

**Mailing Services, Inc and Local 888, United Food & Commercial Workers Union, AFL-CIO, Petitioner Case 22-RC-9955**

March 31, 1989

**DECISION AND DIRECTION OF  
SECOND ELECTION**

**BY CHAIRMAN STEPHENS AND MEMBERS  
JOHANSEN AND HIGGINS**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held July 28, 1988, 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 157 for and 113 against the Petitioner, with 10 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the Employer's objections and has adopted the Regional Director's findings and recommendations only to the extent consistent with this Decision and Direction of a Second Election.

The Employer's first objection alleged that the Union's announcement, 3 days prior to the election, of free medical screenings the next day as the "first Union benefit" impermissibly linked the granting of this benefit to the Union's success in the pending election. The Employer's second objection asserted that the Union's actual provision of medical screening 2 days before the election maximized the impact of its impermissible inducement to vote for the Union. Contrary to the Regional Director, we find merit in these objections and direct that the election be set aside and a new election held.

The essential facts are not in controversy. According to Ronald Kazel, who was responsible for the Union's organizing drive at the Employer's facility, the Union's health and welfare trust fund owns two vans bearing the Union's logo and outfitted as mobile medical units. Kazel explained that these vans were used to provide employees in bargaining units it represents with health screening.<sup>1</sup> Three days before the end of a vigorous election campaign, the Union announced that it would make available free medical screenings to all employees at the Employer's factory. The heading of the announcement was "*FIRST UNION BENEFIT!*" It further stated, "Please take advantage of your first union benefit. It's for your health." The

following day, only 2 days before the election, the two vans were stationed across from the employee entrance of the Employer's factory. An estimated 80 employees availed themselves of the screenings for high blood pressure, lung function, cholesterol level, and diabetes. Although they were not required to demonstrate any preelection support for the Union to qualify for the screenings, it is nevertheless also clear that the Union conferred this benefit on the employees as part of its campaign efforts to gain their favor in the upcoming election.

The Board has long held that a Union's actual grant of benefits to potential members during the critical period is "akin to an employer's grant of a wage increase in anticipation of a representation election [which] subjects the donees to a constraint to vote for the donor union." *Wagner Electric Corp*, 167 NLRB 532, 533 (1967). In *Wagner*, a union's preelection provision of life insurance to employees in a facility in which it was conducting a representation campaign was found to be a "tangible economic benefit" and an impermissible "constraint to vote for the donor Union." Id.<sup>2</sup>

Although a Union may *promise* an existing benefit to new members if its receipt is not conditioned on the recipient's demonstration of preelection support, *Dart Container*, 277 NLRB 1369, 1370 (1985), it is, like an employer, barred in the critical period prior to the election from conferring on potential voters a financial benefit to which they would otherwise not be entitled. *McCarty Processors*, 286 NLRB 703 (1987) (incumbent Union's promise not to collect accrued dues during the election campaign, provided employees with a substantial benefit). The Union has made no contention that the employees who received the screenings were entitled to receive them independent of the election campaign.

We agree with the Regional Director that the Union was entitled to publicize an existing incident of union membership or representation. It could have provided employees with descriptive information about its health screening program, it could even have placed the mobile medical units in the same locale and invited employees to inspect them. Indeed, it takes little imagination to conjure means of demonstrating the availability of periodic medical screening that do not entail the impermissible conferral of this benefit and the consequent tainting of employee choice.

We do not condemn a Union's efforts to make itself "more attractive as a candidate for election,"

<sup>1</sup> Kazel did not specifically indicate whether the tests were provided to all represented employees at these locations irrespective of membership or whether such tests were otherwise made available to union members generally. Accordingly it is unclear whether the entitlement to the tests is based solely on representation on union membership or either factor.

<sup>2</sup> The Board distinguished the gift of life insurance from a waiver of initiation fees on the ground that the latter did not involve (as the former did) an enhancement of the employees' economic position but merely the avoidance of a possible future liability.

*Primco Casting Corp*, 174 NLRB 244, 245 (1969), but we do require that its methods of self enhancement exclude the direct conferral of substantial benefits on its target audience during the critical period<sup>3</sup> Therefore, we find the Union's announce-

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<sup>3</sup> Although the invitation to employees to take the medical tests required and evinced no explicit showing of union support and thus could not have been used to paint a false picture of union support as was condemned in *NLRB v Savair Mfg Co* 414 U S 270 (1973) it nevertheless was made available to employees during the election campaign with a clear implication that this benefit would remain only contingent on the selection of the Union Obviously this created an incentive for the employees to take the test prior to the election It is reasonable to conclude therefore that the recipient of this gift would likely have felt a sense of obligation to the donor the Union

ment and subsequent provision of free medical screening within days of the representation election to be objectionable conduct that impaired the employees' exercise of free choice

Accordingly, we sustain the Employer's first and second objections<sup>4</sup> and direct that the election be set aside and a second election held

[Direction of Second Election omitted from publication]

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<sup>4</sup> In view of our finding that the election must be set aside because of the Union's improper grant of a substantial benefit we find it unnecessary to pass on the Employer's third objection that the Union through its announcement and grant of medical screenings impermissibly implied other benefits would follow as a matter of course if it prevailed in the election