

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

In the Matter of

KINNEY SYSTEM INCORPORATED, d/b/a
CENTRAL PARKING SYSTEM OF
MASSACHUSETTS

Employer

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 25

Petitioner

Case 01-RC-071163

SUPPLEMENTAL DECISION

Pursuant to a Regional Director's Decision and Direction of Election issued on January 13, 2012, an election was conducted on February 8, 2012 among certain employees¹ of the Employer.

The tally of ballots cast at the election is as follows:

¹ The appropriate collective-bargaining unit, as set forth in the Decision and Direction of Election, is:

All full time and regular part-time attendants, cashiers, valets, floor attendants, lead attendants, dispatchers, shuttle drivers, and maintenance workers employed by the Employer at various locations in the Boston, Massachusetts area, as listed in Attachment A, but excluding supervisors, project managers, auditors, all other employees, and guards and supervisors as defined in the Act.

Attachment A referred to in the above unit description is a list of some 44 locations of the Employer in Boston, Mattapan, Newton, Cambridge, and Quincy, Massachusetts which are included in the unit. Attachment A is not included in this report.

Approximate number of eligible voters.....	361
Void ballots.....	1
Votes cast for Petitioner.....	159
Votes cast against participating labor organization.....	138
Valid votes counted.....	297
Challenged ballots.....	37
Valid votes counted plus challenged ballot.....	334

On February 15, 2012, the Employer filed timely Objections to Conduct Affecting Results of the Election.² A copy of the objections was served on the Petitioner and is attached as Attachment A.

On March 9, 2012, the Regional Director issued a Direction and Notice of Hearing on Challenged Ballots, in which she determined to hold the objections in abeyance pending the outcome of a Hearing on Challenged Ballots, as well as the outcome of certain unfair labor practice charges related to the Petitioner’s objections.

The challenged ballots and unfair labor practice charges having now been resolved, I have conducted an investigation of the Employer’s objections, pursuant to Section 102.69 of the Board’s Rules and Regulations. I find that there is no merit to the Employer’s objections. Accordingly, I recommend that all of the objections be overruled and that a Certification of Representative be issued to the Petitioner for the unit of employees described above in footnote 1.

² The Petitioner also filed timely objections, which it withdrew on September 19, 2012. Withdrawal of the Petitioner’s objections is hereby approved.

The objections allege as follows:

Objection #1

The voting structures/apparatuses utilized by the Board Agents during the election on February 8, 2012 did not provide adequate privacy to voting employees, as they consisted of small cardboard barriers that barely covered the voters' hands, and any observers – official or casual – could clearly see the direction of voters' hand and arm movements as they marked their ballots. The Board Agents provided no curtains or any other type of privacy screens that would have afforded voters the opportunity to mark ballots out of sight of others. In addition, neither the Employer nor the Petitioner was notified in advance of the Regional Office's intent to utilize these alternative voting apparatuses, or given the opportunity to express concerns about these alternative devices and/or to request the utilization of standard, privacy-ensuring voting booths. The voters in this election should have been afforded the right to vote in secrecy and under laboratory conditions. Instead, the utilization – and in some instances placement – of these alternative voting structures destroyed the dignity, integrity and secrecy of the election.

In support of its objection, the Employer submitted the affidavit of Jennifer Joseph, an employee who voted in the election and served as the Employer's observer at one of the election sites. Joseph testified that she was led to believe, prior to the vote, that there would be an actual voting booth that had privacy curtains around it, that before she got there, she expected the booth to be more private, and that it had been explained to employees that the Labor Board system ensures privacy while employees are voting. She testified that, while she voted, she could see the other observer and the Labor Board agents. The Employer also submitted a document entitled "Election Tips," in which the Employer advised employees to "Take the ballot inside the polling booth and mark your choice."

The Employer contends that the cardboard lectern-style partitions used at the election, instead of the standard metal and canvas fully-enclosed voting booths used by the Board for decades, barely covered the voters' hands and did not afford employees the

essential privacy required for a Board-conducted election, in that the partitions allowed the observers and perhaps others to stare at the voters and view their arm movements.

The Employer argues that the deployment of these alternative devices was not announced to the parties in advance of polling and was unilaterally implemented by the Board agents in the Regional Office.

The Employer asserts that the standard Notice of Election, the Instructions to Election Observers, and the Board's Casehandling Manual envision an enclosed voting booth. In this regard, the Notice of Election states that "Voters will *enter the voting booth* and mark their ballot in secret" and it instructs voters to "fold the ballot *before leaving the voting booth.*" The Instructions to Observers provides that one of the observers' duties is to "See that only ones voter *occupies* a booth at any time." Section 11322.2 of the Casehandling Manual provides that the "Board agent should *police* the booth to see that there are no cross-conversations between *occupants* and that there is no more than one *occupant* per booth. The Board agent should also occasionally *inspect* the *interior* of the booth." Section 11338.3 of the Casehandling Manual, which discusses the challenge procedure, refers to a voter who is instructed to "*enter*" the booth and who then "*comes out of the booth.*" All of these terms, argues the Employer, imply that the booth must be a personal space that an employee actually enters.

The Employer also argues that, in a document entitled "Election Tips," the Employer advised employees in advance that they could "take the ballot inside the polling booth and mark their choice." Finally, the Employer asserts that the Affidavit of Jennifer Joseph demonstrates that eligible employees generally expected actual voting booths and a level of privacy not afforded to them.

Discussion and Conclusion

I find no merit to the Employer's objection and recommend that it be overruled. In order to set aside an election based on Board agent misconduct, there must be evidence that "raises a reasonable doubt as to the fairness and validity of the election." *Polymers, Inc.*³ Where the alleged misconduct is the Board agent's failure to ensure the secrecy of voter balloting, the Board will not set aside the election under the *Polymers* standard absent evidence that someone witnessed how a voter marked his or her ballot. *Avante At Boca Raton.*"⁴

Applying that standard, the Board, in *American Medical Response*,⁵ considered the Employer's objection that the manner in which the Board agent set up the polling area compromised the secrecy of the voting processes. In that case, the Board agent had conducted the election using the same type of voting booth used in this case, i.e., the Board's "table-top" voting booth that shields voters' lower arms and hands as they mark their ballots, rather than the standard metal booth with curtains that shield voters from head to lower torso. The Board agent had placed the voting booth on a table four or five feet away from the observers' table, and there was nothing in the record to suggest that the Employer objected to this arrangement at the time.

The Board rejected the Employer's argument that, because this setup allowed the observers to see the faces and arm movements of voters as they marked their ballots, the election lacked privacy and secrecy. While the Employer submitted affidavits of two

³ 174 NLRB 282, 282 (1969), *enfd.* 414 F.2d 999 (2nd Cir. 1969), *cert. denied*, 396 U.S. 1010 (1970).

⁴ 323 NLRB 555, 558 (1997).

⁵ 356 NLRB No. 42 (2010).

voters whose statements generally contested the Board's failure to provide them a more private voting environment, the affiants did not assert that anyone saw how they or any other voter had marked their ballots. In the absence of such evidence, the Board found no basis to question the fairness and validity of the election.

Here, as in *American Medical Response*, the Employer has submitted only evidence that one voter had been led to believe that the voting booth used would be more private. While the voter testified that she could see the other observer and the Board agents while she voted, the Employer submitted no evidence that anyone saw how this voter or any other voters marked their ballots.⁶ Accordingly, I recommend that this objection be overruled.

Objections #2, #3, and #4 allege as follows:

Objection #2

During the critical period following December 21, 2011, Petitioner, through its officers, employees, and agents, offered substantial monetary rewards or "bounties" to eligible voters who would provide "proof" (especially in the form of photographs) that they had voted "yes" in the election on February 8, 2012.

Objection #3

During the critical period following December 21, 2011, Petitioner, through its officers, employees, and agents, offered substantial financial inducements to the Employer's employees to campaign on behalf of Petitioner.

⁶ As for the Employer's contention that the deployment of these alternative devices was not announced to the parties in advance of polling, I note that the Board has been using the "table top" voting booths used in this election since at least 2004. GC Memorandum 04-02.

Objection #4

The above and other conduct of the Region's representatives, the Petitioner and its agents interfered with, coerced and restrained employees in the exercise of their Section 7 rights and interfered with voters' ability to exercise a free and reasoned choice in the election conducted on February 8, 2012.

The Employer presented no evidence in support of Objections #2, #3, and #4.

Accordingly, I recommend that these objections be overruled.

Summary

Having found no merit to the Employer's objections, I recommend that the objections be overruled and that a Certification of Representative be issued to the Petitioner for the unit of employees described above in footnote 1.

Right to File Request for Review

Pursuant to the provisions of Sections 102.69 and 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this Supplemental Decision by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Procedures for Filing a Request for Review

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on October 18, 2012, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it 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 a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁷ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing a request for review 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 E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the

⁷ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of 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.

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.

/s/ Elizabeth Gemperline

Elizabeth Gemperline
Acting Regional Director
National Labor Relations Board
First Region
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street - Sixth Floor
Boston, MA 02222-1072

Dated at Boston, Massachusetts
this 4th day of October, 2012.