

**Onan Corporation, a Wholly-Owned Subsidiary of
Cummins, Inc. and International Automobile,
Aerospace & Agricultural Implement Workers
of America, Petitioner.** Case 18–RC–16729

July 13, 2001

DECISION AND DIRECTION OF
SECOND ELECTION

BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND WALSH

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on November 15, 2000, and the hearing officer's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 333 for and 370 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations except as modified below, and finds that the election must be set aside and a new election held.

We affirm the hearing officer's decision to sustain Petitioner's Objection 4.² Further, contrary to the hearing officer, we also sustain Petitioner's Objection 5.³ Objection 5 alleges that the Employer interfered with the election by offering to address employees' longstanding concern over a pension "offset" as part of a settlement of a separate class-action lawsuit filed by the employees. The hearing officer recommended overruling Objection 5 based on his findings that "the details of the proposed settlement remained unknown to the employees" and "it

[was] unlikely that the employees would presume the offset would be part of any settlement proposal."

However, as the Petitioner correctly points out, undisputed documentary evidence shows that on November—just 6 days before the election—the Employer expressly told the employees not only that its settlement offer *did* address the offset issue, but also *how* the offer proposed to resolve their concern. Thus, in a flyer posted and distributed to employees on November 9, the Employer explained, "On November 3, 2000 the company presented an outline of a proposal to settle the litigation, *including the offset issue*. That letter is attached." (Emphasis added.) The attached letter described the Employer's proposal on the offset issue and emphasized that under the Employer's proposal each "participant's cash balance annuity would increase each year after the conversion to a cash balance formula in 1989." In light of this evidence, we find that, during the critical period, the Employer made the employees well aware that it was now willing to address the pension offset issue, the employees' "number one" concern. We therefore sustain Petitioner's Objection 5 to this ill-timed offer of benefit.

We find no merit in the Employer's contention that it notified employees that its settlement offer addressed the pension offset issue simply to respond to the Petitioner's claim that no settlement offer was made. The Employer clearly went beyond a mere response and used the proposed settlement to attempt to influence voters 6 days before the election. We also disagree with the hearing officer's suggestion that the Employer's offer on the pension offset issue was an innocent response to the district court's September 29, 2000 grant of partial summary judgment in the employees' class-action lawsuit. The district court granted summary judgment *for* the Employer on the only claim that implicated the pension offset issue. Offset was therefore no longer part of the lawsuit. Moreover, even if the court's order spurred the Employer to offer a settlement on the offset issue, the ill-timing of the Employer's dissemination of its proposal remains.

[Direction of Second Election omitted from publication.]

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendations that Objections 1, 2, 3, 7, and 8 be overruled. Objection 6 was withdrawn prior to the hearing.

² Chairman Hurtgen finds it unnecessary to pass on the second allegation encompassed by Objection 4, an alleged increase in pension benefits.

³ Chairman Hurtgen finds it unnecessary to pass on this objection.