

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

ATLAS ROLL-OFF CORP.)	
)	
Employer)	
and)	Case No. 29-RC-114120
)	
LOCAL 175, UNITED PLANT & PRODUCTION WORKERS, INTERNATIONAL UNION OF JOURNEYMEN AND ALLIED TRADES)	
)	
Petitioner)	

SUPPLEMENTAL REPORT ON OBJECTIONS

On December 13, 2013, the undersigned issued a Report on Challenges and Objections, and Notice of Hearing. In that Report, inter alia, the undersigned recommended overruling the Petitioner's third objection, which alleged that during the critical period, the Employer performed drug testing of certain employees and disparately applied the results of those drug tests, discharging certain employees who tested positive while allowing other employees who tested positive to remain employed, on the basis that a unfair labor practice charge had not been filed.

On December 23, 2013, in Case No. 29-CA-119669, the Petitioner filed an unfair labor practice charge which alleges, inter alia, that during the critical period prior to the election, the Employer engaged in drug testing of employees in a discriminatory manner in violation of Section 8(a)(1) and (3) of the Act. Because the filing of this new unfair labor practice charge affects the pending objections, I am issuing this Supplemental Report to address the issues raised by the charge.

In its unfair labor practice charge, the Petitioner specifically alleges that during the critical period, the Employer employed drug testing of employees and disparately applied the results of those drug tests, discharging Daniel Mazarina, who allegedly tested positive, while allowing other employees who tested positive to remain employed, and by allowing certain employees not to be tested, in violation of Section 8(a)(1) and (3) of the Act. Accordingly, I will now defer further consideration of this objection to the investigation of the unfair labor practice.

In addition, in its unfair labor practice charge, the Petitioner further alleges that during the critical period, the Employer, by Tom Polsinelli, threatened workers that he would never hire workers from a union hiring hall, and that although the Employer had the ability to get more work at Kennedy Airport, if the Union won the election, the Employer would go in a different direction. The Petitioner also alleges that the Employer introduced workers to a new trust plan where pre-tax money is set aside for workers' benefit.

In White Plains Lincoln Mercury, Inc., 288 NLRB 1133 (1988), the Board held that once an investigation of timely filed objections has begun, if “evidence is uncovered during the course of the investigation that warrants a finding of election interference – regardless of whether such misconduct was alleged in the objections – that evidence will support setting aside the election.” White Plains Lincoln Mercury, Inc., 288 NLRB 1133, 1139 (1988); see also John W. Galbreath, d/b/a John W. Galbreath and Co., 288 NLRB 876 (1988) (“an election may be set aside on the basis of objectionable conduct discovered by the Regional Director in the course of his investigation of a party’s timely filed election objections.”). The Board has also held, though, that while a Regional Director may properly set aside an election based on unalleged misconduct discovered in the course of an investigation of timely filed objections, allowing a party to file subsequent objections once the time to file objections has expired would vitiate the requirement that parties file timely objections. See Burns International Security Services, Inc., 256 NLRB

959 (1981) (“Being inundated with successive sets of objections, the Regional Director, if he has to investigate each new allegation, could be prevented from or unduly delayed in concluding his investigation.”); see also Rhone-Poulenc, Inc., 271 NLRB 1008 (1984) (holding that the Board will consider evidence of “misconduct unrelated to . . . timely filed objections . . . only when the objecting party demonstrates by clear and convincing proof that the evidence is not only newly discovered but was previously unavailable.”). Indeed, in White Plains Lincoln Mercury, the Board recognized that a Regional Director may confine the investigation of timely filed objections “solely to those matters that are specifically set forth in the objections.” White Plains Lincoln Mercury, 288 NLRB at 1137.

The Petitioner’s charge in Case No. 29-CA-119669 was filed after the time to file objections has passed. The Petitioner’s allegations regarding Polsinelli’s alleged threats and the Employer’s alleged introduction of a new trust plan as objections to the election were not discovered in the course of the Region’s investigation of the Petitioner’s timely filed objections. Moreover, the Petitioner does not assert that this alleged conduct was newly discovered or previously unavailable. Accordingly, I will not consider the Petitioner’s allegations that Tom Polsinelli threatened workers that he would never hire workers from a union hiring hall, and that although the Employer had the ability to get more work at Kennedy Airport, if the Union won the election, the Employer would go in a different direction and that the Employer introduced workers to a new trust plan where pre-tax money is set aside for workers’ benefit as objectionable conduct.

The hearing currently scheduled for January 8, 2014 will proceed as set forth in my Report on Challenges and Objections and Notice of Hearing issued on December 13, 2013.

Right to File Exceptions

Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

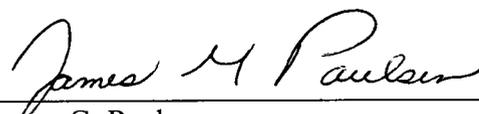
Procedures for Filing Exceptions

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on January 13, 2014, at 5 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board

may grant special permission for a longer period within which to file.¹ A copy of the exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on this 30th day of December, 2013.



James G. Paulsen
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

¹ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.