

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32

RENZENBERGER, INC.

Employer

Case 32-RC-117737

and

UNITED ELECTRICAL, RADIO AND
MACHINE WORKERS OF AMERICA²

Petitioner

TRUCK DRIVERS, CHAUFFEURS, WAREHOUSEMEN
& HELPERS UNION, LOCAL 707, AFFILIATED WITH
THE NATIONAL PRODUCTION WORKERS UNION³

Intervenor

**SUPPLEMENTAL DECISION AND
CERTIFICATION OF REPRESENTATIVE**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, I have caused a preliminary investigation of the Petitioner's objections in this matter to be conducted and hereby overrule the Intervenor's objections in their entirety and issue a Certification of Representative for the United Electrical, Radio and Machine Workers of America.

The Election

A mail ballot election was conducted in this matter on January 29, 2014,⁴ pursuant to a petition filed by Petitioner on November 25, 2013, and a Decision and Direction of Election

¹ Herein called the Board.

² Herein called Petitioner or UE.

³ Herein called Intervenor or Local 707.

issued on December 31, 2013.⁵ The official Tally of Ballots served on the parties at the close of the election after the ballot count on February 18, 2014, shows that, of approximately 549 eligible voters, 356 ballots were cast, 207 of which were for Petitioner, 117 of which were for Intervenor, and 32 of which were for Neither. There were ten void ballots and no challenged ballots. Thereafter, on February 25, Intervenor filed timely objections, which were served on February 25 by the Region upon the Employer and Petitioner. On the same date the Region served the objections, it notified Intervenor of its obligations to provide evidence supporting its objections by March 4.

The Objections⁶

Objection 1:

The Truck Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 707, affiliated with the National Production Workers Union hereby objects to the conduct of Petitioner United Electrical, Radio and Machine Workers of America (UE), in that they deliberately sent agents of the UE to the homes/dwellings of the employees of Renzenberger, Inc for the purpose of intimidating and threatening supporters of the Truck Drivers Union, Local 707 from voting for Local 707. Said intrusive and invasive meetings destroyed any chance of a fair and neutral election condition.

Objection 2:

The Truck Drivers, Chauffeurs, Warehousemen & Helpers Union, Local 707, affiliated with the National Production Workers Union hereby objects to the conduct of Petitioner United Electrical, Radio and Machine Workers of America (UE), in that they deliberately sent agents of the UE to the homes/dwellings of the employees of Renzenberger, Inc for the purpose of intimidating and threatening eligible voters in the above referenced election, to vote for the UE. Said intrusive and invasive meetings destroyed any chance of a fair and neutral election condition.

⁴ All dates refer to calendar year 2014 unless otherwise noted.

⁵ The election was held in the following appropriate unit: All full-time and regular part-time road drivers, yard drivers, radius drivers, yard managers and yard coordinators employed by the Employer at, or out of, rail yards currently located in the State of California; excluding all office clerical employees and guards, professional employees, and supervisors as defined in the National Labor Relations Act.

⁶ Petitioner's Objections are presented verbatim.

Intervenor's Initial Submission of Evidence in support of its objections

In essence, Objections 1 and 2 both involve a claim by Intervenor that Petitioner agents made house calls to bargaining unit employees with the intention of engaging in “intimidating and threatening” conduct toward said employees. On March 4, in support of its objections, Intervenor provided the names and telephone numbers of three employee witnesses and one organizer for Intervenor, along with a statement that the proffered witnesses were “willing to testify in support of the Objections regarding UE conduct directed towards the voters.” Intervenor also indicated that the four proffered witnesses could testify to “the intimidating conduct of the UE in dealing with the employees of Renzenberger – specifically about complaints of *home visits* by them” (emphasis in original). Intervenor did not provide any summary of the anticipated testimony to be provided by its four witnesses. Petitioner denies that its agents engaged in any objectionable conduct.

A hearing on objections is held only when there are substantial and material issues of fact. *Care Enterprises*, 306 NLRB 491 (1992). It is incumbent on the party which has filed objections to furnish evidence sufficient to provide a prima facie case in support thereof before a Regional Director is required to investigate the objections. *Craftmatic Comfort Mfg. Corp.*, 299 NLRB 514 (1990); Secs. 102.69(a) and 102.112, Rules and Regulations. Thus, a party cannot rely on bare assertions to raise an issue requiring a hearing. As the objecting party, Intervenor has the duty of furnishing evidence that, if credited at a hearing, would warrant setting aside the election. *Transcare New York, Inc.*, 355 NLRB 326, 326 (2010); *Builders Insulation, Inc.*, 338 NLRB 793, 794 (2003); *The Daily Grind*, 337 NLRB 655 (2002); *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 (1992); *Holladay Corp.*,

266 NLRB 621 (1983). See NLRB Casehandling Manual (Part Two) Representation Proceedings (CHM), Section 11392.6. This duty to provide evidence may be satisfied by providing specific affidavit testimony and other specific evidence or by identifying witnesses and providing a summary of their anticipated testimony. *Transcare New York, Inc.*, 355 NLRB 326, 327 (2010). Hearsay evidence is not sufficient to raise a material issue warranting a hearing. As the objecting party, Intervenor has the sole burden of providing direct, rather than hearsay evidence in support of its objections. *Builders Insulation Inc.*, 338 NLRB 793, 794 (2003); *Heartland of Martinsburg*, 313 NLRB 655 (1994); *Holladay Corp.*, 266 NLRB 621 (1983).

I find that the evidence submitted by Intervenor is insufficient to warrant setting its objections for hearing. Although Intervenor identified its witnesses, it failed to provide a summary of their anticipated testimony beyond the general claim that there were complaints of “intimidating conduct” and that Petitioner agents made home visits to bargaining unit employees. Intervenor’s evidence submission provides no specific evidence regarding which alleged Petitioner agents visited employee homes, when the visits took place, or what, if anything, happened during the visits.

Indeed, Intervenor appears to be implying by its objections that the fact that Petitioner “deliberately sent agents” to make home visits to bargaining unit employees was, by the very nature of home visits, “intrusive and invasive” and therefore “intimidating and threatening.” This claim completely misses the point of the Board’s long-standing requirement that employers provide home addresses of bargaining unit employees during an election campaign in order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote by allowing unions to communicate with employees away from an

employer's facilities.⁷ In its *Excelsior* decision, the Board considered and specifically rejected the argument that providing unions with employee names and addresses subjected employees to the dangers of harassment and coercion in their homes, stating that "We cannot assume that a union, seeking to obtain employees' votes in a secret ballot election, will engage in conduct of this nature; if it does, we shall provide an appropriate remedy." At 1244.

Intervenor's Untimely Supplemental Evidence Submission

After being notified by the Region of the insufficiency of its evidence submission in support of its objections, at 6:07 p.m. on March 4, which was the date on which Intervenor's evidence in support of its objections was due, Intervenor sent a supplemental e-mail to the Region providing additional information in support of its objections. As the Oakland, California office of Region 32 has an official closing time of 5:00 p.m., I find that the supplemental evidence submitted by Intervenor after the close of business on March 4 was untimely. The Board's Rules and Regulations make it clear that, in order to be timely, evidence in support of objections must be submitted before the official closing time of the receiving office on the last day of the time limit. Sec 102.111(b), Rules and Regulations.⁸

Moreover, even if it had been timely filed, Intervenor's supplemental evidence submission would be insufficient to warrant setting its objections for hearing because Intervenor proffered only hearsay and general anticipated testimony. Intervenor offered only the names of two employee witnesses who were expected to testify that they were told by other co-workers that they had experienced intimidation and harassment when Petitioner agents visited them at

⁷ *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

⁸ Under the Board's electronic filing procedures, evidence submissions are timely if electronically filed through the Agency's website by 11:59 p.m. Eastern Time on the last day of the time limit. However, Intervenor did not electronically file its evidence in support of its objections.

their homes. Intervenor did not offer the name of a single employee who would testify about being actually visited at her or his home by an agent of Petitioner. Intervenor also failed to provide any details about what specific conduct it characterized as “intimidating and harassing.” Such general terms are often subjective, and may be used to refer to legitimate and protected Section 7 solicitation of support for a union if such solicitation annoys or disturbs the employees who are being solicited. *Ryder Transportation Services*, 341 NLRB 761, 761 (2004); *Greenfield Die & Mfg. Corp.*, 327 NLRB 237, 238 (1998).

Intervenor’s Late-filed Objections

Intervenor’s untimely supplemental submission of evidence raised several new objections for the first time. The first new objection involves a general claim of intimidating and harassing conduct on the part of Petitioner agents on Employer premises. In addition to general hearsay complaints from other workers, one employee witness was expected to testify about having actually seen Petitioner agents intimidating and harassing fellow employees on unspecified dates sometime between the filing of the petition (November 25, 2013) and the end of the voting period (February 18, 2014). Despite the untimeliness of Intervenor’s supplemental evidence submission, the Region conducted a telephonic interview with this proffered employee witness in case his direct testimony might have involved home visits. The witness clarified that he had only witnessed Petitioner agents “harassing” employees on a couple of occasions at the Employer’s East Los Angeles Commerce yard. When asked to describe the so-called harassment he witnessed, the employee witness explained that two Petitioner agents kept talking to employees

at the yard about how they should vote in the election and about their rights, and told them that Petitioner could negotiate a better contract for them, but did not make any threats.⁹

Also in support of this new objection about intimidation and harassment on Employer premises, Intervenor proffered a single employee witness who was expected to testify that she was “personally abused” and threatened for showing her support for Local 707 by an unnamed agent of Petitioner who “got in her face” on an unspecified date. In a telephonic interview with this proffered employee witness, she clarified to the Region that the incident took place at the Employer’s San Bernardino office on January 22, while the employee was campaigning for Intervenor accompanied by two Intervenor representatives and a fellow employee. According to the witness, Petitioner Intervenor agent “Fernando,” whose last name is unknown and who was also present at the San Bernardino office, called the employee witness a liar, after which she got closer to him, “got in his face,” and told him not to call her that.¹⁰

The third new objection raised in Intervenor’s supplemental evidence submission relates to employees receiving allegedly harassing telephone calls from Petitioner agents. In support of this new objection, Intervenor preferred a single employee witness expected to testify about hearsay complaints from other employees about harassing telephone calls from unnamed Petitioner agents on unspecified dates during the “election period.”

Intervenor’s fourth new objection relates to Petitioner’s alleged use of the name of one employee and a photograph of another employee on campaign literature without the employees’ permission. Intervenor asserts that one employee witness is expected to testify that his image

⁹ Given the insufficiency and untimeliness of Intervenor’s evidence submission, and in order not to delay further the processing of this case, the Region did not conduct a full administrative investigation of Intervenor’s objections.

¹⁰ As with the earlier Intervenor preferred witness, the Region did not conduct a full administrative investigation of this objection due to its untimely filing and in order not to delay further the processing of this case.

was placed on a Petitioner flier and disseminated to fellow employees without his permission and that another Intervenor employee witness is expected to testify that his name was placed on a Petitioner flier without his permission along with various statements that were attributed to him that were assertedly untrue and that he did not make.

It is well established that untimely objections raised for the first time in an objecting party's submission of evidence in support of its objections will only be accepted if the objecting party can show that the evidence of the untimely-filed objection was not only newly discovered but also previously unavailable. *Rhone-Poulenc, Inc.* 271 NLRB 1008 (1984); *Burns International Security Services, Inc.*, 256 NLRB 959 (1981). Here, in addition to the problem that its supplemental evidence was untimely filed, Intervenor has failed to provide any evidence that the facts relating to these three new objections were newly-discovered or unavailable to Intervenor at the time it filed its objections in this matter. Indeed, the witnesses preferred by Intervenor in support of these new objections are the same witnesses it provided to support its timely-filed objections regarding Petitioner's home visits. This would indicate that the evidence regarding the conduct of Petitioner agents on Employer premises during the campaign, regarding the use of employees' name and photograph on Petitioner's fliers, and regarding employee complaints about telephone calls from Petitioner agents was available to Intervenor at the same time that it was obtaining information regarding its timely-filed objections. Therefore, to the extent that Intervenor is attempting to raise new objections in its untimely supplemental evidence submission, I have determined that such new objections are also untimely.

CONCLUSION

In sum, as Intervenor has failed to meet its obligation to provide sufficient evidence in support of its objections, I am overruling Intervenor's objections in their entirety and issuing the following Certification of Representative.

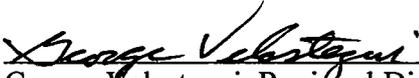
CERTIFICATION OF REPRESENTATIVE

Pursuant to the authority vested in me by the National Labor Relations Board,

IT IS HEREBY CERTIFIED that a majority of valid votes cast in the election have been cast for United Electrical, Radio and Machine Workers of America, and that it is the exclusive collective bargaining representative for the employees in the bargaining unit set forth below:

All full-time and regular part-time road drivers, yard drivers, radius drivers, yard managers and yard coordinators employed by the Employer at, or out of, rail yards currently located in the State of California; excluding all office clerical employees and guards, professional employees, and supervisors as defined in the National Labor Relations Act.

DATED AT Oakland, California, March 13, 2014.¹¹


George Velastegui, Regional Director
National Labor Relations Board, Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5211

¹¹ Under the provisions of Section 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must be received by the Board in Washington, DC by March 27, 2014. *The request for review may be filed electronically through the Agency's website, www.nlr.gov, but may not be filed by facsimile.* 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, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.* 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.