

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 32¹

SERVICE CORPORATION INTERNATIONAL d/b/a
OAK HILL FUNERAL HOME AND MEMORIAL PARK
Employer

and

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA, AFL-CIO,
LOCAL UNION 270
Petitioner

Case 32-RC-5235

and

CEMETERY WORKERS AND GREENS
ATTENDANTS UNION, LOCAL 265,
SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO
Intervenor

**REPORT AND RECOMMENDATIONS ON OBJECTIONS
AND NOTICE OF HEARING**

Acting pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned has caused an investigation of the Employer's objections to be conducted and hereby orders that a hearing be held on Objections Nos. 1 and 2.

The Election

The Petition in this matter was filed on March 15, 2004.² Pursuant to a Stipulated Election Agreement approved on June 29, an election by secret ballot was conducted on July 16 in the following appropriate bargaining unit:

All full-time and part-time cemetery grounds and maintenance employees, including all equipment operators, construction, landscape and gardening, shop, and vehicle repair employees, leadpersons, foremen and janitors, employed by the Employer at

¹ Herein called the Board.

² All dates hereinafter refer to calendar year 2004.

its San Jose, California facility; **excluding** all managerial and administrative employees, salespersons, office clerical employees, bereavement employees, all other employees, guards and supervisors as defined in the Act.

The Tally of Ballots served on the parties at the conclusion of the election showed the following results:

Approximate number of eligible voters.....	44
Number of void ballots.....	0
Number of votes cast for the Petitioner.....	22
Number of votes cast for the Intervenor.....	0
Number of votes against participating labor organizations.....	17
Number of valid votes counted.....	39
Number of challenged ballots.....	5
Valid votes counted plus challenged ballots.....	44

Challenges were sufficient in number to affect the election results. The Petitioner subsequently withdrew its challenges to the ballots of 4 voters, with no objection by any party. Accordingly, a revised Tally of Ballots issued on August 2, which showed the following results:

Approximate number of eligible voters.....	44
Number of void ballots.....	0
Number of votes cast for the Petitioner.....	23
Number of votes cast for the Intervenor.....	0
Number of votes against participating labor organizations.....	20
Number of valid votes counted.....	43
Number of challenged ballots.....	1
Valid votes counted plus challenged ballots.....	44

The remaining challenged ballot was insufficient to affect the results of the election.

The Objections

The Employer filed timely objections to the election, copies of which were served on the Petitioner and the Intervenor by the Region. The objections read as follows:

Objection No. 1

During the “critical period,” the Union³, by and through its officers, representatives, agents, employees and/or officials restrained and coerced eligible voters (i.e., employees in the putative bargaining unit) in the exercise of their Section 7 rights by harassment, threats of retaliation and intimidation directed at Oak Hill’s supervisors, employees and their respective families both at the workplace and elsewhere.

Such unlawful conduct included but was not limited to: following employees to their homes; refusing to leave employees’ homes when requested to do so; writing down employees’ license plate numbers; following a supervisor’s wife home after a high-speed chase; and confronting and threatening a supervisor on Oak Hill property during working hours in the presence of the public and employees. Upon request, Oak Hill will produce witnesses for Board interviews and/or submit sworn declarations in support of this objection.

Objection No. 2

During the “critical period,” the Union, by and through its officers, representatives, agents, employees and/or officials restrained and coerced eligible voters (i.e., employees in the putative bargaining unit) in the exercise of their Section 7 rights by distributing altered Board documents which falsely created the impression that the Board endorsed and/or preferred the Union. See e.g. *SDC Investments, Inc.*, 274 NLRB 556 (1985). Copies of the altered ballots are attached as Exhibit A and B.⁴

As a result of the Union’s conduct (and taking into account the fact that a large percent of the employees do not speak English as a primary language), the Board’s neutrality in the election could not be fully understood by the employees.

The investigation of these objections raised material issues of fact and law that can best be resolved by a hearing.

Notice of Hearing

IT IS HEREBY ORDERED that a hearing on Objections Nos. 1 and 2 be held before a duly designated Hearing Officer of the National Labor Relations Board.

³ The Employer, in its objections, refers to the Petitioner as “the Union.”

⁴ In a footnote to this objection, the Employer states: “In Exhibit A, the Union added the phrase ‘VOTE YES FOR THE UNION LOCAL 270’ in a type set which created the impression that it was part of the Board’s official ballot. In Exhibit B, the Union added typed language at the top of the ballot asking the employees to ‘JUNTA NACIONAL DE...’ and **redacted** the Board’s warning that the NLRB does not endorse any choice in the election.”

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall 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 said issues. Within fourteen (14) days from the issuance of said report, any party may file with the Board an original and one (1) copy of exceptions to such report, with supporting brief, 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, on the other party to the proceeding and with the undersigned. If no exceptions are filed to such report, the Board, upon the expiration of the period for filing exceptions, may decide the matter forthwith upon the record or may make other disposition of the case.

PLEASE TAKE NOTICE that on, at 9:00 a.m. on August 25, 2004, in the Oakland Regional Office of the Board, 1301 Clay Street, Suite 300N, Oakland, California, and continuing on consecutive days thereafter until completed, a hearing pursuant to Section 102.69 of the Board's Rules and Regulations will be conducted before a hearing officer of the National Labor Relations Board upon the aforesaid objections, at which time and place the parties will have the right to appear in person, or otherwise, to give testimony and to examine and cross-examine witnesses with respect to said matters.

DATED AT Oakland, California this 17th day of August, 2004.

/s/ Alan B. Reichard

Alan B. Reichard
Regional Director
National Labor Relations Board
Region 32
1301 Clay Street, Room 300N
Oakland, CA 94612-5211