

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CAPAY, INCORPORATED, D/B/A FARM  
FRESH TO YOU

Employer

and

Case 20-RC-153475

BAKERY, CONFECTIONERY,  
TOBACCO WORKERS & GRAIN  
MILLERS UNION, LOCAL 85

Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision Regarding Objections to Election and Certification of Representative is denied as it raises no substantial issues warranting review.<sup>1</sup>

PHILIP A. MISCIMARRA, MEMBER

KENT Y. HIROZAWA, MEMBER

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., October 28, 2015

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<sup>1</sup> In its Request for Review, the Employer raises electioneering and surveillance issues that it did not first present to the Regional Director. Accordingly, we will not consider them here. See NLRB Rules and Regulations, Sec. 102.67(e) (2015). In any event, the Employer's arguments are without merit. The alleged misconduct did not involve prolonged conversations with voters, and it occurred several hours before the polling period and far from the designated polling area. See *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1119 (1982), *enfd.* 703 F.2d 876 (5th Cir. 1983), cited in *J.P. Mascaro & Sons*, 345 NLRB 637, 638-39 (2005).

Member Miscimarra would find that the Employer sufficiently raised its electioneering and surveillance arguments in its timely-filed Objections. On the merits, he agrees with his colleagues that the Employer failed to present evidence raising substantial and material issues regarding either argument.