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**Go Ahead North America, LLC and Hortense Moss
Petitioner and Local 509, Laborers' Interna-
tional Union of North America, AFL-CIO.¹ Case
14-RD-1946**

July 18, 2011

**DECISION AND DIRECTION OF SECOND
ELECTION**

**BY CHAIRMAN LIEBMAN AND MEMBERS BECKER
AND HAYES**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held December 10, 2010, 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 68 for and 51 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction of Second Election.

The hearing officer recommended overruling the Employer's objection alleging that the Union promised employees a financial benefit when it offered, during a decertification election campaign, to waive past dues owed by members. Contrary to the hearing officer, and for the reasons set forth below, we find merit in the Employer's objection.² Accordingly, we will set aside the election and direct a second election.

I. BACKGROUND

The Employer is in the business of providing school-bus services. In January 2010,³ the Employer successfully bid on a contract to transport students from St. Louis, Missouri, to schools located outside the city. At the time, the contract was held by Atlantic Express of Missouri, Inc. Atlantic Express' bus drivers and monitors were represented by the Union. Before the Employer took over the contract, Atlantic Express failed to

¹ We have amended the caption to reflect the reaffiliation of the Laborers' International Union of North America with the AFL-CIO effective October 1, 2010.

² The hearing officer recommended overruling all of the Employer's objections, and the Employer excepted to all her recommendations. Because we are ordering a second election based on the Union's promise to waive delinquent dues, we find it unnecessary to address the Employer's remaining exceptions regarding other allegedly objectionable conduct.

³ All dates hereafter are in 2010.

deduct and remit to the Union 1 or 2 months' dues from the paychecks of employees who had enrolled in automatic dues withholding.⁴ In June, the Union sent an email to Atlantic Express asking why dues had not been deducted, but it did not otherwise attempt to collect the delinquent dues, either from Atlantic Express or from individual employees.⁵ It also did not inform employees, at that time, that it was waiving the delinquency.

The Employer took over the contract beginning in the summer of 2010. Approximately 75 to 80 percent of the Employer's work force previously worked for Atlantic Express. The Employer recognized the Union as the unit employees' collective-bargaining representative in late July or early August. The Employer and the Union began contract negotiations, which were ongoing when the present petition was filed on November 1. Sometime thereafter, the Union distributed a flyer to employees urging them to vote to retain the Union and promising, among other things, that the Union would not collect any past dues owed by employees.

The Union's Uniform Local Union Constitution was introduced at the hearing as a joint exhibit. As relevant here, article VIII, section 4 of the Constitution states that members "shall be deemed suspended by the International Union without notice" if their monthly dues are not paid on or before the last day of the following month. Article VIII, section 6 requires that suspended members pay a readmission fee plus past and current dues to again become active members. John Chambers, the Union's secretary-treasurer, testified that, normally, members suspended for nonpayment of dues must pay back dues and a fee to be readmitted to the Union.

Union Organizer Andre LaGrand testified that during the decertification campaign, it was brought to the Union's attention that dues had not been deducted in June and that therefore every member would be considered suspended by the Union. LaGrand testified that the Union decided to view the unit as a new one and to bring everyone in with a "clean slate."

II. DISCUSSION

A union cannot make, or promise to make, a gift of tangible economic value as an inducement to win support in a representation election. See *Mailing Services*, 293 NLRB 565, 565 (1989) (free medical screenings);

⁴ Employees paid \$34.80/month on a 10-month payment plan (September through June).

⁵ The Union requested a hard copy of the June dues billing on June 22 via email. Atlantic Express replied that no dues were deducted for June. The Union sent an email the next day that read: "Union dues are to be deducted from the months of September—June each school year. Is there a reason that dues were not deducted?" Atlantic Express did not reply.

Owens-Illinois, Inc., 271 NLRB 1235, 1235–1236 (1984) (jackets); *General Cable Corp.*, 170 NLRB 1682, 1682–1683 (1968) (gift certificates); *Wagner Electric Corp.*, 167 NLRB 532, 533 (1967) (life insurance).⁶ “It is, like an employer, barred in the critical period prior to the election from conferring on potential voters a financial benefit to which they would otherwise not be entitled.” *Mailing Services*, supra. In circumstances similar to those presented here, the Board has found objectionable a union promise, during the critical period preceding a decertification election, to waive accrued back dues. *McCarty Processors*, 286 NLRB 703, 703 (1987).

Here, employee-members were at least 1, and possibly 2, months in arrears on their union dues. We recognize that this was not a problem of the Union’s creation, but rather followed from the failure of Atlantic Express, the predecessor employer, to deduct and remit the dues to the Union. Nonetheless, the Union was entitled to collect these arrearages. It could have collected the unpaid dues directly from employee-members. It also could have postponed collection in anticipation of executing a new collective-bargaining agreement containing union-security and dues-checkoff provisions under which it could recoup the arrearages. Alternatively, the Union could have promptly announced that it would do neither. It could have waived the debt and timely informed employee-members that it was doing so. The Union, however, did not timely pursue any of those alternatives.

Instead, the Union’s announcement of the back-dues waiver occurred only after the petition had been filed and the Union realized that the unpaid dues might be an issue in the decertification election. The Union knew that Atlantic Express had failed to collect and remit dues in June, as shown by the emails exchanged between Atlantic Express and the Union. The Union also knew that, under its Constitution, members would be deemed suspended for failure to pay these dues, and it acknowledged that suspended members normally must pay back dues plus a fee to be readmitted to the Union. The Union did nothing to relieve employee-members of their back-dues obligation until some 6 months after the obligation accrued and after the petition had been filed, when a concern surfaced that those dues might become an issue in the decertification election. In these circumstances, we find that employees reasonably would infer that the purpose of the Union’s expressed willingness to forgive the obligation was to induce them to support the Union. We

therefore find that the back-dues waiver constituted an objectionable grant of a tangible financial benefit. See *McCarty Processors*, supra; *Loubella Extendables, Inc.*, 206 NLRB 183, 183 (1973). Accordingly, we shall sustain the Employer’s objection, set aside the election, and direct a second election.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board’s Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Local 509, Laborers’ International Union of North America, AFL–CIO.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1996); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994).

⁶ Where the value of the gift is so minimal that it would not reasonably interfere with employee free choice, however, the Board has found such a gift unobjectionable. See *Nu Skin International*, 307 NLRB 223, 223–224 (1992) (prounion t-shirts); *R.L. White Co.*, 262 NLRB 575, 576 (1982) (same).

The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C. July 18, 2011

Wilma B. Liebman, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD