

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

ROAD WORKS, INC.

Employer

and

Case 21-RC-21306

SOUTHERN CALIFORNIA DISTRICT COUNCIL
OF LABORERS AND ITS AFFILIATED LOCAL,
LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 1184

Petitioner

REPORT ON OBJECTION

This Report¹ contains my recommendations regarding the Employer's objection to the election conducted on August 18, 2011, among the employees of the Employer, in the unit agreed appropriate for the purposes of collective bargaining.² The Employer's objection alleges that "[t]he Petitioner-Union by and through its agents, threatened and coerced employees in order to interfere with, and prevent the exercise of, free choice in the election."

As described below, I recommend that the Employer's objection be overruled in its entirety.

Procedural History

Pursuant to a Stipulated Election Agreement approved on July 29, 2011, an election by secret ballot was conducted on August 18, 2011, among the employees in the unit agreed appropriate for the purposes of collective bargaining. The tally of ballots which was served upon the parties immediately following the election showed that of approximately 13 eligible voters, six cast

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² All field construction employees, including foreman, performing asphalt and concrete crack filing and sealing, by any method on any surface, employed by the Employer at or out of the Employer's facility located at 303 Short Street, Pomona, California; excluding all other employees, officers, guards and supervisors as defined by the Act.

ballots for, and four against, the Petitioner. There were no void ballots and three challenged ballots, which are sufficient in number to affect the results of the election.³

On August 25, 2011, the Employer timely filed one objection to the election (Attachment A), a copy of which was duly served upon the Petitioner. By letter dated August 25, 2011, the undersigned informed the Employer that, pursuant to Section 102.69(a) of the Board's Rules and Regulations, evidence in support of the Employer's objection must be submitted no later than the close of business on Thursday, September 1, 2011. The Employer was further informed that "[i]f such evidence is not furnished by the time set forth, the objections are subject to being overruled without further notice or investigation. Upon good cause shown, additional time in which to provide the evidence may be granted." At about 3:00 p.m. on September 1, 2011, counsel for the Employer facsimiled a letter (Attachment B) to the undersigned requesting an extension of time to proffer evidence in support of its objection.⁴ After due consideration of the Employer's request for an extension of time to submit its evidence, inasmuch as no good cause for an extension was proffered, the undersigned decided to deny the request. Counsel for the Employer was immediately informed of this decision. Thereafter, a few minutes before 5:00 p.m. on September 1, 2011, counsel for the Employer facsimiled a letter (Attachment C) to the undersigned stating:

"Road Works has good cause to believe, based on information received from employees that Union agents threatened eligible voters and further time is needed to clarify details on supporting evidence. We hereby request reconsideration of the denial of our request for an extension."

Evidence submitted in support of objections should include a list of the witnesses and a brief description of the testimony of each. As shown above, the Employer's second letter of

³ The three challenged ballots are currently under investigation by the Region.

⁴ This letter contained no evidence in support of the Employer's objection.

September 1, 2011 is simply a restatement of the Employer's objection and does not constitute evidence in support of its objection.⁵

Section 102.69(a) of the Board's Rules and Regulations states that "[w]ithin 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections."

The Board has clearly held that filing deadlines for evidence in support of objections to the conduct of an election are to be strictly applied. In Star Video Entertainment L.P., 290 NLRB 1010 (1988), the Board observed that as of September 29, 1986, the Board revised its Rules and Regulations regarding the time periods in which to file documents, including evidence in support of objections to an election. Section 102.69(a) was revised to increase the time allowed for the filing of evidence in support of objections from 5 to 7 days. The Board noted in Star Video that "in so doing, the Board put all parties on notice, with full explanation, that the new rule would be strictly applied." *Id.* at 1010. Further, since its decision in Star Video, the Board has strictly applied rules regarding filing deadlines.⁶

A post-election hearing is granted when the party filing objections has supplied prima facie evidence raising "substantial and material issues" that would warrant setting the election aside. NLRB v. Tio Pepe, Inc., 629 F.2d 964,968 (4th Cir. 1980), citing Gulf Coast Automotive Warehouse Co. v. NLRB, 588 F.2d 1096 (5th Cir. 1979). If the objecting party does not submit its supporting evidence within the required period of time, the objections will be dismissed. Kano Trucking Serv., 295 NLRB 514, 515 (1989). Furthermore, a party seeking to challenge an election may not rely upon

⁵ Inasmuch as no good cause has been proffered in support of the Employer's request for reconsideration of the denial of an extension of time, such request for reconsideration is hereby denied.

⁶ See Koons Ford of Indianapolis, Inc., 308 NLRB 1067 (1992) (rejecting the petitioner's request for review of the Regional Director's decision to overrule objections due to late-tendered evidence); Goody's Family Clothing Inc., 308 NLRB 181 (1992) (rejecting the employer's evidence filed one day late); TA Investment Co., Inc., 300 NLRB 473 (1990) (affirming the Regional Director's decision to overrule the petitioner's objections due to late filing of objections); and Excalibur Extrusions, Inc., 296 NLRB 1292 (1989) (affirming "the requirement that evidence must be timely submitted").

“the Board staff to seek out evidence that would warrant setting aside the election.” U.S. Rubber Co. v. NLRB, 373 F.2d 602, 606 (5th Cir. 1967) (internal citations omitted). Rather, the party seeking to set aside election results must submit prima facie evidence “of a kind which would be admissible into evidence at a hearing and subjected to evaluation as to its weight and probative force.” Grants Furniture Plaza, Inc., 213 NLRB 410 (1974). Thus, the objecting party’s burden is heavy because conclusory allegations are insufficient. NLRB v. Claxton Mfg. Co., 613 F.2d 1364, 1366 (5th Cir. 1980). Specific evidence is required. *Id.*

As stated above, in this case, the Employer failed to submit any evidence, whatsoever, in support of its objection. In addition, the objection itself contains insufficient facts to be deemed to have met the Employer’s “heavy burden.”

SUMMARY

By not submitting timely evidence in support of its objection and by failing to establish the existence of substantial or material issues, the Employer has failed to set forth a prima facie case that would warrant setting aside the election results. Accordingly, I recommend that the Employer’s objection be overruled in its entirety.⁷

DATED at Los Angeles, California, on September 7, 2011.

/s/D. Bruce Hill
Acting Regional Director, Region 21
National Labor Relations Board

⁷ Under the provisions of Section 102.69 of the Board’s Rules and Regulations, Exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington, D.C. by Wednesday, September 21, 2011.