

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

PICO INDUSTRIES, INC.
Employer

and

Case 05-RC-122173

IRONWORKERS DISTRICT COUNCIL OF
THE MID-ATLANTIC STATES LOCAL UNION #5
Petitioner

REPORT ON OBJECTIONS
AND
NOTICE OF HEARING

Pursuant to a Stipulated Election Agreement¹ approved on February 18, 2014,² a secret-ballot election was conducted under my supervision on March 21, with the following results:

Approximate number of eligible voters	29
Void ballots	0
Votes cast for Petitioner	9
Votes cast against participating labor organization	13
Valid votes counted	22
Challenged ballots	4
Valid votes counted plus challenged ballots	26

The challenged ballots are insufficient in number to affect the results of the election.

THE OBJECTIONS

On March 27, Petitioner filed objections to conduct affecting the results of the election. The objections were timely filed.³ A copy of Petitioner's objections is appended hereto as Exhibit A.⁴

¹ The unit is: "All full-time and regular part-time outside field erection crew employees employed by the Employer at its Baltimore, Maryland facility, but excluding all inside fabrication employees, temporary employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act."

² All dates are 2014.

³ The petition was filed on February 7, 2014. I will consider on its merits only that alleged interference which 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).

Objection 1

Despite the obvious application and presumption of the *Steiny-Daniel* formula, the Region did not utilize the appropriate formula to determine eligible voters for the election in Case 05-RC-122173.

In support of Objection 1, Petitioner submitted the Stipulated Election Agreement approved by the Region on February 18, 2014.

The Employer argues that Petitioner failed to request that the formula be included in the stipulation and waived the objection when it executed the Stipulated Election Agreement. The Employer further argues that it does not believe that any potential voters were disenfranchised by this waiver, and that the objection does not state that any voters were disenfranchised.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 1.

Objection 2

During the critical period leading to the election, after February 7, 2014 up to and including March 21, 2014, the Employer has, through its agents, officers, and representatives:

- (a) informed employees in the appropriate unit:
 - (i) That if the Employer “goes union” it will “go bankrupt;”
 - (ii) That the “union does not let people in with no papers”
- (b) granted employees in the appropriate unit:
 - (i) raises in their hourly compensation wages;
- (c) promised the employees in the appropriate unit the Employer will provide:
 - (i) health insurance coverage through and from the company;
 - (ii) an increase in retirement benefit packages;
 - (iii) a full time safety manager to respond to and address the safety concerns presented by the employees in the appropriate unit.

Petitioner provided documentary evidence in support of Objection 2, as well as the names of witnesses who can provide testimony. Petitioner organizer Aaron Bast witnessed the activity described above in (a) and can testify to this objection. Petitioner has also represented that

⁴ On March 27, Petitioner also filed an unfair labor practice charge—Case 05-CA-125505—over the same conduct alleged in these objections. Petitioner requested withdrawal of that charge, without prejudice, on May 9.

witness A witnessed the activity described above in (b) and (c) and can testify to this objection. Regarding the activity described above in (c), Petitioner also provided a letter, attached as Exhibit B, purportedly from the Employer addressed to its employees and dated February 14, 2014; Petitioner asserts this is the first Spanish-language notice the Employer has ever provided to its employees. Petitioner asserts that two of its organizers, Angel Dominguez and Miguel Mijango, can testify to this objection.

The Employer denies that it engaged in any objectionable conduct alleged in Objection 2.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 2.

Objection 3

On the days immediately before and day of the election held at the Lower Concourse of the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001 on March 21, 2014, the Employer has, through its agents, officers, and representatives:

(a) Told the employees in the appropriate unit that they were required to have identification to vote in the election held on March 14, 2014;

(b) Told the employees in the appropriate unit that the Employer would pay them the equivalent of eight (8) hours of pay if they voted “no” in the March 21, 2014 election and took a picture of their “no” vote to show the employer for confirmation;

(c) Told the employees in the appropriate unit they would pay them the equivalent of eight (8) hours of pay if they presented the employer with a paid parking receipt from the date of the election;

(d) Intimated to the employees in the appropriate unit that officers of the Immigration and Naturalization Service would be present and checking identifications during the course of the election;

(e) Told employees in the appropriate unit who are legal U.S. residents that they were in fact no longer legal U.S. residents, residencies had been revoked, or documentation necessary to work in the United States were not current and/or valid.

Petitioner provided a summary of the evidence it intends to present at the hearing, as well as the names of witnesses who can provide testimony. Specifically, Petitioner asserts that witness A witnessed the activity described above in (a) and (b) and can testify to the objection.

Petitioner asserts that witness B witnessed the conduct described above in (c). Petitioner asserts that witnesses A, B, C, D, E, and F witnessed the activity described above in (d) and (e).

The Employer denies that it engaged in any objectionable conduct alleged in Petitioner's Objection 3.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 3.

Objection 4

On the day of the election held at the Lower Concourse of the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001 on March 21, 2014, the Employer has, through its Vice President John Morris:

(a) approached employees in the appropriate unit in the lobby area to speak with, coerce, and poll employees in the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001 concerning the election and the employees' vote.

In support of Objection 4, Petitioner asserts employees A and C, and Organizers Angel Dominguez, Miguel Mijango, and Ronnol Howard witnessed this activity.

The Employer denies that it engaged in any objectionable conduct alleged in Objection 4.

As it appears substantial and material issues have been raised which can best be resolved by record testimony, I hereby direct that a hearing be held with respect to the issues raised by Objection 4.

NOTICE OF HEARING

IT IS HEREBY DIRECTED, pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, that a hearing be held in THE DIVISION OF JUDGES HEARING ROOM, NATIONAL LABOR RELATIONS BOARD, 1099 14TH STREET, N.W., 5TH FLOOR, WASHINGTON, DC, on **Tuesday, June 10, 2014** beginning at

10:00 a.m., and continuing on consecutive days thereafter until completed, before a Hearing Officer of the National Labor Relations Board, who will take testimony for the purpose of resolving the issues raised by the Petitioner's Objections herein, at which the parties have the right to appear in person, or otherwise, and give testimony. 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 the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues. Within 14 days from the issuance of such report, any party may file with the Board in Washington, DC, an original and seven copies of exceptions thereto. Immediately upon filing such exceptions, the party filing the same shall serve a copy thereof on the other parties and shall file a copy with the undersigned. If no exceptions are filed thereto, the Board may decide the matter forthwith upon the record or make other dispositions of the case.

Dated at Baltimore, Maryland, this 29th day of May 2014.

/s/ Charles L. Posner

Charles L. Posner, Regional Director
National Labor Relations Board, Region 5
Bank of America Center – Tower II
100 South Charles Street, Suite 600
Baltimore, MD 21201

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

IN THE MATTER OF:

PICO INDUSTRIES, INC.

and

CASE NO. 05-RC-122173

IRONWORKERS DISTRICT COUNCIL
OF MID-ATLANTIC STATES, LOCAL 5

OBJECTIONS TO CONDUCT AFFECTING RESULTS OF ELECTION AND
PRAYER FOR BARGAINING ORDER

On behalf of Petitioner Iron Workers' District Council of the Mid-Atlantic States of the International Association of Bridge, Structural, Ornamental & Reinforcing Iron Workers, & Local 5¹ (Petitioners) and pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board the Petitioner hereby files objections to the March 21, 2014 Board election held at the Lower Concourse of the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001.

Prior to the stipulated election agreement the Petitioners had received sign authorization cards authorizing the Petitioners to represent a majority of the employers employees in an appropriate unit, later stipulated to, for the purposes of collective bargaining with Pico Industries, Inc.

Pursuant to Section 102.69 the short statement of the reasons for the Petitioner's objections, and which the Petitioners are prepared and available to provide evidence, witnesses, affidavits and testimony, are as follows:

¹ The Petition in this matter was filed on February 7, 2014

c. Told the employees in the appropriate unit they would pay them the equivalent of eight (8) hours of pay if they presented the employer with a paid parking receipt from the date of the election;

d. Intimated to the employees in the appropriate unit that officers of the Immigration and Naturalization Service would be present and checking identifications during the course of the election

e. Told employees in the appropriate unit who are legal US residents that they were in-fact no longer legal US residents, residencies had been revoked or documentation necessary to work in the United States were not current and/or valid.

4. On the day of the election held at the Lower Concourse of the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001 on March 21, 2014 the employer Pico Industries, Inc. has, through its Vice President John Morris:

a. approached employees by Pico Industries, Inc., in the appropriate unit in the lobby area of the to speak with, coerce and poll employees in the National Labor Relations Board Headquarters, 1099, 14th Street NW, Washington, D.C. 20570-0001 concerning the election and the employees vote.

For the foregoing reasons the Petitioners pray the Region set aside the election in case 05-RC-122173 and enter an ORDER requiring Pico Industries, Inc., to recognize and bargain with the Petitioners as the representatives the appropriate unit of the employer's employees. Gissel Packing Co., 395 U.S. 575 (1969).

Respectfully submitted,

HARTNETT GLADNEY HETTERMAN, L.L.C.

/s/ James P. Faul
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Attorneys for Petitioners

CERTIFICATE OF FILING

The undersigned hereby states that on this 27th day of March 2014, I delivered the foregoing to Mr. Charles L. Posner, Regional Director, National Labor Relations Board – Region 5, Bank of America Center, Tower II, 100 S. Charles Street, Ste. 600, Baltimore, MD 21201 By the NLRB E-Filing system.

/s/ James P. Faul



PICO INDUSTRIES
INCORPORATED
 611 W. Ostend St., Baltimore, MD 21230
 Phone: (410) 547-1900 Fax: (410) 547-1982

Febrero 14, 2014

A todos los empleados.

He aquí un resumen de los debates en la reunión "all hands" del mes pasado, lo que se está haciendo para responder a sus inquietudes actuales la administración de la empresa.

La empresa ha podido sobrevivir a la recesión económica, pero el impacto ha puesto mucha presión en nuestras operaciones. Ahora tenemos la oportunidad de reconstruir de vuelta y conseguir trabajos para el futuro impulsada por nuestros clientes actuales. Nuestra capacidad de continuar realizando todos los trabajos actuales es fundamental si queremos asegurar un nuevo trabajo con estos clientes. Pero recuerde, al final va a ser clientes y nuestra capacidad de ganar nuevo negocio rentable a partir de ellos que va a determinar el futuro de PICO, asegurar nuestros puestos de trabajo, y determinar lo que podemos pagar nosotros mismos.

PICO tiene que cambiar para asegurar su crecimiento. Lewis Multz sigue siendo un gran apoyo pero también desea dimitir como consejero delegado y director de la empresa, y para permitir un nuevo liderazgo para la reestructuración para el futuro

La compañía ha escuchado las preocupaciones expresadas por muchas personas y planes para hacer frente a ellos. Parte de ello será necesario la reestructuración de la empresa. Los planes de la compañía incluyen:

- 1 Pagos . Estamos buscando hacer algunos ajustes para ser introducidas en Febrero de 2014. Cualquier aumento en los salarios tendrán que financiarse con ahorros operativos como parte de la reestructuración, pero vamos a hacer algo ahora.
- 2 Seguro de Salud . Estamos siguiendo proactivo: con nuestras obligaciones de ofrecer un plan de salud bajo la Ley. Estamos trabajando con asesores especializados en lo que podemos hacer, pero vamos a cumplir con nuestras obligaciones en ese sentido. Pero entendemos que anticipamos que proporciona el plan de salud obligatorio se sumará costes a la empresa que puede requiere cortes o reducciones en otras áreas.
- 3 Plan 401K: Los mismos consejeros proponer un plan de ahorro de jubilación a la que los empleados pueden contribuir . Esto tiene que caber dentro de los acuerdos de ESOP. Esperamos poder ofrecer algún tipo de programa de ahorro para el retiro en el que los empleados elegibles pueden optar por participar
- 4 . Seguridad. los costos de seguro de Pico son demasiado altos y han aumentado debido a cuestiones históricas que todavía nos acechan. PICO está haciendo un esfuerzo consciente para reducir los costos, pero se necesitará tiempo para conseguir reducir costos de seguro. Costos sólo disminuirá si operamos



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en un ambiente seguro y mejorar nuestro historial. Tenemos un plan de seguridad y un plan para designar a un oficial de seguridad que le proporcionará. entrenamiento; controles de seguridad ; inspección de equipos , y una revisión del desempeño de todos los empleados en este sentido. El responsable de seguridad se encargará de supervisar todas las operaciones de la compañía en materia de seguridad e informar directamente al Gerente General

5. ESOP -Distribución: Todos los participantes en el plan reciba su notificación anual del valor contenido en el fideicomiso ESOP. Ya tenemos dos jubilados y hemos hecho los pagos anuales. Otros también han recibido pagos pequeños bajo las reglas. Enviamos las reglas que rigen los convenios de distribución de los participantes del plan. Vamos a enviar nuevamente y permanecerá disponible en caso de tener preguntas

En cuanto a la estructura de la empresa debemos buscar un gerente general para reemplazar Lewis y planeamos crear un grupo de 3 personas de administración. Adicionalmente, como parte de la reestructuración, estamos considerando la división de la erección/instalación y fabricación de plantas en dos divisiones operativas administradas por separado. Cada uno tendrá su propia información del encargado de la Gerencia General. Al hacer estos cambios, queremos reclutar personas nuevas con experiencia, así como la búsqueda de talentos de los empleados actuales. Ustedes, los empleados actuales, tienen la capacidad de aportar ideas y crecer dentro de la empresa. Lo ideal sería que la compañía encuentre una buena mezcla de nombramientos internos y contrataciones externas

Nos reuniremos de nuevo sobre una base trimestral para revisar el progreso. La siguiente reunión de "all hands" será en Marzo y se les avisará la fecha. Mientras tanto, como siempre, sepan que pueden contactarme directamente

Gracias

John Morris por Lewis Multz

1. Despite the obvious application and presumption of the Steiny-Daniel formula, the Region did not utilize the appropriate formula to determine eligible voters for the election in Case. 05-RC-122173.

2. During the critical period (Ideal Electric Mfg. Co., 134 NLRB 1275 (1961)) leading to the election, after February 7, 2014 up to and including March 21, 2014 the employer Pico Industries, Inc. has, through its agents, officers and representatives:

- a. informed employees in the appropriate unit:
 - i. That if the employer “goes union” it will “go bankrupt;”
 - ii. The that “union does not let people in with no papers;”
- b. granted the employees in the appropriate unit:
 - i. raises in their hourly compensation wages;
- c. promised the employees in the appropriate unit the employer will provide:
 - i. health insurance coverage through and from the company;
 - ii. an increase in retirement benefit packages;
 - iii. a full time safety manager to respond to and address the safety concerns presented by the employees in the appropriate unit

3. On the days immediately before and day of the election held at the Lower Concourse of the National Labor Relations Board Headquarters, 1099 14th Street NW, Washington, D.C. 20570-0001 on March 21, 2014 the employer Pico Industries, Inc. has, through its agents, officers and representatives:

- a. Told the employees in the appropriate unit that they were required to have identification to vote in the election held on March 21, 2014;
- b. Told the employees in the appropriate unit that the employer would pay them the equivalent of eight (8) hours of pay if they voted “no” in the March 21, 2014 election and took a picture of their “no” vote to show the employer for confirmation;