

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

PARAGON SYSTEMS, INC.
Employer

and

GOVERNED UNITED SECURITY PROFESSIONALS
Petitioner

Case 05-RC-119929

and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA
(SPFPA), LOCAL 555
Intervenor

REPORT ON OBJECTIONS

PURSUANT TO A STIPULATED Election Agreement,¹ which I approved on January 10, 2014,² a secret ballot election was conducted by mail, under my supervision. The mail ballots were sent to eligible voters on February 3. The ballots were commingled and counted on February 18, with the following results:³

Approximate number of eligible voters	396
Void ballots	14
Votes cast for Petitioner	37
Votes cast for Intervenor	86
Votes cast against participating labor organizations	2
Valid votes counted	125
Challenged ballots	3
Valid votes counted plus challenged ballots	128

The challenges are not sufficient in number to affect the results of the election.

¹ The unit is: "All full-time and regular part-time employees employed by the Employer at the Social Security Administration's national headquarters, Security "West" and National Computer Center facilities in Woodlawn, Maryland; but excluding all office clerical employees, professionals employees, participants in the pre-hiring training programs, managerial personnel, confidential employees, lieutenants, captains, and supervisors as defined [in] the Act." The eligibility period is the payroll period ending December 26, 2013.

² Unless otherwise noted, all dates are in 2014.

³ The original Tally of Ballots issued on February 18. The Revised Tally of Ballots issued February 25.

On February 24, Petitioner filed timely objections to the conduct of the election and conduct affecting the results of the election.⁴

THE OBJECTIONS⁵

OBJECTION 1:

Paragon Systems aided and abetted SPFPA in the election, contrary to rules and regulations.

OBJECTION 2:

SPFPA local 555 held a Special Union Meeting to which ONLY Paragon members were invited. This meeting was held with the help of Paragon Systems to influence members to vote AGAINST Governed United Security Professionals.

Objections 1 and 2 are related to the same alleged misconduct. In support of these objections, the Petitioner offered several witness statements, submitted a document which appears to be a notice of meetings and a letter dated January 27, 2013.⁶ Witnesses A, B, C, D, and E attended a meeting on February 1 in which Employer's Labor Relations Director Roman Gumul was present. Witnesses A, B, and E claimed the only topics discussed during the meeting were healthcare and the Petitioner. Witnesses A, B, C, and E explained that, during the meeting, Gumul discussed the Employer's and Intervenor's healthcare plans and announced that Intervenor's healthcare plan was better than the Employer's plan. Witness E noted that Gumul said members were better to stay with the SPFPA insurance. Witnesses D and E recalled Intervenor officials making statements about Petitioner. Witness E claimed, without elaboration, that they personally attacked the new union's president.

⁴ The petition was filed on January 2. The undersigned will consider on their merits only that alleged conduct and interference that occurred during the critical period, which begins on and includes the date of the filing of the petition and extends through the election. *Goodyear Tire and Rubber Company*, 138 NLRB 453 (1962).

⁵ Petitioner's Objections are attached as Exhibit 1.

⁶ The January 27, 2013 letter is attached as Exhibit 2. Petitioner did not establish this document was sent to employees during a period relevant to the instant petition, but the use of a 2013 date in place of a 2014 date appears to be a typographical error.

Certain witness statements submitted assert an Employer representative may have discussed aspects of its healthcare plan, comparing it to that maintained by Intervenor. Petitioner submitted no evidence that any statements made by the Employer went beyond a factual comparison of the two plans or, at most, a lawful expression of the Employer's opinion about the two plans. *Suburban Journals of Greater St. Louis*, 343 NLRB 157 (2004). Such statements do not constitute objectionable conduct.

Further, in an election involving multiple unions, an employer may, in a non-coercive manner, state its preference for one union over another. While expressing its views regarding the advantages and disadvantages of representation by one of several competing unions, an employer may not, however, threaten or promise employees it will act in a different manner depending on which union employees choose to represent them. See *Amboy Care Center*, 322 NLRB 207 (1996); *Alley Construction Co.*, 210 NLRB 999 (1974).

Assuming, *arguendo*, Employer representatives asserted that employees would lose Intervenor's healthcare plan if Intervenor did not win the election, such statements represent the factual reality that Intervenor's healthcare plan would be unavailable to employees if Intervenor did not represent the bargaining unit. Such statements do not constitute objectionable conduct. *Midland National Life Insurance Co.*, 263 NLRB 127 (1982).

Petitioner produced no specific evidence that the mere participation in a meeting by Gumul, or any other Employer representative, constituted objectionable conduct. To the extent Petitioner argues that Intervenor's extension of invitations only to its dues-paying members employed by the Employer is objectionable conduct, it is not unlawful or objectionable for a labor organization to conduct general informational or organizational meeting limited to such audiences. *American Postal Workers (Postal Service)*, 300 NLRB 34 (1990); *Teamsters Local 856 (Holiday Inn)*, 302 NLRB 572 (1991). Assuming meetings were held on February 1, Intervenor was the collective-bargaining representative of the relevant unit on that date, and

convening a meeting of its membership at that time does not, without more, rise to the level of objectionable conduct.

Accordingly, I recommend the dismissal of Objections 1 and 2.

OBJECTION 3:

SPFPA did a mass mailing in which erroneous fact and fraudulent information was presented as factual in order to discredit G.U.S.P.

In support of Objection 3, Petitioner submitted letters dated January 27, 2013 and January 10.⁷ Petitioner did not provide evidence illustrating, or otherwise indicate, what, if any, information included in either letter it believes to be false or fraudulent.

Regardless of the absence of such evidence, it is well-settled that, even if Intervenor made campaign-related misrepresentations to employees as alleged, that objection would not constitute a basis for setting aside an election. In *Midland National Life Insurance Co.*, the Board explained:

[We] rule today that we will no longer probe into the truth or falsity of the parties' campaign statements, and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made, a manner which renders employees unable to evaluate the forgery for what it is.

Midland National Life Insurance Co., *supra* at 133.

Further, the Board explains that even if a substantial misrepresentation had been made, "the election would not be set aside if it also appeared that there had been ample time to respond. This result would obtain no matter how egregious the error or falsity, and regardless of whether in fact a response had been made." ID at 132. The election herein began February 3, giving Petitioner sufficient time to respond to the January 27, 2013 and January 10 letters.

Accordingly, I recommend the dismissal of Objection 3.

⁷ The January 10 letter is attached as Exhibit 3.

OBJECTION 4:

Numerous members did not receive ballots. Phone calls/
messages left remain unanswered / returned.

Petitioner produced no evidence in support of Objection 4. Petitioner does not clarify its allegation that "Phone calls/ messages left remain unanswered / returned." Petitioner submitted no witness statements, or even names of individuals whose efforts to obtain mail ballots failed. Petitioner provided no evidence that the Region failed to return calls from eligible voters requesting mail ballots.

The method for conducting the election was the result of mutual agreement among the parties to the election, memorialized in a Stipulated Election Agreement approved by me. That Agreement establishes a procedure providing mail ballots, upon request, to those who believe they were eligible to vote but did not receive a mail ballot. The Region forwarded Notices of Election to the Employer to allow for timely posting, throughout facilities in which bargaining-unit employees worked, prior to mailing ballots to employees. The Notice of Election provides detailed instructions explaining the procedure for employees who do not receive a ballot to obtain a replacement ballot. No allegation has been made, nor has evidence been submitted to show, the Notices were not properly posted. Employees who did not receive mail ballots should have been aware, through the posted Notices, of the procedure to obtain a ballot or a replacement ballot.

Petitioner may also be complaining about the number of employees who voted. To determine whether a representative complement of voters has cast ballots, the Board applies the standard set in *Lemco Construction, Inc.*, 283 NLRB 459 (1987). In *Lemco*, the Board declared it will not depend upon a percentage test of eligible voters, but will find a representative complement to have voted if: (1) all employees have received adequate notice of the election; (2) all employees have been given adequate opportunity to vote; and (3) employees are not prevented from voting by the conduct of one of the parties or by unfairness in the scheduling or

mechanics of the election. “Only if it can be shown by objective evidence that eligible employees were not afforded an adequate opportunity to participate in the balloting will the Board decline to issue a certification and direct a second election.” *Id.* at 460 (internal citations omitted). In *Lemco*, the Board found that the employer failed to meet this burden, and it upheld the results of an election where only one out of a unit of eight eligible voters cast a vote. *Id.* In the instant case, Petitioner failed to present any probative evidence showing employees were not given adequate notice or opportunity to vote or were prevented from voting by the conduct of one of the parties or by the scheduling of the election.

Accordingly, I recommend the dismissal of Objection 4.

OBJECTION 5:

SPFPA and Paragon Systems touted the fact that if the members did NOT vote for SPFPA the membership would lose their Healthcare coverage and 401k plan.

If Petitioner seeks to support this Objection by relying on the witnesses’ statements it produced, this Objection fails for the same reasons discussed above regarding Objection 2. Petitioner submitted no evidence that any statements made by the Employer went beyond a factual comparison of the two plans or, at most, a lawful expression of the Employer’s opinion about the two plans. *Suburban Journals of Greater St. Louis*, 343 NLRB 157. Such statements do not constitute objectionable conduct.

Further, in an election involving multiple unions, an employer may, in a non-coercive manner, state its preference for one union over another. While expressing its views regarding the advantages and disadvantages of representation by one of several competing unions, an employer may not, however, threaten or promise employees it will act in a different manner depending on what union employees choose to represent them. See *Amboy Care Center*, 322 NLRB 207; *Alley Construction Co.*, 210 NLRB 999.

Assuming, *arguendo*, Employer representatives had asserted that employees would lose Intervenor's healthcare plan if Intervenor did not win the election, such statements represent the factual reality that the Intervenor's healthcare plan would be unavailable to employees if the Intervenor did not represent the bargaining unit. Such statements do not constitute objectionable conduct. *Midland National Life Insurance Co.*, 263 NLRB 127.

If Petitioner relies on the January 27, 2013 and January 10, letters it submitted as the source of Objection 5, this Objection fails for the same reasons discussed above regarding Objection 3. It is well-settled that, even if Intervenor made campaign-related misrepresentations to employees as alleged, that objection would not constitute a basis for setting aside an election. In *Midland National Life Insurance Co.*, the Board explained:

[We] rule today that we will no longer probe into the truth or falsity of the parties' campaign statements, and that we will not set elections aside on the basis of misleading campaign statements. We will, however, intervene in cases where a party has used forged documents which render the voters unable to recognize propaganda for what it is. Thus, we will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made, a manner which renders employees unable to evaluate the forgery for what it is.

Midland National Life Insurance Co., supra at 133.

Further, the Board explains that even if a substantial misrepresentation had been made, "the election would not be set aside if it also appeared that there had been ample time to respond. This result would obtain no matter how egregious the error or falsity, and regardless of whether in fact a response had been made." *Id* at 132. The election herein began February 3, giving Petitioner sufficient time to respond to the January 27, 2013 and January 10 letters.

Petitioner did not specify what portions of these letters it contends are objectionable but is likely relying on paragraph 4 of the January 27, 2013 letter and paragraph 4 of the January 10 letter.

Though unsupported by Petitioner's evidence, any objection relating to Intervenor's claims that employees would lose 401(k) plans if Intervenor did not win the election fails. The Intervenor does not control employees' terms and conditions of employment and is therefore

unable to carry out such a threat. Such statements are not objectionable. *Smithfield Packing Co.*, 344 NLRB 1, 11 (2004), *enfd.* 447 F.3d 821 (D.C. Cir. 2006); *Pacific Grain Products*, 309 NLRB 690, 691 (1992).

Petitioner submitted no evidence that any Employer representative made any statements about 401(k) plans.

Accordingly, I recommend the dismissal of Objection 5.

SUMMARY

In light of the foregoing, I recommend overruling Objections 1 through 5, which disposes of the objections in their entirety. Accordingly, I further recommend that the appropriate Certification of Representative issue.

Dated at Baltimore, Maryland, this 17th day of March 2014.

/s/ Steven L. Shuster

Steven L. Shuster, Acting Regional Director
National Labor Relations Board, Region 05
Bank of America Center, Tower II
100 S. Charles Street, Ste. 600
Baltimore, MD 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 **March 31, 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.

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.

Governed United Security Professionals
1258 Stevens Avenue 2nd Floor, Baltimore, Maryland 21227
Office: (443)304-2018 Fax: (443)304-2855

Steven L Shuster

National Labor Relations Board

Sir

We bring the following to your attention and request a re-election based on these revelations:

- Paragon Systems aided and abetted SPFPA in the election, contrary to the rules and regulations.
- SPFPA local 555 held a Special Union Meeting to which ONLY Paragon members were invited. This meeting was held with the help of Paragon Systems to influence the members to vote AGAINST Governed United Security Professionals.
- SPFPA did a mass mailing in which erroneous fact and fraudulent information was presented as factual in order to discredit G.U.S.P.
- Numerous members did not receive ballots. Phone calls / messages left remained unanswered / returned.
- SPFPA and Paragon Systems touted the fact that if the members did NOT vote for SPFPA the membership would lose their Healthcare coverage and 401k plan.

Thank you in advance for your kind attention to this vital matter.

Kent Emery

President

Governed United Security Professionals

Exhibit 1



**International Union,
Security * Police * Fire
Professionals of America (SPFPA)**

25510 Kelly Road, Roseville, Michigan 48066
(586) 772-7250 / FAX (586) 772-9644
www.SPFPA.org

DAVID L. HICKEY
INTERNATIONAL PRESIDENT

DWIGHT E. DULEY
INTERNATIONAL SECRETARY-TREASURER

January 27, 2013

To: All Security Professionals at Paragon @ Woodlawn

Dear Brothers and Sisters:

Recently I received a request and information from one of your Woodlawn Paragon officers who researched the small association calling itself gusp. I have sent you a comparison sheet so you can evaluate the major differences between the International Union, SPFPA, and this want-to-be gusp.

Soon you will be making a choice that may be one of the most important decisions of your security career. You will have to choose whether to remain in the proud family of the Nation's largest Security, Police Union, the SPFPA, or to drink the Kool-Aid of the small, incompetent, want-to-be gusp. This small parasitic gusp has no dues paying members, no contracts, no full-time representatives and absolutely no labor negotiation experience to help you and your families.

Friends, today you are SPFPA members, with BC/BS Medical Benefits, a 401k Plan, a Collective Bargaining Agreement with grievance and arbitration protection, and the service of one of the most prominent Labor Law firms in the Country. You have a full-time staff of SPFPA Representatives and Secretaries to work with you and address your concerns. All those benefits are REAL, and you and your family can count on them.

Tomorrow, you may be stuck in gusp, with no full-time representatives and no resources to support you and protect your families. They also have NO Medical Plan, NO 401k Plan and NO experience. No one should be asked to risk the medical benefits they are currently guaranteed. Look closely and you will see that gusp is nothing but false promises with great risk.

With your SPFPA team prepared to negotiate your new Collective Bargaining Agreement with the improvements you have asked for and deserve, now is not the time to trust inexperienced want-to-be's and Corporate motivators looking for a paycheck.

Now is the time to work with SPFPA, your current Union. Get involved and send a strong message to Paragon. Together we all can make the difference. Don't send an inexperienced, weak gusp salesman that has never completed even one Union contract to represent YOU! Bring the best - **Vote for SPFPA!**

Finally, I am enclosing copies of the information I received from your fellow officers. I believe its better you read it for yourselves. Please review all this information and compare what you have, and what you will lose. Only then can you make an informed decision.

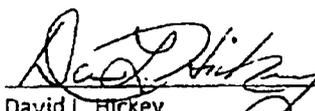
Exhibit 2



A meeting is scheduled for various times at the SPFPA-UUSG Meeting Hall on Saturday, February 1st, that I personally will attend to meet with all dues paying SPFPA members. I have also invited Paragon President, Les Kaciban, to attend this meeting so that he, too, can hear your concerns and address your issues. Meetings like this don't happen often, so please don't miss out. The meeting flier is enclosed and will be posted. Please mark your calendar and plan to attend!

As International President, I wish you all the best and I promise....***I will not let you down!***

Fraternally,



David L. Hickey
International President

DLH/kb/opeiu42

Enclosures



**International Union,
Security ★ Police ★ Fire
Professionals of America (SPFPA)**

25510 Kelly Road, Roseville, Michigan 48066
(586) 772-7250 / FAX (586) 772-9644
www.SPFPA.org

DAVID L. HICKEY
INTERNATIONAL PRESIDENT

DWIGHT E. DULEY
INTERNATIONAL SECRETARY-TREASURER

January 10, 2014

Dear Brothers and Sisters;

After several months of being restricted by contract bar to renegotiate a fair and decent collective bargaining agreement for the Security Professionals working at SSA Woodlawn. The time has come to stand united and take an aggressive and militant stance against Employers unwilling to appreciate the true value of the workers who make not only the companies successfully but also the contract.

The SPFPA is the largest and oldest 9(b)(3) Security Union in the United States representing thousands of security professionals like you including the Ronald Reagan Building, Homeland Security Building, State Department, and Metro West just to name a few.

I would like to take a few minutes to explain the process of contract negotiations. Some people may believe that without experience, knowledge, resources, an office, office staff, legal professionals, and a supporting membership you can just make up a union, not knowing that in doing so you jeopardize people's lives and their families.

SPFPA is here to tell you. Paper unions will only survive at the mercy of the Company. Recently a newly created union filed a petition seeking to represent you. Not only does this new union fail to have the particulars listed above, but to make matters worse they also **DO NOT HAVE** Health Care to offer anyone or any means of funding one.

With all the controversy in Congress regarding the National Health Care Reform Act and important issues surrounding the collective bargaining agreement such as full-time/part-time classification for fringe benefits, wages, fair working conditions, now is not the time to move backwards and let unskilled individuals play with your future.

(Attached, you will find a copy of an Unfair Labor Charge (ULP). It was filed on behalf of the membership working at SSA that was not paid for fringe benefits employed as of April 1, 2013. It was based upon the Letter of Agreement signed on September 6, 2013 classifying fulltime as 36 hours). Together we will be successful in getting the members back there money that was taken.

By standing with SPFPA here is our commitment to you ...

- SPFPA will pay 100% of all legal costs associated with any and all arbitrations
- No Dues increase in your first 3 year contract, No Initiation fees ✕
- SPFPA Blue Cross Blue Shield Health Plan (ACA Approved Plans)
- Wells Fargo 401(k)

Exhibit 3