

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

ELITE PROTECTIVE SERVICES, INC.

Employer

and

Case 05-UD-095760

YUSUF OSMAN

Petitioner

and

**NATIONAL ASSOCIATION OF SPECIAL POLICE
AND SECURITY OFFICERS (NASPSO)**

Union

HEARING OFFICER'S REPORT

On April 19, 2013,¹ I conducted a hearing (herein “the Hearing”) pursuant to a Report on Objections and Notice of Hearing (herein “the Report”) in order to take record evidence to resolve one objection raised by Petitioner Yusuf Osman (herein “the Petitioner”). On the basis of my observations of the witness while testifying under oath, and the record in its entirety, including the exhibits and the arguments of the parties, I recommend overruling the objection for the reasons detailed herein.

I. Procedural History

On January 3, the Petitioner, an employee of Elite Protective Services, Inc. (herein “the Employer”), filed a union deauthorization petition with Region 5 of the National Labor Relations Board (herein “Region 5”), seeking to have an election conducted in which the bargaining unit employees of the Employer represented by the National Association of Special Police and Security Officers (NASPSO) (herein “the

¹ Unless otherwise specified, all dates referred to herein are in 2013.

Union”) would vote on the question of whether they wished to withdraw the authority of the Union to require under its agreement with the Employer that employees make certain lawful payments to the Union in order to retain their jobs.² The Regional Director of Region 5 (herein “the Regional Director”) approved a Stipulated Election Agreement on January 17. Pursuant to that Stipulated Election Agreement, a secret-ballot election was conducted by mail between February 1, and February 22, under the supervision of the Regional Director. The tally of ballots from that election issued on February 22, with the following results:

Approximate number of eligible voters	72
Void ballots	1
Votes cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that employees make certain lawful payments to the Union in order to retain their jobs	25
Votes cast against the above proposition	1
Valid votes counted	26
Challenged ballots	0

The tally of ballots shows the required majority of the eligible voters did not cast valid ballots in favor of the proposition involved in the election.

On February 26, the Petitioner filed timely objections to conduct he alleged affected the results of the election. On April 5, the Regional Director issued the Report.³ I conducted a hearing on April 19, where all parties in attendance were afforded a full and complete opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues raised by the objection. The Petitioner and the

² As stated in the Report, the unit is: “All full-time and regular part-time security guard employees employed by the Employer at the Bureau of Labor Statistics in Washington, D.C.; but excluding all officers and directors, captains, lieutenants, and sergeant employees, project managers, officer [sic] clerical employees, professional employees, managers, non-guard employees, and supervisors as defined in the Act.”

³ In the Report, the Regional Director overruled two of the Petitioner’s objections and directed a hearing on one of Petitioner’s objections.

Union appeared at the hearing, while the Employer did not appear at the hearing. Both the Petitioner and the Union waived the filing of briefs, and instead made closing arguments.

II. The Objection

The only objection for which the Regional Director directed this hearing was called “Petitioner’s Objection 2” (herein “Objection 2”) in the Report. As explained in the Report, for Objection 2, the Petitioner alleged:

[T]he Union sent one of its agents, Sampson Mgbaja, to [the Petitioner’s] work location on January 11, to harass him. In support of this contention, the Petitioner relates and asserts that on at least five occasions that same day, Union agent Mgbaja instructed co-workers of the Petitioner to call his work post and request that the Petitioner meet with Mgbaja. After the Petitioner denied these requests, Union agent Mgbaja waited for him to finish the shift and then exited the building at the same time, and followed the Petitioner for several miles, from the workplace to Takoma Park, Maryland, near where the Petitioner resides, in order to further harass him. The Petitioner further asserts he disseminated Mgbaja’s attempts to meet with him at work and following him after work to a few employees and to management shortly after it occurred. (Rpt. 4).⁴

In his objections filed with Region 5 dated February 26, the Petitioner asserts Sampson Mgbaja (herein after called “Mgbaja”) followed the Petitioner as described above starting at about 10:30 p.m. on January 11.

III. The Parties’ Evidence and Arguments

At the hearing, the Petitioner offered no evidence in support of Objection 2.⁵ The Petitioner did not call any witnesses or offer any arguments about the specific facts supporting his Objection 2.⁶

⁴ Citations to the transcript will appear as “Tr. [page numbers]”. Citations to the Report will appear as “Rpt. [page numbers].”

⁵ At the Hearing, the Petitioner explained that his mother died on April 9 and that he received the Report either April 15 or 16. (Tr. 34-36). Though the Petitioner appeared to suggest that he may have wanted a postponement or continuance of this Hearing, the Petitioner made no such motions despite being given the opportunity to do so. (Tr. 9, 11). The record on the whole shows no proper attempts by the Petitioner to request a postponement or continuance at any time, including prior to or during this Hearing. Assuming,

In the Report, the Regional Director stated that the Union denied Mgbaja was an agent of the Union, while admitting he is the Vice President the Union's Maryland Local. (Rpt. 4). Further, the Regional Director explained that the Union denied it engaged in any of the alleged objectionable conduct.

At the Hearing, the Union offered arguments and testimony in support of its claim that it engaged in no objectionable conduct in connection with this case generally, and specifically with regard to Objection 2. The Union called Mgbaja to testify as its only witness. Mgbaja testified that he remained in his home in Laurel, Maryland during the day on January 11, and, at about 9:00 p.m., he left his home to go to his workplace in Rockville, Maryland, where he worked from 10:00 p.m. on January 11 until 6:00 a.m. on January 12. (Tr. 14-15, 24-25). Under cross-examination by the Petitioner, Mgbaja explained he did not go to the Petitioner's workplace at any time on January 11. (Tr. 25).

IV. Analysis and Recommendation

In a post-election objections hearing, such as this proceeding, the burden is on the objecting party to prove its objections. As set forth in the National Labor Relations Board's Guide for Hearing Officers in NLRB Representation and Section 10(k) Proceedings, Section IX., B., p. 142 (2003):

In an objections case, the burden is on the objecting party to prove its case. A Board-conducted representation election is presumed to be valid. *NLRB v. WFMT*, 997 F.2d 269 (7th Cir. 1993); *NLRB v. Service American Corp.*, 841 F.2d 191,

arguendo, the Petitioner had made a proper postponement or continuance request, I would have denied such a request as untimely. I also would have denied a postponement or continuance request because (1) the Petitioner was the primary witness of the alleged objectionable conduct and claimed he disseminated information to employees about that alleged behavior; (2) the Petitioner was present and available to testify at the Hearing; and (3) the Petitioner also had an opportunity to cross-examine Mgbaja, the individual the Petitioner asserted engaged in the conduct alleged as objectionable in Objection 2. A postponement or continuance of this hearing was unnecessary. National Labor Relations Board Rules and Regulations, Section 102.64, 102.65, 102.66, 102.69

⁶ The Petitioner appeared at the hearing as a pro se party. As such, I ensured the Petitioner understood he had the opportunity to call himself as a witness, and he declined to do so. (Tr. 12.)

195 (7th Cir. 1988); *Progress Industries*, 285 NLRB 694, 700 (1987). Thus, an objecting party must demonstrate not only that the conduct occurred, but also that the conduct interfered with the free choice of employees to such a degree that it has materially affected the results of the election.

As the objecting party in this case, the Petitioner has the burden of providing sufficient evidence to substantiate his objections. *NLRB v. Mattison Machine Works*, 365 U.S. 123, 124 (1961).

At the Hearing, I explained to the Petitioner that, as the objecting party, he possessed the burden to prove his objections. (Tr. 10-11). The Petitioner admitted he understood he had the evidentiary burden in this Hearing. (Tr. 8, 37). The Petitioner was given multiple opportunities to call witnesses, submit evidence, and make arguments at the Hearing.⁷ (Tr. 7-9, 34, 37, 38). Nonetheless, the Petitioner called no witnesses and offered no evidence in support of Objection 2. In light of the absence of evidence in support of the objection, I find the Petitioner failed to meet his burden to prove Objection 2.⁸ I therefore recommend overruling that objection.

As the election involved in this proceeding involved a union-security deauthorization petition, the Petitioner required a majority of the employees eligible to vote to vote for the rescission of the union-security clause in order for the Board to issue a certification rescinding the authority for such a clause. NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11512. Accordingly, I recommend that the

⁷ The objections filed with Region 5 dated February 26, signed by the Petitioner, make clear that the Petitioner's testimony would have been probative concerning Objection 2. As noted above, the Petitioner's refusal to call himself as a witness in support of his objections undermines any argument that additional time was necessary for the Petitioner to present evidence in support of his objection. At the Hearing, the Petitioner also cross-examined the individual allegedly responsible for the acts to which the Petitioner objected.

⁸ With regard to some of the conduct alleged as objectionable under Objection 2, the Union elicited un rebutted testimony purportedly showing Mgbaja was not physically present at the Petitioner's workplace during the period in which the Petitioner alleged Mgbaja sought out and followed the Petitioner. Considering the Petitioner produced no evidence or arguments in support of his Objection 2, I need not pass on the Union's evidence. I also need not resolve Mgbaja's status as an alleged agent of the Union.

Board issue a certification of results, certifying that a majority of employees eligible to vote has not voted to withdraw the authority of the National Association of Special Police and Security Officers (NASPSO), under its agreement with Elite Protective Services, Inc., that employees make certain lawful payments to that labor organization in order to retain their jobs in conformity with Section 8(a)(3) of the Act, as amended.

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Washington, D.C. 20570-0001.

Procedure for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on May 17, 2013, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁹ A copy of the exceptions must

⁹ A request for an extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, D.C., and a copy of such request for extension of time should be submitted to the Regional Director and to each of the parties in this proceeding. A request for an extension

be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the File Documents button under the Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was offline or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Baltimore, MD, this 3rd day of May, 2013.

/s/ Daniel M. Heltzer

Daniel M. Heltzer, Hearing Officer
National Labor Relations Board, Region 5
Washington Resident Office
1099 14th Street, N.W., Suite 6300
Washington, DC 20570

of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or in a faster manner as that utilized in filing the request with the Board.

CERTIFICATE OF SERVICE

I hereby certify that the following document was electronically filed through the National Labor Relations Board's website, and that I served the document by first-class United States Postal Service mail on the 3rd day of May, 2013, on the parties listed below:

Mr. Gaby L. Fraser
National Association of Special Police and
Security Officers (NASPSO)
10 G Street, NE, Suite 710
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Mr. Michael Katz
Elite Protective Services, Inc.
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Mr. Yusuf Osman
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/s/ Vivian Brown

Vivian Brown, Designated Agent of NLRB
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