UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

WASTE MANAGEMENT f/k/a JOHNSON DISPOSAL
Employer

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 150, AFL-CIO
Joint Petitioner

Case 25-RC-10211

and

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 142, AFL-CIO
Joint Petitioner

SUPPLEMENTAL DECISION, ORDER, AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election, an election was conducted on February 13, 2004, among certain employees of the above-named Employer to determine whether or not they desire to be represented by the Joint Petitioners, the International Union of Operating Engineers, Local 150, AFL-CIO and the International Brotherhood of Teamsters, Local 142, AFL-CIO for purposes of collective bargaining.[1]

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[1] The appropriate unit as set forth in Section II, Decision, of the Decision and Direction of Election is as follows:

> All full-time and regular part-time drivers, mechanics, operators, yardmen and helpers employed by the Employer at its Kingsbury, Indiana facility; BUT EXCLUDING all office clerical employees, all professional employees, sales employees, and all guards and supervisors as defined in the Act.

On February 20, 2004, the Joint Petitioners filed timely objections to the election.[2] Following an investigation,[3] and for the reasons discussed more fully below, I am overruling both Objection 1 and Objection 2.

I. THE OBJECTIONS[4]

A. Objection 1

The Joint Petitioners allege that the Employer, through agent Raymond Garbaciak and other managers and supervisors, interfered with, restrained and coerced employees in the exercise of their Section 7 rights by threatening employees with shop closure, termination, cuts in benefits and pay, and with the denial of scheduled pay raises if the employees were to select the Joint Petitioners as their bargaining representatives. In so doing the Joint Petitioners allege that the Employer destroyed the laboratory conditions necessary for a fair election.

No probative evidence was submitted in support of this objection. The only evidence of statements attributed to Garbaciak was an unsigned statement which described remarks made outside the critical period. *Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961). Moreover, under established practice, the Board will dismiss objections which are mere reiterations of unfair labor practice charges which have been dismissed, where the alleged conduct fails to rise either to the level of an unfair labor practice or objectionable conduct. *Capitol Records, Inc.*, 118 NLRB 598 (1957); *Martinolich Ship Repair Co.*, 111 NLRB 761 (1955); *Parker Brothers & Company, Inc.*, 110 NLRB 1909 (1954); *Times' Square Stores Corp.*, 79 NLRB 361 (1948). The same conduct was alleged as the basis of an unfair labor practice charge in Case 25-CA-29009. It was found to lack merit and dismissed on March 5, 2004. Therefore, Objection 1 shall be overruled.

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[2] 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	34
Number of void ballots	0
Number of votes cast for the Petitioners	1
Number of votes cast against participating labor organization	30
Number of valid votes counted	31
Number of challenged ballots	0
Number of valid votes counted plus challenged ballots	31

[3] Both parties furnished evidence in support of their respective positions.

[4] A copy of the Joint Petitioners' objections are attached hereto, in their entirety, as Exhibit 1.

B. Objection 2

The Joint Petitioners allege that, on or about February 9, 2004, the Employer, through its managers and supervisors, interfered with, restrained and coerced members of the Joint Petitioners in the exercise of their Section 7 rights by engaging in surveillance of lawful unfair labor practice picket lines established at the Employer's facilities located in Kingsbury, Wyatt and Gary, IN. The Joint Petitioners allege that, in so doing, the Employer destroyed the laboratory conditions necessary for a fair election.

In support of Objection 2 the evidence indicates that on or about February 9, 2004, agents of the Employer photographed representatives of and employee-members of the Joint Petitioners as they picketed the entrances of the Employer's Kingsbury, Elkhart, Wyatt, and Gary facilities. Certain employees of the Employer honored the picket lines for brief periods by parking their trucks outside the lines where agents of the Employer then drove the trucks across the lines. This conduct was also alleged as the basis of an unfair labor practice charge in Case 25-CA-29011. In that case it was concluded, however, consistent with the Board's decision in *Roadway Express, Inc*., 271 NLRB 1238 (1984), that since the surveillance was undertaken in order to preserve evidence for the Employer's request for injunctive relief before the Board and its cause of action in Federal District Court, and since the Employer possessed a colorable claim for injunctive relief, no violation of Section 8(a)(1) occurred. Therefore, Case 25-CA-29011 was found to lack merit and dismissed. For the same reasons, Objection 2 is found to lack merit.

Additionally, in the context of a petition for certification of representative and a scheduled election, the Board considers the number of alleged unfair labor practices to have been committed, their severity, the extent of dissemination, the size of the unit and other relevant factors. *Archer Services*, 298 NLRB 312 (1990). With regard to the instant charge, although the evidence indicates that on February 9, 2004, one Waste Management employee who worked at the Kingsbury facility and who was eligible to vote in the February 13, 2004 election crossed the picket line at the time that an agent of the Employer photographed activity at the line, absent evidence of what, if any, impact the surveillance had upon the employee, or whether knowledge of the surveillance was disseminated to other eligible voters, it cannot be concluded that the surveillance affected the outcome of the election. Absent dissemination, the outcome of the election could not have been altered by the vote of one individual. *Peppermill Hotel Casino*, 325 NLRB 1202 fn.2 (1998). Based upon the foregoing, Objection 2 shall be overruled.

C. Other Objectionable Conduct

Although the Petitioners alleged the existence of other objectionable conduct in general terms, the investigation disclosed no additional objectionable conduct.

II. DECISION AND ORDER

For the reasons discussed above under Objections 1 2, and Other Objectionable Conduct, it is hereby concluded and ordered that Objections 1, 2, and Other Objectionable Conduct BE AND HEREBY ARE OVERRULED.

III. CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for any labor organization and that no labor organization is the exclusive representative of the employees in the bargaining unit described above.

IV. APPEAL PROCEDURE

Under the provisions of Section 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington by _____.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objection and that is not included in this Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto, that a 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 this Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

ISSUED at Indianapolis, Indiana this 18th day of March, 2004.

/s/ Roberto G. Chavarry

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