

Lutheran Welfare Services of Northeastern Pennsylvania, Inc. and Local 170, Union of Needle Trades, Industrial and Textile Employees, AFL-CIO, CLC, Petitioner. Case 4-RC-18697

August 16, 1996

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

The National Labor Relations Board has considered objections to an election held January 26, 1996, and the Regional Director's report recommending disposition of them. The election was held pursuant to a Stipulated Election Agreement. The tally of ballots shows 60 for and 99 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the Regional Director's findings and recommendations, and finds that the election must be set aside and a new election held.

We agree with the Regional Director that the Employer engaged in objectionable conduct by offering 2 hours of pay to off-duty employees who came in to work to vote in the election. We find such conduct objectionable under the guidelines set forth in *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995).

In *Sunrise*, we held that "monetary payments that are offered to employees as a reward for coming to a Board election and that exceed reimbursement for actual transportation expenses. . . . [constitute] objectionable conduct." In so holding, we found objectionable an offer of 2 hours of pay to employees not scheduled to work on the day of the election for coming in to vote.

As noted by the Regional Director, it is undisputed that the instant offer of pay was similar to the offer found objectionable in *Sunrise*, as it was not linked in any way to transportation expenses. Indeed, there is no contention that the Employer's offer of payment was intended as, or perceived by employees as, reimbursement for transportation expenses. Therefore, the 2 hours of pay constituted an offer of payment for their time, and a reward for coming in to vote, and as such is objectionable under the guidelines set forth in *Sunrise*.

Our dissenting colleague contends that we have abandoned *Sunrise* because there is no showing that the offer of 2 hours of pay exceeded the actual transportation expenses of employees. We disagree. The offer of pay was, on its face, an attempt to pay employees for the act of voting. In the absence of any contention that the Employer was seeking to reimburse

employees' transportation expenses, the offer of payment is objectionable under *Sunrise*. Cf. *Good Shepherd Home*, 321 NLRB No. 56 (May 31, 1996) (reimbursement paid to voting employee based on good-faith, reasonable estimate of actual transportation expenses not objectionable, under guidelines set forth in *Sunrise*, even if reimbursement is slightly greater than actual costs).

[Direction of Second Election omitted from publication.]

MEMBER COHEN, dissenting.

My colleagues have once again changed the law, and once again I dissent.

In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), my colleagues overruled the precedent of *YMCA*, 286 NLRB 1052 (1987), and held that the election would be set aside because the payments exceeded "actual transportation expenses."¹ In the instant case, there is no showing that the 2 hours' pay exceeds the actual transportation expenses of any employee to whom the offer was made.² Notwithstanding this, my colleagues set the election aside. In short, my colleagues abandoned *YMCA* in *Sunrise Rehabilitation*, and they now abandon *Sunrise Rehabilitation* as they did in *Good Shepherd Home*, 321 NLRB 426 (1996).

I would consistently apply *YMCA*, and I would set aside an election only if there is a showing that the amount of money is beyond reasonable reimbursement for the use of an employee's free time and for travel expenses.³ In the instant case, that is not shown. Therefore, I would not set aside the election.

My colleagues contend that payment for the use of an employee's free time is objectionable. As set forth above, I disagree. The payment is not tied to a perception of how the employee is expected to vote. It is simply an effort to encourage the exercise of the right to vote.

Interestingly, my colleagues concede that an employer can pay employees for their transportation expenses. Thus, the employer can seek to remove this disincentive to vote. However, my colleagues refuse to permit payment for the use of employees' free time. Thus, the employer cannot seek to remove the disincentive of employees who might wish to spend their free time in ways other than coming to the workplace to vote. As I said in my *Perdue* dissent, I see no basis for the distinction made by my colleagues. In my view, so long as the payment is a reasonable one, and is not tied to the perception of how the employee is expected to vote, the payment should not be condemned as objectionable.

¹ See also *Perdue Farms*, 320 NLRB 805 (1996), where *Sunrise* was applied.

² As I noted in my dissent in *Perdue*, the burden of proof is on the party who wishes to set aside the election.

³ See my dissent in *Perdue*.