STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Theresa Kyriazes, Petitioner and Park Ridge Park District, Employer and Service Employees International Union, Local 73, Incumbent	)))))))))))))))))	Case No. S-RD-14-003

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 15, 2013, Theresa Kyriazes (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 Park Ridge Park District (Employer) desired continued representation by the Service Employees International Union, Local 73 (Incumbent). On October 30, 2013, the Incumbent filed an unfair labor practice charge involving the same unit in Case No. S-CA-14-073 and requested that the Board, pursuant to Section 9(a) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), hold the election in abeyance until such time as that unfair labor practice charge is resolved. The Employer responded to the Incumbent's request on December 12, 2013. Subsequently, on January 29, 2014, the Board's Executive Director issued a Complaint for Hearing. After full consideration of all aspects of the controversy, I, the undersigned Administrative Law Judge recommend the following.

I. ISSUES AND CONTENTIONS

As noted, the Incumbent requests that the Board, pursuant to Section 9(a) of the Act, hold the proposed representation election in abeyance until such time as the Incumbent's unfair labor practice charge is resolved. In short, the Employer submits that there is no reason to hold the instant petition in abeyance.

II. DISCUSSION AND ANALYSIS

The Board's Blocking Charge Doctrine

Essentially, 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.[1] 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). In general, 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 D. Culbertson Memorial Hospital, 21 PERI ¶139; City of Chicago, 2 PERI ¶3022 (IL LLRB 1986); see Chicago Park District, 9 PERI ¶3009 (IL LLRB 1993); Bishop

[1] Section 9(a)(2) provides, in part, that

> 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.

v. National Labor Relations Board, 502 F.2d 1024, 1028 (5th Cir. 1974). Put differently, the purpose of the doctrine is to ensure employee 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. The doctrine also prevents an employer from profiting from its own wrongdoing. Pace, Northwest Division, 22 PERI ¶15; Forest Preserve District of Cook County, 4 PERI ¶3010 (IL LLRB 1988); see Board of Regents (Sangamon State University), 4 PERI ¶1003 (IL ELRB 1987); Bishop, 502 F.2d at 1028.

To be clear, blocking an election is an extraordinary remedy, and 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 Division, 22 PERI ¶15; County of Cook, 21 PERI ¶53. Moreover, nothing in the Act strictly requires that the Board automatically stay or block representation or decertification proceedings when related unfair labor practice charges are pending. The Board retains substantial discretion in deciding when to invoke its blocking charge doctrine. Sarah D. Culbertson Memorial Hospital, 21 PERI ¶139; Forest Preserve District of Cook County, 4 PERI ¶3010; City of Chicago, 2 PERI ¶3022; see Board of Regents (Sangamon State University), 4 PERI ¶1003.

The Complaint for Hearing of Case No. S-CA-14-073

Case No. S-CA-14-073's Complaint for Hearing alleges that, on or about October 21, 2013, an agent of the Employer posted a note at the unit employees' time clock indicating that a meeting would be conducted on that day for all of the Employer's full-time employees. Allegedly, during that meeting, three of the Employer's agents openly discussed the instant decertification petition and told unit employees that the Incumbent was no longer needed since

newly placed members of management would have a better overall relationship with employees compared to previous members of management. In addition, one Employer agent purportedly indicated that unit employees could expect wage increases regardless of whether the Incumbent was in place. An Employer agent also allegedly directed unit employees to desist from communicating with the Incumbent's officials and the Incumbent in general during working hours and indicated that violations of that direction should be reported to management. Ultimately, the Complaint for Hearing alleges that the Employer's conduct violated Sections 10(a)(1), (2), and (5) of the Act.

In its response to the Incumbent's request, the Employer notes that the Incumbent's charge does not allege violations of Sections 10(a)(3) or (4) of the Act. That fact alone is not determinative. Indeed, a comparable Section 10(a)(1) charge has justified temporarily delaying an election on its own. See County of Cook and Cook County Sheriff, 16 PERI ¶3001 (IL LLRB 1999). The Employer also notes that the charge does not allege that the Employer "threatened reprisal or promised benefits in order to influence the outcome of the election." However, the Complaint for Hearing actually alleges that the Employer's expression did involve a promise of benefit in violation of Section 10(c) of the Act. That key allegation cannot be overlooked.

The Employer separately submits that, even if the charge's allegations are true, they do not rise to the level of egregious and objectionable conduct required to block an election. On one hand, I would concede that the Incumbent's charges must be of sufficient magnitude to warrant the requested remedy. Sarah D. Culbertson Memorial Hospital, 21 PERI ¶139. Yet, significantly, the Complaint for Hearing specifically asserts that the Employer's conduct unlawfully affects the unit employees' ability to fairly and freely make a choice in a pending representation election. It also alleges the Employer has unlawfully discouraged membership in

support of the Incumbent. Those are precisely the kinds of serious issues the Board's blocking charge doctrine is intended to confront. See Forest Preserve District of Cook County, 4 PERI ¶3010 (election blocked when a charge alleged that an employer's officials unlawfully attempted to "coerce employees to abandon the union"). Accordingly, I find that the charge filed in Case No. S-CA-14-073 should temporarily block the holding of a decertification election in the present case.

III. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the petition in Case No. S-RD-14-003 is held in abeyance until such time as the charge in Case No. S-CA-14-073 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-14-073. 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 in Chicago, Illinois this 24th day of February 2014.

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Martin Kehoe
Administrative Law Judge