

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

COLLINS REINFORCING, INCORPORATED
Employer

and

Cases 5-RC-99380
5-CA-89794
5-CA-99767
5-CA-101505

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL, ORNAMENTAL AND REINFORCING
IRON WORKERS, LOCAL 201
Petitioner

**SUPPLEMENTAL DECISION ON OBJECTIONS AND
CHALLENGED BALLOTS AND
ORDER CONSOLIDATING CASES AND
NOTICE OF HEARING**

Pursuant to a Decision and Direction of Election¹ issued on March 21, 2013,² a secret-ballot election was conducted under my supervision on April 15, with the following results:

| | |
|---|----|
| Approximate number of eligible voters | 40 |
| Void ballots | 0 |
| Votes cast for Petitioner | 10 |
| Votes cast against participating labor organization | 13 |
| Valid votes counted | 23 |
| Challenged ballots | 30 |
| Valid votes counted plus challenged ballots | 53 |

The Challenged ballots are sufficient in number to affect the results of the election.

On April 22, the Employer filed timely objections to conduct affecting the results of the election, which are attached as Exhibit A³.

¹ The unit is: "All reinforcing ironworker employees employed by the Employer at its worksites in the greater Washington, DC Metropolitan area, but excluding all professional employees, clerical employees, administrative employees, confidential employees, managerial employees, guards, and supervisors as defined in the National Labor Relations Act, as amended." The eligibility period is the payroll period ending March 16, 2013.

² Unless otherwise specified, all dates are 2013.

³ The petition was filed on March 1, 2013. I 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 Co., 138 NLRB 453. (1962)

THE OBJECTIONS

Objection 1:

Collins Reinforcing Inc. objects to the conduct of the election in that the date, time, place, and manner of the manual election held on April 15, 2013 disenfranchised a potentially determinative number of eligible employees by depriving them of their ability to vote. Specifically, due to the geographic scattering of Collins Reinforcing's workforce several employees were denied the opportunity to vote through no fault of their own because the election was held in Oxon Hill, Maryland, hundreds or even over one thousand miles from their current work locations and/or homes. Had the election been held through a mail ballot election, these employees would have been able to vote⁴.

Objection 2:

Collins Reinforcing Inc. objects to the conduct of the election in that the Petitioner's refusal to join in a stipulation for a mail ballot election disenfranchised a potentially determinative number of eligible employees by depriving them of their ability to vote. Specifically, due to the geographic scattering of Collins Reinforcing's workforce several employees were denied the opportunity to vote through no fault of their own because the election was held in Oxon Hill, Maryland, hundreds or even over one thousand miles from their current work locations and/or homes. Had the election been held through a mail ballot election, these employees would have been able to vote.

In support of Objections 1 and 2, the Employer points to the same pieces of evidence: the *Excelsior* list and an affidavit from Theresa Collins. The Employer refers to the *Excelsior* list as demonstrating that a number of the employees listed have addresses outside of the Greater Washington, DC Metro Area, and as such, the manual election allegedly disenfranchised those employees. The affidavit from Theresa Collins states that four eligible employees were not given the opportunity to vote. Collins states that two of these four employees informed her that they did not cast a ballot because they did not feel comfortable missing work to make the trip to Washington, DC.

As it appears that substantial and material issues of fact have been raised which can best be resolved by record testimony, I shall direct that a hearing be held with respect to the issues

⁴ On April 8, 2013, the Employer submitted a Special Appeal with the Board that is identical to Objection 1. The Board issued an Order on April 15, 2013 denying the appeal without prejudice to the Employer's right to file a post-election objection to the conduct of the election concerning the issue raised on review.

raised by Employer's Objections 1 and 2, which will be consolidated for ruling and decision by an Administrative Law Judge in the same consolidated proceedings described below.

THE CHALLENGED BALLOTS

The following employees were challenged by the Board Agent: Carlos Felipe, Juan Orellana, Sotero Escamilla, Jose David Portillo, Dervin Ruiz, Antonio Ventura, Albert Hernandez, Juan Mancía, Santos Moreno, Exsequil Zuniga, Saul Villatoro, Pedro Villatoro, Felix Rico, Darling Jimenez, Víctor Perada, Enoc Sorto, Cristobal Hernandez, David Bonilla, Pedro Hernandez Felipe, Anidar Valdez, Jose Renaldo Garcia, and Selso Gonzalez.

The Board agent conducting the election challenged the ballots of the employees set forth above because their names did not appear on the *Excelsior* list. The Employer maintained that each of the named individuals was no longer an employee and was not eligible to vote subject to the *Daniels* formula. The Petitioner contends that each is an eligible voter because they have worked a sufficient amount of time with the Employer to be eligible under the *Daniels* formula, and they have not quit or been terminated for cause.

As it appears, there is a material dispute concerning the eligibility of the challenged voters which can best be resolved by record testimony, I shall direct that a hearing be held with respect to the issue of the above-named employees' eligibility to vote, which will be consolidated for ruling and decision by an Administrative Law Judge in the same consolidated proceeds described below.

The following employees were challenged by the Board Agent: Henry Martinez and German Trinidad.

The Board Agent conducting the election challenged the ballots of the employees set forth above because their names did not appear on the *Excelsior* list. The Employer maintained each of the named individuals was no longer an employee. The Petitioner contends that each is an eligible voter because their employment was terminated by the Employer in violation of Section 8(a)(3) of the Act.

On March 29, 2013, Petitioner filed an unfair labor practice charge in Case 5-CA-101505. The charge alleges violations of the Act, substantially, similar to the dispute concerning the challenged ballots of Henry Martinez and German Trinidad. On May 30, 2013, a Consolidated Complaint and Notice of Hearing (herein Consolidated Complaint) issued in Cases 5-CA-89794, 5-CA-99767, and 5-CA-101505, which contains pleadings in paragraphs 11 through 14 substantially identical to the dispute concerning the challenged ballots of Martinez and Trinidad.

Therefore, in view of the similarity of the dispute concerning the challenges with the unfair labor practices alleged in Case 5-CA-101505, and since a Consolidated Complaint has issued, I will order the consolidation of Case 5-RC-99380 with Cases 5-CA-89794, 5-CA-99767, and 5-CA-101505, for the purpose of hearing, ruling and decision by an Administrative Law Judge on the issues raised by the challenged ballots.

The following employees were challenged by the Petitioner: Jesus Ortega Lopez, Victor Morales, Rubical Nava, Baltazar Gonzalez, Ilario Pahuamba, and Roy Fries Gonzalez.

The Petitioner challenged the ballots of the employees set forth above because the Petitioner contends that they are not a part of the stipulated unit and, as such, are not eligible to vote. In support of its assertion, the Petitioner relies on signed statements from employees stating that they worked for Collins Reinforcing, and they do not know any of the Petitioner's-challenged voters. The Employer contends that those employees challenged by the Petitioner are eligible to vote as they belong to the job classification contained in the stipulated unit. To support its position, the Employer relies on time sheets and schedules demonstrating that these employees worked in the Washington, DC area during the eligibility period.

As it appears, there is a material dispute concerning the eligibility of the challenged voters which can best be resolved by record testimony, I shall direct that a hearing be held with respect to the issue of the above-named employees' eligibility to vote, which will be

consolidated for ruling and decision by an Administrative Law Judge in the same consolidated proceedings described above.

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-99380 be, and it hereby is, consolidated with Cases 5-CA-89794, 5-CA-99767, and 5-CA-101505, for the purpose of hearing, ruling and decision by an Administrative Law Judge on the issues raised by Objections 1 and 2, and the challenged ballots raised in Case 5-RC-99380.

NOTICE OF HEARING

PLEASE TAKE NOTICE that commencing at 10:00 a.m., E.D.T., on the 12th day of August 2013, in Hearing Room 5600 East, 1099 14th Street, NW, Washington, DC, 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 Petitioner's Objections in Case 5-RC-99380 set forth above and on allegations set forth in the Complaint issued in Cases 5-CA-89794, 5-CA-99767, and 5-CA-101505, at which time parties will have the right to appear in person, or otherwise, and give testimony.

Dated at Baltimore, Maryland, this 31st day of May 2013.

(SEAL)

/s/Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
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Attachments