

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 24**

SUIZA DAIRY, CORP.

Employer

and

CENTRAL GENERAL DE TRABAJADORES

Petitioner

Cases 24-RC-081423  
24-RC-081452

**REPORT AND RECOMMENDATIONS ON OBJECTIONS**

A Stipulated Election Agreement was signed by Incumbent-Intervenor Movimiento Solidario Sindical (MSS) and the Employer on May 30, 2012, and by Petitioner Central General de Trabajadores (CGT) on May 31, 2012. The Stipulated Election Agreement, approved by the Regional Director on May 31, 2012, provided, among others, for the holding of a secret ballot election on June 20, 2012 among certain employees<sup>1</sup> of the Employer.

On June 11, 2012, or nine (9) days before the election was scheduled to be held, MSS signed a document entitled "Waiver and Disclaimer of Interest" essentially disclaiming any further interest in representing the employees involved in the instant petition; requesting to have the Certification of

---

<sup>1</sup> The bargaining unit in Case 24-RC-081423 included all drivers/salesmen and merchandisers who work for the Employer at its Reparto Metropolitano and Juncos facilities, but excluding all other employees, employees covered by other collective bargaining agreements, office and/or clerical employees, guards and supervisors as defined in the Act. Case 24-RC-081452 included all fleet maintenance department employees employed by the Employer at its Reparto Metropolitano and Juncos facilities, but excluding all other employees, employees covered by other collective bargaining agreements, office and/or clerical employees, guards and supervisors as defined in the Act.

Representative previously issued revoked; and asking that its name be removed from the ballot. By order dated June 12, 2012, MSS's disclaimer of interest request was approved in all respects and MSS's name was removed from the ballot. The parties were notified of the Regional Director's decision to approve MSS's request on June 13, 2012.

On June 15, 2012, the Employer filed a motion before the Board entitled "Appeal From Region's Order Approving Waiver and Disclaimer of Interest and Revoking Certification" essentially claiming that the Regional Director's approval of MSS' request "has been sole(ly) (sic) responsible of the uneasiness, confusion, misunderstandings, and disorientation of all of the Employer's employees". In the document the Employer also requested that the June 20, 2012 election be held two weeks later.

On June 20, 2012, the election was held as scheduled. However, because the Board had not yet ruled on the above noted Employer's request to the Board the ballots were impounded. By order dated June 27, 2012, the Board denied the Employer's motion and the ballots were opened and counted on July 2, 2012.<sup>2</sup> The tally of ballots in 24-RC-081423 made available to the parties, revealed the following:

---

<sup>2</sup> The Employer filed yet another motion regarding the Regional Director's decision to open and count the ballots. On this occasion the Employer raised what essentially appeared to be possible objectionable conduct (discussed below) that occurred after the voting had concluded but before the counting of the ballots had occurred. The Employer's motion was denied orally on July 2, 2012 and notified to the parties by written order dated July 3, 2012.

Approximate number of eligible voters	169
Void Ballots	1
Votes cast for Petitioner	101
Votes cast against participating labor organizations	28
Valid votes counted	129
Challenged ballots	12
Valid votes counted plus challenged ballots	141

Challenges are not sufficient in number to affect the results of the election.

The tally of ballots in Case 24-RC-081452 made available to the parties, revealed the following:

Approximate number of eligible voters	17
Void Ballots	0
Votes cast for Petitioner	14
Votes cast against participating labor organizations	3
Valid votes counted	17
Challenged ballots	0
Valid votes counted plus challenged ballots	17

Challenges are not sufficient in number to affect the results of the election.

On July 6, 2012, the Employer filed objections to the election which were served upon the Union on the same date. Pursuant to the Stipulated Election Agreement, and in conformity with Section 102.69 of the Board's Rules and Regulations, on July 6, 2012, the undersigned Regional Director caused an investigation to be made of the objections to the election and to conduct affecting the results of the election and now sets forth her findings, conclusions and recommendations with respect thereto.

For the reasons that follow, I recommend that the Employer's objections, which are attached hereto as "Exhibit I," and consisting of 7 numbered paragraphs, be overruled in their entirety.

## **OBJECTION No. 1**

Objection No. 1 alleges that the Region's above noted approval of MSS's waiver and disclaimer caused confusion and misunderstanding among unit employees for the following reasons. First, the Employer was not notified by the Region in a timely manner about the approval of the waiver and disclaimer. Second, MSS was campaigning and was still filing unfair labor practice charges shortly before filing the waiver and disclaimer. Third, the approval of the waiver and disclaimer invalidated the terms of the Stipulated Election Agreement executed by its signatories. Fourth, the Employer was not able to clarify all the confusion caused by the approval of the waiver and disclaimer as their request for a 2-week postponement of the election was denied by the Region. In its objections and supporting evidence, the Employer did not provide the names of the employees that were allegedly "confused" as a result of the approval of MSS's waiver and disclaimer nor presented any evidence that would tend to prove the alleged confusion. In support of this objection the Employer stated that Human Resources Director Manuel Velázquez would be testifying about the alleged confusion among employees. However, the affidavit only generally refers to "confusion among the employees" but does not provide any direct evidence of what this alleged confusion consisted of, or how it affected the results of the election in this case.

Section 11098 of the Board's Casehandling Manual, Part Two, states:

### **Request to Withdraw From Ballot After Election Agreement**

In a multiple-union situation, the election agreement provides that:

"If more than one union is to appear on the ballot, any union may have its name removed from the ballot by the approval of the Regional Director of a timely request, in writing, to that effect."

Thus, in a multiunion situation, **if any of the unions wish to withdraw from the ballot and allow the election to go forward, such a request may be freely approved if time permits.** If the petitioner requests withdrawal, an intervenor must have or obtain within a reasonable period of time a petitioner's showing of interest. Sec. 11112.1(b). **If time does not permit making the necessary changes in the ballot and the posting of a correct notice of election for the full three days required by Sec. 103.20** of the Rules and Regulations and the intervenor has or obtains a petitioner's showing of interest, the election should be held as scheduled with the petitioner on the ballot. Whether or not time permits making the necessary changes, if the intervenor does not have or cannot obtain within a reasonable period of time a petitioner's showing of interest, the petitioner's request should be treated as a request to withdraw its petition. Secs. 11110 and 11112.1(a).

Section 103.20 of the Board's Rules and Regulations further provides that: Sec. 103.20 Posting of election notices.—(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

As noted, on June 11, 2012 MSS requested, and the Regional Director approved, its withdrawal from the election. The Regional Director communicated this decision to the Petitioner and to the Employer by order dated June 12, 2012. There is no dispute that the Notice of Election that was issued by the Regional Director and the sample ballots that were intended to be used in the June 20, 2012 election were timely printed, distributed and posted as provided by Section 102.30 of the Board's Rules and Regulations, that is, "3 full working days prior to 12:01 a.m. of the day of the election" or in this case, June 20, 2012.

On the other hand, the Employer presented no evidence to show that the Board's official Notice of Election was defaced and/or that the employees who were eligible to vote in the election did not know the details of the election, i.e., the date, time, place, bargaining unit and the choice on the ballots for each

election.<sup>3</sup> In fact, the administrative investigation reflects that the Notice of Election was delivered to the Employer on June 12, 2012, that is 8-days prior to the scheduled election, clearly in compliance with the requirements of Section 103.20 of Board's Rules and Regulations, and there is no contention that the same was not timely posted.

Further, as shown in the Tally of Ballots issued to the parties, the results of the election reflected a large voter turnout. For example, in the unit in Case 24-RC-081423, 141 of 169 employees, or nearly 84% of those eligible to vote, voted whereas in the unit in Case 24-RC-081452, 100% of all eligible to vote voted (14 of 17 voted for representation and 3 voted against representation by Petitioner). In sum, the evidence presented did not show that employees were "confused" either with the election itself or with the choices on the ballots. Accordingly, it is recommended that the Employer's Objection No. 1 be overruled.

### **OBJECTION No. 2**

Objection No. 2 alleges that the Board agent assigned to the Juncos election site failed to follow established election procedures pursuant to Section 11326.5 of the Board's Casehandling Manual<sup>4</sup> by not allowing the Employer to distribute informative material on the basis that no propaganda or flyers could be distributed 24-hours prior to the election. The Employer contends that the Board

---

<sup>3</sup> *Ryder Memorial Hospital*, 351 NLRB 214 (2007).

<sup>4</sup> 11326.5 Distribution of Literature; Sound Truck

There should be no prohibition on the part of the Board agent against the distribution of literature on the day of the election even though it takes place during the voting hours. However, electioneering materials visible from the polls should be removed. If electioneering from a sound truck should penetrate to the polling place during the voting the Board agent, if possible, should take appropriate steps to have the sound lowered.

Agent's refusal to allow it to distribute literature constitutes an improper interference in the election as Board law allows circulating campaign literature on or off the premises at any time before an election. *General Electric Co.*, 161 NLRB 618 (1966).

An election is set aside when the conduct of the Board agent tends to destroy confidence in the Board's election process or could reasonably be interpreted as impairing the election standards the Board seeks to maintain. *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967). Here, the Employer claims that the Board Agent prevented it from disseminating information about the reasons why the Board had decided to impound the ballots. As noted previously, the Regional Director ordered that the ballots be impounded precisely because the Board had not yet ruled on the Employer's motion "appealing" the Regional Director's decision to approve MSS' request to withdraw from the entire process and have its name removed from the ballot.

Although the Employer claims that the Regional Director's representative at the election did not allow it to distribute a leaflet which accurately communicated the reasons for the Region's decision to impound the ballots, no evidence was presented to show that, in fact, employees were confused, that the decision was somehow confusing to employees or that the distribution of the Employer leaflet itself would clear any "confusion". In this regard, although the Board agent's decision to not allow the Employer to distribute the leaflet may be viewed as unfortunate, the Employer did not provide any evidence of such alleged confusion or that employees reasonably believed that the Employer was responsible for informing them of the Region's decision to impound the ballots. In

fact, the tally of ballots shows the contrary, i.e., that an overwhelming majority of eligible voters voted in this election (83% and 100%, respectfully). Further, as previously discussed, there is no evidence to show that the official Notice of Election was defaced and/or altered. Accordingly, I recommend that Objection No. 2 be overruled.

**OBJECTIONS Nos. 3, 4, and 5**

Because the referenced objections are for all intents and purposes grounded on a similar fundamental proposition and similar events, they are discussed together herein. Objection No. 3 alleges that Board agent Cliff Ramos failed to maintain control of the election site by allowing Human Resources Director Manuel Velázquez and Union agent José Budet to engage in verbal confrontations in the presence of employees during the post-election meeting. Objection No. 4 alleges that the Board agent failed to maintain control of the election site by yelling and physically pushing Manuel Velázquez out of the polling area in the presence of employees during the post-election meeting. Objection No. 5 alleges that the Board agent allowed Union agent José Budet to become disrespectful with Mr. Velázquez in the presence of other employees during the post election meeting. The Employer contends, without providing any specific evidence, that this conduct during the post election meeting destroyed the confidence in the Board's election process and its neutrality.

In an objections investigation, the burden is on the party to prove its case. A Board-conducted representation election is presumed to be valid. *NLRB v. WFMT*, 997 F2d 269 (7<sup>th</sup> Cir. 1993); *NLRB v. Service American Corp.*, 841 F2d 191, 195 (7<sup>th</sup> Cir. 1988); *Progress Industries*, 285 NLRB 694, 700 (1987). Thus,

an objecting party must demonstrate not only that the conduct occurred, but also that the conduct interfered with the free choice of employees to such degree that it has materially affected the results of the election.

In *Sawyer Lumber Co., LLC*, 326 NLRB 1331 (1998), the Board stated: “When the integrity of the election process is challenged, the Board must decide whether the facts raise a “reasonable doubt as to the fairness and validity of the election.” The Court, in *Elizabethtown Gas Co. v. NLRB*, 212 F.3d 257, 262-263 (4th Cir. 2000), involving alleged Board agent misconduct, stated:

Where pre-election conduct is alleged to have invalidated a representation election, the party seeking to overturn the election- in this case the Gas Company- bears a heavy burden. The challenging party must prove by specific evidence not only that campaign improprieties occurred, but also that they prevented a fair election. Where, in all the circumstances, an NLRB Agent’s conduct does not raise a reasonable doubt about the fairness or validity of the election, even actions that are contrary to NLRB policy do not constitute grounds for setting aside the results of the election.

As noted above, these objections collectively state that the Board Agent failed to maintain control of the election site by allowing the Employer’s representative (Velazquez) and the Union representative (Budet) to engage in verbal confrontations in front of employees; by yelling and physically pushing Velazquez; and allowing Budet to be disrespectful towards Velazquez and “purposefully instigated and provoked a violent incident”. However, the evidence submitted in support of these objections, the Velazquez’ sworn statement does not support the Employer’s characterization of this alleged confrontation and Board Agent misconduct. With regard to Budet’s conduct Velazquez merely concludes that the Budet was trying to “threaten” him by looking at him directly, “flipping” his middle finger and smiling at him. Velazquez says that he brought this “confirmed hostility” to the attention of the Board Agent that Budet

purportedly said “you’re going to cry because of this; do you want a ‘Kleenex” and some other similar words were exchanged. With respect to the alleged Board Agent conduct, Velazquez says the Board Agent “physically attacked me by grabbing both of my shoulders and pushing me toward the open door, almost making me trip”. It was sometime during this colloquy, according to Velazquez, that the Board Agent started yelling “please, please, please...we have to end this”. Velazquez then stated that “this is what I want to do, but please don’t touch me again and Jose (Budet) control yourself”. Afterwards, according to this scenario, the ballot boxes were sealed and everyone left the meeting without incident.

There is no dispute however, that even if we accept, as we do for the for the purpose of this report, that all of the aforementioned unfortunate events took place as reported by the Employer, the election had admittedly already concluded. The only purpose of the meeting was to seal the ballot boxes because the Region had ordered, in view of the Employer’s motion to the Board, that the ballots be impounded. In this respect, all of the unit employees had already cast their ballots and as noted and the overwhelming number of these employees had not only voted at the election but a large majority had also voted for the Union.

As noted, with respect to Board Agent conduct the Board has established that the challenging party must prove by specific evidence not only that campaign improprieties occurred, but also that they prevented a fair election. Where, in all the circumstances, an NLRB Agent’s conduct does not raise a reasonable doubt about the fairness or validity of the election, even actions that are contrary to

NLRB policy do not constitute grounds for setting aside the results of the election<sup>5</sup>. Here, it is undisputed that the alleged misconduct, even if true, all occurred after the voting had concluded in both bargaining units and the meeting, at the Employer's facilities, was merely to seal the ballot boxes. In this case, the Employer has failed to meet its burden to establish any basis for concluding that a fair election has not been held because of Board agent conduct. Accordingly, Objections No. 3, 4, and 5 are overruled.

### **OBJECTION No. 6**

Objection No. 6 alleges that the Board agent created an impression of partiality among the employees by allowing both Union observers to leave the polling area together for the restroom while the observer for the Employer was escorted by a female Board agent. The Employer further contends that such conduct constituted a violation of Section 11326.2 of the National Labor Relations Board Case Handling Manual II, which provides the following:

#### **Electioneering by Observers**

**"Election observers may not electioneer during their hours of observer duty, whether at or away from the polling place. In order to remove any possibilities of electioneering, an observer away from the polling place for any reason during his/her duty hours should be accompanied by observers representing the other parties. Observers should not be permitted to engage in unnecessary conversation with incoming voters."**

In support of this objection, the Employer submitted an affidavit of its observer Suhail Rodriguez who only testified that during the pre-election conference, the Board agent advised the observers that if anyone of them had to

---

<sup>5</sup> *Elizabethtown Gas Co. v. NLRB*, supra, at 262-263.

go to the bathroom during the election, they had to be accompanied by a Board agent.

In *Sawyer Lumber Co., LLC*, 326 NLRB 1331 (1998), the Board stated: “When the integrity of the election process is challenged, the Board must decide whether the facts raise a “reasonable doubt as to the fairness and validity of the election.” In a case that involved similar facts, *St. Vincent Hospital, LLC*, 344 NLRB 586 (2005), a Union observer asked permission from the Board agent to go to the bathroom at a time when there were no voters in the area. The Board agent told the observer not to talk to anybody while she was out of the room. The Employer filed objections to the election alleging, among other matters, that the Board agent allowed the Union observers to leave the polling area for an undetermined period of time while wearing their union observer badges and without being accompanied by an Employer observer. The Board adopted Administrative Law Judge conclusion that such conduct did not affect the election as the other observer was present to watch the ballot box and to check the eligibility of the voters and there was no evidence whatsoever that the bathroom absences had any effect on the integrity of the election process.

In the instant case, the Employer neither provided evidence showing that the Union observers engaged in electioneering nor evidence showing that the ballot box was unattended to either by the Board agent or by any of the designated observers. Thus, it cannot be concluded that permitting both Union observers to leave the polling area together for a brief period to use the restroom had any effect on the integrity of the election.

Since the Employer failed to meet its burden of showing that the Board agent conduct prevented a fair election, it is recommended that Objection No. 6 be overruled.

**OBJECTION No. 7**

Objection No. 7 alleges that Rolando González, who had agreed to be the election observer for the Employer days before the election, refused to do so on the day of the election arguing that he was a “union member”. In its objection, the Employer claims that they later on found, through Human Resources Director Manuel Velázquez and Edgardo Villanueva, Labor Consultant, that employee Rolando González was “threatened” by coworkers Mr. Wilmy and Mr. Elias who told him “to be careful on what you plan to do, you could get into trouble, remember we are in election time.” According to the Employer, the threat made to employee Rolando González created an atmosphere of violence and most likely was disseminated among the entire bargaining unit. A brief statement concerning the circumstances surrounding the threatening statements from Rolando González was obtained but the Employer admits that Rolando González refused to sign the statement and that because of this, González’s testimony most likely would require the Region to have him testify by means of a subpoena.

The affidavit of Manuel Velázquez does not make any reference to the alleged objectionable conduct and the statement of Edgardo Villanueva merely states that an employee from the mechanic group, whose name he does not identify, had previously agreed to be the observer for the Employer but that the employee, at the last minute, told him that he could not be the observer because “he was a union member.” Edgardo Villanueva continues his account of events

stating that he respected the decision of the employee but that “it was learned later, after the election, that this employee had been warned by coworkers including shop steward of the nonexistent MSS union, to be careful of what he was doing when they were informed of his decision to accept being the company observer.” The Employer also stated that Human Resources Director Manuel Velázquez and Labor Consultant Edgardo Villanueva would be testifying too in support of the objection.

In the instant case, even assuming that the statements alleged by the Employer were true, they are clearly vague in nature and do not, constitute a coercive statement or threat or in any way. First, the alleged threat is from an employee in the mechanic group and has not been attributed to the Union. Second, the statement itself, “to be careful of what he was doing when they were informed of his decision to accept being the company observer” cannot be reasonably construed to warn the employee about the consequences of his decision to be an Employer observer. Rather, if anything, the statement is informative or instructional in nature especially in light of the fact that there is no evidence that the statement was accompanied by any additional words and/or conduct.

The Board has long stated that threats or implied threats of reprisals may warrant setting aside the election. *Laidlaw Transit, Inc.* 310 NLRB 15 (1993); *Hunter Douglas, Inc.*, 277 NLRB 1179 (1985). However, the objecting party must demonstrate not only that the objectionable conduct occurred, but also that the conduct interfered with the free choice of employees to such a degree that it has materially affected the results of the election.

In order to prove that a third party engaged in objectionable conduct, the objecting party must prove that the conduct created an atmosphere of fear and coercion that renders a free election impossible. *Cal West Periodicals, Inc.*, 330

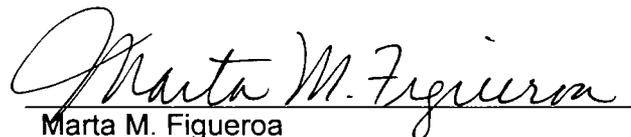
NLRB 599 (2000). There is no evidence that the statement at issue was disseminated within the units. *PPG Industries*, 350 NLRB 225 (2007)

Accordingly, I conclude that the statement, even if true, did not create a coercive atmosphere and therefore, did not interfere with employees' freedom of choice. Accordingly, Objection No. 7 is overruled.

### CONCLUSION AND RECOMMENDATION

Having recommended that the Employer's objections be overruled in their entirety, it is recommended that the appropriate Certification of Representative issue.<sup>6</sup>

Dated on August 3, 2012, at San Juan, Puerto Rico.



Marta M. Figueroa  
Regional Director, Region 24  
National Labor Relations Board  
La Torre de Plaza, Suite 1002  
525 F.D. Roosevelt Avenue  
San Juan, Puerto Rico 00918-1002  
Website: [www.nlr.gov](http://www.nlr.gov)

---

<sup>6</sup> 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 by **August 17, 2012**. 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 which are not included in the Report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which 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 upon that evidence in any subsequent related unfair labor practice proceeding.