

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

MIAMI VALLEY HOSPITAL

Employer

and

Case 9-RC-113461

INTERNATIONAL UNION, SECURITY,
POLICE & FIRE PROFESSIONALS OF
AMERICA (SPFPA)

Petitioner

REPORT ON OBJECTIONS TO THE ELECTION,
ORDER DIRECTING HEARING,
AND
NOTICE OF HEARING

Pursuant to the provisions of a *Stipulated Election Agreement* that I approved on September 27, 2013, an election by secret ballot was conducted on November 4 and November 5, 2013 among certain employees of the Employer, ^{1/} to determine whether they desired to be represented by the Petitioner for the purposes of collective bargaining.

Upon the conclusion of the election, a tally of ballots was made available to the parties in conformity with the Board's Rules and Regulations which disclosed the following results:

Approximate number of eligible voters.....	42
Number of void ballots.....	0
Number of votes cast for the Petitioner.....	17
Number of votes cast against participating labor organization	23
Number of valid votes counted.....	40
Number of challenged ballots.....	2
Valid votes counted plus challenged ballots	42

The challenged ballots are not sufficient to affect the results of the election.

^{1/} The appropriate bargaining unit as set forth in the Agreement is: "All full-time and regular part-time officers, sergeants and operations specialists performing guard duties as defined in Section 9(b)(3) of the National Labor Relations Act, as amended, employed by the Employer at its facilities located at One Wyoming Street, Dayton, Ohio and 2400 Miami Valley Drive, Centerville, Ohio, excluding all customers liaisons, dispatchers, administrative assistants, lieutenants, office clerical employees, all other employees, and all professional employees and supervisors as defined in the Act."

On November 12, 2013, the Petitioner timely filed International Union, SPFPA's Objections to the Election, which was duly served on the Employer in conformity with the Rules. A copy of the Petitioner's objections is attached as Exhibit A.

Pursuant to the provisions of Section 102.69 of the Rules, an investigation of the issues raised by the objections was conducted under my direction and supervision and after carefully considering the results thereof, I make the following report.

THE OBJECTIONS

OBJECTION 1:

In support of this objection, the Petitioner provided evidence that during the critical period,^{2/} a bargaining unit employee, during a discussion with several other unit employees about job security at the hospital, allegedly stated that the Employer's Director of Operations, Cristlyn Johnston, had told the employee that he had nothing to worry about because his job was both safe and secure. The Petitioner asserts that Ms. Johnston made this statement to the employee in an effort to induce the employee to vote against the Petitioner in the election.

The Employer denies that it engaged in any objectionable conduct as alleged by the Petitioner.

In view of the conflicting evidence and positions of the parties, I conclude that Objection 1 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

OBJECTION 2:

In support of the Objection 2, the Petitioner provided evidence that on October 22, 2013, a bargaining unit employee, in the presence of Employer supervisor, Lieutenant Berkshire, and another unit employee, allegedly removed four pieces of pro-union literature posted on a door in the employees' break area. Several other unit employees were later informed about this action and reported this incident to Employer officials Mikki Clancy and Stacey Lawson, asking that the literature be reposted. However, the literature that was removed was not returned.

The Petitioner also provided evidence that on October 28, 2013, a bargaining unit employee, in the presence of other unit employees, allegedly admitted defacing a pro-union sign posted on a taser cabinet in the employees' break area. This employee then allegedly went on to state to the other unit employees that Employer Chief Operating Officer, Mikki Clancy, had told him that he could take down anything not posted on a particular door in the break area. This incident was also reported to Employer official Stacey Lawson by a unit employee.

Finally, the Petitioner provided evidence that on October 29, 2013, a bargaining unit employee allegedly admitted to another unit employee in the presence of several other unit employees that he removed union literature posted on the taser cabinet in the employees' break area. The employee allegedly told the other unit employees that Employer official Mikki Clancy

^{2/} The critical period in this matter is the period from September 16, 2013, the date the petition was filed, through November 5, 2013, the date the election concluded. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

had told him that he was allowed to tear down anything not posted on the door to the entrance of the third room in the break area. This incident was reported to Ms. Clancy by unit employees.

The Petitioner asserts that by instructing employees to remove pro-union literature and/or by taking no action to prevent the defacement or removal of pro-union literature from the employees' break area, the Employer interfered with employee free choice and engaged in objectionable conduct. The Petitioner further argues that third party conduct by other employees who are not agents of the Employer can also constitute objectionable conduct sufficient to set aside an election.

The Employer denies engaging in objectionable conduct as alleged by the Petitioner. The Employer maintains that during the Petitioner's organizational campaign, the Employer told employees that they could post literature in specific areas of the Operations Center that includes the employees' roll call, locker and break rooms: the bulletin board, the back of the door leading into the briefing area and the dry erase board. The Employer further asserts that after receiving complaints from bargaining unit employees about the defacement/removal of posted union literature by other members of the bargaining unit, it reminded unit employees of the proper posting locations, designated an additional posting place on the back wall of a room in the Operations Center and told the unit employees that they had to respect each other's views concerning union representation.

In view of the conflicting evidence and positions of the parties, I conclude that Objection 2 raises substantial and material issues of fact and law affecting the results of the election which can best be resolved by the conduct of a hearing.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, I conclude that the Petitioner's Objections 1 and 2 raise substantial and material issues of fact and law which can best be resolved by a hearing as hereinafter provided.

ORDER DIRECTING HEARING AND NOTICE OF HEARING

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules, that a hearing be conducted before a duly designated hearing officer to resolve issues raised by the Petitioner's Objections 1 and 2.

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 credibility of witnesses, findings of fact and recommendations to the Board as to the disposition of said issues. Exceptions, if any, to the hearing officer's report should be filed with the Board in accordance with Section 102.69(f) of the Board's Rules.

YOU ARE HEREBY NOTIFIED that at 10 o'clock in the forenoon (EDST) on the 5th day of December 2013, and continuing on consecutive days thereafter until closed, in the Hearing Room, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal

Building, 550 Main Street, Cincinnati, Ohio, a hearing will be conducted before a hearing officer to be designated by the undersigned on the issues raised by the Petitioner's Objections, at which time and place the parties may appear in person or otherwise, submit evidence and be heard on the issues.

Dated at Cincinnati, Ohio this 21st day of November 2013.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Exhibit A

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INTERNATIONAL UNION, SECURITY, POLICE AND
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International Union, SPFPA's Objections to the Election

The International Union, SPFPA files the following Objections to the Election for which the ballots were tallied on November 5, 2013:

The Employer engaged in conduct that tends to interfere with employees' freedom of choice and that had potential to affect the outcome of the election when:

1. it promised job security to at least one employee with the intent to induce the employee to vote against the Union; and
2. it failed to prevent third-party employees from removing and/or defacing Union campaign literature that was properly posted in non-work areas within the facility.

The events described above all took place during the critical period.

