

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petitions of	:
	:
IBEW LOCAL NO. 134, UAW, U.F.C.W.	: Case 1
LOCAL NO. 1444, IBT LOCAL NO. 744,	: No. 44420 E-3068
HERE LOCAL NO. 122, IAMAW DISTRICT	: Decision No. 26850-H
NO. 8 and IBT LOCAL NO. 43	:
	: Case 2
Involving Certain Employes of	: No. 44421 E-3069
	: Decision No. 26851-H
DAIRYLAND GREYHOUND PARK, INC.	:
	:
	:

Appearances:

Mr. Gary M. Williams, Attorney at Law, 12065 West Janesville Road, P.O.
Michael, Best & Friedrich, Attorneys at Law, by Messrs. Jonathan O.
Levine and Thomas L. Scrivner, 100 East Wisconsin Avenue, Milwaukee,
Wisconsin 53202-4108, on behalf of Dairyland Greyhound Park, Inc.

Box 42

FINDINGS OF FACT ,
CONCLUSION OF LAW AND ORDER

On August 7, 1992, the Wisconsin Employment Relations Commission conducted an election among certain employes of Dairyland Greyhound Park, Inc., to determine whether said employes wished to be represented for the purposes of collective bargaining by Teamsters Local No. 744. On August 14, 1992, Dairyland and Teamsters each filed an objection to the conduct of the election. Hearing on the Teamsters' objection was conducted on September 30, 1992 in Kenosha, Wisconsin before Examiner Peter G. Davis. The parties thereafter filed written argument, the last of which was received November 11, 1992.

Having reviewed the record and the parties' argument, and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Dairyland Greyhound Park, Inc., herein Dairyland, is an employer having its principal offices at 5522 - 104th Avenue, Kenosha, Wisconsin.

2. Teamsters Local No. 744, herein Teamsters, is a labor organization having its principal offices at 300 South Ashland Avenue, Chicago, Illinois.

No. 26850-H
No. 26851-H

3. On July 16, 1992, the Commission issued an Amended Direction of Election which stated in pertinent part:

That elections by secret ballot shall be conducted under the direction of the Wisconsin Employment Relations Commission on August 7, 1992:

1. In a collective bargaining unit consisting of all regular full-time and regular part-time Mutuels Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes who were employed on June 3, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by IBEW Local 134 or U.F.C.W. Local No. 1444 for the purposes of collective bargaining with Dairyland Greyhound Park, Inc. on questions of wages, hours and conditions of employment, or whether such employes desire not to be so represented.

2. In a collective bargaining unit consisting of all regular full-time and regular part-time employes of Dairyland Greyhound Park, Inc., excluding Mutuels Department employes and Maintenance Department employes and supervisory, managerial and confidential employes who were employed on June 3, 1992, except such employes as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employes voting desire to be represented by Teamsters Local 744 for the purposes of collective bargaining with Dairyland Greyhound Park, Inc. on questions of wages, hours and conditions of employment or whether such employes desire not to be so represented.

The Commission had previously conducted a unit determination and an inconclusive representation election among these Dairyland employes on May 24, 1991 and August 2, 1991, respectively. Prior to these elections, in its verbal and written communications with its employes, Dairyland had stressed the importance of voting.

The voter turnout in the August 2, 1991 election was 78.2% in the Mutuels unit and 71.5% in the Residual unit. Average voter turnout in elections conducted by the National Labor Relations Board (NLRB) during the same period was approximately 90%. 4/

4/ Pursuant to the request of Dairyland, we take notice of the NLRB statistics.

4. Commencing June 5, 1992, Dairyland began to verbally advise employees in the two potential bargaining units identified in Finding of Fact 3 that Dairyland was conducting a contest where it would pay \$20 to each eligible voter in the unit which had the highest percentage turnout in the August 7, 1992 election. The average wage for hourly paid employees in the Residual unit at the time was \$6.49 while Residual employees paid on a shift basis (4-5 1/2 hours) averaged \$30.12 per shift.

5. Commencing on August 4, 1992, Dairyland distributed the following to all eligible voters in the two potential bargaining units:

**YOU CAN BE A WINNER
VOTE ON AUGUST 7**

August 7. . . election day is fast approaching and we encourage each employee to get out to vote in what may be the most important election they have ever voted in.

YOU CAN BE A WINNER. . .

FIRST. . . by coming to vote. Remember that Dairyland has committed to pay \$20 to each employee in the voting group with the highest percentage turnout.

By voting NO UNION you can be sure of another year of. . .

NO UNION DUES
NO UNION FEES
NO UNION FINES
NO UNION ASSESSMENTS
NO STRIKES
NO LOST TIME
NO BARGAINING DELAYS
NO UNION REPRESENTATIVES

Remember that if you don't vote, it's the same as voting for the union. The winner will be determined based on the majority of those actually voting.

For instance. . . if there were 100 eligible voters and if only 50 vote. . . 26 votes for the union could make a decision for all 100 employees.

Don't let someone else gamble with your future and your paycheck.

VOTE NO ON AUGUST 7.

Location: VIP Lounge

Time: Vote any time between 9:00 a.m. to 7:00 p.m.

Ballot: Secret written ballot; no one will know how you vote.

6. The Commission's election tally sheets distributed to the parties

on August 7, 1992 after the ballots had been counted indicated the following results:

MUTUELS

1.	ELIGIBLE TO VOTE	<u>208</u>
2.	BALLOTS CAST (includes <u>all</u> ballots)	<u>180</u>
3.	BALLOTS CHALLENGED	<u>4</u>
4.	BALLOTS VOID	<u>0</u>
5.	BALLOTS BLANK	<u>0</u>
6.	VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, void ballots, and blank ballots)	<u>176</u>
7.	BALLOTS CAST FOR IBEW LOCAL 134	<u>61</u>
8.	BALLOTS CAST FOR UFCW LOCAL 1444	<u>11</u>
9.	BALLOTS CAST FOR NO REPRESENTATION	<u>104</u>

. . .

RESIDUAL

1.	ELIGIBLE TO VOTE	<u>303</u>
2.	BALLOTS CAST (includes <u>all</u> ballots)	<u>263</u>
3.	BALLOTS CHALLENGED	<u>31</u>
4.	BALLOTS VOID	<u>1</u>
5.	BALLOTS BLANK	<u>1</u>
6.	VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, void ballots, and blank ballots)	<u>230</u>
7.	BALLOTS CAST FOR TEAMSTERS	<u>111</u>

The contest results will be announced next Thursday. But, in a way, you are all winners. This has been a very long process. You all hung in there during some very difficult times. Give yourself a pat on the back.

8. On August 14, 1992, Teamsters filed an Objection to Conduct Affecting the Results of the August 7, 1992 Election which stated, in pertinent part:

Shortly before the Friday, August 7, 1992 election, representatives of Dairyland Greyhound Park, Inc. drafted and caused to be circulated among eligible voters in the Residual bargaining unit campaign propaganda (attached hereto), which in relevant part, advised such voters to "(r)emember that Dairyland has committed to pay \$20 to each employee in the voting group with the highest percentage turnout." While not expressly conditioned upon the manner in which any individual voted, this offer had the natural and foreseeable consequence of inducing eligible voters to both vote and vote in a manner favoring Dairyland, thereby interfering with the rights of employees enumerated in Section 111.04, Wis. Stats..

On August 14, 1992, Dairyland filed an objection which stated, in pertinent part:

1. Dairyland employees were threatened, harassed and intimidated by Teamster organizers in the days preceding and on the day of the election.
2. Teamster organizers engaged in electioneering and leafletting on all floors of Dairyland Greyhound Park, Inc. during the election.
3. Teamster organizers engaged in vote buying.
4. Teamster organizers told Dairyland employees that they would be fired after the election unless they voted the Teamsters in.
5. Teamster organizers told Dairyland employees that the Teamsters were already negotiating a collective bargaining agreement with Dairyland Greyhound Park, Inc. prior to the election.
6. "It's Time To Vote Teamsters" key chains were placed and remained in the voting booths during the election.

On August 14, 1992, Dairyland and Teamsters agreed that 14 challenged ballots from the August 7 election in the Residual unit should be opened and counted. On August 14, 1992, these ballots were counted and the following revised tally sheet was mailed to the parties:

1. ELIGIBLE TO VOTE	<u>303</u>
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2.	BALLOTS CAST (includes <u>all</u> ballots)	263
3.	BALLOTS CHALLENGED	17
4.	BALLOTS VOID	1
5.	BALLOTS BLANK	1
6.	VALID BALLOTS COUNTED (Total ballots cast minus challenged ballots, void ballots, and blank ballots)	244
7.	BALLOTS CAST FOR TEAMSTERS LOCAL 744	111
8.	BALLOTS CAST FOR NO REPRESENTATION	133

9. No objections were filed as to the election conducted in the potential Mutuels Department bargaining unit and on August 19, 1992, the Commission issued a Certification of Results which stated, in pertinent part:

IT IS HEREBY CERTIFIED that the required number of the eligible employes of Dairyland Greyhound Park, Inc., who voted at said election in the collective bargaining unit consisting of all regular full-time and regular part-time Mutuels Department employes of Dairyland Greyhound Park, Inc., excluding supervisory, managerial and confidential employes, failed to select either IBEW Local 134, or U.F.C.W. Local No. 1444, as their bargaining representative.

10. On or about August 27, 1992, Dairyland distributed the following document to employes in the potential bargaining units:

ELECTION UPDATE

We have some new information to share with you regarding the outcome of the August 7, 1992 elections.

GOOD NEWS. The IBEW and the UFCW did not file objections to the Mutuels election. The results of that election have been certified by the WERC and are final.

GOOD NEWS. The Teamsters withdrew 14 of their 27 ballot challenges in the "ALL OTHER" election. All 14 ballots were votes against the Teamsters. So the vote -- as it stands today -- is as follows:

NO UNION 133

Teamsters 111
Challenges 17

The remaining challenges can no longer affect the outcome of the election, so no hearing on the challenges will be required.

BAD NEWS. Because the Teamsters filed an objection, the results of the "ALL OTHER" election is not likely to become final for several months. We hope the Teamsters will soon recognize that you don't want them as your representative. If the Teamsters withdraw their objection, we will withdraw ours and that will end the matter once and for all.

The "voter turnout" contest was a tie. 86 percent of the employees eligible to vote in the Mutuels election voted. 86 percent of the employees eligible to vote in the "ALL OTHER" election voted. That means all eligible voters in both groups will receive \$20.00 in this week's paycheck even if they did not actually vote.

CONGRATULATIONS. The large voter turnout was good to see. This was a decision which you all had a stake in and needed to make. We thank you for making the effort to turnout in such large numbers.

Arden Hartman, President
Ronald Sultemeier, General Manager

All eligible employes' August 27, 1992 paycheck included an additional \$20 prize regardless of whether employe actually voted or whether the employe's ballot was challenged. Employes were not asked by Dairyland if they voted or how they voted. Pursuant to the United States Internal Revenue Service Code, the \$20 prize was treated as employe compensation.

Based upon the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The offer of Dairyland Greyhound Park, Inc. to pay \$20 to all eligible voters in the bargaining unit having the highest percentage turnout in the August 7, 1992 election did not have the probable effect of interfering with voter free choice.

Based upon the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER

The objection filed by Teamsters Local No. 744 is dismissed.

Given under our hands and seal at the City of
Madison, Wisconsin this 9th day of February,
1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

William K. Strycker /s/
William K. Strycker, Commissioner

I dissent.

Herman Torosian /s/
Herman Torosian, Commissioner

DAIRYLAND GREYHOUND PARK, INC.

MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER

POSITIONS OF THE PARTIES

Teamsters

Teamsters assert that Dairyland's offer to pay \$20 to each employe in the voting group with the highest percentage turnout interfered with the results of the August 7, 1992 election. Teamsters assert that Dairyland's offer provided voters in the Residual unit with 1 chance in 2 to win \$20 and that the \$20 prize amounted to slightly more than 3 hours' pay for the average hourly paid employe and 2/3 of a shift's pay for those employes paid on a shift basis in the Residual unit. Teamsters argue that while encouraging employe participation in the election process is a laudable goal, Dairyland's offer not only encouraged participation but also had the "natural, foreseeable and intended consequence" of encouraging eligible voters to vote against union representation. In this regard, Teamsters assert that a fair reading of the document distributed by Dairyland prior to the election plainly reveals an intent to use the contest as an inducement to get employes to vote but also to vote against union representation.

Teamsters contend that under National Labor Relations Board (NLRB) case law, inducements such as contests or raffles conducted by an employer for the stated purpose of encouraging employes to vote are not per se objectionable but rather are scrutinized in light of relevant surrounding circumstances. Teamsters argue that even where the inducements are not tied to how employes voted in the election or to the overall election results, "consideration must be given as to whether a valuation would be placed upon the gift. . .by the employes that would reasonably tend to have the effect that they would feel an obligation to vote against the union, or otherwise impair their exercise of free choice." Hollywood Plastics, Inc., 177 NLRB 678 (1969). Teamsters contend that an evaluation of NLRB case law indicates that the value of the prizes, the probability of winning the prizes and the eligible voter's rate of pay are all relevant factors when determining whether a contest has a reasonable tendency to influence the election outcome. Applying these factors to the facts at hand, Teamsters assert that Dairyland's contest was objectionable. Teamsters cite YMCA, 286 NLRB 1052 (1987) and Owens-Illinois, Inc., 271 NLRB 1235 (1984) as cases which particularly support its position herein.

Given the foregoing, Teamsters assert that the Commission should not tolerate a party's direct offer to pay eligible voters money to vote. Teamsters allege such payment offers have the inherent tendency to undermine the integrity of the election process, particularly when coupled with the partisan message to vote against union representation. Therefore, Teamsters ask that its objection be upheld and that a new election be conducted.

Dairyland

Dairyland contends that the contest at issue was designed to encourage interest and participation in the August 7, 1992 elections. It contends that under analogous NLRB case law, such contests are presumed lawful. Because Teamsters have failed to establish facts necessary to rebut that presumption, Dairyland asserts the objection should be dismissed and the election result certified.

While acknowledging that the Commission is not bound by NLRB case law, Dairyland believes NLRB law is instructive in the instant dispute. Applying Board law, Dairyland alleges that none of the factors which render voter turnout contests objectionable is present in this case. In this regard, Dairyland argues that the contest did not provide Dairyland with a means of determining if or how any employe voted; participation in the contest was not conditioned on how any employe voted in the election or the result of the election; the juxtaposition of the contest terms with a "Vote No" message is not significant because Dairyland had made no secret of its position throughout the election process and the language in question in no way implies that a vote against union representation was a prerequisite for winning; and the opportunity to win the \$20 prize was not so substantial that it had any natural tendency to interfere with voter choice. Dairyland urges the Commission to reject Teamster's argument that employes would vote against their conscience or interests for a chance to win an objectively modest sum of money. Dairyland also notes that it is the pre-election probability of winning the prize which is important and points out that the voters did not know whether they would win the prize when the election was conducted.

Dairyland stresses that the voter turnout contest must be viewed in the context of the entire election process. Dairyland notes that throughout the lengthy election process involved herein, it has repeatedly urged employes to vote. Given the relatively low voter turnout in the August, 1991 elections when compared to NLRB elections run during the same time period, Dairyland felt it had a vested interest in obtaining to the greatest extent possible an election which truly reflected the wishes of the majority of those employes eligible to vote. It argues that employes had to recognize that the voter turnout contest was nothing more than a campaign device to get people to vote. Dairyland contends that such a contest is a "natural fit" for a parimutuel establishment that used incentives like special racing events to boost attendance at the track.

Importantly, Dairyland asserts that how reasonable employes would perceive the contest must be judged in the context of the two-year election campaign and the tips, bar tabs, parties, dinners, cash, and other inducements Teamsters provided. Dairyland points out that such expenditures were not indirect incentives to get people to vote but rather were direct incentives to get people to vote for Teamsters. If the Commission agrees that Teamsters objections may have merit, Dairyland contends that a final determination as to the need for a new election cannot be made until Teamsters campaign conduct has been evaluated.

Dairyland asserts that the NLRB cases cited by the Teamsters are easily distinguishable and cites NLRB cases including Thrift Drug Company, 217 NLRB 1094 (1975) and Stride-Rite Corporation, 254 NLRB 297 (1981) as being more closely related to the facts at hand.

In conclusion, Dairyland asserts that Teamsters simply have no confidence in the ability of Dairyland employes to arrive at a reasonable choice in the privacy of the voting booth. Dairyland contends that application of all of the factors which the Board considers relevant when evaluating the propriety of

pre-election contests warrant dismissal of Teamster's objection. Dairyland asserts that the unusual and lengthy election process established by the Wisconsin Employment Peace Act provides a natural disincentive for employes to continue to vote. Thus, Dairyland contends that contests designed to create interest in Commission's election process should be presumed lawful and consistent with the purposes of the Act.

Given all of the foregoing, Dairyland asks that the Teamsters' objection be dismissed and the results of the August 7, 1992 election be certified.

DISCUSSION

One of the rights accorded employes by Sec. 111.04 Stats., is the right to be represented for the purposes of collective bargaining by "representatives of their own choosing." Thus, when employes seek to exercise that right through an election conducted by the Commission pursuant to Sec. 111.05, Stats., they are entitled to an election climate which is free of conduct or conditions which improperly influence them and which is fair to all parties on the ballot. Whitefish Bay Cleaners, Dec. No. 5335-B (WERC, 2/60); Boynton Cab Company, Dec. No. 4809-C (WERC, 11/58); aff'd (Cir. Ct. Milw. 9/59); Schiff Company, Dec. No. 41-A (WERC, 2/40). Where the secrecy of the voting process itself is maintained, there is a strong presumption that the ballots actually cast reflect the true wishes of the employes participating. Whitefish Bay Cleaners. Therefore, where, as here, objections are filed which allege that conduct or conditions existed which prevented the employes from freely expressing their preference as to union representation and that the election results should be set aside, the question before us is whether the conduct or conditions in question render it improbable that the voters were able to freely cast their ballot. This question is not analyzed from the subjective impressions of voters but rather from the perspective of whether the disputed conduct, viewed objectively, has the probable effect of interfering with free choice.

Applying the foregoing legal standards to the facts at hand, we conclude that Dairyland's contest did not have the probable effect of interfering with voter free choice.

Importantly, the opportunity to win the contest was contingent only on the eligible employe's voting group having the higher percentage turnout. So long as this one condition was met, an employe won without regard to the election

results or to whether or how they actually voted. The increased level of voter participation in this election indicates that the contest may well have had the desired effect on voter turnout. Thus, we conclude that the contest was structured in such a way so as to allow employes to cast their ballots freely.

Our conclusion is not altered by the value of the contest prize. Simply put, we do not believe that the potential opportunity to win \$20 in a "get out the vote" contest is sufficient to have the probable effect of altering the choice Dairyland voters would otherwise make. As argued by Dairyland, we think it sells the Dairyland employes short to conclude that the opportunity to win \$20 was sufficient to render free choice improbable.

Our dissenting colleague purports to be able to discern an illicit intent on the part of the Employer. He argues that the \$20 prize was offered solely as an inducement to employes to vote "no," finding an insidious linkage between the Employer's "get-out-the-vote" contest announcement and its advocacy of a "no" vote. That, coupled to our colleague's personal speculation that \$20 is a great enough sum to bribe otherwise indifferent employes, causes him to conclude that the Employer's contest had the probable effect of interfering with their free choice.

But even assuming arguendo that our dissenting colleague is correct in his view that a \$20 prize may represent a large amount to some employes, he offers no evidence from which it can be logically inferred that the "get-out-the-vote" prize money would have influenced any employe to vote "no."

Further, we do not find the August 4, 1992 written communication to employes from Dairyland to be a sufficient basis for reaching a different result regarding the impact of the contest on voter free choice. As set forth in Finding of Fact 5, the August 4 document contains information about both the contest and Dairyland's views on union representation. Clearly, Dairyland had a general entitlement to communicate its views about union representation to its employes. The key question here is whether the exercise of this entitlement would lead a reasonable voter to believe a vote against union representation was a prerequisite for the opportunity to win the contest or to fear that Dairyland would somehow discover how an individual voted and retaliate against those who voted against Dairyland's stated preference. We find no reasonable basis for either belief.

As to whether the anti-union message in the August 4 document could reasonably confuse voters to believe a vote against union representation was required, the written statement of the contest terms contained in the August 4 document is sufficiently clear to avoid any such confusion. As to the concern about retaliation, our secret ballot procedures and the lack of any evidence of employer interrogation of voters combine to warrant rejection of this concern. 2/

(Footnote 2/ appears on the next page.)

Finally, our dissenting colleague suggests that his values simply differ from those of his fellow-commissioners.

Perhaps so. Perhaps not. But one value we hope we all share is the belief that all employes may be fairly encouraged to vote in an election directly affecting their employment future.

In our view, that is what happened at Dairyland.

Given all of the foregoing, we have dismissed the Teamsters' objection 3/ and will certify the election results if Dairyland withdraws its objections.

Dated at Madison, Wisconsin this 9th day of February, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By A. Henry Hempe /s/
A. Henry Hempe, Chairperson

William K. Strycker /s/
William K. Strycker, Commissioner

2/ In Young Men's Christian Association, 286 NLRB No. 98 (1987), the NLRB addressed a similar juxtaposition argument as follows:

We do not find the juxtaposition of the payment offer with the Employer's statement of the need to keep the Union out would tend to put employees leaning toward union support in an uncomfortable position. It is unfortunate that the Employer combined the offer to pay with an exhortation to vote against the Union. However, the Employer made no attempt to find out whether or how the employees voted, nor to condition the payment on the outcome of the election. Payment was to be made after the election, on the next paycheck to employees who came to vote during their nonworking hours, regardless of the outcome of the election.

3/ Our analysis is similar to that utilized by the NLRB when determining whether voter contests warrant setting aside an election. The Board considers all attendant circumstances in determining whether the contest has destroyed the laboratory conditions necessary to assure that employes

(Footnote 3/ continues on the next page.)

(Footnote 3/ continues)

have full freedom of choice in selecting a bargaining representative. Hollywood Plastics, 177 NLRB No. 40 (1969). To make its determination, the Board typically considers the following factors:

1. Whether the circumstances surrounding the contest provided the employer with means of determining how and whether employees voted.
2. Whether participation in the contest was conditioned upon how the employee voted in the election or upon the result of the election.
3. Whether the prizes were so substantial as to either divert the attention of the employees away from the election and its purpose or as to inherently induce those eligible to vote in the election to support the employer's position. See, Grove Valve & Regulator, 262 NLRB No. 35 (1982).

In applying these factors, the Board has concluded that expensive trips, merchandise and large amounts of money have the "tendency to influence" employees, thus impairing their free choice. Grove Valve & Regulator, *supra*; Drilco, 242 NLRB No. 9 (1969); Douglas Parking Co., 262 NLRB No. 24 (1982). When the prizes/payments are modest and other conditions have not been violated, the Board has concluded that contests are permissible. Thus, for instance, in Thrift Drug Company, 217 NLRB No. 171 (1975) a contest in which 4 of 13 eligible voters received a \$40 camera and gift certificates of \$20, \$15 and \$10, respectively, the Board concluded that the value of the prizes was not sufficient to create the feeling of a voter obligation to favor the employer's position.

While the Board cases cited by the parties are all somewhat factually distinguishable from ours, we think it probable that the Board would read the same result as we have herein.

DAIRYLAND GREYHOUND PARK, INC.

Dissenting Opinion of Commissioner Torosian

My colleagues conclude that the \$20 prize amount is not of sufficient value as to create a feeling of obligation on the part of the employes to support the Employer's position.

I agree that for some employes (such as those firmly committed to the union), the potential receipt of \$20 would not affect their decision. But, of course, the Employer's offer and strategy was not really intended to affect their vote. The offer was intended to encourage the disinterested and the undecided voters to participate and vote no. 5/ The objective was to offer enough of a monetary inducement to get their votes. It was part of the Employer's overall strategy to win the election. Unlike the majority, I find that the \$20 inducement was sufficient to have the probable effect of interfering with the free choice of at least the apathetic and undecided employes. Our basic difference is one of values. My view of the monetary amount in question is simply different than the majority's. 6/ Twenty dollars for many of the employes equates to 3 - 4 hours pay or close to a half day's work. To me that is substantial. It is a sufficient amount to turn out at least some of the employes who would not otherwise vote and influence their vote in favor of the Employer.

Because of this impact, I conclude that the Employer's contest with the potential payment of \$20 constitutes a sufficient basis to direct a new election.

Dated at Madison, Wisconsin this 9th day of February, 1993.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By Herman Torosian /s/
Herman Torosian, Commissioner

4/ Of course, this is why in the written contest announcement, the Employer not only offered the \$20 inducement to vote but also encouraged voters to vote against the Union. Contrary to the majority, the announcement clearly establishes the "linkage" between the contest and a "no" vote.

5/ The majority cites NLRB cases in support of its analysis and position. Of course, it is unclear how the NLRB would decide this case since there is no NLRB case factually on point. However, assuming the NLRB's analysis and value judgments would yield the same result reached by the majority, I would not find that result persuasive for the same reasons already expressed herein.