

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)	

EMPLOYER’S REQUEST FOR REVIEW

Pursuant to Section 102.67 and 102.69 of the Rules and Regulations of the National Labor Relations Board (“Board”), Brightside Academy, Inc. (“Brightside” or “Employer”) submits this Request for Review of the Regional Director’s Decision and Certification of Representative dated July 12, 2017 (“Decision”). This Request for Review must be granted under Section 102.67(d)(1)(ii) because the Regional Director’s Decision raises a substantial question of law or policy by departing from officially reported Board precedent. Moreover, the Regional Director’s Decision is inconsistent with the Board Order remanding this case to the Regional Director for a hearing.¹

I. INTRODUCTION

It is undisputed that the Union Observer accepted a wad of bills during the polling period in front of two voters who had not yet voted. It is also undisputed that neither of these prospective voters knew or had reason to believe there was a legitimate purpose for this exchange of money. Accordingly, this conduct interfered with voters’ free choice and the

¹ The Order Remanding and Regional Director’s Decision are attached.

election results must be set aside. The Regional Director's conclusion otherwise is contrary to the Order Remanding and the Board law that ensures the integrity of the election process.

II. PROCEDURAL HISTORY

The Petition in this case was filed on October 13, 2016, by Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO ("Union"). Pursuant to a Stipulated Election Agreement between the parties, an election was conducted at Brightside's three locations in Toledo, Ohio on November 9, 2016, in the following unit:

VOTING GROUP – UNIT A (PROFESSIONAL UNIT)

All full-time professional employees, including headstart lead teachers 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 non-professional employees, early headstart teachers, assistant teachers, teachers' aides, floaters, maintenance, food service employees, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

VOTING GROUP – UNIT B (NON-PROFESSIONAL UNIT)

All full-time non-professional employees, including early headstart teachers, assistant teachers, teacher's 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 professional employees, headstart lead teachers, executive director, assistant director, human resource and fiscal department employees, managerial employees, office clerical employees, guards and supervisors as defined in the Act.

The Tally of Ballots that issued after the election shows that of the 16 eligible voters in "Group A," all 16 cast ballots to be included in the unit with the non-professional employees in "Group B." The second Tally of Ballots shows that of 74 eligible voters, 37 cast votes for the Union and 36 cast votes against the Union. There were no challenged ballots.

On November 16, 2016, the Employer filed timely Objections to Election, a copy of which was served on the Petitioner.

On November 18, 2016, the Acting Regional Director issued a Decision on Objections and Certification of Representative, dismissing the Employer's objections and certifying the Union as the collective bargaining representative of the employees in the following 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.

On December 2, 2016, the Employer filed a timely Request for Review of the Acting Regional Director's Decision with the Board.

On March 14, 2017, a majority of the Board issued an Order remanding the case to the Regional Director, concluding that the "Request for Review ... raises substantial and material issues that can best be resolved after a hearing. In the interest of ensuring the integrity of the Board's election processes, the request for review is granted...."

Pursuant to the Board's Order, on March 17, 2017, the Regional Director issued an Order Directing Hearing and Notice of Hearing on Objections to receive evidence to resolve the issues raised by the Employer's objections.

Hearing Officer Jun Ban heard testimony and received into evidence relevant documents on April 5, 2017. The Hearing Officer issued her Report on May 18, 2017, in which she recommended that the Employer's objections be overruled in their entirety.

On May 31, 2017, the Employer filed Exceptions to the Hearing Officer’s Report, along with its Brief in Support. On July 12, 2017, the Regional Director issued his Decision overruling the Employer’s Objections.

III. BACKGROUND FACTS AND EMPLOYER’S OPERATIONS

Brightside operates three Head Start facilities in Toledo, Ohio that provide early childhood services to children ranging in age from six months to five years, including a facility at 2300 Lagrange Street, Toledo, Ohio 43608 (“Lagrange”). At Lagrange, the Employer employed 25 eligible voters on November 9, 2016, the day of the election.

Voting was conducted at Lagrange (and the other two Brightside Toledo locations) from 7:45 a.m. to 8:45 a.m. in Classroom 8. The Employer Observer at Lagrange was Brianne Wiley, an eligible voter. The Union Observer at Lagrange was Bobbie Purley-Davis, also an eligible voter.

IV. THE EMPLOYER’S OBJECTION

The Employer’s Objection states that “during polling hours and in the polling area at the Lagrange location, the Union engaged in improper electioneering and other inappropriate conduct.”

In its Request for Review to the Board, Brightside’s Offer of Proof included two separate allegations:

- A green carnation that symbolized the Union was placed on the Lagrange registration table by the Union Observer during the polling period and remained there until the polls closed.
- During the polling period, the Union Observer at Lagrange accepted a roll of money (wadded up bills) from a voter, who then voted.

The Employer disagreed with but did not except to the Hearing Officer's finding that there was no green carnation placed on the registration table at Lagrange during the polling period. However, as to the Union Observer's acceptance of a roll of money from voter Sharonda McNeal, the Decision mischaracterized Union witness testimony about this incident, and by doing so erroneously discounted its tendency to affect the election. Accordingly, the Regional Director's legal conclusion that this exchange of money could not have interfered with the election is contrary to the Order Remanding and Board law, in particular the *Milchem* rule that ensures the integrity of the voting process.

- A. The Union Observer's acceptance of money during the polling period was egregious and reasonably tended to affect two voters in a one-vote election.

The Regional Director based his conclusion as to the exchange of money in large part on a mischaracterization of Union witness testimony: "McNeal's statement acted as a disclaimer to demonstrate that the money had nothing to do with the Union or the election." Decision, P. 3.² To the contrary, McNeal admitted that she had no idea what the money was for; the disclaimer was merely to show that **she** (McNeal) did not have any bad intent:

- Q. Okay. And did anything occur while you were making your way to the election room.
- A. On my way down the hall, I was stopped and asked to give some money to Ms. Purley.
- Q. And do you recall who stopped you?
- A. Sonya.
- Q. Do you know Sonya's last name?
- A. No.
- Q. Did Sonya say what the money was for?
- A. She said Ms. Purley already knew. No.
- Q. Okay. Can you explain your responses when she said Ms. Purley already knew?

² Citations to the Regional Director's Decision are in the following format: "Decision, P. ____".

- A. I said okay. I just said okay.
- Q. And did you take money from Sonya?
- A. Yeah.
- Q. Okay. And what did you do after you took the money from Sonya?
- A. I went in the room. When I went in the room I said good morning. I said, this is not a bribe. I was smiling. I said, Ms. Purley, someone told me to give this to you. I dropped it on her lap ... And I went, voted...
- Q. When you were in the room, can you tell me who else was in the room?
- A. Ms. Purley was in the room, [Employer Observer] Bri was in the room...
- Q. Did you say anything else to Ms. Purley?
- A. No.
- Q. Did Ms. Purley say anything to you?
- A. No... (Tr. p. 149, l. 5 – p. 150, l. 21).³

As shown above, McNeal testified unequivocally that she did not know the purpose of the money; Sonya only said “Ms. Purley already knew”, and Union Observer Purley-Davis said nothing. Thus, when McNeal said “this is not a bribe” she was only speaking about her own intent, and not for the intentions, good or bad, of Sonya, Purley-Davis or the Union.

And given that McNeal did not know the purpose for the money, she was justifiably concerned about the appearance of the exchange:

- Q. And if I heard you correctly, when you handed over the money, you said, this is not a bribe?
- A. Yeah. It was just a light joke. Like, Hey, I’m telling you now, this isn’t a bribe. You know, I was just being funny. No one laughed. Because it’s not. I was telling the truth. And I told her I was told to give it to her. I dropped it down on her lap and I proceeded to do what I had to do.
- Q. I’m just curious as to why you thought that was funny. Is it because of the seriousness of the election?
- A. Because I know we’re in there to vote, you know? And then I had somebody saying, Give her this money while you’re in there. **I don’t want anybody thinking I’m up to something crooked because I’m not,** you know? I was told to give her this, and I gave it to her.

³ Citations to the Hearing Transcript are in the following format: “Tr. p. ____, l. ____”.

Q. And you were worried about the appearance of it?

A. **Yeah. I mean I didn't know how it would look...** (Tr. p. 155, l. 14 – p. 156, l. 12) (Emphasis added).

This testimony shows that McNeal felt it necessary to make a “light joke” so that the others in the room would not think she was “up to something crooked.” And she “didn’t know how it would look,” meaning she knew it would look bad. In an attempt to avoid a bad appearance, she said, “This is not a bribe” without knowing the purpose of the payment; this means that either consciously or subconsciously she suspected that it might be exactly that. Accordingly, when the Union Observer accepted the money, it was in front of two voters who did not know, and had no reason to believe, that the money had a legitimate purpose. Regardless of the Union Observer’s intent, the effect was egregious, as two prospective voters could reasonably have assumed that the money was related to support for the Union.

This was no “isolated” incident, as it occurred inside the polling place in front of two eligible voters who had not yet voted, McNeal and Company Observer Wiley, in a one-vote election.

B. By signaling to two voters in a one-vote election that support for the union was for sale, the Union Observer interfered with the voters’ free choice.

In deciding whether to set aside an election, the test is whether the conduct has “the tendency to interfere with employees’ freedom of choice.” *Cambridge Tool & Manufacturing Co., Inc.*, 316 NLRB 716 (1995). The issue is not whether a party’s conduct in fact coerced employees, but whether the misconduct reasonably tended to interfere with the employees’ free and uncoerced choice in the election. *Baja’s Place*, 268 NLRB 868 (1984).

In applying this standard, the Board has for decades been especially vigilant in protecting the integrity of the voting process. In *Milchem*, 170 NLRB 362 (1968), the Board held that a Union officer’s “several minutes” of conversation with employees standing in line to vote was

grounds to set aside the election. In so ruling, the Board reasoned: “The final minutes before an employee casts his ballot should be his own, as free from interference as possible.” *Id.* at 362.

In this case, in the final minutes before they cast their ballots, McNeal and Wiley watched Union Observer Purley-Davis accept a wad of cash with no resistance or explanation, and without either knowing the purpose of the payment. McNeal “joked” that it was “not a bribe” because she suspected that it might be exactly that, or that it would appear so. While Wiley’s recollection of the identity of the voter who handed Purley-Davis the cash was incorrect, the Regional Director acknowledged that she “was present when McNeal provided [Union Observer] Purley-Davis with the money.” Decision, P. 3. There can be no doubt that the Union Observer’s unexplained acceptance of money in front of these two voters in the final minutes before they voted could reasonably have influenced their vote, and therefore interfered with the free choice of the voters. *See Modern Hard Chrome Service Co.* 187 NLRB 82 (1970) (union observer’s offer of small loan to voter, which voter rejected, required rerun election).

“The Board jealously guards its election process as the keystone of the Act. Observers are supposed to watch the ballot box, identify and check off voters on the eligibility list, and perform other services as requested by the Board agent. Their functions do not include ... [accepting cash from] prospective voters as they stand in line.” *Id.* at 83.

There is no material distinction between this case and *Modern Hard Chrome Service*; the Regional Director’s attempt at distinction is specious. As here, the voter involved in the exchange of money in *Modern Chrome* was “kidding”: “Kilby . . . commented that he would enjoy a beer, if only he had some money. [Union] Observer Galbraith stood up, took several bills from his pocket, and offered Kilby a loan. The loan was rejected by Kilby on the grounds he had just been kidding.” *Id.* at 83.

And as here, there was no evidence in *Modern Chrome* that the flashed cash was related to the election. Nonetheless, the Board set aside the election, presumably because the union observer's loan offer sent an unspoken signal that support for the union was for sale. The fact that the voter was "kidding" and rejected the loan was irrelevant. Here, the fact that McNeal said "this is not a bribe" is also irrelevant because neither McNeal (as she admitted) nor Wiley knew or had reason to know the purpose of the money, and so the Union Observer's acceptance of the money sent the same kind of unspoken signal as the union observer's offer of a small loan in *Modern Chrome*. The result here should be the same.⁴ See also *Brinks Incorporated*, 331 NLRB 46 (2000) (union is responsible for union observer's inappropriate electioneering during polling period; election results set aside).

Finally, aside from the identity of the voter who handed over the wad of cash, the undisputed record evidence matches the Employer's Offer of Proof in its Request for Review, as to the exchange of money. Based on the Employer's Offer of Proof, the Board remanded this case "[i]n the interest of ensuring the integrity of the Board's election process...." The Order Remanding in effect advised the Regional Office that if the evidence supported the Offer of Proof as to either the green carnation or the exchange of money, or both, the election results should be set aside. Accordingly, after finding that the Union Observer accepted a wad of bills during the polling period, in front of two eligible voters before they voted, the Regional Director's conclusion that there was no interference with the election is contrary to the Board's Order Remanding.

⁴ The Decision also attempts to distinguish *Modern Chrome* based on the Union Observer in that case conversing with other voters. But the main focus of the *Modern Chrome* decision was on the Union Observer's offer of "beer money" to a voter; the reference to other conversations was superfluous.

CONCLUSION

For the foregoing reasons, and as stated in Brightside's Exceptions, Brightside respectfully requests that the Board accept this Request for Review, and set aside the election results and order a rerun election.

Respectfully submitted,



Gary L. Greenberg
Jackson Lewis P.C.
425 Walnut Street, Suite 2300
Cincinnati, OH 45202
(513) 621-3440 / FAX (513) 621-4449
gary.greenberg@jacksonlewis.com

Attorney for Employer

CERTIFICATE OF SERVICE

I certify that the Employer's Request for Review was served by E-File and Regular U.S. Mail this 26th day of July, 2017 upon Allen Binstock, Regional Director, National Labor Relations Board, Region 8, 1240 E. 9th Street, Suite 1695, Cleveland, OH 44199-2086 and via email and Regular U.S. Mail upon Sean Grayson, Ohio Council 8, American Federation of State, County and Municipal Employees, AFL-CIO, 6800 North High Street, Worthington, OH 43085.


Gary L. Greenberg

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BRIGHTSIDE ACADEMY
Employer

and

Case 08-RC-185999

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

Petitioner

ORDER REMANDING

The Employer's Request for Review of the Regional Director's Decision on Objections and Certification of Representative raises substantial and material issues that can best be resolved after a hearing. In the interest of ensuring the integrity of the Board's election processes, the request for review is granted, and the case is remanded to the Regional Director for consideration of the Employer's Objection.

PHILIP A. MISCIMARRA, ACTING CHAIRMAN

LAUREN McFERRAN, MEMBER

Dated, Washington, D.C., March 14, 2017

Member Pearce, dissenting.

Contrary to my colleagues, I would deny the Employer's request for review of the Regional Director's decision to dismiss its election objections. I find that the Employer failed to establish any basis under Sec. 102.67(d) of the Board's Rules and Regulations, let alone a compelling one, for reversing the Regional Director and granting its Request for Review. Thus, the Employer failed to "present evidence that raises substantial and material factual issues," warranting a hearing, *Park Chevrolet-Geo, Inc.*, 308 NLRB 1010, 1010 fn. 1 (1992). See also *Cumberland Nursing & Convalescent Center*, 248 NLRB 322, 323 (1980) ("Simply put, it is not enough for the objecting party's evidence merely to imply or suggest that some form of prohibited conduct has occurred.").

Even accepting the Employer's assertion in its Offer of Proof that a unit employee presented the Petitioner's election observer with a green carnation when the employee came to vote, this would not warrant setting aside the election. The flower, one of many the Union purportedly distributed to all employees, was presented by a unit employee not alleged to be a Union agent. At *most*, the flower was akin to a union button or insignia that observers are permitted to wear. See, e.g., *The Nestle Co.*, 248 NLRB 732, 742 (1980) (unions' observers at

the polling place wearing a button and a bumper sticker bearing campaign insignias along with their observer badges provided by Board agent not objectionable), enfd. without opinion, 659 F.2d 252 (D.C. Cir. 1981). That the carnation purportedly rested on the observers' table during the polling period would not render it objectionable. See *Flamingo Las Vegas Operating Co.*, 360 NLRB 243, 246 fn. 12, (2014) (use of table cloth bearing the employer's logo and name on the election table was not objectionable). Nor would the employee's simultaneously handing the Petitioner's observer money, which the observer put away, warrant a hearing.

Because I find that the alleged conduct would not warrant setting aside the election even if proven, the Regional Director did not err in overruling the objections without a hearing,

MARK GASTON PEARCE,

MEMBER

Regional Director-Region 8
Gary Greenberg, Esq.
James A. Mills, Esq.
Katie Maccagnone, Dir.
R.Sean Grayson, GC
Mike Sukal, Dir.
William Lurye,GC

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
REGION 08
1240 E 9TH ST
STE 1695
CLEVELAND, OH 44199-2086