

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34**

C & G HEATING AND AIR CONDITIONING, INC.

Employer

and

UNITED ASSOCIATION OF PLUMBERS AND
PIPEFITTERS, LOCAL 777

Petitioner

Case No. 34-RC-2408

REPORT ON OBJECTION

Pursuant to a Stipulated Election Agreement approved by the Regional Director, a secret ballot election was conducted on November 24, 2010, among certain employees of the Employer.¹ The Tally of Ballots prepared after the election and served upon the parties revealed that a majority of the valid votes counted were cast for the Petitioner.² On December 1, 2010, the Employer filed a timely Objection to the election (Exhibit 1), a copy of which was sent to the Petitioner.

Based upon an investigation conducted pursuant to Section 102.69 of the Board's Rules and Regulations, I recommend that the Objection be overruled.

In its Objection, the Employer alleges that during the election the Petitioner's representative [Peter J. Alfieri, herein called Alfieri] sat in his vehicle parked directly outside the polling place and "could clearly observe and communicate with employees entering and exiting the polling place." In support of the Objection, the Employer provided testimony from two voters that during the 7:30 a.m. to 8:30 a.m. voting session, they observed Alfieri sitting in his vehicle that was parked on the street behind

¹ All full-time and regular part-time installation and service technicians and apprentices employed by the Employer at its Torrington, Connecticut facility; but excluding all professional employees, guards and supervisors as defined in the Act.

² Out of 9 votes casts, 6 votes were cast in for Petitioner and one vote was cast against Petitioner, and 2 ballots were challenged.

the facility. More specifically, they report seeing the vehicle in that location when they came in to vote at around 8:05 a.m., and state that it was still parked in the same location when they returned to the area at 8:35 a.m. Both witnesses assert that Alfieri had a clear view of anyone entering or exiting the polling area. One of the voters further states that Alfieri "would have been able to look through the window of the garage door and possibly observe the balloting process." The Employer estimates that Alfieri's vehicle was parked 77 feet from the garage door.

The investigation disclosed that the election was conducted in a garage area located in the back of the Employer's facility, and that all of the voters entered the voting area from outside the facility through a door to the garage. Next to that door are overhead garage doors with windows which, according to the Board agent who conducted the election, were covered with cardboard throughout the election. The garage doors open to a small parking area which abuts a public street. Thus, it appears that all voters entering the garage to vote would have been visible from the location where Alfieri's vehicle was allegedly parked. No evidence was proffered that during the election Alfieri communicated with any voters or engaged in any electioneering activity.

In response to the Objection, Alfieri testified that he was the only representative for the Petitioner at the election. He states that he parked his vehicle on the public street behind the Employer's facility, approximately 200 feet from the garage door entrance to the voting area. He attended the pre-election conference at approximately 7:00 a.m., after which he left the Employer's facility in his vehicle prior to the beginning of the election at 7:30 a.m. He stayed at a Burger King restaurant about two miles from the Employer's facility until about 8:25 a.m., then parked at a Subway restaurant near the facility until about 8:34 a.m., at which time he parked his vehicle in the same location on the public street behind the Employer's facility and entered the garage following the conclusion of the voting. He noted that the windows of the overhead garage doors were covered with cardboard.

Based upon the foregoing, I find no merit to the Employer's Objection. At best, the Employer's evidence shows that Alfieri was positioned on a public street in his vehicle 77 feet from the entrance to the voting area, where he could observe voters entering the garage to vote during a significant portion of the morning voting session.

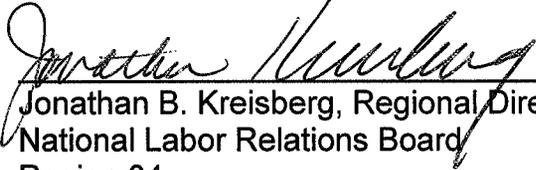
Such conduct without more is insufficient to establish either objectionable electioneering or objectionable surveillance. See *J.P. Mascaro & Sons*, 345 NLRB 637, 638-639 (2005); *U-Haul Co. of Nevada, Inc.*, 341 NLRB 195, 196 (2004). More specifically, I note the undisputed absence of evidence that Alfieri engaged in any electioneering activity during the election; that he was located a significant distance from the entrance to the voting area in a location where voters did not have to pass by him on their way to vote, and which was not a declared no-electioneering area; and that there is insufficient evidence to establish that he could either see into, or be seen from, the voting area itself.

Accordingly, I recommend that the Objection be overruled and that a Certification of Representative issue.

Right to file Exceptions

Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570, or electronically pursuant to the guidance that can be found under "E-gov" on the Board's web site at www.nlr.gov. This request must be received by the Board in Washington, D.C. by December 30th, 2010.

Dated at Hartford, Connecticut this 16th day of December, 2010.


Jonathan B. Kreisberg, Regional Director
National Labor Relations Board
Region 34

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION THIRTY-FOUR [34]
AT
HARTFORD CONNECTICUT

IN THE MATTER OF : CASE 34-RC-2408
:
C & G HEATING & AIR :
CONDITIONING, INC. :
:
VERSUS :
:
THE UNITED ASSOCIATION OF :
PLUMBERS & PIPE FITTERS : EMPLOYER'S OBJECTIONS TO
LOCAL SEVEN HUNDRED & : CONDUCT AFFECTING THE
SEVENTY-SEVEN [777] : ELECTION

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EMPLOYER'S
OBJECTIONS TO CONDUCT
AFFECTING THE ELECTION

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Pursuant to the:

BOARD'S RULES AND REGULATIONS, Section [§] 102.69 [a],

the employer hereby files its objections, to conduct of the union, which affected the outcome of the election, in the instant case.

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THE OBJECTION

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Subsequent to the pre-election conference and prior to the commence of the post election conference, but instead during the election itself, the union stationed its officer and agent on the street, parked directly outside the polling place.

The union's agent, sitting in a parked vehicle, could clearly observe and communicate with all employees entering and exiting the polling place, and vice versa.

In addition, the union's agent was able to, in some instances, observe the identity and conduct of employees, casting their ballots, at our near the polling place, during the course of the election.

The union by the above and other acts, engaged in objectionable conduct, in the instant case.

See:

PIGGLY WIGGLY, #011, 168 NATIONAL LABOR RELATIONS BOARD 792 (1967);

PEPSI-COLA BOTTLING, 291 NATIONAL LABOR RELATIONS BOARD 578;

HOLLINGSWORTH MANAGEMENT SERVICE, 342 NATIONAL LABOR RELATIONS BOARD 050 (2004);

TYSON FRESH MEATS, INC., 343 NATIONAL LABOR RELATIONS BOARD 129.

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EVIDENCE IN SUPPORT OF THE EMPLOYER'S OBJECTIONS
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The employer by separate delivery will provide the regional director with copies of confidential evidence, in support of its objections.

Further, the employer stands ready to present witnesses at the appropriate time.

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CERTIFICATE OF SERVICE

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I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent by telecopier from 937-848-3988 to facsimile machine 860-240-3564 and by ordinary postage prepaid mail to:

Mr. Jonathan B. Kreisberg
Regional Director
National Labor Relations Board [NLRB]
Region Thirty Four [34]
A. A. Ribicoff Federal Building Suite 410
450 Main Street
Hartford, Connecticut 06790;

I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent by telecopier from 937-848-3988 to facsimile machine 860-240-3564 and by ordinary postage prepaid mail to:

Mr. Zachary Parsons
Board Agent
National Labor Relations Board [NLRB]
Region Thirty Four [34]
A. A. Ribicoff Federal Building Suite 410
450 Main Street
Hartford, Connecticut 06790;

I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent by telecopier from 937-848-3988 to facsimile machine 860-489-2801 and by ordinary postage prepaid mail to:

Mr. John Grustas
Secretary/Treasurer
C&G Heating & Air Conditioning, Inc.
977 East Main Street
Torrington, Connecticut 06790;

Mr. James Grustas
President
C&G Heating & Air Conditioning, Inc.
977 East Main Street
Torrington, Connecticut 06790;

I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent by telecopier from 937-848-3988 to facsimile machine 614-462-2616 and by ordinary postage prepaid mail to:

Mr. Michael Asensio
Attorney At Law
Baker & Hostetler
2100 Capital Square
65 East State Street
Columbus, Ohio, 43215-4260;

I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent from telecopier 937-848-3988 to facsimile machine 860-290-9611 and by ordinary postage prepaid mail to:

Mr. John Fussell, Esquire
Robert M. Cheverie & Associates
Commerce Center One
Suite 101
333 East River Drive
East Hartford, Connecticut 06108 and

I certify that one [1] copy of the EMPLOYER'S OBJECTIONS TO CONDUCT AFFECTING THE ELECTION was sent from telecopier 937-848-3988 to facsimile machine 203-317-4759 and by ordinary postage prepaid mail to:

Peter J. Alfieri
Organizer
United Association Of Plumbers & And Pipefitters
Local Seven hundred & seventy-seven [777]
1250 East Main Street
Meridan, Connecticut 06450

this first [1st] day of December, 2010



Wesley B. Vanover

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A Federal Labor Practice

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DATE OF MAILING December 16, 2010

AFFIDAVIT OF SERVICE OF copies of REPORT ON OBJECTION

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by mail upon the following persons, addressed to them at the following addresses:

James Grustas, Jr., President
C & G Heating and Air Conditioning, Inc.
977 East Main Street
Torrington, CT 06790

Bud Burdzinski and
Wesley Vanover
Burdzinski and Partners Incorporated
2393 Hickory Bark Drive
Centerville, OH 45458

Peter J. Alfieri, Organizer
United Association of Plumbers and
Pipefitters, Local 777
1250 East Main Street
Meriden, CT 06450

Robert M. Cheverie, Esquire
Robert M. Cheverie & Associates, P.C.
Commerce Center One
333 East River Drive, Suite 101
East Hartford, CT 06108

Subscribed and sworn to before me this 16th day

of December, 2010

DESIGNATED AGENT Marcelina Cabrera



NATIONAL LABOR RELATIONS BOARD