

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14**

BILFINGER INDUSTRIAL SERVICES INC.,
Employer

and

CRAFTSMAN INDEPENDENT UNION,
Union

Case No. 14-UD-194983

and

SCOTT CRADER, AN INDIVIDUAL,
Petitioner.

**BILFINGER INDUSTRIAL SERVICES INC.'S OPPOSITION TO THE UNION'S
REQUEST FOR REVIEW**

Bilfinger Industrial Services Inc. (“Employer”) submits this Opposition to the Craftsman Independent Union’s (“Union”) Request for Review of the Regional Director’s Decision and Certification of Results. The Employer fully supports the Regional Director’s decision because, not only is it based on a thorough review of the Hearing Officer’s initial report, but also because the Regional Director carefully and fairly examined the stipulated objections and record evidence independently before issuing a finding. Even after these two independent reviews, the Regional Director correctly found no basis for finding the Employer engaged in objectionable conduct and properly certified the election results. As such, the Union’s request for review is misguided and must be denied.

I. THE UNION’S OBJECTIONS WERE SO VAGUE THAT IT DID NOT SATISFY DUE PROCESS REQUIREMENTS

Due process is a prerequisite for the adjudication of all legal matters in American jurisprudence. Even where there is some record, moving parties are not permitted to abandon their burden of providing meaningful due process. The Board has previously noted that “[i]t is

axiomatic, of course, that the mere presence in the record of evidence relevant to an unstated accusation does not mean the [defending] party . . . had notice that the issue was being litigated.” *Factor Sales*, 347 NLRB 747, 748, n. 7 (2006) (quoting *Conair Corp. v. NLRB*, 721 F.2d 1355, 1372 (D.C. Cir. 1983)). That is because a defending party is entitled to “meaningful notice” of the conduct alleged and to be litigated. *Factor Sales*, 347 NLRB 747 (2006). Meaningful notice requires that the moving party’s objections must be sufficiently specific to put the defendant on notice as to the issues to be litigated. Thus, general and conclusory allegations are insufficient.

As the objecting party, the Union was required to meet due process standards by doing more than presenting objections that were bloated with conclusory statements. Starved for specificity, the Union’s objections could point to no specific conduct or statement by the Employer that amounted to coercive activity. The Joint Motion and Joint Stipulation of Facts explicitly states: “the *parties agree that the Objections to be resolved in this proceeding are the following*:

- (1) Whether Joint Exhibits 3 and 5, disseminated by the Employer’s agent Dan Pepple on about September 1 and 7, 2017, coerced, restrained, and induced employees to vote “yes” in the mail ballot election.” (emphasis added). See Joint Motion and Joint Stipulation of Facts, pg. 8.¹

The Union’s Objection fails to provide any specifics regarding how, where, or when “the employer’s agent Dan Pepple” supposedly “coerced, restrained, and induced” employees to vote “Yes.” See Joint Motion and Joint Stipulation of Facts. Even after the Stipulation of Facts

¹ Contrary to the Union’s assertion, the agreed-to objection and issue as stated in the Joint Motion and Joint Stipulation of Facts is the only issue to be litigated before the Hearing Officer, Regional Director and now the Board. As such, we can only examine – on its face – the language of the objections as stated in the Joint Motion and the accompanying Joint Stipulation of Facts. After agreeing to the precise language of these objections and the limited universe of facts, the Union now argues the Board should examine the objection that “it intended” to offer. See Union Request for Review of the Regional Director’s Decision and Certification at pp. 3-4. All parties, including the Union, are bound by the agreed-to statement of the objections to be litigated and the stipulated facts upon which those objections are based. The Union cannot now add statements, regardless of intent or preference, as a means to puff up its vague and conclusory objections and distract the Board from the real issues at hand.

expanded the available record, little more was added to provide the Employer with any basis for why it was asked to litigate this matter. The Stipulation of Facts states only that the Union's objections "are based on the two letters disseminated by the Employer . . . within the context of negotiations for the 2017-2019 CBA." It would seem, therefore, that the only evidence the Union can proffer to support the allegation that the Employer "improperly coerced and induced" employees to vote "Yes" are the letters themselves, and the provisions of the CBA to which the Union itself agreed. However, the dissemination of letters to eligible voters alone is no ground for overturning a validly held election. It is obvious that the Union would have to specifically identify some language in the letters that amounts to "a threat of reprisal or force or promise of benefit" in order to demonstrate some form of coercion. *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). There is no such statement here. Thus, it is unsurprising that the Union has made no attempt to identify any specific language in either letter that could have improperly coerced or induced employees to vote "Yes."

In addition, the Union's assertion that the CBA itself provides the backdrop for the letters' coercive force amounts to nothing more than speculation and conclusion. As the Regional Director observed, the Union failed to point to any language in the CBA that would give rise to coercive effect. *See* Decision and Certification of results of Election, at p. 3. There is a lack of specificity in the objections, and nothing in the Stipulated Record could place the Employer on meaningful notice as to the conduct allegedly coercing employees to vote "Yes." By itself, failure to provide meaningful due process to the Employer is a sufficient basis to accept the Regional Director's decision and certification of the election results and summarily deny the Union's request for review.

II. THE REGIONAL DIRECTOR AND HEARING OFFICER PROPERLY CONSIDERED THE AGREED-TO OBJECTION, WEIGHED THE AVAILABLE RECORD, AND CORRECTLY DECIDED THERE WAS NO OBJECTIONABLE CONDUCT.

Assuming *arguendo* that the Union's objection met due process standards, the Hearing Officer and Regional Director's final determinations and certification of the election were correct. Both carefully weighed the evidence in the Stipulated Facts and ignored the Union's attempt to include additional exhibits and facts that were beyond the stipulated record. *See* Employer's Motion to Strike. More specifically, the Regional Director properly noted that the Union's decision to become a signatory to the current CBA demonstrates that the agreement was freely negotiated and void of bad faith bargaining. *See* Decision and Certification of results of Election, at p. 3. Moreover, the Regional Director also identified the glaring absence of evidence that now compels acceptance of the Hearing Officer's report: 1) the Union's failure to identify how the terms of the CBA, that the Union willingly agreed to, render Joint Exhibits 3 and 5 coercive; and 2) the lack of evidence in the Joint Motion and Joint Stipulation of Facts showing that the Employer engaged in bad faith. *See* Decision and Certification of results of Election, at p. 3. Because the Regional Director considered the agreed-to objection, carefully examined the stipulated record, and correctly decided there was no objectionable conduct, the Union's request for review must be denied.

III. CONCLUSION

When viewed objectively, the concurring findings of two independent examiners must be respected. The Union's failure to provide meaningful due process to the Employer was so apparent that no reasonable adjudicating body could find any basis for the Objection. Furthermore, based on a thorough examination of the record, the Regional Director still found no basis for finding any objectionable conduct on the part of the Employer. For these two reasons,

the Union's request for review of the Regional Director's decision must be denied and the certification of results left to stand.

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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January, 2018, a copy of the foregoing was electronically filed and served upon the following:

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