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Frito-Lay, Inc. *and* Patricia Schultz Teamsters Local Union No. 344, Sales and Service Industry. Case 18–RD–356346

July 30, 2026

ORDER

BY CHAIRMAN MURPHY AND MEMBERS PROUTY AND MAYER

The Union's Request for Review of the Regional Director's Decision on Objections and Issuance of Certification of Results of Election is denied as it presents no substantial issues warranting review.[1]

Dated, Washington, D.C. July 30, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER PROUTY, dissenting.

In the run-up to this decertification election that ended in a tie vote, the Employer effectively prevented an employee from voting by telling him, without qualification or exception, that he was barred from the premises. In addition, the credited testimony demonstrates that the Employer told multiple employees that they would receive a wage increase if they rejected the Union. The Union filed objections to the election raising these two incidents (Objections 5 and 3) as grounds for setting aside the election. Contrary to my colleagues, I find that in this extremely close election, these Union objections raise substantial issues warranting review, either of which alone warrants setting aside the election.[1] Accordingly, I would reverse the Regional Director, sustain both objections, and order a rerun election.

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[1] In denying review with respect to the Union's Objection 9, we do not rely on the Regional Director's discussion of *Taylor Wharton Division*, 336 NLRB 157 (2001). Instead, we observe that the gravamen of the objection is that the Employer violated Sec. 8(a)(5) of the Act by refusing to bargain collectively with the Union by failing and refusing to furnish it with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the unit employees. Such allegations are not properly litigable in a representation proceeding. See *Texas Meat Packers*, 130 NLRB 279, 279 (1961) (observing that unfair labor practice allegations are not properly litigable in a representation proceeding); *Virginia Concrete Corp., Inc.*, 338 NLRB 1182, 1185–1186 (2003) (applying the *Texas Meat Packers* rationale to alleged violations of Sec. 8(a)(5) of the Act).

With respect to Objection 5, there is no dispute that Markise Collins was an eligible voter, but there is also no dispute that—as a terminated employee—the Employer was entitled to exclude him from its premises when he attempted to campaign on January 9, 2025. The Employer's communications regarding this incident merely stated its general policy barring terminated employees from the premises without making any reference to the impending election, and the Union's follow-up communications also inquired only about Collins's ability to campaign on the Employer's property. As our dissenting colleague correctly observes, Board precedent is clear that when there is a pending grievance/arbitration over an employee's discharge, that employee is eligible to vote under challenge. *Pacific Tile & Porcelain Company*, 137 NLRB 1358, 1366–1367 (1962). Indeed, the record reflects that the Union and Collins were aware of this precedent, as established by Collins answering affirmatively when asked on cross-examination whether anyone from the Union told him that he could vote subject to challenge in the election. However, there is no evidence that Collins made any attempt to vote in the election. On these facts, the most that can be said is that, based on communications that did not refer to the election, Collins assumed the Employer would prevent him from voting. Our dissenting colleague would find that this was a reasonable assumption and set the election aside on that basis, but this is insufficient to meet the Union's burden—as the objecting party—of establishing that any objectionable conduct occurred in the first instance. On these facts, we are unwilling to find that this was a reasonable assumption or that objectionable misconduct actually occurred simply because Collins (allegedly) assumed such conduct would occur if he attempted to vote. And absent actual misconduct, the closeness of the election results is of no moment. See *Pruitt Health-Virginia Park, LLC v. NLRB*, 888 F.3d 1285, 1297 (D.C. Cir. 2018). We accordingly agree with the Regional Director's overruling of Objection 5.

Finally, with respect to Objection 3 we agree with the Regional Director's conclusion that the limited testimony about Gregory Poags' statement to Collins—in which Poags recounted that he had previously told newly-hired employees that if they decertified the Union, they would receive wage increases consistent with wages at one of the Employer's non-unionized facilities—does not satisfy the Union's heavy burden to show that the statement constitutes an objectionable promise of benefit. Even if the statement in question is non-hearsay or admissible as a hearsay exception, determining whether a wage comparison constitutes a promise of benefits is a fact-dependent inquiry that considers the precise context and content of the statement. See, e.g., *G & K Services*, 357 NLRB 1314, 1315 (2011). Here, the Regional Director reasonably found that the Union introduced insufficient evidence about the context and content of any conversations Poags had with other employees to justify setting aside the election.

[1] I join my colleagues in denying review as to Objection 2, which alleges that the Board should either apply or extend its prohibition on captive audience meetings in *Amazon.com Services LLC*, 373 NLRB No. 136 (2024), to find that the Employer interfered with the election by sending electronic messages to employees, on paid time when employees are mandated to review the Employer's directives, urging employees to reject union representation. However, I would be willing to consider expanding the ambit of *Amazon.com Services* in a future appropriate case. See generally *Amazon.com Services*, supra at fn. 19 (declining at that time the General Counsel's request to address circumstances other than those presented therein).

Discussion

In evaluating alleged objectionable conduct by a party, the Board applies an objective standard, under which conduct is found objectionable if it has "the tendency to interfere with employees' freedom of choice." *Cambridge Tool & Mfg. Co.*, 316 NLRB 716, 716 (1995). In determining whether conduct has a tendency to interfere with employee free choice, the Board looks at: (1) the number of incidents; (2) the severity of the incidents and whether they were likely to cause fear among the employees in the bargaining unit; (3) the number of employees in the bargaining unit subjected to the misconduct; (4) the proximity of the misconduct to the election; (5) the degree to which the misconduct persists in the minds of the bargaining unit employees; (6) the extent of dissemination of the misconduct among the bargaining unit employees; (7) the effect, if any, of misconduct by the opposing party to cancel out the effects of the original misconduct; (8) the closeness of the final vote; and (9) the degree to which the misconduct can be attributed to the party. *Taylor Wharton Division*, 336 NLRB 157, 158 (2001).

Applying this standard to Objections 5 and 3, I find that each are objectionable and the election should be set aside.

Objection 5

The Union represents the Employer's delivery and warehouse employees at a distribution facility in Menomonee Falls, Wisconsin. On August 10, 2024, the Employer discharged Steward Markise Collins for an alleged safety violation. The Union grieved the discharge, and arbitration was scheduled for March 21, 2025.

On December 9, 2024, while Collins' grievance was pending, a decertification petition was filed. In order to dispel rumors that the Union was not assisting him in challenging his discharge, Collins volunteered to assist the Union with its campaign.

On January 9, 2025, 1 week before the January 16, 2025 election, Collins joined Union Representatives Matthew Birk and Kevin Schwerdtfeger to speak with employees at the facility. Shortly after their arrival, Managers Mariah King and Christopher Heimann approached them in the parking lot and told Collins that, per the Employer's policy, as a terminated employee, he "is not allowed to be on company property" and asked him to leave.[2] Collins and the union representatives left the property and spoke to employees on the road outside the Employer's property line.

Later that day, the Union emailed the Employer, stating:

> We were informed today that, per you, [Collins] could not be on property, including the parking lot. [He] is a [union steward] and part of our organizing campaign. Further, there have been no allegations…of any threatening or dangerous behavior even regarding his discharge. Although we have complied, we object to his removal. Please provide a legal explanation for why [the Employer] believes [it] can remove him from property.

The Employer responded,

> [T]he direction to move from the building entrance and relocate to an area near the street was based on [the Employer's] policy that doesn't allow for terminated employees to be on [the Employer's] property.
>
> The Union replied,
>
> For clarity, please confirm that [the Employer] believes its unilateral policy overrides the Union's legal right to choose its representatives for our campaign. If not, please explain how [the Employer] can legally justify, in this scenario, barring [Collins] from campaigning with his Union.

The Employer did not reply to the Union's reply.

The tally for the January 16, 2025 election showed 75 votes for continuing representation and 75 against. Collins did not vote.

The Union asserts that "Collins was improperly barred from the Employer's property and, fearful that he would be arrested and/or further disciplined for violating Employer policy, unable to exercise his right to vote."

The Regional Director overruled the objection. She found no evidence that the Employer told Collins he would be barred from the property on election day, and she rejected the Union's argument that the Employer, by refusing to respond to the Union's last email, implied that he would be barred from the property on election day, noting that the Union's emails did not mention Collins' right to return on election day.

Contrary to my colleagues, I would grant review, reverse the Regional Director, and sustain the objection. In my opinion, there is no clearer example of conduct interfering with a statutory employee's freedom of choice than an employer, just days before the election, imposing a blanket ban of a statutory employee from the property where the vote is scheduled to take place without announcing any exceptions. Here, the Employer, one week before the election, advised Collins, in person, that, as a terminated employee, he "is not allowed to be on company property" and asked him to leave immediately. The record does not reflect that the Employer provided Collins with

[2] The Employer maintains a policy that terminated employees are not allowed on the property, though they may enter for grievance meetings.

any exceptions or limited this prohibition to campaign-related visits.[3] In fact, the Employer's own practice with respect to terminated employees supports employees' understanding that the exclusion was a total ban from the property (excluding meetings with the Employer, such as grievance meetings).[4]

Our precedent is clear that when there is a pending grievance/arbitration over an employee's discharge, that employee is eligible to vote under challenge. *Pacific Tile & Porcelain Co.*, 137 NLRB 1358, 1366–1367 (1962). As such, Collins was entitled to vote and entitled to access the property for that purpose but the Employer, in essence, told Collins that he was not allowed on the property on any future date—which would have included election day, causing Collins to miss his opportunity to vote.[5] I find that the Union established that the Employer's statement to Collins—made without exception or qualification—that he "is not allowed to be on company property" would reasonably have been understood by Collins to prevent his access for any purpose, including voting, and that particularly in these circumstances, where Collins' vote would have been determinative, the Employer's conduct has a tendency to interfere with employees' free choice. I emphasize the closeness of the vote (a tie) and that the Employer told Collins he was not allowed on the property,[6] conduct that is directly attributable to the Employer and reasonably would have persisted in Collins' mind, one week before the vote scheduled to occur on the Employer's property.[7] See *Taylor Wharton*, supra. Accordingly, I would set aside the election on the basis that the Employer's conduct—banning Collins from its property during the time when an election was being held on its property—interfered with Collins' right to vote where his vote would have been determinative.

Objection 3:

On January 14, 2 days before the election and shortly after they had seen each other at contract negotiations, Zone Operational Manager Gregory Poags called Collins. Collins testified that Poags, who had previously been Collins' supervisor, asked Collins about the potential outcome of the election and said, "Well, I think [the Employer is] going to win because [the Union] only got a little part of veterans that's there and I told all the new people that if they get rid of the union, they get paid $3 more or make the same amount as Madison do that's nonunion."[8] While Poags denied making this statement, the Hearing Officer credited Collins' account of Poags' statement.

The Union's Objection 3 asserts that the Employer "improperly promised [employees] their wages would increase if they voted to decertify the Union."

Despite crediting Collins, the Hearing Officer found that Poags' statement did not affect the election results because Collins neither voted nor disseminated the statement. She found that, aside from Collins' testimony, the Union failed to produce any further evidence of Poags' alleged promises or evidence of any dissemination. "In the absence of any direct evidence that Poag[s] offered any promise of benefits to employees," she recommended the objection be overruled.

The Regional Director found that the Hearing Officer "correctly admitted both [the alleged promise and Poags' side of the phone call] into evidence, because neither is hearsay. . . and properly credited [Collins'] account . . . ." However, she found that crediting Collins does not require her to "treat the alleged promise. . . as sufficient proof of the precise words in the alleged promise." She noted that there is no evidence of exactly when Poags had the conversations or exactly who he talked to and stated

[3] When the Union sought clarity on this ban by emailing the Employer for "a legal explanation for why [the Employer] believes [it] can remove [Collins] from property," it did not limit its inquiry to why the Employer believed it could remove Collins for campaigning or to his role as steward. Instead, the Union asked in general terms why the Employer believed it could remove Collins from its property. It was only after the Employer replied restating its universal property ban that the Union tried to address the more immediate and time-sensitive concern—campaigning—to which it received no response. Accordingly, it is not correct, as my colleagues contend, that the Union's follow-up communications inquired "*only* about Collins's ability to campaign on the Employer's property" (emphasis added).

[4] Both Manager Heimann and Human Resources Director Angela Pelaez testified that, once an employee is suspended pending investigation or terminated, the first thing that the Employer does is turn off the employee's key card (and then, as Pelaez testified, it communicates broadly that the employee is no longer with the organization).

[5] My colleagues correctly note that *the Union* advised Collins that he could vote subject to challenge. However, the Union does not control access to the Employer's property. The issue before us is not whether Collins had the right to vote (or whether he was aware of that right) but, rather, whether that right to vote was interfered with through a property ban issued by the Employer. As such, while my colleagues point out that the Union told Collins he had the right to vote subject to challenge, the record does not reflect that the Employer (or the Union) ever told Collins that he could access the property from which the Employer had banned him in order to exercise that right.

[6] In support of their decision to deny review, my colleagues cite *Pruitt Health-Virginia Park LLC v. NLRB*, 888 F.3d 1285 (D.C. Cir. 2018), for the principle that, "absent actual misconduct, the closeness of the election results is of no moment." I find this principle inapplicable here as, as made clear in this dissent, the Union has established that there was "actual misconduct."

[7] Additionally, I reject the Hearing Officer's and Regional Director's suggestion that the onus was on Collins and/or the Union to clarify the limits of the Employer's restriction on Collins' access, especially considering Collins' reasonable fears, relayed during the hearing, of jeopardizing his discharge grievance and being found to have trespassed. A reasonable employee would take the Employer at its word, as Collins did.

[8] Madison refers to the Employer's nonunion facility in Madison, Wisconsin.

that she was unable to find that "[Collins'] account of [Poags'] account of those conversations is a precise enough record of the words [Poags] actually said during any specific conversations" with employees and noted that the Union failed to provide any additional evidence of conversations between Poags and employees regarding the alleged promises. As such, she found that the record lacks the "precise contents and context" required to prove an objectionable promise.

Again, I would grant review, reverse the Regional Director, and sustain the objection. As the Regional Director acknowledged, a promise of benefit made to employees creates an inference of interference with those employees' free choice. *G & K Services, Inc.*, 357 NLRB 1314, 1315 (2011). The credited evidence establishes that Supervisor Poags admitted to Collins that he told employees—"the new people"—that there would be a raise if employees decertified the Union. While the Regional Director found that the Union failed to provide the specifics of the conversations, Poags' statement itself establishes a promise.[9] The Employer offered no mitigating context—for example, whether Poags referred to the raise in a way that would not be understood as a promise, or assured employees that the Employer could not promise an increase. Instead, Poags denied that portion of the conversation entirely, but as an evidentiary matter that denial disappears with the (unchallenged) crediting of Collins' account. I find that Poags' statement has the tendency to interfere with employees' freedom of choice.[10] In so finding, I again emphasize the closeness of the vote (a tie), the degree to which the conduct can be attributed to the Employer, and that, based on the credited evidence, multiple employees were subjected to the misconduct, as, in addition to telling "the new people," Poags also told Collins, who was a permissible voter, two days before the election. See *Taylor Wharton*, supra.

In sum, I find the Employer's conduct, days before an election, of effectively preventing an employee from voting and promising a wage increase to employees objectionable and, in a situation where a single vote would affect the outcome of the election, I would sustain the related objections, set aside the election, and order a second election.

Dated, Washington, D.C. July 2026

David M. Prouty, Member

NATIONAL LABOR RELATIONS BOARD

[9] The Regional Director correctly acknowledged that neither Poags' statement to employees nor his statement recounting it to Collins is hearsay, as they are admissions by a party opponent. In other words, contrary to the Hearing Officer's finding, Poags' statement is direct evidence that he promised benefits to employees. And, contrary to the Regional Director's finding, Poag's statement is a precise enough record of the words he used to employees.

[10] My colleagues note that determining whether a wage comparison constitutes a promise of benefits is a fact-dependent inquiry that considers the precise context and content of the statement. However, in highlighting and relying on this principle, they ignore that Poags admitted to making an explicit promise of benefits—"if they get rid of the Union, they get paid $3 more"—*and then* made a wage comparison—"or make the same amount as Madison do that's nonunion." No additional context and content is needed for such an explicit promise as "if [you] get rid of the Union, [you] get paid $3 more." As such, I find that the Union has introduced sufficient evidence of Poags' promise to employees of a benefit for voting against the Union to support finding the statement objectionable and setting aside the election.