

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**POTOMAC DISPOSAL, INC.**

**and**

**JOSE FLORES AMAYA, AN INDIVIDUAL**

**Case 05-CA-91629**

**CONSTRUCTION AND GENERAL LABORERS  
LOCAL 657, AFFILIATED WITH LABORERS  
INTERNATIONAL UNION OF NORTH  
AMERICA**

**Cases 05-RC-93887  
05-CA-92016  
05-CA-93890  
05-CA-93906  
05-CA-94080  
05-CA-95609  
05-CA-97256**

**OSCAR HERNANDEZ, AN INDIVIDUAL**

**05-CA-92279**

**BLANCA PORTILLO, AN INDIVIDUAL**

**05-CA-94082**

**JORGE A. RIVAS-BONILLA, AN INDIVIDUAL**

**05-CA-94478**

**ORDER CONSOLIDATING CASES, REPORT ON OBJECTIONS**

**AND**

**NOTICE OF HEARING**

Pursuant to a Stipulated Election Agreement<sup>1</sup> approved by the undersigned on December 7, 2012,<sup>2</sup> a secret-ballot election was conducted under my supervision on December 28, with the following results:

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<sup>1</sup> The unit set forth in the agreement is: "All employees employed in the division of the company working under the garbage disposal contract with the government of Montgomery County, Maryland; excluding all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined by the Act." The eligibility period is the payroll period ending November 30, 2012.

<sup>2</sup> Hereinafter, all dates are in 2012 unless otherwise specified.

Approximate number of eligible voters:	63
Number of void ballots:	1
Number of votes cast for Petitioner:	27
Number of votes cast against participating labor organization:	28
Number of valid votes counted:	55
Number of challenged ballots:	3
Number of valid votes counted plus challenged ballots:	58

The challenged ballots were sufficient in number to affect the results of the election.

The Petitioner filed timely objections to conduct affecting the results of the election on January 4, 2013.<sup>3</sup>

On February 3, 2013, following a stipulation between the Employer and Petitioner on the challenged ballots, two of the three challenged ballots were opened and counted under my supervision and the challenge to the third ballot was sustained.<sup>4</sup> The finally revised tally of ballots is as follows:

Approximate number of eligible voters:	63
Number of void ballots:	1
Number of votes cast for Petitioner:	28
Number of votes cast against participating labor organization:	29
Number of valid votes counted:	57
Number of undetermined challenged ballots:	0
Number of valid votes counted plus challenged ballots:	57
Number of sustained challenges:	1

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<sup>3</sup> The petition was filed on November 29. The undersigned will consider on its merits only that alleged interference which occurred during the critical period which begins on and includes the date of the filing of the petition and extends through the election. *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962).

<sup>4</sup> Under the stipulation the Employer and Petitioner stipulated that two of the three employees were eligible to vote. The parties further agreed that the third challenged ballot should not be counted because the employee was hired after the eligibility date.

## **THE OBJECTIONS<sup>5</sup>**

On February 25, 2013, the Petitioner withdrew its Objections 3 and 7. Accordingly, I hereby approve the withdrawal of these objections.

### **Objections 1 and 2**

#### **Objection 1**

On or about November 28, Potomac Disposal, by its officers, agents, and supervisors improperly coerced and intimidated employees from supporting the Union by telling workers at a mandatory employees' meeting that (i) the company would give workers a raise if they voted against the Union; (ii) undocumented workers could not join the union (which is false); and (iii) undocumented workers would be deported if a labor dispute ensued.

#### **Objection 2**

On or about November 29, Potomac Disposal, by its officers, agents, and supervisors improperly coerced and intimidated employees from supporting the union by discharging two employees for supporting the Union.

In support of the allegations in Objections 1 and 2, the Petitioner relies on the same evidence submitted and adduced during the investigation of the unfair labor practice charges it filed in Cases 5-CA-94080 and 5-CA-94082. On February 27, 2013, the Order Consolidating Cases, Amended Consolidated Complaint, Consolidated Complaint and Notice of Hearing issued which contains in the pleadings in paragraphs 12(a), 12(c), 12(d), 15(h) through (j), and 16(b) conduct identical to Objections 1 and 2.

Therefore, in view of the similarity of the Petitioner's Objections 1 and 2 with the unfair labor practices alleged in the Order Consolidating Cases, Amended Consolidated Complaint, Consolidated Complaint and Notice of Hearing and since the Complaint has issued, I will order the consolidation of Case 5-RC-93887 with Cases 5-CA-91629, 92016, 92279, 93890, 93906,

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<sup>5</sup> A copy of the Petitioner's Objections is attached as Exhibit A.

94080, 94082, 94478, 95609, and 97256 for purpose of hearing, ruling, and decision by an Administrative Law Judge on the issues raised by the Petitioner's Objections 1 and 2.

#### **Objection 4**

On or about December 17, Potomac Disposal, by its officers, agents, and supervisors, improperly coerced and intimidated employees from supporting the union by promising to provide employees employed as helpers with performance reviews and pay increases once the Union was gone and by telling the employees that Union organizing was futile and could not help them.

In support of Objection 4, the Union relies upon the statements of two employees, Employees A and B. According to Employee A, on or about December 17, Supervisor Edgar Villeda made threats of futility when he told employees that the Union could not help them. Employee B asserts that on or about December 21, Supervisor Villeda promised employees that if they did not select the Petitioner as their exclusive collective-bargaining representative, he would attempt to secure raises for employees.

The evidence adduced with respect to Objection 4 raises material and substantial issues of fact which may best be resolved on the basis of record testimony. Accordingly, the undersigned directs that Objection 4 be consolidated with the aforementioned unfair labor practice charges for the purpose of hearing.

#### **Objection 5**

On or about December 21, and every day thereafter, Potomac Disposal, by its officers, agents, and supervisors, improperly coerced and intimidated employees from supporting the union by threatening that, if the employees vote to unionize, the Employer will change the method of employee compensation from a daily rate to an hourly rate, leading the employees to receive half of the compensation that they currently receive. This message was communicated orally by a supervisor and also on a written message on a company white board. The Company's message on the white board also stated that employees who do not follow the Employer's direction to oppose the union will be terminated and states that the Department of Labor will support the Employer on the terminations.

In support of the allegation contained in Objection 5 that the Employer's supervisor Edgar Villeda threatened employees with reduction of wages if they selected the Union as their

collective-bargaining representative, the Petitioner relies on the evidence obtained during the investigation of the unfair labor practice charge it filed in Case 5-CA-95609. This allegation is coextensive with the conduct alleged in paragraph 13 of the aforementioned Order Consolidating Cases, Amended Consolidated Complaint, Consolidated Complaint and Notice of Hearing.

In support of the remaining allegations contained in Objection 5, the Petitioner relies on the statement of one employee, Employee B. According to Employee B, on or about December 21, Supervisor Edgar Villeda posted a written message on a whiteboard located in the Employer's facility which reminded employees that they do not work over 6 hours per day and warned them that if employees selected the Union as their collective-bargaining representative, employees would be paid hourly wages. Employee B stated the whiteboard also contained a message which warned employees that the Employer could discharge employees if it wished to do so. The posting on the whiteboard was maintained for 2 days. The Employer denies the occurrence of any objectionable conduct.

The evidence adduced with respect to Objection 5 raises material and substantial issues of fact which may best be resolved on the basis of record testimony. Therefore, the undersigned directs that Objection 5 be consolidated with the aforementioned unfair labor practice charges for ruling and decision by an Administrative Law Judge in the same consolidated proceeding described above.<sup>6</sup>

### **Objection 6**

While employees were in line to cast ballots, two supervisors, Evelio Hernandez and Thomas, were standing outside the break room in the immediate vicinity with employees who waited in line to enter the break room to cast their ballots.

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<sup>6</sup> The fact that an unfair labor practice charge alleging the same conduct as in the objections may have been dismissed does not require pro forma dismissal of the objections. *ADIA Personnel Services*, 322 NLRB 994 fn. 2 (1997).

In support of the allegations in Objection 6, the Petitioner relies on the statements of two employees, Employees C and D. According to Employee C, on December 28, while the Board-conducted election was taking place, Employer supervisors Edgar Villeda, Thomas Mountain, and Dolores Evelio Hernandez were standing in front of the entrance to the polling station. Employee D stated that on Election Day, supervisors Edgar Villeda, Thomas Mountain, and Dolores Evelio Hernandez were pacing up and down the hallway where the entrance to the polling station was located while the voting polls were open. The Employer denies the occurrence of any objectionable conduct.

The evidence adduced with respect to Objection 6 raises material and substantial issues of fact which may best be resolved on the basis of record testimony.<sup>7</sup> Accordingly, I direct a hearing be held with respect to the issues raise in the Petitioner's Objection 6, which will be consolidated for ruling and decision by an Administrative Law Judge in the same consolidated proceeding described above.

### **SUMMARY**

The undersigned orders that Objections 1, 2, 4, 5, and 6 be set for hearing with the unfair practice labor charges alleged in the Order Consolidating Cases, Amended Consolidated Complaint and Notice of Hearing which issued February 27, 2013, and approves the withdrawal of Objections 3 and 7.

### **ORDER**

IT IS HEREBY ORDERED, pursuant to Section 102.33 and 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that Case 5-RC-93887 be, and it hereby is, consolidated with Cases 5-CA-92016, 93890, 93906, 94080, 95609, 97256, 92279, 94082, and

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<sup>7</sup> See *Milchem. Inc.*, 170 NLRB 362 (1962).

94478 for the purpose of hearing, ruling and decision by an Administrative Law Judge on the issues raised by the Objections raised in Case 5-RC-93887.

NOTICE OF HEARING

Please take Notice that commencing at 10:00 a.m., E.D.T., on the 15<sup>th</sup> day of April 2013, at National Labor Relations Board, 1099 14<sup>th</sup> Street, NW, Room 5600, Washington, DC 20005-3419, and on consecutive days thereafter until concluded, a hearing will be conducted before an Administrative Law Judge of the National Labor Relations Board on the issues raised by the Objections in Case 5-RC-93887 set forth above and on allegations set forth in the Complaint issued in Cases 5-CA-91629, 92016, 92279, 93890, 93906, 94080, 94082, 94478, 95609, and 97256, at which time parties will have the right to appear in person, or otherwise, and give testimony.

Dated at Baltimore, Maryland, this 15<sup>th</sup> day of March 2013.

(SEAL)

/s/ Albert W. Palewicz

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Albert W. Palewicz, Acting Regional Director  
National Labor Relations Board, Region 5  
Bank of America Center – Tower II  
100 South Charles Street, Suite 600  
Baltimore, MD 21201