UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
REGION 13

Nathaniel Mathews	)	
	)	
Petitioner	)	
	)	
and	)	
	)	
Cook County School Bus, Inc.	)	Case No. 13-UD-79769
	)	
Employer	)	
and	)	
	)	
Teamsters Local 777	)	
	)	
Union	)	

EMPLOYER'S BRIEF IN SUPPORT OF EXCEPTIONS

I. STATEMENT OF THE CASE:

On June 1, 2012, the Board held an election to determine if Cook County's employees wanted to deauthorize the union security clause in their contract. Although the results were 11-3 in favor of deauthorization, there were 24 eligible voters so that the required majority of all voters was lacking. Deauthorization was two votes shy of passage. Why did 10 employees choose not to vote? The answer forms the basis for the Employer's objections, which were:

1. Subsequent to the filing of the petition and prior to the election, Local 777, by its agents, threatened employees that if they voted for deauthorization the union would cease representing them and/or would reduce the level of representation and/or void their contract.

2. During the post-petition period, Local 777, by its agents, threatened and restrained employees in their right to vote in the election in order to prevent a majority of the unit from voting to deauthorize. Such conduct included references to employees who decided to vote as "troublemakers" and statements that the union would know who the voters were and would deal with them later.

3. Local 777 conducted a party at a local restaurant on June 1, 2012 during the period that the polls were open in order to confer a benefit on employees and to cause employees to refrain from voting in the election.

4. By the above and other objectionable conduct, the laboratory conditions required by the Board in elections were breached.

A hearing was conducted on June 28, 2012 before Hearing Officer Christina Hill to determine whether the objections should be sustained. The Hearing Officer, on August 24, 2012, issued her report sustaining Objection 2 but overruling Objections 1, 3 and 4. Cook County filed Exceptions on September 6, 2012.

II. FACTS:

For over 20 years, school bus drivers and attendants at Cook County School Bus were represented by Teamsters Local 744. All of their contracts had union security clauses, and no deauthorization petition ever had been filed. During 2010 and 2011, Local 744 disintegrated and ultimately ceased to exist. Although the Teamsters International appointed Local 777, the Union in this case, as the successor, Cook County declined to recognize them without an election. That election was held on May 11, 2011. There were 38 eligible voters, and 37 voted. Local 777 was certified in a 34-3 vote. *CCSB Exh. 9.*

Bargaining ensued, and a contract was reached for the period December 1, 2011 to November 30, 2014. *CCSB Exh. 5.* That contract contains a union security clause in Article 3 that became the subject of the deauthorization vote. More specifically, as several Employer witnesses testified, a number of employees were upset at the failure of Local 777 to keep them informed as to the progress of the negotiations. They simply were presented with a *fait accompli* for ratification. Accordingly, Petitioner Nathaniel Matthews filed the instant petition on April 27, 2012. As noted above, an election was held on June 1, 2012, and the vote was 11-3 in favor

of deauthorization. *CCSB Exh. 8.* Since a majority of 24 was needed, i.e. 13 votes, the deauthorization fell two votes short. It is noteworthy that 37 of 38 employees voted in the initial representation election in 2011. *CCSB Exh. 9.*

The objections in this case involve the statements that Union agent Robert Hollenbach made to employees during the critical period; a statement made by Union agent Greg Glimco and a pizza party held during the polling period on June 1. In this regard there is no dispute that Glimco is an agent of the Union and that the Union sponsored the pizza party. The Union denied that Hollenbach, its steward at Cook County, was an agent. Of course, if he was an agent, his statements are binding on the Union. However, even if he was not an agent, his position with the Union made his statements destructive of the desired laboratory conditions preceding an NLRB election. Here are the facts.

Hollenbach has been employed at Cook County for the past 5 years. *CCSB Exhibit 1* is a posting during the days of Local 744 appointing Hollenbach as the union steward.[1] According to the collective bargaining agreement, the steward handles the first step of the grievance procedure and has authority to resolve grievances at that step without involvement of the Union. *See CCSB Exh. 5, Art. 7.* Sharon Pierluissi, who testified she spends 30-40% of her time in managerial duties at Cook County, has resolved a number of grievances with Hollenbach. Several Cook County drivers testified that they view Hollenbach as the Union representative in dealing with the company. Hollenbach is one of the Union's negotiators and is signatory to the contract. There is nothing in evidence to suggest that employees were informed Hollenbach had limited Union authority nor could the Union point to anything that would suggest any limitation.

[1] This document was placed in the rejected exhibit file. We respectfully disagree and urge reconsideration. It shows that Hollenbach was appointed by the predecessor union, and further evidence confirmed that Local 777 did nothing to change his status.

Indeed, Hollenbach's picture appears on the Local 777 website as attending a meeting of stewards at the Union hall. *CCSB Exh. 2.* And witnesses stated that Hollenbach often is the only employee wearing union logo shirts and hats. Glimco testified that the Union's internal agents only get involved in grievances that are disciplinary, thus acknowledging that Hollenbach could settle others on his own. In addition to all this evidence of agency status is the *coup de grace.* Glimco testified that Hollenbach was instructed by the Union to communicate with employees as to the nature of the deauthorization vote and what it would mean for them. And Hollenbach aggressively fulfilled those instructions. He testified that employees were confused and had many questions for him.

Pierluissi testified that she held small group meetings with employees to explain what the vote was all about. Hollenbach attended one of those meetings. He was permitted to speak, and he told the gathering that if a majority voted in favor of deauthorization, the Union told him they no longer would represent the employees. Her testimony in this regard was confirmed by Jimmy Eggleston, who attended that meeting. This mantra, call it a threat, was repeated by Hollenbach at times before the election to witnesses. Renata Kic testified he told her on a number of occasions if the Union did not win it would "walk away with the contract" and that she would come back in August without a job. She noted that as a result of Hollenbach's continuing threats, many drivers were concerned about losing their jobs and/or their benefits. George Olmo recounted Hollenbach's statement to him that if the union lost, the employees would lose their representation and their jobs, that if employees wanted union representation they had to pay dues. And the same threat was made by Hollenbach to witness Ernesto Vere. In fact, Vere testified that a few days before the election, Glimco told him that the Union would leave if the

drivers voted against them. He emphasized that this was something he could not forget and pointed out Greg Glimco at the hearing.

Hollenbach strengthened this threat by telling employees that a vote to deauthorize would require a majority of the unit to vote, and the Union would know who voted. For example, Larry Bonds testified that Hollenbach said he would be at the vote and would be in a position to see who is against the Union by showing up to vote. Bonds rightfully took this as a threat and said to Hollenbach, "What are you going to do, beat me up? Are you the mob?" A similar conversation was described by witnesses Verne Duddles and Kic. Eggleston also noted that a few days before the election, Hollenbach commented to drivers in the drivers' room that people not vote but rather go to the Union's pizza party and in a threatening tone said that the Union would know who voted. Indeed, Hollenbach told Eggleston after the election that the Union wanted to talk to the 11 people who voted against them. Hollenbach was in a position to facilitate this threat because he was appointed by the Union as observer at the election. *CCSB Exh. 6.* Olmo testified that Hollenbach said that the union will know who voted and who the "troublemakers" were.

Then there is the pizza party admittedly held during the polling period on June 1. The polling periods were 9 a.m. to 10 a.m. and 12:45 p.m. to 1:45 p.m. The party was from 11 a.m. to 2 p.m. The Union claims that the vote had nothing to do with the party; that it was end of the year; that RichLee drivers were invited as well as Cook County employees. Aside from the issue whether this was an improper benefit, the party was used as a means of keeping tabs on voters and encouraging them not to vote. Certainly, Hollenbach used the party as a vehicle for distracting people from voting and his threats that the Union would know who was voting. Company witnesses testified that he encouraged employees to come to the party while he was

telling them to refrain from voting and that the Union would know who voted. Duddles testified that on the day of the election, Hollenbach and Union agent Courtney Bell asked him if he was going to the pizza party as a way of showing support for the Union.

Glimco acknowledged that if any of its agents told employees what Hollenbach was described as stating, it would be wrong and subject to disciplinary procedures. When Hollenbach testified, he acknowledged that the Union instructed him to inform employees what the vote was all about and that the Union had a right to cease representation if there was an adverse vote. More importantly, Hollenbach made general denials of "threatening" people and some specific denials of statements attributed to him. However, he did not deny everything he was accused of saying to employees, and, in any event, the Board would have to conclude that all eight of the company's witnesses were lying in order to credit Hollenbach's testimony. This despite the fact that all except Matthews and Pierluissi were sequestered.

III. ARGUMENT:

In *LaGuardia Associates, LLP*, 2004 NLRB LEXIS 770 (2004), the Board stated:

> When the person responsible for the conduct alleged to be objectionable is not an agent of a party to the election, 'less weight is accorded to such conduct than to the conduct of the parties. In such circumstances, however, the Board has set aside elections where the conduct created a general atmosphere among the voting employees of confusion and fear of reprisal for failing to vote for or to support the Union.' *Steak House Meat Company,* 206 NLRB 28 (1973) With respect to misconduct by an agent of a party, The Board evaluates whether the conduct has 'the tendency to interfere with the employees' freedom of choice.'

Id. at p. 7. See also *Robert Orr-Sysco Food Serv.*, 338 NLRB No. 74 (2002)(threats of non-agents sufficient to set aside election).

As to whether Hollenbach was an agent of the Union, the Board has held in a number of cases that a union steward can be deemed an agent where he has the actual or apparent authority

to act for the union. Thus, in *Yellow Freight System*, 307 NLRB 1024 (1992), the Board held a steward to be an agent where a number of individuals recognized the steward's authority, and the labor contract authorized stewards to transmit union communications to the employer. Not only did the company's witnesses attest to Hollenbach's authority to deal with Cook County, but the Union also acknowledged that it authorized him to communicate with employees concerning the vote. See also *Teamsters Local 886*, 354 NLRB 370 (2009); *Teamsters Local* 705, 347 NLRB 439 (2006); Electrical *Workers Local 745,* 268 NLRB 308 (1983), *enfd.* 759 F.2d 533 (6th Cir. (1985); *Lyons Restaurants,* 234 NLRB 178 (1978); *Teamsters Local 886*, 229 NLRB 832 (1977). The Hearing Officer properly held that Hollenbach was an agent with authority to make the statements he did.

Hollenbach's numerous statements to employees must be viewed as a whole in determining whether they were objectionable. The threat that the union would know who voted and treat them as troublemakers; that employees would lose benefits and/or their jobs; that the Union would stop representing employees and remove the contract if there were an unfavorable vote, as a matter of law, constituted threats and objectionable conduct. All of the above-cited cases involved threats by stewards that were found either to constitute §8(b) unfair labor practices or objectionable conduct.

Additionally, employees were notified during the post-petition period that the pizza party would be held during the time the polls were open. There is no question but that the Union used the party to communicate with employees that they should not vote but rather enjoy the pizza. While the Board can evaluate whether the free pizza is a benefit warranting a second election (see e.g. *NLRB v. Labor Services,*721 F.2d 13 (1st Cir. 1983)), the party must be viewed as an extension of the Union's efforts to prevent or restrain employees from voting. The facts show

the entire plan worked because only 14 of 24 employees voted whereas 37 of 38 employees voted in the election certifying the union. Thus, Objection 3 should not have been overruled.

The Union relied on *Bake Line Products, Inc.*, 329 NLRB 247 (1999) for the proposition that its threats to walk away with the contract were not objectionable. While we disagree that *Bake Line* is good law, and there were two dissents, it is distinguishable because it did not involve the totality of conduct present in the instant case. In that case the union stated it would *consider* disclaiming recognition and this would leave the employees unrepresented and without a contract. That was it. There was nothing in the case combining such statements with threats to voters of dealing with troublemakers or watching to see who voted or causing non-voting by having free pizza during voting periods. Furthermore, the evidence in the instant case shows not that the Union would *consider* a disclaimer but that they *would* jettison the representation and the contract. Earlier precedent, as noted by the dissent, established that a threat to abandon representation, not just consider it, was unlawful and objectionable. *Pinebrook Nursing Home*, 305 NLRB 802 (1991). Additionally, The Union embellished the threat to disclaim by telling employees they would lose their jobs and their benefits. Thus, even if the Union could threaten a disclaimer, they cannot create confusion and fear by adding that this would lead to job or benefit loss. The Union's conduct in this case must be measured by the fact that a deauthorization election is different from a recognition election. Here, the Union is in place and in a position to create fear in a statutory process that can be highly confusing.

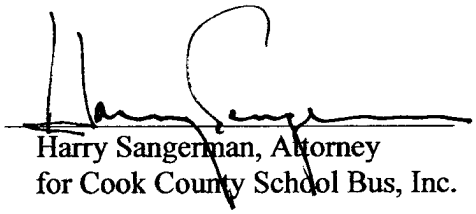
The Hearing Officer overruled Objection 1 by noting that a union can disclaim interest if it loses a deauthorization election. That is true. However, a pre-election threat to disclaim interest is a different matter. It is no different from the fact that an employer can decide to go out of business if it loses a union election. However, it cannot threaten to go out of business prior to

the election. Both types of threats upset the requisite laboratory conditions required by years of Board precedent.

Further, the Union interfered with the conduct of the election in that the totality of its conduct resulted in a substantial portion of the unit failing to vote. In this regard, Glimco and Hollenbach testified that their party was well-attended with Cook County employees. When taken together with Hollenbach's many entreaties that the Union would know who voted and deal with them, it is no surprise that 10 employees chose not to vote at all. Added to this is the fact that Hollenbach was the Union's observer so that the Union was in a position to know who showed up to vote, and employees knew that there was a risk in voting. This was the sense of Objection 4, the totality of the conduct that the Hearing Officer failed to consider in overruling the Objection.

IV. CONCLUSION:

In view of the above and the record as a whole, Cook County School Bus respectfully requests that the election in the above matter be set aside and that a second election be ordered. Additionally, Cook County requests that an order issue preventing Hollenbach from being the Union's observer in the second election.



Harry Sangerman, Attorney
for Cook County School Bus, Inc.

LITTLER MENDELSON
321 N. Clark Street
Suite 1000
Chicago, IL 60654

Dated: September 6, 2012

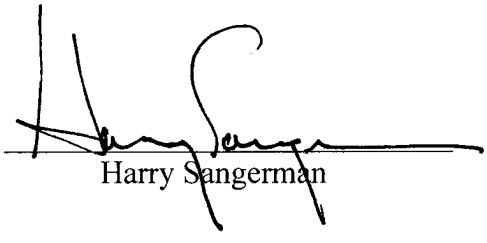
AMENDED CERTIFICATE OF SERVICE

The foregoing Brief in Support of Exceptions was filed with the Board via the Board's e-filing procedure and copies sent via e-mail the 10th day of September, 2012 to:

Mr. Peter Sung Ohr
Regional Director
National Labor Relations Board
209 S. LaSalle Street—S900
Chicago, IL 60604
Peter.ohr@nlrb.gov

Mr. Nathaniel Matthews
1501 E. Central Road, Apt. 211
Arlington Heights, IL 60005
Hnate1369@yahoo.com

Mr. Jim Glimco
Teamsters Local 777
7827 Ogden Ave.
Lyons, IL 60534
james@teamsters777.org



Harry Sangerman