

**Quest International, a Business unit of Indopco, Inc.
and International Brotherhood of Teamsters,
Local 570, AFL-CIO.** Case 5-RC-15417

March 20, 2003

DECISION AND CERTIFICATION OF RESULTS
OF ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER
AND WALSH

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held July 18, 2002, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 13 for and 33 against the Union, with 1 challenged ballot, which is not sufficient to affect the results of the election.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Certification of Results.

A. The Objection

The Union's sole objection alleges that "immediately prior to and during the election, the Employer stationed security guards and guard dogs on the Employer's premises when neither had been so stationed prior to the filing of the petition for representation." The hearing officer recommended that the objection be sustained, that the election be set aside, and that a second election be conducted. We disagree. For the reasons discussed below, we overrule the objection and issue a certification of results.

B. Facts

The representation petition was filed on June 7, 2002 (all dates are 2002 unless otherwise stated).

1. Security

In June, the Employer contracted with a security company to provide an around-the-clock security guard, accompanied at certain times each day by a guard dog, at the Employer's Painters Mill Road plant (which operates around the clock and where most of the unit employees work) and at the Cronhill Drive warehouse (about 2 miles from the plant). This was the first time in 2 years that the Employer had used a security guard. The Employer's normal security system consists of mounted cameras inside and outside the plant and a perimeter fence around the rear of the 7-acre plant property. The front of the plant property, including the employee parking lot, is not fenced. The record does not describe security at the warehouse.

From July 11 through election eve, July 17, an unarmed, uniformed security guard in a marked car was stationed around the clock at the front vehicular entrance to the plant property. The guard patrolled the entire perimeter of the property, including the parking lot, every half hour. Additionally, a security dog (a 90-100 pound Rottweiler) joined the guard every day during plant work shift changes, from 6-8 a.m. and 3-5 p.m. When the dog was not patrolling with the guard at these 30-minute intervals during shift changes, it remained inside the security vehicle. The guard was permitted inside the plant only to use the restroom and vending machines; the dog was never in the plant. Also, once every 8 hours, the guard drove to the warehouse for a brief patrol. On election day, the Employer supplemented the security guard and dog with an armed off-duty police officer, dressed in the security company's uniform. The security guards did not interrogate, confront, or engage in surveillance of employees. They were not near the polls during the election. The Employer discontinued all of these security measures on the day after the election.

2. The Employer's campaign

Site Manager Laura Scott sent two letters to employees about a month before the election, stating, *inter alia*, that the risks of collective bargaining were strikes, picket lines, and standoffs. Scott also conducted weekly employee meetings during the Union's organizational campaign. She told the employees that the security guards were there for their protection, and so that they could feel comfortable and secure coming to, while at, and leaving from work. Scott also told the employees that they should worry about, *inter alia*, the possibility of strikes and picketing. She mentioned occasions (not further specified in the record) where there had been picket line violence. The Employer conveyed to the employees through videotapes that there was evidence of violence on other picket lines. (There are no videotapes in evidence.)

There were no objections to any of the Employer's campaign statements or materials.

C. The Hearing Officer's Report

The hearing officer found that the unprecedented posting of uniformed security guards and security dogs for 10 days before the election was highly likely to cause fear among the employees. The hearing officer stated that was particularly true where, as here, the Employer presented the employees with campaign information linking unionization to strikes, work stoppages, and violence, and then told the employees that the newly arrived security guards and dogs were there to provide protection for the employees, the plant, the Employer's business activities,

and against possible vandalism in the parking lot. Thus, the hearing officer found that the employees would reasonably understand the Employer's message to be that a vote for unionization was a vote for a workplace characterized by violence, in which guards and dogs would be necessary to keep the peace. Accordingly, she recommended that the Union's objection be sustained and that the election be set aside.¹

D. Analysis and Conclusion

The applicable principles have been recently summarized in *Safeway, Inc.*, 338 NLRB 525 (2002):²

'Representation elections are not lightly set aside.' *NLRB v. Hood Furniture Mfg. Co.*, 941 F.2d 325, 328 (5th Cir. 1991) (citing *NLRB v. Monroe Auto Equipment Co.*, 470 F.2d 1329, 1333 (5th Cir. 1972), cert. denied 412 U.S. 928 (1973)). 'There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees.' *NLRB v. Hood Furniture Mfg. Co.*, supra, 941 F.2d at 328. Accordingly, 'the burden of proof on parties seeking to have a Board-supervised election set aside is a 'heavy one.' *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989) (quoting *Harlan #4 Coal Co. v. NLRB*, 490 F.2d 117, 120 (6th Cir.), cert. denied 416 U.S. 986 (1974)). The objecting party must show, inter alia, that the conduct in question affected employees in the voting unit. *Avante at Boca Raton, Inc.*, 323 NLRB 555, 560 (1997) (overruling employer's objection where no evidence unit employees knew of alleged coercive incident). See generally *Antioch Rock & Ready Mix*, 327 NLRB 1091, 1092 (1999).

A party's conduct cannot be the basis for setting aside the election unless it reasonably tended to interfere with the employees' free and uncoerced choice in the election. *Baja's Place*, 268 NLRB 868 (1984).

Applying these principles here, we find, contrary to the hearing officer, that the Union has failed to carry its burden of establishing that the Employer's implementation of the security measures described above had a reasonable tendency to interfere with the employees' free and uncoerced choice in the election.

First, the increased security in question was basically only one unarmed guard, supplemented during shift changes by one dog, and on election day by an additional, armed guard. Second, the guard patrolled the perimeter of the property only, and entered the plant only to use the restroom or vending machines. The dog, when it

was on the site, remained inside the security vehicle except when it was accompanying the guard on perimeter patrol, and it never entered the plant. Also, the guards and dog were not in or even near the polling area on the day of the election. Finally, the guards and dog did not engage in any coercive or even questionable conduct towards the employees. Indeed, the hearing officer stated that there was "no credible testimony" that the guards "interrogated, surveilled, or confronted employees."

Notwithstanding the hearing officer's assessment of the Employer's campaign material, it was not even alleged to be objectionable in any respect. Because it was not, and because the security guards and dog engaged in no objectionable conduct, we cannot conclude that the two elements in combination had a reasonable tendency to interfere with the employees' freedom of choice. Finally, we note that the election was not close. Rather, it was decided by a relatively wide 13-33 margin.³

Accordingly, for all these reasons we overrule the Union's objection and certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Brotherhood of Teamsters, Local 570, AFL-CIO, and that it is not the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed by the Employer at its 10 Painters Mill Road and 11459 Cronhill Drive, Owings Mills facilities, including material handlers, material handler trainees, truck drivers, batch makers, batch maker trainees, shipping clerks, maintenance mechanics, pilot plant technicians, junior batch makers, senior batch makers, senior batch maker trainees, quality control clerks and quality control technicians, but excluding: all inventory buyers, planners, order coordinators, production coordinators, analytic chemists, sensory specialists, accounting supervisors, inventory team leaders, production team leaders, shipping supervisors, receptionists, maintenance supervisors, maintenance team leaders, process development managers, quality team leaders, shipping team leaders, sample lab team leaders, temporary employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

¹ The hearing officer did not cite any precedent supporting her recommendation.

² See, e.g., *Lockheed Martin Corp.*, 331 NLRB 852, 854 (2000).

³ See, e.g., *Avis Rent-a-Car System*, 280 NLRB 580, 581 (1986) (closeness of the vote relevant factor in determining whether employees could exercise free choice in the election).