

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3**

In the matter of:

McNeil Security, Inc./Invizion

Employer,

Case No. 3-RC-11751

and

**United Federation of Special Police
and Security Officers, Inc.,**

Petitioner,

and

**International Union, SPFPA
Intervenor.**

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**Intervenor International Union, SPFPA's
Brief in Partial Support of Hearing Officer's Report on Objections to Election and Brief**

Intervenor SPFPA concurs with the Hearing Officer's Findings and Recommendations that the Employer's conduct as described in Intervenor's SPFPA's Objections Numbers 1, 2, 3 and 14 violates the Act and demonstrably impacted the outcome of the election. For the reasons stated within her report, Intervenor SPFPA concurs with the Hearing Officer's Recommendation that Objections 1, 2, 3 and 14 require that the election be set aside and a rerun election should be held.

Objections 1 and 2

The Hearing Officer properly concluded that Employer's actions in surveilling unit employees and union organizers, and ordering union organizers to leave public areas, violated the Act and constituted objectionable conduct. The Union Organizer, Steve Maritas, was at all

times in public areas of the airport. Other groups are allowed to be within the airport terminal, *e.g.*, the Girl Scouts sell cookies there. The Employer is merely a contractor to the TSA. At no time did the TSA direct Mr. Maritas to leave any area. At no time did the airport authority direct Mr. Maritas to leave any area. At no time did the sheriff's department direct Mr. Maritas to leave any area. The Employer provides passenger and luggage screening. If Mr. Maritas was violating the rules of the airport, those rules would have been enforced by the appropriate authority, not the Employer. Mr. Maritas did not attempt to enter a concourse, and did not attempt to check luggage, which is the Employer's jurisdiction.

In this regard, it is noted that the Employer had its supervisor Mr. Wong follow Mr. Maritas throughout various parts of the airport terminal away from the luggage check or concourse entrance. If Mr. Maritas was a security threat throughout the airport terminal, why did the Employer not remove him from the terminal entirely? It is hard to imagine that in this post 9/11 period that a true security threat would be permitted to remain in an airport terminal simply "followed" by a supervisor (at what the Employer claims to be 30-40 feet distance.) How would the supervisor act to stop the subject from engaging in a security violation? Further, what would happen if the supervisor lost sight of the subject? If Mr. Maritas were a true security risk inside the terminal, he would have been escorted out by the Employer or the appropriate authority.

The Employer's employees are permitted to engage in discussion with members of the public, and self regulate as to when that discussion becomes distracting and must be ended. With respect to discussions with Mr. Maritas, however, those same employees were not provided that option. Rather, the Employer through its supervisors and manager on numerous occasions instructed Mr. Maritas to leave public areas.

Furthermore, the Employer's after the fact self serving excuses for having its supervisor Mr. Wong follow closely behind Mr. Maritas for nearly an hour in open public areas, witnessed by numerous bargaining unit employees, does not justify their objectionable conduct. Certainly this was not a security function, as at times Mr. Maritas was no where near the concourse entrance or luggage screening areas for which the Employer provides security services. Nor did any appropriate airport police authority attempt to restrict Mr. Maritas's movements. Mr. Wong followed him just several feet behind.¹ Mr. Wong was observed by bargaining unit members following Mr. Maritas in this manner.²

The Hearing Officer was correct in finding merit to Objections 1 and 2.

Objection 3

The undisputed evidence is that the Employer photographed unit employees greeting Mr. Maritas. In response, the Employer didn't even present the supervisor in question – Tamiua Powell – as a witness. Rather, the Employer tries to argue that no photograph was taken, because Mr. Maritas testified he saw a flash, not a camera. However, Mr. Maritas' testimony certainly established a prima facie case that a photograph was taken. The Employer could have attempted to rebut the claim then by presenting Ms. Powell to explain she did not take a photograph. As the Employer did not present Ms. Powell as a witness, the claim is unrebutted.

Further, the Employer argues that if a photograph was taken, perhaps it was taken for security purposes. Here the Employer offers pure speculation regarding a matter of which it has direct knowledge. Again, the Employer could have presented Ms. Powell to testify as to why she

¹ The Hearing Officer credited Mr. West's testimony in this regard, rejecting the limited observation of the Employer's manager. The Employer did not present its best evidence in this regard – the Employer did not call Mr. Wong as a witness.

² The Employer suggests that the bargaining unit members found the circumstance to be humorous. In fact, only one member so testified, and the Employer presented no member who so testified. Regardless, an employer may not defend against a violation of the Act by establishing that its actions were humorous.

took the photographs. It did not do so, and now cannot argue that “perhaps” the photos were taken for reasons other than recording Mr. Maritas and bargaining unit members. In fact, the Employer’s knowing decision not to present Ms. Powell as a witness demonstrated they were trying to keep her testimony as to the purpose of the photo out of the record because clearly her testimony would not support the Employer’s position.

The Hearing Officer credited testimony that the taking of the photos was noticed by bargaining unit members who then specifically asked Mr. Maritas to stop engaging them and leave the area so they would not be photographed with him. Again, this testimony was un rebutted by any witness presented by the Employer.

Nor does the fact that there are video cameras recording various aspects of the screeners job performance permit the Employer from taking photographs. The record evidence is that those tapes are not regularly reviewed. Nor is there any evidence that bargaining unit members are aware that such tapes are reviewed, and if so, by the Employer. In fact, as the tapes are not regularly reviewed, if the Employer actually did review them to surveil Mr. Maritas and the protected concerted activity of bargaining unit members, that action would be a violation of the Act.

The Hearing Officer properly found that the Employer improperly photographed bargaining unit members engaged in protected, concerted activity in violation of the Act.

Objection 14

The undisputed evidence is that the Union’s observer was directed by the Employer’s attorney, under penalty of discipline, to remove a pro-Union sticker. The Employer’s attorney, after making the threat of discipline, told the employee it was “her choice” whether to remove it.

The observer removed it. Although present in the hearing room, the Employer did not present its attorney as a witness, and the Union's testimony was unrebutted.

The Hearing Officer correctly held that the observer had a right to wear the pro-Union sticker and that the Employer lacked the proper authority to direct her to remove it under penalty of discipline. Accordingly, the Hearing Officer properly found that the conduct was objectionable.

Effect of Objectionable Conduct

The Hearing Officer found that the objectionable conduct detailed above was sufficiently serious to warrant setting aside the election. If only 2 voters changed their ballot from voting for no union to voting for one of the unions, a runoff election would have been required.³ Each of the above described incidents of objectionable conduct had the potential of changing ballots, and certainly as few as 1. Accordingly, the Hearing Officers conclusion that the objectionable conduct necessitated setting aside the election is support and must be sustained. A new election should be directed.

Respectfully submitted,

s/Scott A. Brooks

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³ If only one voter changed her ballot, a tie would have resulted and the one remaining challenged ballot would be determinative.

Certificate of Service

I certify that I have served a copy of this document today by overnight delivery upon the Regional Director, counsel for the Employer and Petitioner's representative.

s/Scott A. Brooks

Scott A. Brooks

Dated: September 17, 2007