UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BLUE RIBBON PLUMBING, INC.,
D/B/A WORKMAN & SONS PLUMBING
Employer

and

Case 09-RC-301758

PLUMBERS AND STEAMFITTERS,
LOCAL UNION 248
Petitioner

DECISION ON REVIEW AND ORDER REMANDING

On June 12, 2025, the Regional Director issued a Decision and Direction of Second Election sustaining two objections filed by the Petitioner to a representation election. In accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Petitioner filed an opposition.

The Employer's request for review is granted as it raises substantial issues warranting review. Having carefully considered the entire record,[1] including the request for review and opposition, we find that the Petitioner did not show that any potential misconduct had a "tendency to interfere with the employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995). Accordingly, for the reasons discussed below, we reverse the Regional Director and remand the case.

DISCUSSION

On August 19, 2022, the Petitioner filed a petition to represent a unit of the Employer's plumbers and helpers. An election was held on September 16, 2022, in which 12 employees voted against representation by the Petitioner and none voted in favor of representation. The Petitioner filed objections alleging that, during the critical period, the Employer interfered with the election by: (1) granting three employees wage increases; (2) interrogating three employees about their union support or activity; and (3) threatening to shut down the business if employees unionized. On December 9, 2022, a hearing officer issued a report recommending that all three objections be

[1] The Board has exercised its discretion to read the record in this case. See Board's Rules and Regulations, Sec. 102.67(e).

overruled. On June 12, 2025,[2] the Regional Director reversed the Hearing Officer with respect to the first two objections and issued a Decision and Direction of a Second Election.

We begin our review with the well-settled principle that "[r]epresentation elections are not lightly set aside." *Safeway, Inc.*, 338 NLRB 525, 525 (2002). In evaluating party conduct during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if it has "the tendency to interfere with the employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB at 716.

Further, the Board will only set aside an election if the objectionable conduct could have affected the results of the election. Where the margin of the election exceeds the number of employees affected by the misconduct, the Board has generally declined to set aside the election unless the misconduct was disseminated to other voters. See, e.g., *Werthan Packaging, Inc.*, 345 NLRB 343, 345 (2005); *M.B. Consultants, Ltd.*, 328 NLRB 1089, 1089 (1999); *Owens-Illinois, Inc.*, 271 NLRB 1235, 1235-1236 (1995). Here, twelve employees voted against union representation and none voted in favor of representation. We assume, without deciding, that the Employer engaged in the objectionable conduct found by the Regional Director. At most, six employees were affected by this misconduct.[3] Even if all of those employees would have voted for the Petitioner, the Petitioner would have, at best, lost on a tie vote.[4] Consequently, absent evidence of further dissemination, the objectionable conduct does not warrant setting aside the election.

When evaluating the extent to which objectionable conduct is disseminated, the Board places the burden of proof on the objecting party and does not presume dissemination. *Crown Bolt, Inc.*, 343 NLRB 776, 779 (2004). Here, the Regional Director inferred that news of the wage increases would have been disseminated among the voters because there was testimony that employees generally discussed their wages. We disagree and find that the evidence that employees generally discussed wages is insufficient to support the inference that the news of the three wage increases granted during the critical period was disseminated beyond the employees

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[2] In August and September 2022, the Petitioner filed unfair labor practice charges against the Employer, largely based on the same conduct covered by the objections. On April 9, 2025, the Region issued a complaint on the charges, including the three that mirror the objections. On June 20, the Regional Director approved a settlement agreement between the Employer and the Petitioner over the charges, which included a non-admissions clause.

[3] The record is unclear whether one of the employees purportedly interrogated also received a wage increase. If that occurred, only five employees would have been directly affected by the purportedly objectionable conduct.

[4] Sec. 9(a) of the Act provides that "[r]epresentatives selected for the purposes of collective bargaining by the *majority* of the employees in a unit appropriate for such purposes shall be the exclusive representative of all employees in such unit." (Emphasis added.)

who received the wage increases. Additionally, there is no evidence that the alleged interrogation was disseminated beyond the three employees who heard it directly. Therefore, even if the Employer engaged in objectionable conduct, the Petitioner did not prove that it affected a sufficient number of employees to influence the outcome of the election. On that basis, we reverse the Regional Director's Direction of a Second Election and remand the case to the Regional Director for further appropriate action.

JAMES R. MURPHY, CHAIRMAN

SCOTT A. MAYER, MEMBER

MEMBER PROUTY, dissenting.

I would deny review. The Regional Director found four instances of objectionable Employer misconduct directly affecting six employees in this small unit within a two-and-a-half week period during the critical period, three of which occurred one week before the election. Applying the factors set out in *Taylor Wharton Division*, 336 NLRB 157, 158 (2001), the Regional Director found that several of the factors supported his decision that the Employer's misconduct had the tendency to interfere with employee free choice, including that there were multiple instances of objectionable conduct during the critical period, the close proximity of the wage increases to the election, the fact that the objectionable conduct was directly attributable to the Employer, and the lack of alleged misconduct by the Union which could cancel out the effects of the Employer's misconduct. The Regional Director inferred that news of the three objectional raises, which were significant in amount, would have been disseminated to others in the unit as there was evidence that employees at the worksite discussed their wages with each other. The Regional Director also found that the fact that it was the petition itself that precipitated and was the subject of the objectionable interrogation heightened its impact and would have caused it to linger in the minds of employees. In these circumstances, I do not believe that the Employer has shown that the Regional Director's decision that the Employer's objectionable conduct interfered with employee free choice was either clearly erroneous or a departure from Board precedent. Accordingly, I would deny review.

DAVID M. PROUTY, MEMBER

Dated, Washington, D.C., April 13, 2026.