

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

Northwest Pipe Company
Employer

and

Case No. 15-RC-114549

United Steel, Paper and Forestry, Rubber,
Manufacturing, Energy, Allied-Industrial
and Service Workers International Union,
AFL-CIO, CLC
Petitioner

REPORT ON CHALLENGES AND OBJECTIONS,
ORDER DIRECTING HEARING

Procedural History:

A petition was filed by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied-Industrial and Service Workers International Union, AFL-CIO, CLC (herein called Petitioner) on October 17, 2013. The Stipulated Election Agreement was approved by the Regional Director of Region 15 of the National Labor Relations Board on November 13, 2013. On December 5, 2013, the employees¹ of Northwest Pipe Company (herein called Employer) voted to determine whether a majority wished to be represented by the Petitioner. The tally of ballots served on the parties immediately following the ballot count disclosed the following results:

¹ The appropriate collective bargaining unit as set forth in item 13 of the Stipulated Election Agreement is as follows:

All production and maintenance employees, excluding all managers, office clerical employees, coordinators, and all other employees, and guards, and supervisors as defined in the Act.

Approximate number of eligible voters.....	49
Void ballots.....	0
Votes cast for the Petitioner.....	22
Votes cast against participating labor organization.....	20
Valid votes counted.....	42
Challenged ballots.....	3
Valid votes counted plus challenged ballots.....	45

The challenged ballots were sufficient in number to affect the results of the election.

On December 13, 2013, the Petitioner timely filed “Petitioner’s Objections to the Conduct of the Election and to Conduct Affecting the Results of the Election,” a copy of which was served on the Employer. Attachment A is a copy of the amended objections.

RECOMMENDATION

I recommend that a hearing be held for the purpose of taking testimony to resolve the Challenged Ballots and the issues raised in Objections 1, 2, 3, 4, and 5 as they raise substantial and material issues which can best be resolved after a hearing.

THE CHALLENGED BALLOTS

The ballots of Greg Allman, Christopher Caston, and Edmund Marlowe were challenged by the Petitioner. As for Allman, the Petitioner contends he is a supervisor under the Act, and as such is not an eligible voter. As for Caston and Marlowe, the Petitioner contends that they are either supervisors under the Act or fall into other excluded categories.

Specifically, the Petitioner contends that Allman is the maintenance supervisor, and is defined as such on the Employer's work site phone directory. According to the Petitioner, employee witnesses will testify that in his capacity as maintenance supervisor, Allman is involved in the direction or assignment of work to unit employees, and has the authority to grant them time off, and assign them overtime work. With regard to Caston, the Petitioner contends that he is employed as a Quality Analyst, and should be excluded in that he is either a supervisor under the Act or falls into the category "all other employees." The Petitioner contends that employee witnesses will testify that Caston is paid a salary as opposed to the hourly wage paid to the unit employees, attends management meetings, is allowed to leave the worksite for lunch, and is involved in the assignment or direction of work. As for Marlowe, the Petitioner contends that he should be excluded as being a supervisor under the Act, or under the excluded categories of "office clerical employee" or "all other employees." The Petitioner contends that employee witnesses will testify that Marlowe is paid a salary, attends management only meetings, is allowed to leave the worksite for lunch, is involved in the assignment or direction of work to unit employees, and works from an office location outside the production facility. The Employer contends that Allman, Caston, and Marlowe are unit employees whose votes should be opened and counted.

Based on the above, the undersigned concludes that the challenges to the ballots of Greg Allman, Christopher Caston, and Edmund Marlowe raise substantial and material issues which can best be resolved after hearing.

THE OBJECTIONS

Objection 1.

Objection 1 alleges that during the critical period, the Employer “made threats to close the plant because the employees were engaged in protected, concerted activities in support of the Union.”

The Petitioner contends that employee witnesses will testify that, on or about October 24, 2014, supervisor Freddie Mora told employees that the Company would shut down if the employees voted for the union, and that “during captive audience meetings held between October 24 and October 30, 2013, agents of the Employer made statements implying that the plant would close if the Union was voted in.” The Employer denies the allegations contained in Objection 1.

Based on the above, the undersigned concludes that Objection 1 raises substantial and material issues affecting the results of the election that may best be resolved on the basis of record testimony at a hearing.

Objection 2.

Objection 2 alleges that during the critical period, agents of the Employer threatened “to terminate employees because they were engaged in protected, concerted activities in support of the Union”. The Petitioner contends that employee witnesses will testify that during captive audience meetings, “agents for the Company threatened employees by telling them the Company was doing poorly and if the Union was brought in the Company might have to cut back hours or lay people off.” The Employer denies the allegation contained in Objection 2.

Based on the above, the undersigned concludes that Objection 2 raises substantial and material issues affecting the results of the election that may best be resolved on the basis of record testimony at a hearing.

Objections 3 and 4.

Objection 3 alleges that the Employer “unlawfully suspended employee Jared Dickson in retaliation for engaging in protected, concerted activities in support of the Union.” Objection 4 alleges that during the critical period, the Employer “discriminated against employee Jared Dickson by harassing him in order to discourage support for the Union.” The Petitioner contends that employee witnesses will testify that Dickson was a lead supporter for the Union, that the Employer had knowledge of Dickson’s union activities, and that Dickson was harassed and suspended because he engaged in these union activities. The Employer denies the allegations contained in Objections 3 and 4.

Based on the above, the undersigned concludes that Objections 3 and 4 raise substantial and material issues affecting the results of the election that may best be resolved on the basis of record testimony at a hearing.

Objection 5.

Objection 5 alleges that during the critical period, the Employer solicited employee grievances in response to the Union’s organizing campaign. The Petitioner contends that employee witnesses will testify that on multiple occasions in late October during the critical period, “agents of the Employer solicited grievances from employees about working conditions ranging from problem supervisors and managers to rotating shifts, job class and pay concerns and safety and working conditions for yard

employees and that the Company took actions and made promises to improve those conditions.” The Employer denies the allegations contained in Objection 5.

Based on the above, the undersigned concludes that Objection 5 raises substantial and material issues affecting the results of the election that may best be resolved on the basis of record testimony at a hearing.

CONCLUSIONS

For the reasons herein set forth above, it is concluded that a hearing should be held for the purpose of taking testimony to resolve the Challenged Ballots and the issues raised in Objections 1, 2, 3, 4, and 5, as they raise substantial and material issues which can best be resolved after a hearing.

ORDER DIRECTING HEARING²

IT IS HEREBY ORDERED that a hearing be held for the purpose of taking testimony to resolve the issues raised by the Challenged Ballots and Objections 1, 2, 3, 4, and 5.

IT IS FURTHER ORDERED that the hearing officer will prepare a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues. The parties will receive a copy of the report. Within 14 days of the issuance of the report, any party may file with the Board in Washington, D. C., exceptions and supporting brief in accordance with Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended. Thereafter, parties may file an answering brief as provided in that same section. If no exceptions are filed, the Board may decide the matter forthwith upon the record or may make other disposition of the case.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, on the 14th day of January, 2014, and on consecutive days thereafter until concluded, commencing at 9 o'clock a.m. (CDT), in Courtroom 5, First Floor, United States District Court, Western District of Louisiana, 300 Fannin Street, Shreveport, Louisiana, a hearing will be conducted before a duly designated hearing officer of the National Labor Relations Board for the purpose of taking testimony on the issues raised by the Challenged Ballots and Petitioner's Objections 1, 2, 3, 4, and 5 at which time and place the parties will have the right to appear in person, or otherwise, and give testimony.

Dated in New Orleans, Louisiana, this 3rd day of January, 2014.

/s/

M. Kathleen McKinney
Regional Director
National Labor Relations Board
Region 15
600 S. Maestri Pl, 7th Floor
New Orleans, Louisiana 70130

² Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, D.C. Exceptions must be received by the Board in Washington by January 17, 2014.