Duo-Fast Corporation *and* Fred Axcenty, Petitioner, and Production, Merchandising and Distribution Employees Union Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Union. Case 29–RD–495

16 January 1986

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND JOHANSEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 15 June 1984 and the hearing officer's report recommending sustaining them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows two for, and seven against, the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, and adopts the hearing officer's findings[1] and recommendations only to the extent consistent with this decision.

1. In Objection 1, the Union alleged that the Employer interfered with the free conduct of the election by promising improved benefits if the employees voted against the Union. The credited facts are as follows. At a 7 June 1984 meeting with the unit employees, Division Manager Stephen Leber distributed a leaflet, signed by him, comparing benefits received by the union-represented employees with benefits received by the Employer's nonunion employees with respect to life insurance, accidental death and dismemberment, hospital services, professional services, major medical, maternity, optical, and dental benefits. The Employer's nonunion benefits were generally better. Preceding the comparisons, the leaflet stated, "I'm not promising you better medical benefits if you vote 'No' on June 15th but you should know our non-union employees' medical benefits." The leaflet concluded, "[G]ive me and Duo-Fast a chance to show you that you don't need Local 210. Vote 'No' on June 15." When distributing the leaflet, Leber stated that if the employees voted the Union out, they would receive "basically this type of coverage." In addition, Leber answered employee questions concerning medical coverage, not only at the 7 June meeting, but at employee meetings held on 8 or 9, 13, and 14 June. In response to an employee's question about when the medical coverage would go into effect, Leber answered, "immediately" or "most likely right away," and that "he would get back" to the employee. Leber further stated that "once the contract had ended, then most likely it would go into effect right away." Although it is unclear that Leber stated at every meeting that he was not making any promises, it is undisputed that he made this disclaimer at some of the meetings.

The hearing officer acknowledged that although a comparison of benefits is not per se objectionable, it may be objectionable if the circumstances indicate it amounts to an express or implied promise. Based on the totality of the present circumstances, she found that the Employer had made an implied promise of benefit and that this was not nullified by the disclaimers. She, therefore, recommended that the objection be sustained. We do not agree.

The Employer's alleged misconduct can be separated into two actions: first, it circulated a leaflet comparing the insurance benefits of its union-represented employees with the benefits it provided to its nonunion employees; second, through its division manager, Leber, it answered employee inquiries about a possible change in insurance coverage. Concerning the former, as the hearing officer correctly stated, such a comparison is not per se objectionable.[2] Concerning the latter, the Board has permitted employers to explain that there will not be a gap in insurance coverage should a change occur and that such explanations do not amount to promises.[3] Contrary to the hearing officer, we find no convincing support in the record for a determination that the Employer did anything more than make an honest comparison of benefits or give a straightforward explanation concerning insurance coverage in the event of a change in union representation.

The hearing officer apparently sought to distinguish *Viacom Cablevision*, supra, in which similar action was found unobjectionable, by stressing that in that case the employer's comparisons were in response to employee questions, accompanied by disclaimers of promises, discussed with topics other than wages, and made in the absence of other objectionable conduct. We do not agree with her analysis. Instead, we find that those very same factors on which the Board relied in *Viacom* to find the conduct permissible are present here. Although the leaflet, the focal point of this objection, was not published in response to employee questions, it did contain an explicit disclaimer of promises, and this disclaimer was repeated more than once by Divi-

[1] The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect *Stretch-Tex Co*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings

[2] *Viacom Cablevision*, 267 NLRB 1141 (1983).

[3] *Best Western Executive Inn*, 272 NLRB 1315 (1984)

sion Manager Leber in his meetings with the employees. Further, all Leber's oral comments concerning the insurance were made in specific response to employee questions and, as in *Viacom*, Leber discussed other topics in his meetings, including a recent arbitration, future negotiations, and union dues. Finally, in light of our overruling Objection 2, infra, the Employer here engaged in no other objectionable conduct. We must conclude, as we did in *Viacom*, in similar circumstances, that the record discloses no extraordinary efforts by the Employer that would constitute a promise of benefit, either express or implied, should the employees vote the Union out.[4] We, consequently, do not find that the Employer's honest comparison of benefits or discussion of the timing of insurance coverage, uncoupled with any promises, amounts to objectionable conduct.[5] Accordingly, we reverse the hearing officer and overrule Objection 1.[6]

2. In Objection 2, the Union alleged that the Employer interfered with the free conduct of the election by providing a $50 bonus to each unit employee during the preelection period. The facts show that minimal service charges were collected from counter consumers for the repair of small tools by the unit employees. However, these moneys did not go into the Employer's general funds. Instead, pursuant to a practice in effect since 1978, Division Manager Leber would divide the current amount among the unit employees as a bonus for their good work, adding money from his own pocket, if necessary, to round out the amount. He would distribute bonuses in this manner approximately four to six times per year and, according to the credited testimony of employee Fred Axcenty, about the longest period between these payments was 2 months. Each unit employee would receive between $30 and $90, and Leber would thank each for his good work.

Bookkeeper Doreen Populе turned over $340 of this money to Leber between 24 January and 17 February 1984. Leber divided and distributed the money among the employees sometime in March. Between 2 March and 17 April 1984, Populе collected $336.23. This money was divided and distributed among the unit employees in $50 amounts on 7 June, approximately 1 week before the election. When Leber handed each employee his bonus, he made no reference to the Union or the upcoming election.

The hearing officer cited Board precedent which holds that it is objectionable for an employer to grant benefits during the preelection period unless it can establish that the timing was based on factors unrelated to the election. She found that the Employer's practice of distributing the bonuses had no set pattern either concerning timing or amount and that, therefore, the Employer had not met its burden. She, accordingly, recommended that the objection be sustained. We do not agree.

According to undisputed evidence, the Employer's pattern of distributing these bonuses was discernible, although obviously not precise, both as to timing and amount. Thus, the bonuses were given at least once every quarter (and usually at least once every 2 months) and were in amounts between $30 and $90.

The Employer's dispensation of the bonuses on 7 June fits this pattern on both counts. The bonuses were in the lower half of the monetary range and were not given earlier than the employees reasonably could have expected. It is well settled that an employer must continue to provide benefits as if an election were not pending.[7] Here, consistent with earlier practice, the Employer provided two distributions within the first two quarters of the year and well within the range of amounts it usually provided. Absolutely no evidence was adduced to show that Leber orally, or otherwise, linked the bonuses to the election, or that he varied from his practice of merely thanking the employees for their good work.

Further, the Board has found it impermissible for employers, during the preelection period, to discontinue benefits normally provided if those benefits have been provided in the past in a discernible, albeit somewhat imprecise, manner.[8] The Employer has established that it has not deviated from its practice of providing this benefit. We, accordingly, reverse the hearing officer on this issue as well and overrule Objection 2.

As all objections in this case have been overruled, we shall certify the results of the election.

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[4] On the other hand, we distinguish *Ranco Inc.*, 241 NLRB 685 (1979), on which the hearing officer relied. In that case, supervisors made explicit the constantly implied message in the employer's written communications that the unionized employees would receive increased benefits if they rejected the union. Further, no disclaimers of promises were made.

[5] See also *KCRA-TV*, 271 NLRB 1288 (1984).

[6] Member Dennis, dissenting, would find, in agreement with the hearing officer, that Division Manager Leber made an objectionable promise of benefit while distributing the leaflet comparing fringe benefits the Employer's union-represented employees and its nonunion employees received. As discussed above, Leber stated that if the employees voted the Union out, they would receive "basically this type of coverage." Leber's statement went beyond a mere comparison of benefits or an assurance that there would be no gap in coverage from any existing plan to a nonunion plan. As the hearing officer found, Leber's statement constituted a promise "that the better plan would go into effect after the election" if the Union lost. Accordingly, Member Dennis would direct a second election.

[7] See, e.g., *Stumpf Motor Co.*, 208 NLRB 431, 433 (1974), *Gates Rubber Co.*, 182 NLRB 95 (1970).

[8] See *Gossen Co.*, 254 NLRB 339, 353–355, 368 (1981), enfd. in part 719 F.2d 1354 (7th Cir. 1983).

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Production, Merchandising and Distribution Employees Union Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that it is not the exclusive representative of these bargaining unit employees.