

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

BRINK'S GLOBAL SERVICES USA, INC.)	
)	
)	
and)	Case No. 29-RC-260969
)	
LAW ENFORCEMENT SECURITY)	
OFFICERS UNION (LEOSU), LAW)	
ENFORCEMENT OFFICERS SECURITY)	
AND POLICE BENEVOLENT)	
ASSOCIATION (LEOS-PBA))	
)	
Petitioner)	
)	

REPORT ON CHALLENGES

On May 29, 2020,¹ Law Enforcement Security Officers Union (LEOSU), Law Enforcement Officers Security and Police Benevolent Association (LEOS-PBA) (“Petitioner”), filed a petition in this matter seeking to represent certain employees employed by Brink’s Global Services USA, Inc. (“Employer”).

Pursuant to a Decision and Direction of Election, issued by the undersigned on June 25, an election by mail ballot was conducted on July 10 among the employees in the following unit:

All full-time and regular part-time drivers, messengers, vault clerks, and cashiers performing guard functions as defined by Section 9(b)(3) of the Act, employed by the Employer at and out of its facility located at 184-45 147th Avenue, Suite 101, Springfield Gardens, New York, but excluding all other employees, including managerial employees, office employees, maintenance employees, customer services representatives, dispatchers, accounting employees, and supervisors as defined in Section 2(11) of the Act.

¹ All dates hereinafter are in 2020 unless otherwise indicated.

The Tally of Ballots made available to the parties at the conclusion of the election pursuant to the Board’s Rules and Regulations, showed the following results:

Approximate number of eligible voters	52
Number of void ballots	3
Number of ballots cast for the Union	17
Number of votes cast against participating labor organization	15
Number of valid votes counted	32
Number of challenged ballots	5
Number of valid votes counted plus challenged ballots	37

Challenges are sufficient in number to affect the results of the election.

The Petitioner challenged the ballot of Lorenzo Crowe because he requested a duplicate ballot be sent to a new address; the Petitioner challenged the ballot of Michael Cuzco on the ground that he requested a duplicate ballot but returned his original ballot. Petitioner challenged the ballot of Sherob Kellam on the ground that his ballot was postmarked after July 31, 2020; Petitioner challenged the ballot of Katharyne Martina on the ground that her ballot was not postmarked. The Employer challenged the ballot of an unknown voter who had marked the sample ballot from the Notice of Election instead of the official ballot.

The Petitioner and the Employer filed timely objections to the election.

Pursuant to Section 102.69 of the Board’s Rules and Regulations, the undersigned caused an investigation to be conducted concerning the challenges and the Petitioner and Employer’s objections, during which the parties were afforded full opportunity to submit evidence bearing on the issues. As explained below, I make the following findings regarding the challenges, but I am reserving my decision on the parties’ objections.

The Challenges

Duplicate Ballots: Crowe and Cuzco

The Petitioner challenged the ballot of Lorenzo Crowe because he requested a duplicate ballot be sent to a new address. The Petitioner states that someone other than Crowe could have called the Region, requested a duplicate ballot, and returned the duplicate ballot. The Petitioner offers no evidence to support this allegation. Petitioner challenged the ballot of Michael Cuzco on the ground that he requested a duplicate ballot but returned his original ballot. The Petitioner states that Cuzco’s ballot should not be counted because he returned the original ballot instead of the duplicate. The Employer asserts that Crowe and Cuzco’s ballots should be opened and counted.

The investigation revealed that the Region received only one ballot from each Crowe and Cuzco.

With regard to a voter who has moved or whose address is not correct on the voter list, the Board’s Casehandling Manual for Representation Proceedings (the “Manual”) specifically provides that the Region should send that voter a duplicate kit. *See Casehandling Manual, Part Two,*

Representation Proceedings, Section 11336.4. The Manual does not require that the employee demonstrate his/her identity or correct address. The Petitioner offers no evidence that anyone other than Crowe requested the duplicate ballot. The Petitioner's speculation that someone else *could* have requested a duplicate ballot is not sufficient to support its challenge to Crowe's ballot. In accordance with the provisions of the Manual, I overrule the challenge to the ballot of Crowe and direct that his ballot be opened and counted.

With regard to Cuzco's ballot, the Manual states that a voter may request a duplicate ballot if s/he lost or spoiled his or her original ballot. The Manual further states, "In the event both the original and the duplicate envelopes are received from an employee to whom a duplicate was mailed, only the ballot in the envelope having the earlier postmark should be counted." *Casehandling Manual, Part Two, Representation Proceedings*, Section 11336.4. The Manual does not require that the Board void the original ballot in the event that a duplicate ballot is issued. To the contrary, a voter may return both an original and a duplicate ballot and the Board will count one of those ballots. Accordingly, I overrule the challenge to the ballot of Cuzco and direct that his ballot be opened and counted.

Postmarks: Kellem and Martina

The Petitioner challenged the ballot of Sherob Kellam on the ground that his ballot was postmarked after July 31, 2020; Petitioner challenged the ballot of Katharyne Martina on the ground that her ballot was not postmarked. The Employer asserts that these ballots should be opened and counted.

The Manual clearly states that any ballot received by the Regional office before the count should be counted, "even if they are received after close of business on the return by date." See *Casehandling Manual, Part Two, Representation Proceedings*, Section 11336.5(c) citing *Kerrville Bus Co.*, 257 NLRB 176, 177 (1981) ("Although the record here does not disclose any reason for [voters'] late mailing of their ballots, the Board has not regarded the absence of an excuse as a factor invariably requiring that a late ballot not be counted. In the instant case, we find most significant the fact that the ballots of both [voters] were received by the Board prior to the counting of ballots."); *Premier Utility Services, LLC*, 363 NLRB No. 159, slip op. at 1 fn.1 (2016) ("The Board will generally permit mail ballots received after the due date, but before the count, to be opened and tallied."); *Classic Valet Parking, Inc.*, 363 NLRB No. 23 (2015).

In this case, the ballots of Kellam and Martina were both received by the Board before the count. With regard to Martina's ballot, which was not postmarked, I note that the Region did not receive ballots in person during this election. Martina's ballot must have been received by mail. Under the provisions of the Board Manual and the Board's precedent, these ballots should be opened and counted. I overrule the challenges to the ballots of Kellam and Martina and direct that their ballots be opened and counted.

Marked Sample Ballot: Anonymous Voter

During the count, the Employer objected to counting a ballot where the voter marked and returned the sample ballot on the Notice of Election instead of the official ballot. The Board has held that marked sample ballots may be counted where the intent of the voter is clear. In *Aesthetic Designs*, 339 NLRB 395 (2003), the Board found that a marked sample ballot received in a mail ballot election should be counted. The Board reasoned that "counting the sample ballot is entirely consistent with the

primary goal of protecting employee free choice.” *Id.* at 395. The Employer does not contend and presents no evidence that the markings on the ballot in question were ambiguous. Instead, the Employer urges that the Region adopting the dissenting view in *Aesthetic Designs*, which argued that a sample ballot not be counted.² That view, however, is not the Board’s holding in *Aesthetic Designs*. Based on Board law, I overrule the Employer’s challenge to the marked sample ballot received in this case and direct that it be counted.

Reservation on Objections

I have directed that the ballots of Crowe, Cuzco, Kellem, and Martina be opened and counted. I have further directed that the marked sample ballot be counted as a valid ballot in the Tally of Ballots. In order to facilitate an expeditious resolution of this case, I will reserve my ruling on the parties’ objections until a Revised Tally of Ballots is issued.

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, D.C., a Request for Review of this Decision. This Request for Review must conform with the requirements of Sections 102.67(e) and (i)(1) of the Board’s Rules and must be received by Washington not later than ten business days from the date of the final decision and/or certification of the Regional Director in this case.

A Request for Review must be E-Filed through the Agency’s website. To E-File the Request for Review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. A party filing a Request for Review must serve a copy 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 Brooklyn, New York, on September 22, 2020.



Kathy Drew King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center
Brooklyn, New York 11201

² I note that the dissent in *Aesthetic Designs* raised the possibility that a voter could be identified by use of the sample ballot. The Employer does not contend and presents no evidence showing that any voter’s identity was compromised in this case.