

NOT INCLUDED IN  
BOUND VOLUMES

PGB  
Newark, NJ

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NEWARK PORTFOLIO JV, LLC

Employer

and

Case 22-RC-081108

LABORERS INTERNATIONAL UNION  
OF NORTH AMERICA LOCAL 55

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board has considered objections to an election held June 27, 2012, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 6 for and 4 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations as modified below, and finds that a certification of representative should be issued.

In excepting to the hearing officer's recommendation to overrule its objections, the Employer argues that the hearing officer's report failed to address certain evidence regarding the Union's electioneering on the day of the election. We have carefully considered the record and conclude that the evidence, whether considered in isolation or cumulatively, does not support a finding that the Petitioner engaged in objectionable conduct requiring a new election.

As the Employer points out, the credited testimony indicates that the Petitioner's representatives stood on the front steps leading to the building in which the polling site was located, as well as on the public sidewalk. But this evidence does not refute the hearing officer's finding that the electioneering did not take place at or near the polling area, and that it was not directed at employees who were waiting in line to vote. The conduct at issue occurred outside of the building, away from the interior room that served as the polling place and from any voters who may have been in line to vote.<sup>1</sup> See *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982), *enfd.* 703 F.2d 876 (5th Cir. 1983).

The Employer also points out that the Petitioner acted contrary to the Board agent's pre-election instructions against electioneering. We conclude, however, that this is insufficient to render the electioneering objectionable. The evidence indicates that before opening the polls, the Board agent stated generally that electioneering would not be permitted, but the agent did not designate a specific "no electioneering" area. In these circumstances, the Board applies its rules against electioneering only to the customarily proscribed area, i.e., "at or near the polls." See *Bally's Park Place, Inc.*, 265 NLRB 703, 703 (1982). Contrary to the cases cited by the Employer,<sup>2</sup> the Petitioner's representatives did not electioneer in the vicinity of the polling place. Nor did they act in defiance of directives aimed at specific conduct. Finally, we note that the Employer did not protest the Petitioner's conduct during the polling period, when the Board agent

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<sup>1</sup> This was no the only entrance to the building; some voters used a rear door to access and exit the polling area.

<sup>2</sup> *Brinks, Inc.*, 331 NLRB 46 (2000); *Star Expansion Industries Corp.*, 170 NLRB 364 (1968); *Claussen Baking Co.*, 134 NLRB 111 (1961).

might have addressed it. For all these reasons, we find that the Petitioner's conduct was not objectionable.

We further agree with the hearing officer that there is insufficient evidence to conclude that one alleged anti-Semitic remark concerning the Employer's owners might reasonably have affected the election.<sup>3</sup> Even assuming that the remark was made, and further assuming that it was made by a representative of the Petitioner, there is nothing in the record to suggest that the remark would reasonably have had an impact on the employees' free choice. For example, the Employer adduced no evidence suggesting that any religious tensions existed in the workplace or that the Petitioner sought to engender conflict through a broader inflammatory campaign theme. On this record, we find it highly unlikely that the single employee to whom the fleeting remark was apparently directed would have been influenced to vote for the Petitioner. Accordingly, we decline to set aside the election on this basis.<sup>4</sup>

#### CERTIFICATION OF REPRESENTATIVE

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<sup>3</sup> Given the two-vote margin in the election, we do not rely on the hearing officer's reliance on the facts that the remark was heard by, at most, one employee and was not disseminated to other eligible voters.

<sup>4</sup> In contrast to *NLRB v. Silverman's Men's Wear, Inc.*, 656 F.2d 53 (3d Cir. 1981), the Region here conducted a formal evidentiary hearing on the Employer's election objections. The evidence adduced at the hearing easily distinguishes this case from *Silverman's*. There, the Board had assumed, without a hearing, that an alleged anti-Semitic reference to a company official, made by a union officer at a campaign meeting of approximately 20 employees, could not warrant setting aside the election, even if proven. The remark here occurred in circumstances far less likely to produce an "effective appeal to racial or religious prejudice." 656 F.2d at 58.

IT IS CERTIFIED that a majority of the valid ballots have been cast for Laborers International Union of North America Local 55 and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time on site superintendents, porters, and maintenance employees employed by the Employer at its Newark, New Jersey facility; excluding all managerial employees, office and clerical employees, sales employees, professional employees, guards and supervisors as defined in the Act.

Dated, Washington, D.C., February 27, 2013.

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Mark Gaston Pearce, Chairman

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Richard F. Griffin, Jr., Member

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Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD