

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

PARAGON SYSTEMS, INC.)	
)	
Employer)	
and)	Case No. 29-RC-229372
)	
NATIONAL LEAGUE OF JUSTICE AND SECURITY PROFESSIONALS (NLJSP))	
)	
Petitioner)	
)	
and)	
)	
LAW ENFORCEMENT OFFICERS SECURITY UNIONS, LEOSU, LEO-PBA)	
)	
Intervenor		

**HEARING OFFICER'S REPORT AND RECOMMENDATIONS
ON OBJECTIONS**

This report contains my findings and recommendations regarding the Petitioner's objections to the election in the above referenced case. For the reasons contained herein, I recommend overruling the Petitioner's objections and issuing a Certification of Representative.

Procedural History

Upon a petition filed on October 15, 2018, by National League of Justice and Security Professionals (NLJSP), herein called the Petitioner, and pursuant to a Stipulated Election Agreement signed by the Petitioner, Paragon Systems, Inc., herein called the Employer, and by Law Enforcement Officers Security Unions LEOSU, LEOS-PBA, herein called the Intervenor, and approved by the Acting Regional Director on February 11, 2019,¹ an election by mail ballot was conducted on February 25, among the employees employed in the following unit:

All full-time and regular part-time armed and unarmed security officers employed by Paragon Systems, Inc. at the Federal Protective Service sites located in Manhattan, the Bronx, West Nyack, Yonkers, New Rochelle, White Plains, and Peekskill, New York, covered under Paragon Systems, Inc.'s June 1, 2018, service contract with the United States Government, but excluding all other employees and supervisors as defined by Section 2(11) of the Act.

¹ Unless otherwise specified, all dates are 2019.

The Tally of Ballots, made available to the parties pursuant to the Board's Rules and Regulations on March 20, showed the following results:

Approximate number of eligible voters	315
Number of void ballots	9
Number of ballots cast for the Petitioner	7
Number of ballots cast for the Intervenor	167
Number of votes cast against participating labor organization	34
Number of valid votes counted	208
Number of challenged ballots	1
Number of valid votes counted plus challenged ballots	209

Challenges are not sufficient in number to affect the results of the election. A majority of the valid votes counted has been cast for the Intervenor.

The Petitioner filed timely objections to conduct affecting the results of the election. On April 5, the Regional Director issued a Decision on Objections and Notice of Hearing in which she directed that a hearing be held regarding the Petitioner's first objection and the portion of the Petitioner's second objection alleging that the Employer made objectionable payroll changes during the critical period. The Regional Director overruled the remainder of the Petitioner's second objection.²

A hearing was held before the undersigned on April 10, in Brooklyn, New York. The Petitioner and the Intervenor appeared at this hearing.

At the hearing, the parties were afforded full opportunity to be represented by counsel, participate, be heard, examine and cross-examine witnesses, present evidence pertinent to the issues, and present oral argument.

In accordance with the Notice of Hearing, and upon the entire record of this case, consisting of the transcript of the hearing and exhibits, including my observation of the demeanor of the witnesses who testified, and the specificity of their testimony, the undersigned issues this Report and Recommendations with respect to the Petitioner's Objections.³

² In her Report on Objections, the Regional Director overruled the portions of the Petitioner's second objection alleging that the Intervenor engaged in objectionable conduct by filing an unfair labor practice charge regarding the erroneous dues deduction and by campaigning on both the filing of that charge and the refund of dues to make employees believe the Intervenor would be an effective representative.

³ References to the transcript are identified as Tr. ___. References to the Board and Employer's exhibits will be cited as Bd. Ex. __ and Er. Ex. __, respectively. I note that the transcript in this case is incorrectly labelled as Volume 4 and runs from page 160 to page 238.

The Objections

Objection No. 1

In its first objection, the Petitioner alleges that the Employer failed to post Notices of Election in all work locations and failed to email the Notices of Election to all employees as required by the Board's Rules and Regulations.

Two unit employees, Rudolph Petter and Tanya Thomas, testified regarding the posting of the election notices. Both employees work at 26 Federal Plaza in Manhattan, one of the locations where the Employer employs unit employees. Both employees testified that they saw Notices of Election posted at this location. Petter testified that the Notice of Election was posted in the men's lower and upper locker rooms located at 26 Federal Plaza. Tr. at 181-82. In the lower men's locker room, which is the locker room Petter usually uses, the notice was posted on the inside of the door of the locker room so that employees would see the notice as they were exiting the room. Id. Petter further testified that while some employees come to work in uniform and so do not necessarily use the locker room to change clothes, employees are mandated to take their breaks in the locker room. As a result, all male unit employees working at 26 Federal Plaza would have the opportunity to see the Notices of Election. Tr. at 183-84, 190-191.

Employee Tonya Thomas testified that the Employer posted two copies of the Notice of Election in the women's locker room at 26 Federal Plaza. Tr. at 211. One copy was posted near a mirror which all female employees use; the other copy was posted on the inside of the locker room door which employees use to exit the room. Thomas testified that given these locations, female employees would see the notices. Tr. at 211.

With regard to email distribution of the Notices of Election, neither employee testified that he or she received the Notice of Election via email. With regard to whether the Employer regularly communicates with employees via email, Thomas clearly testified that the Employer does not regularly communicate with employees in this manner. Tr. at 213. Petter testified that employees get electronic notices from the Employer when something is of "paramount" importance. Tr. at 184-85. When asked for specific examples, Petter testified that the only emails he could recall receiving from the Employer came during the Employer's hiring process regarding interviews and medical physicals. Tr. at 204. Thomas similarly testified that she has not received any email from the Employer since she was hired. Tr. at 225. Petter further explained that normal communications from the Employer come through post orders, which are physically placed in a binder at the work site, or through supervisors. Tr. at 200. Thomas confirmed that regular communications from the Employer are made via post orders and supervisors. Tr. at 213.

Both Petter and Thomas testified that the Employer uses a scheduling app called Valiant which they check regularly to get their schedule assignments. Tr. at 192 (Petter), 224 (Thomas). Petter explained that other than schedules and payroll information, no other information is transmitted through the app. Tr. at 192.

Credibility

Turning to credibility, after observing the demeanor and listening carefully to the testimony of Rudolph Petter and Tanya Thomas about the posting of Notices of Election, I generally credit their

testimony. Both witnesses testified in a clear, straightforward, and honest manner. I note that their testimony is consistent and unrebutted.

Discussion

An objecting party bears the burden of proving interference with an election. *See Jensen Pre-Cast*, 290 NLRB 547 (1988). The Petitioner has not met that burden here.

Section 102.67 (k) of the Board's Rules and Regulations provides: "The employer shall post copies of the Board's Notice of Election in conspicuous places, including all places where notices to employees in the unit are customarily posted, at least 3 full working days prior to 12:01 a.m. of the day of the election and shall also distribute it electronically if the employer customarily communicates with employees in the unit electronically."

With regard to the posting of the physical notices, the Petitioner was unable to demonstrate that notices were not posted as required. Both witnesses who testified work at 26 Federal Plaza in Manhattan. Both witnesses testified clearly that they saw the Notices of Election posted in the locker rooms used by unit employees at that facility. The Petitioner failed to present any evidence that physical Notices of Election were not posted in any other location prior to the election.

With regard to the emailing of the election notices, Petter and Thomas testified that they do not regularly receive email communications from the Employer. Petter stated that he received email from the Employer regarding interviews and physicals before being employed by the Employer. Thomas similarly testified that she received email from the Employer before she was employed by the company, and clearly stated that she had not received email from the Employer subsequently. I note that although Petter testified that the Employer communicated with employees by email about items that were of "paramount" importance, he could not provide any instances where the Employer had emailed employees other than regarding the pre-hire issues mentioned above. In fact, Petter explained that the Employer communicated important information through post orders and supervisors. Based on this evidence, I find that the Petitioner has not demonstrated that the Employer regularly communicates with employees via email. Accordingly, the Employer did not engage in objectionable conduct by failing to email the Notices of Election to employees.

Based on the foregoing, I recommend overruling the Petitioner's first objection.

Objection No. 2

In its second objection, the Petitioner alleges that the Employer engaged in objectionable conduct by erroneously withdrawing an extra dues payment for Local 32 BJ, SEIU, which represented the unit employees before the election,⁴ and refunding that payment to unit employees during the critical period.

Thomas testified that during the Union campaign, the Employer deducted an extra union dues payment. Tr. at 214. Around February 21,⁵ during the critical period, Thomas received a text message

⁴ Local 32BJ, SEIU did not appear on the ballot in this election.

⁵ Although Thomas did not recall the exact date of this text message, the record evidence shows that she forwarded the message to Steve Maritas, a representative of the Intervenor, on February 21. Int. Ex. 2.

from a representative of Local 32BJ, SEIU, stating that the “second dues deduction was reimbursed by the Employer,” and directing employees to call a Local 32BJ representative if they had questions. Tr. at 217; Int. Ex. 1. Thomas testified that she has not yet been reimbursed for the extra dues deduction. Tr. at 230.

Petter testified that he was unaware of dues being deducted erroneously, but that he was reimbursed \$75 for dues by the Employer before the election. Although initially unable to recall when the reimbursement occurred, after reviewing his paystub, Petter testified that he received the \$75 dues reimbursement on February 21, through direct deposit. Tr. at 232. The Petitioner did not present any other evidence in support of this objection.

The mail ballots in this election were mailed on February 25. Tr. at 222.

Credibility

Turning to credibility, after observing the demeanor and listening carefully to the testimony of Petter and Thomas about the dues deduction and reimbursement during the critical period, I generally credit their testimony. Both witnesses testified in a clear, straightforward, and honest manner. I again note that their testimony is consistent and unrebutted.

Discussion

The Board has held that an employer may not make “changes in the paycheck process, for the purpose of influencing the employees’ vote in the election, during a period beginning 24 hours before scheduled opening of the polls and ending with the closing of the polls.” *Kalin Construction Co.*, 321 NLRB 649, 652 (1996); *see also Fred Meyer Stores, Inc.*, 355 NLRB 541 (2010) (in which the Board found that an employer’s payroll deduction change in employees’ election day paychecks was objectionable, even though it was made for legitimate business reasons). The Board in *Kalin Construction* further explained that this rule does not prohibit paycheck process changes made for campaign purposes prior to the proscribed period or changes made for legitimate business reasons during the proscribed period. *Kalin Construction*, 321 NLRB at 652.

As noted above, the Petitioner bears the burden of establishing that objectionable conduct occurred. In this case, the Petitioner has not done so. Although the evidence shows that the Employer made irregular payroll deductions and reimbursements during the critical period, the Petitioner has not presented evidence that the Employer made those changes within twenty-four hours of the election. Petter testified that he received the \$75 dues reimbursement on February 21, four days before the start of this election. Thomas stated that she received notice of the payroll reimbursement during the critical period, but that as of the date of the hearing, she still had not received her reimbursement from the Employer. The Petitioner has not presented any evidence that the Employer made any payroll changes within twenty-four hours of the election which would constitute objectionable conduct under *Kalin Construction*. Accordingly, I recommend overruling the Petitioner’s second objection.

Recommendation

I have recommended overruling the Petitioner's objections. Accordingly, I further recommend that the Intervenor be certified as the exclusive collective bargaining agent of the following appropriate unit:

All full-time and regular part-time armed and unarmed security officers employed by Paragon Systems, Inc. at the Federal Protective Service sites located in Manhattan, the Bronx, West Nyack, Yonkers, New Rochelle, White Plains, and Peekskill, New York, covered under Paragon Systems, Inc.'s June 1, 2018, service contract with the United States Government, but excluding all other employees and supervisors as defined by Section 2(11) of the Act.

Appeal Procedure

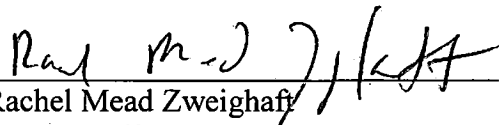
Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 29 by May 29, 2019. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions 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 exceptions should be addressed to the Regional Director, National Labor Relations Board, Region 29, Two MetroTech Center, 5th Floor, Brooklyn, NY 11201.

Pursuant to Sections 102.111-102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by 5:30 p.m. on the due date. If e-filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date.

Within 7 days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated at Brooklyn, New York, on May 15, 2019.


Rachel Mead Zweighaft
Hearing Officer
National Labor Relations Board, Region 29
Two MetroTech Center
Brooklyn, New York 11201