UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

ADVOCATE SOUTH SUBURBAN HOSPITAL

Employer

and

Case 13-RC-359590

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 399

Petitioner

ORDER OVERRULING OBJECTIONS AND ISSUING CERTIFICATION OF REPRESENTATIVE

Based on a petition filed on February 4, 2025 and pursuant to a Stipulated Election Agreement, an election was conducted on March 4, 2025 to determine whether a unit of employees of Advocate South Suburban Hospital (Employer) wish to be represented for purposes of collective bargaining by the International Union of Operating Engineers Local 399 (Petitioner). That voting unit consists of:

> Included: All full-time and regular part-time Stationary Engineers, Maintenance Technicians, Maintenance Trades Specialists, Biomedical Equipment Technicians, and Imaging Equipment Technicians employed by the Employer at its facility currently located at 17800 South Kedzie Ave., Hazel Crest, IL.
>
> Excluded: All office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined by the Act.

The parties stipulated that the classifications of Stationary Engineer Lead, Maintenance Mechanic Lead, and Biomedical Equipment Technician Lead could vote in the election but that their ballots would be challenged since their eligibility had not been resolved. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit.

The tally of ballots prepared at the conclusion of the election shows that of the approximately **19** eligible voters, **11** votes were cast for and **5** votes were cast against the

Petitioner, with **1** challenged ballot, a number that is not sufficient to affect the results of the election.

THE OBJECTIONS

On March 10, 2025, the Employer filed timely objections to conduct affecting the results of the election. A copy of the objections is attached to this Order.

Representation elections are not lightly set aside. *Colgate Scaffolding & Equipment Corp.*, 354 NLRB 544, 546 (2009) (citing *NLRB v. Hood Furniture Manufacturing Co.,* 941 F.2d 325, 328 (5th Cir. 1991)). "There is a strong presumption that ballots cast under specific NLRB procedural safeguards reflect the true desires of the employees." *Id*. (citing *Lockheed Martin Corp.*, 331 NLRB 852-854 (2008)). The burden of proof is on the party seeking to set aside a Board-supervised election, and that burden is a "heavy one." *Lalique N.A., Inc.,* 339 NLRB 1119, 1122 (2003); *Chicago Metallic Corp.,* 273 NLRB 1677, 1704 fn. 163 (1985).

Where, as here, the objecting party alleges that the other party to the election, or its agent, committed the objectionable conduct, the objecting party must show not only that the acts occurred by the other party's agent, but also that they "interfered with the employees exercise of free choice to such an extent that they materially affected the results of an election." *NLRB v. Gulf States Canners,* 634 F.2d 215, 216 (5th Cir. 1981). *See Cedars-Sinai Medical Center,* 342 NLRB 596, 597 (2004) (citing *Cambridge Tool & Mfg. Co.,* 316 NLRB 716 (1995) (conduct is objectionable "if it has the tendency to interfere with the employees' freedom of choice.").

The objecting party must file objections that include a short statement of the reasons for the objections, and an offer of proof identifying "each witness the party would call to testify concerning the issue and summarizing each witness testimony." Board Rules and Regulations Section 102.69(a); 102.66(c).

The objecting party must provide probative evidence in support of its objections; it is not sufficient to rely on mere allegation, conclusory statements, or suspicion. *See Allen Tyler & Son, Inc.,* 234 NLRB 212, 212 (1978) ("In the absence of any probative evidence, [the Board] shall not require or insist that the Regional Director conduct a further investigation simply on the basis of a 'suspicious set of circumstances.'"). In short, to merit investigation by a Regional Director and to warrant a hearing, the offer of proof must be "reasonably specific in alleging facts which *prima facie* would warrant setting aside an election." *Audubon Cabinet Company,* 119 NLRB 349, 350-351 (1957); *Care Enterprises,* 306 NLRB 491 (1992).

If the Regional Director determines that the evidence described in an 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." Rules and Regs. at 102.69(c)(1)(i). *See also* NLRB Casehandling Manual, Part Two- Representation Proceedings, Sec. 11395.1.

Objection 1:

The Employer asserts that because the Board lacks a quorum, the Regional Director lacks the authority to certify the results of the election or to rule on the Employer's objections. The Employer did not provide an offer of proof in support of this objection as required under the Rules and Regulations, Section 102.69(a)(8), however, I address its legal argument below.

The Employer cites to *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), which states that a two-member Board lacked authority regarding an order finding that the involved employer engaged in certain unfair labor practices, and imposing a remedy. This case is inapposite to the instant proceeding as it was not a representation case and does not speak to the authority held by a Regional Director when the Board lacks a quorum.

The Employer also argues that prior decisions examining the issue relied upon *Chevron*, 467 U.S. 837 (1984) and the continued validity of those decisions has been undermined by the overruling of *Chevron* in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

NLRB Board Rule and Regulation 29 C.F.R. 102.182 states that representation cases should be processed to certification in the absence of a quorum. Moreover, this authority has been upheld by the D. C. Circuit. That court held that Regional Directors have the authority to conduct representation proceedings, despite the absence of a quorum. *UC Health v. NLRB*, 803 F.3d 669 (D.C. Cir. 2015); *SSC Mystic Operating Co., LLC, v. NLRB*, 801 F.3d 302, 308 (D.C. Cir. 2015), *cert. denied,* 580 U.S. 986 (2016). As *SSC Mystic* explained: "we must defer to the Board's reasonable interpretation that the lack of a quorum at the Board does not prevent Regional Directors from continuing to exercise delegated authority that is not final because it is subject to eventual review by the Board." 801 F.3d at 308.

Nor does it matter that those cases relied upon a Board interpretation of the NLRA. The Supreme Court in *Loper Bright* made clear that a holding's "[m]ere reliance on *Chevron* cannot constitute a special justification for overruling such a holding, because to say a precedent relied on *Chevron* is, at best, just an argument that the precedent was wrongly decided." 603 U.S. 369, 375 (2024). In any event, the D.C. Circuit in *U.C. Health* found the Board's interpretation persuasive on its own terms:

> [A]llowing the Regional Director to continue to operate regardless of the Board's quorum is fully in line with the policy behind Congress's decision to allow for the delegation in the first place. Congress explained that the amendment to the NLRA that permitted the Board to delegate authority to the Regional Directors was "designed to expedite final disposition of cases by the Board." *See* 105 Cong. Rec. 19,770 (1959) (statement of Sen. Barry Goldwater). Permitting Regional Directors to continue overseeing elections and certifying the results while waiting for new Board members to be confirmed allows representation elections to proceed and tees

> up potential objections for the Board, which can then exercise the power the NLRA preserves for it to review the Regional Director's decisions once a quorum is restored. And at least those unions and companies that have no objections to the conduct or result of an election can agree to accept its outcome without any Board intervention at all. The Board's interpretation thus avoids unnecessarily halting representation elections any time a quorum lapses due to gridlock elsewhere. 803 F.3d at 675–76.

Accordingly, Objection 1 is overruled.

Objection 2:

The Employer asserts that it was subjected to an unconstitutional interpretation of the Act under *Amazon.com Services LLC,* 373 NLRB No. 136 (2024), which materially and substantially impaired its ability to lawfully communicate facts, opinions, experience and viewpoints on unionization to all its employees on paid time in required meetings. The Employer asserts that the *Amazon* decision infringed upon its First Amendment rights. The Employer provides no offer of proof.

The Employer does not offer any evidence as to how the *Amazon* decision allegedly interfered with employee free choice or disrupted laboratory conditions. An objecting party must point to "specific evidence of specific events from or about specific people." *Amalgamated Clothing Workers of America*, 424 F.2d 818, 828 (D.C. Cir. 1970) (quoting *United States Rubber Co. v. NLRB*, 373 F.2d 602, 606 (5th Cir. 1967)). 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., *Affiliated Computer Services, Inc.*, 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).

Even if the Employer's argument is primarily a legal argument, it is still required to present factual evidence in an offer of proof to show why the election must be set aside. In this case, the Employer failed to provide an offer of proof regarding this objection – it did not even attempt to present evidence regarding how the *Amazon.com* case allegedly impacted its conduct.

Section 8(c) of the National Labor Relations Act protects employers' rights to discuss unionization and to educate employees about the risks and benefits of union organizing. Aside from the Employer's ability to hold captive-audience meetings, nothing in Objection 2 would establish that the Employer was prevented from contacting its employees for the purpose of discussing unionization.

As only the Board or the Supreme Court can reverse extant Board precedent, I cannot conclude that the Employer's adherence to current Board law would constitute the grounds for setting aside the election results in this case.[1] Moreover, the offer of proof does not provide requisite probative evidence to warrant a hearing in this matter.

Accordingly, Objection 2 is overruled.

Objection 3:

The Employer asserts that Maintenance Mechanic Lead Dennis Swatek is a supervisor under Section 2(11) of the Act and that he engaged in pro-union conduct which created an atmosphere of fear and surveillance.

The Employer offers no evidence regarding the supervisory status of Swatek. The parties stipulated that Maintenance Mechanic Leads would be permitted to vote subject to challenge as their eligibility was in dispute. The challenges were not determinative, and no determination was made regarding their eligibility. Supervisory status is a prerequisite to finding objectionable conduct here, and the Employer fails to offer any evidence that Swatek is a statutory supervisor.

The Employer asserts in its offer of proof that Swatek attended meetings where union cards were passed around and signed. The Employer also claims that Swatek aided and assisted in the business of the Union. No details are offered as far as what form this aid and assistance took. The Employer does not offer any evidence that Swatek solicited any authorization cards.[2]

The Employer's offer of proof is devoid of names of witnesses or specific testimony that would support its objection. The Employer offers general testimony from unnamed managers and unnamed employees who were eligible to vote. The Employer also fails to offer any timeframe as to when the alleged conduct took place as no dates are contained in the objections or the offer of proof and therefore unclear if the alleged conduct even occurred during the critical period. It is the burden of the objecting party to show that alleged objectionable conduct occurred during the

---

[1] *Tri-State Rigging LLC,* 374 N.L.R.B. No. 21, 2 fn. 3 (2025) (finding that unless the Board specifically acquiesces to the Third Circuit's decision or overrules its own decision, the Board's decision remains controlling precedent); *Sunbelt Rentals, Inc.,* 372 N.L.R.B. No. 24, 17 fn. 40 (2022) (finding that the Board may refuse to follow adverse court of appeals rulings "because only the Supreme Court is 'the supreme arbiter of the meaning of the [Act].' *Nielsen Lithographing Co. v. NLRB*, 854 F.2d 1063, 1066-1068 (7th Cir. 1988) (citing cases)."); see, e.g., *Waco, Inc.*, 273 NLRB 746, 749 fn. 14 (1984); *Pathmark Stores*, 342 NLRB 378 n.1 (2004) (finding that the administrative law judge has duty to apply established Board precedent which the Supreme Court has not reversed).

[2] Even assuming *arguendo* that Swatek was a 2(11) supervisor, the activity alleged by the Employer would not rise to the level of objectionable conduct. Applying *Harborside Healthcare*, the Board has found that activity in support of a union such as attending union meetings, speaking in favor of unions at such meetings, telling employees that the union could improve conditions of employment, and signing authorization cards in front of employees is not objectionable conduct. *Northeast Iowa Telephone Co.*, 346 NLRB 465, 466 (2006).

critical period. *Accubuilt, Inc.*, 340 NLRB 1337, 1338 (2003); *Gibraltar Steel Corporation*, 323 NLRB 601 (1997); *and Dollar Rent-A-Car*, 314 NLRB 1089 fn. 4 (1994).

As the objecting party, the Employer has the duty of furnishing evidence or a description of evidence that, if credited at a hearing, would warrant setting aside the election. *Builders Insulation, Inc.*, 338 NLRB 793, 794-95 (2003); *Holladay Corp.,* 266 NLRB 621 (1983). The Employer must point to "specific evidence of specific events from or about specific people." *Amalgamated Clothing Workers of America*, 424 F.2d 818, 828 (D.C. Cir. 1970) (quoting *United States Rubber Co. v. NLRB*, 373 F.2d 602, 606 (5th Cir. 1967)). Section 102.66(c) of the Board's Rules and Regulations provides that the offer of proof must, in addition to identifying each witness(es) which it does not do, "summariz(e) each witness's testimony." Here, the Employer's offer of proof does not meet the level of specificity required by the Board.

Accordingly, Objection 3 is overruled.

CONCLUSION AND ORDER

Based on my careful review of the Objections and offers of proof, and for the reasons discussed above, the Employer's Objections and offer of proof do not raise any material and substantial issue of fact that would warrant a hearing, much less setting aside the election results. Accordingly, I overrule the Employer's Objections in their entirety, and I shall certify the Petitioner as the representative of the appropriate bargaining unit.

CERTIFCATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that a majority of the valid ballots have been cast for International Union of Operating Engineers Local 399, and that it is the exclusive representative of all the employees in the following bargaining unit:

> **Included:** All full-time and regular part-time Stationary Engineers, Maintenance Technicians, Maintenance Trades Specialists, Biomedical Equipment Technicians, and Imaging Equipment Technicians employed by the Employer at its facility currently located at 17800 South Kedzie Ave., Hazel Crest, IL.
>
> **Excluded:** All office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined by the Act.

Others permitted to vote but whose eligibility was unresolved include Stationary Engineer Lead, Maintenance Mechanic Lead, and Biomedical Equipment Technician Lead. No decision has been made regarding whether the individuals in these classifications or groups are included in, or excluded from, the bargaining unit.

REQUEST FOR 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 **October 15, 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 may be E-Filed through the Agency's website but 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. 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: September 30, 2025

/s/ Angie Cowan Hamada

ANGIE COWAN HAMADA
Regional Director
National Labor Relations Board
Region 13
Dirksen Federal Building
219 South Dearborn Street, Suite 808
Chicago, IL 60604-2027