

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

TERMINIX INTERNATIONAL COMPANY, LP

Employer

and

Case 21-RC-064769

COMMUNICATIONS WORKERS OF AMERICA,
LOCAL 9586, AFL-CIO

Petitioner

**REPORT ON OBJECTIONS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Report¹ contains my recommendations regarding the Employer's objections to the election conducted on October 28, 2011, among the employees of the Employer, in the unit agreed appropriate for the purposes of collective bargaining.² The Employer's objections³ allege that:

1. The Petitioner harassed and/or coerced unit employees who expressed opposition to unionization;
2. The Petitioner threatened unit employees that they would lose their jobs if they did not vote "yes" in the election;
3. The Petitioner threatened unit employees that they would be fired by the Employer, and Petitioner would not be able to help them unless the Petitioner won the election;

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

² The collective-bargaining unit agreed appropriate in this matter is composed of: "Included: All full-time and regular part-time Customer Service Representatives, Regional Account Managers, Branch Account Managers and Pest Control Service Technicians employed by the Employer at its facility located at 5901 East Slauson Avenue, City of Commerce, California; excluding all other employees, professional employees, guards and supervisors as defined by the Act."

³ The Employer has requested withdrawal of Objection Nos. 9 and 16, and the withdrawal requests are hereby approved.

4. The Petitioner misled and intimidated unit employees by telling them that the Employer forced someone to be its election observer;
5. The Petitioner intimidated unit employees by taking photographs and/or video of them;
6. The Petitioner intimidated unit employees by taking photographs and/or video of members of Employer management and human resources personnel;
7. The Petitioner gave the impression to unit employees that it knew how unit employees voted and told unit employees that they had to vote for the Petitioner;
8. The National Labor Relations Board (herein "Board") interfered with the election by using ballots that were printed on paper which was so thin that it was transparent, and a Petitioner election observer told unit employees that he saw how employees voted;
10. Board agents interfered with the election and indicated support for the Petitioner by instructing Employer human resource personnel and members of management in the back parking lot that they had to go to the side parking lot;
11. Board agents interfered with the election and indicated support for the Petitioner by instructing Employer human resource personnel and members of management in the front parking lot that they had to stay away from the doors to the facility and the building;
12. Board agents interfered with the election and indicated support for the Petitioner by instructing Employer supervisors and human resource personnel that interior doors to work areas had to remain closed;
13. Board agents interfered with the election and indicated support for the Petitioner by instructing the Employer to comply with the Petitioner's requirement that doors to work areas and supervisor's office be kept closed during the election;
14. Board agents interfered with the election by repeatedly leaving the polling area during the election; and
15. Board agents interfered with the election and indicated support for the Petitioner by walking through the interior of the Employer's facility and the external parking lots during the election and by giving instructions to employees and Employer supervisors;

As described below, I conclude that the substantial and material factual and legal issues raised by Employer's Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15 can best be resolved by a hearing, and herein Order and give Notice of such hearing.

Procedural History

The petition in this matter was filed on September 19, 2011.⁴ Pursuant to a Stipulated Election Agreement approved on September 30, an election by secret ballot was conducted on October 28, among the employees in the above-noted unit. The tally of ballots served on the parties at the conclusion of the election showed that of approximately 40 eligible voters, 20 cast ballots for, and 19 against, the Petitioner. There were no void ballots or challenged ballots. The Employer timely filed objections to the election, a copy of which is attached hereto as Attachment A. The Objections were timely served upon the Petitioner.

The Objections and Analysis

Objection No. 1

During the critical, pre-election period, the Communication [sic] Workers of America, Local 9586, AFL-CIO (“Petitioner” or “Union”), through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, harassed and/or coerced voting unit employees who expressed opposition to unionization;

Objection No. 2

During the critical, pre-election period, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, threatened voting unit employees that they would lose their job if they did not vote “Yes” in the election.

Objection No. 3

During the critical, pre-election period, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, threatened voting unit employees that they would be fired by the Employer and Petitioner would not be able to help them unless Petitioner won the election;

⁴ Unless otherwise specified, all dates herein are in 2011.

Inasmuch as they are related, I will consider Employer's Objection Nos. 1, 2, and 3 together. The Employer contends that two unit employees, hereinafter referred to as Witness A and Witness B, will testify in support of these objections.

The Employer maintains that Witness A will testify that during the critical period before the election, unit employee Emiliano Caballero, an alleged Petitioner agent who also served as a Petitioner election observer, told him/her that Mr. Caballero and another employee were filing complaints with the Employer human resources director against eligible voters such as Witness A, in order to persuade such employees to vote "yes," and that another identified employee filed a complaint with Employer human resources regarding Witness A to prevent him/her from obtaining a supervisor position. Witness A alleges that Mr. Caballero told him/her this in order to persuade him/her to tell other employees to vote "yes" in the afternoon polling session or face similar consequences.

The Employer maintains that Witness B will testify that during the critical period before the election, unit employee Jose Valdez, an alleged Petitioner agent, told Witness B that he/she would lose his/her job if he/she did not vote for the Petitioner. Mr. Valdez allegedly told Witness B that the only way to protect himself/herself from discharge would be to vote "yes" during the election.

For its part, the Petitioner simply denies engaging in the conduct alleged in Employer's Objection Nos. 1, 2, and 3.

Objection No. 4

On the day of the election, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, mislead and intimidated voting unit employees by informing employees that an Employer observer was being forced by the Company to be an observer for the Employer during the election.

The Employer contends that a person, hereinafter referred to as Witness C, will testify in support of its Objection No. 4.

The Employer maintains that Witness C will testify that on the day of the election, unidentified Petitioner agents told unit employees that the Employer forced a named unit employee to serve as its election observer, and employees were told this in order to mislead them into voting for the Petitioner.

For its part, the Petitioner simply denies engaging in the conduct alleged in Employer's Objection No. 4.

Objection No. 5

On the day of the election, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, intimidated voting unit employees by taking photographs and/or video of them as they entered and exited the Employer's facility housing the voting area. No explanation was provided to voting unit employees for this conduct.

Objection No. 6

On the day of the election, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, intimidated voting unit employees by taking photographs and/or video of members of management and human resources personnel as they entered and exited the Employer's facility. No explanation was provided to employees for this conduct.

Inasmuch as they are related, I will consider Employer's Objection Nos. 5 and 6 together. The Employer contends that two persons, hereinafter referred to as Witness D and Witness E, will testify in support of these objections.

The Employer maintains that Witness D and Witness E will testify that during the election, they witnessed unidentified Petitioner representatives parked near the Employer's

facility taking pictures and/or videos of managers and employees, who were just entering or had just exited the polling area, and the Petitioner representatives did not explain the reasons for the photography.

For its part, the Petitioner denies engaging in the conduct alleged in Employer's Objection Nos. 5 and 6. Rather, the Petitioner asserts that it is prepared to present witnesses who will testify that the Petitioner took one picture of members of Employer management who were congregated outside the Employer's facility while the polls were open, and no unit employees were in the vicinity when the picture was taken. The Petitioner contends that this was the only photograph, it was taken to document possible election interference by the Employer, and the photo has not been distributed.

Objection No. 7

On the day of the election, the Union, through its authorized agents, representatives and individuals acting on its behalf and/or with its implied endorsement, gave the impression to voting unit employees that it knew how unit employees voted in the morning voting session. Based on information and belief, it then informed certain voting unit employees that they had to vote for the Union in the afternoon session.

Objection No. 8

On the day of the election, Drew W. Brungard, the NLRB Board Agent, ("Board Agent") interfered with the fair operation of the election by allowing the use of ballots that were printed on paper which were too thin or transparent. Based on information and belief, this permitted the Union's observer to see how employees voted, a fact which he relayed to unit members in an attempt to coerce persons who had not yet voted to vote for the Union by implying disclosure of how they voted.

Inasmuch as they are related, I will consider Employer's Objection Nos. 7 and 8 together. The Employer contends that Witness A and a unit employee, hereinafter referred to as Witness F, will testify in support of these objections.

In support of Employer's Objection Nos. 7 and 8, the Employer contends that Witness A will testify that while he served as an Employer election observer: (a) a Board agent instructed voters to fold their ballot once and place it into the ballot box; (b) he noticed that the ballots used by the Board were printed on very thin paper, which allowed the election observers to see how voters had voted; and (c) Petitioner election observer Emiliano Caballero told Witness A that he was able to determine how each employee voted and intended to tell the Petitioner how employees voted. The Employer asserts that Witness F will corroborate items (a) and (b) mentioned above.

Regarding Employer's Objection Nos. 7 and 8, the Petitioner denies that it or the Board engaged in any objectionable conduct. Specifically, the Petitioner asserts that it is prepared to present witnesses who will testify that: (a) the Petitioner did nothing to indicate that it knew how employees voted or that employees had to vote for the Petitioner in the afternoon polling session; (b) the ballots were not thin or transparent; (c) the Petitioner's observer did not see how employees voted; (d) nothing was done to indicate to employees how other employees had voted; and (e) the Board agents told voters to fold their ballot and to place it in the ballot box.

Objection No. 10

On the day of the election, the Board Agent interfered with the fair operation of the election by leaving the voting area during the first voting period to instruct human resource personnel and members of management in the back parking lot that they had to go to the side parking lot. This also indicated to voting unit employees that the Board Agent was not an impartial third party but was instead acting on behalf of the Union.

Objection No. 11

On the day of the election, the Board Agent interfered with the fair operation of the election by leaving the voting area during the first voting period to instruct human resource personnel and members of management in the front parking lot that they had to stay away

from the doors to the facility and the building. This also indicated to voting unit employees that the Board Agent was not an impartial third party but was instead acting on behalf of the Union.

Objection No. 12

On the day of the election, the Board Agent interfered with the fair operation of the election by leaving the voting area during the first voting period to instruct supervisors and human resource personnel that interior doors to work areas had to remain closed. This also indicated to voting unit employees that the Board Agent was not an impartial third party but was instead acting on behalf of the Union.

Objection No. 13

On the day of the election, the Board Agent interfered with the fair operation of the election by instructing the Employer to comply with the Union's requirement that doors to work areas and supervisor's office be kept closed during the election. This indicated to voting unit employees that the Board Agent was not an impartial third party but was instead acting on behalf of the Union, particularly since such requirements had not occurred in the 2008 election with the same union, in the same facility, using the same location as the polling location.

Objection No. 14

On the day of the election, the Board Agent interfered with the fair operation of the election by repeatedly leaving the polling area during voting times.

Objection No. 15

On the day of the election, the Board Agent interfered with the fair operation of the election by walking through the Employer's facility during election times, including throughout the interior areas of the facility and the external parking lots, and instructing supervisors and employees on their conduct, while acknowledging that their conduct was not unlawful. This indicated to voting unit employees that the Board Agent was not all impartial third party but was instead acting on behalf of the Union.

Inasmuch as they are related, I will consider Employer's Objection Nos. 10, 11, 12, 13, 14, and 15 together. The Employer contends that Witness A, Witness C, Witness D,

Witness E, and Employer Vice-President of Human Resources Victor Charles will testify in support of these objections.

The Employer asserts that Witness A will testify that the Board agent in charge of the election (herein “lead Board agent”) left the polling area for more than 50 percent of the time that the polls were open, leaving the ballot box with the other agent of the Board who was assisting with the conduct of the election.⁵

The Employer contends that Witness C, Witness D, Witness E, and Mr. Charles will testify that during the pre-election conference, the Petitioner raised a concern from a prior election with the Employer. It is alleged that, in the presence of unit employees, the lead Board agent requested that the Employer implement the Petitioner’s request. The Employer further contends that during the polling, in the presence of unit employees, the lead Board agent: (a) walked through hallways inside the Employer’s facility and in parking lot areas; (b) instructed Employer managers to close the doors of the rooms near the polling area, as requested by the Petitioner; and (c) instructed Employer managers, who were outside the building and in the parking lots, to move away from the area, as requested by the Petitioner, although such managers were not within view of unit employees entering the polling area. The Employer posits that the lead Board agent later stated that he had not witnessed any objectionable conduct by the Employer, which, according to the Employer, establishes that there was no proper basis for the actions described in items (a), (b) and (c) mentioned immediately above.

Regarding Employer’s Objection Nos. 10, 11, 12, 13, 14, and 15, the Petitioner denies that the Board engaged in any objectionable conduct. Specifically, the Petitioner asserts that witnesses will testify that during the 6:00 a.m. pre-election conference, which was attended

⁵ The Employer claims that the agent of the Board who was assisting with the conduct of the election was not authorized to run the election.

by representatives of the Employer and Petitioner, the Petitioner raised a concern about polling area being located in between Employer management offices.⁶ The Petitioner contends that the Parties agreed to keep the interior doors to the offices closed during voting periods, and a member of Employer management taped signs on the doors requesting that they be kept closed.

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Employer's Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Employer's Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer for the purpose of receiving evidence to resolve the issues raised by Employer's Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of Employer's Objection Nos. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, and 15. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the hearing officer's report.

⁶ The voting was conducted in the file room, which was the polling place agreed to by the Parties in the Stipulated Election Agreement.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on December 1, 2011, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PST, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on November 18, 2011.

/s/William M. Pate
Acting Regional Director
Region 21
National Labor Relations Board