

The case was assigned to Administrative Law Judge (ALJ) William Greer for processing. Upon Greer's retirement, the case was administratively transferred to ALJ B. Carlton Grew.

Board Rule 115-25-060(10) provides:

“Objections to Conduct of Election or Conduct Affecting the Results of the Election Within ten days after the tally of ballots has been furnished, any party of record may file with the Board * * * objections to the conduct of the election or conduct affecting the results of the election, which shall contain a clear and concise statement of the reasons therefor. * * *”

In *Employees of State of Oregon Motor Vehicles Division v. Oregon State Employees Association*, Case No. C-29-80, 5 PECBR 3069, 3073 (1980), this Board held:

“Elections should not be set aside lightly, because to do so interferes with the orderly processes of labor relations. If it may reasonably be said that proscribed conduct at an election had an impact or reasonably could have been expected to have an impact on the outcome of the election, however, this Board shall set the election aside.” (Footnotes omitted.)

Don's objection included a copy of a postcard concerning a proposed meeting regarding the election. The postcard stated, on one side, “Dinner for 29 at Sunshine Plaza.” On the reverse, the card stated:

“We hope to have your participation on Nov. 24, 2003.
Sunshine Pizza from 6 - 9 p.m. for 100% election turnout!!

“Pizza and drinks are provided.

“Remember your ballots.”

In his objection, Don stated that the card implied that employees were required to cast their ballots at the meeting, and that the card and meeting constituted misinformation, intimidation, and coercion.

By a letter dated January 26, 2004, ALJ Grew asked Don the following:

"I need more information in order to decide whether this matter should be taken to a hearing. Please advise me of whether the meeting in question took place, and of any additional facts you are aware of regarding the alleged misinformation, intimidation, and coercion in connection with the postcard and meeting.

"I do not believe that the Union's action of mailing of this postcard to bargaining unit members, without more, raises an issue of fact or law regarding the conduct of the election which would warrant a hearing. Mr. Don, unless you convince me to the contrary, or supply additional facts which raise such issues, I will recommend that the Board dismiss the objection. * * *"

Don responded in a letter dated February 5:

"* * * I was not an attendant in the referenced election meeting but I have received conformation [sic] that the meeting did indeed take place. One participant has indicated that no more than a dozen members of the bargaining unit attended. However, based on my experiences of attending previous meeting [sic] sponsored by the union, it is very clear that the intent of the invitation was to mislead the members of the bargaining unit to believe that they were required to bring their ballots to a common location so that they could cast their votes. The offer of free food and beverages is nothing more than a bribe to persuade votes in favor of union representation."

In *OPEU v. Judicial Department*, RC-13-95, 16 PECBR 17 (1995), *rev'd and remanded* 142 Or App 169, 919 P2d 1200, *rev den* 324 Or 487, 930 P2d 851, 852 (1996), the Oregon Court of Appeals reversed this Board's decision that had nullified an election. This Board's decision was based on the union's collection and delivery of ballots in a representation election. The court stated:

"* * * There was neither allegation nor evidence that [the union's] role was anything other than that of a carrier of sealed envelopes. There was no evidence that any employee felt pressured in any way, or that [the union] knew or could have known the vote that was cast in any of the ballot

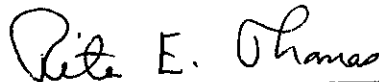
envelopes that it collected and delivered to ERB. Finally, there is no allegation, much less evidence, that [the union] tampered with or failed to deliver any ballot entrusted to it. Thus, it cannot 'reasonably be said that [the union's] proscribed conduct * * * had an impact or reasonably could have been expected to have an impact on the outcome of the election[.]'" 142 Or App at 180-181, quoting *Employees of Motor Vehicles, supra*, 5 PECBR at 3073 (footnote omitted).

For purposes of this dismissal order, we assume that all factual allegations in the complaint are true. *Pollan v. Tri-County Metropolitan Transportation District of Oregon*, Case Nos. UP-20/21-95, 16 PECBR 147 (1995) (Dismissal Order). The factual allegations, as stated by Don, are insufficient to state a claim that AFSCME's conduct affected the results of the election. See *Judicial Department, supra*.

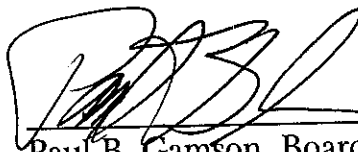
ORDER

The objection to the conduct of the election is dismissed. The elections coordinator shall certify the election results as soon as practicable.

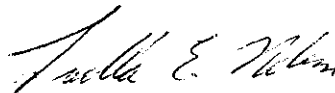
DATED this 2nd day of March 2004.



Rita E. Thomas, Chair



Paul B. Gamson, Board Member



Luella E. Nelson, Board Member

This Order may be appealed pursuant to ORS 183.482.