

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

UNITED NATURAL FOODS, INC.
Employer

and

Case 25-RC-089786

LOCAL 700, UNITED FOOD AND
COMMERCIAL WORKERS UNION
Petitioner

REPORT ON OBJECTIONS AND CHALLENGED
BALLOTS AND ORDER DIRECTING HEARING

Pursuant to a petition filed on September 24, 2012, and a Stipulated Election Agreement approved by the Regional Director on October 4, 2012, an election was conducted on October 31, 2012, and November 1, 2012, among certain employees¹ of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for purposes of

¹ The appropriate unit as set forth in item 5 of the Stipulated Election Agreement is as follows:

All full-time and regular part-time pickers, selectors, lift operators, loaders, inventory control associates, cross dock coordinators, facilities technicians, sanitation associates and haulers at the Employer's Greenwood, Indiana facility; BUT EXCLUDING all temporary agency employees, office clerical employees, professional employees, and guards and supervisors as defined in the Act.

collective bargaining.²

I. THE CHALLENGED BALLOTS

At the election, the Petitioner challenged the ballots cast by Eric Armstrong, Charles Bobo, Timothy Brewer, Chris Dycus, Robert Johnson, Joshua Summit, Daniel Terrell, Brian Turner, and Dan Wyant. The challenged ballots are sufficient in number to affect the outcome of the election.³

A. The Issues

The Petitioner challenged the ballots cast by Eric Armstrong, Charles Bobo, Timothy Brewer, Chris Dycus, Robert Johnson, Joshua Summit, Daniel Terrell, and Brian Turner because their job classification of Receiver was not included in the bargaining unit description. The Petitioner challenged the ballot cast by Dan Wyant because his job title of Inventory Control was not included in the bargaining unit description. The Petitioner contends that neither the Inventory Control nor the Receiver job classification is eligible to vote and that each of its challenges should be sustained and the ballots neither opened nor counted.

The Employer contends that the Receiver and the Inventory Control job classifications are included in the appropriate bargaining unit as part of other classifications which are

² The Tally of Ballots, copies of which were made available to the parties at the conclusion of the election, showed the following results:

Approximate number of eligible voters	159
Number of void ballots	0
Number of votes cast for the Petitioner	65
Number of votes cast against participating labor organization	64
Number of valid votes counted	129
Number of challenged ballots	9
Number of valid votes counted plus challenged ballots	138

³ Both parties were requested to, and did, furnish various evidence in support of their respective positions.

specifically identified in the stipulated unit description and, therefore, the Petitioner's challenges should be overruled and the ballots opened and counted. The Employer also asserts that the Petitioner had notice in advance of the election by means of the Excelsior List that the Employer intended to include the Receiver and Inventory Control job classifications in the bargaining unit but failed to raise any objection to their inclusion before the election. In addition, the Employer contends that since the Petitioner failed to challenge all of the ballots cast by Receivers and Inventory Control employees, the Petitioner's challenges should be overruled in order to prevent the exclusion of only certain Receivers and Inventory Control employees but not other similarly classified employees.

B. Conclusion

Inasmuch as the challenges to the ballots cast by Eric Armstrong, Charles Bobo, Timothy Brewer, Chris Dycus, Robert Johnson, Joshua Summit, Daniel Terrell, Brian Turner, and Dan Wyant give rise to substantial and material issues of fact and credibility concerning their eligibility to vote, a hearing will be held to determine their eligibility.

II. THE OBJECTIONS

On November 6, 2012, the Petitioner timely filed objections⁴ to the election. Following an investigation,⁵ and for the reasons discussed more fully below, I am ordering that Objections 1 and 6 be set to a hearing to resolve the issues of fact and credibility. I hereby approve the Petitioner's request to withdraw Objections 2, 3, 4, and 5.

A. Objection 1

In support of Objection 1, the Petitioner alleges and submits evidence that the Employer engaged in objectionable conduct more specifically set forth and alleged as unfair labor practices

⁴ Petitioner's Objections are attached as Attachment A.

⁵ Both parties furnished evidence in support of their respective positions.

in the Complaint in Case 25-CA-090726, paragraphs 5(a), 5(b), and 5(c). The Employer has denied the allegations raised by the Objections.

B. Objection 6

Evidence of certain other Employer conduct was disclosed by the investigation and has been considered inasmuch as the Regional Director is not limited to the specific issues raised by the objections. *White Plains Lincoln Mercury*, 288 NLRB 1133 (1988); *American Safety Equipment Corp.*, 234 NLRB 501 (1978); *International Shoe Co.*, 123 NLRB 682 (1959).

In the Complaint, it is alleged in paragraph 5(d) that on several dates in September 2012, the Employer, by Plant Manager Michael Dickey, solicited employees to inform the Employer about other employees' union and other concerted activities. The Employer denies that it engaged in any objectionable conduct which affected the results of the election.

C. Conclusion

The evidence offered by the Petitioner in support of the Objections, if credited, would warrant setting aside the election held October 31 and November 1, 2012. However, the Employer denies the allegations raised by these objections, thus giving rise to substantial and material issues of fact and credibility bearing on the validity of the election. Moreover, because conduct alleged as an unfair labor practice may be considered in determining whether an election should be set aside, and because the conduct described in paragraph 5 of the Complaint may have occurred between the date of the filing of the petition and the date of the election, the undersigned concludes that these allegations and the investigation thereof raise substantial and material questions of fact that can best be resolved by a hearing. A hearing will therefore be conducted on Petitioner's Objections 1 and 6 before an Administrative Law Judge in a consolidated proceeding.

III. ORDER DIRECTING HEARING

For the reasons set forth herein, IT IS HEREBY ORDERED that a hearing be held to resolve the issues of fact and credibility raised by Petitioner's Objections 1 and 6 and the challenged ballots cast by Eric Armstrong, Charles Bobo, Timothy Brewer, Chris Dycus, Robert Johnson, Joshua Summit, Daniel Terrell, Brian Turner, and Dan Wyant.

PLEASE TAKE NOTICE THAT, pursuant to the Order Consolidating Cases, Complaint and Notice of Hearing issued by the undersigned on January 31, 2013, which consolidates this matter with Case 25-CA-090726, a hearing will be conducted on March 26, 2013, at 10:00 A.M. (EDT), and on consecutive days thereafter until concluded, at the Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 238, Indianapolis, Indiana, before an Administrative Law Judge of the Board upon the issues of fact and credibility raised by the Petitioner's objections and challenges, at which time you will have the right to appear in person, or otherwise and give testimony. Thereafter, Case 25-RC-089786 will be transferred to and continued before the Board in Washington, D.C., and the provisions of Sections 102.46 and 102.69(e) of the Board's Rules shall govern the filing of exceptions.

Dated: January 31, 2013



RIK LINEBACK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 25
575 N PENNSYLVANIA ST
STE 238
INDIANAPOLIS, IN 46204-1563

Attachments

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 25

UNITED FOOD AND COMMERCIAL)
WORKERS UNION, LOCAL 700,)
)
Petitioner,)
)
-and-)
)
UNITED NATURAL FOODS, INC.)
)
Employer.)

Case No. 25-RC-089786

UFCW LOCAL 700'S OBJECTIONS TO CONDUCT
AFFECTING THE OUTCOME OF THE ELECTION

NOW comes Petitioner, United Food and Commercial Workers Union, Local 700 ("Local 700") and, pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, hereby files its objections to conduct affecting the results of the election in this matter, which occurred on October 31 and November 1, 2012. In support thereof, Local 700 states as follows:

1. Since on or about September 14, 2012, the Employer, United Natural Foods, Inc., through its officers and agents, promulgated an overly broad and discriminatory rule prohibiting employees from discussing Local 700 in working areas, while allowing employees to discuss other non-work related matters in working areas.

2. On October 5, 2012, the Employer disciplined union supporter Marcus Friend for allegedly poor job performance. There had been no change in Friend's job performance since the filing of the petition. Friend's support for the Union was known to both the Employer and other employees. Although the discipline was subsequently removed, the chilling effect of the discipline remained.

2012 NOV - 7 P 5:01

RECEIVED
NLRB REGION 25

ATTACHMENT A

3. On October 24, 2012, the Employer threatened union supporter Mike Reed with discipline for allegedly abandoning his work, despite the fact that Reed followed the customary procedure for leaving work. Reed's support for the Union was known to both the Employer and other employees.

4. On October 26, 2012, the Employer unlawfully threatened union supporter Paul Murphy for allegedly abandoning his work, despite the fact that Murphy followed the customary procedure for leaving work. Murphy's support for the Union was known to both the Employer and other employees.

5. On October 31, 2012, Board Agent Laurie Valentini informed Josh Price, Local 700's election observer, that he could not challenge the eligibility of employees on the Excelsior list. Approximately fifteen voters that Local 700 intended to challenge voted before Ms. Valentini informed Mr. Price that he could challenge whomever he wished.

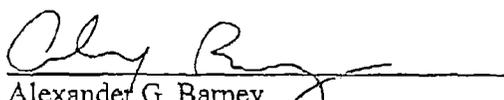
6. By this and other conduct, the Employer and the Board improperly affected the outcome of the election.

WHEREFORE, for all the foregoing reasons, Local 700 respectfully requests that the Regional Director set aside the results of the election held on October 31 and November 1, 2012

Respectfully submitted,

November 6, 2012

**UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 700**


Alexander G. Barney
Attorney for UFCW Local 700

Alexander G. Barney
THE KARMEL LAW FIRM
221 North LaSalle Street, Suite 1307
Chicago, IL 60601
(312) 641-2910