

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Michael Coutre,)	
)	
Petitioner,)	
)	
and)	Case No. S-RD-21-002
)	
Village of Crestwood,)	
)	
Employer,)	
)	
and)	
)	
Illinois Council of Police,)	
)	
Labor Organization/Incumbent.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

Petitioner filed the instant petition seeking an election to determine whether the employees of the Village of Crestwood Police Department (Employer) included in a bargaining unit represented by the Incumbent union Illinois Council of Police (Union) desires continued representation. On October 13, 2020, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) recommending the Board block an election and hold the petition in the above-referenced case in abeyance until the resolution of the unfair labor practice charges in Case Nos. S-CA-20-057 and S-CA-20-114, which were filed by Incumbent Illinois Council of Police (Union) against Employer Village of Crestwood. In S-CA-20-057, the Union alleged the Employer threatened employees with termination if they did not sign the petition to decertify the Union as the exclusive representative. In S-CA-20-114, the Union alleged the Employer engaged in bad faith bargaining to frustrate and delay the collective bargaining process. The ALJ determined blocking the election and holding the instant case in abeyance to be appropriate based on her findings that the

outcome of these two unfair labor practice charges could affect the conduct of a fair election in the pending petition, citing several Board and court cases in support. Petitioner timely filed exceptions to the RDO; neither the Employer nor the Union responded to the exceptions.

After a review of the record, RDO, and Petitioner's exceptions, we are unpersuaded by Petitioner's exceptions. Petitioner challenges the ALJ's findings and recommendations by disputing the allegations in the unfair labor charge underlying Case No. S-CA-20-057 rather than identifying reasons for us to reject the ALJ's recommendation to block the election and hold the instant matter in abeyance. Notably, by focusing on his dispute with the allegations in Case Nos. S-CA-20-057 and S-CA-20-114, Petitioner only highlights the propriety of holding the instant case in abeyance until those two charges in are resolved. Moreover, the ALJ also based her recommendations on the charge filed in Case No. S-CA-20-114 on which Petitioner admittedly claims he is not able to comment.

In his exceptions, Petitioner requests oral argument so that, as Petitioner states, "the workforce is assured that the Board will take into consideration the views and opinions of the entire workforce as a whole, and not the sole opinions of the Union or the minority of individuals they are attempting to represent or basing their facts on." We decline to set this matter for oral argument. Section 1200.135(c) of the Board's rules provides for the Board to grant or deny requests for oral argument based on the significance, complexity, and novelty of the issues. 80 Ill. Adm. Code 1200.135(c).¹ Inasmuch as Petitioner has not advanced any arguments or contentions in support of his exceptions other than his assertions that the allegations in Case No. S-CA-20-057 are unfounded, we find no issues of "significance, complexity, and novelty" to consider at an oral argument.

¹ Section 1200.135(c) states: Parties desiring oral argument before the Board shall request oral argument and state the reasons for the requests in their appeals, exceptions, and responses. The Board shall grant or deny requests for oral argument depending on the significance, complexity and novelty of the issues. In addition, the Board may, on its own motion, request oral argument, depending upon the significance, complexity and novelty of the issues. 80 Ill. Adm. Code 1200.135(c).

For the above reasons, we accept the ALJ's recommendations and adopt the RDO in its entirety as a decision of the Board.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois, via WebEx videoconference on February 11, 2021, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois via WebEx videoconference on March 11, 2021, and issued on March 15, 2021.

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On August 10, 2020, Michael Coutre (Petitioner) filed a decertification petition with the State Panel of the Illinois Labor Relations Board (Board), seeking an election to determine whether a bargaining unit of employees of the Village of Crestwood Police Department (Employer) desired continued representation by the Illinois Council of Police (Union). Before the petition was filed, the Union filed two unfair labor practice charges against the employer in Case Nos. S-CA-20-057 and S-CA-20-114. The Executive Director issued a complaint in Case No. S-CA-20-057. The investigation in Case No. S-CA-20-114 is still pending. On August 28, 2020, the Union filed objections to the petition and requested that the Board, pursuant to Section 9(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), hold the election in abeyance until such time as the unfair labor practice charges are resolved. On September 16, 2020, the case was reassigned to me. After full consideration of all aspects of the controversy, I recommend the following:

I. BACKGROUND

On August 1, 2019, in Case No. S-RC-20-001, the Board certified the Union as the exclusive representative of all part-time police officers employed by the Village of Crestwood Police Department (Employer).

On October 24, 2019, the Union filed an unfair labor practice charge against the Employer in Case No. S-CA-20-057 alleging that it had violated Sections 10(a)(1), (2), and (3) of the Act. On April 21, 2020, the Executive Director issued a complaint for hearing. The complaint alleges numerous violations of Sections 10(a)(2) and (1) of the Act. It alleges that the Employer's agents interrogated employees about who signed union authorization cards, threatened employees, and ultimately terminated four of them to discourage support for the Union. The complaint further alleges that the Employer terminated at least one employee for refusing to sign "anti-union paperwork."¹

In support of its motion to hold this petition in abeyance, the Union provided copies of the affidavits it submitted to the Board during the investigation of Case No. S-CA-20-057. These affidavits flesh out the allegations contained in the complaint. They make clear that the Union claims the Employer allegedly threatened officers with termination if they did not sign the petition to decertify the Union, and that it terminated the employment of four officers when they refused to sign.

On May 11, 2020, the Union filed a second charge in Case No. S-CA-20-114 against the Employer alleging that it violated Sections 10(a)(4) and (1) of the Act by engaging in bad faith bargaining to frustrate agreement and to stall the bargaining process until the certification bar passed.

II. ISSUES AND CONTENTIONS

The Union requests that the Board, pursuant to Section 9(a) of the Act, hold the proposed representation election in abeyance until such time as the Union's unfair labor practice charges are resolved. The issue is whether the Board should block the election pending resolution of those charges.

¹ See S-CA-20-057 Complaint, ¶ 6, 28.

III. DISCUSSION AND ANALYSIS

A blocking order is appropriate in this case.

Section 9(d) of the Illinois Public Labor Relations Act provides that “[t]he Board may ... revoke the certification of the public employee organizations as exclusive bargaining representatives which have been found by a secret ballot election to be no longer the majority representative.” 5 ILCS 315/9(d). However, the Act, in Section 9(a), also expressly allows for “blocking charges”: “Nothing in this Section shall prohibit the Board, in its discretion, from extending the time for holding an election for so long as may be necessary under the circumstances, where the purpose for such extension is to permit resolution by the Board of an unfair labor practice charge filed by one of the parties to a representational proceeding against the other based upon conduct which may either affect the existence of a question concerning representation or have a tendency to interfere with a fair and free election where the party filing the charge has not filed a request to proceed with the election.” 5 ILCS 315/9(a)(2). Pursuant to this provision, the Board may postpone or “block” an election, until it resolves pending unfair labor practice charges. County of Kankakee and Kankakee County State's Attorney, 31 PERI ¶ 168 (IL LRB-SP 2015).

While the Board is statutorily empowered to postpone a representation election to allow resolution of unfair labor practice charges, it exercises discretion in doing so. County of Kankakee and Kankakee County State's Attorney, 31 PERI ¶ 168; Pace Northwest Div., 22 PERI ¶ 15 (IL LRB-SP 2006); Sarah P. Culbertson Mem'l Hosp., 21 PERI ¶ 139 (IL LRB-SP 2005). It considers a blocking order an extraordinary remedy, extraordinary in part because it runs counter to the general goal of prompt determinations regarding representation. County of Kankakee and Kankakee County State's Attorney, 31 PERI ¶ 168. The guiding principle is to assess whether the allegations of the unfair labor practice charges, if true, would prevent a fair election. Sarah D. Culbertson Mem'l Hosp., 21 PERI ¶ 139; Forest Preserve District of Cook County, 4 PERI ¶ 3010 (IL LRB 1988). The Board, in exercising its discretion, hopes to ensure those conditions necessary to allow employees to exercise free choice in the representation election. Illinois Nurses Ass'n and County of Cook, 21 PERI ¶ 53 (IL LRB-LP 2005).

The Board generally holds that an employer's conduct prior to the filing date of a representation petition cannot be considered as objectionable conduct to an election resulting from the filing of a representation petition. Illinois Nurses Ass'n and County of Cook, 21 PERI ¶ 53.

However, the Board does consider the “continuing effects” of pre-petition activities. Illinois Nurses Ass'n and County of Cook, 21 PERI ¶ 53; City of Rock Island (Parks and Recreation), 7 PERI ¶2039 (IL SLRB 1991). It likewise considers pre-petition alleged misconduct when the allegations include clearly proscribed activity likely to have a significant impact on the election, such as an employer’s alleged harassment of union adherents and efforts to coerce employees to abandon the union. Forest Preserve District of Cook County, 4 PERI ¶ 3010 (employer’s pre-petition alleged misconduct, if proven true, could “significantly erode the union’s support and materially affect an election”). This accords with the approach taken by the federal sector. As the Seventh Circuit noted, “in employer-assisted decertification petition situations, there is, as a practical matter, a certain artificiality in drawing a rigid distinction between pre-petition and post-petition conduct.” Ron Tirapelli Ford v. NLRB, 987 F.2d 433, 443 (7th Cir. 1991).

Here, a blocking order is appropriate based on the Union’s allegations in Case No. S-CA-20-057 because the allegations, if proven true, would have a tendency to interfere with a fair and free election and would also affect the existence of a question concerning representation. The Union asserts that the Employer threatened employees with termination if they did not sign the petition to remove the Union as the employees’ exclusive representative. The Union further alleges that the Employer followed through with its threat by terminating the employment of four officers when they refused to sign. This conduct, if proven true, would tend to discourage employees from supporting the Union and would directly affect the showing of interest. The potential for this alleged misconduct to interfere with a free and fair election is heightened by the fact that it allegedly occurred at a time when it could most significantly erode the Union’s support—in the certification year and before the parties had negotiated an initial contract. The Board has previously blocked elections when presented with similar allegations of coercive and discriminatory conduct by an employer. Forest Preserve District of Cook County, 4 PERI ¶ 3010.

A blocking order is similarly appropriate based on the bad faith bargaining allegations raised in Case No. S-CA-20-114. Pending charges alleging a refusal to bargain in good faith can “provide[] a basis for application of the blocking mechanism to a decertification proceeding.” Am. Fed'n of State County & Mun. Employees, Council 31, AFL-CIO v. Illinois State Labor Relations Bd., County of Menard, 187 Ill. App. 3d 585, 598 (4th Dist. 1989) (citing, Big Three Industries, Inc., 201 NLRB 197 (1973)); see also Independent Bridge Tenders Organization and City of Chicago, 2 PERI ¶ 3022 (IL LLRB 1996). For example, in Big Three Industries, Inc., the National

Labor Relations Board (NLRB) issued a blocking order based on a union's allegation that the employer engaged in surface bargaining during the first year of the union's certification. Big Three Indus., Inc., 201 NLRB 197, 197 (1973). The NLRB reasoned that "the orderly procedure of collective bargaining...requires that employees be bound by their choice of representative during the period of ongoing negotiations as well as the period of litigation of the bona fides of an employer's bargaining efforts." Big Three Indus., Inc., 201 NLRB at 197. Also, as the Illinois Labor Relations Board noted, an employer's refusal to bargain with the incumbent union in the certification year could well influence election results. Independent Bridge Tenders Organization and City of Chicago, 2 PERI ¶ 3022 (discussing Big Three Industries, but declining to block election where charging party executed written request to proceed).

Here, if the Union were to prevail on the charge alleging a refusal to bargain in good faith, the remedy would be a bargaining order, which would preclude an election for a certain period of time, in any event. Big Three Indus., Inc., 201 NLRB at 197. In addition, the parties' bargaining relationship here is in its infancy, and the employer's alleged bad faith bargaining therefore has a higher likelihood of causing employee disaffection with the Union than it might have in the context of a longer bargaining relationship. Forest Preserve District of Cook County, 4 PERI ¶ 3010 (considering length of bargaining relationship); cf. Kankakee County State's Attorney, 31 PERI ¶ 168.

In sum, the election is blocked until the unfair labor practice charges in Case Nos. S-CA-20-057 and S-CA-20-114 are resolved.

IV. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the petition in Case No. S-RD-21-002 is held in abeyance until such time as the charges in Case Nos. S-CA-20-057 and S-CA-20-114 are resolved. The Petitioner shall be served with any dismissal, complaint for hearing, administrative law judge decision, or Board decision in Case Nos. S-CA-20-057 and S-CA-20-114. The Petitioner shall have 15 days after service of the Board's disposition of the charge to request the petition be

reopened. Failure to timely request that the petition be reopened within the time allowed will result in dismissal of the petition.

V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 13th day of October, 2020

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/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**