

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

TRUMP RUFFIN COMMERCIAL LLC

Employer

and

Case 28-RC-153650

LOCAL JOINT EXECUTIVE BOARD OF LAS VEGAS,
affiliated with UNITE HERE INTERNATIONAL UNION

Petitioner

ORDER DENYING REVIEW

The National Labor Relations Board, by a three-member panel, has carefully considered the Employer's request for review of the Regional Director's Decision and Certification of Representative. The request for review is denied as it raises no substantial issue warranting review.¹

¹ Pursuant to Sec. 102.67(e) and (d) of the Board's Rules and Regulations, we have carefully examined the record relevant to the Employer's request for review. The Employer has requested review of the Regional Director's decision to affirm some of the hearing officer's credibility findings. The Regional Director appropriately evaluated the Employer's exceptions to the hearing officer's findings under *Stretch-Tex Co.*, 118 NLRB 1359 (1957).

We agree with the Regional Director that the conduct of the Petitioner's election observer, as established by the credible evidence, does not warrant setting aside the election under the Board's standards set forth in *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118, 1118-1119 (1982), and *Milchem, Inc.*, 170 NLRB 362, 363 (1968). We accordingly deny the Employer's request for review of the Regional Director's decision to overrule its Objection 1.

In denying review of the Regional Director's decision to overrule the Employer's Objection 2, to alleged surveillance of employees near the polling area, we find, as a threshold matter, that the alleged surveillants were not the Petitioner's agents, without reaching the question of whether their conduct would otherwise constitute objectionable surveillance.

In denying review of the Regional Director's decision not to consider the Employer's objection alleging that the Petitioner violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., we note that the Employer raised this contention for the first time well after the expiration of the period provided for filing a timely objection under Sec. 102.69(a) of the

Dated, Washington, D.C., July 28, 2016.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Lauren McFerran, Member

(SEAL)

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Board's Rules and Regulations. In order to warrant consideration of its late-filed objection, the Employer would have had to show "clear and convincing proof that evidence relating to the objection was 'not only newly discovered, but also previously unavailable.'" *John W. Galbreath & Co.*, 288 NLRB 877, 878 (1988) (quoting *Burns Security Services*, 256 NLRB 959, 960 (1981)). The Employer has not made the required showing.

Finally, in denying review of the Regional Director's decision to affirm the hearing officer's ruling partially revoking the Employer's subpoenas duces tecum, we agree with the Regional Director that the hearing officer did not abuse her discretion under the Board's Rules and Regulations Sec. 102.66(f). The hearing officer appropriately considered the Employer's need for material related to specific conduct alleged in its objections and required the production of all subpoenaed material relevant to that conduct. The Employer does not contend that it was deprived of any material required to be produced under the subpoenas thus limited. Requiring further production of "any and all photographs or recordings" requested by the Employer could expose employee conduct protected by Sec. 7 of the Act that the Employer could not lawfully have photographed itself. See, e.g., *Cobb Mechanical Contractors*, 356 NLRB 686, 686-687 (2011); *F. W. Woolworth*, 310 NLRB 1197 (1993). Under these circumstances, employees' interest in keeping their Sec. 7 activity confidential outweighs the Employer's interest in obtaining any additional subpoenaed material not probative of its specific objections that may have been denied to it by the hearing officer's ruling. See, e.g., *Laguna College of Art and Design*, 362 NLRB No. 112, slip op. at 1 fn. 1 (2015); *National Telephone Directory Corp.*, 319 NLRB 420, 421 (1995).