

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

St. Clair County Public Building Commission,

Employer

and

Terry Embrich,

Petitioner

and

Laborers International Union of North
America, Local 459,

Incumbent

Case No. S-RD-15-005

ORDER

On March 20, 2015 Administrative Law Judge Sarah R. Kerley, 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 May 19, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 19th day of May, 2015.

**STATE OF ILLINOIS
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**Kathryn Zeledon Nelson
General Counsel**

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Terry Embrich,)	
)	
Petitioner)	
)	
and)	
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St. Clair County Public Building Commission,)	
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Employer)	Case No. S-RD-15-005
)	
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Laborers International Union of North America,)	
Local 459,)	
)	
Incumbent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On February 7, 2015, Petitioner Terry Embrich filed a petition, in S-RD-15-005, seeking an election to determine whether a bargaining unit of employees of the St. Clair County Public Building Commission (Employer) desired continued representation by Laborers International Union of North America, Local 459 (Incumbent/Laborers). The Incumbent responded to the petition arguing that the petition was inappropriate both because it lacks the necessary 30% showing of interest and because it was “circulated at management’s encouragement during business hours and in business space.”¹ Neither the Petitioner nor the Employer responded to the Incumbent’s opposition.

On February 25, 2015, the Incumbent filed an unfair labor practice charge against the Employers in Case No. S-CA-15-112, alleging that the “employer initiated and/or encouraged

¹ This Recommended Decision and Order relates only to the Incumbent’s objection to the election based on the allegation of an unfair labor practice committed by the Employer.

a petition for decertification” and that the petition was “circulated openly during business hours.” The charge seeks, among other things, to have the decertification petition dismissed.

On December 4, 2013, the Board’s Executive Director certified the at-issue bargaining unit, described as follows:

Included: All regular and full-time employees of the St. Clair County Public Building Commission in the following titles: Crew Leader; Building Maintenance Worker; Painter; Carpenter; Grounds Worker; Utility Worker; Shift Operator; Switchboard Operator; Parking Garage Attendant

Excluded: All other employees of the St. Clair County Public Building Commission, including confidential and managerial employees, guards, foremen and supervisors, and all other employees excluded by the Illinois Public Labor Relations Act.

As of the filing of the decertification petition, there was no collective bargaining agreement in place between the parties.

I. DISCUSSION AND ANALYSIS

In this case, the Incumbent requests that the Board dismiss the decertification petition because the alleged unfair labor practices committed by the Employer have made a free and impartial election impossible. The Board's “blocking charge” doctrine governs such requests. It is "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." Ill. Ofc. of the Comptroller, 5 PERI ¶2010 (IL SLRB 1989)(adopting the NLRB’s “laboratory conditions” standard). The blocking charge 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.² Pace, Northwest Div., 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 Cir. Ct. of Cook Cnty., 7 PERI ¶2031 (IL SLRB 1991). The purpose of the doctrine is to ensure employees free choice since the unfair labor practice charge, if true, would destroy the “laboratory conditions” necessary to permit employees to cast their ballots freely and without restraint or coercion. Generally, 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 Dist., 9 PERI ¶3009 (IL LLRB 1993); Bishop v. Nat’l Labor Rel. Bd., 502 F.2d 1024, 1028 (5th Cir. 1974).

The blocking charge doctrine also prevents a party from profiting from its own wrongdoing. Pace, Northwest Div., 22 PERI ¶15; Forest Preserve Dist. of Cook Cnty., 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 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.

² 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.

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; Cnty. 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 Cnty., 4 PERI ¶3010; City of Chicago, 2 PERI ¶3022; see Bd. of Regents (Sangamon State Univ.), 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.” Cnty. of Cook, 21 PERI ¶53.

Most recently, in Ronda Powell and American Federation of State, County and Municipal Employees, __ PERI ¶__, S-RD-15-003 (decided March 13, 2015), the Board reiterated a number of factors it considers when analyzing whether to block an election. The Board noted that it has been more inclined to issue blocking orders where the bargaining relationship, like in this case, is in its “infancy.” Id. citing Marie T. Perkins and Forest

Preserve Dist. Of Cook Cnty., 4 PERI ¶3010 (IL LRB 1988). In Perkins, the Incumbent had been certified just over a year prior to the decertification petition being filed, and the parties had not yet reached agreement on an initial contract. The Board decided to block the decertification election in that case, holding that harassment of union supporters and coercion to abandon the union, if true, “could significantly erode the union’s support and materially affect an election.”

In Powell, the Board also reaffirmed its holding that a long passage of time following the filing of an election petition weighs against a blocking order. See Illinois Nurses Ass’n, 21 PERI ¶53; 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, the allegations at issue are that Employer initiated the decertification petition or unlawfully encouraged the employees to abandon the Incumbent, such that the petition is indicative of the Employer’s desires, rather than that of the employees. The alleged unlawful conduct immediately preceded the filing of the decertification petition, and though not necessarily frequent, the impact of such actions is not isolated. Such conduct, if true, certainly could undermine union sentiment. With a bargaining relationship in its infancy, it is even more important to preserve conditions for a free and fair election. Under these circumstances, where each factor weighs in favor of holding the election in abeyance, I find that it is more than appropriate to utilize this extraordinary remedy to block the election pending the outcome of the unfair labor practice.

III. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the petition in Case No. S-RD-15-005 is held in abeyance until such time as the charge in Case No. S-CA-15-112 is resolved. The Petitioner shall be served with any dismissal, complaint for hearing, administrative law judge decision, or Board decision in Case No. S-CA-15-112. 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.

IV. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 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 at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The 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. The exceptions and/or cross-exceptions will not be considered without that statement. If

no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 20th day of March, 2015.

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

Sarah R. Kerley

**Sarah Kerley
Administrative Law Judge**