

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

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| Ronda Powell, |) | |
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| Petitioner |) | |
| |) | |
| County of Kankakee and Kankakee |) | |
| County State's Attorney, |) | |
| |) | Case No. S-RD-15-003 |
| Employers |) | |
| |) | |
| and |) | |
| |) | |
| American Federation of State, County and |) | |
| Municipal Employees, Council 31, |) | |
| |) | |
| Incumbent |) | |

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

On January 21, 2015, Executive Director Melissa Mlynski denied the request of Incumbent, American Federation of State, County and Municipal Employees, Council 31, to block a decertification election pending resolution of an unfair labor practice charge, and instead issued an order directing an election. Incumbent has filed an appeal of the Executive Director's action, pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code § 1200.135, and Petitioner has filed a response. The Employer has not responded to the appeal. For the reasons that follow, we affirm the Executive Director's decision to order an election.

The petition to block a decertification election

On October 9, 2014, Petitioner Ronda Powell filed a petition to decertify Incumbent as the exclusive representative of a bargaining unit of employees of the Kankakee County State's Attorney's Office. Neither the Incumbent, nor the Employers, Kankakee County State's

Attorney and County of Kankakee, filed objections to the petition; however, on October 30, 2014, Incumbent filed an unfair labor practice charge against the Employers in Case No. S-CA-15-058, and simultaneously requested in this Case No. S-RD-15-003 a blocking charge determination, taking the position that the decertification election should not take place until the unfair labor practice charge is resolved. Petitioner responded in opposition to the request for a blocking charge determination.

Issue presented

The unfair labor practice charge in Case No. S-CA-15-058 alleged the Employer violated Section 10(a)(4) by: 1) direct dealing with a bargaining unit member; 2) providing a wage increase outside the scope of the collective bargaining agreement and without negotiating with Charging Party; 3) unilaterally implementing changes in health insurance amidst negotiations over a successor collective bargaining agreement and without notice or an opportunity to bargain; and 4) engaging in regressive bargaining and overall bad faith bargaining. After investigation, the Executive Director dismissed that part of the charge containing allegations 1 and 2, but issued a complaint that included allegations 3 and 4 which remains pending before an ALJ. The issue is whether the pendency of the complaint warrants blocking the decertification election.¹

Provisions of the Act and the Board application

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

¹ In a separate decision issued today in Case No. S-CA-15-058, we affirmed the dismissal of the first two allegations of the charge. Member Brennwald dissented with respect to the first allegation, but our decision to proceed with the election in this case would not be altered even if the pending complaint raised all four allegations.

representative.” 5 ILCS 315/9(d). However, the Act also expressly allows in Section 9(a) for “blocking charges”:

nothing in this Section [9] 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 See also Board Rule at 80 Ill. Admin. Code §1210.60 allowing for decertification petitions. Although the Act does not expressly limit the time for resolving decertification petitions, it has been amended to limit the time within which a bargaining unit’s exclusive representative may be determined by election in Section 9(a)³ or majority interest petition in Section 9(a-5),⁴ and in any event timely resolution of disputes over a unit’s representative is consistent with the overall policies of the Act.

While the Board is statutorily empowered to postpone a representation election to allow prior resolution of unfair labor practice charges, it exercises discretion in doing so. Pace Northwest Div., 22 PERI ¶15 (IL LRB-SP 2006); Sarah D. 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. Independent Bridge Tenders Organization and City of Chicago, 2 PERI ¶ 3022

² This language was not in the original version of the Act. Marie T. Perkins and Forest Preserve Dist. of Cook Cnty., 4 PERI ¶3010 (IL LRB 1988) (noting lack of language authorizing but finding authority implicit) See Independent Bridge Tenders Org. and City of Chicago, 2 PERI ¶ 3022 (IL LRB 1986) (noting nothing in Act requires blocking, but practice developed as a matter of NLRB policy).

³ The time limit for a representation election was added in 1987, just three years after the Act became effective. P.A. 84-1443, eff. Jan. 5, 1987.

⁴ The time limit for processing majority interest petitions was added six years after that means of representation determination first became available. P.A. 96-813, eff. Oct. 30, 2009.

(IL LRB 1986); cf. Bd. of Regents (Sangamon State Univ.), 4 PERI ¶1003 (IL ELRB 1987) (holding the same because of similar provisions of the Illinois Educational Labor Relations Act). The goal is to allow public employees to exercise free choice, and 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 (IL LRB-SP 2005); Forest Preserve District of Cook County, 4 PERI ¶3010 (IL LLRB 1988).

Executive Director's rationale

In determining not to block the election in the case presently before the Board, the Executive Director noted that she had dismissed two unfair labor practice allegations for failure to raise an issue of fact or law warranting a hearing. She found that the remaining two allegations of unilateral change in health insurance benefits and regressive and bad faith bargaining were insufficient to block the election because, even if true, they would be insufficient to undermine union sentiment or otherwise create an atmosphere tainted by unlawful interference that would prohibit a free and fair election.

In making her determination, the Executive Director relied in part upon the lengthy and detailed progression of dissatisfaction with the Union provided by the Petitioner. Highlights of that schedule include: a 12% increase in union dues beginning in December 2013; a lengthy dispute with Union representatives about whether the Union could negotiate a contract for the State's Attorney's unit separate from a contract for a unit composed of circuit clerk employees that it also represented; distrust of the Union representative when he falsely stated that the Board had certified a single bargaining unit including both sets of employees; and refusal to allow the unit to vote on its separate contract until after the Union had successfully negotiated the circuit clerk's contract. The Executive Director concluded that, in light of this background, the

Employer's alleged conduct regarding health insurance and bad faith bargaining was insufficient to warrant the extraordinary remedy of blocking the decertification election.

Arguments on appeal

In its appeal, the Incumbent sets out the four allegations of its charge in Case No. S-CA-15-058. As previously noted, two were dismissed. The remaining two are: 1) that, since October 1, 2014, the Employer has been charging employees more than 25% of the health insurance premium cost, even though the prior collective bargaining agreement limited such charges to 25%;⁵ and 2) that on September 26, 2014 the Employer submitted a set of eight proposals including increasing the number of personal days and increasing the starting salary hourly wage rates, but on October 10, 2014, the day after the decertification petition was filed, the Employer submitted a new set of proposals without these two components.

Incumbent argues that the Executive Director focused exclusively on the question of whether the decertification petition itself was tainted by the alleged unfair labor practices and overlooked the second necessary inquiry of whether the alleged unfair labor practices so polluted the election atmosphere that a free and fair election is impossible. In fact, the Executive Director's order very convincingly demonstrates that there would have been a decertification petition with or without the alleged unfair labor practices, and finds, but does not as fully address that there can still be a fair election. However, in its own attempt to very briefly demonstrate the election atmosphere is so polluted as to preclude a fair election, the Incumbent relies upon the existence of all four allegations of its charge, including the two which were dismissed.

⁵ The Employer is allegedly charging employees 25% of what the premium would have been for a \$1000 deductible plan, but since the Employer actually purchased a \$5000 deductible plan, the employer is actually charging a higher percentage of the actual premium.

Petitioner's response

In her response, Powell argues that the first two allegations were properly dismissed. She states the amount deducted for a portion of the health insurance premiums would have no bearing on the election as no member of the unit had complained about the deductions and they became aware of the issue only upon the filing of the unfair labor practice charge. Concerning alleged bad faith bargaining, Powell asserts the unit members were pleased with having four one-hour sessions scheduled at the end of the day. With respect to the withdrawal of certain offers, Powell notes that this occurred after the decertification petition had been filed and the unit members were not aware of this fact until the unfair labor practice charge was filed. She also points out that at the third negotiating session, the employer had offered a set of proposals the unit members wished to bring back for a vote, but it was the union representatives who prevented that, and that at the next session it was the union representatives who postponed bargaining the State's Attorney's unit contract until they had completed the Circuit Clerk's unit contract. She claims that it is the Union's filing of unfair labor practice charges that have tended to strengthen member dissatisfaction with the current representation. Powell concludes by arguing the decertification process has been long enough, and the Union should not be allowed to benefit from further delay.⁶

⁶ While it is unclear the extent to which Powell is speaking on behalf of the other members of the unit (that is what the election is for), in a "Supplemental Response to Incumbent's Request to Block," Powell submitted to the Executive Director, she makes reference to three informal votes of the unit members. On April 24, 2014, eight of 11 apparently voted to stay with the current representative. On September 12, 2014, seven of nine voted to ask the representative to pursue separate contracts. And on October 8, 2014, seven members were present to vote for new officers, after which six met and unanimously decided to seek decertification.

Analysis

It is clear that the actions the Employer is alleged to have taken have had no impact on the decision to file the decertification petition. The decertification petition was filed before some of the alleged Employer actions and certainly would have been filed regardless of those actions. But that still leaves the question of whether the atmosphere is at this point so polluted that there is no chance of having a fair election, the alternative basis for a blocking order.

We have considered various factors in determining whether to block an election. The passage of a long period of time following the filing of an election petition weighs against a blocking order. Illinois Nurses Ass'n and County of Cook, 21 PERI ¶ 53 (IL LRB-LP 2005); Independent Bridge Tenders Org., 2 PERI ¶ 3022. The same is true where actions supporting a blocking order are isolated in frequency of occurrence or impact. Illinois Nurses Ass'n, 21 PERI ¶ 53. Here, there is no evidence of frequency of occurrence. Also the decertification petition was filed on October 9, 2014, and a hearing on the unfair labor practice charges will not even begin until early May 2015. The passage of eight months with more to follow also weighs against blocking the election.

We apply the blocking doctrine more carefully where there is risk that the charging party may manipulate the blocking procedure to gain an advantage in the election. Id.; Marie T. Perkins and Forest Preserve Dist. of Cook Cnty., 4 PERI ¶3010 (IL LRB 1988). That possibility is present here. If the Incumbent can conclude negotiations for a more favorable contract for the Circuit Court Clerk employees before the election is held, it may achieve a more favorable election outcome. This factor, too, weighs against blocking the election.

We have been more inclined to issue blocking orders where the bargaining relationship is in its "infancy." Marie T. Perkins and Forest Preserve Dist. of Cook Cnty., 4 PERI ¶3010, but

here, there is a long established bargaining relationship of some 20 years. Given that long history, the Employer's actions in this particular negotiation are less likely to undermine the union, and less likely to warrant a blocking order.

The goal is to allow the employees to exercise free choice, and the guiding principle is to assess whether the allegations, if true, would prevent a fair election. In looking at the totality of the circumstances and the various factors previously considered, we agree with the Executive Director's determination that the Employer's alleged conduct, even if found to be true, would not prevent a fair election. In fact, we are convinced there would be greater damage to the employees' ability to exercise free choice by delaying the election, than there will be by resolving the unfair labor practice charges after the election.

Conclusion

The Executive Director's denial of a blocking order and order for an election is affirmed.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ James Q. Brennwald
James Q. Brennwald, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting held in Chicago, Illinois on March 10, 2015; written decision issued in Chicago, Illinois on March 13, 2015.

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**EXECUTIVE DIRECTOR'S DENIAL OF REQUEST TO BLOCK AN
ELECTION AND ORDER DIRECTING ELECTION**

On October 9, 2014, Petitioner Ronda Powell filed a petition, in S-RD-15-003, seeking to decertify Incumbent, American Federation of State, County and Municipal Employees, Council 31 (Incumbent/AFSCME) as the exclusive representative for a bargaining unit of employees in the Kankakee County State's Attorney's Office.¹ Neither the Incumbent nor the Employers objected that the petition was inappropriate.

On October 30, 2014, the Incumbent filed an unfair labor practice charge against the Employers in Case No. S-CA-15-058, alleging that the Employers were dealing directly with bargaining unit employees, making unilateral changes to the terms and conditions of employment without notice or bargaining, as well as engaging in regressive and overall bad faith bargaining. Simultaneously, the Incumbent filed a request for a blocking charge determination

¹ The unit consists of full time positions including Clerk, Receptionist, Coordinator, Clerk Stenographer, Clerk-Typist, Traffic Supervisor, Juvenile Coordinator, Victim/Witness Coordinator, Paralegal, Grand Jury Coordinator and Interviewer.

wherein the Incumbent set out its position that the election should not be held until the unfair labor practice charge is resolved.²

The Petitioner submitted an initial response to the Incumbent's request to block the election. In this response, Petitioner urged the Board to deny the Incumbent's request as it was "just an attempt to circumvent the election process when the Incumbent had no basis to object to the petition." After being served with Incumbent's written request for a blocking charge determination, Petitioner and Employers responded. After consideration of all of the submitted materials and issues, I determined that the Incumbent's request to block the election should be denied and that the secret ballot election should proceed for the reasons stated below.

I. BACKGROUND AND POSITIONS OF THE PARTIES

Incumbent is the exclusive representative for two relevant bargaining units in Kankakee County – one consisting of employees in the Circuit Clerk's Office and another consisting of employees in the State's Attorney's Office (SAO). The Board certified the Circuit Clerk's Office unit on July 7, 1994, in Case No. S-RC-94-125. The Board certified the SAO unit on July 7, 1994, in Case Number S-RC-94-123. Historically, the Employers and the Incumbent negotiated one collective bargaining agreement (CBA) to cover both units. The most recent CBA expired November 30, 2013. This decertification petition relates to the SAO unit, and Petitioner is employed in that unit. In December 2013, bargaining unit members, including Petitioner, received notice that their union dues were increasing by approximately 12%. Petitioner was one of two SAO employees on the bargaining committee for the Incumbent.

² Incumbent filed its request as part of its position statement in support of the unfair labor practice charge. The Board agent assigned to investigate the decertification petition sought and received Incumbent counsel's permission to share information submitted in the unfair labor practice charge investigation with Petitioner and Employers' counsel.

A. Incumbent's Position

The Incumbent contends that pursuant to Section 9(a) of the Act, the Board should block the decertification election until resolution of its unfair labor practice charge, as the alleged conduct of the Employers would have the tendency to interfere with a fair and free election. Specifically, the Incumbent points to four ways in which it contends the Employers have engaged in unlawful conduct that could undermine the free and fair election process. First, the Incumbent alleges that the Employers engaged in direct dealing by paying Petitioner more than similarly-situated employees. Second, Employers allegedly made offers/proposals directly to bargaining unit members. Specifically, the Incumbent contends that the Employers offered a 4% raise to a bargaining unit member (presumably Petitioner) prior to proposing it to the exclusive representative. The Incumbent also contends that the Employers unilaterally changed terms and conditions of employment by making changes to health insurance on October 1, 2014, without bargaining with the Incumbent. Finally, the Incumbent alleges that the Employers have failed to bargain in good faith by limiting the duration of bargaining sessions and engaging in regressive bargaining after the decertification petition was filed.

The Incumbent argues that this conduct by the Employers undermined the Union in its role as exclusive bargaining representative and has interfered with employee free choice. Accordingly, they ask the Board to block the decertification election until the resolution of the unfair labor practice charge.

B. Petitioner's Position

The Petitioner contends that the unfair labor practice is an issue between the Employers and the Incumbent and the outcome of the decertification petition "has no bearing on the situation between the [Incumbent] and the Employer[s]." Petitioner contends that the SAO unit's

discontent with the Incumbent began as early as December 2013, when union dues were raised by approximately 12%. That discontent increased as time went by primarily due to the Incumbent's initial unwillingness to negotiate a stand-alone contract for the SAO, and finally reached the tipping point when the Incumbent refused to accept the Employers' offer for a one-year contract for the SAO unit meeting all the demands of that unit. Petitioner contends that the request for a blocking charge determination is merely a stall tactic used by the Incumbent, and that blocking the election would necessarily harm the unit by requiring members to "continue paying union dues for an indeterminate amount of time to a union that doesn't want to serve our desires" and "forc[es] [them] to wait longer to possibly gain representation from another union."

Petitioner provided a detailed timeline of the discussion leading up to filing the decertification petition. In Spring of 2013, Petitioner began researching how to separate the SAO employees from the Circuit Clerk employees for purposes of negotiating a separate contract. According to documentation provided by Petitioner, on March 27, 2014, twelve members of the SAO signed an "interest to separate" petition indicating their desire to become a stand-alone unit separate from the Circuit Clerk's Office unit. On March 31, 2014, Petitioner and the other SAO member of the bargaining committee met with Incumbent Staff Representative, Jeff Dexter, gave him the petition and informed him of the SAO employees' wish to have separate bargaining units and separate contracts from the Circuit Clerk's Office employees. Petitioner provided emails showing that throughout April 2014, Petitioner and Dexter exchanged emails about the possibility of separating units. In that correspondence, Dexter informed Petitioner that the SAO employees could not separate from the Circuit Clerk's Office employees, as it "is not allowed both legally and fundamentally." As support for this

position, Dexter cited the Board, the recognition clause of the contract, and unity of the local union as reasons why it was not possible for the SAO to have a separate contract.

Petitioner indicates that on April 17, 2014, she obtained the SAO unit's original certification and confirmed with a Board agent that the SAO and Circuit Clerk's Office employees were already in separate bargaining units and had been since they were first certified by the Board in 1994. On or about April 24, 2014, the SAO employees met and discussed what Petitioner had learned and what, if any, action to take. The SAO employees decided to attempt to get a separate contract, and if they could not, to decertify. Petitioner indicates that in April and May, she contacted three different labor unions about whether they would represent the SAO unit should they decide to decertify.

Between May 15 and 22, 2014, Petitioner and Dexter corresponded regarding setting up a meeting. Petitioner described Dexter's emails as condescending and defensive. On May 22, 2014, Dexter, Petitioner, the Local Union President, and the other SAO negotiations committee member met. In that meeting, the SAO employees informed Incumbent's officials that the SOA unit would like a separate contract. According to Petitioner, Dexter indicated in that meeting that the Union Council would not agree to separating the units.

From May through the beginning of September 2014, the parties were not yet meeting at formal negotiation sessions. On September 12, 2014, the SAO unit met and discussed the upcoming contract negotiations and what, if any, action to take toward decertification. The SAO unit again decided to try to get the Incumbent to negotiate a stand-alone contract for the SAO unit. On September 15, 2014, the negotiations committee (including both SAO and Circuit Clerk's employees) met with Dexter and the Local Union President regarding upcoming negotiations. At that meeting, the SAO employees laid out a contract proposal specific to their

unit, including that the contract be a one-year contract to expedite negotiations and swifter retroactive pay. According to Petitioner, Dexter accused the State's Attorney of offering something to the SAO unit, because something "smells rotten." Petitioner told Dexter at that time that the State's Attorney is not involved in what the unit members are doing, and they do not discuss such things with him.

On the first day of negotiations, September 22, 2014, contrary to the wishes of the SAO unit, Dexter made a joint proposal and sought additional things that the SAO unit had not requested. On September 24, 2014, AFSCME Regional Director Billy Brown indicated he would check in to whether the units could negotiate separate contracts. Brown and Dexter informed the SAO unit negotiating committee members that AFSCME would not accept a one-year contract, which the SAO unit was seeking.

On September 26, 2014, the Incumbent indicated to the Employer its willingness to accept separate proposals for the two different units. When the Employers submitted their proposals, the proposal relating to the SAO unit was similar to that which Petitioner had provided to the Incumbent on September 15, 2014, including separate contracts for the units and a one-year contract with a 4% raise for the SAO unit. According to the Petitioner, she and the other SAO negotiating committee member asked Dexter if the SAO unit could vote on the Employers' proposal; Dexter purportedly replied that the AFSCME council would not allow a one-year contract. The SAO unit did not vote on the one-year contract proposal.

On September 29, 2014, Dexter indicated to the Employers that AFSCME was willing to negotiate separate contracts for the separate bargaining units. He also informed the Employers that it was Incumbent's intent to negotiate the larger of the two units first, the Circuit Clerk's Office unit, only negotiating the SAO unit once that contract was complete.

Petitioner denies that the Employers have been directly dealing with her or other bargaining unit members. Petitioner denies that she is being paid above the scale set out in the union contract, and provided evidentiary support for that contention. Furthermore, Petitioner denies that the Employers were directly dealing with bargaining unit members with respect to an offer for a one-year contract with a 4% raise. Petitioner supplied a copy of a November 2013 email (provided to her by the Union in February 2014) between Dexter and the Employer's spokesperson wherein the Incumbent responds to the Employers' interest in a one-year extension based on the previous year's (2012) raise, which was 4%.

Petitioner's response to the Incumbent's allegation about changes to health insurance was very minimal. "The same allegation made about my pay rate. It is simply false."

With respect to the allegations of bad faith bargaining, Petitioner points out that the decertification petition was completed and mailed to the Board prior to the Employers allegedly withdrawing any previous proposals. Moreover, Petitioner contends that she filed decertification paperwork on behalf of the majority of her unit only once the members of the unit determined that AFSCME was not going to pursue what the unit members wanted. Specifically, in late September 2014, AFSCME representatives informed the SAO unit negotiating committee members that (1) they would not seek a one-year contract; (2) they would not allow the SAO unit to vote to accept the Employers' initial offer; and (3) they would negotiate the Circuit Clerk's Office unit's contract before negotiating a contract for the SAO unit. Accordingly, Petitioner argues that the bad faith bargaining allegations "should have no bearing on [the] petitioner/election as it happened after the fact."

Petitioner argues that blocking the election would "completely undermine [the SAO unit's] right to choose our representative[,] not to mention how it would affect our timeline to

seek other representation.” She also points out that the SAO unit has met numerous times over more than seven months and has voted on what approach to follow with respect to contract negotiations and relationship with AFSCME. According to Petitioner, this supports that the unit has “the capacity for having a fair and free election.”

C. Employers’ Position

The Employers do not specifically take a position on the request for a blocking charge determination, and instead, assert that they have not engaged in alleged unfair labor practices. Specifically, the Employers contend that Petitioner has only received raises due pursuant to the CBA. Moreover, the Employers contend that a document related to contract negotiations for the SAO unit was placed on the State’s Attorney’s desk without his knowledge of where it came from, and that he, in turn, provided it to the individual negotiating the contracts for the office, Bob McElroy. McElroy was unaware of where the proposal came from, but, understanding that the document contained what he was supposed to propose for the SAO unit, he made that the Employers’ initial proposal at the negotiating session.

Employers also deny that they engaged in bad faith and/or regressive bargaining and deny that they made any unlawful changes in the terms and conditions of employment with respect to health insurance or otherwise.

II. DISCUSSION AND ANALYSIS

In this case, the Incumbent requests that the Board temporarily “block” the instant decertification petition by applying the Board’s “blocking charge doctrine.” That doctrine emanates from Section 9(a)(2) of the Act, which provides that the Board, in appropriate circumstances, may postpone an election, pending resolution of an unfair labor practice charge,

thereby blocking the holding of the election.³ Pace, Northwest Division, 22 PERI ¶15 (IL LRB-SP 2006); Sarah D. Culbertson Memorial Hospital, 21 PERI ¶139 (IL LRB-SP 2005); County of Cook, 21 PERI ¶53 (IL LRB-LP 2005); Chief Judge of the Circuit Court of Cook County, 7 PERI ¶2031 (IL SLRB 1991). Generally, the rationale underlying the doctrine is that a representation election should not be held where conduct is alleged that could make a fair election impossible. Sarah P. Culbertson Memorial Hospital, 21 PERI ¶139; City of Chicago, 2 PERI ¶3022 (IL LLRB 1986); *see also* Chicago Park District, 9 PERI ¶3009 (IL LLRB 1993); Bishop v. National Labor Relations Board, 502 F.2d 1024, 1028 (5th Cir. 1974). The purpose of the doctrine is to ensure employees free choice since the unfair labor practice charge, if true, would destroy the “laboratory conditions”⁴ necessary to permit employees to cast their ballots freely and without restraint or coercion.

The doctrine also prevents a party from profiting from its own wrongdoing. Pace, Northwest Div., 22 PERI ¶15; Forest Preserve Dist. of Cook County, 4 PERI ¶3010 (IL LLRB 1988); *see also* Bd. of Regents (Sangamon State Univ.), 4 PERI ¶1003 (IL ELRB 1987). The Fifth Circuit federal appellate court described the doctrine’s application to alleged misconduct by an employer as follows:

If the employer has in fact committed unfair labor practices and has thereby succeeded in undermining union sentiment, it would surely controvert the spirit of the [NLRA] to allow the employer to profit by his own wrongdoing. . . . Where a majority of the employees in a unit

³ Section 9(a)(2) provides, in part:

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.

⁴ In Ill. Ofc. of the Comptroller, 5 PERI ¶2010 (IL SLRB 1989), the Board adopted the NLRB “laboratory conditions” standard, holding “our duty when regulating the election process is to provide an atmosphere as free as possible from the taint of unlawful interference, while at the same time providing for a free and vigorous exchange of ideas.”

genuinely desire to rid themselves of the certified union, this desire may well be the result of the employer's unfair labor practices. In such a case, the employer's conduct may have so affected employees' attitudes as to make a fair election impossible. Bishop, 502 F.2d at 1029.

Under Board and NLRB precedent, where allegations exist that, if true, suggest that an employer has worked to undermine union sentiment, a blocking charge is appropriate to prevent the employer from profiting from its own misconduct. See Pace, Northwest Div., 22 PERI ¶15; Bishop, 502 F.2d 1024.

However, Board precedent makes clear that blocking an election is an extraordinary remedy. Application of the blocking charge doctrine should be limited, because it operates to deprive employees of a prompt election and can enable parties to improperly manipulate the timing of elections. Pace, Northwest Div., 22 PERI ¶15; County of Cook, 21 PERI ¶53. To block an election any time a charge contains an allegation of unlawful conduct would work to undermine the right of employees to choose their representative. To that end, the Act does not *require* the Board automatically stay or block representation or decertification proceedings when related unfair labor practice charges are pending. Instead, the Board retains substantial discretion in deciding when to invoke its blocking charge doctrine. Sarah D. Culbertson Memorial Hospital, 21 PERI ¶139; Forest Preserve Dist. of Cook County, 4 PERI ¶3010; City of Chicago, 2 PERI ¶3022; *see* Board of Regents (Sangamon State University), 4 PERI ¶1003. In exercising this discretion, "the Board hopes to ensure those conditions necessary to allow employees to exercise free choice in the representation election." County of Cook, 21 PERI ¶53.

Turning to the Incumbent's request for a blocking determination, I do not think it is appropriate to apply the blocking charge doctrine in this election. With respect to the unfair labor practice charge, S-CA-15-058, the undersigned issued a Partial Dismissal and a Complaint

for Hearing.⁵ In the Partial Dismissal, I found that Incumbents failed to raise an issue of fact or law warranting a hearing on the allegation that the Employers engaged in direct dealing and the allegation that the employer granted a wage increase outside of what was negotiated in the CBA. Accordingly, there is no basis to block the election based on these allegations.

While the Incumbent's allegations of regressive and bad faith bargaining and unilateral change in the terms and conditions of employment are the subject to a Complaint for Hearing, these allegations are insufficient to block the election. This is because I do not find that the alleged misconduct by Employers, even if true, undermined union sentiment or otherwise created an atmosphere tainted by unlawful interference, such that a free and fair election is impossible for the SAO unit.

In this case, Petitioner has set out that the issues giving rise to the decertification petition are from disagreements between the SAO unit and AFSCME staff. These disagreements include how best to negotiate their contract, concerns that SAO unit members' interests were not being adequately represented by having a CBA combined with the Circuit Clerk's Office unit, and whether the SAO unit was getting "their money's worth" given the increase in union dues. Petitioner provided information that indicates the decertification petition is a culmination of employee frustration with the Incumbent lasting over a period of months, namely:

- Approximately 12% increase in union dues in December 2013;
- Months of back and forth between SAO unit members and AFSCME representatives regarding whether the SAO unit had the right to negotiate separately from the Circuit Clerk's Office unit;
- Distrust of Dexter engendered by his delayed and ultimately incorrect response to the question of whether the SAO unit was separate from the Circuit Clerk's Office unit.
- AFSCME's resistance to negotiating a separate contract for the SAO unit;
- AFSCME's resistance and ultimate unwillingness to negotiate a one-year contract;
- AFSCME's unwillingness to allow the SAO unit to vote on the Employers' proposal, which met all of the units demands; and

⁵ See Case No. S-CA-15-058, Partial Dismissal and Complaint for Hearing issued simultaneously.

- AFSCME's decision to negotiate the Circuit Clerk's Office unit contract to completion prior to negotiating a contract for the SAO unit.

In light of this, the Employers' alleged conduct regarding health insurance and its alleged bad faith bargaining is not sufficient to warrant applying the extraordinary remedy of blocking the decertification election. In fact, Petitioner makes almost no mention of health insurance and does not identify the length of time negotiations were taking as an issue under consideration when SAO unit members discussed possible decertification. In fact, the Employers' alleged conduct with respect to regressive bargaining occurred after the petition was filed. For all of these reasons, I deny the Incumbent's request for a blocking charge. Because no further objections have been raised, I direct an election be held as detailed below.

III. ORDER

The Incumbent's request to apply the blocking charge doctrine to block the decertification election is denied. I order that the Board conduct a secret ballot election in the bargaining unit described below. In order to efficiently utilize Board resources due to the small bargaining unit and the location of the worksite, I direct that the election shall be by mail ballot. In accordance with the Illinois Public Labor Relations Act and the Boards' Rules and Regulations (Rules), eligible voters shall be given the opportunity to vote between American Federation of State, County and Municipal Employees, Council 31 and No Representation. Pursuant to Section 1210.100(7)(c) of the Rules, the Employers shall, within seven days of this order, furnish the Board and the labor organization with a list of the full names, alphabetized by last name, and addresses of the employees eligible to vote in the election. Eligible employees shall mean those employees within the payroll titles included in the unit described below and on the payroll as of the pay period ending prior to this Order. The lists shall be delivered by personal delivery or certified mail, and the Employers shall obtain receipts verifying delivery.

INCLUDED: All full-time positions including Clerk, Receptionist, Coordinator, Clerk Stenographer, Clerk-Typist, Traffic Supervisor, Juvenile Coordinator, Victim/Witness Coordinator, Paralegal, Grand Jury Coordinator & Interviewer.

EXCLUDED: Supervisory, managerial and confidential employees as defined by the Act, and all other employees of the Joint Employer.

This Order is an intermediate order that will become final unless any of the parties to this election files exceptions thereto with the Illinois Labor Relations Board. Exceptions must be directed to the General Counsel of the Illinois Labor Relations Board, Jerald S. Post, at 160 North LaSalle Street, Suite C-400, Chicago Illinois, 60601-3103 within ten days of service. See, Section 1200.135 of the Rules. Exceptions must be served upon all other parties to the case at the same time it is served on the Board. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that exceptions have been provided to them. Exceptions will not be considered without this statement. If no exceptions to this order are filed, the order shall stand.

Issued at Springfield, Illinois, this 21st day of January, 2015

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



**Melissa Mlynski
Executive Director**