



**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
1099 14th Street, N.W.
Washington, D.C. 20570-0001**

April 2, 2014

Re: Atlas Roll-Off Corp.
Case 29-RC-114120

PARTIAL EXTENSION OF TIME TO FILE EXCEPTIONS

The Employer has requested a 30-day extension of time to file Exceptions to the Hearing Officer's Report and Recommendations on Objections in this case issued on March 20, 2014. Having considered the request, **SOME, BUT NOT ALL, OF THE TIME REQUESTED IS GRANTED**. Specifically, a 14-day extension of time is granted. Accordingly, the due date for the receipt in Washington, D.C. of the Exceptions and Supporting Brief is extended to APRIL 17, 2014.

A handwritten signature in black ink, reading "Henry S. Breiteneicher".

Henry S. Breiteneicher
Associate Executive Secretary

cc: Parties

Exhibit 1

RECEIVED

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NLRB
ORDER SECTION

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

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

REPORT ON CHALLENGES AND OBJECTIONS AND NOTICE OF HEARING

On September 25, 2013,¹ Local 175, United Plant & Production Workers, International Union of Journeymen and Allied Trades, herein called the Petitioner, filed a petition in this matter seeking to represent certain employees employed by Atlas Roll-Off Corp., herein called the Employer. Pursuant to a Stipulated Election Agreement signed by the Petitioner and the Employer, and approved by the undersigned on November 4, an election by secret ballot was conducted on November 20 among the employees in the following unit:

All full-time and regular part-time construction employees who are machine operators, concrete construction laborers, including form setters and carpenters, masons, asphalt workers, including screed men, asphalt rakers, asphalt shovelers and all other laborers employed by the Employer, located at 95-11 147th Place, Jamaica, New York, but excluding all employees of Atlas Transit Mix Corporation and Pro-Concrete Contractors Corporation, located at 95-11 147th Place, Jamaica, New York, all employees working out of Atlas Roll-Off Corp.'s 895 Essex Street, Brooklyn, New York location, including concrete plant workers, machine operators, mechanics,

¹ All dates hereinafter are in 2013 unless otherwise indicated.

Exhibit 2

dump truck drivers, concrete construction workers, concrete delivery truck drivers, roll-off container drivers, and transfer station/recycling yard employees and further excluding all office clericals, guards, managers and supervisors as defined in Section 2(11) of the Act.

The Tally of Ballots made available to the parties pursuant to the Board's Rules and Regulations, showed the following results:

Approximate number of eligible voters	31
Number of void ballots	0
Number of ballots cast for the Petitioner	13
Number of votes cast against participating labor organization	15
Number of valid votes counted	28
Number of challenged ballots	3
Number of valid votes counted plus challenged ballots	31

Challenges are sufficient in number to affect the results of the election.

The Petitioner challenged the ballot of Merek Metejeksi on the ground that he is an alleged supervisor. The Employer challenged the ballot of Daniel Mezarina on the ground that he was not employed by the Employer at the time of the election. The Board Agent challenged the ballot of Janderson De La Cruz on the ground that his name did not appear on the Excelsior² list.

The Petitioner filed timely objections to conduct affecting the results of the election. The Petitioner's objections are attached hereto as Exhibit "A."

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned Petitioner's objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. The investigation revealed the following:

² Excelsior Underwear, Inc., 156 NLRB 1236 (1966).

The Challenges

Janderson De La Cruz and Daniel Mezarina

Janderson De La Cruz's ballot was challenged by the Board Agent on the ground that his name did not appear on the Excelsior list. The Employer concedes that De La Cruz was hired on November 2, after the October 30 payroll cutoff date for eligibility. The Petitioner asserts that De La Cruz was not part of the bargaining unit at the time of the election.

Daniel Mezarina's ballot was challenged by the Employer on the ground that he was not employed at the time of the election. The Employer states that it terminated Mezarina's employment before the election. The Petitioner concedes that Mezarina was terminated before the election. There has been no unfair labor practice charge filed alleging that Mezarina was terminated in violation of Section 8(a)(3) of the Act.

Generally, to be eligible to vote in a Board election, an employee must be employed in the unit during both the eligibility period and on the date of the election. See Plymouth Towing Company, Inc., 178 NLRB 651 (1969); see also Stockham Fittings, Inc., 222 NLRB 217, fn. 2 (1976); Choc-ola Bottlers, Inc., 192 NLRB 1247 (1971). With regard to De La Cruz's ballot, the evidence adduced during the investigation demonstrates that De La Cruz began working for the Employer after the October 30 eligibility date. Because De La Cruz was not employed by the Employer by the October 30 eligibility date, I recommend sustaining the challenge to his ballot. See Plymouth Towing Company, supra.

With regard to Mezarina's ballot, it is undisputed that Mezarina was not employed by the Employer at the time of the election. As stated above, there is no unfair labor practice charge pending regarding his termination. The Board has stated that "in cases involving challenges, it is well settled that, in the absence of unfair labor practices charges, a discharge will be presumed to be for cause." Texas Meat Packers, Inc., 130 NLRB 279, 280 (1961). Accordingly, absent a

pending unfair labor practice charge, because Mezarina was not employed by the Employer at the time of the election, I recommend sustaining the challenge to his ballot. See Plymouth Towing Company, supra.

Given the Tally of Ballots, sustaining the challenges to De La Cruz and Mezarina's ballots renders the remaining challenge to Metejeski's ballot non-determinative. Accordingly, I need not address the challenge to Metejeski's ballot at this time.

The Objections

Objection 1

In its first objection, the Petitioner alleges that Gary Caparelli, an alleged supervisor or agent of the Employer, surveilled voters while they were voting during the election at the John F. Kennedy Airport site.³ In its objection, the Petitioner alleges that Caparelli oversees bargaining unit employees, ensures that they are performing their work, and is paid a salary unlike bargaining unit employees, who are paid hourly. The Employer asserts that this objection lacks merit.

In its offer of proof, the Petitioner states that a Union agent will testify that he observed Caparelli standing approximately ten to twenty feet from the Kennedy Airport voting area, which was held in a trailer. According to the Petitioner's offer of proof, employees had to walk past Caparelli in order to get to or from the voting area. The Petitioner further states that named employees will testify regarding Caparelli's alleged authority.

The Employer denies these allegations. The Employer provided an affidavit from Caparelli. In his affidavit, Caparelli denies that he surveilled voters during the election. He

³ There were three polling sites for this election.

states that he merely waited in line to vote with the other employees.⁴ With regard to his supervisory status, Caparelli denies that he is a supervisor within the meaning of the Act. Caparelli, however, admits that he may send employees home and provided an example in which he exercised such authority. He also stated that he has the authority to recommend that an employee be fired, but that he has never exercised this authority. Caparelli stated that he receives a salary and will be docked pay if he does not work a full week.

Discussion

The foregoing conduct of alleged surveillance of employees by an alleged supervisor during the election, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.⁵ In view of the conflicting positions and facts asserted by the parties regarding the Employer's alleged surveillance of employees and Caparelli's alleged supervisory status, I find that the Petitioner's first objection raises material and substantial issues of fact that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the Petitioner's first objection. I note that the Petitioner bears the burden of establishing Caparelli's supervisory or agency status at a hearing.

Objection 2

In its second objection, the Petitioner alleges that during the critical period before the election, Rolquide Peralta, an alleged agent of the Employer, told bargaining unit employees that they had to take a picture of their ballots during the election and show the picture to the Employer or they would lose their jobs. The Petitioner further alleges that this directive came

⁴ Caparelli's name appears on the Excelsior list. His ballot was not challenged.

⁵ See Liberty House Nursing Homes, 245 NLRB 1194 (1979) (setting aside an election following, inter alia, surveillance of employees union activity).

directly from Tom Polsinelli, the Employer's owner. In addition, the Petitioner alleges that during the critical period prior to the election, Polsinelli told employees that if they voted for the Union and the Union won the election, the employees would not work in the industry again. The Employer asserts that this objection lacks merit.

In its offer of proof, the Petitioner states that named employees will testify that they heard from other employees that Peralta, an alleged agent of the Employer who has made effective recommendations regarding hiring employees and has asked employees to leave the job, told employees that when they voted, they had to take a picture of their ballot and turn the picture over to the Employer or that they would be prevented from working. In addition, employees will testify that Peralta told employees that this directive came from owner Polsinelli.

The Employer provided affidavits from Peralta and Polsinelli. In his affidavit, Peralta denied that he ever made any comments to employees about taking pictures of ballots. Polsinelli's affidavit also denies that Peralta made the alleged comments.

In addition, in its offer of proof, the Petitioner states that named and unnamed employees will testify that Polsinelli told unit employees that if the Union came in, he would make sure no one worked in the industry again. Polsinelli's affidavit does not specifically address this allegation.

Discussion

With regard to the Petitioner's allegation that Peralta told employees that owner Polsinelli was requiring employees to take a picture of their ballots and turn it over to the Employer or they would lose their jobs, the Petitioner has provided evidence that that named employees heard from other employees that Peralta made these statements. Although the Petitioner's evidence in support of this allegation is hearsay, the Board has held that the presentation of hearsay evidence is sufficient to warrant a full investigation of the issues raised. The Holladay Corp., 266 NLRB

621, 622 (1983). The Board noted that “where the objecting party submits *prima facie* evidence demonstrating that an election was not held under the proper laboratory conditions, the Board will not hesitate to commit the necessary investment of time and money to protect its election process.” *Id.* at 621. Accordingly, I find that the foregoing conduct of Peralta telling employees that the Employer required them to show the Employer a photograph of their ballots or they would not be able to work, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.⁶ I note that the Petitioner bears the burden to establish that employees would reasonably believe that Peralta was speaking on behalf of the Employer with regard to the alleged comments.

With regard to the Petitioner’s allegation that Polsinelli told employees that if the Union won the election, they would not work in the industry again, the Petitioner has identified named and unnamed witnesses who will provide direct testimony of these statements. The foregoing conduct of Polsinelli telling employees that they would no longer work in the industry if the Union won the election, if true, could have affected the outcome of the election and would, therefore, warrant setting aside the election.⁷

In view of the conflicting positions and evidence regarding Peralta and Polsinelli’s alleged statements, I find that the Petitioner’s second objection raises material and substantial issues of fact and credibility that would be best resolved by a hearing. Accordingly, I direct that a hearing be held regarding the Petitioner’s second objection.

⁶ See Newport News Shipbuilding and Dry Dock Co., 243 NLRB 99 (1979) (in which that the Board found that chain voting, where a voter takes an unmarked ballot out of the polling area, the ballot is marked by someone else, and the ballot is then deposited into the ballot box by a second voter, if proven, was objectionable). The allegations here present a similar issue to that of chain balloting in that employees were allegedly required to prove how they had voted to a party to the election by showing a photograph of their ballots.

⁷ See Community Action Commission of Fayette County, Inc., 338 NLRB 664, 667 (2002) (setting aside an election following threats of job loss).

Objection 3

In its third objection, the Petitioner alleges that during the critical period, the Employer drug tested certain employees and disparately applied the results of those drug tests, discharging certain employees who tested positive while allowing some employees who tested positive to remain employed. The Petitioner alleges that this disparate treatment of employees “served to intimidate” voters. The Employer asserts that this objection lacks merit.

In its offer of proof, the Petitioner states that named employees will testify that the Employer had not drug tested employees prior to the filing of the petition in this case. Moreover, named employees will testify that not every employee was tested. Finally, the Petitioner states that a named former employee will testify that s/he was drug tested and discharged when s/he tested positive, but that other employees who tested positive were not discharged.

The Employer denies these allegations. As stated above, certain employees in the petitioned-for unit work at John F. Kennedy Airport, which is operated by the Port Authority. These employees work in an area in which combustible jet fuel is stored. According to Polsinelli’s affidavit, the Employer maintains a policy of random drug testing of its employees in accordance with the Port Authority’s no drug policy. In this case, prior to the filing of the petition, the Employer had retained a laboratory to conduct drug testing of its employees. Employees were randomly drug tested. The Employer admits that it terminated an employee who worked at Kennedy Airport and who failed a drug test. Polsinelli stated that the Employer does not selectively enforce its drug testing policy.

Discussion

The Petitioner alleges that the Employer sought to intimidate voters by engaging in drug testing and selectively disciplining certain employees for testing positive. This allegation

requires a finding that the Employer's actions were motivated by the Petitioner's organizing drive or by the protected conduct in which certain employees engaged. The Board has held the gravamen of such an allegation is an unfair labor practice "requiring the finding that the Employer's conduct constituted a violation of Section 8(a)(3) of the Act." Texas Meat Packers, supra, at 279; see also Almet Inc., 305 NLRB 626, 632, 637-38 (1991) (finding that selective drug testing during the critical period before an election violated Section 8(a)(3) of the Act and was objectionable). There is no unfair labor practice charge pending regarding the Employer's drug testing program. Absent such a charge, the Board will presume that the Employer's actions were not unlawfully motivated and will not set aside an election on that basis. Texas Meat Packers, supra, at 280. Accordingly, I recommend overruling the Petitioner's third objection.

Summary and Recommendations

In summary, I have recommended sustaining the challenges to the ballots of Janderson De La Cruz and Daniel Mezarina. Accordingly, the challenge to the ballot of Merek Metejeski is no longer determinative and a Revised Tally of Ballots would show that a majority of the valid votes cast were not cast for the Petitioner.

In addition, I have directed that a hearing be held regarding the Petitioner's first and second objections. I have recommended overruling the Petitioner's third objection.

Accordingly, pursuant to the authority vested in the undersigned by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by Objections Nos. 1 and 2.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing

resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that on December 23, 2013, at 9:30 a.m., and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

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 December 27, 2013, 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.⁸ 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

⁸ 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.

exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Brooklyn, New York, on this 13th day of December, 2013.

A handwritten signature in cursive script that reads "James G. Paulsen". The signature is written in black ink and is positioned above a horizontal line.

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

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November 25, 2013

By Fax & Mail: 718-330-7579

James G. Paulsen, Esq.
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, Suite 5100
Brooklyn, New York 11201

Re: Atlas Rolloff Corp.—Objections to Conduct of Election
Case No. 29-RC-114120

Dear Director Paulsen:

Local 175, United Plant & Production Workers, UJWAT, the Petitioner in the above noted Case, files the following Objections to the Conduct of Election:

Supervisor/Agent of Employer Surveillance: During the time of the balloting at the JFK polling location, a supervisor or agent of the of the Employer was present for up to two hours outside the polling trailer where other voters could see him and had to pass him in order to enter the trailer where voting was conducted. The supervisor or agent's name is Gary Caparelli. Mr. Caparelli is considered a "supervisor" by the other workers, he directs their work in the interest of the employer at the work site, is the Employer's liason between the Employer and the New York Port Authority that operates the airport where the Employer is performing work. Mr. Caparelli is considered a "working foreman" by the Employer. Mr. Caparelli ensures that the bargaining unit employees comply with the rules and regulations established by the New York Port Authority, and enforces those rules at the work site on behalf of the Employer. Mr. Caparelli, in fact, was the person notified by Brian Baldeo, the Construction Management Resident Engineer at the Port Authority of New York, to remove a worker from the work site who allegedly reeked of marijuana on or about October 30; and Mr. Caparelli walked the individual, Diego Villacreses, out of the work area essentially disciplining him on the spot. Mr. Caparelli oversees the bargaining unit employees and makes sure they are performing the work scheduled for the specific day or week. Mr. Caparelli, upon information and belief, is paid a salary whereas the workers in the bargaining unit are paid hourly; and he is not docked pay if he does not work a full 40 hours.

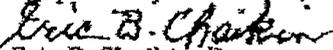
Exhibit A.

Improper Threats Made to Bargaining Unit Members: Prior to the election, in or about November 4, 2013, a person who was an agent of the Employer, Rolquide Peralta, told bargaining unit employees that when they voted they had to take a picture of their ballot and turn the picture over to the employer; or else they would lose their job or otherwise be prevented from working; and that the directive came from the owner of the Employer, named Tom Possinelli. Mr. Peralta is considered a "working foreman" by the employer but is viewed as an individual with authority to send workers home or recommend that workers be dismissed.

Also, prior to the election, in or about November 4, 2013, the Employer, by Tom Possinelli, advised bargaining unit employees that if they voted for the union and the union won he would make sure the workers never worked again in the industry.

Intimidation by Drug Testing Bargaining Unit Excelsior List Employees At the JFK Location: In or about the week of November 12, 2013 the Employer drug tested a group of employees in the bargaining unit for drugs contrary to past practice. There had been no drug testing performed, upon information and belief, during the prior 16 months before that week. Moreover, upon information and belief, the son of Gary Caparelli, the Employer's agent and Working Foreman at the JFK work location, Julien T. Caparelli, who smoked marijuana with Daniel Mezarina, was specifically not drug tested. And another individual who was drug tested, who failed, was not discharged. Thus, the Employer changed its drug testing policy regarding the bargaining unit, tested those workers it may have suspected or knew were smoking marijuana, and selectively discharged them, (eg., Daniel Mazarina).

Respectfully submitted,


Eric B. Chaikin, Esq.

Gary Wirth, Esq., Counsel to Atlas Roll-Off Corp.
United Plant & Production Workers, Local 175, IUJAT
Kate Anderson, Board Agent

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UNITED STATES GOVERNMENT
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)	
	Petitioner)

SUPPLEMENTAL REPORT ON OBJECTIONS

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

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

Exhibit 3

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

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

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

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

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

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

Right to File Exceptions

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

Procedures for Filing Exceptions

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

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

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

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



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

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

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