

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

BRIGHTSIDE ACADEMY, INC.

Employer

and

CASE 08-RC-185999

**OHIO COUNCIL 8, AMERICAN
FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, AFL-CIO**

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulated Election Agreement, an election was conducted on November 9, 2016 among professional and non-professional employees employed at the Employer's three Head Start facilities located in the Toledo, Ohio area. The tally of ballots showed that of the approximately 16 eligible voters in the professional unit, all 16 cast ballots to be included in the unit with the non-professional employees. The second tally of ballots showed that of approximately 74 eligible voters, 37 cast votes for the Petitioner and 36 cast votes against the Petitioner. There were no challenged ballots. Therefore, the Petitioner received the majority of votes.

The Employer timely filed objections to the election. Following an administrative investigation pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, the Acting Regional Director issued a Decision on Objections and Certification of Representative, overruling the Employer's objections and certifying the Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO (Union) as the collective bargaining representative of the employees. The Employer filed a Request for Review with the National Labor Relations Board (Board). On March 14, 2017, a Board majority issued an Order remanding the case to Regional Director. On March 17, 2017, the Regional Director issued an Order directing that a hearing be held for the purpose of receiving evidence to resolve the issues raised by the objections.

Following a hearing on April 5, 2017, the Hearing Officer issued a report recommending that the objections be overruled in their entirety. The Employer filed exceptions to the Hearing Officer's findings and recommendations.¹ The Union filed a brief in opposition to the Employer's exceptions.

¹ In its objections, the Employer lists one Objection which alleges that the Union engaged in improper electioneering and other inappropriate conduct during the polling hours and in the polling area. However, the Employer's Objection included two separate arguments. No exceptions were filed regarding the Hearing Officer's rulings, conclusions, and decision to overrule the portion of the Objection concerning the placement of a green carnation on

I have carefully reviewed the Hearing Officer's rulings made at the hearing. The rulings are free from prejudicial error and are hereby affirmed.² After a review of the record in light of the exceptions and the parties' briefs, I agree with the Hearing Officer that the Employer's objections should be overruled in their entirety.³ Accordingly, I am issuing a Certification of Representative of Election.

The Employer alleges that the Union engaged in improper conduct when the Union observer accepted a wad of bills from a voter during the polling period in front of the Employer observer. The Hearing Officer concluded that there was no evidence that the exchange of money was related to the Union or the election. In addition, given that the Union observer did not speak with the voter about the money or anything else, the Hearing Officer concluded that the Union observer did not violate the Milchem rule.⁴ Therefore, the Hearing Officer concluded that the Employer failed to meet its burden to establish that the conduct interfered with employee free choice.⁵

In its exceptions, the Employer argues that Union observer Bobbie Purley-Davis' acceptance of money from voter Sharonda McNeal in front of Employer observer Brianne Jaclyn Wiley interfered with the laboratory conditions of the election by signaling a potential monetary benefit for supporting the Union. The Employer maintains that Purley-Davis was responsible for the interference as she chose to accept the cash. The Employer further argues that regardless of Purley-Davis' intent, the effect was that two prospective voters, McNeal and Wiley, could have reasonably assumed that the money was related to support for the Union. The Employer also excepts to the Hearing Officer's finding that the testimony of Purley-Davis and McNeal established that there was a legitimate purpose for the exchange of money and that it had no relationship with the Union. The Employer argues that neither Wiley nor McNeal had reason to believe there was a legitimate purpose for the exchange of money. The Employer, citing Milchem, Inc., argues that in the final minutes before McNeal and Wiley cast their ballots, they watched Purley-Davis accept a wad of cash with no resistance or explanation.

As discussed in the Hearing Officer's report, McNeal was walking down the hallway on her way to vote when she was stopped by another employee, Sonya Jefferson. Jefferson asked McNeal to give Purley-Davis some money and told McNeal that Purley-Davis already knew

the polling place table utilized by the Board Agent and parties' observers. Accordingly, I adopt pro forma the Hearing Officer's decision to overrule that portion of the Objection.

² The Employer excepts 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 relevant evidence convinces the reviewer that they are incorrect. Stretch-Tex Co., 118 NLRB 1359, 1361 (1957). I have carefully examined the record and find no basis for reversing her findings.

³ The Employer filed a total of 14 exceptions to the Hearing Officer's report, as well as brief in support of its exceptions.

⁴ Milchem Inc., 170 NLRB 362, 363 (1968) (election will be set aside if party to the election engages in prolonged conversation with prospective voters waiting in line to cast their ballots.)

⁵ In its exceptions, the Employer's maintains that the Hearing Officer mischaracterized Avante at Boca Raton, Inc., 323 NLRB 555, 560 (1997), as requiring a showing of subjective effect on employees. I note that the Hearing Officer clearly explained that in determining whether to set aside an election, the Board applies an objective test. Accordingly, I conclude the Employer's exception is without merit.

about it. When McNeal arrived at the polling area, McNeal dropped the money into Purley-Davis' lap and told Purley-Davis that it was "not a bribe." Purley-Davis testified that she knew that the money was for Avon products. Purley-Davis did not speak to McNeal while McNeal was in the polling location. Wiley was present when McNeal provided Purley-Davis with the money.

As the Hearing Officer noted, the Employer provided no evidence that any Union agent provided financial inducements to voters. The Employer does not argue that McNeal was acting with any agency from the Union, nor is there any evidence that McNeal was acting as an agent of the Union. Instead, the Employer maintains that Purley-Davis' mere acceptance of the money in front of two voters signaled a potential reward for supporting the Union. Without any evidence or suggestion that the exchange of money was in some way tied to the voting, I cannot conclude that this act constitutes objectionable conduct that would warrant setting aside the results of the election.

As the Hearing Officer correctly concluded, there is no evidence that the exchange of money between McNeal and Purley-Davis was related to the Union or the election. The Employer argues that McNeal's testimony establishes that she knew there was either something wrong about the exchange of money or that it would appear that way. Specifically, McNeal explained that she joked that "this was not a bribe" because she didn't want anybody thinking she was "up to something crooked." This does not establish or suggest that the payment was related to the election. In fact, McNeal's statement acted as a disclaimer to demonstrate that the money had nothing to do with the Union or the election. While the Employer argues that Wiley and McNeal did not know the purpose of the payment and therefore had no reason to believe there was a legitimate purpose for the exchange, the Employer presented no evidence that would suggest that the exchange was tied to the Union or the election.⁶ I also note that Purley-Davis made no statements and took no action in response to McNeal's delivery of the cash. Accordingly, there is insufficient evidence to establish that any voter would reasonably have drawn the inference that the exchange had anything to do with the Union or the election. In addition, without more, Purley-Davis' conduct did not violate the Milchem rule.

In its brief in support of its exceptions, the Employer cites Modern Hard Chrome Service Co., 187 NLRB 82 (1970) as support for its contention that McNeal's presentation of money to Purley-Davis constituted objectionable conduct. The Board there found that a union observer engaged in objectionable conduct by offering a small loan to a prospective voter and engaging in continued conversation with voters who were approaching the voting table, despite the Board Agent's repeated admonishment. In that case, a voter commented that he would enjoy a beer if he had some money. In response, the union observer stood up, took several bills from his pocket, and offered the voter a loan. The voter rejected the loan on the grounds that he was kidding. The Board, citing Milchem, 170 NLRB 362 (1968), noted that while a chance hello by an observer will not suffice to set aside an election, the Union's observer's repeated

⁶ While I agree with the Employer that the Hearing Officer misstated the record by saying that McNeal credibly testified that there was a legitimate purpose to the money (see Employer exception 9), the evidence nevertheless does not establish that a reasonable voter would have concluded that the money was an offering from the Union meant to influence votes.

conversations with voters approaching the voting table and the observer's gratuitous offer of a loan to a prospective voter constituted interference.

I find that the Employer's reliance on this case is misplaced. First, unlike the present case, the union's observer in Modern Hard Chrome Service, offered a loan of money to a voter. Here, Purley-Davis took no action at all other than to accept cash that had been thrown into her lap by McNeal. As noted above, there was no evidence that McNeal was acting on behalf of the Union when she delivered the money. Second, here, unlike in Modern Hard Chrome Service, Purley-Davis did not say anything to McNeal about the money. In fact, there is no evidence that Purley-Davis spoke to McNeal at all during the polling period. Finally, unlike the observer in Modern Hard Chrome Service, Purley-Davis did not engage in continuous conversations with other voters. On this basis, I find the facts in Modern Hard Chrome Services, Co., are distinguishable and the Employer's reliance is misplaced.

Based on the above and having carefully reviewed the entire record, the Hearing Officer's Report on Objections, and the exceptions and arguments made by the Petitioner and the Employer, I overrule the objections, and find that a certification of representative should issue.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, and that it is the exclusive representative of all the following employees in the following bargaining unit:

All full-time professional and non-professional employees, including headstart lead teachers, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees employed by the Employer at its facilities located at 2300 Lagrange Street, Toledo, Ohio 43608; 1218 City Park, Toledo, Ohio 43604; and, 545 Woodville Road, Toledo, Ohio 43605, but excluding all other employees, including executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

REQUEST FOR REVIEW

Pursuant to Section 102.69(c)(2) of the Board's Rules and Regulations, any party may file with the Board in Washington, DC, a request for review of this decision. The request for review must conform to the requirements of Section 102.67(e) and (i)(1) of the Board's Rules and must be received by the Board in Washington by July 26, 2017. If no request for review is filed, the decision is final and shall have the same effect as if issued by the Board.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request

for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Dated at Cleveland, Ohio this 12th day of July 2017.



ALLEN BINSTOCK
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
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