

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SUBREGION 33

WEST LIBERTY FOODS, LLC d/b/a IOWA
TURKEY GROWERS ASSOCIATION

Employer

and

Case 33-RC-4858
Stipulation

UNITED FOOD AND COMMERCIAL WORKERS
UNION, DISTRICT LOCAL 431

Petitioner

**REGIONAL DIRECTOR'S REPORT ON CHALLENGED BALLOTS AND
OBJECTIONS, ORDER CONSOLIDATING CASES
AND ORDER DIRECTING HEARING**

This is the Regional Director's report on challenged ballots and objections. As explained more fully below, I am directing that the Petitioner's objections be consolidated with an outstanding complaint for hearing by an administrative law judge.

Following the filing of a petition on May 21, 2004,¹ and pursuant to a Stipulated Election Agreement approved by the Acting Officer-in-Charge on June 8, an election was conducted on July 1, among employees of the Employer in the following appropriate collective bargaining unit:

All full-time and regular part-time production, maintenance and quality assurance employees employed at the Employer's West Liberty, Iowa facility; but excluding all research and development employees, office clerical, professional employees, guards and supervisors as defined in the Act.

¹ All dates are 2004 unless otherwise indicated.

The tally of ballots made available to the parties at the conclusion of the election discloses the following results:

Approximate number of eligible voters	639
Void ballots	3
Votes cast for Petitioner	301
Votes cast against participating labor organization	299
Valid votes counted.....	600
Challenged ballots.....	15
Valid votes counted plus challenged ballots.....	615

Challenges are sufficient in number to affect the results of the election.

On July 8, the Petitioner timely filed objections to conduct of the election and to conduct affecting the results of the election.²

On August 5, The Employer and the Petitioner entered into a Stipulation³ in which they agreed that the challenge to the ballot of Lora Phelps may be sustained, and agreed to the Petitioner's withdrawal of its challenges to the ballots of Lisa Cozad, Barth Donald, Francisco Estrada, Donna Gatzke, Carlos Izaguirre, Josue Juarez, Russ McDonald, Cindy McGowan, Raul Navarro, Joshua Sturms, and Roberto Zapata, and that the ballots of those latter individuals could be opened and counted. On August 5, the eleven challenged ballots were opened and counted.⁴

The corrected revised tally of ballots discloses the following Final Tally:

² A copy of the Petitioner's objections is attached as Exhibit 1.

³ A copy of the parties' Stipulation is attached as Exhibit 2.

⁴ On this same date, the Petitioner and the Employer each withdrew their respective challenges to the Board Agent's interpretation of two voided ballots.

Approximate number of eligible voters	639
Void ballots.....	5
Votes cast for Petitioner.....	303
Votes cast against participating labor organization	308
Valid votes counted.....	611
Undetermined challenged ballots.....	1
Valid votes counted plus challenged ballots.....	612
Sustained Challenges (voters ineligible).....	1

The remaining undetermined challenged ballots, if any, shown in the Final Tally column are not sufficient to affect the results of the election. A majority of the valid votes plus challenged ballots as shown in the Final Tally column has no been cast for Petitioner.

Pursuant to Section 102.69 of the Board’s Rules and Regulations, Series 8, as amended, the Regional Director caused an investigation to be made of the Petitioner’s objections. All evidence adduced during the investigation has been carefully considered by the undersigned who reports and orders as follows:

Background

The Employer is an Iowa limited liability corporation with a facility located in West Liberty, Iowa, the only facility involved, where it is engaged in the nonretail slaughter, processing, and distribution of turkeys. At the time of the election, there were approximately 639 employees in the above-described collective-bargaining unit under the overall supervision of Employer President Ed Garrett.

THE OBJECTIONS

In its first objection, the Petitioner alleges that the Employer failed to provide a private location for the voting area on the Ready-to-Eat side of its facility since the polling place in

question, the Ready-to-Eat Cafeteria, was used throughout the day by employees. In its second objection, the Petitioner alleges that the Employer's supervisors and agents were present in the voting area while the polls were open, thereby intimidating and coercing unit employees. In its third objection, the Petitioner alleges that supervisors and agents of the Employer distributed coercive anti-union literature and otherwise campaigned in the voting area while the polls were open. In its fourth objection, the Petitioner alleges that the Employer permitted anti-union employees to wear "Vote No" stickers while refusing to allow pro-union unit employees to wear "Union Yes" stickers. In its fifth objection, the Petitioner alleges that the Employer solicited grievances and impliedly promised benefits to employees if they rejected representation by the Petitioner. In its sixth objection, the Petitioner alleges that the Employer granted a substantial benefit by agreeing to employees' requests that it terminate a disliked supervisor in order to influence the election. In its seventh objection, the Petitioner alleges that the Employer granted unit employees substantial benefits by providing winners of an Employer-sponsored raffle with free vacations.

The Employer, while admitting certain of the conduct alleged in the Petitioner's objections, denies that any of the conduct alleged in the Petitioner's objections provides a basis upon which the election may be set aside.

The undersigned concludes that the Petitioner's objections and the investigation of them raise substantial and material questions of fact that can best be resolved by a hearing.

CONCLUSION

The undersigned concludes that in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay, it is appropriate to consolidate the Petitioner's objections with the unfair labor practice case in Case 33-CA-14604 for hearing. Accordingly,

ORDER

IT IS HEREBY ORDERED, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, that a hearing be held to resolve the issues raised by the Petitioner's objections.

IT IS FURTHER ORDERED that, pursuant to Sections 102.72 and 102.33 of the Board's Rules and Regulations, that such hearing shall be, and hereby is consolidated with the allegations of the complaint in Case 33-CA-14604 for hearing, ruling by an Administrative Law Judge of the National Labor Relations Board.

August 20, 2004.

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director
Region 14, Subregion 33
National Labor Relations Board
300 Hamilton Square, Suite 200
Peoria, IL 61602

PETITIONER' S OBJECTIONS

During the critical period preceding the election in the above-captioned matter, the employer, by its supervisors and agents, destroyed the laboratory conditions necessary to the holding of a free and fair election, by engaging in the following conduct:

1. The employer failed to provide a private location for the voting area on the Ready-to-Eat side of its facility. The election was held in the employer's cafeteria, which was used throughout the day by employees as a break area. Bargaining unit employees were thereby effectively deprived of their right to vote in a secret ballot election.

2. The employer's supervisors and agents were present in the voting area while the polls were open, thereby intimidating and coercing unit employees.

3. The employer's supervisors and agents distributed coercive anti-union literature, and otherwise campaigned, in the voting area while the polls were open, thereby intimidating and coercing unit employees.

4. The employer permitted anti-union unit employees to wear "Vote No" stickers while refusing to allow pro-union unit employees to wear "Union Yes" stickers.

5. The employer solicited grievances from and impliedly promised benefits to unit employees if they rejected union representation.

6. The employer granted unit employees a substantial benefit by causing a supervisor who was despised by unit employees –and whom many unit employees told the employer that they wanted the employer to get rid of— to resign his employment, in an effort to cause unit employees to reject union representation.

7. The employer granted unit employees other substantial benefits by providing winners of an employer-sponsored raffle with free vacations, in an effort to cause unit employees to reject union representation.

By the above and other conduct, the employer destroyed the laboratory conditions necessary to the holding of a free and fair election.

Respectfully submitted,

/s/ Alyssa Rotschafer
Alyssa Rotschafer
Organizer, UFCW Region 6
Representative for the Petitioner

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION THIRTY-THREE**

WEST LIBERTY FOODS, LLC d/b/a IOWA
TURKEY GROWERS ASSOCIATION

Employer

and

Case 33-RC-4858

UNITED FOOD AND COMMERCIAL WORKERS
UNION, DISTRICT LOCAL 431

Petitioner

STIPULATION FOR RESOLUTION OF CHALLENGED BALLOTS

It is stipulated by the undersigned that:

1. Pursuant to a Stipulated Election Agreement approved by the Regional Director on June 8, 2004 (all dates are 2004), an election by secret ballot was conducted on July 1 Employer's facility located at 207 West 2nd Street West Liberty, Iowa 52776 under the supervision of the Regional Director for the Thirty-Third Subregion.

2. The Tally of Ballots shows the results of the election were three hundred one (301) votes cast for the Petitioner, two hundred ninety-nine (299) votes cast against the Petitioner, and 15 challenged ballots. The challenges were sufficient in number to affect the results of the election.

3. The parties hereto agree that on August 5 at 11:00 a.m. at the National Labor Relations Board, Subregion 33, 300 Hamilton Blvd., Suite 200, Peoria, Illinois 61602, the ballots of the individuals named in paragraphs 4 and 5 will be removed for the reasons set forth in paragraphs 4 and 5; the ballots of the individuals named in paragraph 4 will be removed, opened, commingled and counted for the reasons set forth in paragraph 4; and that a Revised Tally of Ballots be thereafter issued.

4. The Petitioner requests to withdraw its challenges to the ballots of the

following individuals: Josue Juarez, Raul Navarro, Liza Cozad, Russ McDonald, Donna Gatzke, Francisco Estrada, Roberto Zapata, Joshua Sturms, Barth Donald, Cindy McGowan and Carlos Izaguirre. The Employer has no objection to the approval of the withdrawals.

5. The parties agree that Lora Phelps is not an eligible employee because, as an employee in the company store, she does not share a community of interests with the other employees in the collective-bargaining unit, therefore, the Petitioner's challenge to her ballot may be sustained.

6. With respect to the aforementioned individuals only, the parties hereto waive the right to (1) a Regional Director's Report on Challenged Ballots; (2) a Hearing Officer's Report and Recommendations on Challenged Ballots, (3) a hearing to resolve said challenged ballots; and (4) a Board Decision.

7. This Stipulation for Resolution of Challenged Ballots shall be final and binding on the parties.

WEST LIBERTY FOODS, LLC d/b/a IOWA
TURKEY GROWERS ASSOCIATION

By: /s/ Tara DeLong

Date: 8/5/04

UNITED FOOD AND COMMERCIAL WORKERS
UNION, DISTRICT LOCAL 431

By: /s/ Alyssa Rotschafer

Date: 8/5/04

DATE APPROVED: 8/5/04

For: Ralph Tremain, RD
Region 14

By: /s/ Will J. Vance
Will J. Vance, Officer-in-Charge
National Labor Relations Board
Subregion 33, Peoria, Illinois

Exhibit 2