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Greco Steel Products, Inc. and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. Cases 06–RC–350334 and 06–RM–350348

September 30, 2026

DECISION ON REVIEW AND ORDER REMANDING

BY CHAIRMAN MURPHY AND MEMBERS PROUTY
AND MAYER

On January 29, 2025, the Regional Director issued a Decision on Objections and Certification of Representative overruling one objection filed by the Employer to a representation election and certifying the Petitioner as exclusive representative of the employees in an appropriate unit based on a majority of votes cast. In accordance with Section 102.67 of the National Labor Relations Board’s Rules and Regulations, the Employer filed a timely request for review of the Regional Director’s decision.¹ The Petitioner has not filed an opposition to the request.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Employer’s request for review is granted as it raises substantial issues warranting review. Having carefully considered the entire record, including the request for review, we find that the Employer sufficiently demonstrated that Ironworkers Local 3 Business Manager Rich Danko told employee William “Billy” Green that, if the Petitioner won the election, the fees that Green would otherwise need to pay in order to reinstate his union membership would be waived. We further find that this promise of benefit would be objectionable if Danko was an agent of the Petitioner. Although the parties disputed Danko’s agency status at the hearing, the Regional Director implicitly found it unnecessary to reach that issue. For the reasons discussed below, we remand the case for the Regional Director to make the agency determination in the first instance.

BACKGROUND

On September 12, 2024,² the Petitioner filed a petition to represent a unit of the Employer’s full-time and regular

part-time field iron workers and laborers working out of the Employer’s Springdale, Pennsylvania facility. Pursuant to a Stipulated Election Agreement, an election was held on October 2, in which 9 employees voted in favor of representation by the Petitioner and 7 voted against representation. There was one challenged ballot, a number insufficient to affect the election results. Accordingly, the Petitioner received a majority of the votes cast. The Employer timely filed one objection to the election, asserting that the Petitioner “unlawfully offered an economic benefit to at least one employee to induce them to support the union” by telling a voter-eligible unit employee whose union membership was suspended that he would avoid paying an \$800-\$1000 fee to have his membership reinstated “if he voted ‘yes’ for the union and waited until after the vote.” A hearing officer conducted a hearing and issued a report recommending overruling the objection. On exceptions from the Employer, the Regional Director adopted the Hearing Officer’s recommendation to overrule the objection and issued a certification of representative to the Petitioner.

Employee William “Billy” Green was a former member of two of the Petitioner’s affiliated local unions: Local 772 and Local 3. Green testified that his union membership is currently suspended, and he is not a member of either local union. Sometime prior to August 22, Green called Local 3 Business Manager Rich Danko and inquired about how he could get his union book/membership back. Danko responded that if the Petitioner did not win the election at the Employer, then he could go to another unionized employer and pay to lift his suspension. Alternatively, if the Petitioner won the election at the Employer, then Green would not have to pay to be reinstated. There was no testimony that Danko told Green that his reinstatement fee would be waived if he personally voted “yes” for the Petitioner. There is no record evidence that Green disseminated this conversation he had with Danko to any other employees. Neither party called Danko to testify as a witness. Meanwhile, Article XIX, Section 1b of the General Rules of the Petitioner’s Constitution and By-Laws provides that “[t]he standard reinstatement fee shall not exceed Eight Hundred Dollars (\$800.00)” and that “[r]einstatement fees may be waived for organizing purposes.”

¹ The Employer purports to incorporate by reference its brief in support of exceptions. We reject this attempted incorporation as contrary to Sec. 102.67(e), which requires that a request for review be a self-contained document.

The Employer has requested review of the Regional Director’s decision to affirm some of the Hearing Officer’s credibility findings. The Board’s policy is not to overrule a hearing officer’s credibility resolu-

tions that are adopted by a regional director unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. Cf. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record in light of the request for review and find no basis for reversing the findings.

² All dates are in 2024 unless otherwise indicated.

An organizing meeting was subsequently held at the Local 3 Union Hall on August 22. Foremen Jared Ray and Ronald “R.J.” Menchio, both of whom are unit employees who were eligible to vote in the election, testified for the Employer about what transpired at this meeting. Ray and Menchio each testified that an unidentified union representative, in response to a question asked by Green, stated that if the Petitioner won the election then he would not have to pay anything to buy his union book back, but if the Petitioner lost the election then he would need to pay a fee to get his book back.

Green testified that he did not speak to anyone regarding getting his membership back at the August 22 meeting. The Petitioner’s District Representative, Don Heverly, testified that Green asked about his membership status during the meeting. Heverly responded to Green by noting that after you get a contract you will be represented by the Iron Workers union. He also testified that he did not see Green interact with any local union representatives at the meeting. Heverly denied discussing Green’s fees during the meeting.

Having considered the record evidence and having adopted the Hearing Officer’s credibility resolutions favoring Green’s testimony over that of Ray and Menchio, the Regional Director found—consistent with Green’s account—that Danko told Green by phone, not at the meeting, that he would not have to pay a reinstatement fee to get his union book back if the Petitioner won the election.

DISCUSSION

We begin our review with the well-settled principle that “[r]epresentation elections are not lightly set aside.” *Safeway, Inc.*, 338 NLRB 525, 525 (2002). In evaluating party conduct during the critical period, the Board applies an objective standard, under which conduct is found to be objectionable if it has “the tendency to interfere with the employees’ freedom of choice.” *Cambridge Tool & Mfg. Co.*, 316 NLRB at 716; see also *Gulf States Cannery, Inc.*, 242 NLRB 1326, 1327 (1979) (observing that “[i]n evaluating whether or not certain campaign tactics constitute objectionable conduct, the Board has generally applied an objective standard in accord with the ‘tendency-to-influence test’ followed by the courts”), *enfd.* 634 F.2d 215 (5th Cir. 1981), *cert. denied* 452 U.S. 906 (1981).

Further, the Board will only set aside an election if the objectionable conduct could have affected the results of the election. Where the margin of the election exceeds the number of employees affected by the misconduct, the Board has generally declined to set aside the election unless the misconduct was disseminated to other voters. See, e.g., *Werthan Packaging, Inc.*, 345 NLRB 343, 345 (2005); *M.B. Consultants, Ltd.*, 328 NLRB 1089, 1089 (1999). And, “[i]n assessing the size of the margin of vic-

tory, the Board will assume the unopened, uncounted challenged ballots were cast in favor of the objecting party.” *Harborside Healthcare, Inc.*, 343 NLRB 906, 913 fn. 23 (2004). Here, the Petitioner won the election 9–7, meaning that the swing of a single vote, i.e., Green’s, would have resulted in an 8–8 tie vote and therefore the Petitioner would not have received a majority of votes cast. Relatedly, under *Harborside Healthcare*, the Board would necessarily assume that the single unopened, uncounted challenged ballot would have been cast in the Employer’s favor. *Id.* at 913 fn. 23. Applying that presumption here, the potential swing of Green’s vote would result in 9–8 vote against representation. Moreover, Green was the only known unit employee in the situation of being suspended and seeking the return of his union book/membership. Because Green’s vote alone was enough to swing the election, and because the promise to waive his reinstatement fee would inure to his sole benefit if the Petitioner won, it is of no consequence whether the promise was disseminated beyond Green himself in evaluating whether the allegedly objectionable conduct could have affected the election results.

Considering the merits of the Employer’s objection, the Board has long held that “[a] union cannot make, or promise to make, a gift of tangible economic value as an inducement to win support in a representation election.” *Go Ahead North America, LLC*, 357 NLRB 77, 77 (2011) (finding offer to waive back dues after decertification petition filed objectionable). Accordingly, the Board has often found gifts of tangible economic value to constitute objectionable conduct. See, e.g., *Mailing Services*, 293 NLRB 565, 565 (1989) (free medical screenings); *Owens-Illinois, Inc.*, 271 NLRB 1235, 1235–1236 (1984) (free jackets); *General Cable Corp.*, 170 NLRB 1682, 1682–1683 (1968) (gift certificates); *Wagner Electric Corp.*, 167 NLRB 532, 533 (1967) (free life insurance). Indeed, a union is, “like an employer, barred in the critical period prior to the election from conferring on potential voters a financial benefit to which they would otherwise not be entitled.” *Go Ahead North America*, 357 NLRB at 78 (quoting *Mailing Services*, 293 NLRB at 565); see also *McCarty Processors*, 286 NLRB 703 (1987) (finding objectionable incumbent union’s promise during the election campaign not to collect accrued dues, which provided employees with a substantial benefit).

Here, based on the facts as found by the Regional Director, Danko promised Green in a phone call that if the Petitioner won the election, Green’s union book/membership would be reinstated for free rather than Green having to pay a reinstatement fee of up to \$800 as provided by the Petitioner’s Constitution and By-Laws. However, if the Petitioner lost the election, Green’s only path to reinstated

union membership would be to obtain employment with a Petitioner-represented employer and pay the full reinstatement fee. Green admitted in his testimony that he had been suspended from membership by Petitioner locals and paid the full reinstatement fee of \$800 to reacquire his union book on two prior occasions. Accordingly, a reasonable employee in Green's circumstances would understand the promised reinstatement fee waiver to be a "gift of tangible economic value." See *Go Ahead North America*, 357 NLRB at 77. This promise would likewise reasonably tend to serve "as an inducement to win support in a representation election." *Id.* Accordingly, we conclude that, because an employee like Green seeking reinstatement of his union membership would reasonably be induced to support the Petitioner in the then-upcoming election, the offer, if attributable to the Petitioner, would constitute objectionable conduct.³ And, as noted in the dissemination discussion above, Green's inducement to support the Petitioner in the election alone would have been sufficient to swing the election in the Petitioner's favor.⁴

Furthermore, we note that the promised reinstatement fee waiver was a benefit to which Green would "otherwise not be entitled." *Id.* at 78 (emphasis added; citation omitted). Indeed, the Petitioner's Constitution and By-Laws specifically provides that "[r]einstatement fees *may* be waived for organizing purposes" (emphasis added). This permissive language effectively grants the Petitioner absolute discretion over whether to waive reinstatement fees. Cf. *King Electric, Inc. v. NLRB*, 440 F.3d 471, 474–4 75 (D.C. Cir. 2006) (finding objectionable union promise of benefit and concluding that "[i]f the union retained discretion whether to award such [job referral] benefits—the employees were not actually *entitled* to referral to union-signatory employers—then the union's promise to do so in this case could be thought a quid pro quo for a majority's voting for the union or, at least, staying to vote on election day") (emphasis in original). And, to the extent that the Petitioner could have implemented a practice constraining this unfettered discretion, the record indicates the opposite, namely that the Petitioner *collected* the reinstatement fees rather than waived them, as evidenced by Green having paid the fee on two prior occasions. *Id.* at 476 (observing that had the union established that it, in fact, "invariably" granted the job referral benefits, the case

might have come out differently); *Andal Shoe, Inc.*, 197 NLRB 1183, 1183–1185 (1972) (finding unobjectionable union's promise during the critical period not to collect past dues arrearages or reinstatement fees from suspended members or to collect any dues until a contract was executed with the employer because "[t]he [u]nion's constitution and bylaws d[id] not require the collection of such arrears on rejoining, and it ha[d] not been the Union's practice to collect them"). Accordingly, the Petitioner failed to establish that it had a "practice" of "invariably" waiving reinstatement fees during organizing campaigns, thereby leaving its absolute discretion intact. See *King Electric*, 440 F.3d at 476.

The Regional Director's analysis to the contrary misses the mark. In particular, the Regional Director found "no merit to the Employer's . . . arguments that there was sufficient evidence to establish the Petitioner offered an employee an economic gift in exchange for his support." Distinguishing *Go Ahead North America*, the Regional Director found "insufficient evidence to establish that [the] Petitioner was offering to forgive a debt that Green owes in order to buy his union book or reinstate his membership." Instead, the Regional Director found that "a union representative was merely explaining to Green whether he would incur any reinstatement fees if the Employer's employees voted for representation by Petitioner-[,] . . . consistent with the Petitioner's Constitution and By-Laws[,] and [that this explanation] applies to all of the Employer's employees, regardless of their support for the Petitioner." This analysis is erroneous in several respects.

Initially, the Regional Director framed the issue too narrowly, essentially concluding that because the gift promised to Green was not tantamount to the forgiveness of a debt that Green affirmatively owed—i.e., accrued back dues—the gift could not be one of "tangible economic value." But in *Go Ahead North America*, the Board found "an objectionable grant of a tangible financial benefit" in the forgiveness of back dues obligations because, given the suspect timing of that promise, "employees reasonably would infer that the purpose of the [u]nion's expressed willingness to forgive the obligation was to induce them to support the union." *Id.* at 78. Accordingly, the Board's rationale in that case was broader than the mere fact that the promised gift effectively amounted to

³ Cf. *NLRB v. River City Elevator Co.*, 289 F.3d 1029, 1033 (7th Cir. 2002) (finding objectionable union's preelection offer of mechanic's cards to unit employees who had not completed the requisite courses or exams because "the articles [offered were] sufficiently valuable and desirable in the eyes of the person to whom they [were] offered, to have the potential to influence that person's vote") (citation omitted).

⁴ Indeed, Green admitted that he was moved by the promise to waive his reinstatement fee in the event of a victory. Specifically, he testified that upon hearing that he would get his union book back without charge

if the Petitioner won, "I decided I wanted to stay with this company [Greco] and unionize this company" and that he would "wait it out with Greco . . . to see if they're going to unionize" and to "do my voting or whatever I need to do to try to get the company to get a union." On cross examination, Green confirmed that "from my understanding, I just wanted to wait, and then I wouldn't have had to pay anything" and that "I wanted to try to unionize this company . . . for me and the rest of the guys that worked there."

debt forgiveness. Significantly, the Board there also drew the governing legal principle from a variety of other cases finding objectionable union gifts not involving accrued back dues or other similar financial obligations. See *id.* at 77 (citing cases).

Moreover, we disagree with the Regional Director's suggestion that Danko was merely explaining the effect of a vote for representation on Green's responsibility for paying a reinstatement fee "consistent with the Petitioner's Constitution and By-Laws" applicable to all employees irrespective of their support for the Petitioner. Crucially, the Regional Director ignores the fact that the Petitioner has unfettered discretion over whether to waive reinstatement fees under its Constitution and By-Laws. Consequently, Danko was not merely "explaining" to Green a set policy and how it would apply depending on the election results, and the fact that the Constitution and By-Laws applied to all employees regardless of their union support is irrelevant. Rather, as discussed above, Danko promised Green the benefit of a reinstatement fee waiver to which he would "otherwise not be entitled." *Id.* at 78 (emphasis added; internal citation omitted).

Accordingly, the critical issue in this case is whether Danko was acting as an agent of the Petitioner at the time he made the promise. See *Millard Processing Services*, 304 NLRB 770, 771 (1991), *enfd.* 2 F.3d 258 (8th Cir. 1993), *cert. denied* 510 U.S. 1092 (1994). If he was, then the election should be set aside. If he was not, then his promise was not attributable to the Petitioner and would not be a basis for setting aside the election.⁵ As noted above, the Regional Director made no findings regarding Danko's agency status. In these circumstances, we find it appropriate to remand the case for the Regional Director to address the issue, on the basis of the existing record, in the first instance.

ORDER

The case is remanded to the Regional Director for further action consistent with this Decision.

Dated, Washington, D.C. September 30, 2026

James R. Murphy, Chairman

Scott A. Mayer, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD
MEMBER PROUTY, dissenting.

The outcome of this proceeding hinges on a question of agency. The Petitioner is the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers. It is undisputed that no personnel of the International Union made the statement of inducement asserted by the Employer to constitute objectionable conduct. Rather, the statement—that unit employee William Green could avoid paying a fee to have his union membership reinstated if the Union won the election—was made by Rich Danko, who is the business manager for Local 3 of the Iron Workers, a labor organization distinct from the International Union.

It is settled law that international unions are not to be held liable for the acts of their locals purely on the basis of the relationship between them. See *Musicians Local 47 (American Broadcasting)*, 255 NLRB 386, 391 (1981); *Mine Workers (Garland Coal)*, 258 NLRB 56, 59 (1981) ("Respondent Local and Respondent District are legal entities apart from Respondent International and [the] Respondent International is not automatically responsible for the acts of its affiliates"), *affd.* 727 F.2d 954 (10th Cir. 1984); *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212, 216–218 (1979). *Accord:* *California Saw & Knife Works*, 320 NLRB 224, 250–251 (1995), *enfd.* sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied* 525 U.S. 813 (1998). Thus, assigning responsibility to the International Union for the statement made by a Local 3 official cannot be established based on the mere fact of affiliation between the union entities here. More must be shown. The Board determines whether that requisite showing is made by applying the common law rules of agency. See, e.g., *California Saw & Knife Works*, *supra*, 320 NLRB at 250.

The Employer's Objection expressly declares that the Petitioner International Union engaged in objectionable conduct "by and through its representative and agents." The burden of proving an agency relationship is on the party asserting its existence, here the Employer. See *Millard Processing Services*, 304 NLRB 770, 771 (1991), *enfd.* 2 F.3d 258 (8th Cir. 1993), *cert. denied* 510 U.S. 1092 (1994); *Pierce Corp.*, 288 NLRB 97, 101, *fn.* 65 (1988), citing *Sunset Line & Twine Co.*, 79 NLRB 1487, 1508 (1948). Indeed, the Employer was clearly on notice from the outset of this proceeding that the issue of agency was a contested one. At the hearing, the attorney for the Petitioner expressly denied that Danko is an agent of the

⁵ No party contends that the conduct would be objectionable under the third-party misconduct standard nor would the record support a finding that it was.

International Union or that the International Union can be charged with his statements.

The Employer contends in its Request for Review that Danko was clothed with apparent authority to speak on behalf of the International Union and thus was acting as an agent of the International Union. The apparent authority theory requires some manifestation by the principal (the International Union here) to a third party that the principal has authorized the alleged agent (Danko) to do the acts in question. See, e.g., *Service Employees Local 87 (West Bay Maintenance)*, 291 NLRB 82, 82–83 (1988).

The Employer cites only one piece of evidence in its Request for Review in support of finding such manifestation here: the testimony by unit employee and voter William “Billy” Green stating “That’s the guy [Danko] that *they* told me I needed to talk to get my [union] book back.” (Emphasis supplied).¹ The Employer apparently surmises that “they” referred to the International Union.

However, there is no evidentiary basis to support this surmise. Green did not testify who “they” are. His testimony gives no indication whatsoever that “they” refers to the International Union. There is simply no evidence in the record that Green was directed by the International Union to call Danko. There is likewise no evidence that

Danko was speaking for the International Union. The Employer engages in sheer, unsubstantiated speculation by construing a lone line of Green’s testimony as establishing that it was someone from the International Union that told him to call Local 3, and Danko specifically, about being reinstated to union membership.

The Employer has adduced nothing in its Request for Review to support its contention of agency beyond the single, plainly insufficient line of testimony. It does not cite any other evidence in its Request for Review to support its theory of apparent authority, and my colleagues have identified no other evidence.² There is thus no need to remand this case to the Regional Director for a finding regarding Danko’s agency status, because the record evidence cannot support such a finding. Accordingly, I dissent.

Dated, Washington, D.C. September 30, 2026

David M. Prouty,

Member

NATIONAL LABOR RELATIONS BOARD

¹ Green was a former member of the Petitioner’s Local Unions 3 and 772. Green’s union membership was suspended at the time of the events in this case. Green called Local 3 Business Manager Danko and inquired about how he could get his “union book” i.e. (membership) back. Danko responded that if the Petitioner did not win the election at the Employer, Green could work for another unionized employer and pay to lift his

suspension; if the Petitioner won the election Green would not have to pay to be reinstated.

² The Employer in its Request for Review suggests that Danko was actually authorized by the International Union to speak on its behalf. There is no evidence to support this claim. My colleagues do not contend otherwise.