

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

)	
MR TRANSPORTATION, INC,)	
d/b/a MARQUIS AMBULETTE)	
)	
Employer)	
and)	Case No. 29-RC-66530
)	
LOCAL 1181, AMALGAMATED)	
TRANSIT UNION, AFL-CIO)	
)	
Petitioner)	
and)	
)	
LOCAL 713, INTERNATIONAL)	
BROTHERHOOD OF TRADE UNIONS)	
)	
Intervenor)	

REPORT ON OBJECTIONS

On October 12, 2011,¹ Local 1181, Amalgamated Transit Union, AFL-CIO, herein called the Petitioner or Local 1181, filed a petition in Case No. 29-RC-66530 seeking to represent certain employees employed by MR Transportation, Inc. d/b/a Marquis Ambulette, herein called the Employer. Local 713, International Brotherhood of Trade Unions, herein called the Intervenor or Local 713, intervened on the basis of a showing of interest.

Pursuant to a Stipulated Election Agreement signed by the Petitioner, the Intervenor, and the Employer, and approved by the undersigned on October 27, an election by secret ballot was conducted on November 22 among the employees in the following unit:

All full-time and regular part-time drivers and matrons employed by the Employer at its facility located at 2602 Stillwell Avenue, Brooklyn, New York, but excluding all professional employees, call-takers, dispatchers, guards and supervisors as defined in Section 2(11) of the Act.

¹ All dates hereinafter are in 2011 unless otherwise indicated.

The Tally of Ballots made available to the parties pursuant to the Board’s Rules and Regulations, showed the following results:

Approximate number of eligible voters	90
Number of void ballots	0
Number of ballots cast for the Petitioner	35
Number of ballots cast for the Intervenor	21
Number of votes cast against participating labor organizations	2
Number of valid votes counted	58
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	59

Challenges are not sufficient in number to affect the results of the election. A majority of the valid votes counted plus challenged ballots has been cast for the Petitioner.

The Intervenor filed timely objections to conduct affecting the results of the election.²

Pursuant to Section 102.69 of the Board’s Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Intervenor’s objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The undersigned also caused an independent investigation to be conducted. The investigation revealed the following:

Objections Nos. 1, 2 and 3

On November 23, the Intervenor filed its first objection alleging that the Employer implemented a change in employees’ working conditions during the critical period prior to the election. This objection is attached hereto as Exhibit A. Specifically, the Intervenor alleges that during the critical period prior to the election, the Intervenor had campaigned on the issue of improving the conditions of the bathrooms provided to employees. The Intervenor further alleges

² As discussed more fully below, the Intervenor also filed one untimely objection.

that two days before the election, the Employer improved the bathroom facilities provided to employees, thereby making a “major unilateral change in the employees’ working conditions.”

On November 28, the Intervenor filed its second and third objections. These objections are attached hereto as Exhibit B.³ In its second objection, the Intervenor alleges that the November 22 election was held at a time which denied certain workers an opportunity to vote. In its third objection, the Intervenor alleges that the Employer instructed drivers with matrons on their buses not to return to the base in time to allow these employees to vote in the election. The Petitioner asserts that these objections lack merit. The Employer has not taken a position on these objections.

With regard to its first, second and third objections, the independent investigation disclosed that on December 2, the Assistant Regional Director advised the Intervenor of its obligation to provide evidence in support of its objections within seven days of its filing of objections. To date, the Intervenor has not produced any evidence showing that the Employer engaged in the conduct alleged therein. It is incumbent on the party filing objections to provide evidence sufficient to prove a prima facie case within seven days of the date for filing objections. See Craftmatic Comfort Mfg. Corp., 299 NLRB 514 (1990). In order to support objections adequately, a party must do more than “rely on its bare allegations.” Lange and Perkins LLC d/b/a The Daily Grind, 337 NLRB 655, 656 (2002). A party must at least identify its witnesses and provide a description of the evidence the named witnesses could provide. See id. If the Regional Director does not receive timely evidence in support of objections, those objections should be overruled. See Star Video Entertainment L.P., 290 NLRB 1010 (1988). In this case, the Intervenor has not provided any information in support of these objections. Accordingly, I recommend overruling these objections.

³ On November 28, the Intervenor filed an unfair labor practice charge alleging violations of Section 8(e) of the Act. The allegations contained in this charge allege objectionable conduct rather than violations of Section 8(e). I note that the Intervenor listed the case number on the charge as 29-RC-66801. Since it appears that the Intervenor’s unfair labor practice charge was intended to serve as additional objections to the election, I will consider these allegations as objections, and I will address them as such in this Report. Avis Rent-A-Car, 324 NLRB 445 (1997).

Objection No. 4

On December 1, the Intervenor filed its fourth objection alleging that the Board Agent conducting the election denied the Intervenor the opportunity to have a second observer at the polls. This objection is attached hereto as Exhibit C.⁴

In order to be timely, objections must be filed by the close of business on the seventh day after the tally of ballots has been prepared and made available to the parties. See Section 102.69(a) of the Board's Rules and Regulations. The Regional Director does not have the authority to extend the time for filing objections. See John I. Haas, Inc., 301 NLRB 300 (1991). Finally, a party may not amend objections to file further objections after the seventh day.⁵ See Rhone-Poulenc, Inc., 271 NLRB 1008, 1008 (1984). In this case, the election was held and the tally of ballots was prepared on November 22. The seventh day following this date was November 29. Thus, this objection, which was not filed until December 1, was not timely. Accordingly, I cannot consider the Intervenor's fourth objection, and therefore recommend overruling this objection.

Summary and Recommendations

I have recommended overruling the Intervenor's objections in their entirety. Accordingly, I recommend that the Petitioner be certified as the exclusive bargaining representative for the following appropriate unit:

⁴ On December 1, the Intervenor filed a second unfair labor practice charge, again listing 29-RC-66801 as the case number. On its face, this charge also alleged violations of Section 8(e) of the Act. The Intervenor included the allegations discussed above in connection with Objections Nos. 2 and 3, and added a third allegation regarding the conduct of the Board Agent. As I have with Objections Nos. 2 and 3, I consider this allegation as an objection and include it herein.

⁵ The Board may consider objections filed after this seven day period, which are related to timely filed objections, or, if unrelated to timely filed objections, if the objecting party can show by clear and convincing evidence that such information was newly discovered and previously unknown. See Rhone-Poulenc, Inc., 271 NLRB 1008 (1984). In this case, the Intervenor's allegation regarding the Board Agent's conduct was not related to the timely filed objections. Further, the Intervenor cannot show that the information was newly discovered or previously unknown to it, as it would have or could have learned of the alleged objectionable conduct at the election.

All full-time and regular part-time drivers and matrons employed by the Employer at its facility located at 2602 Stillwell Avenue, Brooklyn, New York, but excluding all professional employees, call-takers, dispatchers, guards and supervisors as defined in Section 2(11) of the Act.

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 December 23, 2011, 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

