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NLRB Overrules Employer's Objection to Union Flyers

In *Durham School Services*, 360 NLRB No. 108 (2014), Teamsters Local 991 won a representation election by a vote of 112 to 74. However, the employer filed several objections, one of which asserted that the union deceived voters by distributing a campaign flyer that contained pictures of eligible voters and statements allegedly misrepresenting their intent to vote for the union. The Regional Director overruled the employer's objections and on May 9, 2014, in a 2-1 decision, the National Labor Relations Board affirmed the Regional Director's decision.

In support of its objection, the employer submitted an affidavit from an employee stating she did not intend to vote for the union and did not authorize the union to attribute any quotation to her. However, and contrary to the employer's claim, the employee admitted she voluntarily signed the literature permitting the Union to use her picture and statement in favor of the Union as campaign material. The form used by the Teamsters, and which was voluntarily signed by the employee, stated as follows:

"I hereby give permission to the International Brotherhood of Teamsters to use my likeness and name in Teamster publications."

That same document also included the following endorsement for Teamsters Local 991:

"I support forming a union with the Teamsters because I want fairness."

In addition to the above document, the employee signed two other Union prepared documents that contained the following statement:

"Yes"- "I'm voting to have a voice in our working standards at Durham by voting for Teamster representation on February 22."

Based on these documents, Chairman Pearce and Member Schiffer found that the initial document bearing the employee's signature was a valid release to use her picture in campaign literature, and this document, standing alone, gave Teamsters Local 991 sufficient reason to



believe it had the employee's support. Furthermore, the Board found that the additional documentary evidence indicated that the employee added her name to two petitions containing other signatures, which both proclaimed support for the Union. On this basis, the Board held, "[t]here is no basis to conclude, as a factual matter, that the Union engaged in any misrepresentation."

The Board went on to hold that even if the employee had not expressed support for the union on the forms, they would still affirm the Regional Director's decision under *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), because there was no dispute "that the Union's flyer was easily recognizable as campaign propaganda." Under the *Midland* standard, the Board will not probe into the truth or falsity of the parties' campaign statements and will not set aside an election on the basis of misleading statements unless "a party has used forged documents which render the voters unable to recognize propaganda for what it is."

Respectfully submitted,

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