

**Ryder Student Transportation Services and School Employees Local 284, SEIU, Petitioner.** Case 18-RC-16461

December 29, 2000

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

This case presents the issue of whether the Employer engaged in objectionable conduct by announcing, shortly before the election, that it would conduct a raffle for employees and award two trips to Disney World or \$1000 in cash (after taxes) if 1450 employees cast ballots at the election.<sup>1</sup> In *Atlantic Limousine*, 331 NLRB No. 134, slip op. at 5 (2000), the Board recently adopted a new rule barring “employers and unions from conducting a raffle if (1) eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day or (2) the raffle is conducted at any time during a period beginning 24 hours before the scheduled opening of the polls and ending with the closing of the polls.” The Board also stated that, consistent with its usual practice, it would apply this new rule to all pending cases before the Agency.<sup>2</sup> Applying *Atlantic Limousine*, for the reasons set forth below, we agree with the Regional Director’s recommendation to sustain the Petitioner’s Objection 1, which alleges that the Employer’s raffle interfered with the election.<sup>3</sup> The evidence shows that, on May 24, 1999,<sup>4</sup> 2 days before the election held May 26 and 27, the Employer mailed notices to employees stating that:

Because of the importance of every voice being heard, we are offering two Disney World vacation getaways for two—4 days and 3 nights including airfare, hotel and \$250 spending money, or \$1,000 cash. A drawing will be held to award these getaways (or cash) if at least 1450 of the eligible employees vote over the two day period.

<sup>1</sup> Pursuant to a Stipulated Election Agreement, an election was held May 26 and 27, 1999, in a unit consisting of all full-time and regular part-time school bus drivers, school bus aides, and wash rack employees employed by the Employer at its locations throughout the metropolitan Minneapolis-St. Paul, Minnesota area; excluding dispatchers, terminal managers, assistant managers, office clerical employees, guards, and supervisors as defined in the Act. The tally of ballots shows that, of approximately 1690 eligible voters, 664 cast votes for, and 723 against, the Petitioner, with 49 challenged ballots, an insufficient number to affect the results.

<sup>2</sup> *Atlantic Limousine*, supra, slip op. at 6, fn. 15.

<sup>3</sup> The Regional Director has approved the Petitioner’s request to withdraw its remaining objections.

<sup>4</sup> All dates are in 1999.

The Employer, about the same time, also posted signs in its facilities informing employees that it would award two trips to Disney World “OR \$1,000 CASH (after taxes).” The notices stated that, “if 1450 votes are cast, No matter how you choose to vote, We will have the drawing.” In some cases, the Employer placed these signs beside “Vote No” posters that the Employer had posted. Although the evidence does not show that there were any posters or notices in the polling areas during the balloting, signs pertaining to the raffle remained posted in other locations at the 10 voting sites throughout the election.<sup>5</sup>

Based on *Atlantic Limousine*, supra, we conclude that the Employer’s raffle interfered with the election. As stated, the Board in that case prohibited raffles by either party to an election in which “eligibility to participate in the raffle or win prizes is in any way tied to voting in the election or being at the election site on election day.” Raffles which are tied to voting in the election implicate the concerns expressed in *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), which held that an offer to compensate employees for coming in to vote on election day, in amounts which are not linked in any way to transportation expenses, is objectionable. *Atlantic Limousine*, supra, slip op. at 5. In *Sunrise*, the Board concluded that such payments could reasonably be considered as “something extra” for coming in to vote, and thus could reasonably be perceived as a favor from the Employer which the employees might feel obligated to repay by voting against the Union. *Sunrise*, supra at 213. In the same way, the opportunity to win a prize in a raffle that is tied to voting in the election could be perceived as “something extra” which could make employees feel obligated to vote against the Union. *Atlantic Limousine*, supra, slip op. at 5. The Board rejected the argument that such raffles should not be prohibited because they serve the laudable goal of encouraging employees to vote, holding that their inherent tendency to interfere with employee free choice outweighed this goal:

We are not persuaded by the argument that election raffles merely encourage employees to vote. As the Board recently explained in *United Cerebral Palsy Assn. of Niagara County*, 327 NLRB 40 (1998), “maximum voter participation in Board-sponsored elections is a laudable goal. However, the Board must protect employee free choice in all voting decisions.” Where the challenged conduct is objectionable, i.e., it

<sup>5</sup> The tally of ballots shows that the number of employees voting in the election fell 14 short of the prerequisite figure the Employer had set for holding the raffle. Nevertheless, documentary evidence submitted by the Employer reveals that, after the election, it announced in its June 8 newsletter to employees that it would conduct the raffle at the “Ryder Employee and Family Appreciation Day” scheduled for June 12.

has a reasonable tendency to influence the election outcome, the fact that the conduct may also encourage voter turnout is immaterial.

Id.

The Employer in this case conditioned the holding of the raffle on the requirement that 1450 employees cast ballots in the election. Although the Employer did not thereby condition an individual employee's eligibility to participate in the raffle on whether or not that individual voted in the election, it nevertheless used the raffle as an inducement to vote by conditioning overall eligibility for the raffle on a certain level of participation in the election. It is just this sort of inducement that we found to be objectionable in *Atlantic Limousine*.

The Employer also arguably violated the second prong of *Atlantic Limousine* by "announcing a raffle" within 24 hours before the scheduled opening of the polls.<sup>6</sup> However, we find it unnecessary to make this determination here. Eligibility for participation in the Employer's raffle was clearly tied to voting in the election, and thus it violated the first prong of the two-prong disjunctive test set forth in *Atlantic Limousine*. Accordingly, on this basis, we affirm the Regional Director's recommendation to sustain the Petitioner's Objection 1 and to direct a new election.

[Direction of Second Election Omitted From Publication.]

MEMBER HURTGEN, dissenting.

For reasons set forth in my dissent in *Atlantic Limousine, Inc.*, 331 NLRB No. 134 (2000), I do not subscribe to a per se ban on election raffles. Rather, I adhere to the longstanding multifactor standard set forth in *Sony Corp.*

<sup>6</sup> *Atlantic Limousine*, supra at slip op. 5, defined the term conducting a raffle to include: "(1) announcing a raffle; (2) distributing raffle tickets; (3) identifying the raffle winners; and (4) awarding the raffle prizes."

*of America*, 313 NLRB 420 (1993). Therefore, unlike my colleagues, I would not set aside this election.

In this case, the Employer mailed notices and posted signs before the election that it would conduct a raffle designed to encourage participation in the election. If 1450 of the approximately 1690 eligible voters came to the polls, the employees would be given a chance to win prizes. There would be two winners. Each winner would choose between a trip to Disney World and \$1000 in cash (after taxes). The total value of all prizes did not exceed \$4000.

Applying the *Sony* standards to the present case, I find, contrary to my colleagues, that the raffle and announcement thereof were unobjectionable. The raffle did not provide the Employer with the means for determining how and whether employees voted in the election. Nor did the Employer condition its employees' participation in the raffle on *how* they voted in the election, only on *whether* a substantial majority of the employees voted. Finally, the raffle did not offer prizes so substantial as to either divert attention of employees away from the election and its purposes or to induce employees to vote in favor of the Employer. Thus, with 1690 employees and the maximum value of the drawing estimated at \$4000, the benefit of a raffle ticket to each participating employee was no more than \$2.37, significantly less than the \$12.50 value of the raffle ticket found unobjectionable in *Sony*. See also *Arizona Public Service*, 325 NLRB 723 (1998) (raffle ticket valued at \$7) and my dissenting opinion in *Allenbrooke Healthcare Center*, 331 NLRB No. 144 (2000) (raffle ticket valued at \$5). Thus, by application of the *Sony* standard, the Employer's raffle did not interfere with this election. The announcement of the raffle is likewise unobjectionable.

Accordingly, I would overrule the Petitioner's Objection 1 and certify the results of the election.