

**NATIONAL LABOR RELATIONS BOARD
REGION 8**

OHIO COUNCIL 8, AMERICAN	:	CASE NO: 08-RC-185999
FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	
AFL-CIO	:	
	:	
Petitioner,	:	EMPLOYER'S REQUEST FOR
	:	REVIEW
and	:	
	:	
BRIGHTSIDE ACADEMY	:	
	:	
Respondent	:	
	:	

The Employer, Brightside Academy, Inc., submits this Request for Review under Sections 102.69 (c)(2) and 102.67 of the Board's Rules and Regulations of the Regional Director's November 18, 2016 Order Dismissing Objections and Certification of Representation (the "Order"). Under Section 102.67 of the Board's Rules and Regulations, the Request for Review must be granted because the Regional Director's Order raises a substantial question of law or policy by departing from officially reported Board precedent when it dismissed the Employer's Objection without hearing. The Employer's Objection and Offer of Proof raised a substantial issue of electioneering and the conduct of the election, which if proved in a hearing, would have warranted setting aside the election.

BACKGROUND

The following facts are from the Election Agreement, the Tally of Ballots and the Order, all of which are appended to this Request for Review.

The Employer operates a Head Start program at 3 locations in Toledo, Ohio, all of which are involved in the election in this case, where it employed both professional and non-professional employees. The Petitioner, AFSCME Region 8 (the "Union"), sought to represent the Employer's employees. The Regional Director approved an election agreement in which the Employer and Union agreed to a Sonotone election to be held on November 9, 2016 in one session conducted simultaneously at the 3 locations: Woodville, City Park, and LaGrange. (Election Agreement.)

The Tally of Ballots showed that the professionals voted unanimously for inclusion and that the overall voting unit voted for the Union's representation 37 votes for to 36 against. There were no challenges or void ballots. (Tally of Ballots.)

THE OFFER OF PROOF

The following is from the Employer's Offer of Proof, which was filed and before the Regional Director. A copy is appended.

On November 9, 2016, before the polls opened, agents of the Union stood outside each of the 3 buildings which contained the voting locations and passed out 2 campaign items – a flyer urging employees to vote yes, and a long stemmed green carnation – to employees entering the 3 buildings.

The LaGrange polling area was in a classroom. The Union Observer, Employer Observer (both of whom were eligible voters), and the Board Agent sat at a table inside the classroom with the ballots and ballot box. During the voting, before all employees had cast their votes, an employee came in to vote, and upon reaching the voting table, gave the Union's Observer a long stemmed green carnation. The Union's Observer

placed the green carnation on the voting table where it stayed while the remainder of the LaGrange employees approached the table and then voted.

Immediately after the same employee gave the green carnation to the Union's Observer, the employee also gave the Union's Observer a wad of cash. The Union's Observer, who was an employee eligible to vote, put it in her pocket.

As noted above, the election was decided by one vote.

THE REGIONAL DIRECTOR'S DISMISSAL OF THE OBJECTION WAS A DEPARTURE FROM OFFICALLY REPORTED BOARD PRECEDENT

A. The Green Carnation

The green carnation was unmistakably a pro-union message. The agents distributed this right before the election along with a flyer which urged employees to vote yes for the Union. When the Union's Observer accepted the green carnation in the polling area, she did not then hold it, pin it to her coat or blouse or do anything which would suggest to those employees later entering the polling area that it was a sign of her personal pro-union sympathies. Instead, she left it on the Board Agent's election table where all remaining voters would not only see the pro-union message in the polling area as they prepared to vote, but those voters would be left to speculate whether the green carnation represented the pro-union sympathies of the Union Observer, the Company's Observer or the Board Agent. In an election decided by only one vote, the seriousness of the Union Observer's conduct is obvious.

The Regional Director's Decision and Order failed to address the significance of the Observer's decision to place the green carnation on the Board's election table where the identity of the election participant sponsoring its pro-union message – Union, Company or Board – was unclear to the voters preparing to vote.

The Regional Director instead ignored this fact and wrongly ruled that the Observer's conduct was controlled by Larkwood Farms, 178 NLRB 226 (1969), where the Board ruled that Observers can wear union insignia without interfering with the election. Larkwood, and the many cases upholding this principle, are inapplicable because the Observer did not wear the green carnation – she put it in a place which created the appearance that the Board, Company, or Union sponsored its pro-union message.

The Regional Director's Decision and Order wrongfully ignored the Board's longstanding precedent for analysis of electioneering in Boston Insulated Wire, 259 NLRB 1118, 1118-19 (1982) enfd 703 F2d 876 (5th Cir. 1983). Under Boston Insulated Wire, the Regional Director should have examined (1) the nature and extent of the electioneering, (2) whether it was conducted by a party to the election or by employees, (3) whether it occurred in a designated "no electioneering area", and (4) whether it was contrary to the instructions of the Board Agent.

Applying Boston, the Regional Director should have concluded that Offer of Proof and Objections required a hearing. The Observer's placement of the green carnation on the Board's election table was significant electioneering since the Union distributed them so close in time to the election which made its pro-union message unmistakable. Moreover, the Observer's placement of the green carnation on the election table is significant, as described above, because it created the possibility that the remaining voters – in an election ultimately decided by one vote – could attribute its pro-union message to the Board. The Board has long held that it should prohibit election conduct which "could reasonably be interpreted as impugning the election standards we seek to

maintain.” Athbo Precision Engineering Corp. 166 NLRB 966 (1967). Moreover, it is unquestioned that the Observer, as agent of the Union, accepted the green carnation and placed it on the election table in a clear no electioneering area. In summary, the Observer’s conduct was objectionable under Boston Insulated Wire.

The Board has applied Boston Insulated Wire to invalidate an election based on the presence of campaign literature “in the customary area at or near the polls” where it could be seen by approaching voters. Pearson Education, Inc., 336 NLRB 979, 979-80 (2001) (anti-union posters seen by voters as they entered the voting area). The Regional Director’s Decision and Order is contrary to both Boston Insulated Wire and Pearson.

The Board closely analyzes cases where there has been campaign material in the polling area, which the Regional Director in his Decision and Order failed to do. See e.g. Alliance Wear, 92 NLRB 55 (1950) (election set aside when Union used sound truck on street outside building which could be heard in polling area); Fieldcrest Cannon, Inc., 318 NLRB 470 (1995) (election set aside when supervisors wearing anti-union placards were near observers who were walking the plant to release employees to vote). C F Firestone Textiles Corp., 244 NLRB 168 (1979) (presence of pro-union sticker on ashtray which was visible on election table for only 15 minutes of a 2 day, 6 hour election not sufficient to affect outcome; “very few” people voted during this period in election involving over 600 employees which was decided by 18 votes).

B. The Exchange of Money

The Regional Director’s Decision and Order wrongfully concluded that “the only way this scenario might have suggested improper conduct is if the observer had given

money to the voter.” This conclusion erroneously assumes without any citation of authority, that while it is wrong for the Union’s election agent to give money to a voter in the polling area, there is nothing wrong with the same Union Agent receiving money in the voting area. This not only makes no sense, but it ignores the fundamental fact that the Union’s Observer was also an eligible voter, as was the nearby Employer Observer, and that this exchange reasonably created the impression that the Union Observer’s vote was for sale in an election that ultimately was decided by one vote. In similar circumstances, the Board has set aside results in an election decided by one vote. Modern Hard Chrome Service Co., 187 NLRB 82 (1970) (Observer’s offer of a loan to one voter with no election context other than it happened when the employee appeared to vote; election set aside).

CONCLUSION

The Request for Review must be granted. The Regional Director’s Decision and Order dismissing the Objection without hearing is contrary to established Board precedent.

Respectfully submitted,

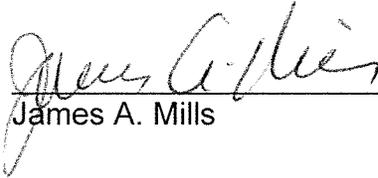


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Attorney for Employer

CERTIFICATE OF SERVICE

I certify that a copy of the Request for Review in this case were served by e-file and U.S. Regular Mail this 2^d day of December, 2016 upon Allen Binstock, Regional Director, National Labor Relations Board, Region 8, 1240 E. 9th Street, Suite 1695, Cleveland, OH 44199-2086 and via email and Regular U.S. Mail upon Sean Grayson, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, 6800 North High Street, Worthington, OH 43085.


James A. Mills

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

Brightside Academy, Inc.

Case 08-RC-185999

The parties **AGREE AS FOLLOWS:**

1. **PROCEDURAL MATTERS.** The parties waive their right to a hearing and agree that any notice of hearing previously issued in this matter is withdrawn, that the petition is amended to conform to this Agreement, and that the record of this case shall include this Agreement and be governed by the Board's Rules and Regulations.

2. **COMMERCE.** The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the National Labor Relations Act and a question affecting commerce has arisen concerning the representation of employees within the meaning of Section 9(c).

Brightside Academy, Inc. is a Pennsylvania corporation with facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, the sole facilities involved herein where it is engaged in the operation of a school for early childhood education. During the previous 12 months, the Employer has derived revenues in excess of \$1,000,000.00 dollars and has purchased and received at its Toledo, Ohio locations goods in excess of \$50,000 directly from points outside the state of Ohio.

3. **LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

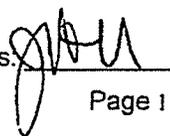
4. **ELECTION.** A secret-ballot election under the Board's Rules and Regulations shall be held under the supervision of the Regional Director on the date and at the hours and places specified below.

DATE: Wednesday, November 9, 2016 HOURS: 7:45 a.m. to 8:45 a.m.
PLACE: Classroom 6
1218 City Park
Toledo, OH 43604

DATE: Wednesday, November 9, 2016 HOURS: 7:45 a.m. to 8:45 a.m.
PLACE: Staff Lounge
545 Woodville Rd
Toledo, OH 43605

DATE: Wednesday, November 9, 2016 HOURS: 7:45 a.m. to 8:45 a.m.
PLACE: Classroom 8
2300 Lagrange
Toledo, OH 43608

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

Initials: 

5. **UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

All full-time professional employees, including headstart lead teachers employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including non-professional employees, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

VOTING GROUP – UNIT B (NON-PROFESSIONAL UNIT)

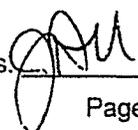
All full-time non-professional employees, including early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including professional employees, headstart lead teachers, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

Those eligible to vote in the election are employees in the above unit who were employed during the payroll period ending Saturday, October 15, 2016, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

6. **VOTER LIST.** Within 2 business days after the Regional Director has approved this Agreement, the Employer must provide to the Regional Director and all of the other parties a voter list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available personal home and cellular telephone numbers) of all eligible voters. The Employer must also include, in a separate section of that list, the same information for those individuals whom the parties have agreed should be permitted to vote subject to challenge. The list must be filed in common,

Initials.  _____
Page 2

everyday electronic file formats that can be searched. Unless otherwise agreed to by the parties, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. The font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. When feasible, the list must be filed electronically with the Regional Director and served electronically on the parties. The Employer must file with the Regional Director a certificate of service of the list on all parties.

7. THE BALLOT. The Regional Director, in his or her discretion, will decide the language(s) to be used on the election ballot. All parties should notify the Region as soon as possible of any voters or potential voters who only read a language other than English.

Two questions shall appear on the ballot of the professional employees in Unit A:

1. Do you wish to be included with nonprofessional employees in a unit for the purposes of collective bargaining? The choices on the ballot will be "Yes" or "No"
2. Do you wish to be represented for purposes of collective bargaining by **OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**? The choices on the ballot will be "Yes" or "No"

The question on the ballot for the non-professional employees in Unit B will be "Do you wish to be represented for purposes of collective-bargaining by **OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**?" The choices on the ballot will be "Yes" or "No"

8. NOTICE OF ELECTION. The Regional Director, in his or her discretion, will decide the language(s) to be used on the Notice of Election. The Employer must post copies of the Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least three (3) full working days prior to 12:01 a.m. of the day of the election. The Employer must also distribute the Notice of Election electronically, if the Employer customarily communicates with employees in the unit electronically. Failure to post or distribute the Notice of Election as required shall be grounds for setting aside the election whenever proper and timely objections are filed.

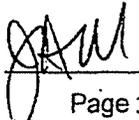
9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Katie Maccagnone, Executive Director (419) 309-2475.

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. TALLY OF BALLOTS. Immediately upon the conclusion of the last voting session, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Initials:  Page 3

Ohio Council 8, American Federation of
State, County and Municipal Employees,
AFL-CIO

Brightside Academy, Inc.
(Employer)

(Petitioner)

By

(Name)

(Date)

/s/ James A. Mills, Esq.

By

(Name)

(Date)

/s/ R. Sean Grayson, Esq.

Recommended:

Roberta Montgomery 10/31/16
/s/ ROBERTA MONTGOMERY,
Field Examiner (Date)

Date approved:

10/31/16

Allen Bystal
Regional Director, Region 08
National Labor Relations Board

Initials:

JAM
Page 4

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
STIPULATED ELECTION AGREEMENT

Brightside Academy, Inc.

Case 08-RC-185999

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3. **LABOR ORGANIZATION.** The Petitioner is an organization in which employees participate, and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work and is a labor organization within the meaning of Section 2(5) of the Act.

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Toledo, OH 43608

If the election is postponed or canceled, the Regional Director, in his or her discretion, may reschedule the date, time, and place of the election.

Initials: *BSA*

5. **UNIT AND ELIGIBLE VOTERS.** The following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

All full-time professional employees, including headstart lead teachers employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including non-professional employees, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

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Those eligible to vote in the election are employees in the above unit who were employed during the **payroll period ending Saturday, October 15, 2016**, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off.

Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause after the designated payroll period for eligibility, (2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and (3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

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Initials:

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The question on the ballot for the non-professional employees in Unit B will be "Do you wish to be represented for purposes of collective-bargaining by **OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO**?" The choices on the ballot will be "Yes" or "No".

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9. NOTICE OF ELECTION ONSITE REPRESENTATIVE. The following individual will serve as the Employer's designated Notice of Election onsite representative: Katie Maccagnone, Executive Director (419) 309-2475.

10. ACCOMMODATIONS REQUIRED. All parties should notify the Region as soon as possible of any voters, potential voters, or other participants in this election who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.503, and who in order to participate in the election need appropriate auxiliary aids, as defined in 29 C.F.R. 100.503, and request the necessary assistance.

11. OBSERVERS. Each party may station an equal number of authorized, nonsupervisory-employee observers at the polling places to assist in the election, to challenge the eligibility of voters, and to verify the tally.

12. TALLY OF BALLOTS. Immediately upon the conclusion of the last voting session, all ballots cast will be comingled and counted and a tally of ballots prepared and immediately made available to the parties.

13. POSTELECTION AND RUNOFF PROCEDURES. All procedures after the ballots are counted shall conform with the Board's Rules and Regulations.

Initials: RR

Brightside Academy, Inc.

(Employer)

Ohio Council 8, American Federation of
State, County and Municipal Employees,

AFL-CIO

(Petitioner)

By

(Name)

(Date)

/s/ James A. Mills, Esq.

(see other copy)

By

(Name)

(Date)

/s/ R. Sean Grayson, Esq.

R. Sean Grayson

Recommended:

/s/ ROBERTA MONTGOMERY,
Field Examiner (Date)

10/31/16

Roberta Montgomery

Date approved:

10/31/16

Alan Bosted

Regional Director, Region 08
National Labor Relations Board

Initials:

JS

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD

Date Filed

Oct 12, 2016

Case No. 08-RC-185999

Date Issued 11/09/2016

City TOLEDO

State OH

Type of Election: (Check one:)

(If applicable check either or both:)

Stipulation

8(b) (7)

Board Direction

Mail Ballot

Consent Agreement

RD Direction Incumbent Union (Code)

BRIGHTSIDE ACADEMY, INC. Employer and OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO Petitioner

TALLY OF BALLOTS

The undersigned agent of the Regional Director certifies that the results of tabulation of ballots case in the election held in the above case, and concluded on the date indicated above, were as follows:

- 1. Approximate number of eligible voters 74
2. Number of Void ballots 0
3. Number of Votes cast for OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO 37
4. Number of Votes cast for XXXXXXXXXXXX
5. Number of Votes cast for XXXXXXXXXXXX
6. Number of Votes cast against participating labor organization(s) 36
7. Number of Valid votes counted (sum 3, 4, 5, and 6) 73
8. Number of challenged ballots 0
9. Number of Valid votes counted plus challenged ballots (sum of 7 and 8) 73
10. Challenges are (not) sufficient in number to affect the results of the election.
11. A majority of the valid votes counted plus challenged ballots (Item 9) has (not) been cast for OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

For the Regional Director

The undersigned acted as authorized observers in the counting and tabulating of ballots indicated above. We hereby certify that the counting and tabulating were fairly and accurately done, that the secrecy of the ballots was maintained, and that the results were as indicated above. We also acknowledge service of this tally.

For BRIGHTSIDE ACADEMY, INC. [Signature]

For OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO [Signature]

For [Blank line]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 8

BRIGHTSIDE ACADEMY

Employer

And

CASE NO. 08-RC-185999

OHIO COUNCIL 8, AMERICAN FEDERATION

OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

Petitioner

DECISION ON OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulated Election Agreement approved by the Regional Director on October 31, 2016, an election was conducted on November 9, 2016 among the employees in the following described unit:

VOTING GROUP -UNIT A (PROFESSIONAL UNIT)

All full-time professional employees, including headstart lead teachers employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including non-professional employees, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

VOTING GROUP -UNIT B (NON-PROFESSIONAL UNIT)

All full-time non-professional employees, including early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including professional employees, headstart lead teachers, executive director, assistant

director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

The tally of ballots issued after the election shows that of approximately 16 eligible voters in "Group A", all 16 cast ballots to be included in the unit with the non-professional employees in "Group B" The second tally of ballots shows that of approximately 74 eligible voters, 37 cast votes for the Union and 36 voted against the Union. There were no challenged ballots.

On November 16, 2016, the Employer filed a timely objection to the election, (attached).

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, an administrative investigation of the objection has been conducted. Concerning the objection, I make the following findings and conclusions.

THE OBJECTION

In the objection, the Employer asserts that the Union "engaged in improper electioneering and other inappropriate conduct" during the hours the polls were open and in the polling area.

It is well settled that "[r]epresentation elections are not lightly set aside," and that "[t]here is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000) (quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted)). Therefore, "the burden of proof on parties seeking to have a Board-supervised election set aside is a heavy one." *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005) (citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989)). To prevail, the objecting party must establish facts raising a "reasonable doubt as to the fairness and validity of the election." *Patient Care of Pennsylvania*, 360 NLRB No. 76 (2014) (citing *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enfd. 414 F.2d 999 (2d Cir. 1969)). Moreover, to meet its burden the objecting party must show that the conduct in question affected employees in the voting unit. *Avante at Boca Raton*, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence that unit employees knew of the alleged coercive incident). I note that these basic principles governing objectionable conduct and its effect on the outcome of elections applies in elections where the margin of victory was small, as here, or large.

The Offer of Proof submitted by the Employer indicates that it will offer testimony proving that representatives of the Petitioner passed out flyers urging a vote for the Petitioner and green carnations to eligible voters outside the buildings before the polls opened, that an eligible voter gave a green carnation and "a roll of money (waded up bills)" to the Petitioner Observer while the polls were open at one of the three locations, and that the green carnation was on the election table for the remainder of the time the polls were open, when other employees voted at that location.

Crediting the evidence in the offer of proof, I cannot conclude that the activity described by the potential witnesses constitutes objectionable conduct that would warrant setting aside the results of the election. First, the Employer does not purport to offer any evidence that the voter

results of the election. First, the Employer does not purport to offer any evidence that the voter had any agency from the Petitioner to offer the observer the carnation or the money. There is no proffered evidence to show that the Petitioner has any responsibility for the conduct of the eligible voter.

The question remains, however, whether the Petitioner observer engaged in any objectionable conduct by receiving the money and carnation and leaving the latter where other voters could see it. Since the eligible voter cannot be viewed as an agent of the Petitioner, her presentation of money to the observer cannot be seen as conduct attributable to the Petitioner. The only way that this scenario might have suggested improper conduct is if the observer had given money to the voter. Moreover, there is no suggestion in the Employer's offer of proof that the observer distributed the money received from the voter to other voters, either during or after the election.

As for the carnation, the Employer appears to be suggesting that it could have been seen by voters as a Petitioner insignia or symbol of support for the Petitioner. The Board, however, has long held that the wearing of insignia or union buttons by observers is not prohibited. Larkwood Farms, 178 NLRB 226 (1969). Thus, even though the observer was the Petitioner's representative at the election table, the conduct of displaying the carnation cannot be considered as electioneering in the polling place. Moreover, the Employer failed to offer and I see no theory to find that the simultaneous offer by the voter of the carnation and the money combined with the display of the carnation was objectionable. Neither act by itself can be said to be objectionable nor can the combination of them be seen as electioneering. Significantly, I note that the offer of proof does not suggest that any words were exchanged by the voter and the observer or by anyone else at the time of the incident.

Therefore, based on the evidence in the Offer of Proof and applying the relevant case law, I conclude that this objection does not raise substantial or material issues of fact and credibility requiring an evidentiary hearing before a Hearing Officer, nor does the Offer of Proof establish that the alleged objectionable conduct, even if proven, would result in overturning the results of the election.

The Employer's Objection is hereby dismissed.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for OHIO COUNCIL 8, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO and that it is the exclusive representative of all the employees in the following bargaining unit:

All full-time professional and non-professional employees, including headstart lead teachers, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, and food service employees, employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio

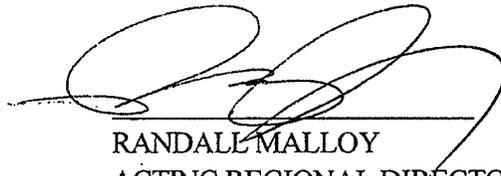
43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by December 2, 2016. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the Request for Review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Cleveland, Ohio, this 18th day of November, 2016.



RANDALL MALLOY
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 8
1240 E. 9TH STREET, STE 1695
CLEVELAND, OHIO 44199-2086

**NATIONAL LABOR RELATIONS BOARD
REGION 8**

OHIO COUNCIL 8, AMERICAN	:	CASE NO: 08-RC-185999
FEDERATION OF STATE, COUNTY	:	
AND MUNICIPAL EMPLOYEES,	:	
AFL-CIO	:	
	:	
Petitioner,	:	EMPLOYER'S OFFER OF PROOF
	:	
and	:	
	:	
BRIGHTSIDE ACADEMY	:	
	:	
	:	
Respondent	:	
	:	

The Employer, Brightside Academy, Inc. submits the following offer of proof in support of its Objections filed this same date.

WITNESS – STEVE KOWALIK, Regional Director AFSCME Ohio Council 8.

Mr. Kowalik will admit that on November 9, 2016, before the election polls opened, representatives of the Union stood outside each of the three Brightside Academy locations – outside of the buildings – including the Lagrange building, and gave each Brightside employee entering their buildings a flyer urging them to vote for the union and a long-stemmed green carnation.

WITNESS – BRIANNE WILEY, Early Head Start Teacher, Lagrange.

Wiley will testify that she was the Employer's Observer at the Lagrange polling station and that Bobbie Purley Davis, Head Start Assistant Teacher at Lagrange, was the Union's Observer. The two Observers and the NLRB agent sat at a table with the NLRB agent throughout the open polling time.

Before everyone had voted, Tanya James, a Head Start Assistant Teacher, came in to vote. James gave Purley Davis a long stemmed green carnation. Purley Davis set the green carnation on the same table being used by the Observers and NLRB Agent for the election. The green carnation stayed there on the election table for the remainder of the polling period, and was therefore there when others voted.

After giving Purley Davis the green carnation, James then handed Purley Davis a roll of money (wadded up bills) which Purley Davis put in her pocket. James then voted and left.

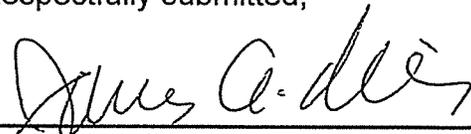
WITNESS - TANYA JAMES, Head Start Assistant Teacher

James will admit that she received the pro-union flyer and green carnation from a Union representative on November 9, before the vote and that she gave it to Purley Davis during polling hours as she came to the election table to vote. James will also admit that while at the table to vote, she gave Purley Davis a wad of money.

WITNESS – BOBBIE PURLEY DAVIS, Head Start Assistant Teacher

Purley Davis will admit that as the Union's Observer, she took the green carnation from James and placed it on the voting table for the remainder of the polling period. She will also admit that while at the voting table, she took money handed to her by James.

Respectfully submitted,

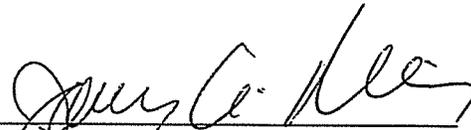


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Attorney for Employer

CERTIFICATE OF SERVICE

I certify that the original and five copies of the Employer's Offer of Proof in this case were served by e-file and U.S. Regular Mail this 16th day of November, 2016 upon Allen Binstock, Regional Director, National Labor Relations Board, Region 8, 1240 E. 9th Street, Suite 1695, Cleveland, OH 44199-2086.



James A. Mills