

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

RHEE BROS., INC.

Employer

and

Case 05-RC-115948

TEAMSTERS LOCAL UNION NO. 570,
INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Petitioner

REPORT ON OBJECTIONS

Pursuant to a Petition filed by Teamsters Local Union No. 570, International Brotherhood of Teamsters ("Union") on October 30, 2013, and a Stipulated Election Agreement approved on November 8, 2013, a secret-ballot election was conducted on December 4, 2013 with the following results:¹

Approximate number of eligible voters	34
Void ballots	0
Votes cast for Petitioner	29
Votes cast against participating labor organizations	5
Valid votes counted	34
Challenged ballots	0
Number of valid votes counted plus challenged ballots	34

The Certification of Representative issued on December 12, 2013. (Copy attached as Exhibit A.) On December 13, 2013, Rhee Bros., Inc. ("Employer"), filed objections to conduct it alleges affected the results of the election. (Copy attached as Exhibit B.)

¹ The unit is: "All full-time and regular part-time warehouse employees, including auditors, forklift operators, loaders, pickers, receiving clerks, and team leaders, employed by the Employer at its Hanover, Maryland location; but excluding all kitchen staff, repackers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act." The eligibility period is the payroll period ending October 6, 2013.

PROCEDURAL BAR

Untimely Objections

The Employer's objections were filed on December 13, 2013.² Counsel for the Employer contends that its December 13, 2013 objections are not untimely because it was advised by a Board agent that objections needed to be filed within seven business days of the election and were therefore due by December 13, 2013. Assuming that the Employer's assertion regarding the Board agent's statement is correct, I nevertheless find that the Employer's objections were untimely filed.

Section 102.69(a) of the Board's Rules and Regulations requires that:

“[w]ithin 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor.” [sic]

Notice of the applicability of this rule was served upon the Employer enclosed with the Region's November 20, 2013, letter regarding the stipulated election agreement and notice of election. (Copy attached as Exhibit C.) The Region's enclosed Notice of Procedures contains a short restatement of Section 102.69. A complete copy of the Board's Rules and Regulations is also available to the public on the Board's website.

Since the election was held on December 4, 2013, and the tally of ballots (Copy attached as Exhibit D.) prepared and served at that time, any objections to the election should have been filed with the Regional Director no later than December 11, 2013. Notwithstanding the Employer's argument the Board agent misinformed the Employer of the correct filing date, the Board's Rules and Regulations, which are unequivocal about the filing date, are available to any party via the Board's website. Additionally, the Employer

² The petition was filed on October 30, 2013. Were the objections filed timely, the undersigned would have considered on its merits only that alleged interference that occurred during the critical period, which begins on and includes the date of filing of the petition and extends through the election. *Goodyear Tire and Rubber Co.*, 138 NLRB 453 (1962).

was served with a copy of these rules prior to the election. The Employer cannot, therefore, claim ignorance or misunderstanding of the 7-day requirement for filing objections. Such objections are thus, untimely.

Untimely Evidence

I find that even if the Employer's objection were timely, evidence in support of those objections were untimely filed with the Regional Director and would preclude unsupported substantive objections from going forward. The Employer submitted its evidence in support of its objections on December 19, 2013, although the evidence was dated December 18, 2013. (Copy attached as Exhibit E.)

Section 102.69(a) of the Board's Rules and Regulations requires that:

“Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections.”

Notice of the applicability of this rule was served upon the Employer enclosed with the Region's November 20, 2013 letter regarding the stipulated election agreement and notice of election. The Region's enclosed Notice of Procedures contains a short restatement of Section 102.69. (See Exhibit C) A complete copy of the Board's Rules and Regulations is also available to the public on the Board's website.

Since the election was held December 4, 2013, and the tally of ballots served that day, evidence in support of objections would be due no later than December 18, 2013. The Employer argues, via letter dated December 20, 2013 (Copy attached as Exhibit F.), that its messenger arrived at the Region 5 Office prior to 5 p.m. on December 18, 2013, but that the Regional Office was closed, forcing the evidence to be re-delivered on December 19, 2013.³ Region 5's regular hours of operation are 8:15 a.m. to 4:45 p.m. Thus, the

³ The evidence in support of objections was not left at the Regional office on December 18, 2013.

Employer attempted delivery after the Regional office closed. Furthermore, under the Board's rules, the evidence in support of objections could have been filed electronically until 11:59 p.m. on December 18, 2013. As such, the evidence in support of the objections is untimely.

THE OBJECTIONS

The Employer's eight numbered paragraphs appear to be allegations of misconduct in support of the following overarching objection, for which the Employer argues the election should be set aside:

On information and belief, Mr. Intae Kim and other managers have been in contact with Mr. [Myong] Moon since his termination and actively pursued union representation in the Warehouse at his behest. These statutory supervisors orchestrated the union organizational effort in the company and exercised undue influence and control over the employees with respect to their choice in the representation election.

In support of its Objection, the Employer submits the sworn affidavit of Robin Rhee, the Executive Director of Rhee Bros., Inc., the sworn affidavit of Kevin Rhee, Director of Operations for Rhee Bros., a print out of an article on the Union website published after the election, camera footage taken from a security camera in the manager's office on August 27, 2013, and a copy of employees' list of demands, written in Korean.

The Employer's assertion, and evidence in support thereof, that current supervisors cooperated with former supervisor Moon to set in motion the Union campaign and/or affect the result of the election is entirely speculative. Nevertheless, even if true, it fails to present adequate reason to set aside the results of the election because the behavior imputed to the current supervisors is separate and unrelated to the election and because the main individual in question, Myong Moon, is a former supervisor whose actions as a third party had no discernible impact on the election.

The Employer cites *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004) in support of the principle that prounion supervisory conduct is objectionable and can interfere with employees' free choice. I also note the fact that the Board in *Harborside* did not limit objectionable supervisory conduct to the critical period because the impact of objectionable conduct in the prepetition period could carry over to the critical period. *Id.* at 912.

When determining whether supervisory prounion conduct would disturb the laboratory conditions for a fair election, the Board looks at two factors: (1) whether the supervisory conduct reasonably tended to coerce or interfere with employees' free choice; and (2) whether the conduct interfered with the freedom of choice to the extent that it materially affected the outcome of the election. *Id.* at 909.

The inquiry into supervisory prounion conduct, and whether it reasonably tended to coerce or interfere with employees' free choice, includes consideration of the nature and degree of supervisory authority possessed by those who engage in the prounion conduct; and examination of the nature, extent, and context of the conduct.⁴ *Id.* In examining the second prong of its *Harborside* inquiry - whether the conduct interfered with the freedom of choice to the extent that it materially affected the outcome of the election - the Board looks at factors such as: (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; and (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of that conduct. *Id.*

The Employer argues that the current supervisors' involvement in the August 27 stoppage and employee demands, along with the subsequent actions by Moon and the

⁴ The Employer's objections were not clear on what manner of authority the supervisors involved have over employees. It is unclear whether those supervisors engaging in prounion or antiunion activity would have the potential to pressure employees. However, rather than hold a hearing, I will assume, *arguendo*, that these supervisors have such authority and that their actions, if found to be prounion or antiunion, would have the potential to unduly influence workers.

Union, is evidence that the stoppage, the supervisors' involvement, and the Union's campaign were all connected and intertwined.⁵ I note that the only conduct asserted by the Employer with the potential to impact employees, for which it has produced evidence that is more than mere speculation, is current supervisors' role in the work stoppage and presentation of grievances. The Employer has produced no evidence, beyond speculation, that supervisors were involved in the organizing of the Union's campaign, or that they engaged in any pro-Union activity before or during the critical period.

Notwithstanding the Employer's arguments, the conduct the Employer attributes to current supervisors as pro union activity that coerced employees in their free choice was separate and unrelated to the election. The facts in *Harborside* involved a supervisor's solicitation of cards, behavior that bears directly on employees' free choice. The alleged supervisory conduct in this case, a work stoppage and list of demands, shows no tangible nexus with the Union campaign, even viewed in light of the submitted evidence. Furthermore, the conduct occurred two months prior to the filing of the petition and over three months prior to the actual election, which the Union won handily. During that time not only were there no other incidents that occurred in connection to the Union's campaign, but the Employer had ample time to address the supervisors' conduct with employees, and could have distanced or disassociated itself from it to address any lingering concerns that supervisors would punish or reward employees for acting in a certain manner. Finally, this distinguishes it from *Harborside*, where the prounion supervisory conduct was during the critical period.

⁵ Specifically, Objections paragraph 2 addresses the termination of Mr. Moon on August 26, 2013. Objections paragraph 2 relates the private meeting held on August 27, 2013, between several supervisors and employees. Objections paragraph 3 discusses a document that supervisor Intae Kim created with the assistance of other supervisors and directed employees to sign. Objections paragraph 4 discusses a work stoppage on August 27, 2013, and list of demands presented by employees to management that day. There is no evidence, however, other than speculation and conjecture after-the-fact that the Union was in any way discussed at this meeting, that supervisors collected any signatures for the Union, or that there is any other nexus between the Union election and the events of August 27, 2013.

Additionally, the conduct speculatively attributed to Moon – collaborating with current supervisors on the work stoppage and drafting of a list of employee demands, taking legal action against the Employer, exiting the Union offices on November 28, 2013, and having someone call on his behalf two days after the election to comment on the election results and demand settlement – even if true, are acts of a former supervisor with minimal impact on employees.⁶ The Board’s concern over supervisors making statements for or against unionization is that “employees may be induced to support/oppose the union because they fear future retaliation, or hope for preferential treatment, by the supervisor.” *Id* at 907. As a former supervisor, Moon would have no control over employees, nor any actual authority over them, so employees would not reasonably believe that Moon could retaliate against them or offer them preferential treatment.

Moreover, Moon had no apparent authority from the Employer to act or speak on its behalf in spite of his termination. Apparent authority “results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe the principal has authorized the alleged agent to perform the acts in question.” *Corner Furniture Discount Center*, 339 NLRB 1122 (2003). “Either the principal must intend to cause the third person to believe the agent is authorized to act for him, or the principal should realize that his conduct is likely to create such a belief.” *Id*. Moon’s involvement, therefore, as a former supervisor whom the Employer terminated, lacked apparent authority and so, even if established, would not provide a basis for overturning the election.

⁶ I note that while the Employer contends that a Rhee Bros. driver observed Mr. Moon exiting the Union offices on November 28, 2013 the Employer submits no evidence of this event, fails to identify the driver or provide a statement, and the event is not referenced by either of the sworn affidavits provided in support of the objections.

Absent any authority to act on behalf of the Employer, Moon's alleged conduct would still be subject to the Board's third-party conduct inquiry. The Board looks at whether the conduct would create "a general atmosphere of fear and coercion so as to render the conduct of a free election impossible." *U.S. Electrical Motors*, 261 NLRB 1343, 1344 fn. 5 (1982). There is no evidence here that Moon's conduct, even as alleged, created any atmosphere of fear and coercion among employees.

SUMMARY

In summary, the Employer's objections, and the evidence in support of the objections, were filed untimely. Moreover, the Employer has failed to set forth a prima facie case that would warrant setting aside the election results. Accordingly, I recommend that the Employer's objections be overruled and that the Certification of Representative that issued on December 12, 2013 stand.

Date at Baltimore, Maryland, this 7th day of January 2014.

/s/ Steven L. Shuster

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 5
Bank of America Center, Tower II
100 South Charles Street, Suite 600
Baltimore, Maryland 21201

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 21, 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.⁷ 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.nlrb.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.

⁷ 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.

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

<p>Rhee Bros., Inc.</p> <p style="text-align:center">Employer</p> <p>and</p> <p>Teamsters Local 570 A/W International Brotherhood of Teamsters</p> <p style="text-align:center">Petitioner</p>	<p>Case 05-RC-115948</p>
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TYPE OF ELECTION: STIPULATED

CERTIFICATION OF REPRESENTATIVE

An election has been conducted under the Board's Rules and Regulations. The Tally of Ballots shows that a collective-bargaining representative has been selected. No timely objections have been filed.

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots have been cast for

TEAMSTERS LOCAL 570 A/W INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit.

Unit: All full-time and regular part-time warehouse employees, including auditors, forklift operators, loaders, pickers, receiving clerks, and team leaders, employed by the Employer at its Hanover, Maryland location; but excluding all kitchen staff, repackers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act



December 12, 2013

/s/ Steven L. Shuster

STEVEN L. SHUSTER
Acting Regional Director, Region 5
National Labor Relations Board

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1636
MAIN TELEPHONE (410) 347-8700
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WWW.WTPLAW.COM
(800) 987-8705

December 13, 2013

By Facsimile - 410-962-2198

And By Hand Delivery

Wayne R. Gold, Director
National Labor Relations Board
Region 05
103 South Gay Street, 8th Floor
Baltimore, Maryland 21202-7500

**Re: Rhee Bros., Inc. and Teamsters Local 570, IBT
Case No.: 05-RC-115948**

Dear Mr. Gold:

The Employer, Rhee Bros., Inc., hereby submits, through undersigned counsel, the following objections to the conduct affecting the outcome of the election in the above referenced matter:¹

1. On August 26, 2013, the Warehouse Manager Mr. Myong Moon was terminated following performance issues. On multiple times prior to his termination, Mr. Moon indicated that he was the only thing between Rhee Bros. and a Union, and if he left the company, a union would come in soon afterwards.

¹ The Employer requests that their objections be considered, notwithstanding the fact that a Notice of Certification was issued on December 12, 2013. At the conclusion of the election, the Employer was advised by the Board Agent that any objections needed to be filed by today, December 13, 2013, seven days after the election, not counting the intervening Saturday and Sunday. Based on that representation, which the Employer reasonably relied upon, the filing of its objections by the date set by the Board Agent is not untimely. Accordingly, the Employer requests that good cause has been established to permit the Board to consider these objections, and rescind the Notice of Certification issued on December 12, 2013.

By Facsimile – 410-962-2198

And By Hand Delivery

Wayne R. Gold, Director

December 13, 2013

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2. On August 27, 2013, the day following Mr. Moon's termination, Mr. Intae Kim, a statutory supervisor in the warehouse, assisted by other members of the supervisory staff in the warehouse, stopped employees and with the assistance of other managers, conducted a private meeting with the employees.

3. Shortly after this meeting, Mr. Intae Kim, with the assistance of the other managers, created a document that he then showed the warehouse employees and, upon information and belief, directed them to sign.

4. Thereafter, around 8 am, Mr. Kim and the other managers, directed the employees to assemble and begin a general work stoppage. As part of this work stoppage, Mr. Kim presented a list of demands to management.

5. On or about October 30, 2013, Rhee Bros., Inc. received the Notice of Election from the NLRB, which was addressed to Mr. Myong Moon. On the same day, Rhee Bros. received a letter from counsel representing Mr. Moon, making allegations of unlawful termination and threatening further legal action.

6. On or about November 28, 2013, Mr. Moon was observed by a driver for Rhee Bros. exiting the offices of Teamsters Local 570 on Eastern Avenue, in Baltimore. The driver reported the incident to Rhee Bros.

7. On December 4, 2013, the petitioning Union Teamsters Local 570 received 29 votes out of a total of 34 employees in the stipulated warehouse bargaining unit. The following day, the Union published the election results on its website. The article stated that the union was contacted following a work stoppage by the warehouse workers; the work stoppage led by Mr. Intae Kim and other Managers.

8. Two days following the election, and a day after the election results were reported, Robin Rhee, the President of Rhee Bros., Inc., received a call from a person who represented that he was working on behalf of Mr. Moon. This individual mentioned the union election results and commented further that the company should settle with Mr. Moon in order to avoid any further problems.

On information and belief, Mr. Intae Kim and other managers have been in contact with Mr. Moon since his termination and actively pursued union representation in the Warehouse at his behest. These statutory supervisors orchestrated the union organizational effort in the company and exercised undue influence and control over the employees with respect to their choice in the representation election.

By Facsimile – 410-962-2198

And By Hand Delivery

Wayne R. Gold, Director

December 13, 2013

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By the above action, the laboratory conditions that are required for the proper conduct of a Board directed election were destroyed, thereby necessitating a new election in which the taint of supervisory participation is not present. Supporting documentation is attached with this letter, and further supporting information will be provided as needed.

Sincerely yours,



Kevin C. McCormick

KCM:sb/lpb

Cc: Moses Jackson

2075680

NLRB
NATIONAL LABOR
RELATIONS BOARD

2013 DEC 13 PM 4: 22

REGION 5
BALTIMORE MD 21202-4061



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
BANK OF AMERICA CENTER, TOWER II
100 S. CHARLES STREET, STE 600
BALTIMORE, MD 21201

Agency Website: www.nlr.gov
Telephone: (410)962-2822
Fax: (410)962-2198

November 20, 2013

Mr. Myonng G. Moon
Rhee Bros., Inc.
7461 Coca Cola Drive
Hanover, MD 21076

Re: Rhee Bros., Inc.
Case 05-RC-115948

Dear Mr. Moon:

Enclosed is the Conformed Stipulated Election Agreement approved by the Acting Regional Director on November 8, 2013 and the English and Korean Notices of Election in the above matter. Each Notice consists of three 8 ½" by 14" panels which are labeled "Panel 1 of 3", "Panel 2 of 3" and "Panel 3 of 3" at the bottom. The three panels should be treated as one 25 ½" by 14" document, with the panel labeled "Panel 1 of 3" posted first on the left, "Panel 2 of 3" in the middle, and "Panel 3 of 3" on the right. Please post them on bulletin boards and other conspicuous places in areas where the employees in the bargaining unit work. To help avoid an issue about the adequacy of the posting period, **the notices should be posted immediately upon receipt.**

Notice Posting Requirement

Section 103.20 of the Board's Rules and Regulations requires employers to post the Board's official Notice of Election in conspicuous places at least 3 working days, not including Saturdays, Sundays, and holidays, prior to 12:01 a.m. of the day of the election. **Therefore, the enclosed notices must be posted prior to 12:01 a.m. on November 29, 2013.** Failure to comply with this posting requirement is grounds for setting the election aside whenever proper and timely objections are filed.

Section 103.20 also provides that an employer is conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice. Failure to do so within that time period precludes an employer from filing objections based on the nonposting of the election notice.

Very truly yours,

/s/ Wayne R. Gold

Wayne R. Gold
Regional Director

Enclosures:

1. Conformed Stipulated Election Agreement
2. Notices of Election- English and Korean
3. Notice of Procedures

cc: Kevin C. McCormick, Esq.
Whiteford, Taylor & Preston L.L.P.
7 Saint Paul St.
Baltimore, MD 21202-1636

Mr. Moses Jackson, Organizer
Teamsters Local No. 570, International
Brotherhood of Teamsters
6910 Eastern Ave.
Baltimore, MD 21224-3101

Mr. Harlan Ryang
Rhee Bros., Inc.
7461 Coca Cola Drive
Hanover, MD 21076

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. ELECTION ELIGIBILITY LIST. Within seven (7) days after the Regional Director has approved this Agreement, the Employer shall provide to the Regional Director an election eligibility list containing the full names and addresses of all eligible voters. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

The question on the ballot will be "Do you wish to be represented for purposes of collective bargaining by TEAMSTERS LOCAL UNION NO. 570, INTERNATIONAL BROTHERHOOD OF TEAMSTERS?" The choices on the ballot will be "Yes" or "No".

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer will post copies of the Notice of Election in conspicuous places and usual posting places easily accessible to the voters at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

9. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

10. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

11. TALLY OF BALLOTS. Upon conclusion of the election, the ballots will be counted and a tally of ballots prepared and immediately made available to the parties.

VOTING UNIT- For Certain Employees of- Rhee Bros., Inc.

EMPLOYEES ELIGIBLE TO VOTE: All full-time and regular part-time warehouse employees, including auditors, forklift operators, loaders, pickers, receiving clerks, and team leaders, employed by the Employer at its Hanover, Maryland location who were employed by the Employer during the payroll period ending October 26, 2013.

EMPLOYEES NOT ELIGIBLE TO VOTE: All kitchen staff, repackers, office clerical employees, managerial employees, guards, and supervisors as defined in the Act.

DATE, TIME, AND PLACE OF ELECTION

Wednesday, December 4, 2013	7:00 a.m. to 7:45 a.m. and 4:00 p.m. to 4:45 p.m.	The Canteen Room at the Employer's facility located at 7461 Coca Cola Drive Hanover, MD
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UNITED STATES OF AMERICA
 National Labor Relations Board
05-RC-115948



OFFICIAL SECRET BALLOT

For certain employees of
RHEE BROS., INC.

RHEE BROS., INC.

Do you wish to be represented for purposes of collective bargaining by

**TEAMSTERS LOCAL UNION NO. 570,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS?**

**TEAMSTERS LOCAL UNION NO. 570,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS?**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

원하는 선택지의 네모 칸을 "X"로 표시하십시오.

YES



NO



DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.

If you spoil this ballot, return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

투표용지에 서명하지 마십시오. 접어서 투표함에 넣으십시오.

투표를 다시 해야 할 경우 선거관리 위원에게 사용한 용지를 반납하고 새 용지를 받으십시오.

전국노동관계위원회는 선거에서 투표에 영향을 주는 자지행위를 하지 않습니다.

투표 단위 - Rhee Bros., Inc.의 일부 직원

투표 가능 직원: 메릴랜드 주 하노버(Hanover)에 2013년 10월 26일에 종료되는 급여 명부상에 있는 감사관, 지게차 운전자, 짐을 적재하거나 나르는 사람, 수하 역자, 자재 입고 담당자 그리고 팀 리더를 포함한 모든 풀타임 및 일반 파트타임 창고 직원.

투표 불가능 직원: 모든 식당 직원, 재포장 직원, 사무실의 서무 직원, 관리직 직원, 경비 그리고 법에 따라 정의된 감독관들.

선서 일시 및 장소

2013년 12월 4일 수요일	오전 7시부터 7:45까지 및 오후 4시부터 4:45까지	7461 Coca Cola Drive Hanover, MD 소재 직원 시설 뒤편 점심용 식당
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미 합중국 UNITED STATES OF AMERICA
노동관계위원회 National Labor Relations Board
05-RC-115948



OFFICIAL SECRET BALLOT

For certain employees of
RHEE BROS., INC.

공식 기밀 투표용지

아래 회사의 특정 직원
RHEE BROS., INC.

Do you wish to be represented for purposes of collective bargaining by

**TEAMSTERS LOCAL UNION NO. 570,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS?**

단체 교섭 목적으로 다음 단체가 귀하를 대변하는 것을 원하십니까

**TEAMSTERS LOCAL UNION NO. 570,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS?**

MARK AN "X" IN THE SQUARE OF YOUR CHOICE

원하는 선택지의 네모 칸을 "X"로 표시하십시오.

YES 예

NO

아니요

DO NOT SIGN THIS BALLOT. Fold and drop in the ballot box.

If you spoil this ballot, return it to the Board Agent for a new one.

The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

투표용지에 서명하지 마십시오. 접어서 투표함에 넣으십시오.

투표용지 다시 행사 하려는 선거관리 위원에게 사용용지를 반환하기 필요하지 않습니다.



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 5

103 South Gay Street, 8th Floor Telephone: (410) 962-2822

Baltimore, MD 21202-4061 Facsimile: (410) 962-2198

(INSERT DATE)

ENCLOSED ARE NOTICES OF ELECTION.

THE COMPANY IS REQUIRED TO PROTECT THE SAMPLE BALLOT OF THESE NOTICES FROM DEFACEMENT BY COVERING IT WITH SOME TYPE OF TRANSPARENT MATERIAL OR BY PLACING THE NOTICES ON A GLASS-COVERED BULLETIN BOARD.

FURTHER, THE EMPLOYER IS ADVISED OF THE FOLLOWING:

- (A) EMPLOYER SHALL POST COPIES OF THE BOARD'S OFFICIAL NOTICE OF ELECTION IN CONSPICUOUS PLACES AT LEAST 3 FULL WORKING DAYS PRIOR TO 12:01 A.M. OF THE DAY OF THE ELECTION. THEREFORE, THE ENCLOSED NOTICES MUST BE POSTED PRIOR TO 12:01 A.M. ON (). IN ORDER TO AVOID ANY ISSUE DEVELOPING ABOUT THE ADEQUACY OF THE POSTING PERIOD, THE ENCLOSED NOTICES SHOULD BE POSTED IMMEDIATELY UPON RECEIPT. IN ELECTIONS INVOLVING MAIL BALLOTS, THE ELECTION SHALL BE DEEMED TO HAVE COMMENCED THE DAY THE BALLOTS ARE DEPOSITED BY THE REGIONAL OFFICE IN THE MAIL. IN ALL CASES, THE NOTICES SHALL REMAIN POSTED UNTIL THE END OF THE ELECTION.**
- (B) THE TERM "WORKING DAY" SHALL MEAN AN ENTIRE 24-HOUR PERIOD EXCLUDING SATURDAYS, SUNDAYS, AND HOLIDAYS.**
- (C) IN ACCORDANCE WITH SECTION 103.20(c) OF THE BOARD RULES AND REGULATIONS THE EMPLOYER SHALL BE CONCLUSIVELY DEEMED TO HAVE RECEIVED COPIES OF THE ELECTION NOTICE FOR POSTING UNLESS IT NOTIFIES THE REGIONAL OFFICE AT LEAST 5 FULL WORKING DAYS PRIOR TO 12:01 A.M. OF THE DAY OF THE ELECTION THAT IT HAS NOT RECEIVED COPIES OF THE ELECTION NOTICE.**
- (D) FAILURE TO POST THE ELECTION NOTICES AS REQUIRED HEREIN SHALL BE GROUNDS FOR SETTING ASIDE THE ELECTION WHENEVER PROPER AND TIMELY OBJECTIONS ARE FILED UNDER THE PROVISIONS OF SECTION 102.69 (a) OF THE BOARD'S RULES AND REGULATIONS.**

THE OFFICE OF THE ASSISTANT TO THE REGIONAL DIRECTOR SHOULD BE ADVISED PROMPTLY IF THE NOTICES ARE NOT POSTED. THE TELEPHONE NUMBER IS (410) 962-3155 OR (410) 962-3159.

ALSO, PLEASE FIND ENCLOSED A COPY OF THE NOTICE OF PROCEDURES TO BE FOLLOWED WHEN FILING OBJECTIONS TO AN ELECTION WITH REGION 5, AND THE BOARD, AND/OR AFTER ELECTION(S) IN WHICH THERE ARE DETERMINATIVE CHALLENGED BALLOT(S).

**WAYNE R. GOLD
REGIONAL DIRECTOR**

A pre-election conference is scheduled for (INSERT HERE) and a copy of the approved Stipulated Election Agreement is enclosed. (REMOVE IF ELECTION IS RD DIRECTED.)

NOTICE OF PROCEDURES TO BE FOLLOWED WHEN FILING OBJECTION(S) TO AN ELECTION WITH REGION 5 AND/OR AFTER ELECTION(S) IN WHICH THERE ARE DETERMINATIVE CHALLENGED BALLOTS

THIS NOTICE IS ONLY INTENDED AS A GUIDELINE OF YOUR RESPONSIBILITIES IN THE FILING OF OBJECTIONS AND DETERMINATIVE CHALLENGES, IT IS THE PARTIES RESPONSIBILITY TO ADHERE TO THE SPECIFIC REQUIREMENTS OF SECTIONS 102.69 (a) AND 102.114 OF THE BOARD'S RULES AND REGULATIONS. THEREFORE THE PARTY FILING OBJECTIONS WILL:

OBJECTIONS

1. a. Within seven (7) days after the Tally of Ballots has been prepared Objections are to be received in the Regional Office with an original and five copies of Objections to the conduct of the election, which shall contain a short statement of the reasons therefore. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election.
- b. Within fourteen (14) days after the Tally of Ballots has been prepared, or by such additional date as the Regional Director may allow, all evidence in support thereof is to be received in the Regional Office. State the objection to which each witnesses' testimony and/or documentation relates.
2. It is incumbent on the party filing objections to furnish sufficient evidence, under item 1 of this notice, to establish a prima facia case in support of each objection before the Region will initiate an investigation. The objecting party will not be permitted to "piecemeal" the submission of evidence, but, instead, will be required to submit all evidence in support of the objections within fourteen (14) days from the time the Tally of Ballots has been prepared.

CHALLENGES

1. Following an election in which the Tally of Ballots shows that challenged ballots are determinative, all parties to the election should obtain from the Board agent conducting the election a list of all names and addresses of the individuals who cast the challenged ballots, including the information normally recorded on the challenge envelope.
2. Within seven (7) days after the Tally of Ballots has been prepared, or by such additional date as the Regional Director may allow, each party is to submit to the Regional Director all affidavits, signed statements, documents and other supporting evidence relative to the eligibility of each challenged voter.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Date Filed
Oct 30, 2013

Case No. 5-RC-115948

Date Issued 12/04/2013

City Hanover

State MD

Type of Election:
(Check one:)

(If applicable check either or both:)

- Stipulation
- Board Direction
- Consent Agreement
- RD Direction Incumbent Union (Code)

- 8(b) (7)
- Mail Ballot

Rhee Bros., Inc.
Employer
and
Teamsters Local Union No. 570, International Brotherhood of Teamsters
Petitioner

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 34
- 2. Number of Void ballots 0
- 3. Number of Votes cast for PETITIONER 29
- 4. Number of Votes cast for _____
- 5. Number of Votes cast for _____
- 6. Number of Votes cast against participating labor organization(s) 5
- 7. Number of Valid votes counted (sum 3, 4, 5, and 6) 34
- 8. Number of challenged ballots 0
- 9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 34
- 10. Challenges are ~~(not)~~ sufficient in number to affect the results of the election.
- 11. A majority of the valid votes counted plus challenged ballots (Item 9) has ~~(not)~~ been cast for Teamsters Local Union No. 570, International Brotherhood of Teamsters

For the Regional Director Region 5 [Signature]

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For Employer [Signature]

For Petitioner [Signature]

For _____

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1636

MAIN TELEPHONE (410) 347-8700
FACSIMILE (410) 752-7092

BALTIMORE, MD
BETHESDA, MD
COLUMBIA, MD
DEARBORN, MI
FALLS CHURCH, VA
ROANOKE, VA
TOWSON, MD
WASHINGTON, DC
WILMINGTON, DE*

WWW.WTPLAW.COM
(800) 987-8705

KEVIN C MCCORMICK
DIRECT LINE (410) 347-8779
DIRECT FAX (410) 223-4379
kmccormick@wtplaw.com

December 20, 2013

Hand Delivered

Kimberly E. Andrews, Field Examiner
National Labor Relations Board
Region Five
Bank of America Center, Tower Two
100 South Charles Street, Suite 600
Baltimore, MD 21201

Re: Rhee Bros., Inc. Case: 05-RC-115948

Dear Ms. Andrews:

This is to confirm that on Wednesday, December 18, 2013, I attempted to file Affidavits and other evidence in support of our Objections concerning the above-referenced Rhee Bros., Inc., matter.

Although the messenger arrived at your office prior to 5 p.m., the office was closed. Those items were re-delivered to your office early on Thursday, December 19, 2013. If, for whatever reason, you have not received them, please contact me immediately.

In further support of my client's objections to the election that was held on December 4, 2013, I am relying on the Board's decision in *Harborside Health Care, Inc.*, 343 N.L.R.B. 906 (2004). In that case, the Board imposed a two-prong test to decide whether the supervisor's conduct requires setting aside the election. In this case, we firmly believe that it does.

The first prong of the test is whether the supervisor's pro-union conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. As demonstrated in the Affidavits that were provided to you, as well as

Hand Delivered

Kimberly E. Andrews, Field Examiner

December 20, 2013

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the video evidence, the supervisors at Rhee Bros. took a very aggressive and partial view with regard to the union. The video and still photos demonstrate that the work stoppage was instigated and managed by the supervisors in the warehouse. During that work stoppage, there is video evidence showing how the warehouse employees were required to sign a petition critical of management.

The second prong concerns whether the conduct of the supervisors interfered with the employees' freedom of choice to the extent that it materially affected the outcome of the election based on factors such as the margin of victory in the election, whether the conduct at issue was wide-spread or isolated, the timing of the conduct, the extent to which the conduct became known, and the lingering effect of the conduct.

Again, it is Rhee Bros.' position that the supervisors who organized the work stoppage were the very same supervisors who encouraged the employees to sign authorization cards for the union, and encouraged those employees to vote for the union in the NLRB supervised election.

Because of the significant influence that these individual supervisors have over the employees, it is no surprise that they voted in a manner in which they did, strongly supporting the union.

This is not a case in which supervisors were engaged in pro-union speech. Rather, the supervisors' involvement and control over their subordinates was much more extensive, with the likely solicitation of authorization cards, which, as you know, has an inherent tendency to interfere with the employees' freedom to choose to sign a card or not. *See, Chinese Daily News*, 344 N.L.R.B. 1071, 1072 (2005).

The Board has found solicitation not only in cases of direct solicitation by supervisors, but also in cases where the employees had reason to believe that whether they signed a card would become known to their pro-union supervisor. *See, Madison Square Garden Ct., LLC*, 350 N.L.R.B. 117 (2007).

Keep in mind, this is not one of those cases involving sufficient mitigating circumstances to negate the inherently coercively effect of a supervisor's involvement in a union campaign. To the contrary, the supervisor's involvement in poisoning the laboratory conditions necessary for a free and fair election continued throughout the time leading up to and including the date of the election.

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Kimberly E. Andrews, Field Examiner

December 20, 2013

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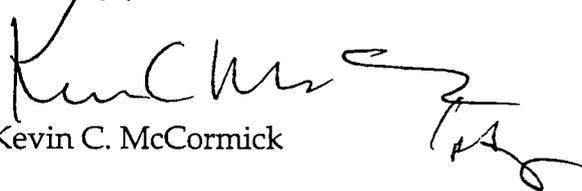
As part of your investigation, I urge you to interview the bargaining unit employees and question them carefully about the effect that the supervisors had on their decision to vote for the union in the election. I am confident that you will discover that the supervisors' involvement was extensive and sufficient to destroy any of the necessary laboratory conditions needed for a fair election.

I also urge you to contact the union to learn exactly how the union organizing began and, in particular, who first contacted the union concerning representation issues. My client firmly believes if the union representatives provide credible testimony, they will admit that the supervisors identified in the evidence supplied to you were the ones who made the initial contact with the union and continued that involvement throughout the period leading up to the date of the election on December 4, 2013.

Why else would Local 570 quickly redact provisions from their website once they learned of the objections filed in this case. If Local 570 had nothing to hide, the original website would have remained posted without alteration. The fact that the media changes were made to that website by Local 570 strongly suggests that even they are concerned about the level of involvement that the supervisors had in the organizing campaign at Rhee Bros.

If you need any additional information or would like to interview any of the individuals who prepared affidavits in this matter, do not hesitate to contact me.

Sincerely yours,


Kevin C. McCormick

KCM:lpb

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