

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

SEVEN-UP/RC BOTTLING COMPANY
OF SOUTHERN CALIFORNIA, INC.

Employer

and

Case 21-RD-2816

RUBEN BARAJAS, an Individual

Petitioner

and

AMALGAMATED INDUSTRIAL WORKERS
UNION LOCAL 2061 NFIU/LIUNA

Union

SEVEN-UP/RC BOTTLING COMPANY
OF SOUTHERN CALIFORNIA, INC.

Employer

and

Case 21-RC-20881

TEAMSTERS LOCALS 495, 848, 896, and 952

Petitioner

UNITED INDUSTRIAL, SERVICE, TRANSPORTATION,
PROFESSIONAL AND GOVERNMENT WORKERS OF
NORTH AMERICA OF THE SEAFARERS INTERNATIONAL
UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES
AND INLAND WATERS DISTRICT/NMU, AFL-CIO

Intervenor

**SUPPLEMENTAL DECISION
ON OBJECTIONS
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Supplemental Decision¹ contains my conclusions regarding the Employer's objections to the election conducted on July 13, 2006.² As fully set forth below, I conclude that Objection No. 5 be overruled and that the substantial and material issues of fact or law raised by the Employer Objections Nos. 1, 2, 3, and 4 can best be resolved by a hearing.

The Employer's objections allege that Teamsters Locals 495, 848, 896, and 952 (hereinafter "Teamsters"), by and through its representatives and agents, 1) interrogated employees at the voting locations and distributed leaflets that asked employees to advise the Teamsters as to how they voted in the election, 2) photographed employees, their automobiles, their trucks and license plate numbers, and recorded employees' truck numbers at the voting locations, 3) photographed Amalgamated Industrial Workers Union Local 2061 NFIU/LIUNA President Joe Silva's cars, used the photograph of the cars in a Teamsters leaflet, and vandalized the cars, and 4) during the course of the election and in the polling areas, yelled "go Teamsters," wore Teamsters buttons and t-shirts, talked to voters, shook hands with employees, and asked employees to vote for the Teamsters. Employer Objection No. 5 alleges that the conduct of the election was based on petitions filed at a time when a written

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² The unit of employees which voted in the election was composed of: All full-time and regular part-time body and fender employees, garage mechanic "A," garage mechanic "B," garage mechanic helper, production maintenance, production maintenance helper, dispenser mechanic "A", dispenser mechanic "B," dispenser mechanic "C," dispenser/vending utility, semi-driver, semi-driver (doubles), bulk pre-sales delivery (40+), pre-sales delivery, fountain/vending delivery drivers, utility driver, merchandiser, special events crew, display/stocker, facility painter, fleet painter, shipping and receiving, syrup/CIP, carpenter, janitor, machine operator, yard tractor operator, lift truck operator, warehouse crew, plant crew, stockroom/material attendant, garage utility, seasonal help-delivery drivers, seasonal help, seasonal other (full-time and part-time), employed at the Employer's facilities located in Los Angeles County; Orange County; and at the Employer's Camarillo, California facility; excluding all other employees, technical employees quality control technicians, professional employees, temporary employees, office clerical employees, sales persons, guards, and supervisors as defined in the Act.

contract was in effect between the Employer and Amalgamated Industrial Workers Union Local 2061 NFIU/LIUNA (hereinafter "Amalgamated"), thereby violating the Board's "contract bar" rule.

Procedural History

The petition in Case 21-RD-2816 was filed by Ruben Barajas (hereinafter "RD Petitioner"), an individual, on February 9, 2006. The petition in Case 21-RC-20881 was filed by Teamsters, on March 15, 2006. The cases were consolidated for hearing and a hearing was conducted. A Decision and Direction of Election issued on June 7, 2006. The election was conducted on July 13, 2006. The tally of ballots served on the parties at the conclusion of the election showed that of approximately 697 eligible voters, 280 cast ballots for Teamsters, 179 cast ballots for Amalgamated, 7 cast ballots for the United Industrial, Service, Transportation, Professional, and Government Workers of North America of the Seafarers International Union of North America, Atlantic, Gulf, Lakes, and Inland Waters District/NMU, AFL-CIO (hereinafter "Seafarers"), and 3 cast ballots against the above-referenced unions. There were 2 void ballots and 9 challenged ballots, which are sufficient in number to affect the results of the election. A majority of the valid votes counted plus challenged ballots were cast for the Teamsters.

The Employer timely filed objections to the conduct of the election, a copy of which is attached hereto as Attachment A. The Objections were timely served upon the parties involved herein. Teamsters deny engaging in any objectionable conduct.

The Objections and Analysis

Objection No.1

Teamsters, by and through its representatives and agents, interrogated employees at the voting locations and distributed leaflets that asked employees to advise the Teamsters as to how they voted in the election.

In support of Objection No. 1, the Employer contends that, on the day of the election, at the Vernon facility, the Teamsters, by and through its representatives and agents, asked employees that were exiting the facility, how they voted and

distributed flyers asking that they either report their vote to a Teamsters toll free number or tell a Teamsters agent how they voted. The Employer contends that the Teamsters engaged in this conduct in the presence of other employees that were entering the facility.

Teamsters flatly deny engaging in the conduct described above.

Amalgamated did not submit any direct evidence in support of Objection No. 1 and instead makes a blanket request that the Board sustain the Employer's objections.

Seafarers and the RD Petitioner did not respond to Objection No. 1.

Based on the forgoing, the undersigned concludes that this objection raises substantial and material issues of fact and credibility that can best be resolved after a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Objection No. 1.

Objection No. 2

Teamsters, by and through its representatives and agents, photographed employees, their automobiles, their trucks and license plate numbers, and recorded employees' truck numbers at the voting locations.

In support of Objection No. 2, the Employer alleges that during the election campaign up to and including the day of the election, Teamsters, by and through its representatives and agents, photographed employees and their vehicles as the Teamsters passed out literature at the entrance of the Vernon facility. The Employer also alleges that Teamsters agents and organizers verbally threatened employees that chose not to accept Teamster leaflets as they entered and exited the Vernon facility. The Employer argues that the photographing, accompanied by threats, intimidated employees. The Employer also contends that at the Vernon facility, Teamsters, by and through its representatives and agents, wrote down the truck numbers of those employees that refused to disclose how they voted in the election. The Employer contends that some employee attempted to use the rear entrance in an effort to avoid the Teamsters questioning.

Teamsters flatly deny engaging in the conduct described above.

Amalgamated did not submit any direct evidence in support of Objection No. 2 and instead makes a blanket request that the Board sustain the Employer's objections.

Seafarers and the RD Petitioner did not respond to Objection No. 2.

Based on the forgoing, the undersigned concludes that this objection raises substantial and material issues of fact and credibility that can best be resolved after a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Objection No. 2.

Objection No. 3

Teamsters, by and through its representatives and agents, photographed Amalgamated Industrial Workers Union President Joe Silva's cars, used the photographs of the cars in a Teamsters leaflet, and vandalized the cars.

In support of Objection No. 3, the Employer contends that on about June 30, 2006, Teamsters, by and through its representatives and agents, went to the home of newly-elected Amalgamated President, Joe Silva, and photographed his cars. The Employer further contends that on about July 3, 2006, Teamsters, by and through its representatives and agents, vandalized and photographed Silva's cars and then on about July 6, 2006, distributed flyers depicting the vandalized cars to employees. The Employer contends that employees who heard of the vandalism became concerned that the election campaign was getting personal. The Employer argues that the Teamsters conduct sent a clear message that those who did not support the Teamsters would be retaliated against.

Teamsters flatly deny engaging in the conduct described above.

Amalgamated did not submit any direct evidence in support of Objection No. 3 and instead makes a blanket request that the Board sustain the Employer's objections.

Seafarers and the RD Petitioner did not respond to Objection No. 3.

Based on the forgoing, the undersigned concludes that this objection raises substantial and material issues of fact and credibility that can best be resolved after a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Objection No. 3.

Objection No. 4

During the course of the election and in the polling areas, Teamsters, by and through its representatives and agents, yelled "go Teamsters," wore Teamsters buttons and t-shirts, talked to voters, shook hands with employees, and asked employees to vote for the Teamsters.

In support of Objection No. 4, the Employer contends that, on the day of the election, Teamsters, by and through its representatives and agents, arrived to the pre-election conference at the Vernon facility with at least seven agents who then lingered after the pre-election conference ended. The Employer further contends that these Teamsters agents approached employees as they were waiting in line to vote and shook their hands and asked them to vote for Teamsters. The Employer further contends that the Teamsters observers wore buttons and t-shirts in the polling area.

Teamsters flatly deny engaging in the conduct described above.

Amalgamated did not submit any direct evidence in support of Objection No. 4 and instead makes a blanket request that the Board sustain the Employer's objections.

Seafarers and the RD Petitioner did not respond to Objection No. 4.

Based on the forgoing, the undersigned concludes that this objection raises substantial and material issues of fact and credibility that can best be resolved after a hearing. Accordingly, I shall direct that a hearing be held to resolve the issues raised by Objection No. 4.

Objection No. 5

The conduct of the election based on petitions filed at a time when a written contract was in effect between the Employer and Amalgamated violated the Board's "contract bar" rule.

A pre-election hearing was conducted in this matter based on the Employer's contention that a contract bar should prohibit further processing of the petitions. The Regional Director issued a Decision and Direction of Election concluding that there was no contract bar. Thereafter, on June 7, 2006, the Employer filed a Request for Review. On July 12, 2006, the Board denied the Employer's Request for Review.

Teamsters argue that Objection No. 5 has no merit because the Request for Review on this issue was denied by the Board.

Amalgamated did not submit any direct evidence in support of Objection No. 5 and instead makes a blanket request that the Board sustain the Employer's objections.

Seafarers and the RD Petitioner did not respond to Objection No. 5.

Inasmuch as the Board issued an order denying the Employer's Request for Review, I conclude that Objection No. 5 be overruled.

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted objections, I conclude that Employer's Objections Nos. 1, 2, 3, and 4 can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on Employer's Objections Nos. 1, 2, 3, and 4.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by Employer's Objections Nos. 1, 2, 3, and 4 and that Objection No. 5 be overruled.³

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 the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of Employer's Objections Nos. 1, 2, 3, and 4. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.⁴

³ Under the provisions of Section 102.69 and 192.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570. The request for review must be received by the Board in Washington by August 22, 2006. 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 which are not included in the Supplemental Decision, are not part of the record before the Board unless appended to the request for review or opposition thereto which 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 Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

⁴ This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on Friday, August 18, 2006, **and such consecutive days thereafter until concluded**, at 9 a.m., PDT, in Hearing Room 902, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on August 8, 2006.

/s/[Victoria E. Aguayo]_____

Victoria E. Aguayo
Regional Director
Region 21
National Labor Relations Board