

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

SKIDMORE COLLEGE
Employer

and

Case No. 3-RC-106452

**UNITED PROFESSIONAL AND SERVICE
EMPLOYEES UNION LOCAL 1222**
Petitioner

SEIU LOCAL 200 UNITED
Union

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Eric LaRuffa, Esq., Law Office of Richard Greenspan, PC, Counsel for Petitioner.
Drew Blanton, Esq., Counsel for the Union.*

DECISION

Statement of the Case

Joel P. Biblowitz, Administrative Law Judge: This case was heard by me on September 3, 2013¹ in Albany, New York. Pursuant to a Stipulated Election Agreement approved by the Regional Director on June 17, a secret ballot election was conducted on August 1 in the following appropriate unit:

All full-time, regular part-time, and permit housekeepers, customer attendant/short order cooks, sanitation and safety steward, environmental services techs, groundskeepers, stablehands, central receiving clerks, post office clerks, refuse-recycling truck drivers, cooks, maintenance mechanics, bakers, grounds mechanics, fleet mechanics, and senior cooks employed by the Employer at its Greenfield and Saratoga Springs, New York locations; but excluding all guards, all professional employees and supervisors as defined in the Act, and all other employees.

The Tally of Ballots stated that of approximately 147 eligible voters, 138 cast ballots, of which 66 cast ballots for United Professional and Service Employees Union Local 1222, the Petitioner, 52 cast ballots for SEIU Local 200 United, the Union, 20 ballots were cast against both participating labor organizations, and there were no challenged ballots.

The Objections

On August 8 the Union filed Objections to Conduct Affecting the Results of the Election, copies of which were served upon the other parties. The Objections are:

1. On July 17, 2013 Sean Collins, Organizer with SEIU Local 200 United, witnessed

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2013.

two UPSEU representatives talking to 15-20 workers in a private work area while on duty. Collins witnessed supervisors in the parking lot who were aware of the meeting and did nothing to enforce the employer's alleged policy of non-work time and non-work areas. Collins called security. After a brief conversation with a public safety officer where Collins regurgitated the policy as it had been applied to SEIU the officer called his Sergeant. The Sergeant was dismissive of Collins, never left his vehicle, simply pointing his finger at Collins and in a loud voice stating that he didn't work for Collins he worked for Barbara Beck and that UPSEU was allowed on campus. Neither the Officer nor Sergeant engaged agents of UPSEU to ascertain whether prior permission was granted or to ascertain whether employees were on work time while engaged in what eventually was a meeting lasting over 1 hour.

2. July 22, 2013 UPSEU held a meeting on campus where they brought their President, Kevin Boyle to campus. When Brian Havens, Union Representative, learned about the meeting being held on campus in Filene Recital Hall, which is a campus owned building he called Barbara Beck. Ms. Beck confirmed she had no knowledge of the meeting. Although UPSEU had not made the requisite arraignments to have this meeting on campus including prior notification of the meeting and arraignments for a room on campus the meeting was allowed to occur without any attempt by the Employer to enforce its purported neutral policy. Two employees who attended the meeting Tom Dussault and Pat Overholt can confirm the meeting time, location, etc. was not altered and the meeting occurred.
3. Also on July 22, 2013, Kevin Boyle, President of UPSEU walked through work areas in the kitchen in full view of Skidmore supervisors and spent significant time attempting to talk to Peter Usack while he was serving food and nothing was done by Skidmore to enforce their policy.
4. However, Jake Allen, was kicked out of the dining hall by a Skidmore supervisor/manager named John when Allen attempted to speak with a worker who was preparing food.
5. Jason Piche, a Skidmore employee, called security when Gary Favro, an agent of UPSEU was bother [sic] employees and nothing was done.
6. Kevin Lloyd, a very vocal UPSEU supporter, was allowed by Skidmore through the entirety of the campaign to drive around campus in his Skidmore issued vehicle to campaign for UPSEU on work time and in work areas.
7. Kevin Lloyd, followed known SEIU supporters, like Anthony Colangelo, to monitor their union activity, in lieu of performing his assigned duties.
8. Kevin Lloyd, on one instance told Colangelo to "get back to work" when Kevin came upon Colangelo talking to SEIU organizers. This conversation happened on Colangelo's break but Lloyd's comments intimidated Colangelo and he returned to work.
9. Joann Dugan, a very vocal UPSEU supporter told Robert Coleman to "get back to work" when she witnessed him talking to SEIU organizers. Coleman was off the clock but proceeded to end the conversation and punch back into work.

The Union withdrew Objections 10 through 12.

Object 1. The evidence supporting this objection was supplied by Collins, who is employed by the Union as an organizer. He testified that on July 17, he was on the Employer's campus, herein called the campus, for several hours that day with Theresa Mack-Piccone, another organizer for the Union, meeting employees of the Employer and distributing literature to them. While they were in the North Hall parking lot, he saw Gary Favro, a labor relations representative for the Petitioner, together with another individual employed by the Petitioner, in that parking lot. At about 12:00 or 12:30 Favro and the other individual walked into North Hall, which Collins described as a working area for the facilities and maintenance staff. The doors leading into the building were being held open by a fan in the doorway, allowing him to see inside the building. He called campus security and told them that two of the Petitioner's representatives were in the building which they were not supposed to have access to, and they were conducting a meeting with between ten and fifteen employees, although he does not know whether these employees were on work time or were on breaks. Security said that they would dispatch somebody to the area and when he arrived, Collins repeated what he had told security. The representative then said that he would have to call his sergeant, who arrived a few minutes later, pointed his finger at Collins, and said that he didn't work for him, that he worked for Barbara Beck, that Collins should stop calling them, and he drove away. Although the objection alleges that Collins saw supervisors in the parking lot who were aware of the meeting, he could not identify any employees, managers or supervisors who were present in the area at the time. He testified further that he never contacted the Employer to make arrangements for meeting space on campus; Brian Havens, a representative of the Union made these arrangements and Collins attended two meetings that were held in classrooms at the facility during the pre-election period.

On July 8, Kevin O'Haire, an attorney and labor relations specialist for the Petitioner, wrote to the Employer, *inter alia*:

Additionally, as I mentioned in my email, we would also propose to do a brief "walk throughs" of the campus in order to greet employees while on their break times and answer any questions they may have regarding the election process and our organization.

These visits will be short, unobtrusive and respectful of college operations and the employees' job duties. Please find below the proposed dates:

There were fourteen dates listed from July 9 to July 31, including July 17 and July 22. The Employer's records indicated that on July 12, Mariani approved at least two of these dates for the Petitioner, including July 22 at Filene Hall.

Beck testified that "over the years" that the Union has been the bargaining representative of the unit employees, they contacted her office when they wanted to have a meeting of employees at the campus, and that practice was continued after the petition was filed; both unions were told to contact her office to request meeting space on the campus. A report by the Campus Security Department states: "Rp [sic] reports other union reps in work area of North Hall talking to workers. Officer advised union rep to call HR." Beck testified that she never received a phone call from Collins about this incident.

Objection No. 2. This evidence supporting this objection was supplied by Thomas Dussault, who is employed by the Employer as a custodian, and Haven. Dussault testified that on about July 22 he attended a meeting held by the Petitioner on the campus in Filene Hall; the Petitioner's

President, Kevin Boyle, attended the meeting, which lasted for about an hour. Dussault learned of the meeting by “word of mouth.” This meeting took place at about 3:30, before he was to report for work, and lasted for about an hour. This was the only meeting of the Petitioner that he was aware of, and he does not know if the Petitioner notified the Employer prior to scheduling the meeting. He also testified that about two weeks earlier the Union conducted a meeting in a different building on the campus, beginning at about 9:30 a.m. and continuing throughout the day, so that employees could come and go as they pleased. Haven testified that he was on campus on July 22 handling a problem that an employee had with a supervisor when somebody told him that the Petitioner was conducting a meeting of employees in Filene Hall. He then called Beck and asked her if she was aware that the Petitioner was conducting a meeting of employees in Filene Hall and she said that she was not aware of such a meeting. Haven also testified that he was aware that when either of the parties wanted to have a meeting of employees on campus, they had to make a request to the Employer specifying the dates and times that they wanted, and the Union made such requests and received email confirmations from the Employer. During July, the Union received approval from Beck to have membership meetings every Wednesday, for two hours in the morning and three hours in the afternoon. None of his requests for meeting times was ever denied. Beck has told him that if she was not available, he could make his request to Terri Mariani, her assistant.

O’Haire testified that he and Favro were at the North Hall parking lot on about July 1 or 2 talking to a few employees who had not yet begun their shifts, when they were approached by the Employer’s security people, who told them that they had to make a request to come on to the campus, and they left the campus at that time, with the promise that in the future they would first request permission from the Employer’s HR department to come on to the campus. On about the following day, he either called or emailed Beck with dates in July that the Petitioner was requesting, and she emailed back confirming all the dates except July 30, because a fund raising event was taking place on campus that day, and the Petitioner agreed to these dates, one of which was July 22. On July 12 O’Haire asked if he could book a room for meetings on July 16 and July 22, from 1:00 to 4:00, and Beck responded later that day saying that she would ask Mariani to locate a room for them, and get back to him. As a result, they had the meeting in Filene Hall on July 22.

Beck testified that she doesn’t specifically recollect receiving a call from Haven on July 22, but she may have received such a call. And if Mariani had approved and made the arrangements for a meeting for the Petitioner, she (Beck) might not have been aware of it. In addition, the Employer processed requests from both unions in an equal manner.

Objection No. 3. The evidence supporting this objection was supplied by Peter Usack, who is employed by the Employer as a short order cook in the dining services department. He testified that in about mid-July, O’Haire and another gentleman whom he could not identify, met in the dining hall with four or five dining hall employees, “in plain view. Nobody said anything. Nobody bothered them.” He initially testified that the employees were not on their break at the time and that while they were there, supervisory employees “walked through” but did not say anything, and that the Petitioner’s representatives remained there for about thirty minutes. He subsequently testified that, he “...couldn’t say for sure” whether the employees were on work time or break time during these discussions, and that he couldn’t “...say for sure, at that time, which manager may or may not have walked through.” He testified that he saw one manager walk through the area, but does not know if he observed the meeting. His only interaction with the Petitioner’s representatives on that day was that they said hi to him and he may have said hi to them. He also testified that at other times he has seen the Union’s representatives in the dining hall.

Objection No. 4. The evidence supporting this objection was supplied by Jacob Allen, an organizer for the Union, who worked primarily with the food service workers. He testified that he began going into the dining hall in June, but went more frequently in the last two weeks of July. He estimated that he was there at least a dozen times. On most of those occasions he would order food and while the employee was preparing the food. “I would sometimes engage him in conversation, introduce myself, and so on.” He also gave his business card to the employees. On one occasion, in about June, as he was talking to an employee for about five minutes while she was preparing pizza, a manager approached him and told him that he was not allowed to talk to workers and that he shouldn’t be there and Allen left immediately. The manager had a nametag, and Allen believes that his name was John. Allen testified: “We were told, at one point, that the school had granted us access to campus, yes. And we no longer ...had to call ahead, call HR or something like that. And then that was lifted.” After learning that, he came on campus several times without making prior arrangements with the Employer’s HR Department. Beck testified that the restrictions on access to the campus were never lifted during the campaign.

Objection No. 5. The evidence supporting this objection was supplied by Jason Piche, who is employed by the Employer as a short order cook. He testified that Favro and O’Haire approached fellow employee Jeff Ayres, ordered breakfast and Favro handed Ayres his card and said, “We’re from Local 1222 if you would like to talk.” He testified that this is a public area where anybody can come to purchase food. After witnessing this situation, Piche did not call security. Favro testified that on the day in question, he ordered breakfast and “made small talk” with the young man who was cooking his breakfast. He told him who he was, handed him his business card, and told him that if he had any questions he should call him. He remained there for about five minutes while his breakfast was being made.

No evidence was adduced regarding Objection No. 6.

Objections Nos. 7 and 8. Anthony Colangelo is a housekeeping employee of the Employer on the second shift, from 3:00 to 11:30 P.M. During the campaign, he made phone calls for the Union asking employees which union they supported, but he did not attempt to persuade them to support the Union. During that period, Kevin Lloyd, a fellow maintenance employee, told him that the Union was no longer representing the employees and asked him to fill out a card (presumably for the Petitioner), which he did and he gave the completed card to Lloyd. On one occasion, he was in the parking lot on the campus talking to Allen and Piccone asking them if he would have to join the Union because he signed the card that Lloyd gave him. During this discussion, they were approached by Lloyd, who told him to get back to work. Colangelo testified that he began this conversation with Allen and Piccone a little before his break, but it may have gone past his break time. On the following day Lloyd told Colangelo that he told him to return to work because he didn’t want him to be written up for talking to them on work time. Allen testified that he has had many conversations with Colangelo, but the conversation involved herein only lasted about ten minutes with Colangelo giving them an update on what was occurring on the campus. The conversation ended when Lloyd drove up and yelled to Colangelo, “Hey, get back to work.” Colangelo then got into his car and left.

Piccone testified that she and Allen have had numerous conversations with Colangelo, some at his home and some on campus. On one occasion toward the end of June, she met Colangelo in front of Filene Hall and after talking for about seven to ten minutes, Lloyd drove up and shouted, “You need to get back to work, Anthony.” She testified that Lloyd had been involved in the campaign of the Petitioner. On one occasion while she was distributing literature outside of Filene Hall, he shoved the Union literature “back in my face” and told her, “Go hand this out somewhere else.”

Lloyd testified that on the day in question, at about 7:15, as he was driving on the campus, he saw Colangelo talking to somebody in the parking lot. He and Colangelo work the second shift from 3:00 to 11:30, with scheduled breaks from 6:00 to 6:30 and 8:30 to 9:00. He pulled his van nearby and said, “Tony, you can’t do this, you’ve got to get back to work, it’s not break time.” He said it so that Colangelo would not get written up. He did this on his own and never reported it to the Employer. He testified further that he has spoken to employees in his department in favor of the Petitioner, but always during breaks. Beck testified that Lloyd had no authority from the Employer to tell employees to stop talking to Union representatives and return to work.

Objection No. 9. The evidence supporting this objection was supplied by Amber Childs, an organizer for the Union, and Piccone. Childs testified that in about mid June she and Piccone were walking through the Case Center, located in mid campus, when they passed Robert Coleman, a dining services employee of the Employer. He told them that he was on his break and could speak to them for a few minutes, and so they went into a little computer area in the building and began talking. He said that he saw cards were being distributed for the Union and asked how the campaign was going. They finished speaking and were returning to the main dining hall where Coleman was going to clock back in, and Joann Dugan, a bargaining unit employee, approached them and told Coleman that he “needed to get back to work.” She “...was pretty aggressive in her approach toward him. He was taken aback and he was like, why, I’m on my break, I’m headed in to clock in now.” Beck testified that Dugan had no authority from the Employer to tell employees to stop talking to Union representatives and to return to work. Piccone’s testimony about this incident is nearly identical to Child’s.

Analysis

There is a strong presumption that the ballots cast in a Board conducted election “reflect the true desires of the employees,” *Crown Bolt, Inc.*, 343 NLRB 776 (2004), and “the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one.” *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (1989). The Union has not satisfied that burden.

Objections 1 and 2, basically allege favoritism by the Employer in granting the Petitioner access to the campus. This allegation is clearly lacking in merit. The uncontradicted and credible testimony of Beck is that during the campaign the Employer required both Unions to request specific dates that they wished to be on the campus to campaign and that she and Mariani responded to these requests in an equal manner, generally granting the unions a time and place in which to meet the employees. This testimony is supported by O’Haire, who testified that by July 8 he was aware of this rule, and made such requests for access to the campus, resulting in the July 22 meeting. In fact, the Union had a meeting on campus two weeks earlier and received approval to have membership meetings every week for two hours in the morning and three hours in the afternoon. Apparently, none of the Union’s access requests were denied by the Employer. As the evidence establishes that the Petitioner’s request to have a meeting on campus on July 22 had been approved by the Employer, and as there is no evidence of any disparate treatment herein, I recommend that Objections 1 and 2 be overruled.

Objection No. 3 alleges that Boyle walked through work areas in the dining room, “in full view of Skidmore supervisors,” and “spent significant time attempting to talk to” Usack, while he was working, and nothing was done by the Employer to enforce its equality policy. A close examination of the evidence establishes that each of these allegations lacks merit. Usack testified that it was O’Haire that he observed that day in the dining hall, that he said hi to him, and that Usack may have said hi as well. Although not specifically objected to, Usack testified

that O’Haire was talking to four or five employees in the dining hall, but he could not say for sure whether they were on work time or break time, and he was uncertain whether any specific supervisor or manager witnessed this incident. I therefore recommend that Objection No. 3 be overruled.

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Objection No. 4 alleges that Allen was kicked out of the dining room while trying to talk to an employee preparing food. Allen testified that during the campaign he went to the dining room about a dozen times, ordered food, and while he was waiting, he introduced himself, engaged in conversation with the employee, and gave them his business card. On one occasion during this period, an individual he identified as a manager told him that he was not allowed to talk to the employees while they were working, and he left. He returned to the campus on later dates without making prior arrangements. While it is true that “John” told him that he was not allowed to talk to workers, he was probably correct. Although the employee was preparing his food, he was working. In addition, Allen had been there numerous times before and after this incident without being stopped from speaking to employees. I therefore recommend that the objection alleging this *de minimis* incident be overruled.

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Objection No. 5 alleges that because Favro was bothering him, Piche called security and nothing was done. However, the evidence establishes that Favro and O’Haire ordered breakfast from Ayres, handed him his business card, and said, “We’re from Local 1222 if you would like to talk.” Piche did not call security. There is no need to determine whether Favro engaged in improper electioneering by introducing himself to Ayres as he did. No supervisor or manager was present, and no disparate treatment was shown as the evidence establishes that both unions were generally permitted to talk to the food service employees while they were preparing their food. I therefore recommend that Objection No. 5 be overruled. As no evidence was adduced regarding Objection No. 6, I recommend that it be overruled as well.

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Objections 7 and 8 allege that Lloyd was following Union supporters, like Colangelo (and there was no evidence to support this allegation), and that by telling Colangelo to get back to work, Lloyd intimidated him. The evidence is conflicting on whether Colangelo was on break time when Lloyd approached him, although Colangelo testified that his conversation with Allen and Piccone may have gone past his break time. It is clear that Lloyd is a fellow bargaining unit employee with no authority to tell employees to return to work and although he supported and campaigned for the Petitioner, there is no evidence that he was an agent of the Petitioner. The burden of establishing agency status is on the party asserting its existence, *Mastec North America, Inc.*, 356 NLRB No. 110 (2011), and that agency relationship must be established with regard to the specific conduct that is alleged to be unlawful; in this case telling Colangelo to get back to work. *Cornell Forge Company*, 339 NLRB 733 (2003). The mere fact that Lloyd solicited cards for the Petitioner does not establish that he is an agent of the Petitioner. Further, the Union has not established that he had apparent authority as it has not shown any activity by the Petitioner which could lead employees to believe that he was acting on the its behalf. In fact, Favro, Boyle and O’Haire actively campaigned for the Petitioner, leaving little reason for employees to believe that Lloyd was also an agent of the Petitioner. Finding that Colangelo had no reason to feel threatened by Lloyd’s comment, and in fact didn’t, and that Lloyd was not an agent of the Petitioner, I recommend that Objections No. 7 and 8 be overruled.

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For the same reasons, I would recommend that Objection No. 9 be overruled. There is no evidence that fellow bargaining unit employee Dugan was an agent of the Petitioner, and there was no reason for Coleman to feel threatened by her statement to him.

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Conclusions

Based upon the above, I recommend that the Union’s objections be overruled in their entirety and that the matter be returned to the Regional Director for Region 3 of the Board to take appropriate action.²

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Dated, Washington, D.C. September 23, 2013

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Joel P. Biblowitz
Administrative Law Judge

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² Under the provisions of Section 102.69 of the Board’s Rules and Regulations, exceptions to this Decision may be filed with the Board in Washington, D.C. within 14 days from the date of this Decision. Exceptions must be received by the Board in Washington by October 7, 2013.