

PJS
Hasbrouck Heights, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AARON MEDICAL TRANSPORTATION, INC.
Employer

and

Case 22-RC-070888

HUDSON COUNTY UNION LOCAL ONE
AMALGAMATED
Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held March 22, 2013, and the administrative law judge's report recommending disposition of it. The tally of ballots shows 26 for and 22 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the judge's findings and recommendations, and finds that a certification of representative should be issued.¹

¹ Only Employer Objection 1 is presently before the Board. By unpublished Order dated June 19, 2013, the Board adopted the Regional Director's recommendation to overrule, without a hearing, Employer Objections 2, 3, and 4 as they did not raise substantial and material factual issues.

We agree with the judge that Employer Objection 1 must be overruled because the record fails to show that the stipulated polling hours were such that eligible employees were prevented from voting. *Community Care Systems, Inc.*, 284 NLRB 1147, 1147 (1987) (“[W]here the election has gone ahead pursuant to the parties’ stipulation, however reluctant, and it does not appear that the election arrangements were such that employees were prevented from voting, we see no

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of valid ballots have been cast for Hudson County Union Local One Amalgamated, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time emergency medical technicians and coach drivers employed by the Employer at its Hasbrouck Heights, New Jersey facility, but excluding all office clerical employees, dispatchers, managers, guards and supervisors as defined in the Act, and all other employees.

basis for permitting the unsuccessful party to attack the election on the basis of a condition to which it stipulated.”). Under such circumstances, it is insufficient that some employees may have found it “inconvenient or difficult” to vote. *Id.* To be sure, the Board should strive to choose polling hours that will promote maximum participation. Had the Employer declined to stipulate to the hours it now protests, thereby compelling the Regional Director to issue a decision respecting the polling hours, and had the Employer timely appealed that decision to the Board, there might well have been a basis for ordering different polling hours.

We reject the Employer’s argument that Sec. 11302.3 of the NLRB Casehandling Manual (Part 2) Representation Proceedings compels the Board to set aside the election because the stipulated polling hours were scheduled such that some employees would have had to make a special trip to the polling place to cast a ballot. Sec. 11302.3 merely suggests that polling hours be scheduled to avoid the necessity of special trips; it does not mandate voting periods enabling employees to cast ballots immediately before, during, or immediately after their shifts. Further, the Casehandling Manual is intended to be used for guidance only. It does not bind the Regional Offices, other General Counsel staff, or the Board. *Hempstead Lincoln Mercury Motors Corp.*, 349 NLRB 552, 552 fn.4 (2007); *Queen Kapiolani Hotel*, 316 NLRB 655, 655 fn.5 (1995).

Additionally, we reject the Employer’s argument that the judge erred by failing to apply the disenfranchisement test described in *Wolverine Dispatch, Inc.*, 321 NLRB 796, 796-798 (1996). Under the disenfranchisement test, “an election will be set aside if the objecting party shows that the number of voters possibly disenfranchised *by an election irregularity* is sufficient to affect the election outcome.” *Garda World Security Corp.*, 356 NLRB No. 91, slip op. at 1 (2011) (emphasis added). Unlike both *Garda World Security* and *Wolverine Dispatch*, where the polls were closed when they were scheduled to be open, there was no election irregularity here; the election was conducted exactly as specified in the Stipulated Election Agreement.

Dated, Washington, D.C., December 18, 2013

MARK GASTON PEARCE, CHAIRMAN

HARRY I. JOHNSON, III, MEMBER

NANCY SCHIFFER, MEMBER

(SEAL)

NATIONAL LABOR RELATIONS BOARD