the election sealed the opening of the ballot box with tape and had the parties sign over the tape. The parties' signatures did not extend onto the box itself, but remained only on the tape. The Board Agent then left the ballot box in his locked car, along with unmarked ballots, during the breaks between sessions. The employer filed objections alleging that the tape could have been removed from the ballot box and reaffixed without disturbing the signatures since the signatures were only on the tape. Polymers, 170 NLRB 333, 339-40 (1968). The Board found that this evidence was not sufficient to raise a reasonable doubt as to the fairness and validity of the election. The Board stated that although "the manner in which the ballot box was sealed in this election could have been improved upon [the tape was] affixed to the box in a manner which makes it quite improbable that any tampering with the box would not have left suspicious traces. . . . In view of the extreme improbability of any violation of the ballot box, and in the absence of any affirmative indication of tampering, we again conclude that desirable election standards were met and that no reasonable possibility of irregularity inhered the conduct of the election." Polymers, 174 NLRB at 283.

The cases in which the Board has set aside elections due to a breach of election protocol with regard to impounded ballots involve substantial deviation from the Board's election procedures creating reasonable doubt about the validity of the election. For example, in Madera Enterprises, 309 NLRB 774 (1992), the Board Agent properly impounded the ballots at the end of the election and placed ballots in the Region's safe. However, the Region later discovered that the Board Agent had failed to keep a list of voters whose ballots had been challenged. In the absence of the parties, the Region's election specialist and a supervisor retrieved the ballots from safe, opened the impounded ballot envelopes, prepared a list of challenged ballots, and returned the ballots to the safe. The Board set aside the election noting that the Casehandling Manual requires that impounded ballots be opened and counted in the presence of the parties.

Similarly, in Paprikas Fono, 273 NLRB 1326, supra, the Board set aside an election in which there was extensive handling of impounded determinative challenge ballots outside the presence of the parties. In that case, the Board Agent conducting the election did not impound the determinative challenge ballots at the conclusion of the election, but instead placed the ballots in the case file and took them to his office. The following day, he deposited the ballots into a large envelope, sealed the envelope with tape, signed his name across the seal, and placed the envelope in the Region's safe. The Employer subsequently filed an objection alleging that the challenged ballot envelopes had not been properly sealed. The Regional attorney and counsel for the Region retrieved the impounded ballot envelope from the safe and opened it to inspect the challenged ballot envelopes before returning the ballots to the safe. The parties were not given an opportunity to be present for this inspection.

In both of these cases, the Board relied on specific evidence which showed that the parties were denied opportunities to observe the handling and safeguarding of impounded ballots. The Board found that when the "normal procedures for handling [impounded ballots] were not followed

and the procedures followed did not permit the parties to assure themselves that the [impounded ballot envelopes] were secure," it created a reasonable doubt regarding the validity and the fairness of the elections. Paprikas Fono, 273 NLRB at 1328.[10]

In this case, the Employer has not established that there is any reasonable doubt as to the fairness or the validity of this election. The only evidence of any irregularity the Employer can identify is that the transparent tape on two of the impounded ballot envelopes had become loosened after the ballots were impounded. The Employer offers no evidence that Ryan's signatures across the envelope flaps were in any way disturbed or that the envelope flaps were loose or open or that the envelopes were in any way tampered with or mishandled. Indeed, the Petitioner's evidence establishes that the signatures on the envelopes had not been disturbed and the area of tape that had loosened on two of the envelopes was about one centimeter, smaller than an area through which a folded ballot could pass. The Employer does not dispute these details. As Sawyer Lumber and Polymers make clear, the speculative nature of the Employer's evidence that the "tape looked as if it could have been removed and reaffixed," is not sufficient to raise a reasonable doubt as to the validity and fairness of the election.

There is no evidence that the Region deviated from the election procedures or that the impounded ballot envelopes had been opened or disturbed at any time outside of the parties' presence as in Madera Enterprises or Paprikas Fono, discussed above. Absent evidence that the integrity of the impounded ballots or impounded ballot envelopes in this case was compromised, the Employer's mere speculation does not raise a reasonable doubt about the validity of this election.

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[10] Similarly, in Fresenius USA Manufacturing, Inc., 352 NLRB No. 86 (2008), the Board set aside an election after the Board Agent conducting the election failed to display the marked ballots during the count and denied the parties an opportunity to review the "yes" and "no" piles of ballots following the count. Although the Board Agent told the parties they could review the ballots at the Regional Office the following week, the Board Agent did not take any steps to secure the ballots against tampering or mishandling during the interim. In the present case, however, the evidence demonstrates that the parties were given ample opportunity to observe the ballots during the count and that the Region followed the proper procedures for securing the impounded ballots.

Based on the foregoing, I overrule the Employer's eleventh objection.

Objections Nos. 12 and 13

In its twelfth objection, the Employer alleges that by the conduct described in the above objections, the Petitioner has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights and has interfered with employees' ability to exercise a free and reasoned choice in the election. In its thirteenth objection, the Employer alleges that by the conduct described in the above objections, the Petitioner has destroyed the conditions necessary for a valid election and therefore the election results are invalid. The Petitioner asserts that these objections are without merit.

The Employer did not produce any evidence in support of these objections that had not been submitted and considered in regard to the other objections. Accordingly, I overrule the Employer's twelfth and thirteenth objections.

SUMMARY AND DETERMINATIONS

In summary, I have overruled the Employer's objections in their entirety. Accordingly, I hereby issue the following Certification of Representative certifying the Petitioner as the exclusive collective bargaining agent for the employees in the unit:

CERTIFICATION OF REPRESENTATIVE

It is certified that a majority of the valid ballots have been cast for the Communication Workers of America, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time customer service representatives ("CSRs") and clerks employed by the Employer in its tag processing department, violations department and correspondence department, all CSRs employed in the Employer's Staten Island walk-in center and the Staten Island call center, receptionists and facilities clerks employed in the facilities department, monitor clerks employed at the Staten Island call center, refund coordinators, NSF coordinators, charge back collections coordinators, reconciliation coordinators, deposit coordinators, accounts payable coordinators, payroll coordinators, junior reciprocity analysts, work leaders, correspondence department analysts, PA class mismatch transaction analysts, Port Authority violations bus analysts, Port Authority violations collections analysts, generic violations analysts, violations business account analysts, Port Authority accounts analysts, all employed by the Employer at its facility located at 1150 South Avenue, Staten Island, New York, herein called the Staten Island facility, but excluding all other employees, managers, executives, supervisors as defined in Section 2(11) of the Act, confidential employees, guards, trainers, junior systems analysts, performance monitoring analysts, Vector system test administrators, junior LAN administrators, junior and senior quality assurance analysts, junior business analysts, workforce analysts, senior systems analysts, report production leads, senior LAN administrators, deposit clerks employed at the Employer's facilities located at Yonkers, Queens, Spring Valley, Albany, Grand Island and Syracuse, New York, and all other employees employed by the Employer in locations other than Staten Island.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.69 of the Board's Rules and Regulations, Request for Review of this Report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Request for Review must be received by the Board in Washington, D.C. on or before August 20, 2009.[11]

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the

[11] Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections which are not included in the Regional Director's Report are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Regional Director's Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

above-described Request for Review electronically, please refer to the guidance which can be found under “E-Gov” on the National Labor Relations Board website: www.nlrb.gov.

Dated at Brooklyn, New York, on this 6th day of August, 2009.

/s/ "(Alvin Blyer}"