Dold Foods, LLC *and* United Food and Commercial Workers Union Local 2. Case 14–RC–353703

April 16, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

The Petitioner's request for review of the Regional Director's Decision on Objections, Order Approving Withdrawal of Objection, and Order Setting Aside and Directing Rerun Election, pertinent portions of which are attached to this Order, is denied as it raises no substantial issues warranting review. Accordingly, the Petitioner's request for extraordinary relief is denied as moot.

Pursuant to a Stipulated Election Agreement, the Board conducted a manual election on December 4 and 5, 2024. The tally of ballots showed 277 for and 266 against the Union, with four challenged ballots and 11 void ballots. It is undisputed that a substantial number of the Respondent's employees' first language is not English. Employer Objections 1–4 allege that non-English-speaking employees' ability to understand and participate in the election was impeded by the lack of translators, the fact that all ballots were printed in English only, and by errors in the wording and design of the Swahili and Spanish sample ballots.

The Regional Director sustained these objections. She found that the sample ballots contained within the Spanish and Swahili notices were "fatally flawed" because the Swahili election notice was partially translated into Swahili but the sample ballot within the election notice was not labeled with the Swahili word for "yes" or "no" above the voting choices and the sample ballot contained within the Spanish election notice was not fully translated, with only the Spanish word for "sample" on the predominately English language ballot. Based on these admitted errors and because the ballots at the election were provided only in English, the Regional Director found that "there was a high potential for voter confusion that was created."

In light of these issues with the notice of election and sample ballots, the Regional Director found that the decision to use only English-language ballots "created an additional likelihood for voter confusion," especially because the translated election notices did not advise employees that this would be the case.[1] Under those circumstances, the Regional Director also found that the denial of requested Swahili translators was further grounds for setting aside the election: "The Region was on notice prior to the election that a substantial number of the employees did not speak English nor could they read in their own language. Further, the Board agents supplied by the Region to run the election spoke only English and as detailed above, the Spanish and Swahili election notices were fatally flawed."

In sustaining the objections, the Regional Director also relied on the fact that this was a close election, with 543 ballots cast, with 277 votes cast for representation and 266 votes cast against the participating labor organization, a difference of 11 votes. As the Regional Director noted, this difference in votes corresponds exactly with the number of void ballots in the election.

The Board will grant a request for review "only where compelling reasons exist therefor."[2] That showing has not been made here. It is undisputed that the first election was marred by the errors described above. The Regional Director who supervised that election concluded that those errors destroyed the "laboratory conditions" necessary for the election to determine the uninhibited desires of the employees and we decline to second-guess that judgment in the circumstances presented here. See *General Shoe Corp.*, 77 NLRB 124, 127 (1948). That is especially true in light of the unusually large number of void ballots, as the Regional Director noted.

Our dissenting colleague contends that the Employer's objections should be denied because they were inadequately supported. We respectfully disagree. The errors and omissions described above are undisputed and based on the Board's own records. Under these specific circumstances, we cannot ignore or dismiss them merely because the Employer's offer of proof failed to identify witnesses who would testify that they occurred.

Our dissenting colleague also claims that "the Board's cases plainly require evidence of actual voter 'confusion' to warrant setting aside an election" and that no such evidence was presented here. Again, we respectfully disagree. In *Superior Truss & Panel, Inc.*, 334 NLRB 916, 919 (2001), and *Arthur Sarnow Candy*, 311 NLRB 1137, 1137 fn. 1 (1993), enfd. 40 F.3d 552 (2d Cir. 1994), the Board overruled objections related to the failure to provide translated ballots or an interpreter citing, among other factors, the lack of any affirmative evidence that voters were confused. But neither case involved, in addition to the absence of translated ballots or an interpreter, errors in the

[1] Case Handling Manual Sec. 11315.2(c) (stating that where a translated notice of election is provided, it should specifically so inform employees if only English-language ballots will be used in the election).

[2] Sec. 102.67(d) of the Board's Rules and Regulations.

notice of election or sample ballot comparable to those in this case.[3] Nor did either case involve the substantial number of void ballots present in this case. The Regional Director sustained the Employer's objections based on a combination of those factors *and* the failure to provide translators. There is no basis for concluding that the Regional Director departed from any reported precedent in so finding.[4]

In denying review, we note that a second election has already been scheduled for April 16, 2026. We are firmly convinced that proceeding with that election is the best way to ensure that employees' wishes concerning representation are fairly and promptly determined in a manner that will withstand judicial scrutiny if enforcement proceedings are required.

Dated, Washington, D.C. April 16, 2026

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James R. Murphy, Chairman

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Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

Contrary to my colleagues, I would grant the Petitioner's request for review of the Regional Director's Decision on Objections, Order Approving Withdrawal of Objection, and Order Setting Aside and Directing Rerun Election, as it raises substantial issues warranting review.

The Region held a stipulated election on December 4–5, 2025, in a petitioned-for unit of employees. Prior to the election, the Employer requested the assistance of Swahili translators at the election, asserting that most of the Employer's Swahili-speaking employees did not read or write Swahili, and therefore would need the ballot and instructions translated to them. The Region denied the request for a Swahili translator but allowed each party to have an observer present at all voting sessions who spoke each language spoken by employees. The tally of ballots, after being revised to reflect resolution of certain challenges, showed 277 votes in favor of representation, 266 against, 4 challenged ballots, and 11 void ballots.

The Employer filed multiple objections, including Objections 1–4, which are the only ones at issue in the instant request for review, and a bare-bones, one-paragraph offer of proof supporting those objections. Objections 1–4 allege, as conduct affecting results of the election, that the Region's refusal to provide onsite interpreters during the election, use of only English-language ballots, and use of incomplete Swahili and Spanish-language sample ballots "prevented certain employees from understanding the voting process and fully participating" in the election.[1] The Employer's offer of proof for these objections stated, in full:

> OBJECTIONS 1, 2, 3, 4:
>
> As to Objections 1, 2, 3 and 4, the evidence will establish that no translators were available during the election, ballots were provided only in English and not translated into other languages, and the sample ballots provided were incomplete and not fully translated. These deficiencies prevented certain employees from understanding the voting process and fully participating. These Objections will be established through the testimony of the Board agent, Employer Managers, Union officers, eligible voters from the unit, election observers and documentary evidence.

The offer of proof did not identify any witnesses or summarize their anticipated testimony. Nor did it provide

[3] No errors in the translation of the notice of election or the ballots were identified in *Arthur Sarnow Candy*. In *Superior Truss & Panel*, the Board found that regardless of any deficiency in the translated notices of election they were still "understandable." 334 NLRB 916 fn. 2. No such finding has been or could be made here, in light of the undisputed errors identified by the Regional Director. In *Marriott Corp., Marriott In-Flite Services Division*, 171 NLRB 742 (1968), enf. denied 417 F.2d 563 (5th Cir. 1969), the Board overruled objections based on the lack of translated ballots. There, unlike here, the regional director found that the election was fair, there was no finding that the translated notices of election were "fatally flawed," nor does it appear that there were any void ballots, let alone the number of void ballots found significant by the Regional Director in this case.

Moreover, the Fifth Circuit refused to enforce the Board's subsequent bargaining order. Sweeping aside arguments advanced by the Board that the translation issues were mitigated by bilingual election notices and the presence of Spanish-speaking officials at the polls, the court emphasized that "minimum standards of fairness must be met for an election to be valid." The court further found:

> [I]t would be whimsical to establish meticulous safeguards against coercion, misinformation, and corruption if a sizeable portion of the electorate, though untrammeled in its choice, does not know how to exerise it. We can think of few things more fundamental to a democratic selection of labor representatives than the ability of the polity to cast an intelligent vote." 417 F.2d at 566–567 (internal footnotes omitted).

We note that we are not citing the court's decision as binding precedent. Rather, we are of the view, shared by the Fifth Circuit, that the Board has the fundamental duty to ensure that elections are conducted with "minimum standards of fairness" and that this duty is not met when a sizeable portion of the electorate are provided with ballots in a language they do not understand.

[4] Sec. 102.67(d) of the Board's Rules and Regulations.

[1] The remaining objections were subsequently overruled or withdrawn and are not at issue in this request for review.

any information about the number of allegedly affected voters, instead, stating only that "*certain* employees" were impacted.

Following an administrative investigation, but, notably, without holding a hearing, the Regional Director issued a decision (Decision) sustaining Objections 1–4, setting aside the results of the election, and ordering a rerun election for April 16, 2026. The Petitioner filed a request for review and the Employer filed an opposition. I believe that the Regional Director erred in sustaining these objections.

First, the Regional Director unquestionably applied an incorrect legal standard. For the type of conduct alleged here—the lack of interpreters, the use of English-only ballots,[2] and deficiencies in the sample ballots included in the translated Notices of Election—the Board's cases plainly require evidence of actual voter "confusion" to warrant setting aside an election. See *Superior Truss & Panel, Inc.*, 334 NLRB 916, 919 (2001); *Arthur Sarnow Candy*, 311 NLRB 1137, 1137 fn. 1 (1993), enfd. 40 F.3d 552 (2d Cir. 1994). The Regional Director found only the "potential" or "likelihood" of confusion, which utterly fails to satisfy the above standard.[3] My colleagues attempt to distinguish *Superior Truss* and *Arthur Sarnow Candy* on the grounds that those cases did not involve errors to the notices combined with a lack of translators or an English-language ballot. This is unpersuasive. The Board has applied the "actual confusion" standard in a variety of cases and has never indicated that its application is confined to only certain facts or circumstances. See, e.g., *Bridgeport Fittings*, 288 NLRB 124 (1988) (denying a motion for reconsideration of the Board's decision not to overturn an election where the Acting Regional Director found that translation errors in two languages were minor and there was no evidence that the errors caused confusion, and that translation errors in a third language did not cause "significant confusion;" and refusing to find that ballots with "multiple alphabets[,] three printed languages and one handwritten, caused voter confusion"); *Avante At Boca Raton, Inc.*, 323 NLRB 555 (1997) (adopting hearing officer's decision to overrule an objection related to translations where "there was no evidence presented to indicate that voters could not make a free election choice or were confused about their choice because certain words, such as 'affiliated with' were not translated"). Indeed, I find it especially persuasive that in the face of all of the overlapping allegations here—no translators, the use of English ballots, and errors in the notices—the Regional Director still did not make a finding, nor did the Employer allege, that certain voters were confused about the choice they were being asked to make.[4]

With these principles in mind, I turn now to the Regional Director's treatment of the specific objections. In sustaining Objection 1, alleging the lack of translators, the Regional Director found only that "the Region was on notice prior to the election that a substantial number of the employees did not speak English nor could they read in their own language."[5] She explained that, due to the use

[2] Although the Employer's opposition states that the Region agreed to provide translated ballots and did not do so, the Employer's objections and offer of proof contain no such assertion, and the Regional Director made no such finding. Indeed, the Regional Director stated in the Decision that that the translated Notices of Election "inadvertently left off" a statement that the actual ballots would be in English.

[3] Additionally, as the Petitioner notes, in deciding whether to provide translated notices and/or ballots, the Regional Director may consider the following factors: (1) the portion of the voting group which speaks a foreign language and does not read English; (2) the number of foreign language translations that would be required to accommodate these voters; and (3) whether written communication between the employer and these employees is in English or their native language. See NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11315.1. Instead of considering any of these factors, the Regional Director simply assumed that the lack of interpreters and the sample ballot issues created a "high *potential*" or "likelihood" for "voter confusion" (emphasis added).

[4] In attempting to further distinguish *Superior Truss*, my colleagues claim that, "in light of the undisputed errors identified by the Regional Director," it would be impossible to find that the notices of election were still "understandable," as in *Superior Truss*. See 334 NLRB at 916 fn. 2. That needlessly broad statement directly contradicts the Board's holding in *Marriott Corp., Marriott In-Flite Services Division*, 171 NLRB 742, 743 fn. 4 (1968) (finding that a failure to translate the sample ballot on the notice of election into Spanish did not warrant setting aside the election due to "the lack of any showing that voter misunderstanding resulted from the English ballots explained by the Spanish notices of election," and "the Respondent's contention that there 'may' have been language confusion is entirely speculative"), enf. denied 417 F.2d 563 (5th Cir. 1969); see also *Norwestern Products, Inc.*, 226 NLRB 653, 654 fn. 6 (1976) (noting that *Marriott* remains binding Board precedent). My colleagues' attempt to distinguish *Marriott* from the instant matter is necessarily unpersuasive as they continue to rely on assertions by the Regional Director in this case for which there is no evidence, which is the real "fatal flaw" here. My colleagues also rely on the Court's denial of enforcement in *Marriott*. However, unlike here, and putting aside that the Board's decision in *Marriott*, not the Court's, is extant Board precedent, the Court in *Marriott* reached its conclusion based on record information as to how much of the electorate ("one third," which it described as "a sizeable portion") had no access to ballots it could understand, just one of the fundamental facts missing from this case.

[5] It is worth noting that this statement is yet another error committed by the Regional Director in the Decision, one on which my colleagues rely in support of their decision to deny review, as they begin by noting that it is "undisputed that a substantial number of . . . employees first language is not English." The Regional Director appears to have taken the Employer's preelection assertion that an unspecified number of *Swahili*-speaking employees did not read or write *Swahili*, and turned it into a conclusion that "[t]he Region was on notice prior to the election that *a substantial number of the employees* did not speak English nor could they read in their own language" (emphasis added). The information provided to the Board does not reflect how the Regional Director drew this conclusion or on what she relied, as there is no evidence indicating how many employees communicate solely in Swahili (or how many non-English speakers could not read their own language).

of exclusively English ballots, "employees could have been confused by the absence of an interpreter[.]" Id. As explained above, the mere *potential* confusion on which the Regional Director relied improperly relaxes the standard the Board has applied in similar cases, in which the Board has required evidence of "actual confusion." See *Superior Truss*, supra at 919; *Arthur Sarnow*, supra at 1137 fn. 1.

The Regional Director relied on a similarly speculative finding in sustaining Objection 2, alleging that the region used English ballots, which she stated created an "additional *likelihood* for voter confusion[.]" Again, setting aside an election based on a "likelihood" of confusion does not comport with the Board's standard in similar cases requiring evidence of actual confusion. See *J.C. Brock Corp.*, 318 NLRB 403, 404 ("[T]he Board . . . 'requires more than merely speculative harm to overturn an election'") (quoting *Transportation Unlimited, Inc.*, 312 NLRB 1162, 1162 (1993)).

The Regional Director failed to apply the correct standard for the remaining objections as well. The errors she cited in the Swahili and Spanish sample ballots included missing "no" and "yes" captions under the boxes on the Swahili sample ballot and a Spanish sample ballot that was entirely in English except for the term "muestra" (sample). In sustaining the two sample-ballot objections, the Regional Director held that the translations of both the Swahili and Spanish sample ballots contained "fatal flaws" that contributed to the same "likelihood for voter confusion" noted above. Neither the Decision nor my colleagues cite any specific precedent holding that errors in the sample ballots require setting aside an election.

Second, to warrant setting aside a Board-conducted election—or even to warrant a hearing—the offer of proof accompanying a party's objections must "furnish[] evidence or description[s] of evidence that, if credited at [a post-election] hearing, would warrant setting aside the election." See *Jacmar Food Service Distribution*, 365 NLRB 271, 271 fn. 1 (2017). The offer of proof "must be reasonably specific in alleging facts which *prima facie* would warrant setting aside an election." See *Audubon Cabinet Co, Inc.*, 119 NLRB 349, 350 (1957); *Professional Transportation, Inc.*, 370 NLRB No. 132, slip op. at 6–7 (2021); see also Board's Rules and Regulations Sec. 102.66(c) ("Offers of proof shall . . . identify[] each witness the party would call to testify concerning the issue and summarizing each witness's testimony."). Here, the Employer's offer of proof contained only a single vague and conclusory allegation claiming that the way in which the Region conducted the election "prevented certain employees from understanding the voting process and fully participating." That statement is clearly not specific enough to make a prima facie showing that a sufficiently large number of voters to affect the outcome of the election was actually confused or unable to vote because of the specific voting processes that are the objections' focus. Thus, the Employer's offer of proof was on its face insufficient to warrant even a hearing on the objections, let alone sufficient to warrant the even bigger leap of sustaining them without a hearing.[6] Consequently, I find that the Regional Director should have overruled Objections 1–4 based on the Employer's deficient offer of proof.[7]

Accordingly, I would grant review, overrule Objections 1–4, reverse the direction of a rerun election, and remand to the Regional Director to issue the appropriate certification.

Additionally, it is also worth noting that, while Objection 1 mentions the absence of translators in general and the Regional Director highlights the absence of translators (presumably for all non-English speaking employees), the information provided to the Board reveals that the Employer, who is in the best position to know the language needs of its employees, *only* requested *Swahili* translators (and did so only one week before the election). Based on the Board's own records, the Employer did not see a need for translators for non-Swahili employees who did not speak English until after the Union prevailed in the election, and, even while it attempts to argue that translators were necessary, it failed to provide relevant information to determine how many employees were impacted by their absence, a failure the Regional Director erred by ignoring.

[6] My colleagues argue that the conduct alleged in the objections cannot be "ignore[d] or dismiss[ed] . . . merely because the Employer's offer of proof failed to identify witnesses who would testify that they occurred." The offer of proof did not merely fail to identify witnesses; it also failed to provide any information about the number of allegedly affected voters. In any event, finding the offer of proof deficient here does not amount to "ignoring or dismissing" the conduct; it simply holds the parties to the standards set forth in the Board's Rules and precedent cited above. As the Regional Director noted, "representation elections are not lightly set aside," and there is a "heavy" burden of proof on parties seeking to have a Board supervised election set aside. *Lockheed Martin Corp.* , 331 NLRB 852, 854 (2000) (quoting *NLRB v. Hood Furniture Co.*, 941 F.2d 325, 328 (5th Cir. 1991)); *Delta Brands, Inc.*, 344 NLRB 252, 253 (2005) (citing *Kux Mfg. Co. v. NLRB*, 890 F.2d 804, 808 (6th Cir. 1989)). As such, contrary to my colleagues, I find that a party's failure to support its objections with the information required by the Board's Rules and precedent is a sufficient basis on which to overrule the objections.

[7] Even assuming arguendo that the Employer's offer of proof was sufficient to make a prima facie case, which the Regional Director obviously believed given the extraordinary steps she took based upon that conclusion, the Regional Director should have—and could have—instead ordered a hearing so that any evidence in support of the objections could be flushed out, and a full record thereby made for her—and, if necessary, the Board—to review under the correct legal standard of actual voter confusion. I therefore disagree with my colleagues' implicit endorsement of the course of conduct that the Regional Director did take.

Dated, Washington, D.C. April 16, 2026

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David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

REGIONAL DIRECTOR'S DECISION ON OBJECTIONS, ORDER APPROVING WITHDRAWAL OF OBJECTION, AND ORDER SETTING ASIDE AND DIRECTING RERUN ELECTION

Based on a representation petition filed by United Food and Commercial Workers District Union Two ("Petitioner"), on October 30, 2024, and pursuant to a Stipulated Election Agreement, an election was conducted on December 4, 2024, from 3:30 p.m.-7:00 p.m. and December 5, 2024, from 3:30 a.m.-7:00 a.m., among employees of Dold Foods, LLC ("Employer") in the following unit:

> INCLUDED: All full time and regular part-time Production Employees, Quality Control Employees, Maintenance Employees, Shipping Employees, and Janitors employed by the Employer at its 2929 North Ohio Street, Wichita, Kansas facility.
>
> EXCLUDED: All office clericals employees, professional employees, managers, office clerks, human resources trainers, confidential employees, guards and supervisors as defined in the Act.

Others Permitted to Vote: At this time, no decision has been made regarding whether *Maintenance Leads, Maintenance Clerks, Industrial Utilities Technicians FSQ Technicians, and Electronics Technicians* are included in, or excluded from, the bargaining unit, and individuals in those classifications may vote in the election but their ballots shall be challenged since their eligibility has not been determined. The eligibility or inclusion of these individuals will be resolved, if necessary, following the election.

The tally of ballots prepared at the conclusion of the election on December 5, 2024, showed the following results:

Approximate number of eligible voters	629
Number of Void ballots	9
Number of Votes cast for Petitioner	240
Number of Votes cast against participating labor organization(s)	229
Number of Valid votes counted	469
Number of Challenged ballots	79
Number of Valid votes counted plus challenged ballots	548

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

On December 12, 2024, the Employer timely filed eleven (11) objections to the conduct of the election, with a supporting Offer of Proof.

Thereafter, on May 5, 2025, the Region approved a bilateral stipulation to resolve 77 challenged ballots. On May 22, 2025, a revised and corrected[1] Tally of Ballots issued. The revised and corrected Tally of Ballots showed the following results:

Approximate number of eligible voters	647
Number of Void ballots	11
Number of votes cast for Union	277
Number of votes cast against participa- labor organization	66
Number of valid votes counted	543
Number of challenged ballots	4
Number of valid votes counted plus challenged ballots	47

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

Following the issuance of the revised and corrected Tally of Ballots, the Employer filed Objection 12 and a supporting Offer of Proof. A copy of the Objections is attached to this decision as **Exhibit A**. In accordance with Section 102.69 of the Board's Rules and Regulations, and the Board's Casehandling Manual (Part Two) Representation Proceedings, Sections 11390—11397, I caused an administrative investigation and review of the Objections to

[1] The Original Tally of Ballots contained several clerical errors. The corrected Tally of Ballots corrected the following: approximate number of eligible voters from 629 to 647; undetermined challenged ballots from 79 to 81; and valid votes counted plus challenged ballots from 548 to 550.

be conducted. After carefully considering the Employer's offer of proof and supporting evidence, I have concluded, for the reasons set forth in this decision, that the Employer's Objections No. 1-4 are sustained and are sufficient to warrant setting aside the election. I have further approved the Employer's request to withdraw its Objection No. 10 and have determined that the Employer's accompanying Offer for the remaining Objections (Objections No. 5–9, and No. 11–12) is deficient and would not constitute grounds for setting aside the election if introduced at a hearing. Accordingly, I shall overrule them, as explained more fully below.

STANDARD FOR SETTING ASIDE ELECTIONS AND BURDEN OF PROOF

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).

As the objecting party, the Employer 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 noted by the Board, "[t]he burden is on the objecting party to present evidence that raises substantial and material factual issues" under controlling law, i.e., to "establish[ ] a prima facie case in support of its objections." *Durham School Services, LP,* 360 NLRB 851, 851 (2014), citing *Park Chevrolet-Geo, Inc*., 308 NLRB 1010, 1010 fn. 1 (1992).

An objecting party's evidence cannot be conclusory. *XPO Logistics Freight, Inc. v. NLRB,* 2018 WL 2943938, *2 (D.C. Cir. May 25, 2018), citing *North of Market Senior Services, Inc. v. NLRB*, 204 F.3d. 1163, 1167 (D.C. Cir. 2000); see also *Audubon Cabinet Co*., 119 NLRB 349 (1957) (general conclusions devoid of any specific content or substance fail to satisfy the Board's requirements of providing specific evidence in support of objections). Rather it "must point to specific events and specific people." *XPO Logistics Freight, Inc. v. NLRB,* supra at 1167. To warrant a hearing, an objecting party must provide "specific evidence of specific events from or about specific people." *Boston Insulated Wire & Cable System v. NLRB*, 703 F.2d 876, 880 (5th Cir. 1983), enforcing bargaining order issued pursuant to certification of representative in 259 NLRB 1118 (1982) (allegations of misconduct must be supported by "specific evidence of specific events from or about specific people"). Finally, the Board has held that "[a] hearing is not warranted so that [an objecting party] can subpoena evidence in an effort to uncover conductthat it has failed to sufficiently allege. Hearings on objections are not discovery tools." *XPO Logistics Freight, Inc.*, 13–RC–184190, 2017 WL 1294849, at fn.1 (N.L.R.B. April 6, 2017). See also *Professional Transportation, Inc*., supra at fn. 25 (a hearing may not be used as "a fishing expedition" to gather evidence in support of a party's objections).

THE OBJECTIONS

Objections No. 1,2, 3, and 4

In **Objection 1**, the Employer alleges that no translators were allowed or provided during the election, impeding the ability of non-English speaking voters to understand and participate fully in the voting process. In **Objection 2**, the Employer alleges that all ballots were printed in English only, creating an obstacle for non-English speaking employees to cast their votes confidently and accurately, particularly in the absence of any translators or Board agents with the necessary language skills. In **Objection 3**, the Employer alleges that although a sample ballot in each language was placed on the table where Board agent and observers sat, the Swahili sample ballot was incomplete. Specifically, the voting boxes were not labeled "Yes" or "No." and the Employer's Swahili observer was forced to write in these labels on the sample ballot by hand, creating potential confusion and inconsistency for Swahili-speaking voters. In **Objection 4**, the Employer alleges that although a sample ballot in each language was placed on the table where Board agent and observers sat, the Spanish sample ballot was not in Spanish but rather was in English. The only Spanish word on the Spanish sample ballot was an added stamp of "MUESTRA" indicating that it was a "sample" ballot. All other wording on the sample ballot was in English. As a result, Spanish-speaking voters did not have a sample ballot or an actual ballot in their language, causing confusion and inconsistency for Spanish-speaking voters.

In its offer of proof, the Employer asserts that it would establish through testimony of the Board Agent, Employer managers, Union officers, eligible voters, election observers, and documentary evidence that no translators were available during the election, ballots were provided only in English and not translated into the other languages spoken by employees, and the sample ballots provided were incomplete and not fully translated.

It is well established that in conducting elections, the Board must maintain and protect the integrity and neutrality of its procedures. See *Fessler & Bowman, Inc.*, 341

NLRB 932, 933 (2004). This procedure requires that all eligible employees be given an opportunity to vote. *Yerges Van Liners Inc.*, 162 NLRB 1259, 1620 (1967); *Alterman-Big Apple, Inc.*, 116 NLRB 1078 (1956). When a party's conduct causes an employee to miss the opportunity to vote, the Board will set the election aside if the employee's vote is determinative and the employee was disenfranchised through no fault of his or her own. *Sahuaro Petroleum & Asphalt Co.*, 306 NLRB 586, 586–587 (1992); *Versail Mfg.*, 121 NLRB 592, 593 (1974). In situations in which there is no material dispute as to the conduct alleged to warrant setting aside the election, the Board has done so in the absence of an administrative hearing. See *Woods Quality Cabinetry Co.*, 340 NLRB 1355 (2003)(ballots included erroneous information regarding petitioner affiliation with AFL-CIO); *Browning-Ferris Industries of California, Inc.*, 327 NLRB 704 (1999)(breach of election agreement provided equal number of observers for both parties); *Kerona Plastics Extrusion Co.*, 196 NLRB 1120 (1972) (polls closed 20 minutes early and potentially disenfranchised voters). As the Board held in *GHG Management LLC d/b/a Windy City Cannabis*, 371 NLRB No. 93, slip op. at p. 2 (2022), citing *Guardsmark, LLC*, 363 NLRB 931 (2016), and quoting *Polymers, Inc.*, 174 NLRB 282, 282 (1969), enfd. 414 F.2d 999 (2d. Cir. 1969), cert. denied 396 U.S. 1010 (1970): "The test for setting aside an election based on regional office conduct is whether the alleged irregularity raises 'a reasonable doubt as to the fairness and validity of the election.'"

Here, an administrative investigation revealed that during the processing of the petition, the parties requested that election notices and ballots to be printed in all four languages of the workforce: English, Spanish, Swahili, and Vietnamese. Pursuant to that request, the Region printed the election notices in all four languages but provided English only ballots at the election. Further, although election notices were provided in Swahili, the sample ballot in the Swahili election notice was missing the Swahili word for "yes" and "no":

Fomu NLRB-707
(4-2015)

Halmashauri ya Kitaifa ya Mahusiano ya Kazi
Ya Marekani

TAARIFA YA UCHAGUZI

WAANGALIZI WALIOIDHINISHWA: Kila mhusika anaweza kuteua idadi sawa ya waangalizi, idadi hii itabainishwa na NLRB. Waangalizi hawa (a) huwa kama wakaguzi katika eneo pa upigaji kura na pa kuhesabiwa kwa kura; (b) husaidia katika kuwatambua wapiga kura; (c) kupinga wapiga kura na kura; na (d) vinginevyo kusaidia NLRB.

Kura iliyochapishwa tena katika notisi hii ni ya Kiswahili na ni tafsiri sahihi ya kura utakayopata kwenye uchaguzi, lakini itachapishwa kwa Kiingereza.

BODI YA KITAIFA YA MAHUSIANO
YA KAZI YA MAREKANI
14-RC-353703

KURA RASMI YA SIRI

Kwa baadhi ya wafanyakazi wa
DOLD FOODS LLC

Je, ungependa kuwakilishwa kwa madhumuni ya mazungumzo ya pamoja na
UNITED FOOD AND COMMERCIAL WORKERS DISTRICT UNION LOCAL TWO?

WEKA ALAMA YA "X" KATIKA KISANDUKU UNACHOTAKA

ae

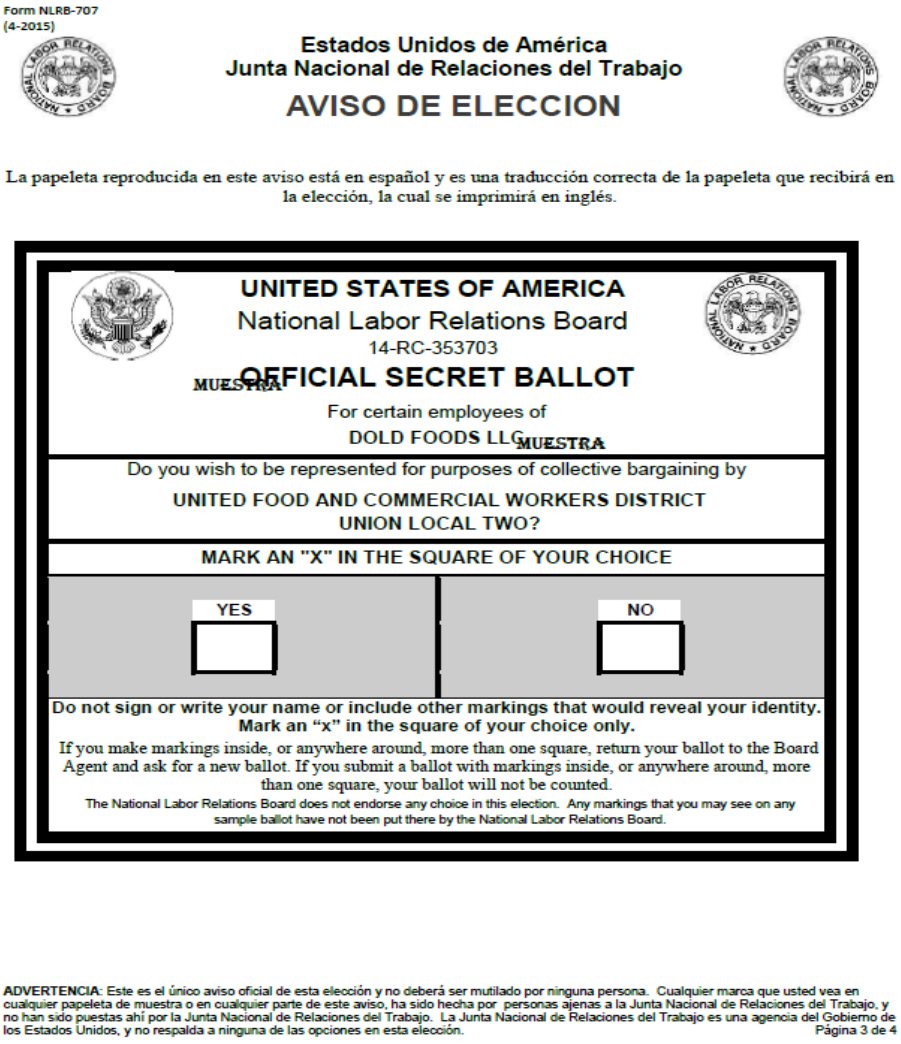
USITIE SAINI AU KUANDIKA JINA LAKO AU KUWEKA ALAMA ZINGINE KUFANYA HIVYO KUNAWEZA KUFICHUA UTAMBULISHO WAKO. WEKA ALAMA YA "X" KATIKA KISANDUKU UNACHOTAKA PEKEE.

Ikiwa utaweka alama ndani, au mahali popote karibu, zaidi ya mraba mmoja, rudisha kura yako kwa Wakala wa Bodi na uombe kura mpya. Ukiwasilisha kura yenye alama ndani, au popote karibu, zaidi ya mraba mmoja, kura yako haitahesabiwa.

Bodi ya Kitaifa ya Mahusiano ya Kazi haiungi mkono chaguo lolote katika uchaguzi huu. Alama zozote ambazo unaweza kuona kwenye sampuli ya kura hazijawekwa pale na Bodi ya Kitaifa ya Mahusiano ya Kazi.

ONYO: Hii ndiyo taarifa rasmi pekee ya uchaguzi na haiwezi kuharibiwa na mtu yeyote. Alama zozote unazoweza kuona kwenye sampuli hii ya kura au popote pale kwenye taarifa hii imewekwa na mtu mwingine tofauti na Halmashauri ya Kitaifa ya Mahusiano ya Kazi, na haijawekwa hapo na Halmashauri ya Kitaifa ya Mahusiano ya Kazi. Halmashauri ya Kitaifa ya Mahusiano ya Kazi ni Shirika la Serikali ya Marekani, na haina mapendeleo ya mtu yeyote aliyeteuliwa katika uchaguzi . Ukurasa wa 2 kati ya &quot

Additionally, the sample ballot in the Spanish election notice was only printed in English, with only the Spanish word for sample "muestra" printed on the face of the sample:



Form NLRB-707
(4-2015)

Estados Unidos de América
Junta Nacional de Relaciones del Trabajo

AVISO DE ELECCION

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UNITED STATES OF AMERICA
National Labor Relations Board
14-RC-353703
MUESTRA
OFFICIAL SECRET BALLOT
For certain employees of
DOLD FOODS LLC MUESTRA
Do you wish to be represented for purposes of collective bargaining by
UNITED FOOD AND COMMERCIAL WORKERS DISTRICT UNION LOCAL TWO?
MARK AN "X" IN THE SQUARE OF YOUR CHOICE
YES
NO
Do not sign or write your name or include other markings that would reveal your identity.
Mark an "x" in the square of your choice only.
If you make markings inside, or anywhere around, more than one square, return your ballot to the Board Agent and ask for a new ballot. If you submit a ballot with markings inside, or anywhere around, more than one square, your ballot will not be counted.
The National Labor Relations Board does not endorse any choice in this election. Any markings that you may see on any sample ballot have not been put there by the National Labor Relations Board.

ADVERTENCIA: Este es el único aviso oficial de esta elección y no deberá ser mutilado por ninguna persona. Cualquier marca que usted vea en cualquier papeleta de muestra o en cualquier parte de este aviso, ha sido hecha por personas ajenas a la Junta Nacional de Relaciones del Trabajo, y no han sido puestas ahí por la Junta Nacional de Relaciones del Trabajo. La Junta Nacional de Relaciones del Trabajo es una agencia del Gobierno de los Estados Unidos, y no respalda a ninguna de las opciones en esta elección. Página 3 de 4

One week prior to the election, the Employer additionally requested Swahili translators be present at the election, asserting that most of the Employer's Swahili speaking employees did not read or write Swahili, and therefore would need the ballot and instructions translated to them. The Region denied the request for a Swahili translator but did allow each party to have an observer present at all voting sessions who spoke each of the four languages spoken by employees.

Based on the administrative investigation, I am sustaining Employer Objections 1–4, and ordering that the election be set aside and re-run. First, as detailed above the sample ballots contained within the Spanish and Swahili notices were fatally flawed. While the Swahili election notice was partially translated into Swahili, the sample ballot within the election notice was not labeled with the Swahili word for "yes" or "no" above the voting choices. Further, the sample ballot contained within the Spanish election notice was not fully translated, with only the Spanish word for "sample" on the predominately English language ballot. Because the Region's translation of the sample ballots contained within the Swahili and Spanish election notices were incomplete, and because the ballots at the election were provided only in English, there was a

high potential for voter confusion that was created. The Board has long held that it is its function and duty under the National Labor Relations Act to establish in election proceedings conditions as nearly ideal as possible to determine the uninhibited desires of the employees. *General Shoe Corp.*, 77 NLRB 124, 127 (1948). For example, in *Fibre Leather Mfg. Corp.*, 167 NLRB 393 (1967), the Board set aside the election because the regional office provided only English language ballots and notices and did not provide other assistance to voters who spoke only Portuguese, despite the petitioner's notice of the language issue at the pre-election conference.

Second, while the Board has not established a national policy requiring the use of ballots in multiple languages, but instead has left to its regional directors the choice among multi-ingual ballots in different languages, or English ballots plus election notices in other languages, here where there were fatal flaws with the Spanish and Swahili sample ballots in the election notices and the ballots were printed only in English, this created an additional likelihood for voter confusion. See, e.g., *Superior Truss & Panel,* 334 NLRB 916, 919 (2001) (Board adopted hearing officer's decision that noted that the Board "has made it clear that it has no policy requiring the use of ballots in multiple languages" and that "there is no uniform policy mandating that every Region of the NLRB use foreign language ballots"); cf. *NLRB v. Precise Castings,* 915 F.2d 1160, 1164 (7th Cir. 1990) ("Precise Castings observes that the Board has not established a national policy but has left to its regional directors the choice among multi-lingual ballots in different languages, and English ballots plus election notices in other languages. . . . Nothing in the National Labor Relations Act prevents the Board from giving its subordinates discretion in matters of this kind.") Also, guidance in the Agency's casehandling manual says that whenever translated notices of election are to be used but the ballots are in some other language (normally English), that the translated notices should notify the voters that while the sample ballot on the translated notice appears in their language, the actual ballot used in the election will only be printed in the other language. Here, it appears that this language was inadvertently left off the translated notices. Therefore, voters were not informed in advance of the election about what ballot to expect when they arrived at the polls to cast their ballot, creating further confusion.

Finally, I will address the Employer's assertion that because no translators were provided or allowed, it impeded the ability of non-English speaking voters to understand and participate fully in the voting process. First, I would note that while a ballot can be examined to decide about likely confusion, that is not the case where an interpreter is not present. In such a case, the Board has repeatedly found that it is essential that the objecting party produces evidence of voter confusion. See *Arthur Sarnow Candy*, 311 NLRB 1137 (1993), where the Boad upheld regional director's conclusion that the record contained no evidence that any eligible voter was affected by the absence of an interpreter." 311 NLRB at 1138. However, in adopting the regional director's decision in that case, the Board went further and additionally noted that its decision to uphold the regional director's determination was also because there was no evidence that the electorate was confused by the voting procedures or unable to make an informed choice in the election. See *NLRB v. Precise Castings*, 915 F.2d 1160 (7th Cir. 1990); *Bridgeport Fittings*, 288 NLRB 124 (1988), enfd. 877 F.2d 180 (2nd Cir. 1989). That is not the case here. The Region was on notice prior to the election that a substantial number of the employees did not speak English nor could they read in their own language. Further, the Board agents supplied by the Region to run the election spoke only English and as detailed above, the Spanish and Swahili election notices were fatally flawed. Finally, I would note that this was a close election. There were 543 ballots cast, with 277 votes cast for representation and 266 votes cast against the participating labor organization, a difference of 11 votes. Importantly, this difference in votes corresponds exactly with the number of void ballots. Because of the foregoing issues, employees could have been confused by the absence of an interpreter to assist them in the voting process or because of the lack of a translated ballot. For the above reasons, I am sustaining Objections 1, 2, 3, and 4.