

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

GARDA CL ATLANTIC, INC.

Employer

and

Case No. 22-RC-086025

UNITED FEDERATION OF SPECIAL POLICE
& SECURITY OFFICERS, INC. (UFSP0)

Petitioner

AND

INTERNATIONAL UNION SECURITY POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA)

Intervenor

**REPORT ON OBJECTIONS
AND NOTICE OF HEARING**

Upon a petition filed on July 26, 2012,¹ by United Federation of Special Police & Security Officers, Inc., herein called the Petitioner or the Union, and pursuant to a Stipulated Election Agreement executed by the Petitioner and Garda CL Atlantic, Inc., herein called the Employer, and approved by the Regional Director of Region 22 on August 9, an election by secret ballot was conducted on September 5, among the employees in the following unit:

All full-time and regular part-time driver/messengers who perform guard duties as defined by Section 9(b) (3) of the National Labor Relations Act, as amended, employed by the Employer at its Fairfield, New Jersey facility, excluding all office clerical employees, Cash Vault Services (CVS) employees, vault services

¹ All dates hereinafter are in 2012 unless otherwise indicated.

employees, professional employees and supervisors as defined in the Act, and all other employees.²

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

Approximate number of eligible voters	110
Number of void ballots	0
Number of ballots cast for Petitioner	49
Number of ballots cast for Intervenor	7
Number of votes cast against participating labor organizations	21
Number of valid votes counted	77
Number of undetermined challenged ballots	20
Number of valid votes counted plus challenged ballots	97
Number of sustained challenges (voters ineligible)	1

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are not sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has been cast for the Petitioner.

On September 12, the Employer and the Intervenor filed timely objections to conduct affecting the results of the election. The Employer's objections are attached hereto as Exhibit "A." By letter dated October 15, the Intervenor requested to withdraw its Objections to the Election. I hereby approve the Intervenor's request to withdraw its Objections to the Election.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director of Region 22 caused an investigation to be conducted concerning the above-

² The Stipulated Election Agreement noted that "The parties are not in agreement over the eligibility of the premise guards, and thus, the premise guards are neither included nor excluded from the unit. By agreement of the parties, premise guards may vote subject to challenge."

mentioned objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues.³ The investigation revealed the following:

The Employer, a Delaware corporation, is engaged in the business of providing security, armored transportation and guard services to various commercial customers from its Fairfield, New Jersey facility.

THE OBJECTIONS

Objection Nos. 2, 3, 4 and 8:

In Objection Nos. 2 and 3, the Employer essentially contends that the Petitioner, by its observer, engaged in campaigning in the voting area during the voting process, improperly monitored employees who came to vote and was texting on his cell phone in the voting room during the polling period. In Objection No. 4, the Employer claims that the Petitioner engaged in intimidation of voters as they were in and around the voting area during the polling period. In Objection No. 8, the Employer alternatively contends that even if the above conduct is attributable to employees or individuals as third parties, it is objectionable. The Intervenor takes no position on the objections. The Petitioner contends that these objections have no merit. For the reasons noted herein, I direct that a hearing be conducted on the allegations that the Petitioner's observer and employee/Petitioner supporter McCord engaged in improper monitoring of voters, encompassed by Objection Nos. 2, 3 and 8 and I overrule the portions of Objection Nos. 2, 3 and 8 concerning allegations of objectionable campaigning/electioneering by the Petitioner's observer and/or third parties. I further recommend that Objection No. 4 be overruled.

³ Inasmuch as the objections involve allegations of Board Agent misconduct, the case was reassigned to Region 29 for investigation and if necessary, a hearing

In support of its allegations that the Petitioner's observer and/or third parties engaged in objectionable electioneering, monitoring and intimidation encompassed by Objection Nos. 2, 3, 4 and 8, the Employer submitted an offer of proof summarizing the testimony of two employee witnesses.⁴ The Employer contends one employee witness would testify that Paul McCord, a unit employee who is a supporter of the Petitioner, stationed himself immediately outside the entrance to the polling room during the polling times and every voter was forced to pass him before voting. Employee/Petitioner supporter McCord told employees to vote "Yes" as they approached the voting room and was talking on his cell phone as voters came in and out of the voting room. The Employer contends that both of its employee witnesses will testify that McCord ducked his head into the polling room on numerous occasions while voters were present. The Employer cites *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981, 992-93 (D.C. Cir. 2001) and *Performance Measurements Co.*, 148 NLRB 1657 (1964). Further, the Employer contends that one of its employee witnesses will testify that Petitioner observer Victor Chang was sending text messages on his cell phone while voters were in line waiting to vote and while they were in the voting booth. The Employer contends that employees could have reasonably concluded that McCord and Chang used their cell phones to monitor voters who came to vote, citing *Southland Containers, Inc.*, 312 NLRB 1087 (1993) and *Cerock Wire & Cable Group*, 273 NLRB 1041 (1984).

The Intervenor takes no position on the objections.

⁴ With regard to Objection No. 4, while the Employer did not specifically provide any evidence in support thereof, Objection No. 4 alleges conduct that appears to be related to the conduct alleged in Objection Nos. 2 and 3. With regard to Objection No. 8, the section of the Employer's offer of proof concerning Objection No. 8 refers to the same conduct that was submitted in support of Petitioner Agent/Observer conduct, i.e., the conduct alleged in Objection Nos. 2 and 3.

The Petitioner contends that its only designated observer was in the polling room with the Board Agent and the Employer's observer throughout both polling sessions and did not engage in campaigning or electioneering. Further, the Petitioner contends that the Employer stationed three employees to patrol and observe immediately outside the polling room and that they campaigned and electioneered until being asked to leave the area by the Board Agent conducting the election. With regard to the allegation of texting, the Petitioner contends that its observer exchanged text messages with a family member about a family concern. The text messages were unrelated to the election or anyone participating in the election.

The Board in *Milchem Inc.*, 170 NLRB 362 (1968), held that an election would be set aside on the basis of any prolonged conversations between a representative of a party to the election and voters waiting to cast ballots, without inquiring into the nature of the conversation itself.⁵ However, the Board does not apply its "no electioneering" rules to set aside elections whenever electioneering takes place at or near the polls, regardless of the circumstances. When faced with allegations of objectionable electioneering that does not involve prolonged conversations, the Board determines whether the conduct, under the circumstances, is sufficient to warrant an inference that it interfered with the free choice of the voters. The Board considers whether the conduct occurred within or near the polling place, the extent and nature of the alleged electioneering, whether it is conducted by a party to the election or by employees, and whether the electioneering was conducted within a designated "no electioneering" area or contrary to the instructions of

⁵ The Board's *Milchem* rule does not apply to any "chance, isolated, innocuous comment or inquiry between a party to the election and a voter."

the Board Agent. *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982), enfd. 703 F.2d 876 (5th Cir. 1983).⁶

With regard to the allegation of improper electioneering encompassed by portions of Objection Nos. 2, 3 and 8, the evidence shows that employee/Petitioner supporter McCord: “stationed himself” outside the entrance to the polling room, so that every voter had to pass him before voting and told employees to vote “Yes” as they approached the voting room.⁷ There is no evidence to establish that employee/Petitioner supporter McCord is an agent of the Petitioner.⁸ Inasmuch as there is no evidence of prolonged conversations and McCord is not a party to the election, the conduct here does not fall under the *Milchem* prohibition. In cases involving electioneering by non-parties at or near the polls, the Board considers the circumstances peculiar to the situation and determines whether the conduct at issue so substantially impaired the employees’ exercise of free choice as to require that the election be set aside. See *Southeastern Mills*, 227 NLRB 57 (1976); *Rheem Manufacturing Co.*, 309 NLRB 459 (1992); *Hollingsworth Management Service*, 342 NLRB 556 (2004). Thus, the proper standard to be applied to McCord’s electioneering conduct is the third party standard, i.e., whether it so substantially impaired the employees’ exercise of free choice as to require that the election be set aside. In this regard, the evidence indicates the presence of one employee

⁶ The Board has held that the “voting area” includes the place where the votes are actually cast and the area where employees line up waiting to vote. *Boston Insulated Wire Co.*, 259 NLRB 1118, 1119 (1982); *Westwood Horizons Hotel*, 270 NLRB 802 fn. 14 (1984).

⁷ There is no evidence that McCord engaged in electioneering by talking on his cell phone as voters came in and out of the voting room or when he ducked his head into the polling room on numerous occasions while voters were present; however this conduct will be discussed below in relation to the monitoring allegation.

⁸ While the Employer states that the Petitioner “condoned, encouraged and authorized the conduct of their supporters,” no evidence was presented to support such conclusions related to McCord.

stating “vote yes” to other employees as they approached the polling area.⁹ There is no evidence that a line of voters extended outside the polling area. There is no evidence that the area outside the polling place was designated by the Board Agent as a no-electioneering area. Nor is there evidence that the conduct of McCord was brought to the attention of the Board Agent conducting the election or that his conduct was contrary to the instructions of the Board Agent. The Board has found similar conduct, even if it occurs in the no-electioneering area, not objectionable. See *Rheem Manufacturing Co.*, 309 NLRB 459 (1992) (where the conduct of one employee union supporter outside the cafeteria doors urging employees to vote for the petitioner, even if it occurred in a non-electioneering area, was not so coercive and disruptive as to substantially impair the employees’ exercise of free choice); *Southeastern Mills*, 227 NLRB 57 (1976) (where the conduct of one employee who made brief pronoun remarks in an area not previously designated a no-electioneering area by the Board Agent was found not objectionable); *Sewanee Coal Operators*, 146 NLRB 1145, 1147 (1964) (where several persons circulated around the voting line wearing placards asking voters to “Vote For United Mine Workers And Be Able to Get a Pension,” the Board found such conduct did not impair the exercise of a free choice in the election.) Compare *Pepsi-Cola Bottling Co.*, 291 NLRB 578 (1988) (where the Board found that the election day conduct of 20 non-party employees in a unit of 100 who formed two lines on either side of an aisle-way immediately outside the polling place in a no-electioneering area, forcing employees to pass through a “gauntlet” of boisterous chants, cheers, clapping and remarks in order to cast their votes, was so disruptive and coercive that the free choice of the electorate was impaired); *Hollingsworth Management Service*, 342 NLRB 556 (2004) (where the Board

⁹ There is no evidence that McCord engaged in conversation with voters.

found under the circumstances of the case, which included the persistent campaigning by multiple persons, the physical manhandling of voters, the extended conversations with voters about the union and about how they intended to vote, and the large number of voters subjected to the conduct while waiting in the voting line, that the electioneering so substantially impaired the employees' exercise of free choice as to require that the election be set aside.) While the Employer cites *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981, 992-93 (D.C. Cir. 2001) and *Performance Measurements Co.*, 148 NLRB 1657 (1964) for the proposition that regardless of whether there was improper electioneering, the continued presence at the site of the election in a place where the employees had to pass to vote is objectionable, I find the aforementioned cases distinguishable. In *Nathan Katz*, the conduct of two union agents who sat in a car within the designated no-electioneering area was found to be contrary to the instructions of the board agent overseeing the election and objectionable. In the instant case, the unit employee involved is not a party to the election, there is no evidence that he was stationed in a no-electioneering area or that he engaged in conduct contrary to the instructions of the Board Agent handling the election. In *Performance Measurements*, the Board held that the continued presence of the employer's president, i.e., standing by the door to the election area and at a table six feet away from such doorway, at a location where employees were required to pass to gain access to the polls was improper conduct. Thus, both of the cited cases deal with the conduct of a party to the election and in the instant case McCord is a non-party unit employee, i.e., a third

party.¹⁰ In these circumstances, in my view, there is insufficient evidence to warrant an inference that McCord's electioneering was so disruptive as to require setting aside the election. See *Boston Insulated Wire & Cable Co.*, *supra*; *Rheem Manufacturing Co.*, *supra*. Further there is no evidence that the Petitioner's observer engaged in campaigning/electioneering as alleged. Accordingly, I recommend that the allegations of objectionable electioneering encompassed by portions of Objection Nos. 2, 3 and 8 be overruled.

With regard to the portions of Objection Nos. 2, 3 and 8 alleging that the Petitioner's observer and employee/Petitioner supporter McCord engaged in improper monitoring of voters, the Employer's evidence shows that McCord was talking on his cell phone as voters came in and out of the voting room; McCord ducked his head into the polling room on numerous occasions while voters were present and Petitioner observer Victor Chang was texting during the election while voters were in line waiting to vote and while they were in the voting booth. The Employer contends that employees could have reasonably concluded that employee/Petitioner supporter McCord and Petitioner observer Chang used their cell phones to monitor voters who came to vote. In this regard, I note that NLRB Form 772, entitled "Instructions to Election Observers," advises election observers, among other things, "Do not ...use any electronic devices, including cell phones, laptop computers, personal digital assistants (PDAs), mobile e-mail devices, wired or wireless data transmission and recording devices, etc. (Please turn off or disable

¹⁰ The Board has noted that this heightened standard for objections based on third party conduct reflects recognition of the unfairness of saddling parties with the consequences of conduct over which they had no control. *Independence Residences, Inc.*, 355 NLRB No. 153 (2010). I also note here that the Board has found that the mere presence of one of the parties to an election at or near the polling area is not per se objectionable. See *Equitable Equipment Company, Inc.*, 214 NLRB 939 (1974) (where the presence of 86 foremen, later found to be supervisors, in the polling area, was an inadequate basis to set aside an election.); *Marathon Metallic Building Co.*, 224 NLRB 121 (1976) (where the Board overruled an objection regarding the momentary appearance of a supervisor in the polling area.)

these devices before entering the polling area.)” The Board’s Casehandling Manual Section 11318.2 states that the Board Agent should give a copy of Form 772 to each observer at the pre-election conference, if this has not already been done. Further, it is Board policy to prohibit the keeping of any list of persons who have voted, other than the official eligibility list. The keeping of any list of voters other than the official voter eligibility list is grounds for setting aside an election if it can be shown or inferred from the circumstances that the employees knew their names were being recorded. The Board has focused on what voters observed and whether they could have reasonably inferred that their names were being recorded. See e.g. *Indeck Energy Services*, 316 NLRB 300 (1995); *Cross Pointe Paper Corporation*, 330 NLRB 658 (2000). In the two cases cited by the Employer in this regard, *Southland Containers, Inc.*, 312 NLRB 1087 (1993) and *Cerock Wire and Cable Group*, 273 NLRB 1041 (1984) the Board overruled objections based on list keeping. In *Cross Pointe*, an election observer was seen writing on a sheet of paper when voters were in the voting area. In setting aside the election, the Board found that voters could reasonably conclude that the observer was keeping a list of names. Accordingly, in my view, the better course is to proceed to a hearing to gather details related to employee McCord’s and Petitioner observer Chang’s alleged improper monitoring of employees who came to vote. Inasmuch as there are substantial and material issues, including issues of fact and credibility that would be best resolved at hearing, I direct that a hearing be held concerning details of the alleged improper monitoring of employees who came to vote, encompassed by the remaining portions of Objection Nos. 2, 3 and 8.

It appears that Objection No. 4, alleging that the Petitioner engaged in intimidation of voters as they were in and around the voting area during the polling period, is duplicative of Objection Nos. 2, and 3 which allege improper campaigning, monitoring and texting during the election by the Petitioner's observer, and Objection No. 8 covering the same conduct engaged in by third parties. Since the Employer has not furnished specific evidence about specific events and persons in support of this objection other than evidence previously considered, I recommend that Objection No. 4 be overruled.

Objection Nos. 5, 6 and 7:

In these objections, the Employer contends that the during the polling period, the Board Agent conducting the election failed to provide the minimum laboratory conditions necessary for a free and fair election and impugned the integrity of the election and gave the appearance that the Board favored the Petitioner by a) failing to prevent improper electioneering and acts of intimidation and improper monitoring by representatives, employees and supporters of the Petitioner in and near the polling room; and b) leaving the ballot box unsecured when he left the polling room to investigate whether the Employer had removed campaign materials, while not prohibiting the Petitioner's electioneering, intimidation and monitoring. The Intervenor takes no position on the Employer's objections. The Petitioner contends that these objections have no merit. For the reasons set forth herein, I recommend that the portion of Objection No. 5 concerning the Board Agent's failure to prevent improper electioneering and intimidation be overruled and I direct that a hearing be conducted on the remaining portion of Objection

No. 5 concerning the Board Agent's failure to prevent improper monitoring and Objection Nos. 6 and 7.

In support of these objections, the Employer submitted an offer of proof summarizing the testimony of one employee witness and its Branch Manager, Jose Arroyo. The Employer contends its employee witness will testify that the Board Agent conducting the election left the ballot box unsecured while leaving the polling room to investigate whether the Employer had removed campaign materials in other locations of its premises not near the polling room, while not prohibiting the improper actions of the two employees that is the subject matter of Objection Nos. 2 and 3 above. The Employer also contends that its Branch Manager, Jose Arroyo, will testify that, while the polls were open, the Board Agent came to his office, which was on the other side of the Employer's premises away from the polling room and accessible only by going through a security checkpoint, without the ballot box or ballots. The Employer cites *Hook Drugs*, 117 NLRB 846 (1957); *Tidelands Marine Services*, 116 NLRB 1222 (1956) and *Austill Waxed Paper Co.*, 169 NLRB 1109 (1968) in support of its position that the election should be set aside due to the blank ballots and ballot box being left unattended.

The Intervenor takes no position on the objections.¹¹

The Petitioner contends that these objections have no merit. The Petitioner states that, "...the Board Agent had to briefly absent himself from the polling room to ask the employees assigned by the Employer to electioneer in the polling area to leave, not Union supporters." The Petitioner also contends that in the brief absence from the polling area to attempt to mitigate Employer electioneering, the ballot box remained under the

¹¹ As noted above, the Intervenor requested the withdrawal of its objections, which included an allegation that the Board Agent left the ballot box unsecured in the polling room during the election.

immediate observation of both employee observers. The Petitioner asserts that the Employer should not be allowed to gain by its own objectionable conduct.

The independent investigation established that the number of ballots counted equaled the number of names checked by the observers on the *Excelsior*¹² list.

It is well established that the Board, in conducting elections, must maintain and protect the integrity and neutrality of its procedures. See: *Alco Iron & Metal Co.*, 269 NLRB 590 (1984); *Glacier Packing Co.*, 210 NLRB 571 (1974). The Board has expressed its concern that elections be conducted in a manner that inspires confidence in the impartiality of the Board and its agents. *Alco Iron & Metal Co.*, 269 NLRB 590 at footnote 2 (1984). The commission of an act by a Board Agent conducting an election that tends to destroy confidence in the Board's election process, or which could reasonably be interpreted as impugning the election standards the Board seeks to maintain, is a sufficient basis for setting aside an election. See: *Glacier Packing*, 210 NLRB 571 (1974). Thus, in determining whether a Board agent's misconduct invalidated an election, the proper approach is to assess on a case by case basis whether the alleged misconduct "tends to destroy confidence in the Board's election process" or "could reasonably be interpreted as impugning the election standards" sought to be maintained. *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967) (where the board agent in charge of an election was observed by an employee drinking a beer with a union representative in between polling periods, the Board set aside the election, noting it must

¹² *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966).

maintain and protect the integrity and neutrality of its procedures).¹³

Another line of Board cases analyze Board Agent conduct related to the sanctity of the ballots or the ballot box using the standard set forth in *Polymers, Inc.*, 174 NLRB 282 (1969), *enfd.* 414 F.2d 999 (2nd. Cir. 1969), *cert. denied* 396 U.S. 1010 (1970). In order to set aside an election on the basis of Board Agent conduct which compromised the integrity of an election and interfered with the fair operation of the election process, the Board must be presented with facts raising a "reasonable doubt as to the fairness and validity of the election." *Polymers, Inc.*, 174 NLRB 282 (1969), *enfd.* 414 F.2d 999 (2nd. Cir. 1969), *cert. denied* 396 U.S. 1010 (1970).¹⁴

Here, the Employer's evidence shows that the Board Agent conducting the election left the ballot box unsecured when he left the polling room to investigate whether the Employer had removed campaign materials in other locations of its premises not near the polling room and that the Board Agent did not prohibit the actions of the two employees that is the subject matter of Objection Nos. 2 and 3 above. Further, the Employer's evidence shows that the Board Agent came to Branch Manager Arroyo's office, which was on the other side of the Employer's premises away from the polling

¹³The standard to apply in determining whether a Board Agent's misconduct invalidated an election due to a lack of neutrality is articulated in *Athbro Precision Engineering Corp.*, 166 NLRB 966 (1967), *vacated sub nom. IUE v NLRB*, 67 LRRM 2361 (D.D.C. 1968), *on remand* 171 NLRB 21 (1968), *Enforced, NLRB v. Athbro Precision Engineering Corp.* 423 F.2d (1st Cir. 1970).

¹⁴ For example, in *Fresenius USA Manufacturing*, 352 NLRB 679 (2008), during the preelection conference and the election itself, the board agent, who was colorblind, made two mistakes regarding ballot identification and during the count the board agent failed to display ballot markings and refused the Employer's request to examine ballots. Applying the *Polymers* standard, the Board found the cumulative effect of these irregularities raised a reasonable doubt as to the fairness and validity of the election, noting that even one mistake in the distribution or counting of the ballots could have altered the election outcome, and directed a second election. In contrast, in *Avante at Boca Raton, Inc.*, 323 NLRB 555 (1997) it was alleged that the voting arrangements and the placement of the box created the impression that observers and others could determine how employees voted in the election. The Board found there was no evidence that employees' election choices were witnessed or that they had the impression that their election choice was witnessed, and thus, there was no evidence that raised reasonable doubt as to the fairness and validity of the election.

room and accessible only by going through a security checkpoint, without the ballot box or ballots. Inasmuch as I have recommended overruling the allegations of objectionable electioneering and “intimidation” as set forth above in connection with Objection Nos. 2, 3, 4 and 8, I also recommend that the portion of Objection No. 5 related to the Board Agent’s failure to prevent improper electioneering and unspecified “acts of intimidation” be overruled. However, inasmuch as I have directed a hearing with regard to employee McCord’s and Petitioner observer Chang’s alleged improper monitoring of employees who came to vote encompassed by those objections, the Board Agent’s alleged failure to prevent such conduct is at issue. Accordingly, I direct that a hearing be held concerning the alleged failure of the Board Agent to prevent improper monitoring of employees who came to vote, encompassed by the remaining portion of Objection No. 5. Further, with regard to the evidence in support of Objection No. 6, concerning the Board Agent leaving the ballot box and ballots unsecured during the election, I note that leaving an unsealed package of blank ballots unprotected during a period when access to the ballot box is possible is regarded as a serious irregularity on the part of the Board Agent. See *Hook Drugs*, 117 NLRB 846 (1957). Similarly, the Board set aside an election in *Austill Waxed Paper*, 169 NLRB 1109 (1968), where the ballot box was left wholly unattended by all of the election officials when an altercation developed outside the polling place during the voting period. Compare *Sawyer Lumber Co., LLC.*, 326 NLRB 1331 (1998) (where questions were raised about the handling of blank ballots and the board agent leaving the ballot box, it was found that neither the ballot box or the ballots were left unattended; nor were they tampered with and the integrity of the election was not compromised.) In my view, leaving blank ballots and the ballot box unattended in the voting room during the

polling period, if true, could have affected the fairness and validity of the election and would therefore warrant setting aside the election. Inasmuch as there are substantial and material issues, including issues of fact and credibility that would be best resolved at hearing, I direct that a hearing be held before a hearing officer concerning Objection No. 6 and Objection No. 7.¹⁵ See e.g., *Polymers Inc.*, 174 NLRB 282 (1969) (where the Board stated that when the desired practices are not met and the integrity of the election is challenged, the question to be decided is whether the manner in which the election was conducted raises a reasonable doubt as to the fairness and validity of the election)

Objection Nos. 1, 9 and 10:

In Objection No. 1, the Employer essentially contends that the Petitioner created an atmosphere of coercion and intimidation during the critical period before the election which interfered with the employees' ability to exercise their free and uncoerced choice in the election and interfered with the conduct of the election. In Objection No. 9, the Employer contends that a general atmosphere of fear and/or coercion created by the Petitioner and/or third parties during the critical period before the election and on the day of the election interfered with the employees' ability to exercise a free, unfettered and uncoerced choice in the election. In Objection No. 10, the Employer contends the Petitioner, employees and/or the Board engaged in additional objectionable conduct which interfered with the election and tainted the minimum laboratory conditions necessary for the rendering of a free and fair election. The Intervenor takes no position on the objections. The Petitioner contends that these objections lack specificity and have

¹⁵ Objection No. 7 essentially contends that the integrity of the election was impugned and that an appearance that the Board favored the Petitioner was created by the aforementioned alleged failure of the Board Agent to prevent the monitoring of voters (Objection No. 5) and the alleged conduct of the Board agent in connection with an unattended ballot box and ballots (Objection No. 6).

no merit. For the reasons noted herein, I recommend that Objection Nos. 1, 9 and 10 be overruled.

In support of Objection Nos. 1 and 10, the Employer contends that a unit employee will testify that s/he received threatening text messages from another unit employee, Paul McCord, who is a supporter of the Petitioner, because of the first employee's perceived lack of support for the Petitioner.¹⁶ The Employer also contends that its employee witness will testify that the entire environment at work was uncomfortable because of "threatening" conduct by the Petitioner's supporters, employees Paul McCord and Victor Chang. The Employer did not specifically provide any evidence in support of Objection No. 9.

Here the Employer's evidence in support of Objection Nos. 1 and 10 indicates that an employee supporter of the Petitioner sent "threatening" texts to another employee. The Employer also contends that the work environment was uncomfortable because of "threatening" conduct by employees who are Petitioner supporters. The Employer did not provide the content of the "threatening" text nor does the Employer provide specific evidence of other "threatening" conduct referenced. Thus, there are only conclusionary assertions concerning the alleged "threatening" conduct of the Petitioner. Conclusionary assertions, in the absence of specific supporting evidence, do not satisfy the Board's requirements of furnishing specific evidence about specific events and persons, and further investigation is not warranted. *Audubon Cabinet Co.*, 119 NLRB 349 (1957). See also *Aurora Steel Products*, 240 NLRB 46 (1979) (evidence sufficient to present a prima facie case must include dates, names of witnesses and what the witnesses might testify to

¹⁶ The Employer did not provide the date(s) that such text messages were sent/received. There is no specific claim or evidence that such text messages were sent/received while the polls were open.

on a given issue). Accordingly, there is insufficient evidence concerning “threatening” texts and conduct and the Employer did not present any evidence in support of these objections or Objection No. 9 that was not previously considered in connection with the Objection Nos. 2 through 8. Accordingly, I recommend that Objections 1, 9 and 10 be overruled.

SUMMARY AND DETERMINATIONS

In summary, I have directed that the allegations that the Petitioner’s observer and employee/Petitioner supporter McCord engaged in improper monitoring of voters, encompassed by Objection Nos. 2, 3 and 8 be sent to hearing. I have also directed that the portion of Objection No. 5 alleging the Board Agent’s failure to prevent improper monitoring and Objection Nos. 6 and 7 be sent to hearing. Further, I have recommended that Objection Nos. 1, 4, 9, 10, the remaining portions of Objection Nos. 2, 3 and 8 concerning allegations of objectionable campaigning/electioneering by the Petitioner’s observer and/or third parties and the remaining portion of Objection No. 5 concerning the Board Agent’s failure to prevent improper electioneering and intimidation be overruled.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by the allegations that the Petitioner’s observer and employee/Petitioner supporter McCord engaged in improper monitoring of voters, encompassed by Objection Nos. 2, 3 and 8, the portion of Objection No. 5

alleging the Board Agent's failure to prevent improper monitoring and Objection Nos. 6 and 7.

IT IS FURTHER ORDERED that the hearing officer designated for the purposes of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Regional Director simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that on **November 29, 2012**, and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

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

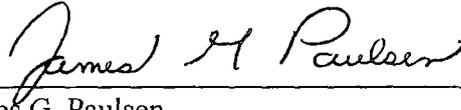
Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party 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 4, 2012**, 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 facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. 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 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.

Signed at Brooklyn, New York, on this 20th day of November, 2012.

A handwritten signature in cursive script, reading "James G. Paulsen", written in black ink over a horizontal line.

James G. Paulsen
Regional Director
Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 12

GARDA CL ATLANTIC, INC.,)
)
)
 Employer,)
)
 and)
)
)
 UNITED FEDERATION OF SPECIAL)
 POLICE AND SECURITY OFFICERS, INC.,)
)
 Petitioner,)
)
 and)
)
 INTERNATIONAL UNION, SECURITY,)
 POLICE AND FIRE PROFESSIONALS OF)
 AMERICA (SPFPA))
)
 Intervenor.)

Case 22-RC-086025

EMPLOYER'S OBJECTIONS TO THE CONDUCT OF THE ELECTION
AND TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

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Attorneys for the Employer,
Garda CL Atlantic, Inc.

Exhibit "A"

Pursuant to the Rules and Regulations of the National Labor Relations Board, including Section 102.69(a) thereof, Garda CL Atlantic, Inc. ("the Employer") hereby files the following Objections to the Conduct of the Election and to Conduct Affecting the Results of the Election in connection with the election conducted by Region 22 of the National Labor Relations Board ("the NLRB") on September 5, 2012 in Case 22-RC-086025:

1. United Federation of Special Police and Security Officers, Inc. ("UFSPSO"), by its authorized representatives, employees and/or supporters, created a general atmosphere of coercion and intimidation during the critical period before the election which interfered with the employees' ability to exercise their free and uncoerced choice in the election and interfered with the conduct of the election.

2. During the election, one of UFSPSO's designated observers campaigned in the voting area during the voting process and improperly monitored employees who showed up to vote.

3. During the election, one of UFSPSO's designated observers in the polling room was texting on his cell phone during the polling times and while voters were in line waiting to vote and while they were in the voting booth. The Employer suspects that the observer was improperly campaigning and/or monitoring employees who showed up to vote and communicating such information to UFSPSO representatives.

4. UFSPSO engaged in intimidation of voters as they were in and around the voting area during the voting periods.

5. The NLRB, through its Board Agent conducting the election, failed to provide the minimum laboratory conditions necessary for a free and fair election by failing to prevent improper electioneering and acts of intimidation and improper monitoring by representatives, employees and/or supporters of UFSPSO in and/or near the polling room during the course of the election.

6. The NLRB, through its Board Agent conducting the election, failed to provide the minimum laboratory conditions necessary for a free and fair election by leaving the ballot box unsecured while leaving the polling room while the polls were open to investigate whether the Employer had removed campaign materials in other locations of its premises not near the polling room, while not prohibiting improper electioneering and acts of intimidation and improper monitoring by representatives, employees and/or supporters of UFSPSO in and/or near the polling room during the course of the election.

7. The conduct set forth in Objections 5 and 6 above impugned the NLRB's integrity, impartiality and neutrality in the eyes of the voters and the parties to the election and further gave the appearance that the NLRB favored or endorsed UFSPSO in the election.

8. Alternatively, if any of the acts set forth above are not attributable to UFSPSO but rather were engaged in by employees or individuals as third parties, said employees and individuals were acting on behalf of UFSPSO, and their third party conduct was sufficient to, and in fact did, either singularly or cumulatively destroy the minimum laboratory conditions necessary for a free and fair election.

9. A general atmosphere of fear and/or coercion created by UFSPSO and/or third parties during the critical period before the election and on election day interfered with the employees' ability to exercise a free, unfettered and uncoerced choice in the election and interfered with the conduct of the election.

10. UFSPSO, by its authorized representatives, employees and/or supporters, and/or the NLRB engaged in additional improper and/or objectionable conduct which interfered with the election and tainted the minimum laboratory conditions necessary for the rendering of a free and fair election.

Based upon each of the foregoing Objections, or in combination thereof, the Employer respectfully submits that the election results must be set aside.

DATED: September 12, 2012

Respectfully submitted,

LITTLER MENDELSON, P.C.

/s/ Kevin J. Morris

Attorneys for the Employer,
Garda CL Atlantic, Inc.