

ALJ Finds Employer's Pizza Party, Cash and Gift Card Bonuses Interfered with Union Election

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SBM Management Services, Inc. provides custodial services for certain commercial facilities. After the company took over the custodial contract at a particular facility, it had regular employee meetings on Fridays. At the meeting six days before a union election, SBM provided pizza for employees and certain employees were given bonus checks or gift cards, neither of which were common or regular occurrences. The election was conducted and only eight votes were cast in favor of the union, which then filed objections to SBM's conduct as allegedly affecting the results of the election. The matter proceeded to an unfair labor practice proceeding to determine whether SBM violated section 8(a)(1) of the National Labor Relations Act such that the results of the election should be set aside.

Section 8(a)(1) of the NLRA states that "[i]t shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section seven ["Rights of Employees"]." The union asserted that SBM violated the NLRA by giving bonuses to about nine employees six days before the election in front of almost all of the 35 unit employees and distributing bonuses to two more unit members the following day, allegedly for the purpose of influencing the employees' votes in the election.

In determining whether a grant of benefits is objectionable and violates section 8(a)(1) of the NLRA the Board has drawn the inference that benefits granted during the critical period are coercive, but it has allowed the employer to rebut the inference with an explanation other than the pending election, for the timing of the grant or announcement of such benefits. See *United Airlines Services, Corp.*, 290 NLRB 954 (1988); *B & D Plastics*, 302 NLRB 10 245 (1991). Generally, to rebut the inference that paying bonuses was objectionable and constituted a violation of the NLRA, a respondent must show that it had an "established past practice" of giving bonuses for extra or superior work.

The ALJ in this case, *SBM Mgmt. Servs.*, No. 5-CA-129128 (Dec. 8, 2014), found that, given the amount of discretion exercised by SBM in distributing bonuses for actions that had taken place two weeks earlier, this was **not an established past practice and was a significant departure from prior practices** at that work site. Since the

bonuses were not insignificant compared to employees' weekly wages and were given to eleven of the approximately 35 eligible voters six days before the election in front of nearly the entire bargaining unit, the ALJ determined this was "far from *de minimis*" misconduct. In effect, the ALJ concluded that SBM violated section 8(a)(1). He recommended that the election be set aside and directed that there be a second election on the question of union representation.

In this case, the employer's conduct six days before the election was compared to the general practices of the employer over time; in the past, for example, only minimal bonuses or gifts were distributed, and on a more limited basis. For that reason, the inference made by the ALJ was that this particular gift-giving endeavor was designed to influence the way the employees voted in the election. Employers are cautioned to take this decision into consideration when providing gifts to employees, particular where union activity is present.

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National Labor Relations Board (NLRB), Unions