

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

PREMIER PARATRANSIT, LLC)	
)	
Employer)	
and)	Case No. 29-UD-089447
)	
RODNEY SMITH, AN INDIVIDUAL)	
)	
Petitioner)	
and)	
)	
INTERNATIONAL BROTHERHOOD OF TRADE UNIONS, LOCAL 713)	
)	
Union)	

**HEARING OFFICER'S REPORT AND RECOMMENDATIONS
ON OBJECTIONS**

This report contains my findings and recommendations regarding the Petitioner's objections to the election in the above referenced case. For the reasons contained herein, I recommend overruling the Petitioner's objections.

Procedural History

On September 18, 2012,¹ Rodney Smith, an individual, herein called the Petitioner, filed a petition in the above referenced case seeking to withdraw the authority of International Brotherhood of Trade Unions, Local 713, herein called the Union, to require, under its agreement with Premier Paratransit, LLC, herein called the Employer, that employees make certain lawful payments to the Union in order to retain their jobs. Pursuant to a Stipulated Election Agreement

¹ All dates hereinafter are in 2012 unless otherwise indicated.

signed by the parties, and approved by the Regional Director on October 3, an election by secret ballot was conducted on November 19 among the employees in the following unit:

All full-time and regular part-time operators, vehicle maintenance employees, and building maintenance employees employed by the Employer at its 940 Remsen Avenue, Brooklyn, New York facility but excluding all dispatchers, office clerical employees, confidential employees, all other employees, and supervisors as defined in Section 2(11) of the Act.

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

Approximate number of eligible voters	173
Number of void ballots	0
Number of ballots cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that employees make certain lawful payments to the Union in order to retain their jobs	64
Number of ballots cast against the above Proposition	1
Number of valid votes counted	65
Number of challenged ballots	4

Challenges are not sufficient in number to affect the results of the election. The required majority of the eligible voters have not cast valid ballots in favor of the proposition.

The Petitioner filed timely objections to conduct affecting the results of the election. Pursuant to Section 102.69 of the Board's Rules and Regulations, the Regional Director caused an investigation to be conducted. On December 11, the Regional Director issued and served on the parties a Report on Objections and Notice of Hearing, in which he directed that a hearing be held by a duly designated Hearing Officer regarding the Petitioner's objections alleging that the Notices of Election had been removed during the seventy-two hour period before the election and that the Employer had assigned employees extra work to prevent them from voting while the

polls were open on the day of the election.² No exceptions to the Regional Director's Report were filed.

A hearing was held before the undersigned on December 27 in Brooklyn, New York. The Employer and the Union appeared at this hearing. The Petitioner did not appear. At the hearing, all parties were afforded full opportunity to participate, be heard, examine and cross-examine witnesses, present evidence pertinent to the issues and present oral argument.

As noted above, the Petitioner failed to appear at the hearing. The record establishes that the Petitioner was served with the initial Notice of Hearing on December 11. On December 18, the Regional Director granted the Employer's request to adjourn the hearing until December 27 at 9:30 a.m. An order rescheduling the hearing was served on the Petitioner by mail on December 18.

On December 27, the Petitioner failed to appear at the hearing. The undersigned called the Petitioner's cellular telephone twice after 9:30 a.m. and left voicemail messages. In the second message, left at 9:55 a.m., the undersigned advised the Petitioner that the record would open at 10:30 a.m. The Petitioner failed to respond to any telephone messages left by the undersigned. Moreover, no witnesses or representatives of the Petitioner appeared at the hearing.

As the objecting party, the Petitioner bears the burden of proof regarding these objections. The Board has frequently held that representation elections are not to be set aside lightly. See Quest International, 338 NLRB 856, 857 (2003); Safeway, Inc., 338 NLRB 525, 525 (2002). Accordingly, the Board has held that "the burden of proof on parties seeking to have a Board-supervised election set aside is a 'heavy one.'" Safeway, 338 NLRB at 525 quoting Kux Mfg. Co. v. NLRB, 890 F.2d 804, 808 (6th Cir. 1989). The objecting party must show that the

² The Regional Director approved the Petitioner's request to withdraw its Objection alleging that the Notices of Election should have been posted in French.

alleged objectionable conduct affected employees in the voting unit. See e.g. Avante at Boca Raton, Inc., 323 NLRB 555, 560 (1997) (overruling an employer's objection absent evidence that unit employees knew of alleged conduct).

In this case, the Petitioner failed to meet his burden. He did not appear at the hearing and has failed to present any evidence in support of his objections. Accordingly, I recommend overruling the Petitioner's objections.

Recommendation

I have recommended overruling the Petitioner's objections. Accordingly, I recommend that a Certification of Results issue.

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, DC 20570-0001.

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 January 10, 2013, 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.

Dated at Brooklyn, New York, on this 28th day of December, 2012.


Rachel Zweighaft
Hearing Officer
National Labor Relations Board, Region 29
Two MetroTech Center
Brooklyn, New York 11201