

NOT INCLUDED IN
BOUND VOLUMES

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OPW FUELING COMPONENTS
Employer

and

RONALD R. BALL, JR.
Petitioner

Case 9-RD-2168

and

GLASS MOLDERS, POTTERY, PLASTICS &
ALLIED WORKERS INTERNATIONAL UNION,
AFL-CIO-CLC & ITS LOCAL 45-B
Union

DECISION AND CERTIFICATION
OF RESULTS OF ELECTION

The National Labor Relations Board¹ has considered objections to an election held July 23, 2008, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

Election Agreement. The tally of ballots shows 106 for and 123 against continued representation by the Union, with 13 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and has decided to adopt the hearing officer's findings and recommendations only to the extent consistent with this Decision and Certification of Results of Election.²

The hearing officer recommended sustaining the Union's Objection 5 in part and setting aside the election based upon the Employer's promulgation of an overly broad rule limiting employees' opportunities to express their views about the Union. The rule, Question & Answer Number 12 ("Q & A 12"), was set forth in a document³ prepared and disseminated by the Employer approximately a month prior to the election, to respond to employees' concerns about the election process. It reads:

"Can I tell people how I feel about the union?

Yes. Each employee can share his or her views

² In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Union's Objections 3, 6, and 5 (except as it related to the Employer's promulgation of an overbroad rule).

³ "Q & A Number 12" appears in Employer's Exhibit 3, which the Employer presented at the hearing in defense against alleged objectionable conduct.

during non-working hours. No employee is to be harassed or intimidated because of their decision regarding the election (emphasis added)."

Although this rule was not the subject of an objection, the hearing officer determined that it was sufficiently related to the issue that the Regional Director set for hearing -- that the Employer told employees to "keep quiet" regarding their union opinions -- to be considered potentially objectionable. Citing *Superior Emerald Park Landfill*, 340 NLRB 449 (2003), the hearing officer observed that the language of "Q & A 12" is facially overbroad because it prohibits employees from expressing their union views during nonwork time. Given the circumstances of the rule's promulgation and its wording, he determined that it could have interfered with the conduct of the election.

In exceptions, the Employer and the Petitioner contend, *inter alia*, that the issue of whether "Q & A 12" interfered with the election was not fully litigated. We agree. As the Employer points out, "Q & A 12" was not included among the matters set for hearing, and no one at the hearing stated that "Q & A 12" should be or was being considered an overbroad rule and potentially objectionable. To defend against the claim that it had told employees to keep quiet about the Union, the Employer introduced into evidence the document containing "Q & A 12." That

presentation of evidence alone does not suffice to constitute notice that another, unalleged claim about the contents of the rule was being litigated and could be considered as a possible basis for overturning the election.⁴ The Employer states that, had it been given such notice, it would have put on evidence and elicited testimony regarding the applicability of the rule in the workplace, as well as briefed the matter. In these circumstances, we find that whether "Q & A 12" was itself objectionable was not fully litigated. Accordingly, we will certify the election result.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Glass Molders, Pottery, Plastics & Allied Workers International Union, AFL-CIO-CLC & Its Local 45-B, and that it is not the exclusive representative of these bargaining unit employees.

Dated, Washington, D. C., March 25, 2009.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

⁴ Cf. *Dilling Mechanical Contractors*, 348 NLRB 98, 105 (2006).