

**Lutheran Home of Northwest Indiana, Inc., d/b/a  
Lutheran Retirement Village and Scott Brown,  
Petitioner and United Steelworkers of America,  
AFL-CIO, CLC, Intervenor.** Case 13-RD-2015

September 30, 1994

SUPPLEMENTAL DECISION AND  
DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS  
AND DEVANEY

The question presented to the National Labor Relations Board in this decertification election case is whether the hearing officer correctly found that the Employer did not interfere with a decertification petition when its chairman made comments to employees about pension benefits during a preelection campaign speech.<sup>1</sup> The Board has reviewed the record in light of the exceptions and briefs and has determined, contrary to the hearing officer's findings and recommendations, to sustain the Intervenor's objection to the statements at issue and to direct a second election.

Two days prior to the April 23, 1993 election, the Employer held a series of meetings with employees. This proceeding focuses on statements made by Robert Anderson, the Employer's chairman of the board, to the group of 15-20 employees who attended the second meeting held that day. During introductory remarks, Anderson asked employees for a second chance. He said that the board of directors had received a wake-up call from the decertification petition, and he invited employees to help in decertifying the Union. Anderson then commented about some of the issues he had heard during the election campaign. According to the credited testimony of three employee witnesses, Anderson stated, *inter alia*, that the Employer was definitely looking into getting pensions for the employees. They had no pension benefits at the time.

A question and answer period followed Anderson's remarks. Employee Cathy Surowiec asked Anderson how he could have made such a statement about pensions when a head nurse had recently told her that, with or without a union, the Employer could not afford a pension. Anderson repeated that the Employer was definitely looking into getting employees a pension. In response to this and other employee questions, Ander-

<sup>1</sup> In an unpublished decision dated November 18, 1993, the Board considered the objections to an election held on April 23, 1993, and the hearing officer's report recommending disposition of them. The election was held pursuant to a Stipulated Election Agreement. The tally of ballots shows 61 for and 78 against the Intervenor, with 2 challenged ballots, an insufficient number to affect the results. The Board adopted the hearing officer's recommendation to overrule the Intervenor's Objections 3, 7, 8, and 9. It then remanded to the hearing officer for further factual findings, including credibility resolutions, and reconsideration of Intervenor's Objection 12.

son also said that he could not make any promises because that would be illegal.

There is no evidence that employees were previously aware that the Employer's board was definitely considering a pension benefit. Moreover, there is scant evidence of such consideration at the time of the election. The Intervenor's campaign literature claimed that it had proposed, and the Employer had rejected, pension benefits in the parties' recent contract negotiations (fiMDBUfi\*ERR17\*fiMDNMfi which apparently failed to produce a final agreement). Wayne Hahn, the Employer's administrator, testified that, "long before the election bringing the Steelworkers into the Home," an employee advisory committee had reviewed several pension plans and had presented them to the board of directors for review. Anderson could not recall the last time that the board had discussed pensions. He estimated that the subject arose twice a year. According to Anderson, the board briefly discussed pensions each time and had never ruled them out.

The hearing officer found that Anderson had truthfully stated that the Employer's board of directors had in the past occasionally considered or discussed a pension benefit. Acknowledging that Anderson's use of the word "definitely" may have unduly emphasized the extent of board consideration, the hearing officer found that "no specific pension improvement was mentioned, even as a distinct probability." In sum, the hearing officer found Anderson's remarks to be comparable to those which the Board had previously found to be unobjectionable because they were "recognizable by employees as paternalistic campaign propaganda to the effect that the Employer would take better care of them in the future generally." *Coverall Rental Service*, 205 NLRB 880, 881 (fiMDBUfi\*ERR17\*fiMDNMfi1973)fiMDBUfi\*ER fore recommended that the Intervenor's Objection 12 be overruled. We disagree.

A pension plan represented a specific and substantial new benefit to unit employees. The Intervenor had been unsuccessful in securing such a benefit for them in collective bargaining. A week before the employee meeting, a head nurse had specifically told unit employee Surowiec that there would be no pension benefit, with or without a union.

Anderson's remarks must be considered against this background and in the context of his admitted purpose of encouraging employees at the April 21 meetings to decertify the Intervenor. The Employer's chairman *sua sponte* volunteered the unexpected information that the Employer was definitely looking into getting employees a pension plan. There is no evidence that Anderson's comments signaled a change in the Employer's bargaining position, or that employees would reasonably interpret them as such. On the contrary, employees would reasonably believe that Anderson was implicitly providing them with a concrete example of a

benefit which they could obtain only by supporting the decertification effort. This implicit promise of a specific and substantial benefit 2 days before the election necessarily interfered with employees' free choice in that election.<sup>2</sup>

---

<sup>2</sup> Anderson's remarks about pensions benefits are significantly different from those statements found permissible in *Coverall Rental Service*, supra, and relied upon by the hearing officer. In that case, the employer made generalized references to a seminar discussion of improvements which could be made to profit-sharing plans. The unit employees already had a profit-sharing plan, and the employer did not mention any specific improvements to that plan as a distinct probability. In the present case, Anderson stressed the Employer's definite consideration of a specific, new, and substantial benefit which unit employees had been unable to obtain through their bargaining representative.

Anderson's rote disclaimers of the ability to make promises did not negate the objectionable effects of his remarks about pension benefits. "It is immaterial that an employer professes that he cannot make any promises, if in fact he expressly or impliedly indicates that specific benefits will be granted." *Michigan Products*, 236 NLRB 1143, 1146 (fiMDBUfi\*ERR17\*fiMDNfi1978)fiMDBUfi  
forth above, we conclude that Anderson did implicitly promise pension benefits to employees in an effort to persuade them to vote against continued representation by the Intervenor. Accordingly, we shall sustain the Intervenor's Objection 12, set aside the election held on April 23, 1993, and direct a second election.

[Direction of Second Election omitted from publication.]