

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

G4S GOVERNMENT SOLUTIONS, INC.

Employer

and

05-UD-086913

DON ALLEN BENNETT

Petitioner

and

**INTERNATIONAL UNION FEDERAL
CONTRACT GUARDS OF AMERICA (FCGOA)**

THE HEARING OFFICER'S REPORT

On November 19, 2012, pursuant to a Report on Objections and Notice of Hearing, I conducted a hearing in order to take record evidence to resolve one issue: whether G4S Government Solutions, Inc. (herein "the Employer") failed to post Notices to Employees by the required deadline of 12:01 a.m. on September 17, 2012.¹ Based on my credibility resolutions and the evidence presented, I recommend overruling the objection.²

I. Procedural History

On August 8, Don Allen Bennett (herein "the Petitioner"), a Justice Protective Service Officer employed by the Employer, filed a union deauthorization petition with Region Five of the National Labor Relations Board, seeking to have an election conducted in which the bargaining unit employees of the Employer represented by the International Union Federal Contract Guards of America (FCGOA) (herein "the Union") would vote on the question of whether they wished to withdraw the authority of the Union to require under its agreement with

¹ Unless otherwise specified, all dates are 2012.

² At the hearing, the International Union Federal Contract Guards of America (FCGOA) made a motion to dismiss the Petitioner's sole objection, which I indicated that I would hold in abeyance. In light of my findings and recommendations below, I determine that the motion to dismiss is moot.

the Employer that employees make certain lawful payments to the Union in order to retain their jobs.³ On September 11, the Regional Director of Region Five of the National Labor Relations Board issued a Decision of Election. Pursuant to that Decision of Election, a secret-ballot election was conducted by mail between September 20, and October 11, under the supervision of the Regional Director. The tally of ballots from that election issued on October 11, with the following results:

Approximate number of eligible voters	244
Void ballots	10
Votes cast in favor of withdrawing the authority of the bargaining Representative to require, under its agreement with the Employer, that employees make certain lawful payments to the Union in order to retain their jobs	91
Votes cast against the above proposition	16
Valid votes counted	107
Challenged ballots	4
Valid votes counted plus challenged ballots	111

On October 18, the Petitioner filed a timely objection to conduct affecting the results of the election. On November 7, the Regional Director issued a Report on Objections and Notice of Hearing.⁴ I conducted the hearing on November 19, where all parties in attendance were permitted to call witnesses, take testimony and introduce exhibits, and cross-examine witnesses. The Petitioner and the Union appeared at the hearing, while the Employer did not appear at the hearing. The parties waived the filing of briefs, and instead made closing arguments to me.

³ The unit is: "All full-time and regular part-time Justice Protective Service Officers (JPSOs) assigned to the Department of Justice's contract in the National Capital Area excluding all other employees employed by the Employer, office and/or clerical employees, professional employees, temporarily assigned employees, substitute employees, managerial employees, and supervisors as defined by the Act."
⁴ On November 15, the Regional Director issued an Erratum to the Report on Objections and Notice of Hearing.

II. Evidence and Credibility Determinations

In support of his objection that the Employer failed to post the Notices of Election by the required time of 12:01 a.m. on September 17, the Petitioner almost exclusively relies on e-mails he sent and received on September 17. The Employer is party to a contract with the United States Department of Justice (herein "DOJ"), under which it provides guard services at various DOJ locations in the greater Washington, D.C. metropolitan area. Ronald B. Horch serves as the Employer's project manager for its contract with the DOJ.

At 10:11 a.m. on September 17, the Petitioner sent an e-mail to Horch, seeking to verify that the Employer had posted the notices as required, at the approximately 14 locations covered by its contract with the DOJ. At 10:37 a.m., Horch replied to the Petitioner, indicating that the Employer had recently posted some notices. However, Horch asked the Petitioner if he had a copy of the notice that the Petitioner could send to Horch by e-mail, so that Horch could confirm that the Employer had in fact posted the notices that the Petitioner was asking about. At 11:01 a.m., the Petitioner sent Horch another e-mail, attaching an image of the notice. At 6:05 p.m., Horch forwarded the Petitioner an e-mail that was sent to Horch, among others, at 5:58 p.m. by Charles Carroll, the Employer's deputy project manager for its contract with the DOJ. Carroll's e-mail to Horch stated, "The documents have been confirmed as posted at all locations." The Petitioner admits that nowhere in the e-mails is it affirmatively indicated that the Employer failed to post the notices by 12:01 a.m. on September 17.

The Petitioner was not working at 12:01 a.m. on September 17. He was not scheduled to work until 6:00 p.m. on September 17. The Petitioner admitted that when he arrived for work on the evening of September 17 at his assigned work location of the Patrick Henry Building in Washington, D.C., the Notice to Employees was posted. The Petitioner admitted that he was not

present at the Patrick Henry Building at 12:01 a.m., and that he was not personally aware of whether the Employer had failed to post the notice at the Patrick Henry Building or any other location where notices were required to be posted. The Petitioner did not call any other witnesses to testify as to the Employer's alleged failure to post the notice by the time it was required to do so.

III. Analysis

There is only one objection to resolve: whether the Employer failed to post Notices to Employees by the required deadline of 12:01 a.m. on September 17, 2012. As the party filing the objection, the Petitioner had the burden of establishing, by a preponderance of the evidence, that the Employer failed to post the notices by the required time. NLRB Casehandling Manual (Part Two) Representation Proceedings, Sec. 11392.10. I find that the Petitioner has failed to meet his evidentiary burden.

When the National Labor Relations Board conducts an election, it uses a standard Notice of Election form to inform eligible voters of the balloting details. The notice contains such information as a description of the bargaining unit, the names of the parties involved in the election, the date, place, and hours of the election itself, and a statement of employees' rights under the National Labor Relations Act. The notice also contains a sample ballot. The Board has a specific rule for the posting of election notices. Under Section 103.20 of the Board's Rules and Regulations, an employer involved in a Board election must "post copies of the Board's official Notice to Employees in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election." Rules and Regulations of the National Labor Relations Board Sec. 103.20. For elections such as this involving a mail ballot, Section 103.20 specifies that "the

election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail.” *Id.* An employer’s “[f]ailure to post the election notices as required herein shall be grounds for setting aside the election wherever proper and timely objections are filed under the provisions of section 102.69(a).” *Id.* The Board’s rule requiring notice-posting is mandatory, and an employer may not satisfy its requirement by an alternative means of communication to employees. See Terrace Gardens Plaza, 313 NLRB 571, 572 (1993). The Board strictly enforces its rule, and an employer’s failure to comply with the notice-posting requirement is, on its own fact, grounds for setting aside an election, regardless of whether the failure had any actual impact on whether employees voted. See Terrace Gardens Plaza, *supra* at 572; Smith’s Food & Drug, 295 NLRB 983, n. 1 (1989).

The Petitioner relies exclusively on the e-mails he exchanged with Horch, the Employer’s Project Manager, after 12:01 a.m. on September 17 in order to prove that the Employer failed to post the notices by the required time. Based on my review of the e-mails and the testimony, I find that the Petitioner has not met his burden of establishing that the Employer in fact failed to post the notices by the required time. In the Petitioner’s first e-mail to Horch, sent at 10:11 a.m., on September 17, the Petitioner merely asked Horch to verify that the notices had been posted. Approximately thirty minutes later, Horch responded, indicating to the Petitioner that the Employer had posted something recently; however, Horch asked the Petitioner to send Horch a version of the notice, in order to confirm that the notice had in fact been posted. In the Petitioner’s view, the fact that Horch did not respond that the notices had already been posted was tantamount to an admission that the Employer had failed to timely post the notices. The Petitioner further relies on Horch’s e-mail to him from 6:05 p.m. on September 17, forwarding a message Horch received moments earlier from Charles Carroll, stating, “[t]he documents have

been confirmed as posted at all locations.” As with the prior e-mail, the Petitioner views this e-mail as a tacit admission that the Employer had failed to post the notices until shortly before 6:00 p.m. on September 17.

I do not share the Petitioner’s view, and I find that the documentary evidence does not establish the fact that the Employer failed to timely post the notices. While the Petitioner’s assumptions are not outlandish, they are merely assumptions, and there is no evidence definitively indicating whether the Employer had posted the notices by 12:01 a.m. or not. In neither of the e-mails that the Petitioner relies upon did an agent of the Employer write that the notices had not been posted. Rather, Horch indicated that the Employer had already posted some notices recently, and Carroll later wrote that the notices had been confirmed as posted at all of the locations involved in the present election. Furthermore, the Petitioner admitted that he had no first-hand knowledge of whether the notices were not posted at 12:01 a.m., and there was no testimony on this point. Thus, while I cannot find, on the record before me, that the Employer had, in fact, posted the notices as of 12:01 a.m. on September, I also cannot find that the Petitioner has met his burden of proving, by a preponderance of the evidence, that the Employer failed to post the notices by the required time.

IV. Recommendation

I recommend that the National Labor Relations Board overrule the sole objection to the election in question, that the Employer failed to timely post the Notices to Employees.

As the election involved in this proceeding involved a union-security deauthorization petition, the Petitioner required a majority of the employees eligible to vote to vote for the rescission of the union-security clause in order for the Board to issue a certification rescinding

the authority for such a clause. NLRB Casehandling Manual (Part Two) Representation Proceedings Sec. 11512. Accordingly, I recommend that the Board issue a certification of results, certifying that a majority of employees eligible to vote has not voted to withdraw the authority of the International Union Federal Contract Guards of America (FCGOA), under its agreement with G4S Government Solutions, Inc., that employees make certain lawful payments to that labor organization in order to retain their jobs in conformity with Section 8(a)(3) of the Act, as amended.

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Washington, D.C. 20570-0001.

Procedure for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on December 12, 2012, at 5:00 p.m. (ET), unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically.** If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁵ A copy of the exceptions must be served on each of the other parties to the proceeding, as

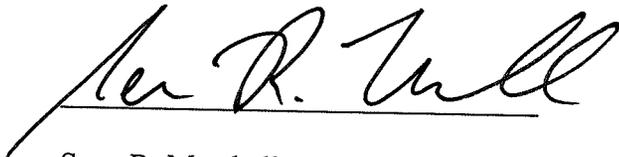
⁵ A request for an extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, D.C., and a copy of such request for extension of time should be submitted to the Regional

well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-Filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the File Documents button under the Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated in Baltimore, MD, this 28th day of November 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean R. Marshall", written over a horizontal line.

Sean R. Marshall
Hearing Officer
National Labor Relations Board, Region 5
Bank of America Center, Tower 2
Suite 600
100 S. Charles Street
Baltimore, MD 21201

Director and to each of the parties in this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or in a faster manner as that utilized in filing the request with the Board.

CERTIFICATE OF SERVICE

I hereby certify that the following document was electronically filed through the National Labor Relations Board's website, and that I served the document by first-class United States Postal Service mail on the 28th day of November 2012, on the parties listed below:

1. The Hearing Officer's Report

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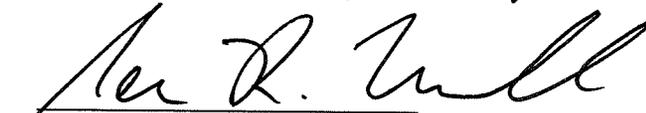
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Dated at Baltimore, MD, this 28th day of November 2012.



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