

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-SEVENTH REGION**

WINCO FOODS, LLC,

Employer

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
LOCAL 483,

Petitioner

Case 27-RC-109711

and

WINCO FOODS #91 BOISE DISTRIBUTION CENTER  
EMPLOYEE ASSOCIATION

Intervenor.

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**REPORT ON DETERMINATIVE CHALLENGES, OBJECTIONS, ORDER  
DIRECTING HEARING AND NOTICE OF HEARING**

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**I. Introduction**

This report contains the Regional Director's conclusions and order regarding 10 determinative challenged ballots of individuals whose eligibility remains in question, as the parties have been unable to reach agreement on the question of the challenged voters' eligibility. As described below, it is concluded that the eligibility of the challenged voters must be resolved following the conduct of a hearing.

In addition, this report contains the Regional Director's conclusions and order regarding three objections to the election filed by the Petitioner. The objections allege that (1) the Board's

election process created an appearance of irregularity, (2) that the Intervenor engaged in electioneering near the polling place while voting was taking place, and (3) that Employer engaged in acts and conduct that threatened employees, all of which warrant setting aside the election. As described below, it is concluded that the Petitioner's Objection 1, and the investigation thereof, raises substantial and material questions of fact, which can best be resolved by a hearing. It is further recommended for the reasons discussed below that the Petitioner's Objection 2 and 3 be overruled.

## **II. Procedural History**

Based on a petition filed on July 23, 2013,<sup>1</sup> and pursuant to a Stipulated Election Agreement approved on August 8, an election by secret ballot was conducted on August 28 and 29, for the following unit of employees (Unit):

**Included:** All full-time and regular part-time warehousemen, drivers, office/support Class I employees (including janitors, sanitors, recoup, and truck cleanout), office/support Class II employees (including inventory control clerks, maintenance clerks, transportation clerks, shop utility), office/support Class III employees (including administrative assistants, billing/receiving clerks, maintenance tech, dispatchers), office/support Class IV employees (including maintenance specialists) employed by the Employer at its facility located at 2390 E. Freight St., Boise, ID 83716.

**Excluded:** All professional employees, guards, and supervisors as defined in the Act.

The parties expressly agreed to have certain classifications vote subject to challenge, as detailed in the Stipulated Election Agreement:

\*The following classifications are neither included nor excluded from the appropriate collective bargaining unit. They may vote in the election subject to challenge and their status can be determined subsequently, as appropriate under Board law, including through agreement of the parties, the challenged-ballot procedure, or a unit clarification petition: security and lead security employees; receptionists; lead inventory control; warehouse assistant supervisors; HR assistants.

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<sup>1</sup> All dates in this report refer to calendar year 2013, unless otherwise specified.

The results of the election as disclosed by the tally of ballots made available to the parties after the ballot count on August 29 were as follows:

Approximate number of eligible voters.....	218
Number of void ballots.....	0
Number of votes cast for Petitioner.....	92
Number of votes cast for Intervenor.....	99
Number of votes cast against participating labor organizations .....	3
Number of valid votes counted.....	194
Number of challenged ballots.....	10
Number of valid votes counted plus challenged ballots.....	204

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

On September 5, the Petitioner filed timely objections to conduct affecting the results of the election.<sup>2</sup>

### **III. Background**

The Employer is a retail grocery store chain with branches located in multiple states, including in the state of Idaho. The Employer and Intervenor have had a bargaining relationship for at least the past three years. They are parties to a collective bargaining agreement with effective dates of October 17, 2010 through October 15, 2016.<sup>3</sup> That collective bargaining agreement is essentially a wall-to-wall unit and includes the employees who were challenged at the election.

### **IV. The Determinative Challenges**

Based upon agreement of the parties to challenge certain voters in specific classifications, as detailed in the Stipulated Election Agreement, a total of 10 challenged ballots were cast in the election.

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<sup>2</sup> A copy of the Petitioner's objections is attached is attached to this report.

<sup>3</sup> The petition herein was timely filed during the open period 60-90 days before the third anniversary of the collective bargaining agreement and no party contends otherwise.

<u>NAME</u>	<u>CLASSIFICATION</u>	<u>POSITION OF PARTIES</u>
Patrick Douglass Rodney Ricks Jason Munden	Assistant Shift Supervisor	Petitioner and Intervenor assert they are eligible to vote, as they are not statutory supervisors; however, the Employer asserts they are statutory supervisors and ineligible to vote.
Scott Reinburg	Assistant Shift Supervisor/Lead Inventory Control	Intervenor asserts he is eligible to vote, as he is not a statutory supervisor; however, the Petitioner and Employer assert he is a statutory supervisor and ineligible to vote.
David Sweet Joyce Higman Jeffrey Howard	DC Security Gate Guard	The Petitioner and Employer assert they are ineligible to vote as they are guards, as defined in the Act. Additionally, the Petitioner asserts that Higman is a statutory supervisor and, therefore, ineligible to vote on that basis. The Intervenor asserts that their duties and responsibilities do not qualify them as guards, as defined in the Act.
Alejandro Chavez	DC Security Gate Guard	The Petitioner and Intervenor assert he is eligible to vote. The Petitioner argues that he works primarily as a janitor and that his guard duties are incidental. The Intervenor asserts that his guard duties and responsibilities do not qualify him as a guard, as defined in the Act. The Employer asserts he is ineligible to vote inasmuch as his duties and responsibilities qualify him as a guard, as defined in the Act.
Cheryl Berg	HR Assistant	The Petitioner and Employer assert that she is ineligible to vote as she is a confidential employee. The Intervenor asserts she is eligible to vote as her duties and responsibilities

		do not qualify her as a confidential employee.
Catherine Dubish	Receptionist	The Petitioner and Intervenor assert that she is eligible to vote as she shares a community of interest with the rest of the bargaining unit. The Employer failed to take a position on whether she is eligible to vote.

The number of challenged votes is sufficient to affect the results of the election. In this regard, 10 votes will determine whether a party has received the required majority of valid votes cast, or whether no party has received a majority of valid votes cast therefore requiring a runoff election.

The challenged votes raise a question as to the eligibility of voters, including whether the challenged voters occupy positions which cannot be included in the unit, such as statutory supervisors and guards, or whose inclusion is proscribed by Board policy, such as confidential employees. The challenged votes also raise a question as to whether the receptionist shares a sufficient community of interest with the unit such that she should be included in the unit.

The undersigned concludes that these questions can best be resolved by a hearing.

## **V. The Objections**

### **Objection 1**

The Petitioner asserts that the Board Agent who conducted the election failed to maintain the integrity of the ballots and the ballot box during the hiatus in voting between August 28 and August 29. The Petitioner asserts that observers were advised by the Board agent that the ballot box became unsealed at a time when its observers were not present. While the Petitioner

contends that it is not questioning the integrity of the Board Agent, the Petitioner contends that the ballot box becoming unsealed outside the presence of its observers created an appearance of irregularity which affects the validity of the election.

The undersigned concludes that Objection 1 raises substantial and material questions of fact, which can best be resolved by a hearing.

### **Objection 2**

The Petitioner contends that electioneering on behalf of the Intervenor occurred near the polling place while voting was taking place. The Board's rules require that an objecting party provide evidence in support of its objections within seven days of when the objections are due to be filed. *Craftmatic Comfort Mfg. Corp.*, 299 NLRB 514 (1990); Secs. 102.69(a) and 102.112, Rules and Regulations. By letter dated September 6, 2013, Petitioner was advised that absent receipt of its evidence in support of its objections by September 12, 2013, the objections were subject to being overruled without further notice. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010 (1992); *Koons Ford of Annapolis, Inc.*, 308 NLRB 1067 (1992); *Public Storage, Inc.*, 295 NLRB 1034 (1989); *Star Video Entertainment*, 290 NLRB 1010 (1988). The Petitioner failed to provide any evidence in support of this objection. Accordingly, it is recommended that Objection 2 be overruled.

### **Objection 3**

The Petitioner contends that the Employer, through its agents, made unlawful threats to employees for the purpose and with the effect of coercing them to vote against the Petitioner. The Board's rules require that an objecting party provide evidence in support of its

objections within seven days of when the objections are due to be filed. *Craftmatic Comfort Mfg. Corp.*, 299 NLRB 514 (1990); Secs. 102.69(a) and 102.112, Rules and Regulations. By letter dated September 6, 2013, Petitioner was advised that absent receipt of its evidence in support of the objections by September 12, 2013, the objections were subject to being overruled without further notice. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010 (1992); *Koons Ford of Annapolis, Inc.*, 308 NLRB 1067 (1992); *Public Storage, Inc.*, 295 NLRB 1034 (1989); *Star Video Entertainment*, 290 NLRB 1010 (1988). The Petitioner failed to provide any evidence in support of this objection. Accordingly, it is recommended that Objection 3 be overruled.

## **VI. Order and Notice of Hearing**

The undersigned, having concluded that the determinative challenges raise questions as to the eligibility of voters, and that Petitioner's Objection 1 raises substantial and material questions of fact, which may best be resolved by a hearing;

**IT IS ORDERED**, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, that a hearing be held in this matter for the purpose of receiving testimony relative to the determinative challenges and Petitioner's Objection 1.

**IT IS FURTHER ORDERED** that the Hearing Officer designated for the purpose of conducting the 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.<sup>4</sup>

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<sup>4</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. A request for review may also be submitted by electronic filing. See the Attachment

**YOU ARE HEREBY NOTIFIED THAT** commencing at 9 a.m. (MDT) on September 26, 2013, and consecutive days thereafter until concluded, a hearing will be conducted at a location to be determined in Boise, Idaho, before a duly designated Hearing Officer of the National Labor Relations Board on the issues of fact and credibility raised by the determinative challenges and Petitioner's Objection 1, as discussed above, at which time and place you will have the right to appear in person or otherwise and give testimony.

ISSUED AT Denver, Colorado this 19<sup>th</sup> day of September, 2013.

  
Wanda Pate Jones  
Regional Director  
National Labor Relations Board  
Region 27  
600 17<sup>th</sup> Street, 700 N  
Denver, CO 80202

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provided in the initial correspondence in this case or refer to OM 05-30 and OM 07-07, which are available on the Agency's website at [www.nlr.gov](http://www.nlr.gov), for a detailed explanation of requirements which must be met when electronically submitting documents to the Board and Regional Offices. Guidance can also be found under *E-Gov* on the Board's website. This request must be received by the Board in Washington D.C. by 5:00 p.m. (ET) within fourteen (14) calendars days from the issuance of this Report. This request may *not* be filed by facsimile.

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 27**

**WINCO FOODS, LLC**

**Employer**

**and**

**Case 27-RC-109711**

**INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LOCAL UNION NO. 483**

**Petitioner**

**and**

**WINCO FOODS #91 BOISE DISTRIBUTION  
CENTER EMPLOYEE ASSOCIATION**

**Union**

**AFFIDAVIT OF SERVICE OF: Report on Determinative Challenges, Objections, Order Directing Hearing and Notice of Hearing, dated September 19, 2013.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **September 19, 2013**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

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MIKE GALLAGHER  
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MERIDIAN, ID 83642

INTERNATIONAL BROTHERHOOD OF  
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225 N 16TH ST STE 112  
BOISE, ID 83702-5187

September 19, 2013

Date

Georgette Maldonado, Designated Agent of NLRB

Name

  
Signature