

Rite Aid Corporation and United Food and Commercial Workers Union, Local 381, Petitioner. Case 19–RC–13486

August 27, 1998

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held October 1, 1997, and the hearing officer's report recommending disposition of it. Pursuant to a petition filed September 4, 1997, the election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows two for and three against the Petitioner, with one challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, adopts the hearing officer's findings and recommendations to sustain the Petitioner's objection, and finds that the election must be set aside and a new election ordered.¹

[Direction of Second Election omitted from publication.]

MEMBER HURTGEN, dissenting.

Contrary to my colleagues, I would not find that the Employer engaged in objectionable conduct. The Em-

¹ Contrary to the Employer's contention, we find the Board's decision in *Good Shepherd Home*, 321 NLRB 426 (1996), distinguishable from this case. In that case, the Board found that the union made a good-faith attempt to reimburse an employee for his actual transportation expenses. Here, in contrast, in announcing to employees that it would provide 2 hours' pay in exchange for their coming to vote on their day off, the Employer did not describe this payment as reimbursement for transportation costs or other expenses associated with traveling to the worksite. Rather, it linked the payment to its antiunion message. Nor did the Employer thereafter establish that it based the payment amount on any good-faith estimate of employees' actual transportation expenses. These explanations were proffered only as a post-hoc rationale for its action. Thus, we find this objectionable conduct sufficient to warrant setting aside the election under the standard enunciated by the Board in *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995).

Our dissenting colleague's attempt to rationalize the Employer's payment offer as "reasonable compensation for loss of free time" by the employees suffers from the same defect as the Employer's post-hoc rationale that the offer was designed to reimburse the employees for travel and other costs. The message that the employer conveyed to the employees by its offer was that if they voted, they would receive "something 'extra'" in their paychecks. The Board in *Sunrise* found such payments objectionable (id. at 213), and we adhere to that decision.

ployer offered to reimburse employees who were not scheduled to work on election day 2 hours' pay to come to the workplace to vote. This reasonable reimbursement for an employee's time and expense did not amount to a benefit that could reasonably affect the outcome of the election.

The Employer's offer was not confined to employees who had indicated opposition to the Union. It was offered to all off-duty employees. It was simply an effort to encourage employees to vote—a goal that is quite consistent with the purposes of the Act.

In *Young Men's Christian Assn.*, 286 NLRB 1052 (1987) (*YMCA*), the Board found unobjectionable an employer's offer of reimbursement that was essentially the same as here (i.e., 2 hours' pay). The Board reasoned that the moneys offered "did not constitute a substantial benefit that would influence votes, but rather were a reasonable reimbursement for transportation and time costs."

In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), the Board overruled *YMCA*. The Board held that a party's reimbursement of employees is objectionable unless it is linked to actual transportation expenses.

I disagree with *Sunrise*. In my view, an employee incurs transportation costs *and* loss of free time by coming to the workplace during off-duty hours. In a society that is increasingly hectic and demanding, free time is at least as valuable as transportation costs. Phrased differently, employees are far more likely to give up their free time if they are offered some reasonable compensation therefor. Accordingly, I do not think it objectionable if an employer offers transportation costs *and* reasonable compensation for loss of free time.

Further, I would not require the employer to be precise, to the penny, as to what an individual's actual expenses are. Questions concerning how far an employee had to travel, and how long it took, are cumbersome to administer and would lead to pointless litigation. As long as the reimbursement is reasonable in the circumstances, I would not condemn it.

Finally, I would not condemn the offer here simply because it was made during the course of a campaign speech. The speech was a lawful one. Thus, since the offer was otherwise lawful (as I conclude it was), it surely did not become unlawful simply because it was part of a lawful speech.

In sum, the Employer made a good-faith effort to encourage employees to come to the polls. I would not brand that conduct as objectionable.