

Chicagoland Television News, Inc. and American Federation of Television and Radio Artists (AFTRA), AFL-CIO, Petitioner. Case 13-RC-19844

February 9, 2000

ORDER DENYING MOTION FOR
RECONSIDERATION

BY MEMBERS FOX, HURTGEN, AND BRAME

On April 30, 1999, a three-member panel of the National Labor Relations Board issued its Decision and Certification of Results of Election¹ in the above-entitled proceeding finding, *inter alia*, that the Employer did not engage in objectionable conduct by hosting a 12-hour party for employees on the day before the election. Thereafter, on May 21, 1999, the Petitioner filed a Motion for Reconsideration of that finding.

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

The Board, having considered the matter, denies the Petitioner's motion as lacking merit.²

The Board, in its previous decision, found that three unit employees—Dwight Casimere, Nadine Arroyo, and Greg Prather—extended their normal meal breaks to attend the pre-election party, in part, on worktime. The Petitioner contends that three other unit employees (for a total of six)—Tressa Pankovits, John Marsheets, and Mark Gambino—attended the party on worktime.

The unchallenged testimony of Pankovits was that she attended the party after she had finished her shift, not on worktime. As discussed below, there is evidence in the record, inadvertently overlooked in our earlier decision, that Marsheets and Gambino attended the party on worktime. This evidence, however, does not warrant a reversal of our prior decision.³

Photographers Marsheets and Gambino were assigned to work on the day of the party with reporters Casimere and Arroyo, respectively. Casimere testified that he had been at work on the day of the party for about an hour or an hour and a half, and that his assignment had not yet

¹ 328 NLRB 367.

² Member Brame finds without merit the Petitioner's assertion that in determining that the cost of the party held the day before the election was not excessive, the Board erred in not applying the analysis used in *Chicago Tribune*, 326 NLRB 1057 (1998). In that case, where 24 unit employees and, *inter alia*, their spouses, children, and guests attended a preelection party at a cost of \$8000, Member Brame found that the hearing officer correctly divided the total cost of the party by the number of unit employees "since service for spouses, guests, and children directly inure[d] to the unit employees' benefit." *Id.* at fn. 4 (emphasis added). In the present case, however, it was proper to divide the cost of the party by the total number of attendees because it cannot be said that the service to the attendees who were not unit employees, *i.e.*, managers, supervisors, and nonunit employees, "directly inured" to the unit employees' benefit as it did in *Chicago Tribune*, *supra*.

³ Although Pankovits, Arroyo, and Prather in their testimony named other persons who attended the party, the record does not establish that those persons were all unit employees or, as to those that are unit employees, that they attended the party during worktime.

"firmed up." Thus, he and Marsheets decided to go to the party for lunch and to await dispatch when the assignment was firm.⁴ Casimere traveled to the party with Marsheets, who was driving a company car. They arrived at the party at about 1:30 p.m. and were dispatched to their assignment at about 4:30 or 5 p.m.⁵

Arroyo and Gambino also attended the party and ate lunch while awaiting dispatch to a developing assignment. Arroyo left for the party at about 12:30 p.m. with reporter Evelyn Holmes in Holmes' car.⁶ Gambino drove to the party alone in a company car.⁷ Arroyo testified that she had been at the party for about half an hour, "not more than an hour, maybe," when she was paged and "we got a scheduled time for [our] interview."

In sum, Arroyo and Gambino did not appreciably extend their lunchbreak.⁸ Although Casimere and Marsheets apparently stayed at the party for a longer period, they were (as were Arroyo and Gambino) at all times on call for an assignment. When their assignments came, they promptly left the party.

There is no suggestion in the record that any employee's attendance at the party was accompanied by any relief from their work responsibilities. Further, the effect of the attendance of five unit members at the party during worktime is lessened by record evidence which indicates that, in the absence of a time-sensitive assignment, reporters and photographers had some discretion over the management of their workday, as long as they completed their work, and that it is customary to have "downtime" while waiting for assignments. Under these circumstances, we continue to find that the attendance of five unit employees at the party was *de minimis* and does not

⁴ Casimere further testified that generally, if he does not have an assignment, he "sit[s] around making calls . . . go[es] through the wires, look[s] for stuff," and that "there is always something to do."

⁵ Marsheets did not testify at the hearing. Although we cannot be certain on the record before us, based on Casimere's testimony it seems probable that Marsheets remained at the party with Casimere on worktime, as the Petitioner contends.

⁶ Arroyo's shift on the day of the party was from noon to 9 p.m. She testified that she did not have a scheduled lunchbreak and generally would pick up lunch when she "found a gap" in her work. She further testified that on a "normal" day she would not have taken a lunchbreak so soon after her arrival at work. She did not claim that she never took such an early lunchbreak.

⁷ The record does not reveal the time of Gambino's departure from the Employer's premises or his arrival at the party. Gambino did not testify at the hearing. Arroyo testified that Gambino was with Arroyo at her desk when they decided to go to the party for lunch and to await dispatch. She testified further that Gambino had "gathered up his gear" and that they had agreed to "meet" at the party; but she did not testify regarding Gambino's departure and arrival times.

⁸ We reaffirm our previous finding that Greg Prather also spent a longer-than-normal meal break at the party, but that the effect of his attendance was *de minimis*. Prather testified that he attended the party for approximately 2 hours at the time when he normally would take his meal break. His normal break period was 1 hour. He did not explain the circumstances under which he was able to take a 2-hour break to attend the party.

warrant overturning the election. Accordingly, we deny the Petitioner's motion for reconsideration.

ORDER

It is ordered that the motion for reconsideration is denied as lacking in merit.