

**Galen Hospital Alaska, Inc. d/b/a Columbia Alaska Regional Hospital and Laborers Local 341 affiliated with Laborers' International Union of North America, AFL-CIO, Petitioner.** Case 19-RC-13249

March 16, 1999

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held September 13, 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 25 for and 27 against the Petitioner, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision, and finds that a certification of results should issue.

The hearing officer recommended setting aside the election based on two objections of the Petitioner. Objection 1 contends that the Employer interrogated employees by requesting them to take "Vote No" campaign buttons. Objection 3 contends that the Employer threatened to cease regularly scheduled wage increases if the Union won the election. We reverse.<sup>1</sup>

1. The hearing officer found that in two respects the Employer's distribution of "Vote No" buttons interfered with the holding of a fair election. In one incident occurring a few days before the election, Supervisor Connie Spahn placed a plastic bag containing "Vote No" buttons on a counter in a location that served as both an employee break area and office area. Spahn stated to nearby unit employees that the buttons were available but did not otherwise pressure or ask any individual employees to take a button. Spahn left the break/office area after a brief period and then went to her adjacent office.

In a second incident, also occurring a few days before the election, a third-party, Dr. Lester Lewis, who contracts with the Employer to provide radiology services, offered a "Vote No" button to an employee. The employee declined to accept the button, and Lewis responded by declaring, "Well, I guess we know how she's going to vote."

Contrary to the hearing officer, we find that neither incident, considered separately or together, warrants setting aside the election.

In the first incident involving Supervisor Spahn, it is undisputed that Spahn did not solicit any employee to take a "Vote No" button. Accordingly, no employees

<sup>1</sup> In the absence of exceptions, we adopt, pro forma, the hearing officer's overruling of the Petitioner's Objection 2.

were put in the position of having to make an observable choice demonstrating their support for, or rejection of, the Union. Instead, Spahn simply made buttons available to employees, unaccompanied by any collateral conduct that was coercive in character.<sup>2</sup> Because it is well settled that an employer permissibly may make antiunion paraphernalia available to employees at a central location, when unaccompanied by coercive conduct, we find that this incident was unobjectionable. See *Barton Nelson, Inc.*, 318 NLRB 712 (1995). Cf. *Circuit City Stores*, 324 NLRB 147 (1997) (election set aside when store manager approached employees individually and handed each employee a coffee mug bearing "vote no" slogan).

We also find unobjectionable the third-party incident involving Dr. Lewis.<sup>3</sup> The standard for determining whether an election should be overturned on the basis of third-party conduct is "whether the misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984). We find no basis in the record to warrant a finding that the Lewis incident created a general atmosphere of fear and reprisal.<sup>4</sup> Lewis' offer of a "Vote No" button to a single employee and his comment regarding the employee's likely vote simply is insufficient to meet the standard for setting aside an election based on third-party conduct, particularly in the absence of any evidence that Lewis' comment was accompanied by any threat of coercive conduct by the Employer. Accordingly, we overrule the Petitioner's Objection 1.

2. The Petitioner's Objection 3 contends that the Employer threatened to cease regularly scheduled wage increases if the Union won the election.

About 1 week before the election, on September 5, 1996, the Employer's chief executive officer, Ernie Meier, told assembled employees at a "captive audience" group meeting that salary increases and benefits would remain "status quo" until there was a union contract.<sup>5</sup>

On the day following Meier's comments, the Employer distributed to employees the following written statement:

<sup>2</sup> There is no evidence that Spahn's mere presence in the break/office area, after making the buttons available, was coercive. Indeed, the credited testimony of employee Pamela Fox is that Spahn may have been present for as little as 20 seconds after depositing the buttons on the counter.

<sup>3</sup> The hearing officer found that Lewis was not a statutory supervisor, and he found it unnecessary to decide whether Lewis was an agent of the Employer. Instead, the hearing officer found that Lewis was "a very interested third-party." The Petitioner filed no exceptions to these findings.

<sup>4</sup> Indeed, the hearing officer made no finding that the Lewis incident created a general atmosphere of fear and coercion.

<sup>5</sup> The credited testimony is that Meier stated:

Everything would remain status quo as far as annuals. Any kind of increases, any kind of changes as far as benefits, salary; it would all remain status quo until there was a union contract, if we had voted in the union. It could be a year, it could be never.

I want to clarify two issues that came up in my meetings last week because I may have misspoken or what I said may have been misunderstood:

1. I was discussing what would happen with annual increases if the union won the election. I need to make it clear that Alaska Regional will maintain the status quo during any period of contract negotiations if the union won. That means Alaska Regional would continue to give employees regularly scheduled wage increases as it has done in the past. Whether such increases would continue under a union contract would be the subject of negotiations.

2. If the union won, Alaska Regional would, under all circumstances, bargain with union representatives in good faith. When parties bargain in good faith, sometimes they reach agreement on contract terms in a few weeks or months, sometimes it takes one or more years, and sometimes they never reach agreement. I cannot predict how long it might take at Alaska Regional if the union won. You should understand, however, that Alaska Regional would never intentionally drag contract negotiations out and it would always bargain in good faith.

Prior to distributing the above statement, the Employer made a list of all employees whom it could identify as having attended the September 5 group meeting with Meier. After doing so, the Employer gave to each attending employee, whom it could identify, a copy of the statement, personally hand-delivered by the Employer's director of human resources, David "Bo" Wolfe. Further, according to Wolfe's credited testimony, at "captive audience" group meetings held subsequent to September 5, Chief Executive Officer Meier read the above statement to the assembled employees.

We find it unnecessary to determine whether Meier's September 5 statements constituted an impermissible threat to withhold planned wage increases or benefits. Even assuming, *arguendo*, that the statements were improper, we conclude that the Employer took adequate steps to repudiate any improper implications of the statements and, by doing so, restored the laboratory conditions necessary for a fair and valid election.

First, the distribution of the written statement clarifying Meier's September 5 remarks was timely. It was undertaken promptly after the allegedly coercive statements were made. Second, the statement was unambiguous and specific in nature to the previous day's remarks, as it was directed very specifically to the matters at issue and ensured employees that the Employer "would continue to give employees regularly scheduled wage in-

creases as it has done in the past." Third, the statement was accompanied by assurances that the Employer would bargain in good faith if the Union won the election, and it was undertaken in an atmosphere free from other objectionable conduct. See generally *Passavant Memorial Hospital*, 237 NLRB 138 (1978); and *Gaines Electric Co.*, 309 NLRB 1077, 1080-1081 (1992).<sup>6</sup>

Contrary to the hearing officer, we find that, under these circumstances, the manner of publication was sufficient and adequate. Although Director of Human Resources Wolfe could not be certain that each and every employee attending the September 5 group meeting could be successfully identified, the Employer made reasonable efforts to do so. Thereafter, Wolfe personally hand-delivered the clarifying statement to all employees known to have attended the September 5 meeting, and Chief Executive Officer Meier personally read the statement at subsequent group meetings.

In finding that the publication of the retraction was "cavalier," the hearing officer noted that the Employer circulated lawful antiunion campaign literature throughout its facility, in contrast to the more circumspect circulation of the clarifying statement. Meier's September 5 remarks, however, were made in a group setting—not on a facilitywide basis—and the retraction was directed to those in that group. Further, Meier's retractions at later group meetings were undertaken in the same manner as the original publication. Accordingly, we find that the Employers' curative statements were adequately published, and we overrule the Petitioner's Objection 3.<sup>7</sup>

Because all of the Petitioner's objections have been overruled, we shall issue a certification of results of election.

#### CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Laborers Local 341 affiliated with Laborers' International Union of North America, AFL-CIO, and that it is not the exclusive representative of bargaining unit employees.

<sup>6</sup> Member Hurtgen does not necessarily agree with all of the requirements for repudiation, as set forth in *Passavant Memorial Hospital*. He does, however, agree that the Employer effectively repudiated any objectionable implication conveyed in its original statement.

<sup>7</sup> Inasmuch as the retractions were personally delivered to employees by Human Resources Director Wolfe, we are not persuaded that the absence of a company letterhead or signature on the document would confuse or mislead employees as to the source of the retraction.