

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

**106-20 SHOREFRONT REALTY, LLC;
107-10 SHOREFRONT REALTY, LLC; AND
1 BEACH 105 REALTY, LLC, A SINGLE
EMPLOYER**

Petitioning Employer

and

Case No. 29-RM-063193

**LOCAL 32B-32J, SERVICE EMPLOYEES
INTERNATIONAL UNION**

Union

*Jonathan D. Farrell, Esq. and Carmelo
Grimaldi, Esq., Counsel for the Employer*
*Lyle D. Rowen, Esq., Counsel for the
Union*

DECISION ON OBJECTIONS

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in New York City on August 1, 2012. The Petition in this case was filed on August 23, 2011 by the Employer. Pursuant to a Stipulated Election Agreement executed on April 30, 2012, a secret ballot election was held on May 10, 2012 in the following unit:

All full time and regular part time employees, including superintendents, handymen and porters employed by the Employer at its facilities located at 106-20 Shorefront Parkway, 107-10 Shorefront Parkway and 1 Beach 106th street, Rockaway Park, New York, but excluding all guards and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots showed that five employees cast votes in favor of the Union and four employees cast votes against union representation. There were no challenged ballots.

On May 17, 2012, the Employer filed Objections to the Election and on July 3, 2012, the Acting Regional Director issued a Report on Objections and Notice of Hearing. In the Report the Director overruled Objections 4, 5 and 10. He also noticed for hearing the allegations contained in the Employers Objections 1 through 3, and 6 through 9. These alleged as follows:

Objection 1 alleges that once the election began, about five union business agents failed to leave the Employer's premises and stationed themselves at the west entrance door to the building's lobby, adjacent to the voting area and engaged in (a) electioneering, (b) surveillance and (c) intimidation.

Objection 2 alleges that having stationed union agents at lobby entrances, these agents had a direct view of all employees who proceeded to vote at the election and thereby engaged in prohibited surveillance.

5 Objection 3 alleges that approximately five union agents “interacted” with employees who entered the lobby to vote during the election. The employer therefore contends that the Union engaged in prohibited electioneering.

10 Objection 6 alleges that the Board agent during the election permitted employees who were considered to be “pro-union” by their co-workers, including the Union’s observer, to directly observe other employees vote during the election. The Employer specifically alleges that Victor Rivera, (the union observer) and his friend, stood adjacent to a third employees who was at the ballot box while he was marking his ballot and voting.

15 Objection 7 alleges that the Board agent’s decision to sit adjacent to the union observer and away from the employer’s observer during the election, caused employees to perceive that the Board agent favored the Union.

20 Objection 8 alleges that the Board agent conducting the election allowed the Union’s observer to walk towards and greet voters as they entered the voting area and that this conduct gave the impression that the Board showed favoritism toward the Union.

25 Objection 9 alleges that during the election, the Board agent permitted the union observer to vote in the first session in the presence of other employees while refusing to allow the employer observer to vote at the same time and required that observer to wait until the second session of the election. It is contended that this created the impression amongst the voters that the Board agent favored the Union.

30 Based on the record as a whole, including credibility findings based in part on demeanor ground, I hereby make the following

Findings and Conclusions

35 The Employer owns and operates an apartment building complex in Rockaway, New York, consisting of three multi-story buildings located adjacent to each other and abutting on the beach. Pursuant to the Stipulated Election Agreement, the election was scheduled to take place on May 10, 2012, during two sessions; the first from 7:00 a.m. to 8:00 a.m. and the second from 9:45 a.m. to 10:15 am.. The location of the election was the clock room on the first floor of the middle building. This is a closed room where employees generally clock in or out when they
40 arrive or leave work. It also is a room where employees take breaks.

45 The room itself is fairly small and was set up with a table facing the entrance door with the voting booth adjacent to the table. The Board agent was seated in the center of the table facing the door, with the union’s observer to her right. The Employer’s observer, Miguel Estrada, was seated opposite in a chair backing on the door. Why this seating arrangement was established is not known to me as it was not shown in the record. In any event, the evidence shows that all employees except for the Employer’s observer voted during the 7:00 a.m. to 8:00 a.m. session and the Employer’s observer for some unknown reason voted at the beginning of the second session. Therefore, by about 9:46 a.m. all persons who were eligible to vote, voted.
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 The Employer presented employee witnesses, (one of whom was its own observer) who testified that during the morning session, the Union’s observer, Jesus Santos, briefly spoke to

Victor Rivera as he approached the table and when another voter, Jose Caba was in the voting booth and when Joseph Caba was entering the room. There is a dispute as to whether Santos walked to the center of the room to talk Rivera but in my opinion this is not relevant.¹ The testimony of the witnesses shows that Rivera was the person who initiated the conversation; that it did not relate to the election, but rather related to some work issue. All witnesses agree that the Board agent conducting the election told Santos to stop talking to Rivera and that he did so immediately. Based on the testimony as a whole, it seems that the entire transaction could not have taken more than a few seconds and that the content of the conversation between the two parties was inconsequential.

No evidence was presented to show that the voting area was set up so as to allow any employees waiting to vote the ability to directly observe how other employees voted during the election. I therefore shall overrule Objection No. 6.

I shall also recommend that Objection No. 7 be overruled as there is no evidence showing that the seating arrangement at the election somehow indicated that the Board agent favored one side over the other.

Objection No. 8 alleges that the Board agent showed favoritism toward the Union by allowing the Union's observer to approach and greet employees as they entered the voting room. The contrary is the fact as the evidence shows that when Victor Rivera initiated a conversation with the Union's observer, she told the observer to stop. I shall therefore recommend that this Objection be overruled. See *Sawyer Lumber Co.*, 326 NLRB 1331 (1998) and *Dubosky & Jones*, 324 NLRB 1068 (1997).

As there is simply no evidence to support the Employer's contention, I conclude that there is no merit to Objection No. 9 which alleges that the Board agent refused to allow the Employer's observer to vote during the first voting session and that she required him to vote in the second session.

In Objections 1, 2 and 3, the Employer contends, in substance, that union agents, during the election, stationed themselves at an entrance to the building and that they engaged in electioneering, surveillance and intimidation as employees entered the building.

Union agents arrived at the building at around 6:45 a.m. and were allowed to enter in order to attend a pre-election conference held in the clock room with the Board agent and representatives of the Employer. Each side chose an observer and they were given instructions. Thereafter, both union and company representatives were told to leave and they complied. There is no indication in this record that a no-electioneering area was designated by the Board agent. In this regard, the record shows that the closed room where the election was held was at least 100 feet away from the two main accessible entrances to the building. In order to get to the election room from the lobby, a person would have to walk up a long corridor adjacent to which are a number of other closed rooms before reaching the room where the election was being held. There is no evidence that any representatives from either party stationed themselves at any point from the lobby to the voting room.

¹ The Employer called Santos as an adverse witness and he testified that he stayed seated during the entire time of the election and except for saying hello or good morning, had no conversations with any of the voters.

After being told to leave the voting area, the union representatives went outside the building and stationed themselves at a bench located about three or four feet from the west lobby entrance. A witness for the Employer testified that during the first session, he observed a union representative talk to Victor Rivera outside the building but did not hear what was said.

5 He also testified that he saw union agents speak to two other employees either during the first voting session or after it had ended. As to this assertion, union agent Kevin Stavros, who I thought was a credible witness, testified that an employee named Roman approached him before entering the building and said good morning as he (Stavros), was standing outside the lobby door. Stavros further testified that Victor Rivera and two other employees approached him
10 but only after they had voted and that they all merely exchanged greetings.

In any event, there is no evidence that any union agents engaged in any electioneering or prolonged conversations with employees as they were waiting to vote or that they kept a list of voters. Moreover, there is no evidence to suggest that the area where they stationed
15 themselves was designated as a no-electioneering zone. Nor was there any evidence to show that union agents engaged in surveillance or acts of intimidation. As such, it is my opinion that the mere fact that union agents waited outside the entrance to the property while the vote was going on and may have greeted or been greeted by one or more employees is not sufficient to set aside an election. *Milchem Inc.*, 170 NLRB 362 (1968) and *C&G Heating and Air
20 Conditioning*, 356 NLRB No. 133 (2011).

Accordingly, based on the record as whole, I hereby recommend that Objections 1 through 3 also be overruled.

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Conclusions of Law

The Union has not engaged in any objectionable conduct warranting setting aside the election.

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ORDER

The representation case should be remanded to the Regional Director of Region 29 for the purpose of issuing the appropriate Certification.²

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Dated, Washington, D.C. August 13, 2012

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Raymond P. Green
Administrative Law Judge

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² Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, Series 8 as amended, within 14 days from the date of the issuance of this Recommended Decision. Exceptions must be received by the Board in Washington, D.C. by August 27, 2012. Immediately upon the filing of such exceptions, the party filing same shall serve a copy thereof upon the other parties and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board may adopt this Recommended Decision.