

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

UNIVERSITY OF CHICAGO
Employer

and

Case 13-RC-198365

TEAMSTERS LOCAL 743
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative raises substantial issues with respect to Objection 2 that can best be resolved after a hearing. Accordingly, the Request for Review is granted with respect to Objection 2, and the case is remanded to the Regional Director for consideration of Objection 2. In all other respects, the Request for Review is denied.¹

¹ Contrary to our dissenting colleague, we find that the Employer has shown that it could produce evidence at a hearing that, if credited, may warrant setting aside the election. Thus, the Employer's offer of proof identifies witnesses who directly observed alleged surveillance by the Petitioner's agents at each of the two voting locations, in addition to photographs of the agents and the signs they displayed. The offered testimony indicates that the Petitioner's agents stationed themselves where voters had to pass in order to vote at the SSA location. A hearing would help determine whether, among other things, the agents at the Regenstein location likewise stationed themselves in areas voters would be forced to pass.

Our decision to direct a hearing finds support in *Transcare New York, Inc.*, 355 NLRB 326 (2010). In that case, the Petitioner offered to produce evidence that, among other things, managers stationed themselves in view of voters accessing the polling sites. Further, the Petitioner allegedly sent an email to a Board agent complaining about the conduct. The Board found, as we find on similar offered proof in this case, that there was sufficient evidence warranting a hearing.

Houston Shell and Concrete Division, 118 NLRB 1511 (1957), relied on by our dissenting colleague, does not warrant a different result. That case involved allegations that union representatives conversed with voters "on company premises," but not necessarily in the polling place, before the voting began or "the morning that the voting started," and that they were in a polling place when the election began but not necessarily during the election. The Board found the conduct unobjectionable. Here, by contrast, the Petitioner's agents allegedly stationed themselves just outside the two voting locations during the election.

Chairman Miscimarra dissented from the Board's prior denial of the Employer's pre-election Expedited Request for Review and Motion to Stay the Election and/or Impound Ballots, in which the Employer raised issues similar to those presented in

PHILIP A. MISCIMARRA, CHAIRMAN

WILLIAM J. EMANUEL, MEMBER

Dated, Washington, D.C., December 15, 2017.

MEMBER PEARCE, dissenting:

Contrary to my colleagues, who grant the Employer's request for review of the Regional Director's dismissal of the Employer's Objection 2, and remand that objection to the Regional Director for a hearing, I would deny the Employer's request for review in its entirety. The Employer has not established any basis under Section 102.67(d) of the Board's Rules and Regulations for granting its Request for Review, nor has it "present[ed] evidence that raises substantial and material factual issues" warranting a hearing. *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992).

The Employer's Objection 2 alleged that agents of the Petitioner stationed themselves in locations voters would be forced to pass in order to vote. I agree with the Regional Director that the evidence described in the Employer's offer of proof does not constitute grounds for setting aside the election if introduced at a hearing. Even

Objections 3 and 4, and as to these issues, Chairman Miscimarra adheres to the views stated in his prior dissent. Nevertheless, Chairman Miscimarra concurs in the denial of review with respect to Objections 3 and 4 on the basis that the Employer's more recent request for review fails to identify extraordinary circumstances warranting reconsideration of the Board's prior action with respect to these matters.

Member Emanuel did not participate in the Board's denial prior to the election of the Employer's Expedited Request for Review and Motion to Stay the Election and/or Impound Ballots, or, in the Alternative, For Remand to the Regional Director, and does not reach the merits of the issues raised there.

Member Emanuel further notes that he would, in a future appropriate case, consider whether and under what circumstances students qualify as "employees" within the meaning of Section 2(3) of the Act.

Member Kaplan is not on the panel and took no part in deciding this case.

accepting the Employer's assertion in its offer of proof that three of the Petitioner's representatives stood outside the main entrances to both of the libraries during the polling, this would not warrant setting aside the election. The mere presence of union representatives outside a building where polling is taking place, without proof of electioneering or other improper conduct, does not constitute objectionable conduct. See *Houston Shell and Concrete Division, McDonough Corp.*, 118 NLRB 1511, 1516 (1957). Further, even if I were to apply *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981, 993 (D.C. Cir. 2001), I would not find that the Petitioner's conduct was objectionable. Unlike in that case, the evidence described in the Employer's offer of proof does not establish that the Petitioner's representatives were located in a no-electioneering zone, that they engaged in conduct contrary to the instructions of a Board agent, or that employees had to pass by the Petitioner's representatives in order to vote.

Because the alleged conduct, even if proven, would not warrant setting aside the election, I find that the Regional Director properly overruled the objections without a hearing. Accordingly, I dissent.

MARK GASTON PEARCE,

MEMBER