

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1277

September Term, 2006

FILED ON: MAY 21, 2007 [1041681]

ALL SEASONS CLIMATE CONTROL, INC.,
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD,
RESPONDENT

Consolidated with 06-1295

On Petition for Review and Cross-Application for Enforcement
of an Order of the National Labor Relations Board

Before: RANDOLPH, TATEL and BROWN, *Circuit Judges*.

J U D G M E N T

This case was considered on the record from the National Labor Relations Board (NLRB) and on the briefs of the parties pursuant to D.C. CIR. Rule 34(j). It is

ORDERED AND ADJUDGED that the petition for review is denied and the NLRB's cross-application for enforcement is granted. Petitioner All Seasons Climate Control argues that the Board unreasonably departed from its precedent in ruling that the union election was free from impermissible electioneering and bribery. The hearing officer, however, provided a perfectly reasonable explanation for upholding the election. *See* J.A. 377-380. As to the electioneering claim, the hearing officer reasonably explained why the facts of this case more closely resembled those in *Boston Insulated Wire & Cable Co.*, 259 N.L.R.B. 1118 (1982), and *J.P. Mascaro & Sons*, 345 N.L.R.B. No. 42 (2005)—in which the Board upheld the election results—than those in *Electric Hose & Rubber Co.*, 262 N.L.R.B. 186 (1982), *Performance Measurements Co.*, 148 N.L.R.B. 1657 (1964), and *Nathan Katz Realty, LLC v. NLRB*, 251 F.3d 981 (D.C. Cir. 2001)—all cases in which the Board set aside election results. Specifically, in this case, the union officials did not surround the only entrance to the polling place, did not occupy a non-electioneering zone, and did not engage in conduct contrary to the instructions of the Board agent. The hearing officer also reasonably

explained, in light of Board precedent, its decision to reject Petitioner's trivial claim that the election should be set aside because the union gave one of the employees a union t-shirt. Finally, Petitioner's Equal Protection Clause claim was not presented to the NLRB and is therefore not properly before us. 29 U.S.C. § 160(e) ("No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances."); *Parsippany Hotel Mgmt. Co. v. NLRB*, 99 F.3d 413, 419 (D.C. Cir. 1996).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R.APP. P. 41(b); D.C. CIR. Rule 41.

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Deputy Clerk