

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

DURHAM SCHOOL SERVICES, L.P.
Employer

and

Case 05-RC-103218

**TEAMSTERS LOCAL UNION NO. 570, a/w
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**
Petitioner

REPORT ON OBJECTIONS
AND
NOTICE OF HEARING

Pursuant to a Stipulated Election Agreement¹ approved on April 30, 2013,² a secret-ballot election was conducted under my supervision on May 31, with the following results:

Approximate number of eligible voters	150
Void ballots	0
Votes cast for Petitioner	61
Votes cast against participating labor organization	74
Valid votes counted	135
Challenged ballots	5
Valid votes counted plus challenged ballots	140

The challenged ballots are insufficient in number to affect the results of the election.

On June 6, 2013, the Petitioner filed objections to conduct affecting the results of the election and the conduct of the election. The Objections were timely filed.³ A copy of the Petitioner's objections is appended hereto as Exhibit A.

¹ The unit is: "All full-time and regular part-time school bus drivers and monitors employed by the Employer at its Rosedale, Maryland facility; but excluding all maintenance employees, mechanics, dispatchers, safety coordinator, office clerical employees, managerial employees, professional employees, guards, and supervisors as defined in the Act."

² Unless otherwise specified, all dates are 2013.

Objection 1

During the critical period, the Employer, by its supervisors and agents, threatened employees in order to dissuade them from supporting the Petitioner. Specifically, on or about May 22, 2013, Employer supervisors and agents told employees that they would lose their routes if the Union were elected to represent them.

In support of Objection 1, the Petitioner submitted the statement of Employee A, which alleges General Manager Daryl Owens threatened a group of employees that they would lose their assigned routes if they voted in the Union.

The Employer denies it engaged in any objectionable conduct or that the conduct alleged is objectionable.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 1.

Objection 2

During the critical period, the Employer, by its supervisors and agents, appealed to racial prejudice in order to dissuade groups of employees from supporting the Petitioner. Specifically, on or about May 21, 2013, the Employer countenanced, through inaction, racist name-calling by employees towards other employees who supported the Union. By this conduct, the Employer improperly affected the free choice of the employees in voting for or against representation by the Petitioner.

In support of Objection 2, the Petitioner submitted the statement of Employee B, which alleges the Employer, by Human Resources representative John Kembrowski and Manager Eric Owings, allowed an employee to make derogatory remarks about another employee based on that employee's race during a captive audience meeting in which the union and the upcoming election were being discussed.

³ The petition was filed on April 19, 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 Company, 138 NLRB 453 (1962).

The Employer denies it engaged in any objectionable conduct or that the conduct alleged is objectionable.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 2.

Objection 3

During the critical period, the Employer, by its supervisors and agents, granted employees benefits in order to dissuade them from supporting the Petitioner. Specifically, on or about May 24, 2013, Employer supervisors and agents provided supplemental cash payments to selected employees. By this conduct, the Employer improperly affected the free choice of the employees in voting for or against representation by the Petitioner.

In support of Objection 3, the Petitioner relies on six affidavits from six employees.

Employee C states that on May 24, 2013, C picked up their pay check and noticed it was short. Attorney Gayle Gray told C the money would be deposited into C's account at a later date. C learned later that day from coworkers the Employer was handing out cash to other employees. On May 29, 2013, C received an envelope of cash and a voided check from someone named Easley. C further asserts this was the first time C had ever received cash when paychecks were short.

Employee D alleges on May 24 D picked up their pay check and noticed it was short. D notified Attorney Gayle Gray and Gray told D it would be corrected on Tuesday or Thursday. D later learned from a coworker that the Employer was handing out cash to employees in the spare room across from Human Resources administrator Primrose Stokes's office. D went to the room and Manager Eric Owings handed D an envelope with cash inside and a piece of paper to sign acknowledging receipt of the cash. D stated this is the first time D received cash when paychecks were short.

Employee E alleges on May 24 E picked up their pay check and noticed it was short. Attorney Gayle Gray took E's paystub and stated E would have a check within 24-hours for the missing amount. Later that evening, E received a phone call from a coworker and was told that Manager Eric Owings was handing out cash to people whose checks were wrong. The following day, E asked Owings about the missing money and was told to wait until the next payday for the missing money. E stated other people in line were given cash payments.

Employee F alleges on May 24 F picked up their paystub and noticed it was short. A coworker told F to have the paystub copied because the Employer was giving away cash to people. F had the paystub copied and someone by the name Dean started counting out cash for F. Attorney Gayle Gray stopped Dean and gave F an envelope with cash in it. F stated nobody from the Employer asked how many hours the paycheck was short or told F why F was receiving cash. F stated this is the first time F received cash when paychecks were short despite F's paychecks being short in the past.

Employee G alleges on May 24 G picked up their paycheck and noticed it was short. G got into line with other employees whose paychecks were short and Attorney Gayle Gray made a photocopy of the paystub and informed G that the missing money would be direct deposited as soon as possible. When G returned to the facility later that afternoon, G saw the Employer handing out cash payments to people. G went into Manager Eric Owings' office, Owings walked G to the line of employees, and G received cash for the amount the paycheck was short. G stated this is the first time G had received cash from the Employer.

Employee H alleges on May 24 H went to pick up their paycheck and noticed it was short. Attorney Gayle Gray took a photocopy of the paycheck and stated the Employer would provide a check on Tuesday for the amount it was short. When H returned from the afternoon

route, a coworker informed H that management had cash and to go get money. H received cash and signed a form acknowledging receipt. H states this is the first time the Employer has offered cash to cover the amount a paycheck was short.

The Employer denies it engaged in any objectionable conduct or that the conduct alleged is objectionable.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 3.

Objection 4

During the critical period, on the day of the election, the Board Agent was significantly late for the pre-election conference. As a result, (a) the polls opened late, (b) the polls opened without the Board Agent having instructed the observers, (c) the polls opened without the Board Agent having posted signs directing voters and banning electioneering in the polling place, (d) the polls opened without the Board Agent having made arrangements for the proper flow of voters into and out of the polling place and in regards to the distribution of employee paychecks, (e) the polls were open for a period of time during which the Employer's and the Petitioner's representatives were present in the polling place, (f) there was insufficient time for the parties to review the Excelsior list and determine who would be challenged and (g) the polling place was left unattended by the Board Agent while she moved her vehicle to a proper parking space. This conduct spoiled the laboratory conditions under which NLRB election must be run.

In support of Objection 4, the Petitioner provided four affidavits. All affidavits allege the above-referenced Board agent misconduct occurred during the election on May 31.

The Employer denies it engaged in any objectionable conduct or that the conduct alleged is objectionable.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 4.

Objection 5

During the critical period, on the day of the election, the Employer distributed paychecks to employees and resolved discrepancies on pay while employees were in line to vote.

The Petitioner relies on five affidavits in support of this objection.

Employee I stated that I stopped in the Dispatch office to get their paycheck while on the way to vote and saw General Manager Daryl Owens in the Dispatch office passing out paychecks. I saw Owens in the hallway joking with employees and laughing saying that he was not supposed to be out there.

Employee J stated that J went to pick up their paystub from the Dispatch window and noted that J had to walk past the Dispatch window in order to get to the polling place.

Employee K stated that K went to pick up their paystub from the Dispatch window and noted that K had to walk past the Dispatch window in order to get to the polling place.

Petitioner's Organizers Stephan Hansen and Moses Jackson, Junior, provided affidavits that stated that on May 31 he objected to the normal paycheck distribution location because it was the only route for workers to the polling place. Someone by the name of Dean agreed to move the paycheck distribution location to another location that was not on the route to the polling place.

The Employer denies it engaged in any objectionable conduct or that the conduct alleged is objectionable.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 5.

NOTICE OF HEARING

IT IS HEREBY DIRECTED, pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that a hearing be held in Hearing Room B, 100 South Charles Street, Baltimore, Maryland, on Thursday, July 18, 2013, beginning at **10:00 a.m.**, and continuing on consecutive days thereafter until completed, before an Administrative Law Judge of the National Labor Relations Board, who will take testimony for the purpose of resolving the issues raised by the Petitioner's Objections herein, at which the parties have the right to appear in person, or otherwise, and give testimony. The Administrative Law Judge designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within 14 days from the issuance of such report, any party may file with the Board in Washington, DC, an original and seven copies of exceptions thereto. Immediately upon filing such exceptions the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the undersigned. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or make other dispositions of the case.

Dated at Baltimore, Maryland, this 26th day of June 2013.

/s/ Wayne R. Gold

Wayne R. Gold, Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

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DURHAM SCHOOL SERVICES *

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* * * * *
OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION

Petitioner, Teamsters Local Union No. 570, by and through its undersigned counsel, pursuant to Section 102.69 of the Board's Rules and Regulations, files the following objections to the election held on May 31, 2013, for the following reasons:

Objection 1. During the critical period, the Employer, by its supervisors and agents, threatened employees in order to dissuade them from supporting the Petitioner. Specifically, on or about May 22, 2013, Employer supervisors and agents told employees that they would lose their routes if the Union were elected to represent them.

Objection 2. During the critical period, the Employer, by its supervisors and agents, appealed to racial prejudice in order to dissuade groups of employees from supporting the Petitioner. Specifically, on or about May 21, 2013, the Employer countenanced, through inaction, racist name-calling by employees towards other employees who supported the Union. By this conduct, the Employer improperly affected the free choice of the employees in voting for or against representation by the Petitioner.

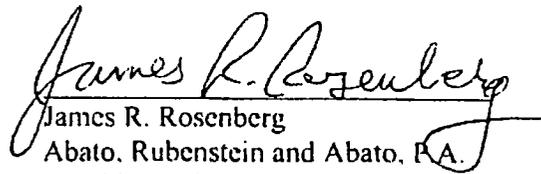
Exhibit A

Objection 3. During the critical period, the Employer, by its supervisors and agents, granted employees benefits in order to dissuade them from supporting the Petitioner. Specifically, on or about May 24, 2013, Employer supervisors and agents provided supplemental cash payments to selected employees. By this conduct, the Employer improperly affected the free choice of the employees in voting for or against representation by the Petitioner.

Objection 4. During the critical period, on the day of the election, the Board Agent was significantly late for the pre-election conference. As a result, (a) the polls opened late, (b) the polls opened without the Board Agent having instructed the observers, (c) the polls opened without the Board Agent having posted signs directing voters and banning electioneering in the polling place, (d) the polls opened without the Board Agent having made arrangements for the proper flow of voters into and out of the polling place and in regards to the distribution of employee paychecks, (e) the polls were open for a period of time during which the Employer's and the Petitioner's representatives were present in the polling place, (f) there was insufficient time for the parties to review the Excelsior list and determine who would be challenged and (g) the polling place was left unattended by the Board Agent while she moved her vehicle to a proper parking space. This conduct spoiled the laboratory conditions under which NLRB elections must be run.

Objection 5. During the critical period, on the day of the election, the Employer distributed paychecks to employees and resolved discrepancies on pay while employees were in line to vote.

Dated: June 6, 2013


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