

Indiana Hospital, Inc., a wholly owned subsidiary of Indiana Health Care Corporation and Indiana Hospital Professional Employees Association/PSEA Health Care, Petitioner. Case 6-RC-11488

September 30, 1998

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FOX, LIEBMAN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to an election held March 20, 1998, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election issued by the Regional Director. The tally of ballots shows 101 for and 102 against the Petitioner, with no challenged ballots, and 1 void ballot.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision, and finds that a certification of results of election should be issued.

The hearing officer recommended sustaining Objections 1 and 2 and setting aside the election because she found that the Employer engaged in objectionable conduct by offering payment to, and paying, off-duty employees as a reward for coming to a Board election. We do not adopt the hearing officer's recommendation because we find that the evidence fails to show that the Employer made such an offer to employees.

The record discloses that the idea of giving 1 hour's pay to off-duty employees who came to the Employer's facility to vote in the Board election was discussed and approved by certain of the Employer's supervisory or managerial personnel prior to the election, but there is no evidence of what, if anything, employees were told prior to the election concerning pay or reimbursement for off-duty employees who came to vote in the election.

Two or three weeks before the election, three or four nursing supervisors, including Mary Beth Kennedy, Chris Arrow, and Debbie Succherelli, asked Joseph McDermott, the Employer's attorney, whether employees who were not scheduled to work during the election would be paid for coming in and voting. He replied that it was permissible to reimburse employees who were off duty for the expense of coming in to vote, and he suggested that 1 hour's pay be the amount of the reimbursement. At the hearing, McDermott claimed that he thought this would approximate the employees' travel expenses. McDermott did not speak to any employees directly, and there is no evidence whether Kennedy, Arrow, or Succherelli, none of whom testified, conveyed this information to any employees.

On the afternoon before the election, Matthew Reading, the Employer's director of human resources, sent an electronic mail message to all the Employer's managers and supervisors to whom employees eligible to vote reported. The message stated as follows:

Off-duty registered nurses on election day.

Joe McDermott has verified that registered nurses, not scheduled to work during the election hours, should be paid for coming to the hospital for the election tomorrow.

Registered nurses not scheduled to work, but who come to the hospital for the election should swipe in prior to and swipe out following their vote. When reviewing time cards for payroll, please make adjustments to pay so that these nurses receive one (1) hour pay for this time. The time can be scheduled to in-service.

Please call me if you have any questions.

Reading testified that, after he sent this message, he did not have any communication with the managers and supervisors to whom it was sent. He did not direct management to inform the eligible voters and he did not know which supervisors had or had not conveyed to employees the information contained in his message.

The only employees who testified, Susan Flowers and Beth Pardee, both stated that they were not informed prior to the election that off-duty employees who came in to vote would receive pay. Flowers, who served as the Union's election observer during the afternoon voting session, testified that she first learned about such pay when some employees coming to vote asked where a timeclock was in the voting room where they could punch in. The Employer's election observer, Carrie Pappal, told them to go to their units to punch in. Flowers asked Pappal why the employees would be talking about getting paid when they were there for only 5 minutes, and Pappal replied that they were getting paid for an hour. Flowers testified that at least six employees asked about punching in. Pardee, who served as the Union's election observer during the morning voting session, testified that two employees asked where a timeclock was in the voting room and Pappal told them to punch in at their units.

Pardee further testified that after the election she asked PCU Unit Manager Margaret Welsh and OR Unit Manager Kathy Cunningham about some employees being told they would be paid if they came in to vote. According to Pardee, Welsh replied that she had received Reading's e-mail late in the afternoon on the day before the election and that it did not really involve her because all of her employees were scheduled to work. Cunningham told Pardee that the operating room was so busy on the day before the election that she did not even read her e-mail until the next morning.

In sum, the record contains no evidence of what, if anything, the Employer told employees prior to the election concerning pay or reimbursement for off-duty employees who came to vote in the election. Indeed, it contains much evidence of employees not being told anything about such payment. Both employee witnesses testified that they were not told anything prior to the election about payment for off-duty employees who came in to vote in the election, and both management witnesses testified that they did not tell any employees prior to the election about payment for off-duty employees who came in to vote in the election.

In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), the Board held that “monetary payments that are offered to employees as a reward for coming to a Board election and that exceed reimbursement for actual transportation expenses . . . [constitute] objectionable conduct.”¹

The only evidence that any employee knew, prior to the election, that off-duty employees would be paid an hour’s pay to come in to vote was union observer Flowers’ hearsay testimony that employer observer Carrie

¹ Under the circumstances of this case, Member Brame finds it unnecessary to express a view on the Board’s decision in *Sunrise Rehabilitation Hospital*.

Pappal told her that employees were punching in at their units because they were getting paid for an hour. Following the election, of 92 eligible voters not scheduled to work on election day, 48 were paid the equivalent of 1 hour’s pay, minus deductions. Absent evidence of what, if anything, the Employer told employees prior to the election about payment to off-duty employees who came to vote in the election, however, we cannot find the Employer’s conduct objectionable. The Union has simply failed to meet its burden to prove that any objectionable offer was made to employees prior to the election. Further, absent such an offer, the Employer’s actual payment to off-duty employees made after the election was over could not have influenced their vote in the election and, thus, is not in itself objectionable conduct. Accordingly, we do not adopt the hearing officer’s recommendation that the election be set aside. Rather, we overrule Objections 1 and 2 and shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Indiana Hospital Professional Association/PSEA Health Care and that it is not the exclusive representative of these bargaining unit employees.