

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

ALCOA POWER AND PROPULSION D/B/A
HOWMET CASTINGS & SERVICES, INC.

and

Case 05-CA-092579

UNITED STEEL, PAPER AND FORESTRY,
RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION, AFL-CIO, CLC

HOWMET CASTINGS & SERVICES, INC.,

and

Case 05-RC-089312

UNITED STEELWORKERS OF AMERICA,
DISTRICT 8, AFL-CIO, CLC

**COUNSEL FOR THE REGIONAL DIRECTOR'S OPPOSITION TO
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On March 12, 2013, Alcoa Power and Propulsion, d/b/a Howmet Castings & Services, Inc., herein Respondent, filed a Motion for Summary Judgment requesting dismissal of certain Objections scheduled for hearing by Region 5 in its January 24, 2013 Order Consolidating Cases, Report on Objections and Notice of Hearing. More specifically, Respondent requests the dismissal of objection numbers 4, 5, 8, and 9 because the objections are coextensive with allegations in the unfair labor practice charge in Case 05-CA-092579 that were dismissed by the Region and not alleged as violations of Section 8 of the Act in the Order Consolidating Cases, Report on Objections and Notice of Hearing. In support of its argument, Respondent cites to *Times Square Stores Corp.*, 79 NLRB 361, 365 (1948), for the proposition that “when unfair labor practice charges are dismissed for insufficient evidence, objections based on the same evidence or alleged conduct should likewise be dismissed.” Respondent’s Motion for Summary Judgment at page 3.

For the reasons stated below, Counsel for the Regional Director opposes Respondent’s Motion for Summary Judgment and argues that, pursuant to *ADIA Personnel Services*, 322 NLRB 994 fn. 2 (1997), the fact that an unfair labor practice charge allegation has been dismissed does not require the pro forma overruling of an objection based on the same conduct.

The Board applies a different standard for determining the effect of preelection conduct on an election than it does when determining the merits of conduct alleged in a complaint to violate the Act. As the Board observed in *Texas Meat Packers*, 130 NLRB 279, 280 (1961):

It is Board practice to set aside elections because of substantial interference therewith arising from conduct which, in an unfair labor practice proceeding, would also be held violative of the Act. But, in such cases, the interference with the election is found to exist without regard to whether the interfering conduct would be deemed an unfair labor practice in a complaint case. For the effect of preelection conduct on an election is not tested by the same criteria as conduct alleged by a complaint to violate the Act. On the other hand, where, as in the instant case, the conduct which is alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair practice was committed, it is Board policy, as indicated above, not to inquire into such matters in the guise of considering objections to an election.

Because of this different standard, “it is properly within the Board’s authority to consider, in the context of an objection, conduct which has been dismissed as an 8(a)(1) allegation ***where the conduct may be found objectionable without determining that it is an unfair labor practice.***” *ADIA Personnel Services*, 322 NLRB 994 fn. 2 (1997) (emphasis added).¹

In *Times Square Stores Corp.*, the Board reviewed challenges to the eligibility of employees to vote in a representation election. Some of the employees were challenged because they were hired as replacements for employees who were on strike at the time of the election, while others were challenged for losing their status as employees by going on strike in violation of Section 8(d) of the Act and for not being entitled to reinstatement because they were economic strikers. The Board recognized that determining the nature of the strike—whether it was caused by unfair labor practices or not—was an issue

¹ In recognition of this principle that an objection to an election may stand even if the conduct was dismissed as an unfair labor practice allegation, the Board, in *Virginia Concrete Corp.*, 338 NLRB 1182, 1184 n. 4 (2003), recognized that the fact that an unfair labor practice allegation had been withdrawn did not necessarily preclude a party to file election objections regarding the same conduct that was at issue in the withdrawn allegation.

that could only be decided in the context of a complaint case, pursuant to Section 10 of the Act, and not in a representation case. Thus, the Board concluded it could not make its own determination as to whether a strike was an unfair labor practice strike for purposes of analyzing the challenges. Similarly, in *Texas Meat Packers*, the Board dismissed objections that would have required it to determine whether the Employer's conduct constituted a violation of Section 8(a)(3) of the Act where the 8(a)(3) allegation was not raised in an unfair labor practice charge. 130 NLRB at 280. In both of these cases, the conduct that was alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair practice was committed.

Where, however, the conduct may be found objectionable without determining that it is an unfair labor practice, the fact that an unfair labor practice charge concerning the same conduct was dismissed "does not require the pro forma overruling of the objection." *ADIA Personnel Services*, 322 NLRB 994 fn. 2 (1997). Here, the four objections cited by Respondent in its Motion for Summary Judgment may be resolved without an initial finding that an unfair labor practice was committed. The objections do not involve allegations of Sections 8(a)(3) or 8(d) and are akin to the objections considered by the Board in *ADIA Personnel Services*, which involved statements by the Employer at a preelection captive audience speech about raises and bonuses.

For these reasons, Counsel for the Regional Director respectfully requests the Board to deny Respondent's Motion for Summary Judgment.

Respectfully submitted on March 18, 2013,

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Certificate of Service

I hereby certify that Counsel for the Regional Director's Opposition to Respondent's Motion for Summary Judgment was filed with the Board electronically on March 18, 2013, and, on that same day, a copy of the document was served on the following individuals by electronic mail at the address listed below:

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