

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

EXECUTIVE MANAGEMENT SERVICES, INC.  
Employer

and

Case 25-RC-093670

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTURAL IMPLEMENT WORKERS OF  
AMERICA (UAW)  
Petitioner

REPORT ON OBJECTIONS, ORDER DIRECTING HEARING, AND NOTICE OF HEARING

Pursuant to a petition filed on November 26, 2012, and a Stipulated Election Agreement approved by the Regional Director on December 7, 2012, an election was conducted on January 8, 2013, among certain employees of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for purposes of collective bargaining.<sup>1</sup>

On January 15, 2013, the Employer timely filed objections<sup>2</sup> to the election.<sup>3</sup> Following

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

All full-time and regular part-time housekeepers/janitorial employees employed by the Employer at GMCH Kokomo Operations Facility; BUT EXCLUDING all office clerical employees, technical employees, engineering employees, guards and supervisors as defined in the Act, and all other employees.

<sup>2</sup> The Employer's Objections are attached as Attachment A.

<sup>3</sup> 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	27
Number of void ballots	0
Number of votes cast for the Petitioner	20
Number of votes cast against participating labor organization	5
Number of valid votes counted	25
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	26

an investigation,<sup>4</sup> and for the reasons discussed more fully below, I am ordering that the Objections be set for hearing to resolve the issues of fact and credibility.

## I. THE OBJECTIONS

### A. Objection 1

The Employer alleges that, during the critical period between the filing of the petition and the election, representatives of the Petitioner negotiated terms and conditions of employment with General Motors on behalf of the bargaining unit employees even though the Petitioner is not the employees' exclusive collective bargaining representative. In support of its objection, the Employer submitted evidence that the Petitioner negotiated with General Motors to ensure a billing rate increase for the Employer's services and further informed both the Employer and employees that the deal the Petitioner had struck with General Motors would result in a pay increase for the employees. The Employer asserts that such actions and statements interfered with the employees' free choice in the election and affected the results of the election.

The Petitioner denies that any of its officials, representatives, or agents engaged in any objectionable conduct which interfered with employees' free choice and affected the results of the election.

Inasmuch as the evidence gives rise to substantial and material issues of fact, credibility, and law bearing on the validity of the election, a hearing will be conducted on the Employer's Objection 1.

### B. Objection 2

The Employer alleges that representatives of the Petitioner made material misrepresentations to employees during the critical period regarding the terms of an agreement they had negotiated with General Motors. In support of its objection, the Employer submitted evidence that the Petitioner informed employees that it had negotiated with General Motors for a wage increase for the bargaining unit employees which would be incorporated into a collective bargaining agreement between the Employer and Petitioner. The Employer argues that the Petitioner's representations that it had secured wage increases for the bargaining unit employees were false, coerced employees, and improperly affected the outcome of the election.

The Petitioner denies that any of its officials, representatives, or agents engaged in any objectionable conduct which interfered with employees' free choice and affected the results of the election.

Inasmuch as the evidence gives rise to substantial and material issues of fact, credibility, and law bearing on the validity of the election, a hearing will be conducted on the Employer's Objection 2.

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<sup>4</sup> Both parties furnished evidence in support of their respective positions.

### C. Objection 3

The Employer alleges that, during the critical period, representatives of the Petitioner failed to apprise employees of the contingent nature of its agreement with General Motors and/or of the implications of a billing rate increase if it occurred. In support of its objection, the Employer submitted evidence and asserts that the Petitioner failed to inform employees that, in order for the agreement between the Petitioner and General Motors to take effect, representatives of the specific GM facility involved (GMCH Kokomo) were required to request a billing rate increase and that the GMCH Kokomo representatives did not intend to request any rate increase. Moreover, the Employer argues that representatives of the Petitioner failed to disclose that, even if an increased billing rate was adopted, GMCH Kokomo planned to reduce the scope of services provided by the Employer in order to maintain costs which, in turn, would require reduction in force or hours for the bargaining unit employees. The Employer asserts that the Petitioner's statements coerced employees and affected the outcome of the election.

The Petitioner denies that any of its officials, representatives, or agents engaged in objectionable conduct which interfered with employees' free choice and affected the results of the election.

Inasmuch as the evidence gives rise to substantial and material issues of fact, credibility, and law bearing on the validity of the election, a hearing will be conducted on the Employer's Objection 3.

### D. Objection 4

The Employer alleges that, during the critical period, agents of the Petitioner represented to employees that the Petitioner had the authority to negotiate wage increases on behalf of employees, even though the Petitioner does not represent them and General Motors does not employ them or otherwise control their terms and conditions of employment. In support of its objection, the Employer submitted evidence that the Petitioner promised a wage increase to employees which would be funded by an increased billing rate for the Employer's services at GMCH Kokomo that was negotiated between the Petitioner and General Motors. The Employer claims that these actions by representatives of the Petitioner coerced employees and interfered with the fair conditions required for an election.

The Petitioner denies that any of its officials, representatives, or agents engaged in objectionable conduct which interfered with employees' free choice and affected the results of the election.

Inasmuch as the evidence give rise to substantial and material issues of fact, credibility, and law bearing on the validity of the election, a hearing will be conducted on the Employer's Objection 4.

## II. ORDER DIRECTING HEARING AND NOTICE OF HEARING

For the reasons discussed above under Objections 1, 2, 3, and 4, IT IS ORDERED that a hearing be held to resolve the issues of fact and credibility raised by Employer's Objections.

IT IS ALSO ORDERED that the Hearing Officer designated for the purpose of conducting the 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 disposition of said issues.

YOU ARE HEREBY NOTIFIED THAT commencing at 10:00 a.m. (EST) on the 21st day of February, 2013, and consecutive days thereafter until concluded, a hearing will be conducted at the National Labor Relations Board, Hearing Room, in the Minton- Capehart Federal Building, at 575 N. Pennsylvania St., Room 238, Indianapolis, Indiana before a duly designated Hearing Officer of the National Labor Relations Board on the issues of fact and credibility raised by the Employer's Objections as discussed above, at which time and place you will have the right to appear in person or otherwise and give testimony.

ISSUED AT Indianapolis, Indiana this 7th day of February, 2013.

A handwritten signature in black ink that reads "Rik Lineback". The signature is written in a cursive, flowing style.

Rik Lineback  
Regional Director  
NATIONAL LABOR RELATIONS BOARD  
Region Twenty-five  
Room 238, Minton-Capehart Building  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204-1579

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EXECUTIVE MANAGEMENT	)	
SERVICES, INC.,	)	
	)	
Employer,	)	
	)	
and	)	CASE NO. 25-RC-093670
	)	
INTERNATIONAL UNION,	)	
UNITED AUTOMOBILE,	)	
AEROSPACE AND AGRICULTURAL	)	
IMPLEMENT WORKERS OF	)	
AMERICA (UAW),	)	
	)	
Union.	)	

**EMPLOYER’S OBJECTION TO CONDUCT AFFECTING THE ELECTION**

The Employer, Executive Management Services, Inc. (“EMS”), pursuant to 29 C.F.R. § 102.69(a), hereby objects to the conduct of the Union, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (“UAW”), affecting the outcome of the election, and in support thereof states as follows:

On the morning of Monday, January 7, 2013, less than 24 hours before the voting sessions that occurred between 6:00 and 6:45 a.m. and between 1:30 and 2:30 p.m. on Tuesday, January 8, the UAW held a meeting with EMS employees eligible to vote in the election in a conference room at the GM Corporate Holdings, LLC (“GMCH”) plant in Kokomo where the EMS workers are employed (“GMCH Kokomo”). The meeting was conducted by the local UAW president and occurred during the working hours of the EMS employees who attended the meeting. At that time, EMS employees were invited to attend another meeting scheduled to occur that afternoon at a local area Pizza Hut.

Later that afternoon, the UAW held a second meeting with the EMS employees at the Pizza Hut in which a large number of eligible voters were in attendance. During that meeting,

the local union president and International Representative Lynee Walters announced that the union had reached a “deal” with the General Motors Company (“General Motors”) to fund a wage increase for EMS employees that would be incorporated into a collective bargaining agreement between EMS and the UAW. The scope of the wage increase would have represented approximately 30-40 percent of the employees’ hourly wages. When EMS learned of these representations, EMS contacted a GMCH Kokomo representative who denied knowledge of any such arrangement.

Later that evening and early the next morning, EMS received reports from several employees that many of the workers who had previously planned to vote against union representation had decided to vote in favor of union representation because of the information provided by the UAW. The next morning, after the initial voting session had occurred, EMS made efforts to advise employees that the company was unaware of any deal with GMCH or General Motors. Ms. Walters immediately contacted EMS’s corporate counsel, Erik Bigelow, and advised him that a deal was in place with General Motors and that certain General Motors representatives would verify the deal. Mr. Bigelow was not able to reach those representatives to verify the information, however.

Immediately after the second voting session opened at 1:30 p.m., EMS received a call from a General Motors purchasing representative in Detroit, Michigan, who stated that the company had decided to increase EMS’s approved billing rate by more than \$10.00 per hour in order to “keep the peace” with the UAW. There was no discussion of any impact on wages or benefits for EMS employees or any additional conditions on this rate increase.

At 2:30 p.m., when the polls closed, the ballots were tallied with an outcome of 20 in favor of the union, five opposed, and one ballot challenged by the union.

In the days following the election, EMS representatives had several conversations with representatives of General Motors and GMCH in Detroit and Kokomo and learned that the “deal” which had been approved by General Motors purchasing in Detroit required a formal request by GMCH Kokomo, and that the plant manager and facility manager at GMCH Kokomo had no intention of requesting the billing rate increase because of the negative impact on their budget. Alternatively, EMS was advised that if the billing rate increase were implemented, GMCH Kokomo planned to reduce the scope of service specifications for EMS in order to maintain costs.

In other words, if the increased billing rate increase is not adopted by GMCH, then EMS would have no way of funding the wage increases promised by the UAW to the employees. If the billing rate increase is adopted by GMCH and the scope of work is reduced correspondingly, then EMS will be required to lay off workers or reduce hours to accommodate these cost reductions. The UAW did not advise the employees of the contingent nature of the “deal” or the possibility of personnel reductions before the election.

By the foregoing conduct, the UAW has engaged in improper conduct affecting the outcome of the election by: (1) negotiating terms and conditions of employment with General Motors on behalf of employees with respect to whom it is not the exclusive bargaining representative; (2) making material misrepresentations to employees regarding the terms of a “deal” with General Motors; (3) failing to apprise employees of the contingent nature of the understanding with General Motors and/or the implications of the billing rate increase if it occurs; and (4) representing to employees that the union had the authority to negotiate wage increases on their behalf, even though the union does not represent them and General Motors does not employ those workers and does not control their terms and conditions of employment.

By virtue of the fact that such conduct occurred within the 24-hour period prior to the election, and before EMS had the opportunity to research the union's claims and provide accurate information to employees about their accuracy and their implications, the UAW's conduct has improperly affected the outcome of the election, thereby requiring that the election be set aside.<sup>1</sup>

Respectfully submitted,



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Gregory W. Guevara, Esq.  
Philip Zimmerly, Esq.  
BOSE McKINNEY & EVANS LLP  
111 Monument Circle, Suite 2700  
Indianapolis, Indiana 46204  
[gguevara@boselaw.com](mailto:gguevara@boselaw.com)  
[pzimmerly@boselaw.com](mailto:pzimmerly@boselaw.com)  
(317) 684-5000

Attorney for Employer,  
Executive Management Services, Inc.

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<sup>1</sup>The UAW's conduct also violates Section 8(b)(1)(A) of the National Labor Relations Act, as set forth in the unfair labor practice charged filed by EMS contemporaneously herewith.