

ORIGINAL

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

ATLAS BOBCAT, INC.

Employer

and

**Case 13-RM-1766
Stipulated**

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 150**

Union

REPORT ON OBJECTIONS

This report contains my findings and recommendations regarding the International Union of Operating Engineers, Local 150's (herein the "Union") objections to conduct affecting the results¹ of the election² conducted under the direction of the Regional Director for Region 13 of the National Labor Relations Board on September 10, 2010, among the Employees in the Stipulated Unit.³ The Union, on September 17, 2010, filed timely objections to conduct affecting the results of the Election, a copy of which was served on Atlas Bobcat, Inc. (herein the "Employer"), and a copy of which is attached hereto as Exhibit 1. As explained below, I

¹ The Tally of Ballots shows that there were approximately 13 eligible voters. 3 ballots were cast for the Union, 8 ballots were cast against the participating labor organization, 0 ballots were void, and there were 2 challenged ballots that were insufficient in number to affect the results of the election.

² An election was conducted pursuant to a petition filed on September 1, 2009. Following the resolution of Cases 13-CA-45478, 13-CA-45684, 13-CA-45793, 13-CA-45798, the Stipulated Election Agreement was approved by the Regional Director on August 11, 2010. The payroll eligibility date for the election was August 8, 2010.

³ The Unit consists of: All regular full-time and regular part-time Field Mechanics, Shop Mechanics, and CDL Drivers employed by the Employer at its facilities in Schiller Park, Mokena, West Chicago, Wauconda and Yorkville, IL; but excluding all other employees, temporary employees, managers sales representatives, plant clerical employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

recommend overruling all objections and certifying the results of the election. The evidence is insufficient to show that the campaign material distributed by the Employer constituted objectionable conduct.

THE OBJECTIONS

Union's Objections #1 through #6 allege that the contents of the Employer's written campaign material distributed to employees during the critical period constituted objectionable conduct. In support of these Objections, the Union provided 20 documents that the Employer purportedly distributed to employees. Objection #7 is a catch-all objection to which the Union did not offer any evidence.

ANALYSIS

For conduct to warrant setting aside an election, the objecting party must provide specific evidence to show not only that the improper acts occurred, but also that those acts interfered with the exercise of free choice to such an extent that they materially affected the results of the election. Accordingly, the critical issue is whether the Union in the instant case has established that the conduct alleged in the objections was such that the employees were prevented from exercising an unimpaired free choice during the election. *Pacific Grain Products*, 309 NLRB 690 (1992).

The Union submitted evidence in the form of handouts distributed to employees by the Employer. The Union relies on the *General Shoe* doctrine which states that improper conduct that may destroy the laboratory conditions for an election, although not an unfair labor practice, may still be the basis for setting aside an election. *General Shoe Corp.*, 77 NLRB 124 (1948).

Regarding Objection #1, the Union provided no evidence suggesting that a strike was inevitable if the union was voted in. No Employer handouts state that the Union would automatically strike or that once the Union comes in, the employees will be on strike or that a strike is inevitable. The literature put out by the Employer merely references the possibility of strikes and does not state, as the Union contends, that strikes are inevitable. The Employer's literature that referenced the possibility of strike action is protected 8 (c) conduct and did not interfere with employees' free choice at the election and is not objectionable.

Regarding Objections #2 and #5, the Union provided no evidence suggesting that the Employer will lose business, or employees will lose work opportunities or job security if the Union is voted in. There are no threats or promises of benefit contained in the handouts.

Regarding Exhibit E, the Board in *Eagle Transport Corp.*, 327 NLRB 1210 (1999) found that the Employer did not engage in objectionable conduct when it posted a letter from a customer indicating that unionization by the employees might influence the customer to make other business arrangements. In the instant case, the Employer did not go that far; the Employer merely stated what *could* happen, rather than what *would* happen. The Employer's campaign material can not be reasonably interpreted by an employee as threatening or coercive in nature.

Regarding Objection #3, the Union claims that the Employer threatened that employees would be replaced by permanent replacement if employees went on strike. It argues that Exhibits L and N reference that employees can be permanently replaced if they go out on an economic strike. The Union argues that Board law is clear that such statements must be accompanied by a further statement that such employees are subject to recall for up to one year after being placed on a preferential hire list. The Union further argues that the fact that the Employer includes this statement in Exhibit F does not render Exhibits L and N harmless.

Exhibits L and N are both a list of questions for about the Union. Exhibit L states “can Local 150 guarantee me that it will be able to prevent the Company from permanently replacing me if we decide to go out on an economic strike?” Exhibit N asks “can you guarantee that we would not be permanently replaced if we did strike?” Neither document states that employees will lose their jobs or be replaced if the Union goes on strike. Furthermore, the literature does not state that the employees will be fired if they engage in a strike.

Regarding Objection #4, the Union alleges that the Employer stated it would not continue existing benefits if the employees voted for the Union. The Union refers to Exhibit A which states “nothing in collective bargaining is guaranteed.” and Exhibit D which states “there is no obligation on the part of a company to continue existing benefits...” The Union argues that the Employer misrepresented Board law and conveyed to employees that they could lose their existing wages and benefits upon voting for the Union. However, in the overall context of the document, Exhibit D is not coercive or threatening as it states that employees’ wages can go up, down or stay the same as a result of the collective bargaining process.

Finally, in Objection #6 regarding violence was inevitable if the Union went on strike, the Union submitted Exhibits B, F, G, M, N, O, Q, R and T in support of this objection. The literature does not contain statements suggesting that all strikes are violent by nature or that picket line violence, harassment and fines are inevitable if employees go on strike.

In the instant case, the Union failed to show under the *General Shoe* doctrine or other Board law that the Employer created an atmosphere, through its campaign literature, which rendered improbable a free choice by employees in the instant election. The Union has not met its burden in establishing that the conduct alleged in the objections was such that the employees

were prevented from exercising an unimpaired free choice during the election or that the results of the election were materially affected by the alleged conduct.

CONCLUSION

Based on the findings and conclusions above, it is my recommendation that the Union's objections be overruled in their entirety and that a certification of results issue.⁴

⁴ *Right to File Exceptions:* Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the 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 its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that 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 Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on **October 21, 2010**, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED at Chicago, Illinois this 7th day of October, 2010.

/s/ Joseph Barker

Joseph Barker, Regional Director
National Labor Relations Board
Region 13
209 South LaSalle Street, Suite 900
Chicago, IL 60604

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UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

Atlas Bobcat, Inc.,)	
)	
Employer,)	
)	
and)	
)	
International Union of Operating)	Case No. 13-RM-001766
Engineers, Local 150, AFL-CIO,)	
)	
Petitioner.)	

PETITIONER'S OBJECTIONS TO ELECTION

The International Union of Operating Engineers, Local 150, AFL-CIO ("Local 150"), pursuant to NLRB Rules and Regulations 102.69(a), hereby objects to the election conducted by Region 13 in the above case on September 10, 2010 as follows:

1. During the critical period, the Employer distributed campaign literature implying that an economic strike was inevitable if the employees voted for the union.
2. During the critical period, the Employer distributed campaign literature implying that it will lose business and profits if the employees voted for the union.
3. During the critical period, the Employer distributed campaign literature implying that employees, who struck, will lose their jobs and be permanently replaced.
4. During the critical period, the Employer distributed campaign literature that stated it had no obligation to continue existing benefits if the employees voted for the union.
5. During the critical period, the Employer distributed campaign literature implying loss of work opportunities and job security if the employees voted for the union.

Exhibit 1

6. During the critical period, the Employer distributed campaign literature implying that picket line violence, harassment* and fines were inevitable if its employees went out on strike.

7. By the above and other conduct, the Employer interfered with, coerced and restrained employees in the exercise of their Section 7 rights; destroyed the laboratory conditions required for the conduct of a fair election; and interfered with employees' ability to exercise a free and reasoned choice in this election.

WHEREFORE, Local 150 respectfully requests that a re-run election be held, an appropriate Lufkin notice be posted informing employees of the Company's unlawful conduct, the pursuit of 10(j) injunctive relief, and all other relief that the Region deems appropriate.

Dated: September 17, 2010

Respectfully submitted,

/s/ Charles R. Kiser
One of the Attorneys for Local 150

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on September 17, 2010, on or before 5:00 p.m., he electronically filed the foregoing, which sent notification to the following:

Mr. Joseph Barker
National Labor Relations Board, Region 13
The Rookery Building
209 South LaSalle Street, 9th Floor
Chicago, IL 60604

/s/ Charles R. Kiser
One of the Attorneys for Local 150

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