UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 1

RHODE ISLAND CVS PHARMACY, L.L.C.

Employer

and **Case 01-RC-339980**

THE PHARMACY GUILD A/W INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO

Petitioner

DECISION OVERRULING OBJECTIONS AND CERTIFICATION OF REPRESENTATIVE

Based on a petition filed on April 12, 2024,[1] by The Pharmacy Guild a/w International Association of Machinists & Aerospace Workers, AFL-CIO (Petitioner or Union), and pursuant to a Stipulated Election Agreement approved April 23, a manual election was conducted among employees of Rhode Island CVS Pharmacy, L.L.C., (Employer), in the following unit:

> All full-time and regular part-time Staff Pharmacists and Night Pharmacists employed by the Employer at its Wakefield, RI facility (Store #2065); but excluding pharmacy managers, pharmacy technicians, pharmacy interns, shift supervisors, store managers, managers, store associates, confidential employees, office clerical employees and guards, nonprofessional employees and supervisors as defined in the Act.

Ballots were counted, and a Tally of Ballots issued, upon the conclusion of the election. The Tally of Ballots showed the following results:

Approximate number of eligible voters……5
Number of void ballots……0
Number of ballots cast for Petitioner...……3
Number of votes cast against Petitioner…….....1
Number of valid votes counted…… 4
Number of challenged ballots……1
Number of valid votes counted plus challenged ballots……5

Challenges are not sufficient in number to affect the results of the election.

A majority of the valid votes counted has been cast for The Pharmacy Guild a/w International Association of Machinists & Aerospace Workers, AFL-CIO.

[1] All dates are 2024 unless otherwise noted.

On May 30, the Employer filed a timely objection to conduct affecting the results of the election. The objection is as follows:

> CVS objects to the Election because a supervisor within the meaning of Section 2(11) of the Act—Chris Eggeman—engaged in pro union supervisory conduct within the meaning of applicable Board law, including but not limited to *Harborside Health Care, Inc*., 343 NLRB 906 (2004) and *Madison Square Garden Ct, LLC*, 350 NLRB 117 (2007).

For the reasons set forth below, I am overruling the Employer's objection and issuing a Certification of Representative.

Employer's Objection

Pharmacist Chris Eggeman voted in the election subject to challenge because the Employer took, and continues to take, the position that he is a statutory supervisor within the meaning of Section 2(11) of the Act. His challenged ballot was not determinative.

The Employer asserts that Eggeman exercises the authority to hire pharmacy technicians, assign work to pharmacy technicians, and responsibly direct pharmacy technicians. The Employer's offer of proof includes several emails in which Eggeman documents sending offers of employment to various pharmacy technicians. At a hearing, District Leader Dana Gagnon would testify to Eggeman's duties and authorities.

In support of its contention that Eggeman engaged in pro-union conduct, the Employer's offer of proof includes a copy of a press release retrieved from the Petitioner's Facebook page. The press release explains that the Petitioner prevailed in the election at issue here. In the press release, Eggeman is described as "a pharmacist active in the organizing drive at one store." Eggeman is quoted as saying "Unionization is the best tool we have to ensure our patients are receiving the care standards they deserve. Our patients aren't served by an unchecked profit-driven healthcare system; quality patient care needs to come first. There should never be a medication error or a delay in providing healthcare services because of short staffing derived from increasing the bottom line. With our union, we will have a voice to speak for our patients and our profession, and a legally enforceable collective bargaining agreement to ensure that voice is heard."

At a hearing, a pharmacist the Employer did not identify by name in its offer of proof would testify that Eggeman solicited their support for the Union, attempted to answer their questions about the Union, and attempted to persuade them to support the Union.

Analysis

It is well settled that "representation elections are not lightly set aside. There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees," *Lockheed Martin Skunk Works*, 331 NLRB 852, 854 (2000), quoting

NLRB v. Hood Furniture Co., 941 F.2d 325, 328 (5th Cir. 1991) (internal citation omitted). Therefore, "the burden of proof on parties seeking to have a Board supervised election set aside is a heavy one," *Delta Brands, Inc.*, 344 NLRB 252, 253, (2005), citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989).

Section 102.69(a) of the Board's Rules and Regulations provides that when filing objections to an election, a party must also file a written offer of proof in the form described in Section 102.66(c) of the Board's Rules and Regulations. Section 102.66(c) specifies that offers of proof shall identify each witness and summarize the testimony of that witness. With regard to processing objections and/or challenges, Section 102.69(c)(1)(i) of the Board's Rules and Regulations provides that, if the Regional Director determines that the evidence described in the offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, the Regional Director shall issue a decision disposing of the objections and certifying the results of election, including a certification of representative where appropriate. The objecting party bears the burden of furnishing evidence or a description of evidence that, if credited at hearing, would warrant setting aside the election, *Jacmar Food Service Distribution*, 365 NLRB No. 35, slip. Op. 1, fn. 2 (2017), citing *Transcare New York, Inc.*, 355 NLRB 326 (2010).

As a procedural matter, a party does not have an automatic right to a hearing on its objections. 29 C.F.R. § 102.69(c)(1). An evidentiary hearing is appropriate only "[w]hen an objecting party raises substantial and material issues of fact sufficient to support a *prima facie* showing of objectionable conduct." *Swing Staging, Inc. v. NLRB*, 994 F.2d 859, 862 (D.C. Cir. 1993); see also *Durham School Servs. v. NLRB*, 821 F. 3d 52, 58 (D.C. Cir. 2016). The objecting party cannot rely on bare assertions or conclusory statements to raise an issue requiring a hearing and has the duty of furnishing evidence or description of evidence that, if credited at a hearing, would warrant setting aside the election. See, e.g., *In re Affiliated Comput. Servs.*, 355 NLRB 899, 903 (2010); *Transcare New York, Inc.*, supra; *The Daily Grind*, 337 NLRB 655 (2002) (unsupported allegations are insufficient to trigger administrative investigations). Rather, the objecting party must point to "specific evidence of specific events from or about specific people." *Amalgamated Clothing Workers of Am.*, 424 F.2d 818, 828 (D.C. Cir. 1970) (quoting *United States Rubber Co v. NLRB*, 373 F.2d 602, 606 (5th Cir. 1967)). Recently, the Board reiterated that a hearing may not to be used as "a fishing expedition" to gather evidence in support of a party's objections. *Professional Transportation*, 370 NLRB No. 132 (June 9, 2021).

Accordingly, the Employer's offer of proof is insufficient in that it fails to identify any non-supervisory witness(es) that would testify regarding any specifics relating to Eggeman's alleged activities on behalf of the Union. Because the offer of proof does not identify a proposed witness and, therefore, is insufficient, I am overruling the Employer's objection.

In addition, even if introduced and credited at hearing, the evidence described in the Employer's offer of proof does not constitute grounds for setting aside the election.

In *Harborside Healthcare, Inc.*, 343 NLRB 906 (2004), the Board clarified the legal standards applicable when an employer challenges the results of an election alleging objectionable pro-union conduct. Under *Harborside*, the Board considers two factors:

(1) Whether the supervisor's pro-union conduct reasonably tended to coerce or interfere with the employees' exercise of free choice in the election. This inquiry includes: (a) consideration of the nature and degree of supervisory authority possessed by those who engage in the pro-union conduct; and (b) an examination of the nature, extent, and context of the conduct in question.

(2) Whether the conduct interfered with freedom of choice to the extent that it materially affected the outcome of the election, based on factors such as (a) the margin of victory in the election; (b) whether the conduct at issue was widespread or isolated; (c) the timing of the conduct; (d) the extent to which the conduct became known; and (e) the lingering effect of the conduct.

With respect to the first *Harborside* factor, the Employer does not allege that Eggeman exercises supervisory authority over the other pharmacists who were eligible voters. Rather, the Employer suggests that Eggeman exercises supervisory authority over pharmacy technicians who did not take part in the election. In applying the *Harborside Healthcare* test, the Board has indicated that prounion supervisory conduct is not objectionable where the supervisor has no authority over the employees to whom the conduct was directed. *Glen's Market*, 344 NLRB 294, 295 (2005). By contrast, the supervisor who was the subject of *Harborside* initiated discipline, assigned schedules, gave principal input on evaluations, directly suspended employees, and effectively recommended termination of the eligible voters to whom she spoke.

The conduct in question in this case is also minimal: Eggeman is alleged to have made a pro-union statement in a press release which was not published until after the election. The quote attributed to Eggemen discusses the potential benefits the union might offer to patients rather than to pharmacists. The pro-union comments Eggeman is alleged to have made to a colleague are also devoid of any evidence of coercion. *Harborside* makes it plain that a supervisor's pro-union speech, without more, will not be found objectionable. The Board has many times found union endorsements from supervisors to be non-coercive. See *Connecticut Humane Society*, 358 NLRB 187, 223 (2016) (supervisor attending union meetings, encouraging others to attend same and signing a union petition in the presence of employees not coercive); *Northeast Iowa Telephone Co*., 346 NLRB 465, 466-468 (2006) (supervisor attending union meetings and speaking in favor of union at such meetings not coercive). Further, the Board has repeatedly held that a strong opinion in support of, or against, a union, even an offensive one, does not by itself constitute coercive conduct that warrants overturning an election. See *Werthan Packaging, Inc*., 345 NLRB 343, 343–44 (2005) (finding that supervisor's statement to employee that it was in her and "her family's best interest to vote no," was not coercive); *NLRB v. J.S. Carambola, LLP*, 457 F. App'x 145, 151 (3d Cir. 2012) (statement by kitchen supervisor, that "if you [do not] vote for the union, you are a stupid ass," was not threatening statement of physical harm or job loss that could have warranted overturning union election).

I have determined that the evidence offered in Employer's offer of proof, even if it were introduced and credited at hearing, does not establish the existence of coercive conduct. I am, therefore, overruling the Employer's objection for that reason as well as because the offer of proof is insufficient on its face.

CONCLUSION

Based on the foregoing, having considered the Employer's offer of proof in the light most favorable to them, I find their offer of proof is insufficient to warrant setting aside the election. I am, therefore, overruling the Employer's objection in its entirety and hereby issue the following Certification of Representative based on the Tallys of Ballots that previously issued at the conclusion of the election.

CERTIFICATION OF REPRESENTATIVE

As authorized by the National Labor Relations Board, it is certified that a majority of the valid ballots has been cast for:

THE PHARMACY GUILD A/W INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO

and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time Staff Pharmacists and Night Pharmacists employed by the Employer at its Wakefield, RI facility (Store #2065); but excluding pharmacy managers, pharmacy technicians, pharmacy interns, shift supervisors, store managers, managers, store associates, confidential employees, office clerical employees and guards, nonprofessional employees and supervisors as defined in the Act.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Sections 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by **February 21, 2025**. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001, and must be accompanied by a statement explaining the circumstances concerning not having access to the Agency's E-Filing system or why filing electronically would impose an undue burden. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated: February 6, 2025

LAURA A. SACKS
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