

NOT INCLUDED
IN BOUND VOLUMES

LBP
Washington, DC

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DOWNTOWN BID SERVICES CORPORATION
Employer

and

Case 5-RC-16330

INTERNATIONAL ASSOCIATION OF MACHINISTS
AND AEROSPACE WORKERS, AFL-CIO,
DISTRICT LODGE 98
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held July 30 and 31, 2009, and the administrative law judge's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 56 ballots for and 51 ballots against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the judge's findings and recommendations, and finds that a certification of representative should be issued.

¹ The judge was sitting as a hearing officer in this representation proceeding.

We adopt the judge's recommendation to overrule the Employer's Objections 3, 4, and 5, for the reasons he stated. We also adopt the judge's recommendation to overrule the Employer's Objections 1 and 2, as further discussed below.

In Objection 1, the Employer alleged that prounion employees, particularly members of an in-plant organizing committee, threatened other employees that the Union would have non-supporters fired. In Objection 2, the Employer alleged that these prounion employees also engaged in harassment and intimidation of eligible voters.

Preliminarily, there is the question of the Union's responsibility for those employees' conduct. In analyzing Objection 2, the judge rejected the Employer's contention that members of the in-plant committee acted as agents of the Petitioner. We agree for the reasons he states. In exceptions, the Employer submits that the prounion employees were the Petitioner's special agents citing, inter alia, *Davlan Engineering, Inc.*, 283 NLRB 803, 804 (1987), which held that "employees who solicit authorization cards should be deemed special agents of the union for the limited purpose of assessing the impact of statements about union fee waivers or other purported union policies that they make in the course of soliciting." We find no merit in this contention because the prounion employees' statements at issue cannot reasonably be viewed as involving a "policy" of the Petitioner. See *Shawnee Manor*, 321 NLRB 1320 (1996) (alleged threats of violence, even when made in the course of card solicitation, cannot be construed by any reasonable person as representing "purported union policies"). Further, at least as to the threats of job loss alleged in Objection 1, the record does not show that the prounion employees made the alleged statements when they were soliciting authorization cards. We therefore agree that

these prounion employees were not agents of the Petitioner.. Having so found, we must apply the Board's third-party standard in considering the conduct at issue in the Employer's Objections 1 and 2.² The Board will set aside an election on the basis of third party conduct only if the conduct is so aggravated that it creates a general atmosphere of fear and reprisal rendering a fair election impossible. See e.g., *Corner Furniture Discount Center, Inc.*, 339 NLRB 1122, 1123 (2003). Applying this standard, we find that the Employer failed to meet its burden of proving that the election should be set aside. Accordingly, we overrule the Employer's Objections 1 and 2 and certify the Petitioner.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 98, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

INCLUDED: All full time and regular part time hospitality/safety workers and maintenance workers employed by the Employer in Washington, D.C.

EXCLUDED: All office clerical employees, professional employees, managers, guards and supervisors as defined in the Act.

² Although the judge found that the prounion employees were not the Petitioner's agents, he assessed the threats of job loss at issue in Objection 1 under a party conduct standard. Citing *Janler Plastic Mold Corporation*, 186 NLRB 540 (1970) and *Underwriters Laboratories, Inc.*, 323 NLRB 300 (1997), enfd. 147 F.3d 1048 (9th Cir. 1998), the judge found that the threats of job loss would not be objectionable even if made by union agents. We agree but, in any event, the employees who made the threats here were not union agents, and the alleged objectionable nature of their actions must be evaluated under the third-party conduct standard.

Dated, Washington, D.C. , December 23, 2010.

Wilma B. Liebman Chairman

Craig Becker Member

Mark Gaston Pearce Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD