

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

DISTROKID, LLC

Employer

and

Case 02-RD-364536

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES & TECHNICIANS**

Union

and

DAVID HABERMEHL, an Individual

Petitioner

DECISION ON DETERMINATIVE CHALLENGED BALLOTS AND OBJECTIONS

Based on a petition filed on April 28, 2025, in the above-captioned matter, and pursuant to a Stipulated Election Agreement (**Stipulation**) that was entered into on May 5, 2025, an election by mail ballot was conducted and the ballots were counted on June 16, 2025, to determine whether a unit of employees of Distrokid, LLC (**Employer**) still wish to be represented for purposes of collective bargaining by National Association of Broadcast Employees & Technicians (**Union**). The election was conducted in the following unit (**Unit**):

INCLUDED: All full-time and regular part-time employees in the following classifications: Sr. Artist Relations Specialist, Artist Relations Specialist, Artist Relations Associate, Customer Support Experience Designer, Sr. Quality Control Specialist, Quality Control Specialist, Quality Control Associate, Fraud Specialist, Infringement Specialist, Sr. Content Operations Specialist, Content Operations Specialist, UGC Monetization Lead, Lead-Software Engineer, Sr. Software Engineer, Software Engineer, Agile Coach, Sr. Product Manager, Product Manager, Sr. Product Designer, Product Designer, Delivery Manager, Lead-QA Analyst, QA Analyst, Lead-QA Automation, Sr. Sysops Engineer, Sysops Engineer, and Sr. DBA, DevOps based in the United States.

EXCLUDED: All other employees including confidential employees, professional employees, managers, guards and supervisors as defined by the Act.

A tally of ballots was prepared which shows that of the approximately **40** eligible voters, **13** votes were cast for the Union, and **13** votes were cast against the Union, with **4** challenged ballots, a number that is sufficient to affect the results of the election.

CHALLENGED BALLOTS

In accordance with the Board's Rules and Regulations, an investigation into the eligibility of the challenged voters was conducted. The parties provided position statements and supporting evidence with respect to the challenged voters explaining whether they are eligible to vote in the election.

The names of the challenged voters, the stated reason for each challenge, and the party or person who made the challenge are as follows:

NAME	JOB TITLE	CHALLENGED BY	REASON
Stephen Jaunzemis	Sr. Infringement Specialist	Union	2(11) Supervisor
Laura Scirto	Sysops Engineer	Union	Not in Unit
James Yastremski	Sr. DBA	Union	Not in Unit
Sean James	Sr. Sysops Engineer	Union	Not in Unit

Union Challenges

The Union challenges Stephen Jaunzemis's ballot because it alleges that he is a Section 2(11) supervisor under the Act and therefore ineligible to vote.

Regarding the Union's challenges against Laura Scirto, James Yastremski and Sean James's ballots, the Union asserts that their job titles are excluded from the Unit even though they are included in the Stipulation as being eligible to vote. The Union argues that after the Certification of Representative (**Certification**) issued on April 24, 2024, in 02-RC-335901, covering the same Unit employees, the parties agreed in an e-mail dated August 7, 2024, that the Sysops Engineer, Sr. Sysops Engineer and Sr. DBA would no longer be in the Unit. The Union cites to *Brom MacHine & Foundry Co.*, 227 NLRB 690 (1977), for the proposition that the unit for a decertification election must be the existing unit represented by the Union even if the Stipulation contains different language. The Union concedes that the parties have not reached a collective bargaining agreement (**CBA**).

The Employer's position is that the August 7, 2024, e-mail was a tentative agreement, and the parties have not signed a CBA memorializing their agreement. The Employer points out that after the parties entered into the tentative agreement, they signed the Stipulation which reflected the language in the Certification which clearly includes the job titles at issue. The Employer asserts that the parties' tentative agreement does not override the clear, final Stipulation especially where the bargaining unit description in the decertification Stipulation is

the same as the unit description in the original election agreement and April 24, 2024, Certification and there was no intervening CBA.

The Employer argues that if the objective intent of the parties is expressed in clear and unambiguous terms in the Stipulation, the Board must simply enforce that agreement. *Desert Palace, Inc.*, 337 NLRB 1096, 1097 (2002). The Employer argues that *Brom* is inapplicable in this case because unlike the facts of *Brom*, the parties never signed a CBA to evidence their full and final intent with respect to the bargaining unit.

Analysis

Stephen Jaunzemis

Regarding Stephen Jaunzemis, the Union's challenge is sustained because the parties agree that he is a Section 2(11) supervisor under the Act and therefore ineligible to vote.

Laura Scirto, James Yastremski and Sean James

The Board has held repeatedly that all parties to an election agreement must be held to its material terms because the agreements are contracts which are binding on the parties that executed them. *See Barceloneta Shoe Corp.*, 171 NLRB 1333, 1343 (1968). The Board enforces Stipulated Election Agreements, provided their terms are clear, unambiguous, and do not contravene express statutory exclusions or established Board policy. *See, e.g., Business Records Corp.*, 300 NLRB 708 (1990); *Granite & Marble World Trade*, 297 NLRB 1020 (1990).

It is undisputed that Laura Scirto, James Yastremski and Sean James challenged by the Union were employed in classifications which are included in the Stipulation's Unit (and Certification), and that the parties did not reach a CBA changing the Unit. Because the Union did not cite to any controlling authority that applies *Brom* in circumstances in which the Unit was altered by any type of agreement other than a CBA, and the Stipulation's terms are clear and unambiguous, I find that the Unit contained in the Stipulation is the proper unit for the instant petition. Therefore, I find that Laura Scirto, James Yastremski and Sean James are eligible to vote, and their ballots will be opened and counted.

PENDING UNION OBJECTIONS

The Union also filed timely objections to conduct affecting the results of the election.

Section 102.69(a)(8) of the Board's Rules and Regulations provides that, when filing objections to an election, a party must file a written offer of proof in the form described in Section 102.66(c) of the Board's Rules and Regulations. Section 102.66(c) specifies that offers of proof shall identify each witness and summarize the testimony of that witness. If the regional director determines that the evidence described in an offer of proof is insufficient to sustain the proponent's position, the evidence shall not be received. Similarly, with regard to processing objections and/or challenges, Section 102.69(c) (1) (i) of the Board's Rules and Regulations provides that if the regional director determines that the evidence described in the offer of proof

would not constitute grounds for setting aside the election if introduced at a hearing, the regional director shall issue a decision disposing of the objections and a certification of the results of the election, including a certification of representative, where appropriate.

As the objecting party here, the Union bears the burden of furnishing evidence or description of evidence that, if credited at hearing, would warrant setting aside the election. *Professional Transportation, Inc.*, 370 NLRB No. 132 (2021), citing *Transcare New York, Inc.*, 355 NLRB 326 (2010); *Jacmar Food Service Distribution*, 365 NLRB 271 n.2 (2017). 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 (2014), citing *Park-Chevrolet Geo, Inc.*, 308 NLRB 1010, n.1 (1992) (Board holding that employer did not submit evidence that established a *prima facie* case in support of its objections and failed to meet its burden to present evidence that raises substantial and material factual issues warranting a hearing). *See also*, the Board's Casehandling Manual, Part Two, Representation Proceedings, Section 11392.2(a)(2) stating in pertinent part, that objections submitted to the Regional Director must “...be accompanied by a written offer of proof identifying each witness the party would call to testify concerning the issue and summarizing the witness's testimony.”

The Casehandling Manual, Part Two, Representation Proceedings, Section 11395.1 also notes that there is no statutory requirement for a hearing on objections and that upon receipt of the offer of proof, the Regional Director evaluates each objection and the accompanying offer of proof to determine whether the evidence described in the offer of proof could be grounds for setting aside the election if introduced at hearing. Thus, in each case, whether an objecting party's evidence is sufficient depends upon the Board's substantive criteria for the relevant claim of election misconduct. *Durham School Services, LP v. NLRB*, 821 F.3d 52 (DC Cir. 2016), *enfg.* 360 NLRB 851 (2014).

It is also noted that the 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 conduct that it has failed to sufficiently allege. Hearings on objections are not discovery tools.” *XPO Logistics Freight, Inc.*, 13-RC-184190, 2017 WL 1294849, at n.1 (N.L.R.B. April 6, 2017). *See also Professional Transportation, Inc.*, *supra*. At n.25 (a hearing may not be used as “a fishing expedition” to gather evidence in support of a party's objections)

The Board has upheld regional directors' decisions to overrule objections when the supporting offer of proof is insufficient. See e.g., *Nexstar Media Group, Inc., For Their Station, KDVR-TV/KWGN-TV*, 27-RC-333229, 2024 WL 4252687 (N.L.R.B., September 19, 2024) (finding regional director properly overruled objections without hearing where no substantial issues raised); *Mr. C. Manager, LLC*, 31-RC- 249624, 2020 WL 3187948, n.1 (N.L.R.B., June 12, 2020) (objection and accompanying offer of proof did not proffer evidence that, if proven at a hearing, could be grounds for setting aside the election), citing *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, n. 1 (1992) (regional director properly overruled objection without a hearing based on deficient offer of proof); *XPO Logistics Freight, Inc., supra* at n.1 (objections overruled as the employer's support of its objections found insufficient to constitute grounds for setting aside the election if introduced at hearing).

Objection 1: Rebecca Helgeson's Ballot

If challenges and objections arise in the same matter, they ordinarily will be processed simultaneously. However, under appropriate circumstances, they may be treated separately. For example, the resolution of some challenges may render one party's objections moot. "Thus, if it appears that the overall more expeditious resolution of the entire matter would result from holding the objections in abeyance, while challenges are being processed, that is the course that should be followed." NLRB Case handling Manual (Part Two) Representation Proceedings, Section 11360.3.

Considering the Union's first objection, to effectuate the expeditious processing of this matter, under Section 102.69(c) of the Board's Rules and Regulations, as noted above, the regional office conducted an administrative investigation of the challenged ballots to arrive at a potentially determinative election outcome which might moot this Objection. Therefore, a decision on this Objection, if necessary, is deferred until after Laura Scirto, James Yastremski and Sean James's challenged ballots are opened.

Objection 2: Employer Assistance

The Union's offer of proof for Objection 2 fails to meet its burden to present evidence that raises substantial and material factual issues warranting a hearing in this case. Section 102.69(c)(1)(i) of the Board's Rules and Regulations provides that if the regional director determines that the evidence described in the offer of proof would not constitute grounds for setting aside the election if introduced at a hearing, the regional director shall issue a decision disposing of the objections and a certification of the results of the election, including a certification of representative, where appropriate.

Here, the only evidence the Union provided was the petition itself wherein the Petitioner listed the Employer's physical and email address as their own. The Union assumes that the Petitioner used the Employer's email to communicate with employees and circulate the decertification petition, but in its offer of proof it neither refers to any evidence to support, nor provides the names of witnesses who may testify to, this claim. The Board has held that an objecting party must provide probative evidence in support of its objections; the Union has provided no such evidence here.

The evidence that the Union presented falls short from showing that the Employer took affirmative actions to help the decertification effort. *See, e.g., Am. Linen Supply Co.*, 297 NLRB 137 (1989) (The Board found a withdrawal of recognition to be tainted because the employer aided employees by furnishing withdrawal forms and notaries during work time to help in the processing of the withdrawal cards). Therefore, there is insufficient evidence to support the conclusion that the Employer lent more than ministerial aid to the petitioner in the decertification effort and this Objection is overruled.

CONCLUSION AND ORDER

I have concluded that certain determinative challenged ballots be overruled and opened and another challenge be sustained. Accordingly,

IT IS ORDERED that the ballots of Laura Scirto, James Yastremski and Sean James be opened and counted by an agent of the undersigned. A revised tally will be prepared and served thereafter. The challenge to the ballot of Stephen Jaunzemis is sustained and his ballot will not be opened and counted. If, after opening these ballots, Rebecca Helgeson's ballot is deemed determinative, a separate Decision and Order on Objections will be issued.

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 **August 25, 2026**. 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.nlr.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: August 11, 2026



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