

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MOVEMENT HOLDINGS, LLC
D/B/A MOVEMENT GYMS
Employer

and

Case 05-RC-382041

MID-ATLANTIC REGIONAL JOINT BOARD,
WORKERS UNITED A/W SERVICE EMPLOYEES
INTERNATIONAL UNION
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision on Objections and Certification of Representative is denied as it raises no substantial issues warranting review.

In denying review, we agree with Regional Director that the Employer's offer of proof did not describe evidence which, if credited at a hearing, would establish that Petitioner agents engaged in objectionable misconduct. An objecting party is not necessarily required to positively identify an alleged wrongdoer in order to warrant a hearing, but it is not sufficient to assert (as the Employer does for Objections 1-5) that an employee is also a union agent without proffering any evidence in support of that assertion (it is well established that the party asserting agency status bears the burden of proof—see, e.g., *Cornell Forge Co.*, 339 NLRB 733, 733 (2003)), nor is it sufficient to merely recite (as the Employer does for Objection 6) that “union agents” engaged in the alleged conduct.

We additionally note that the offer of proof in support of Objection 6 is deficient in any event because the conduct it describes is not objectionable under extant Board law. See, e.g., *Smith Co.*, 192 NLRB 1098, 1101 (1971) (union promises dependent on contingencies beyond a union's control are generally not objectionable).

Although the Regional Director did not explicitly address the Employer's alternative argument that the allegedly threatening Mandarin statement constitutes objectionable third-party misconduct warranting a hearing, we find that it does not. In this regard, under either translation any violent sentiment is directed at unspecified “billionaires,” not eligible voters, and it would be implausible to conclude that the employee who wrote the statement had the power to carry it out. In addition, the Employer's offer of proof does not proffer any evidence regarding when the statement was translated and whether or when the translations were disseminated to eligible voters, so although the statement was written the day before the election and eligible voters may have seen it on their way to vote, no evidence has been proffered that any voters (other than the voter who wrote the statement) were aware of its contents when they voted. We do not condone the rhetoric alleged here, but even assuming all employees were aware of the contents of the statement when they voted, we nevertheless conclude that the statement, if introduced at a

hearing, would not establish “a general atmosphere of fear and reprisal rendering a free election impossible” by itself or in conjunction with the other alleged conduct. *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984).

JAMES R. MURPHY, CHAIRMAN

DAVID M. PROUTY, MEMBER

SCOTT A. MAYER, MEMBER

Dated, Washington, D.C., September 29, 2026.