

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

CHI CENTERS, INC.

Employer

and

Cases 05-RC-080047

SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU) LOCAL 500

Petitioner

REPORT ON OBJECTIONS
AND
NOTICE OF HEARING

Pursuant to a Stipulated Election Agreement¹ approved on May 29, 2012, a secret-ballot election was conducted on June 21, 2012 with the following results:

Approximate number of eligible voters	320
Void ballots	10
Votes cast for Petitioner	163
Votes cast against participating labor organizations	41
Valid votes counted	204
Challenged ballots	0
Number of valid votes counted plus challenged ballots	204

On July 17, 2012,² CHI Centers, Inc., the Employer, filed timely objections to conduct it alleges affected the results of the election.³ (Copy attached as Exhibit A.)

THE OBJECTIONS

The Employer alleges the Petitioner engaged in the following acts of misconduct for which the election should be set aside:

¹ The unit is: "All full-time and regular part-time employees employed by the Employer in the State of Maryland; but excluding all accountants, managerial employees, professional employees, guards and supervisors as defined in the Act." The eligibility period is the payroll period ending May 25, 2012.

² Unless otherwise noted, all dates hereafter refer to 2012.

³ The petition was filed on May 1, 2012. The undersigned will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

Objection 1

During the period from the filing of the petition through the final day of the election, Service Employees International Union (SEIU), Local 500 ("Union") agents and adherents threatened and coerced employees, in numerous home visits and telephone calls, at work and after work. These threats created an atmosphere of fear and reprisal rendering free expression of the employees' choice of representative impossible, and/or interfered with the employees' free and uncoerced choice.

In support of Objection 1, the Employer offers the sworn statement of a company official. According to the official, several employees, whom he does not identify, told him that they were threatened by a Union organizer. Although the witness does not provide the date or details of the threat(s) these unidentified employees received, I find that substantial and material issues have been raised which can best be resolved by record evidence. Therefore, a hearing is warranted with respect to whether employees were threatened by a Union organizer as asserted by Employer's Objection 1.

Objection 2

During the period from the filing of the petition through the final day of the election, one or more of the Employer's supervisors acting as agents for the Union, unlawfully threatened and coerced employees under their control or direction to vote in favor of the Union and otherwise improperly expressed support for the Union. The conduct also interfered with the results of the election.

In support of Objection 2, the Employer offers testimony by a company official who testifies that during an unspecified time, several unidentified employees told him that Supervisor Judy Hyde encouraged them to attend Union meetings during work hours.

As it appears substantial and material issues have been raised which can best be resolved by record evidence, I find a hearing is warranted with respect to the issues raised by Employer's Objection 2.

Objection 3

While the polls were open on the day of the election at the Hillandale facility and at all times during the mail balloting, Union agents congregated outside and in close proximity to the voting area and areas of work and electioneered in such a manner as to create a coercive atmosphere and thus interfered with the laboratory conditions necessary to conduct the election.

In support of Objection 3, the Employer offers testimony of the same company official. The official testifies that several unidentified employees told him that Union organizers came to the Employer's facility during the mail-balloting period to talk to employees. The official further avers that several unidentified employees stated that during polling at the Hilldale facility, pro-union employees were talking to other employees. No evidence or claim was raised that these latter conversations occurred while employees were waiting in line to vote.

While the Board prohibits conversations with voters in the polling area or waiting in line to vote, *Mitcham, Inc.* 170 NLRB 362 (1968), it does not apply its rule to conversation with or between prospective voters outside a no-electioneering area. *Golden Years Rest Home*, 289 NLRB 1106 (1988); *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982). Nothing in the National Labor Relations Act prohibits electioneering during a certification election. Indeed, it is the exact process by which information necessary to make intelligent choices is disseminated and it enjoys a rather secure footing in our constitutional jurisprudence.

To the extent the Employer asserts that any conversations between a union agent and one or more employee occurring during the period of mail balloting constitutes prohibited electioneering, I reject the Employer's argument. The Board has long permitted such conversations, prohibiting only speeches by employer or union representatives to massed

assembles of employees during the mail balloting period. See, e.g., *Oregon Washington Telephone Co.*, 123 NLRB 339 (1959).

Accordingly, I recommend that Objection 3 be overruled in its entirety.

Objection 4

During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents solicited mail ballots from employees of the Employer. Objections 4 thru 6 are to be set because of the statement that a union agent collected ballots. However, to the extent that Objection 6 alleges post-election conduct (the claim that the signatures were not true signatures) evidence will not be taken because no challenges were made to the ballots.

Objection 5

During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents collected mail ballots from employees of the Employer. The improper collection and subsequent handling of ballots interfered with a free election process.

Objection 6

During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents tampered with mail ballots of employees of the Employer.

In support of these objections, the Employer offers the same company official as well as the sworn statement of Employee A.

The company official testifies that during an unspecified time, several unidentified employees stated that they saw an unidentified pro-union employee collect mail ballots from employees and place them in a bag and then hand the bag to a Union organizer. The official further testified that when observing for the mail-ballot count, discrepancies with signatures of the mail-ballots including incomplete and illegible signatures were observed.

Employee A testifies that on July 11, 2012, an employee told her that a Union Organizer known as Michael called her and asked her if she wanted to give her mail-ballot to a named individual.

The Employer's objection that the mail-ballots had incomplete and illegible signatures on them is not a proper post-election objection because the Employer did not challenge the ballots at the time of the count. The Board has long held that parties to an election bear the primary responsibility for challenging voter eligibility. *Balfre Gear & Mfg. Co.*, 115 NLRB 19, 22 (1956); *Galli Produce Co.*, 269 NLRB 478 (1984). The Board has further determined that, in the interest of promoting election finality, postelection challenges will not be permitted. *NLRB v. A. J. Tower Co.*, 329 U.S. 324 (1946) *Sears, Roebuck & Co.*, 114 NLRB 762, 763 (1955). Therefore I recommend Objection 6 be overruled in part.

As it appears substantial and material issues have been raised with respect to Objections 4 and 5, and the remaining portion of Objection 6, which can best be resolved by record evidence, I find a hearing is warranted with respect to these issues. To the extent that Objection 6 raises issues with respect to ballot tampering, other than the allegation that signatures on ballot envelopes were illegible or incomplete, I find hearing is warranted with respect to that objection.

Objection 7

In sum, the activities of the Union and its agents under the totality of the circumstances improperly interfered with the NLRB's election process and created a tainted atmosphere for the employees engaged in the voting process.

This objection reiterates the issues raised in objections 1 through 6 and is a "catch all objection." A "catch all objection" is an objection where no specific evidence is advanced

and lacks the specificity contemplated by the Board's Rules; hence, it must be overruled. *Smithfield Packing Co.*, 344 NLRB 1, 172 (2004) and *Airstream*, 288 NLRB 220, 229 (1988). Accordingly, I recommend that Objection 7 be overruled in its entirety

SUMMARY

In summary, the undersigned recommends that Employer's Objections 3 and 7 be overruled in their entirety and that Objection 6 be overruled in part. The undersigned further directs that a hearing be held with respect to the issues raised by Employer's Objections 1, 2, 4, 5 and part of 6.

NOTICE OF HEARING

IT IS HEREBY DIRECTED, pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that a hearing be held in the Washington Regional Office in the conference room, Room 6300, National Labor Relations Board, 1099 14th St NW, Washington, DC, on the 21st day of August 2012, and continuing on consecutive days thereafter until completed, before a hearing officer of the National Labor Relations Board, who will take testimony for the purpose of resolving issues raised challenged ballots at which time the parties have the right to appear in person or otherwise and give testimony. The hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within 14 days from the issuance of such report, any party may file exceptions with the Board in Washington, DC.

If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or make other dispositions of the case.

Dated at Baltimore, Maryland, this day of August 14, 2012.

(SEAL)

/s/Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

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 by 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 **August 28, 2012**, at 5:00 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 by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁴ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under the Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

⁴ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, D.C., and a copy so such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties' to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION FIVE

CHI CENTERS, INC.)	
)	
EMPLOYER,)	
)	
and)	CASE NO. 5-RC-80047
)	
SERVICE EMPLOYEES INTERNATIONAL)	
UNION (SEIU), LOCAL 500)	
)	
PETITIONER)	

EMPLOYER'S OBJECTIONS TO ELECTION

CHI Centers, Inc. (the "Employer"), by and through counsel, pursuant to Section 102.69 of the Board's Rules and Regulations, files objections to the election for which the tally of ballots was held on July 11, 2012, for the following reasons:

Objection 1: During the period from the filing of the petition through the final day of the election, Service Employees International Union (SEIU), Local 500 ("Union") agents and adherents threatened and coerced employees, in numerous home visits and telephone calls, at work and after work. These threats created an atmosphere of fear and reprisal rendering free expression of the employees' choice of representative impossible, and/or interfered with the employees' free and uncoerced choice.

Objection 2: During the period from the filing of the petition through the final day of the election, one or more of the Employer's supervisors, acting as agents for the Union, unlawfully threatened and coerced employees under their control or direction to

vote in favor of the Union and otherwise improperly expressed support for the Union.

This conduct also interfered with the results of the election.

Objection 3: While the polls were open on the day of the election at the Hillandale facility and at all times during the mail balloting, Union agents congregated outside and in close proximity to the voting area and areas of work and electioneered in such a manner as to create a coercive atmosphere and thus interfere with the laboratory conditions necessary to conduct the election.

Objection 4: During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents solicited mail ballots from employees of the Employer.

Objection 5: During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents collected mail ballots from employees of the Employer. The improper collection and subsequent handling of ballots interfered with a free election process.

Objection 6: During the period from the filing of the petition through the final day of the election, the Union and/or its agents and adherents tampered with mail ballots of employees of the Employer.

Objection 7: In sum, the activities of the Union and its agents under the totality of the circumstances improperly interfered with the NLRB's election process and created a tainted atmosphere for the employees engaged in the voting process.

Respectfully submitted,

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July 17, 2012