

Red Lion, a California Limited Partnership, Employer/Petitioner and Hotel Employees, Restaurant Employees, Local 360 and Arlene G. Snow, Petitioner. Cases 36–RM–1265 and 36–RD–1312

January 9, 1991

DECISION AND NOTICE TO SHOW CAUSE

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held March 15, 1990, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 42 for and 43 against the Union, with 2 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, and adopts the hearing officer's findings and recommendations as discussed here.¹

1. We adopt the hearing officer's recommendation to overrule the Union's Objection 2, which alleges that (1) the Employer paid employees to vote in order to influence them to vote against the Union; and (2) the Employer created an impression of surveillance by requiring off-duty employees who came to the facility to vote in the election to sign a special off-duty payroll roster confirming that they had voted, as a condition of receiving one-half hour's pay.

The Employer has demonstrated a valid business reason for keeping a list of off-duty employees who voted and who wanted to receive the one-half hour's pay. Payment was not to be immediate, but by checks issued sometime after the election. Thus, the Employer needed to know, for payroll purposes, which employees were to get the payment.² The 56 off-duty employees who potentially could have applied for this payment made accurate recordkeeping a necessity.

The employees understood the legitimate administrative purpose of the election day payroll roster for off-duty employees. The Employer's standard method of recording daily attendance and hours was by a signature roster. In the past, off-duty employees who attended meetings at the Employer's facility had to sign a special roster in order to be paid.

The procedures themselves were straightforward. The roster was kept in the office of the director of human resources, which was located upstairs from and

out of sight of the polling place. After asserting or acknowledging that they had voted, the employees signed the roster. They were not asked *how* they had voted and they did not have to identify themselves as voters until *after* they had voted.

Under all the circumstances, we find that the Employer's requiring off-duty employees to sign the special payroll roster after they had voted, if they wanted to receive payment for coming to the facility to vote, did not create an impression of surveillance, and did not otherwise interfere with the election. Accordingly, we affirm the hearing officer's recommendation to overrule this objection in its entirety.³

2. We also affirm the hearing officer's posthearing rejection of the stipulation entered into by the parties and accepted by the hearing officer at the start of the hearing. The stipulation stated that the Union's challenges to the ballots of Chana Nation and David Ritchie would not be contested by the Employer.

The hearing officer observed that the parties had not presented any evidence on the supervisory status of these two employees. He concluded that without that factual basis he could not rely just on the parties' agreement that the Employer would not contest these challenges, possibly to disenfranchise two voters whose names were on the eligibility list. The hearing officer recommended that the challenges to the ballots of Nation and Ritchie be overruled, and that the ballots be opened and counted.

In its exceptions to the hearing officer's report, the Union notes that the hearing officer gave no indication at the hearing that a presentation of evidence would be necessary to support the stipulation in question. The Union argues that the hearing officer's posthearing rejection of the stipulation on the grounds of an absence of supporting evidence "denies the parties due process."⁴

We find that the Union has established that it reasonably relied on the hearing officer's acceptance of the stipulation at the hearing in not introducing evidence in support of its challenges. In these circumstances, we shall not at present adopt the hearing

³In *Marathon Le Tourneau Co.*, 208 NLRB 213, 223–224 (1974), enfd. mem. 498 F.2d 1400 (5th Cir. 1974), the Board found that the employer interfered with the election by requiring voters who wanted to participate in a post-election raffle to have their names checked off on a copy of the official voter eligibility list after they had voted. We find *Marathon Le Tourneau* to be distinguishable from the instant case because in that case there was no showing that the employees were aware of a legitimate reason for the employer's maintaining a list of employees who had voted, whereas in the instant case, as discussed above, the employees had good reason to understand the legitimate administrative purpose of the election day payroll roster for off-duty employees. We find *Days Inn Management Co.*, 299 NLRB 735 (1990), to be distinguishable for similar reasons.

Chairman Stephens notes that his dissent in *American Nuclear Resources*, 300 NLRB 567 (1990), is inapplicable because the sign-in procedure for off-duty employees here was in accord with the Employer's standard practice of maintaining sign-in sheets in order to reimburse off-duty employees for their attendance at meetings.

⁴Neither the Employer nor the Petitioner have either excepted to or argued in support of the hearing officer's posthearing rejection of the stipulation.

¹In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule Objections 1 and 4. The Union withdrew Objection 3 at the hearing.

²Chairman Stephens notes that, unlike the circumstances in *Young Men's Christian Assn.*, 286 NLRB 1052 (1987), in which he dissented, the payments to off-duty employees here were not substantial, ranging from \$2.10 to \$3.50, and thus cannot be viewed as having reasonably tended to influence the election outcome in favor of the Employer.

officer's recommendation to overrule the challenges and have the ballots opened and counted. Instead, we shall provide the parties with an opportunity to proffer evidence on the eligibility of Chana Nation and David Ritchie to vote in the election. Accordingly,

Notice is given that cause be shown, in writing, filed with the Board in Washington, D.C., on or before January 23, 1991 (with affidavit of service on the parties to this proceeding), why the Union's challenges to the ballots of Chana Nation and David Ritchie should not be overruled.