

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

ARAMARK EDUCATIONAL SERVICES, INC.

Employer

and

Case No. 29-RC-11432

LOCAL 621, UNITED CONSTRUCTION TRADES
& INDUSTRIAL EMPLOYEES INTERNATIONAL
UNION, INTERNATIONAL UNION OF JOURNEYMEN
AND ALLIED TRADES

Petitioner

and

UNITED SERVICE EMPLOYEES UNION, LOCAL 377,
RETAIL, WHOLESALE AND DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS

Intervenor

REPORT ON OBJECTIONS AND NOTICE OF HEARING

On April 2, 2007,¹ Local 621, United Construction Trades & Industrial Employees International Union, International Union of Journeymen and Allied Trades, herein called the Petitioner or Local 621, filed a petition in Case No. 29-RC-11432 seeking to represent certain employees employed by Aramark Educational Services, Inc., herein called the Employer. United Service Employees Union, Local 377, Retail, Wholesale and Department Store Union, United Food and Commercial Workers, herein called the Intervenor or Local 377, intervened based on its collective bargaining relationship with the Employer.

¹ All dates hereinafter are in 2007 unless otherwise indicated.

Pursuant to a Stipulated Election Agreement signed by the Petitioner, the Intervenor and the Employer, and approved by the undersigned on April 16, an election by secret ballot was conducted on May 10, among the employees in the following unit:

All full-time and regular part-time canteen workers, commissary workers, cafeteria employees, cashiers, bakers helpers, kitchen workers and waiters, waitresses, bartenders and warehousemen employed by the Employer at the C.W. Post College campus, located at 720 Northern Boulevard, Brookville, New York, and excluding all C.W. Post student employees, part-time employees scheduled for twenty (20) hours or less per week, working chefs, professional employees, guards, watchmen and supervisors as defined in Section 2(11) of the Act.

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	114
Number of void ballots	1
Number of ballots cast for Local 621, United Construction Trades & Industrial Employees International Union, IUJAT (the Petitioner)	51
Number of ballots cast for United Service Employees Union, Local 377, RWDSU, UFCW, (the Intervenor)	35
Number of votes cast against participating labor organizations	0
Number of valid votes counted	86
Number of challenged ballots	3
Number of valid votes counted plus challenged ballots	89

Challenges are not sufficient in number to affect the results of the election.

On May 14, the Intervenor filed timely objections to conduct affecting the results of the election. The Intervenor's objections are attached hereto as Exhibit "A."

Pursuant to Section 102.69 of the Board's Rules and Regulations, the undersigned caused an investigation to be conducted concerning the above-mentioned objections, during which the parties were afforded full opportunity to submit evidence bearing on the

issues. The undersigned also conducted an independent investigation. The investigation revealed the following:

The Employer, a domestic corporation, is engaged in providing cafeteria services at various locations throughout the United States, including at two cafeterias located on the C.W. Post campus of Long Island University, in Brookville, New York.

THE OBJECTIONS

OBJECTIONS 1 THROUGH 4

Objection No. 1:

In this objection, the Intervenor alleges:

On May 7, 2007 and continuing through the date of the election, United Construction Trades & Industrial Employees Union, Local 621, the Petitioner (“Local 621”) distributed leaflets to eligible employees guaranteeing the employees medical insurance coverage, a \$25,000.00 life insurance policy for each employee and a retirement fund, if they voted for Local 621.

Objection No. 2:

In this objection, the Intervenor alleges:

On or about May 7, 2007, Local 621 distributed a letter from Local 621 Secretary-Treasurer Dean DeLucia, conveying medical benefits, prescription drug plan benefits, vision care benefits and 401(k) plan benefits on employees to induce them to vote for Local 621. Along with the letter from DeLucia, Local 621 distributed employee benefit enrollment forms, an employee legal plan description, an employee 401(k) plan enrollment form, an employee vision plan benefit booklet and individual medical insurance cards made out in the names of eligible employee voters.

Objection No. 3:

In this objection, the Intervenor alleges:

On or about May 1, 2007, and continuing through the election date of May 10, 2007, officers and agents of Local 621 granted to each employee a guaranteed \$25,000 life insurance benefit upon Local 621’s “certification.”

Objection No. 4:

In this objection, the Intervenor alleges:

On or about May 8, 2007, and continuing through the election date of May 10, 2007, Local 621 distributed a leaflet to bargaining unit employees deliberately misleading employees into believing that Local 377 withheld existing Local 377 life insurance benefits from employees' beneficiaries and converted said benefits for Local 377's use, i.e., an allegation that Local 377 "ripped off" employees' death benefits.

The Intervenor provided the names of ten witnesses who would testify in support of Objections 1 through 4. However, the Intervenor did not describe the witnesses' testimony with particularity. In addition, the Intervenor provided copies of various materials allegedly distributed by the Petitioner during the campaign, and on the date of the election. These materials are described below.

In support of Objections 1, 3 and 4, the Intervenor provided a copy of a leaflet, which is set forth verbatim below:

**LOCAL 621
GUARANTEE TO
ARAMARK EMPLOYEES
AT C.W. POST**

WHEN YOU ELECT TO CHANGE YOUR UNION YOU CHOOSE TO MAKE THE FUTURE BETTER FOR EVERYONE. A CONTRACT IS VERY LIKELY TO BE IN PLACE IN A SHORT TIME. IN ORDER TO BE CLEAR, AND DISPEL ANY FEARS, PLEASE READ THE LOCAL 621 GUARANTEE:

- HEALTH COVERAGE: The United Benefit Fund will provide coverage until your Employer agrees to pay. This allows you to treat with a local doctor at no cost to you.

- LIFE INSURANCE: Local 621 will provide a life insurance policy in the amount of \$25,000.00, at no cost to you, upon certification.

- RETIREMENT: You get immediate control of your retirement fund when you join Local 621. YOU manage YOUR money. Your benefit is directed to the beneficiary of YOUR CHOICE when you are gone, NOT LIKE 377. (You lose

your benefit when you are gone – you have no control of your money. The benefit is VERY LITTLE. YOU ARE BEING RIPPED OFF!)

- PROTECTION BY LAW: You are protected by law during contract negotiation!! Your Employer must maintain the “status quo”. This means that you can not be discharged or disciplined by your Employer unless they can prove “just cause”. Don’t believe the desperate lies of a union that USE’S U.

WE, the officer’s of Local 621, UCTIE, IUJAT, guarantee the above to be true:

[The leaflet was signed by Andrew Talamo, President, Rafael Griffin, Vice President, and Dean DeLucia – Secretary-Treasurer.]

In support of Objections 2 and 3, the Intervenor provided copies of a May 7 letter to “members” of the Petitioner, an enrollment form and beneficiary designation form for the Petitioner’s 401(k) plan, a description of the Petitioner’s vision benefits and legal coverage plan, and identification cards for the Petitioner’s medical plan. The identification cards include the names of individual bargaining unit members, with their individual member identification numbers under the Petitioner’s medical plan, and indicate that the effective date of the medical coverage is May 1 (before the date of the election).

The May 7 letter is on a Local 621 letterhead and reads as follows:

Dear Member:

Welcome to Local 621. Enclosed please find:

CW Post Coverage Summary

This outlines your medical coverage and co-payments

Medical Card

Please note all co-payments. Your Rx card will arrive separately

Vision Coverage

Explanation of vision coverage

401(k) benefit

Complete the enrollment and beneficiary forms and give back to your Union representative.

If you have any problems with a claim, immediately send it to the following address:

MagnaCare
825 East Gate Blvd.
Garden City, NY 11530
516-282-8000

Sincerely,
Dean DeLucia
Secretary Treasurer

In addition, the Intervenor's offer of proof contends that Joan Lavin, an alleged agent of Local 621, engaged in improper electioneering during the election on May 10, by standing "approximately 15 to 20 feet from the polling place located at Room 218 of Hillwood Commons" and handing "brochures and leaflets guaranteeing the employees medical insurance coverage, prescription drug plan coverage, vision care benefits, 401(k) benefits, a \$25,000 life insurance policy and individual medical insurance cards made out in the name of employees to employees entering the polling places." The Intervenor asserts that six witnesses would testify in support of this allegation. Their testimony is not described with particularity.

In its response to objections 1 through 4, the Employer denied sufficient knowledge to fashion a response. The Petitioner took the position that it had merely "promised to provide health coverage *after election certification*," and "distributed materials informing all eligible voters of the programs available from Local 621, including a 401K Plan, life insurance and health insurance plans." It denied having granted any benefit to potential voters either before or during the election. With regard to Objection 4, the Petitioner characterized the representations concerning the Local 377 retirement plan as mere "propaganda."

Discussion of Objections 1 through 4

During the critical period prior to a Board election, a union “may *promise* an existing benefit to new members if its receipt is not conditioned on the recipient’s demonstration of pre-election support,” but a union is barred from “conferring on potential voters a financial benefit to which they would otherwise not be entitled.” *Mailing Services, Inc.*, 293 NLRB 565 (1989) (emphasis in original)(election set aside, where union provided free medical screening shortly before election). Under this standard, objections 1 and 3, concerning the promise of benefits after certification, do not set forth objectionable conduct. Accordingly, I recommend that Objections 1 and 3 be overruled.

However, Objection 2 alleges that benefits were actually provided to potential voters *before* the election, and the Intervenor has furnished evidence in support of this allegation. Under the standards set forth in *Mailing Services, supra*, this conduct, if true, could warrant setting aside the election.² In my view, the allegations embodied in Objection 2 raise substantial and material issues, including issues of fact and credibility, which would be best resolved at hearing. Therefore, I direct that a hearing be held before a hearing officer concerning Objection 2.

As for Objection 4, the Board does not “probe into the truth or falsity of campaign statements,” or “set elections aside on the basis of misleading campaign statements.”

Midland National Life Insurance Company, 263 NLRB 127, 133 (1982). The Board

² In *52nd Street Hotel Associates d/b/a Novatel New York*, 321 NLRB 624 (1996), the Board held that it was not objectionable for a union to provide legal services during the critical period in support of a Fair Labor Standards Act lawsuit. Because of statutory and constitutional considerations, which are discussed in detail by the Board in *Novatel*, the Board concluded that this conduct was “fundamentally different” from the objectionable grant of benefits prohibited by *Mailing Services, supra.*, and by *Wagner Electric Corporation*, 167 NLRB 532 (1967)(grant of life insurance benefits to prospective voters who “signed up” for the union) and *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973)(waiver of initiation fees for employees who agreed to sign union recognition slips). *Novatel*, 321 NLRB at 634-35.

“will set an election aside not because of the substance of the representation, but because of the deceptive manner in which it was made,” such as “where a party has used forged documents which render the voters unable to recognize propaganda for what it is.” *Midland National Life Insurance*, 263 NLRB at 133. With respect to Objection 4, the Petitioner’s campaign flyer, comparing its retirement benefits to those of the Intervenor, may be confusing and misleading, but the “manner in which the representation was made” was not so deceptive as to meet the standard set forth in *Midland National Life Insurance*, particularly since employees are likely to be familiar with their existing Local 377 retirement benefits. Moreover, the colloquial term, “ripped off,” of which Intervenor complains, is customarily used to describe any bad deal, and does not solely pertain to “conversions for one’s own use.” Accordingly, I recommend that Objection 4 be overruled.

With regard to the issue of whether improper electioneering took place on the day of the election, the Board finds such electioneering to be objectionable if “the conduct, under the circumstances, is sufficient to warrant an inference that it interfered with the free choice of the voters.” *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1118-1119 (1982). The factors to be considered include “whether the conduct occurred within or near the polling place...the extent and nature of the alleged electioneering...whether it is conducted by a party to the election or by employees...[and] whether the electioneering is conducted within a designated ‘no electioneering’ area or contrary to the instructions of the Board agent.” *Boston Insulated Wire*, 259 NLRB at 1119 (citations omitted). In *Boston Insulated Wire*, agents of the Petitioner passed out a campaign leaflet and spoke to employees on their way to vote or work, as they entered a set of glass-

paneled doors that was only 10 feet from the polling place. *Boston Insulated Wire*, 259 NLRB at 1118-1119. This conduct was found not to be objectionable, because the electioneering was conducted away from the polling place, and it was not directed at employees waiting in line to vote. The area in which the electioneering was conducted had not been designated a “no electioneering” area, the electioneering did not violate any instructions by the Board agent, and the voters standing in line to vote were separated from the electioneering by the set of glass doors, which remained closed. *Boston Insulated Wire*, 259 NLRB at 1119.

In the instant case, the Intervenor’s offer of proof does not contend that the electioneering was directed at employees waiting in line to vote, that it was conducted in an area designated as a “no electioneering” area, or that it violated any instructions by the Board agent. The offer of proof does not indicate how long Lavin was distributing campaign materials, and there is no contention that Lavin said anything objectionable to the employees. Under these circumstances, the Intervenor’s offer of proof does not set forth a *prima facie* case that the electioneering was objectionable, apart from the allegation that certain benefits were conferred prior to and during the election, as described in connection with Objection 2. Accordingly, I recommend that this allegation be overruled.

Objection No. 5:

In this objection, the Intervenor contends that during the election campaign, the Intervenor was denied the opportunity to hold customary membership meetings at the workplace, and the Petitioner was given “unfettered access to employees’ work sites.”

The Intervenor has requested permission to withdraw Objection 5. Accordingly, the Intervenor's request to withdraw Objection 5 is granted.

Objection No. 6:

This objection is set forth verbatim below:

By these and other acts, Local 621 and the Employer interfered with the conduct of the election, destroyed "laboratory conditions" and interfered with the employees' exercise of their right to vote in an atmosphere free from restraint, coercion and interference, thereby warranting the setting aside of the election and the conducting of a new election.

The Intervenor did not present any evidence in support of this objection that was not considered in connection with Objections 1 through 4. Accordingly, I recommend that Objection 6 be overruled.

SUMMARY AND DETERMINATIONS

In summary, I have directed that a hearing be held concerning Objection 2, and have recommended that the remainder of the Intervenor's objections be overruled. Accordingly, pursuant to the authority vested in the undersigned Regional Director by the National Labor Relations Board, herein called the Board,

IT IS HEREBY ORDERED that a hearing be held before a duly designated hearing officer with respect to the issues raised by Objection 2, as described above.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board, as to the issues raised. Within fourteen (14) days from the date of the issuance of such report, any party may file with the Board, an original and seven copies of Exceptions to the report, with supporting briefs, if desired. Immediately upon the filing

of such Exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon the other parties. A statement of service shall be made to the Board simultaneously with the filing of Exceptions. If no Exceptions are filed thereto, the Board, upon the expiration of the period for filing such Exceptions, may decide the matter forthwith upon the record or make any other disposition of the case.

PLEASE TAKE NOTICE that at 9:30 a.m. on June 21, 2007, and on consecutive days thereafter until concluded, at Two MetroTech Center, 5th Floor, Brooklyn, New York, a hearing will be conducted before a hearing officer of the National Labor Relations Board on the issues set forth in the above Report, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony.

RIGHT TO FILE EXCEPTIONS

Under the provisions of Section 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Exceptions must be received by the Board in Washington, D.C. on or before June 25, 2007.³

The parties are advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party

³ Under the provisions of Section 102.69(g) of the Board's Rules and Regulations, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections and which are not included in the Regional Director's Report are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Regional Director's Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

wishes to file the above-described Exceptions electronically, please refer to the guidance which can be found under “E-Gov” on the National Labor Relations Board website: www.nlr.gov.

Signed at Brooklyn, New York, on this 11th day of June, 2007.

Alvin Blyer
Regional Director
Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201