STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Northbrook Public Works Department Association,	)	
Petitioner,	)	Case No. S-RC-16-007
and	)	
Village of Northbrook (Public Works Department),	)	
Employer,	)	
and	)	
International Union of Operating Engineers, Local 150,	)	
Incumbent	)	

ORDER

On September 28, 2015, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its November 17, 2015 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 18th day of November, 2015.

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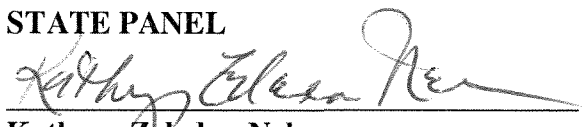

Kathryn Zeledon Nelson
General Counsel

STATE OF ILLINOIS
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Northbrook Public Works Department Association, Petitioner, and Village of Northbrook (Public Works Department), Employer, and International Union of Operating Engineers, Local 150, Incumbent	)	Case No. S-RC-16-007

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 7, 2015, the Northbrook Public Works Department Association (NPWDA or Petitioner) filed an election petition with the Illinois Labor Relations Board (Board) seeking to represent an existing bargaining unit of employees employed by the Village of Northbrook Public Works Department (Employer) in the following titles: mechanic; maintenance worker – sewers; maintenance worker – trees/traffic; maintenance worker – streets; maintenance worker – customer service; maintenance worker – water distribution; water plant maintenance worker; water plant operator. The unit is currently represented by the International Union of Operating Engineers, Local 150 (Incumbent or IUOE).

On September 10, 2015, the IUOE filed objections to the petition. In accordance with Section 9(a) of the Act, the undersigned Board agent conducted an investigation. On September 14, 2015, I issued an Order to Show Cause to the Petitioner as to why the petition should not be dismissed. The Petitioner filed a timely response.

I. Investigatory Facts

The IUOE and the Employer were parties to a collective bargaining agreement. The agreement had an expiration date of April 30, 2015, but its effective date is ambiguous. Section 23.01 of the agreement indicates that the effective date of the agreement is November 30, 2011 because it provides that the "Agreement shall be effective the day after it is executed by both parties," and the last party to sign the agreement did so on November 29, 2011. However, other language in the agreement indicates that the effective date of the agreement is May 1, 2011. Each page of the agreement contains the following header: "effective May 1, 2011 through April 30, 2015," and the wage schedules specifically provide that they are "effective May 1, 2011." Furthermore, the cover page of the agreement states the following dates in bold letters: May 1, 2011 to April 30, 2015.

The contract provided that it would renew automatically from year to year following its stated expiration date (April 30, 2015) unless either party gave written notice of an intent to modify the agreement within the specified window period prior to that date. The contract further stated that the agreement would continue in force during negotiations for a new contract unless and until a party gave 10 days written notice of its intent to terminate the agreement.

These terms are set forth in the contract's "Term of Agreement" clause, reproduced below:

> **ARTICLE XXIII**
>
> **TERM OF AGREEMENT**
>
> **Section 23.01**. This Agreement shall be effective the day after it is executed by both parties in 2011 and shall remain in full force and effect until the 30th day of April 2015. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing at least sixty (60) days prior to the anniversary date that it desires to modify this Agreement. In the event that such notice is given, negotiations shall begin not later than thirty (30) days prior to the anniversary date. This Agreement shall remain in full force and be effective during the period of negotiations and until notice of termination of this Agreement is provided to the other party in the manner set forth in the following paragraph.
>
> In the event either party desires to terminate this Agreement during the period of negotiations, written notice must be given to the other party not less than ten (10) days prior to the desired termination date.

On December 18, 2014, the IUOE gave the Employer timely, written notice of its intent

to modify the contract and begin negotiations for a new collective bargaining agreement. The parties are currently in negotiations for a successor contract. Neither party has given notice of intent to terminate the agreement.

On August 7, 2015, the Petitioner filed its election petition with the Board.

II. Issues and Contentions

The issue is whether there is a contract bar to the election petition.

The IUOE argues that there is a contract bar to the petition under Section 1210.35 of the Board's Rules because the parties' Agreement is still in effect, pursuant to its negotiated terms. Moreover, the IUOE claims the bar extends until 90 to 60 days prior to the end of the contract's fifth year under Section 1210.35(a)(2) of the Board's Rules because more than four years have elapsed since May 1, 2011, the date on which the IUOE claims the agreement became effective.

The Petitioner argues that there is no contract bar to the petition because the IUOE contract expired on April 30, 2015. On the same grounds, the Petitioner disputes the IUOE's assertion that it must wait until 90 to 60 days prior to the end of the contract's fifth year before filing a petition. The Petitioner also notes that Section 1210.35(a)(2) of the Board's Rules does not apply to this case because less than four years have elapse since November 30, 2011, the date on which the Petitioner claims the agreement became effective.

III. Discussion and Analysis

The IUOE contract does not bar the petition because IUOE terminated the contract's barring effect by reopening negotiations prior to the date on which the contract automatically renewed. Moreover, the contract that currently exists between the IUOE and the Employer cannot bar the petition because it is an interim contract and one of indefinite duration.

The purpose of the contract bar doctrine is "to promote the policy of stability in collective bargaining relationship with an incumbent" and to "give the parties time and opportunity to administer the collective bargaining agreement free of distraction from outside challenges." Rockford School Dist. No. 205. 6 PERI ¶ 1093 (IELRB 1986).

Section 9(h) of the Act sets forth the contract bar doctrine as it pertains to elections.[1] 5 ILCS 315/9(h). Section 1210.35(a) of the Board's rules expands upon the statutory contract bar language by providing than an effective collective bargaining agreement will bar any representation or decertification petition that is not filed during the specified window periods:

> 1) When there is in effect a collective bargaining agreement of 3 years or shorter duration covering all or some of the employees in the bargaining unit, representation and decertification petitions may be filed during the window period (between 90 and 60 days prior to the scheduled expiration date of the collective bargaining agreement) or anytime after the expiration of the collective bargaining agreement. However, the collective bargaining agreement shall serve as a bar (contract bar) to filing representation or decertification petitions outside of the window period.
>
> 2) Where more than 4 years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such an agreement, and between 90 and 60 days prior to the end of each successive year of such agreement. (Section 9(h) of the Act).
>
> 80 Ill. Admin. Code 1210.35(a)

The Board has further refined the contract bar doctrine through its case law by adopting the approach of the National Labor Relations Board (NLRB). To that end, the ILRB has held that a contract's provisions for automatic renewal or extension will not bar a petition filed after the contract's stated expiration date where a party has given notice of its intent to reopen negotiations prior to the date of automatic renewal, and where the parties have not yet reached a new contract. Northern Ill. University (Dep't of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000) citing Deluxe Metal Furniture Co., 121 NLRB 995, 1002 (1958). The Board has acknowledged that a party's notice of intent to renegotiate the contract will prevent its renewal for contract bar purposes even where the contract's terms provide that the contract will continue in force during negotiations. Id.

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[1] It provides the following: "No election shall be directed by the Board in any bargaining unit where there is in force a valid collective bargaining agreement. The Board, however, may process an election petition filed between 90 and 60 days prior to the expiration of the date of an agreement, and may further refine, by rule or decision, the implementation of this provision. Where more than 4 years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such an agreement, and between 90 and 60 days prior to the end of each successive year of such agreement." 5 ILCS 315/9(h).

Similarly, the Board has held that interim agreements that extend the life of the existing contract while the parties negotiate a new contract do not bar the filing of a representation petition. Chicago Park Dist., 9 PERI ¶ 3009 (IL LLRB 1993); Cnty. of Winnebago and Winnebago Cnty. Recorder of Deeds, 7 PERI ¶ 2024 (IL SLRB 1991); Alliance Manufacturing Co., 101 NLRB 112 (1952); John Liber & Company, 123 NLRB 1174 (1959); Crompton Company, Inc., 260 NLRB 417 (1982).

Here, the Union's request to reopen negotiations rendered the contract ineffective to bar a petition because the Union made the request prior to the date of the contract's automatic renewal. Id. Under these circumstances, the contract's language does not create a contract bar even though it provides that the "Agreement shall remain in full force and be effective during the period of negotiations." Id. (no contract bar where parties began negotiations for new contract prior to automatic renewal date and had not executed contract before the date on which the petition was filed); Deluxe Metal Furniture Co., 121 NLRB at 1002 ("Any notice of a desire to negotiate changes in a contract received by the other party thereto immediately preceding the automatic renewal date provided in the contract will prevent its renewal for contract bar purposes, despite provision or agreement for its continuation during negotiations").

Moreover, the contract that exists between the Union and the Employer is reasonably viewed as an interim agreement that is likewise ineffective to bar a petition because it merely extends the life of the existing contract while the parties negotiate a new one. Chicago Park Dist., 9 PERI ¶ 3009 (30-day interim agreement extending the old contract until a new contract was negotiated did not constitute a bar to representation petition); Cnty. of Winnebago and Winnebago Cnty. Recorder of Deeds, 7 PERI ¶ 2024 (agreement to extend expired contract did not bar a petition where the parties were still engaged in substantial negotiations for a new agreement).

In addition, the indefinite term of that extended agreement likewise defeats the Union's claim that the agreement bars the petition. The NLRB has held that contracts with an indefinite term do not bar petitions, and it is appropriate to apply this rule here because the ILRB has adopted the NLRB's approach to the contract bar doctrine in other, related respects.[2] South

[2] Am. Fed'n of State, Cnty. & Mun. Empl. v. Ill. State Labor Rel. Bd., 190 Ill. App. 3d 259, 264 (1st Dist. 1989)(Rulings of the NLRB and federal courts construing labor relations acts are persuasive authority when analyzing similar provisions in Illinois acts); Chicago Park Dist., 9 PERI ¶ 3009 (citing NLRB case law in support of contract bar analysis).

Mountain Healthcare & Rehabilitation Center, 344 NLRB 375, 375-376 (2005); Fruitrale Canning Co., 85 NLRB 684 n. 9. The contract in this case has no definite termination date because it "remain[s] in full force...during...negotiations" and can be terminated at any time by either party in writing at least "10 days prior to the desired termination date." It could continue in effect for as little as 10 days or it could continue in perpetuity and therefore cannot bar the petition. South Mountain Healthcare & Rehabilitation Center, 344 NLRB 375, 375-376 (2005) (an expiration date is a material term of a contract, the absence of which precludes a contract from barring a petition); Fruitrale Canning Co., 85 NLRB 684 n. 9 (1949).

Finally, under these circumstances, it is unnecessary to determine the precise duration of the parties' agreement because there is no contract bar, irrespective of the contract's original term. Northern Ill. University (Dep't of Safety), 17 PERI ¶ 2005 (noting that the parties' decision to reopen their agreement precluded a contract bar, "regardless of [the contract's] effective date").

For these reasons, there is no contract bar to the election petition.

IV. Conclusions of Law

There is no contract bar to the petition filed by the Northbrook Public Works Department Association.

V. Recommended Order

It is hereby ordered that a secret ballot election shall be conducted among the employees employed by the Village of Northbrook (Public Works Department) n the election unit defined below, at a time and place set forth in the Board-issued Notice of Election. In accordance with the Act and the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, eligible employees, set out in the unit stated below, shall be given an opportunity to vote between representation by the International Union of Operating Engineers, Local 150, in the unit certified by the Board in Case No. S-UC-(S)-94-35, by the Northbrook Public Works Department Association, or "No Representation."

UNIT FOR VOTING:

INCLUDED: All regular full-time and regular part-time employees working in the following classifications in the Public Works Department of the Village of Northbrook:

Mechanics
Maintenance workers – sewers
Maintenance workers – trees/traffic
Maintenance workers – streets
Maintenance workers –customer service
Maintenance workers water distribution
Water plant maintenance workers
Water plant operators

EXCLUDED: All probationary, summer help, and non-regular part-time employees working in the above classifications; all custodians; all superintendents and supervisory employees; all managerial employees; all confidential employees; all office clericals, professional employees and guards as defined in the Act, and all other employees of the Village of Northbrook.

VI. Exceptions

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, 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, if at all, with the Board's General Counsel, Kathryn Zeledon Nelson, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in 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 28th day of September, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge