

Amera Products, Inc. d/b/a Ameraglass Co. and International Brotherhood of Painters and Allied Trades, Local Union No. 1008, AFL-CIO, Petitioner. Case 16-RC-9879

May 9, 1997

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections to an election held August 8, 1996, 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 three for and four against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted, with modifications to the rationale below, the hearing officer's findings and recommendations, and finds that the election must be set aside and a new election held.

After the election, the Petitioner filed Objections 1-3 alleging, respectively, that on or about August 6, 1996, the Employer interfered with the election by offering to provide the unit employees with health insurance, paid vacations, and sick leave. The hearing officer concluded that the Employer, by informing the employees 2 days before the election that they were entitled to these benefits, made a promise of benefit which interfered with the election. She found, relying on the four-part test applied by the Board in *B & D Plastics*, 302 NLRB 245 (1991), that the size of the benefits conferred and the number of employees affected by them were significant and that the timing of the announcement was suspicious because it created the impression that the Employer was attempting to influence the voters' choice. While noting that these benefits arguably were in existence before the election campaign, the hearing officer stressed that only one employee was aware of them and that he had received only vacation pay and sick leave despite making numerous requests for the Employer to activate his health insurance coverage. Accordingly, the hearing officer recommended that all three objections be sustained.

The Employer, in excepting, essentially argues that during the election campaign it did nothing more than inform employees about existing benefits they were entitled to receive. We agree with the Employer that it was free to publicize existing benefits even in the situation, as here, in which at least some of the unit employees did not know that such benefits existed.¹

However, for the reasons stated below, we find that the Employer in this case announced to employees health insurance and vacation benefits that were improvements on its existing policies and that the Employer thereby interfered with the election. We therefore adopt the hearing officer's recommendations to sustain the Petitioner's Objections 1 and 2 and to set aside the election.²

The Employer is engaged in the installation of glass doors and commercial storefronts in Houston, Texas. The Employer has a handbook titled "AMERAGLASS COMPANY EMPLOYMENT POLICY MANUAL" that is dated January 1996.³ This manual includes a provision, quoted below, providing health insurance coverage for the unit employees. On March 6, the Employer issued an amendment to the manual covering, inter alia, holidays and annual leave.

Richard Rodriguez had worked for the Employer as a glazier for about 3 months in 1995. When the Employer rehired him on May 6, its shop manager, Kirby Jones, discussed Rodriguez' salary and company benefits and gave him a copy of the Employer's policy manual. Jones also said that because Rodriguez had previously worked for the Company he would become eligible for health insurance, as well as paid vacation, holidays, and sick leave, after he worked 60 days. Rodriguez stated that he received paid sick leave and a couple of paid vacation days following 60 days of further employment, but did not receive health insurance. Although Rodriguez asked his jobsite foreman, on at least four occasions, to inquire about when Rodriguez' health insurance would begin, the foreman never reported back to Rodriguez.

The Employer also employed Rodney Arredondo as a glazier for about 3 months during 1995. On rehiring Arredondo in May, Jones did not tell him that he was entitled to any benefits and did not give him a copy of the policy manual. There is no evidence that Arredondo received any benefits before the advent of the Union or that he even knew that the Employer had employee benefits.

On June 20, the Petitioner filed the representation petition in this case. Thereafter, Charles Holmes, a consultant and former part owner of the Employer, met with the employees in small groups on July 24 and August 6 to discuss management's position on the organizing campaign and to inform employees about the benefits that were available to them. Richard Rodriguez and Arredondo attended the same meetings on both dates. A composite of their testimony discloses

able conduct where employer made previously *concealed* existing benefits a major part of its antiunion campaign).

² In light of our disposition of these objections, we find it unnecessary to pass on the hearing officer's recommendation to sustain the Petitioner's Objection 3.

³ All dates are in 1996, unless otherwise noted.

¹ See *Ideal Macaroni Co.*, 301 NLRB 507 (1991), and *Weather Shield of Connecticut*, 300 NLRB 93, 96-97 (1990). Cf. *Beverly Enterprises*, 322 NLRB 334 (1996) (unfair labor practice and objection-

that at the July 24 meeting Holmes stated that the Employer's benefits included holidays, sick leave, insurance, and vacation. Rodriguez told Holmes that Jones had previously offered him these benefits, but Arredondo claimed that he was not offered benefits. Holmes said that the employees would have to work 90 days before such benefits became effective. Rodriguez replied that he only had to complete a 60-day probationary period to receive benefits based on his prior service with the Employer in 1995. Rodriguez then asked Holmes to find out when his health insurance would begin because 60 days were up and he needed the coverage. Holmes said that he would check into the matter.⁴

During the second meeting, on August 6, 2 days before the election, Holmes informed Rodriguez and Arredondo that they were eligible for health benefits as of August 5.⁵ Holmes said that there was paperwork for them to complete and that they would be eligible immediately if they accepted the health insurance. In addition, Holmes said that the two employees were immediately eligible for vacation, sick leave, and holiday benefits because they had been there for 90 days.

The section of the Employer's employment policy manual entitled, "STAFF COMPENSATION" dealing with health insurance states in pertinent part at section D,1,(b):

All regular employees working forty (40) hours or more per week are eligible for health insurance benefits on the *first working day of the month following* three (3) full months of continuous employment. [Emphasis added.]

The record discloses, as stated, that Holmes told Rodriguez and Arredondo that they were *immediately* eligible for health insurance on August 5, after they had completed 90 days of employment following their May rehire. However, under the provision in the Employer's policy manual quoted above, Rodriguez and Arredondo would not have been eligible for health insurance until September 3, i.e., "the first working day of the month following three (3) full months of continuous employment."⁶ Thus, we find that the health in-

⁴Another unit employee, Robert Rodriguez, testified that he also attended the July 24 meeting with Arredondo and Holmes. Rodriguez stated that Holmes told them that as employees they were eligible for vacation pay, sick leave, and holiday pay. Rodriguez did not recall Holmes saying anything about an eligibility or probationary period that employees would have to serve before receiving these benefits. According to Rodriguez, he was unaware the Employer had any benefits before this meeting took place.

⁵Holmes never replied to Rodriguez' claim at the first meeting that Jones had said that Rodriguez was eligible for medical insurance after 60 days of reemployment.

⁶The manual's provision is, however, arguably ambiguous. That is, "three (3) months" could be interpreted to mean either 3 months of employment or 3 full calendar months in which there was employment. Under the former interpretation, Rodriguez, for example,

insurance benefit that Holmes gave to employees was an improvement over that set forth in the policy manual. We view this additional benefit as significant because the employees could easily have incurred medical claims between August 5 and September 1, a period of 27 days, for which they would not have been covered under the manual's provision. We therefore conclude that Holmes' announcement 2 days before the election that these employees were immediately eligible for health insurance, whether inadvertent or not, was contrary to the terms of the policy manual and constituted a grant of benefit during the critical period by accelerating the availability of this coverage.⁷

Furthermore, regarding paid vacation leave, the Employer's March amendment to its policy manual states in section B, "ANNUAL LEAVE," as follows:

All regular employees must complete a period of employment of not less than six (6) months and successfully complete their probationary period to be eligible for annual leave. Annual leave with pay is based on service with AmeraGlass Company from the anniversary date of hire and is granted as follows: . . . one year 5 days.

This provision establishes by its terms that an employee "must complete" 6 months of employment with the Employer in order to receive paid vacation leave. Yet, Holmes told Rodriguez and Arredondo on July 24 that vacation benefits would go into effect after 90 days. Then, in the subsequent meeting on August 6, Holmes stated that the employees had become eligible for vacation leave as of August 5, i.e., after they had been employed for 90 days. We conclude that Holmes' announcements pertaining to vacation benefits were another significant deviation from the policy

would have completed 3 months of employment on August 6. Under the latter interpretation for Rodriguez, the full calendar months in which there was employment would have been June, July, and August. But nevertheless, under *either* of these arguable interpretations, Rodriguez was not eligible for health insurance on August 5. Rather, he was not eligible until September 3—the first working day of the month following August 1996.

In addition, there is no contention or evidence that, contrary to the manual's provision, the Employer grants health insurance 90 days after hire or rehire.

⁷Although Shop Manager Jones, as stated, had said on Rodriguez' rehire that Rodriguez would be eligible for health benefits after 60 days of further employment, the evidence shows that Holmes told Rodriguez on August 6 that he was immediately eligible for health insurance without reliance on, reaffirmation of, or even reference to Jones' earlier precritical period promise that Holmes had said that he would investigate. We find that Holmes' announcement on that date created a *new promise* granting health benefits after 90 days of employment and did not constitute any fulfillment of Jones' earlier promise. Indeed, Holmes essentially ignored Rodriguez' claim of 60-day eligibility. Thus, it appears that the Employer effectively abandoned the promise of 60-day eligibility that Jones had made in May when Holmes, during the critical period, conferred health insurance after 90 days, which nevertheless was an improvement over the eligibility period set forth in the policy manual as discussed above.

manual in that he advanced the employees' eligibility for vacation leave benefits by 3 months.

In sum, we find that the Employer's acceleration of health benefits and vacation leave represented specific and substantial benefits conferred on employees during the critical period. Based on the Board's test in *B & D Plastics*, supra, we further conclude that these benefits were significant in nature, clearly affected at least two employees in an election decided by one vote and reasonably could have impacted on the entire voting

unit, and likely were calculated to have an adverse effect on the balloting as the last group meeting occurred 2 days before the election.⁸ Accordingly, we shall sustain the Petitioner's Objections 1 and 2, set aside the election held August 8, 1996, and direct a second election.

[Direction of Second Election omitted from publication.]

⁸ See, e.g., *AK Steel Corp.*, 317 NLRB 260 (1995).