

Irvington Nursing Care Services, Inc. d/b/a Brookville Healthcare Center and District 1199J, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, Petitioner. Case 22-RC-10629

September 30, 1993

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has considered the request for review of the Regional Director's Supplemental Decision and Certification of Election filed by the Intervenor, 1115 Nursing Home and Service Employees Union-New Jersey, a Division of 1115 District Council, HERE, AFL-CIO. The request for review is denied as it raises no substantial issues warranting review.

In denying review, we agree with the Regional Director's conclusion that the Intervenor's Objections 3 and 4, which alleged that several days before the election the Employer caused a sample ballot to be marked and displayed indicating the Board's and the Employer's support for the Petitioner, should be overruled, but for different reasons from those set forth by the Regional Director.

The appropriate standard for evaluating altered Board documents was announced in *SDC Investment*,¹ in which the Board held that the central issue is whether the altered document is likely to have given voters the misleading impression that the Board favored one of the parties to the election. To resolve this issue, the Board held that the initial inquiry is whether the source of the defacement is clearly identified on the face of the material. If so, then the Board will find that the document is not misleading, because employees would know it emanated from a party and would not be led to view it as a Board endorsement of that party. If the identity is not evident, then the Board will examine the nature and contents of the material to determine whether the document has a tendency to mislead employees into believing that the Board favors a particular party.

¹ 274 NLRB 556 (1985).

Applying this test in the instant case, the Regional Director found that since the only marking on the sample ballot done in pen and ink was an "X" indicating the choice for Petitioner, the remainder of the ballot was clearly printed material, and there was no evidence that the Petitioner or an employee supporting the Petitioner marked the sample ballot, the ballot did not reasonably tend to lead employees to believe that one party had been endorsed by the Board.

The Board recently revised its Notice of Election to include language specifically disavowing Board participation or involvement in any defacement, as well as specifically asserting its neutrality in the election process.² Therefore, in all cases involving defacement of a revised notice, the *SDC Investment* analysis no longer is required. Rather, we deem the new language itself as sufficient to preclude a reasonable impression that the Board favors or endorses any choice in the election, whether or not an "X" appears on the sample ballot. Given the prominence of the bold, large-print "warning," we think it extremely unlikely that an employee would overlook the disclaimer of Board involvement in any markings; in fact, we think an employee would be at least as likely to see the "warning" as any marking such as that involved in the instant case.

Accordingly, we agree with the Regional Director's conclusion that Objections 3 and 4 should be overruled, but solely because the Notice of Election at issue, which contains this new language, thereby precludes a reasonable impression that the "X" marking in the box indicating a choice for the Petitioner emanated from the Board.

² The Notice of Election specifically states, in large, bold lettering: **WARNING: THIS IS THE ONLY OFFICIAL NOTICE OF THIS ELECTION AND MUST NOT BE DEFACED BY ANYONE. ANY MARKINGS THAT YOU MAY SEE ON ANY SAMPLE BALLOT OR ANYWHERE ON THIS NOTICE HAVE BEEN MADE BY SOMEONE OTHER THAN THE NATIONAL LABOR RELATIONS BOARD, AND HAVE NOT BEEN PUT THERE BY THE NATIONAL LABOR RELATIONS BOARD. THE NATIONAL LABOR RELATIONS BOARD IS AN AGENCY OF THE UNITED STATES GOVERNMENT, AND DOES NOT ENDORSE ANY CHOICE IN THE ELECTION.**