UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

BEST UTICA MARKET, INC. Employer and	)	Case No. 29-RC-102301
LOCAL 338, RETAIL WHOLESALE, AND DEPARTMENT STORE UNION, UNITED FOOD AND COMMERCIAL WORKERS Petitioner	)	

REPORT ON CHALLENGES AND OBJECTION AND NOTICE OF HEARING

Upon a petition filed on April 9, 2013,[1] by Local 338, Retail, Wholesale and Department Store Union, United Food and Commercial Workers, herein called the Petitioner or the Union, and pursuant to a Stipulated Election Agreement signed by the Petitioner and Best Utica Market, Inc., herein called the Employer, and approved by the undersigned on April 26, an election by secret ballot was conducted on May 17 among the employees in the following unit:

> All full-time and regular part-time cashiers and stock persons employed by the Employer at its 890 Utica Avenue, Brooklyn, New York facility, but excluding all clerical workers, guards, and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

[1] All dates hereinafter are in 2013 unless otherwise indicated.

Approximate number of eligible voters	21
Number of void ballots	0
Number of ballots cast for the Petitioner	10
Number of votes cast against participating labor organization	9
Number of valid votes counted	19
Number of challenged ballots	2
Number of valid votes counted plus challenged ballots	21

Challenges are sufficient in number to affect the results of the election.

The Petitioner challenged the ballots of Jeong Sun Yang and Seoung H. Kim on the ground that they are supervisors within the meaning of Section 2(11) of the Act.

The Petitioner filed a timely objection[2] to conduct affecting the results of the election. The Petitioner's objection is attached hereto as Exhibit A.

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned objections and challenges, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

The Challenges

The Petitioner challenged the ballots of Jeong Sun Yang and Seoung H. Kim on the ground that they are supervisors within the meaning of Section 2(11) of the Act. The Employer asserts that these individuals are not supervisors within the meaning of the Act and are eligible to vote in the election.

In support of its challenges, the Petitioner states that named employees will testify that

[2] On May 22, 2013, the Petitioner filed an unfair labor practice charge in Case No. 29-CA-105938. The Board will accept an unfair labor practice charge filed within seven days of an election as an objection. See Avis Rent-A-Car, 324 NLRB 445 (1997). Accordingly, I have accepted this unfair labor practice charge as an objection to the election. In view of this decision, further processing of the unfair labor practice charge will be held in abeyance during this objection proceeding.

Yang has the authority to hire, fire, and discipline employees, and exercises independent judgment in assigning work to employees and changing employees' schedules. Further, these witnesses will testify that Yang orders stock and supplies for the Employer and enjoys special status as the sibling of the owner. The Employer asserts that Yang is a cashier. The Employer specifically denies that Yang has the authority to fire or fire employees, or possesses any other supervisory indicia.

The Petitioner states that named employees will testify that Kim is a shift supervisor who has the authority to hire, fire, and discipline employees, and exercises independent judgment in assigning work to employees and changing employees' schedules. In addition, these witnesses will testify that Kim orders stock and supplies for the Employer. The Employer asserts that Kim is a night stock person and stocks the shelves with other employees. The Employer states that Kim has instructed new employees about how to stock the shelves, but denies that this isolated fact denotes supervisory status.

In view of the conflicting positions and facts asserted by the parties regarding the alleged supervisory status of Yang and Kim, and Yang's alleged status as a close family member of the owner, I find that the challenges to their ballots raise material and substantial issues of fact and credibility that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the challenges to the ballots of Yang and Kim.

The Objection

In its objection, the Petitioner alleges that during the critical period, the Employer threatened employees that their work hours and wages would be reduced if they voted for the Petitioner. The Employer asserts that this objection is without merit.

In support of its objection, the Petitioner states that named employees will testify that their supervisor and the Employer's owner threatened to reduce their wages and hours if they voted for the Petitioner. The Employer denies these allegations.

The foregoing conduct of alleged threats to reduce wages and hours if employees voted for the Petitioner, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.[3] In view of the conflicting positions and facts asserted by the parties regarding the Employer's alleged threats to reduce wages and hours if employees voted for the Petitioner, I find that the Petitioner's objection raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the Petitioner's objection.

SUMMARY

In summary, I have directed that a hearing be held regarding the eligibility of Jeong Sun Yang and Seoung H. Kim and the Petitioner's objection.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the challenges to the ballots of Jeong Sun Yang and Seoung H. Kim and the Petitioner's Objection.

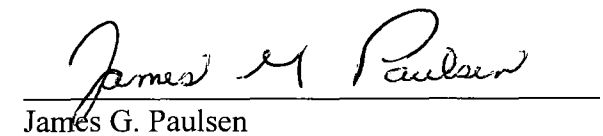
IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing

[3] See Tim Foley Plumbing Service, Inc., 332 NLRB 1432 (2000) (in which the Board set aside an election following, inter alia, threats to reduce employees' wages if the union won an election); Piggly Wiggly, Tuscaloosa Division Commodores Point Terminal Corp., 258 NLRB 1081 (1981) (in which the Board set aside an election following, inter alia, threats to reduce employees' hours if the union won an election).

resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that on June 25, 2013, at 9:30 a.m., and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

Dated at Brooklyn, New York, on this 5th day of June, 2013.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

FORM EXEMPT UNDER 44 U.S.C. 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case 29-CA-105938	Date Filed 5/23/13

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
BEST UTICA MARKET, INC.

b. Tel. No. 718-940-8396
c. Cell No.
f. Fax No.
g. e-Mail
h. Number of workers employed 22

d. Address *(Street, city, state, and ZIP code)*
890 UTICA AVENUE
BROOKLYN, NY 11203

e. Employer Representative

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
GROCERY STORE

j. Identify principal product or service
GROCERIES

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*

ON OR ABOUT APRIL 26, 2013 THE ABOVE-NAMED EMPLOYER, BY AND THROUGH ITS OFFICERS, AGENTS AND REPRESENTATIVES, THREATENED EMPLOYEES THAT THEIR WORK HOURS AND WAGES WOULD BE REDUCED IF THEY VOTED FOR THE UNION IN NLRB REPRESENTATION CASE NUMBER: 29-RC-102301.

BY THE ABOVE AND OTHER ACTS, THE ABOVE-NAMED EMPLOYER HAS INTERFERED WITH, RESTRAINED AND COERCED EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS GUARANTEED IN SECTION 7 OF THE ACT

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
LOCAL 338, RWDSU/UFCW

4a. Address *(Street and number, city, state, and ZIP code)*
1505 KELLUM PLACE
MINEOLA, NY 11501

4b. Tel. No. 516-294-1338
4c. Cell No.
4d. Fax No. 516-281-0250
4e. e-Mail

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* Retail Wholesale Department Store Union/United Food and Commercial Workers

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief

By _____ Eric J. LaRuffa, Attorney
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address Richard M.Greenspan,PC,220 Heatherdell Rd,ArdsleyNY10502 May 22, 2013 *(date)*

Tel No 914-478-2801
Office, if any, Cell No.
Fax No. 914-478-2913
e-Mail eric.rmglaw@verizon.net

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Exhibit A