NOT INCLUDED IN
BOUND VOLUMES

Fullerton, CA
PMH

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CARGILL, INC.

Employer

and

Case 21-RC-136849

UNITED FOOD & COMMERCIAL
WORKERS UNION LOCAL NO. 324

Petitioner

DECISION AND DIRECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held December 4, 2014, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 14 for and 14 against the Petitioner, with three challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and adopts the hearing officer's findings[1] and recommendations.[2]

[1] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt, pro forma, the hearing officer's overruling of the challenges to the three challenged ballots and Objections 2, 3 and 4. By Order dated June 24, 2015, the Board denied the Employer's request for review of the Regional Director's overruling of the Employer's Objection 1 without a hearing.

In adopting the recommendation to overrule the Employer's Objection No. 5, alleging that certain conduct by prounion employees waiting in line to vote warrants a new election, we find that the conduct of these voters has not "'so substantially impaired the employees' exercise

DIRECTION

IT IS DIRECTED that the Regional Director for Region 21 shall, within 14 days of this Decision and Direction, open and count the ballots of Donna Teuscher, Josh Ennulat, and Leonardo Garcia. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

Dated, Washington, D.C., September 30, 2015.

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Mark Gaston Pearce, Chairman

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Philip A. Miscimarra, Member

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Kent Y. Hirozawa, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

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of free choice as to require that the election be set aside.'" *Rheem Mfg. Co.,* 309 NLRB 459, 463 (1992) (quoting *Southeastern Mills*, 227 NLRB 57, 58 (1976)). The record indicates that as approximately 10-15 employees waited in line to vote, the group of employees was very loud. Some individual employees cursed, some discussed how they would vote, approximately five to seven employees chanted, "Yes we can," and one employee testified that he heard other voters in the line behind him "boo" an employee who was leaving the polling area after voting. Contrary to the Employer's claims, this conduct is distinguishable both from the coercive gauntlet that voters were forced to pass in order to vote in *Pepsi Cola Bottling Co.,* 291 NLRB 578, 579 (1988) (setting aside election where approximately twenty union supporters wearing union paraphernalia formed a "gauntlet" outside the voting room through which arriving voters were forced to pass while being subjected to "chants, cheers, and other antics"), and from the overtly threatening voting-line misconduct in *Westwood Horizons Hotel*, 270 NLRB 802 (1984), and *NLRB v. McCarty Farms, Inc.,* 24 F.3d 725, 729 (5th Cir. 1994). And, as the hearing officer noted, although the closeness of the election is an important consideration, that factor does not alter the objecting party's burden to prove that there has been misconduct to warrant setting aside the election in the first instance. *Consumers Energy Co.,* 337 NLRB 752, 752 fn. 2 (2002). The Employer has not made such a showing here.