Cleveland Indians Baseball Company *and* James F. Wise, Petitioner and Ticket Takers, Ushers and Police Union, Local 85 a/w Service Employees International Union. Case 8–UD–287

March 12, 2001

DECISION AND CERTIFICATION OF RESULTS

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to a deauthorization election held August 18, 2000, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows that of 408 eligible voters, 173 voted for and 62 against withdrawing the authority of the Union to require in its collective-bargaining agreement that employees make certain lawful payments to the Union in order to retain their jobs. There were 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, and has decided to adopt the Regional Director's findings and recommendations[1] only to the extent consistent with this decision. Contrary to the Regional Director's recommendation to sustain the Petitioner's objections alleging that employees did not have sufficient notice of the election,[2] we find that these objections should be overruled.

The facts are undisputed. The Employer, Cleveland Indians Baseball Company Limited Partnership, and the Union, Ticket Takers, Ushers and Police Union, Local 85, are parties to a collective-bargaining agreement covering ticket takers and ushers at Jacobs Field in Cleveland, Ohio. On July 12, 2000, bargaining unit member James F. Wise filed a petition for a deauthorization election. All the parties agreed to a Stipulated Election Agreement providing, among other things, that the election be conducted on August 18, 2000. On August 7, 2000, the Regional Office mailed five copies of the Notice of Election forms to the Employer. The Employer received and posted these forms on August 8, 2000, prior to the arrival of the unit employees for their shift that began at approximately 4:30 p.m. that afternoon. The notices were posted in the employee breakroom near the time clock where unit employees check in before each shift. The ticket takers and ushers also worked on August 9, 2000. Since the Cleveland Indians were on an extended road trip from August 10 to 17, 2000, ticket takers and ushers were not scheduled to work during this period. The election took place on August 18, 2000.

The Regional Director found that because the employees do not generally have access to the Employer's premises when the Cleveland Indians are not in town, the Board's requirement that Notices of Election must be posted for at least 3 full working days before the election has not been met in this case. We disagree.

Section 103.20 of the Board's Rules and Regulations provides that "Employers shall post copies of the Board's official Notice of Election in conspicuous places at least three full working days prior to 12:01 a.m. of the day of the election." That rule further provides that the term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays. Section 103.20(b). In his decision the Regional Director found that the days encompassed by the team's road trip did not constitute "working days" since the unit employees were not scheduled to work on those days.

Contrary to the Regional Director's finding, however, the Board does not define "working day" depending on the individual circumstances of a particular employer or industry or on the working schedules of individual employees, but rather consistently adheres to the precise and literal definition given in the Board's Rules and Regulations. See, e.g., *Penske Dedicated Logistics*, 320 NLRB 373 (1995) (finding that the posting requirement was met when the notices were posted for at least 3 "working days" before the election even though 36 percent of the unit employees only worked on weekends and the posting area was locked off from employee access on the Sunday before the election).

In *Ruan Transportation*, 315 NLRB 592 (1994), for example, the Board found that the notice requirement was not met when the notices had been posted 4 days before the election, because 2 of those days were weekend days. The Board adhered to the language of the Rule, notwithstanding the fact that the Employer was in full operation 7 days a week. In that case, the Board also specifically reaffirmed its intention to apply a bright-line methodology to its administrative notice requirement. Specifically, the Board explained that during the rulemaking process, it rejected suggestions made by two nurses' associations that it apply different posting periods for industries in which employees did not work a normal 5-day workweek. The Board emphasized that it was attempting to eliminate unnecessary and time-consuming litigation and it was "reluctant to complicate the rule by establishing different posting periods for different industries." *Ruan Transportation*, 315 NLRB at 502 (citing 52 Fed. Reg. 25213 (1987)).

[1] In the absence of exceptions, we adopt pro forma the Regional Director's recommendation to overrule Objections 2–4 and 7–10.

[2] Petitioner's Objections 1, 5, and 6.

The use of bright-line rules, particularly in an administrative context, serves a valuable purpose: "The very nature of rules [is to] make[] one or a few mass particulars legally decisive, ignoring the rest. The result is a gain in certainty, predictability, celerity and economy, and a loss in individualized justice. Often the tradeoff is worthwhile . . . ." *American Hospital Assn. v. NLRB*, 899 F.2d 651, 659 (7th Cir. 1990), affd. 499 U.S. 606 (1991). Here, the notice was posted for 10 days, including 7 working days prior to the election. The Employer thus conformed to the Board's Rule for notifying the employees of the election.

Additionally, we find that the Petitioner's claim of notice deficiency is undermined by the fact that he signed a stipulation agreeing to the date and other terms and conditions of the election and raised no objection based on employees' work schedules.[3] There is no allegation that any party mislead the others about work schedules or engaged in any fraud or misrepresentation by entering into the stipulation. Indeed, all parties were well aware of the employees' work schedule when they agreed on the election date.

The Board generally adheres to agreements stipulated to by the parties. As stated in *Community Care Systems*, 284 NLRB 1147 (1987), "[w]here the election has gone ahead pursuant to the parties' stipulation, however reluctant, and it does not appear that the election arrangements were such that employees were prevented from voting, we see no basis for permitting the unsuccessful party to attack the election on the basis of a condition to which it stipulated." 284 NLRB at 1147. Here, the election was held pursuant to the stipulated agreement and there is no evidence on the record before us that unit employees were prevented from voting. All that is asserted by the Petitioner is that employees were not provided optimal notice of the election.[4]

For the reasons stated above, we find that the Board's Rule for the posting of notices has been complied with in this case. We therefore overrule the Petitioner's objections in this regard and certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is certified that a majority of employees eligible to vote has not voted to withdraw the authority of Ticket Takers, Ushers and Police Union, Local 85 associated with Service Employees International Union to require, under its agreement with the Employer, that employees make lawful payments to that labor organization in order to retain their jobs in conformity with Section 8(a)(3) of the Act, as amended.

[3] The stipulated agreement contained the following language regarding Notice of Election postings: "Copies of the Notice of Election shall be posted, as requested by the Regional Director, at conspicuous and usual posting places easily accessible to the voters."

[4] Member Hurtgen does not adopt this portion of the opinion. The parties did not agree as to when posting would begin. Since the stipulation was signed on August 2, the posting could have begun on August 3, and, if so, would have been completed before the road rip began on August 10.