

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

YOUNG SCHOLARS OF WESTERN
PENNSYLVANIA CHARTER SCHOOL

Employer

and

Case 06-RC-102643

YOUNG SCHOLARS OF WESTERN PA
EDUCATION ASSOCIATION, PSEA/NEA

Petitioner

REPORT ON OBJECTIONS
AND
RECOMMENDATION TO SET ASIDE
ELECTION AND CONDUCT NEW ELECTION

Pursuant to a Stipulated Election Agreement approved by the Acting Regional Director on April 19, 2013, an election by secret ballot was conducted on May 24, 2013, among employees in the unit heretofore found appropriate. The results of the election are set forth below:

1. Approximate number of eligible voters	23
2. Void ballots	0
3. Votes cast for Petitioner	12
4. Votes cast against participating labor organization	11
5. Valid votes counted	23
6. Challenged ballots	0
7. Valid votes counted plus challenged ballots	23
8. Challenges are not sufficient in number to affect the results of the election.	

On May 30, 2012, the Employer filed timely Objections to conduct affecting the results of the election, a copy of which was duly served upon the Petitioner. Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, an investigation of the Objections was made, during which all parties were afforded an opportunity to present evidence bearing on the issues. Having duly considered the results thereof, I hereby make the following report:

THE OBJECTIONS

The Employer's Objections allege as follows:

- a. The Board's failure to have any English language ballots available to voters creates a reasonable doubt as to the fairness and validity of the election.
- b. The Board's failure to have any English language ballots available to voters destroyed the laboratory conditions essential for the conduct of a fair election and the free expression of voter preference.
- c. The Board's failure to have English language ballots available created confusion among eligible voters, thus undermining the reliability of the voting process, by providing them with a ballot in a language that the majority of voters can neither speak, understand, nor read, and has rendered the results of the election unreliable.
- d. The Board's failure to have any English language ballots available to voters deprived voters of the information deemed by the Board to be essential to an informed vote while in the voting booth, including the failure to have an understandable instruction mandated by the Board's decision in Ryder Memorial Hospital, 351 NLRB 214 (2007), that advises voters on the ballot itself that "The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board."
- e. By adopting the suggestion of the Union's poll observer that only the Turkish words "Evet" and "Hayir," with the translation of "Yes" and "No" contained underneath, be printed on the whiteboard (without a translation of the remainder of the Turkish contained in the official ballot similarly posted on the whiteboard), the Board agent impermissibly delegated Board agent authority and responsibility to the Union's poll observer.
- f. By adopting the suggestion of the Union's poll observer that only the Turkish words "Evet" and "Hayir," with the translation of "Yes" and "No" contained underneath, be printed on the whiteboard, the Board agent improperly created an ad-hoc election notice that fails to comply with the requirements necessary for an official Notice of Election posting.

Objections a through d.

In Objections a through d, the Employer contends that the Board's failure to have any English language ballots available to voters created doubt as to the fairness and validity of the election, destroyed the laboratory conditions essential for the conduct of a fair election,

rendered the results of the election unreliable and deprived voters of the information deemed by the Board to be essential to an informed vote, including the failure to have an understandable instruction mandated by the Board's decision in Ryder, supra.

In support of its Objections a through d, the Employer notes that because the native language of some of the Employer's professional employees is Turkish, the Petitioner requested, and the Region agreed, that the Notice of Election and ballots would be provided in the Turkish language as well as in English. The Employer further notes that the majority of its professional employees are native speakers of the English language and neither speak nor read the Turkish language and that, with the exception of foreign language classes, subjects and grades at the School, are taught in English, not Turkish.

At the election, there were no official ballots in English, nor were there any bilingual official ballots. Only part of the Petitioner's name, "Young Scholars of Western PA Charter," on a portion of the ballot and "Young Scholars of Western PA . . . PSEA/NEA" on another portion of the ballot, and the case number were in English. The remainder of the official ballot was in Turkish. The Employer contends that the Board's action in providing only Turkish-language ballots was contrary to the terms of the Stipulated Election Agreement, which provided that Turkish-language ballots would be available, but not to the exclusion of English-language ballots. In support of its objections a through d, the Employer submitted signed statements by three voters who expressed that they were confused by the Turkish-only ballot.

Objections e and f.

In Objections e and f, the Employer contends that the Board agent impermissibly delegated Board agent authority and responsibility to the Union's poll observer and created an ad-hoc election notice that fails to comply with the requirements necessary for an official Notice of Election posting when he adopted the suggestion of the Union's poll observer and printed on a whiteboard only the Turkish words "Evet" and "Hayir," with the translations of "Yes" and "No" beneath, but with no translation of the remainder of the Turkish contained in the

official ballot being similarly posted on the whiteboard.

In support of its Objections e and f, the Employer contends that it was at the request of the Petitioner's observer that the Board Agent printed the Turkish words for "Yes" and "No" with their English translation on a whiteboard. The Employer states that no other instructions that were contained on the official ballot were translated into English on the whiteboard. The Employer further contends that the whiteboard posting of the Turkish words for "Yes" and "No" was not visible to voters while they were standing in the enclosed voting booth. The Employer further argues that the Board Agent who conducted the election declined the Employer's suggestion to photocopy the sample ballot as use for the official ballot and that he failed to translate any voting instructions other than Turkish translations of "Yes" and "No."

THE PETITIONER'S POSITION

The Petitioner disagrees that the election should be invalidated because the ballots were not provided in English. The Petitioner notes that the Board and the Courts have consistently held that an election should not be invalidated just because the ballots were not printed in the native language of some of the eligible voters and that the failure to provide a ballot in all of the languages spoken/read by the eligible voters does not create reasonable doubt as to the fairness and validity of the election, does not destroy laboratory conditions, does not create confusion per se and does not deny voters the necessary information needed to vote per se.

In support of its position, the Petitioner cites Northwest Products, Inc., 226 NLRB 653 (1976), and Precise Castings, 294 NLRB 1164 (1989), enfd. 915 F.2d 1160 (7th Cir. 1990), cert. denied 499 U.S. 959 (1991), contending that the Board has made it clear that it has no policy requiring the use of ballots in multiple languages.

In further support of its position, the Petitioner notes that the Board has changed the Representation Casehandling Manual to reflect this policy. The current version of the pertinent section, now Section 11315.2(c), states that translated notices of

election may be provided, while English-only ballots are provided to the voters at the election. Moreover, the Petitioner asserts that, as in Precise Castings, supra, the record contains no evidence of actual confusion on the part of the voters and the Employer herein has not provided any evidence of actual confusion.

The Petitioner further notes that the sample ballots were provided in both English and Turkish. The Petitioner argues that, printing a translation of two Turkish words on a whiteboard is not grounds for setting aside the election. In this regard, the Petitioner contends that the two sample ballots, one in English and one in Turkish, were readily available for reference by the eligible voters. Finally, the Petitioner contends that the parties agreed to the English translation on the whiteboard and thereby waived any basis for objection.

ANALYSIS

As to Objections a through d, one of the goals of the Board when conducting a representation election is to afford all eligible voters the opportunity to vote and to be informed of the voting details. To that end, the Board requires, under Section 103.20 of its Rules and Regulations, that the Employer post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. The parties requested and the Region agreed to provide Notices of Election and ballots in both English and Turkish since the native language of some of the eligible voters is Turkish.

The Notices of Election for the May 24, 2013, election were printed in both English and Turkish. The ballots, with the exception of a portion of the Employer's and Petitioner's names and the case number, were printed solely in Turkish. As set forth in the Agency's Casehandling Manual, Part Two, Representation Proceedings, Section 11315.2(b), when a foreign language notice of election is provided, a bilingual ballot may be provided. It is not the Agency's policy to provide a separate, single-language ballot, in a language other than English.

The cases cited by the Petitioner in support of its position are distinguishable from the

instant case in that they involved English only ballots, not ballots that, in significant part, were devoid of the English language. Furthermore, in the cases cited by Petitioner, the voters who did not speak or read English were a minority of voters, not a majority as in the instant case.

Although a Regional Director has the discretion to decide the language(s) to be used on the election ballot, in the instant case the ballot did not contain the primary language of the majority of voters. Despite the attempt to address the absence of the English language on the ballot, by printing on a whiteboard, underneath the Turkish words "Evet" and "Hayir" their English translation - "Yes" and "No" respectively, a majority of voters were denied the opportunity to fully read and comprehend the question before them at the time that they voted.

Regarding Objections e and f, although the Board agent adopted a suggestion to write the translation of "Yes" and "No," on the whiteboard where the translations would be visible to voters entering the room, and did not adopt the Employer's suggestion to photocopy and use as the official ballot, the sample English-only ballot, there is no evidence to support a finding that the agent's conduct was not neutral, fair and impartial. The Board agent made a reasonable attempt to correct a difficult situation and to avoid further confusion that would have resulted from voters having a ballot marked "sample," and from identifying the manner in which the small number of Turkish voters cast their ballots. The Board agent's attempts did not cause any further confusion but these actions did not eliminate the confusion caused by the primarily Turkish language ballots.

RECOMMENDATION

I find that the absence of a bilingual ballot reasonably created confusion on the part of a majority of eligible voters in this election, who do not read Turkish. The majority of eligible voters were unable to read the entire ballot, including the question before them regarding representation and the statement of the Board's neutrality in representation elections. Therefore, I find that Objections a through d raise material and substantial issues with respect to the election.

As to Objections e and f, inasmuch as I find that the Board Agent attempted to resolve the issue of the ballot in a fair and impartial manner and one which would be least disruptive of the election process, I overrule these Objections.

ACCORDINGLY, I recommend that the May 24, 2013, election be set aside and that a new election, with the use of a bilingual ballot, be conducted on a date and time to be determined by the Regional Director, in the unit of employees set forth in the Stipulated Election Agreement approved by the Acting Regional Director on April 19, 2013,¹ with the payroll period for eligibility to be the payroll period immediately preceding the issuance of the Notice of Second Election.²

Dated: June 20, 2013



Robert W. Chester
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
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¹ Under the provision of Section 102.69 and 102.67 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington, D.C. by July 5, 2013. Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

² In order that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236, NLRB v. Wyman-Gordon Company, 354 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the full first and last names and the addresses of all eligible voters, must be filed with the Regional Director for Region Six within seven days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.