

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

SODEXO, INC

Employer

and

Case 4-RC-21511

NATIONAL UNION OF HOSPITAL AND
HEALTH CARE EMPLOYEES, DISTRICT
1199C, AFSCME, AFL-CIO

Petitioner

REPORT AND RECOMMENDATION
ON OBJECTION TO ELECTION

Pursuant to a Stipulated Election Agreement approved by the Regional Director on December 11, 2008, an election by secret ballot was conducted on January 8, 2009, in the unit described in paragraph 13 of the Agreement. The Tally of Ballots, copies of which were made available to the parties at the conclusion of the election, showed the following results:

Approximate number of eligible voters	6
Void Ballots	0
Votes cast for Petitioner	5
Votes cast against participating labor organization	0
Valid votes counted.....	5
Challenged Ballots	0
Valid votes counted plus challenged ballots.....	5

On January 12, 2009, the Employer filed a timely Objection to conduct affecting the results of the election, which alleges as follows:

Union Organizer Linda Fields was observed meeting with eligible voters during the 24-hour restricted period.

Pursuant to Section 102.69(c) of the Board's Rules and Regulations, the Petitioner's Objection has been carefully considered, on the basis of which the undersigned reports as follows:

The Objection was not accompanied by any supporting evidence. Section 102.69(a) of the Board's Rules and Regulations provides that a party filing Objections shall, within seven days after filing the Objections, furnish the Regional Director with the evidence available to support its Objections. By letter dated January 13, 2009, the Employer was reminded of this requirement and requested to submit the evidence in support of its Objection by the close of business on January 22, 2009. The Employer was advised that the evidence was to be in the form of affidavits, written statements or documents; that, if the evidence was to be presented through witnesses with knowledge of the allegation set out in the Objection, the name, address and telephone number of each witness was to be provided *in addition* to a detailed description of what they are expected to say; and that the evidence must be sufficient to constitute a prima facie showing that conduct occurred that warranted setting the election aside. The Employer was informed that its failure to do so would result in dismissal of the Objection. *Star Video Entertainment L.P.*, 290 NLRB 1010 (1988); *Bob G. Lewis d/b/a Classic Courts*, 246 NLRB 603 (1979). In addition, the Employer was advised that unless such evidence was produced, the Regional Director is not required to pursue the investigation. *Aurora Steel Products*, 240 NLRB 46, fn. 3 (1979); *Allen Tyler & Son, Inc.*, 234 NLRB 212 (1977).

During the allotted time, the Employer failed to submit any evidence as required under the Board's Rules and the above cases. On January 28, 2009, the Board Agent advised the Employer that the Regional Office had decided to dismiss the Objection, and solicited a withdrawal of the Objection, based on the Employer's failure to timely submit supporting evidence as required. *Star Video Entertainment* and *Bob G. Lewis*, supra. On January 29, 2009, the Employer submitted a letter setting forth what it described as "witness statements" from Employer General Manager Roy Manno and Employer District Manager Steve Yurasits and asserted that the Petitioner engaged in a meeting which interfered with the employees' freedom of choice in the election. In fact, the "witness statements" are two brief paragraphs within the Employer's letter summarizing what Manno and Yurasits were expected to say.¹ This summary indicates that at approximately 4:10 p.m. on January 7, 2009² as Manno and Yurasits exited the cafeteria at the Presbyterian Hospital in Philadelphia, PA, the hospital where the unit employees are assigned to work, they observed Petitioner Organizer Linda Fields and Delegate Danyette Mickens "having a discussion" with two of the eligible voters.³ According to the Employer's witnesses, one of these employees was on paid work time and "should have been in the dispatch center working." As to the employee on paid work time, the summary avers that "clearly either [Fields] asked to meet her or [the employee] was seeking out [Fields] due to the Election on January 8, 2009." The summary contains no information concerning the length or substance of the conversation. In its letter, the Employer contends that this discussion "was clearly an act and conduct interfering with the employee's (sic) freedom choice in the exercise of their right to vote."

¹ A copy of this letter is appended as Attachment I. The names of the two unit employees identified have been redacted.

² The scheduled election hours were 2:00 p.m. to 4:00 p.m. on January 8.

³ There are approximately six eligible voters in the unit.

The evidence submitted by the Employer is insufficient to establish that the Petitioner's agents engaged prohibited campaign practices warranting a new election. In *Peerless Plywood Co.*, 107 NLRB 427, 429 (1953), the Board held that "employers and unions alike will be prohibited from making an election speech on company time to massed assemblies of employees within the 24-hour period preceding the election." It is well settled that the *Peerless* rule "was not intended to nor . . . does it prohibit every minor conversation between a few employees and a union agent or supervisor for a 24-hour period before an election." *Business Aviation Inc.*, 202 NLRB 1025 (1973); see also *Comcast Cablevision of New Haven*, 325 NLRB 833 (1998) (brief conversations with voters by union demonstrators on day of election urging voters to select union not objectionable under *Peerless*).

In light of the foregoing, I find that the Employer's Objection lacks merit. My conclusion is based primarily on the Employer's failure to timely submit evidence in support of its Objection as required by the Board's Rules. Notwithstanding my letter of January 13, the Employer submitted no evidence in support of the Objection until a week after the deadline for submitting evidence, after it was advised of my decision to dismiss the Objection. Moreover, the evidence summarized in the Employer's January 29 letter is insufficient to establish that the Petitioner arguably engaged in any objectionable pre-election conduct.

RECOMMENDATION

Based on the foregoing, I recommend that the Objection be dismissed, and that a Certification of Representative be issued⁴

Signed at Philadelphia, Pennsylvania, this 4th day of February, 2009.

DOROTHY L. MOORE DUNCAN
Regional Director, Fourth Region
National Labor Relations Board

⁴ 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, NW, 20570-0001. Exceptions may also be submitted by electronic filing through the Agency's website at www.nlr.gov. A copy of the Exceptions must be served on each of the other parties to the proceeding, and with the Regional Director either by mail or by electronic filing. Guidance for electronic filing can be found under the E-Gov heading on the Agency's website. Each exception must contain a complete statement setting forth the facts and reasons upon which it is based. Exceptions must be received by the Board in Washington by the close of business on **February 18, 2009**. 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 and which is not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that 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 Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.