

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15

TOSCO ALLIANCE REFINERY
Employer

and

PAPER, ALLIED-INDUSTRIAL, CHEMICAL,
AND ENERGY WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC
Petitioner

Case No. 15-RC-8358

**REPORT ON OBJECTIONS AND CHALLENGED
BALLOTS, ORDER DIRECTING HEARING AND
NOTICE OF HEARING**

Pursuant to a petition filed on September 11, 2001¹ and a Stipulated Election Agreement approved by the Regional Director for Region 15 on September 24, an election by secret ballot was conducted on October 18 and 19 among certain employees of Tosco Alliance Refinery (herein called the Employer)² to determine whether they desired to be represented for purposes of collective bargaining by Paper, Allied-Industrial, Chemical, and Energy Workers International Union, AFL-CIO, CLC (herein called the Petitioner or the Union).

¹ All dates are in 2001 unless otherwise noted.

² The appropriate collective-bargaining unit as set forth in Item 13 of the Stipulated Election Agreement is as follows:

All operators, chief operators, instrument technicians and analysts, lab technicians, and store employees employed by the Employer at the Tosco Alliance Refinery in Belle Chasse, Louisiana, excluding all salaried employees, operations clerks, office clerical employees, guards, professional employees, and supervisors as defined by the Act.

The tally of ballots served upon the parties immediately following the election disclosed the following results:

Approximate number of eligible voters	214
Number of Votes cast for Petitioner	101
Number of Votes cast against participating labor organization	97
Number of Valid votes counted.....	198
Number of Challenged ballots	9
Number of Valid votes counted plus challenged ballots	207

The challenged ballots are sufficient in number to affect the results of the election.

The Petitioner challenged the ballots of Joseph Darnell, Gary Amos, Jr., Claudio Balbero, Freddie Cosey, Fred Gondrella, Glen Poche, Jacob Bouie, Marcus Sylve, and Jean Couvillon on the ground that they did not commence their employment with the Employer until after the September 23 eligibility date.

On October 26, the Employer timely filed “Objections to Election”, a copy of which was duly served upon the Petitioner. A copy of the Employer’s objections is attached hereto and made a part hereof as Attachment 1.

Pursuant to Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended, a preliminary investigation of the objections and challenged ballots has been conducted, and the undersigned concludes as follows:

THE CHALLENGES

As earlier noted, the Petitioner challenged the ballots of the above-named individuals on the ground that they did not begin working for the Employer until after the September 23 eligibility date. The Petitioner contends that although these employees may have filled out applications prior to September 23, they did not begin performing unit work until October 15. It maintains that because they did not begin performing unit work until after the eligibility date, they are ineligible to vote under Board law. The Employer maintains that these employees are

eligible to vote and that the challenges to their ballots should be overruled. It contends that by September 11, the date the petition was filed, these individuals had accepted conditional offers of employment. It further argues that they had been placed in the Employer's electronic personnel data system prior to the September 23 eligibility date. While it acknowledges that they did not receive pay until October 8, it contends that they had met with the plant manager and been taken into the plant prior to that date.

I find that the challenges to the ballots of the above-named employees raise substantial and material issues that would best be resolved at a hearing.

THE OBJECTIONS

The Employer's three objections have been consolidated for reporting purposes. All three allege that during the period of the election, the Petitioner and its agents engaged in conduct that warrants setting the election aside. In objection Nos. 1 and 2, the Employer alleges that the Petitioner engaged in improper electioneering during the balloting. In Objection No. 3 the Employer alleges that the Petitioner created an atmosphere of fear and confusion that interfered with the balloting.

In support of objection No. 1 the Employer presented evidence that Mike Richard, an employee, caused a commotion both in and near the voting area after learning that another individual he had transported to the facility was not eligible to vote. Richard allegedly used profanity and repeatedly accused the Employer of mistreating him.

In support of Objection No. 2, the Employer presented evidence that while he was in the polling area, Brent Balley, a union supporter, told employees that it would take a moron to vote against the Petitioner and sarcastically stated that voting would be a "real hard decision."

With regard to Objection No. 3, the Employer presented evidence that during the election, a “Mr. Gregoire,” a control room employee, spread the false rumor that the pension benefits of retired employee Anthony Vergona had been terminated. According to the rumor, an agent of the Employer’s benefits department told Vergona that the benefits department could not help him because he was not in a union. An employee who discussed the rumor with one of the Employer’s witnesses said that employees were really “fired up” about what had happened.

The Petitioner contends that Richard, Balley, and Gregoire are not its agents. It further argues that the above-described conduct does not warrant setting aside the election.

I find that the Employer’s objections raise substantial and material issues that would best be resolved at a hearing.

CONCLUSIONS AND ORDER

The undersigned concludes that the nine determinative challenged ballots and the Employer’s objections raise substantial and material issues which can best be resolved by a hearing.

IT IS HEREBY ORDERED that a hearing be held for the purpose of taking testimony to resolve the issues raised by the by the Employer’s objections and the challenges to the ballots of Joseph Darnell, Gary Amos, Jr., Claudio Balbero, Freddie Cosey, Fred Gondrella, Glen Poche, Jacob Bouie, Marcus Sylve, and Jean Couvillon.

IT IS FURTHER ORDERED that the hearing officer will prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the issues.

NOTICE OF HEARING

YOU ARE HEREBY NOTIFIED that pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, on the **19th day of November, 2001**, and on consecutive days thereafter until concluded, commencing at **9 o'clock a.m. (CST) in the Regional Office Courtroom A, Hearing Room 649, 1515 Poydras Street, 6th Floor, New Orleans, Louisiana**, a hearing will be conducted before a duly designated hearing officer of the National Labor Relations Board for the purpose of taking testimony on the issues raised by above-described challenged ballots and the Employer's objections, at which time and place the parties will have the right to appear in person, or otherwise, and give testimony.

Dated at New Orleans, Louisiana, this 9th day of November, 2001.

Rodney D. Johnson
Acting Regional Director, Region 15
National Labor Relations Board
1515 Poydras Street, Suite 610
New Orleans, Louisiana 70112-3723

Attachments