

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

In the Matter of

**RENZENBERGER, INC.,
Respondent,**

and

Case No. 13-RC-107644

**TRUCKDRIVERS, CHAUFFERS, WAREHOUSEMEN
AND HELPERS UNION, LOCAL 707,**

Petitioner,

and

**UNITED ELECTRICAL, RADIO AND MACHINE,
WORKERS OF AMERICA (UE), LOCAL 1177,
Intervenor.**

**ANSWERING BRIEF IN OPPOSITION TO PETITIONER'S EXCEPTIONS TO THE
HEARING OFFICERS REPORT FILED ON BEHALF OF INTERVENOR UNITED
ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), LOCAL 1177**

I. INTRODUCTION AND BACKGROUND

A. The Parties

Respondent Renzenberger, Inc. (hereinafter "the Employer") is an employer under the Act that provides transportation services to rail crews within rail yards and to and from rail yards and other locations. Intervenor United Electrical, Radio and Machine Workers of America (UE), Local 1177 (hereinafter "UE") and Petitioner Truckdrivers, Chauffers, Warehousemen and Helpers Union, Local 707 (hereinafter "Local 707") are labor organizations within the meaning of Section 2(5) of the National Labor Relations Act (hereinafter "the Act").

B. Procedural History

On February 12, 2010, the UE was certified by the National Labor Relations Board (hereinafter “the Board”) as the exclusive bargaining representative of the Employer’s road drivers, yard drivers radius drivers, yard managers and yard coordinators working at, or out of, ten rail yards in the Chicagoland area. *See* Case No. 13-RC-21895. On June 20, 2013, Local 707 filed a petition to represent the same bargaining unit currently represented by the UE. The Region approved a Stipulated Election Agreement on June 28, 2013.

Pursuant to the Stipulated Election Agreement, the ballots were counted on August 12, 2013. Of approximately 187 eligible voters, eleven ballots were cast in favor of Local 707, 108 were cast in favor of UE, and five were for no union. There were six void ballots and eight challenged ballots. The challenged ballots were not sufficient in number to affect to the results of the election. The UE received an overwhelming majority of the ballots cast.

On August 19, 2013, Local 707 filed objections to conduct affecting the results of the election. On September 10, 2013, the Regional Director for Region 13 of the National Labor Relations Board (hereinafter “NLRB” or “the Board”) scheduled a hearing for September 18, 2013. The hearing opened and closed on September 18, 2013. On November 21, 2013, Hearing Officer J. Edward Castillo (hereinafter “the Hearing Officer”) issued a report of his findings and recommendations regarding Local 707’s objections. The Hearing Officer recommended that all of Local 707’s objections “be overruled in their entirety and that a Certification of Results issue.” *See* Hearing Officer’s Report at 7.

Sometime on or about December 2, 2013, Local 707 filed Exceptions to the Hearing Officer’s Report on Objections. Local 707’s Exceptions appear to have been merged with a

Brief in Support of such Exceptions. Now the UE files an Answering Brief in Opposition to Local 707's Exceptions to the Hearing Officer's Report.

II. LEGAL ANALYSIS

A. It appears that Local 707 solely objects to the Hearing Officer's credibility findings.

Although it is somewhat difficult to discern, it appears that Local 707's sole objection to the Hearing Officer's report relates to the Hearing Officer's credibility determinations. In its Exceptions, Local 707 writes, "Respondent takes exception to the overall credibility determinations of the Administrative Law Judge."¹ See Local 707's Exceptions at 1. Local 707 then claims that "[t]he Hearing Officer has failed to point out *why* the testimony of the Intervenor's witnesses was more credible than that of the witness offered by the Petitioner." *Id.* (emphasis in the original). Local 707 then cites three cases² which all stand for the proposition that the Board does not normally overturn fact finders' credibility determinations; in all three cases, the Board followed its normal procedure and did not overturn the fact finder's credibility determination. *Id.* Local 707 then quotes from Black's Law Dictionary's definition of "preponderance of the evidence." *Id.* Finally, Local 707 claims that its witnesses were more credible than the UE's witnesses. *Id.*

B. The Hearing Officer's credibility determinations should not be overturned.

As all of the cases cited by Local 707 confirm, the Board's policy is to only overturn a

¹ The UE will assume that when Local 707 refers to the "Respondent" it is referring to itself, which is actually the Petitioner in this matter. Moreover, the UE will assume that when Local 707 refers to the "Administrative Law Judge" it is referring to the Hearing Officer.

² Local 707 seems to have mis-cited all three cases. The UE will assume that Local 707 meant to cite to *675 West End Owners Corp.*, 345 NLRB 324 (2005); *Miramar Sheraton Hotel*, 336 NLRB 1203 (2001); and *Manor West, Inc.*, 311 NLRB 655 (1995).

fact finder's credibility determinations in the most rare and unusual circumstances. The Board has long held that since:

the demeanor of witnesses is a factor of consequence in resolving issues of credibility, and as the Trial Examiner, but not the Board, has had the advantage of observing the witnesses while they testified, it is [the Board's] policy to attach great weight to a Trial Examiner's credibility findings insofar as they are based on demeanor. Hence we do not overrule a Trial Examiner's resolutions as to credibility except where the clear preponderance of *all* the relevant evidence convinces us that the Trial Examiner's resolution was incorrect.

Standard Dry Wall Products, Inc., 91 NLRB 544, 545 (1950) (emphasis in the original).

Here, despite Local 707's claims, the Hearing Officer went to great lengths to explain how he came to his credibility determinations. Indeed, an entire demarcated section of the Hearing Officer's Report is dedicated to explaining the standards he relied upon in making credibility determinations. *See* Section II of the Hearing Officer's Report. In making credibility determinations, the Hearing Officer specifically acknowledged that he considered "such factors as the relative demeanor of the witnesses, partisan interest, guarded or indirect answers, conclusory and conflicting testimony, argumentativeness, ability to recall with accuracy and specificity, consistency, corroboration, inherent probabilities and reasonable inferences in view of the record as a whole."

Since the Hearing Officer considered the demeanor of the witnesses in making credibility determinations, the Board should only overrule his resolutions as to credibility if all relevant evidence establishes that they are erroneous. *Standard Dry Wall Products*, 91 NLRB at 545. Quite simply, Local 707 has not offered any evidence or a remotely cogent argument that all relevant evidence establishes that the Hearing Officer's credibility determinations were incorrect. As such, the Board should adopt the Hearing Officer's Report, overrule Local 707's objections,

and issue a Certification of Results.

III. CONCLUSION

For all of the foregoing reasons, the UE urges the Board to:

- (1) adopt the Hearing Officer's Report;
- (2) overrule Petitioner's objections; and
- (3) issue a Certification of Results.

Dated at Pittsburgh, Pennsylvania, this 11th day of December, 2013.

Respectfully submitted,

/s/ Joseph Cohen /s/

Joseph Cohen
General Counsel
United Electrical, Radio and Machine
Workers of America (UE)
One Gateway Center, Suite 1400
Pittsburgh, PA 15222
412.471.8919 (telephone)
412.471.8999 facsimile
Joseph.Cohen@ranknfile-ue.org

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing ANSWERING BRIEF IN OPPOSITION TO PETITIONER'S EXCEPTIONS TO THE HEARING OFFICERS REPORT FILED ON BEHALF OF INTERVENOR UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE), LOCAL 1177 has been sent this 18th day of March 2011 by email to Scott Gore, Counsel for the Respondent at sgore@lanermuchin.com; Patrick J. Calihan, Counsel for the Petitioner, at pcalihan@sbcglobal.net; and by facsimile to Peter Sung Ohr, Regional Director of Region 13 at (312) 886-1341.

_____/s/ Joseph Cohen /s/_____
Joseph Cohen