

**Chicago Tribune and Malissia Jenkins, Petitioner and Chicago Local 458-3M, Graphic Communications International Union.** Case 13-RD-2225

September 21, 1998

DECISION AND DIRECTION OF SECOND ELECTION

BY MEMBERS FOX, HURTGEN, AND BRAME

The National Labor Relations Board, by a three-member panel, has considered objections to a decertification election held on December 17, 1997, 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 15 for the Union and 18 against, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has, for the reasons set forth below, adopted the hearing officer's findings and recommendations,<sup>1</sup> and finds that the election must be set aside and a new election held.

The Employer held a brunch at the Drake Hotel for bargaining unit employees 3 days before the decertification election. The invitation, sent by Federal Express, included the unit employees' spouses, children, or guests. Upon receipt of each employee's acceptance, an acknowledgment letter was sent, via Federal Express, noting that, although the brunch would end around 1 p.m., free parking and babysitting would be available until 3 p.m. The letter concluded by letting the employees know that there would be an opportunity for the Employer at the brunch to "answer any questions employees, and more importantly spouses and friends, may have about the decertification election scheduled for December 17."

A total of 91 individuals attended the brunch, including unit employees, members of management, and spouses, guests, and children of both employees and management. The children were served a different meal in a separate room, were entertained by and photographed with a Santa Claus, and received a Christmas stocking with candies and a small stuffed animal inside. The adults dined in another room with poinsettias on the table, and the employees were permitted to take the

flowers home with them afterwards. In addition, babysitting, valet parking, and coat check were all provided by the Employer. An antiunion speech was made by the Employer. The total cost was \$7,999.64.<sup>2</sup> The hearing officer divided this amount by 24, the number of unit employees who attended, and concluded that the affair cost the Employer \$333.32 per unit employee. The hearing officer went on to find that such a benefit would reasonably tend to interfere with the employees' free and uncoerced choice in the election. He recommended sustaining that portion of Objection 1.

We agree that providing a brunch costing approximately \$8000, and holding it 3 days before a decertification election, is a benefit which would reasonably tend to interfere with employee free choice, and we agree that a new election must be conducted.<sup>3</sup>

We do not pass on whether the hearing officer was correct in dividing the total cost by the number of unit employees. Arguably, the correct divisor should include the unit employees and their spouses, guests, and children.<sup>4</sup> And, arguably, the correct dividend should include the cost of gifts and babysitters for such children, and should exclude the cost inuring to the benefit of management persons and their spouses, guests, and children. However, in our view, we need not resolve these issues or calculate a precise dollar figure. Nor does *B & D Plastics* require such mathematical precision. Suffice it to say that an \$8000 affair, held primarily for unit employees and those associated with them, and held 3 days before the election, is a benefit that is sufficiently large to interfere with the laboratory conditions for a fair election. Accordingly, we adopt the hearing officer's recommendation to set aside the election, based on this portion of the Union's Objection 1.

[Direction of Second Election omitted from publication.]

<sup>2</sup> This amount does not include the expense for babysitters and the gifts for the children.

<sup>3</sup> *B & D Plastics, Inc.*, 302 NLRB 245 (1991).

<sup>4</sup> This number is approximately 59. Member Brame finds that the hearing officer correctly divided the total cost by the number of unit employees, since service for spouses, guests, and children directly inures to the unit employees' benefit.

<sup>1</sup> In light of our ruling with regard to Objection 1, we find it unnecessary to pass on the hearing officer's recommendation with regard to Objection 4.