

September 19, 2003

Illinois Labor Relations Board Adopts Emergency "Card Check" Rules

At a meeting of the Illinois Labor Relations Board ("Board") yesterday, the Board adopted emergency rules to implement P.A. 093-0444, the new law signed by Governor Blagojevich on August 5, 2003. That law provides that a Union can get bargaining rights if it can demonstrate "a showing of majority interest by employees in the unit." If there is a dispute as to how to determine majority status, the law states that ". . . the Board shall ascertain the employees' choice of employee organization, on the basis of dues deduction authorization and other evidence, or, if necessary, by conducting an election." As Board member Edward Sadlowski commented, "It's labor's time."

The Illinois Administrative Procedure Act provides that an administrative agency like the Illinois Labor Relations Board can adopt emergency rules that are effective for a period not longer than 150 days. An "emergency" is defined as "the existence of any situation that any agency finds reasonably constitutes a threat to the public interest, safety, or welfare." 5 ILCS 100/5-45(a).

In a nutshell, the emergency rules adopted by the Illinois Labor Relations Board contain the following major provisions:

- ♦ Evidence of majority support "may consist of authorization cards, petitions, or any other evidence that demonstrates that a majority of the employees wish to be represented by a labor organization."
- ♦ If an employee has signed an authorization card for two or more labor organizations, ". . . the most recently signed card will count for the purpose of determining majority status."
- ♦ The determination of majority status "shall be determined administratively by the Board or its agent . . . [and] is not subject to litigation, except upon a finding of clear and convincing evidence of fraud or coercion. . ."
- ♦ Within seven days after being served with a card check petition, ". . . the employer shall file with the Board a list containing the full names and titles of the employees in the proposed bargaining unit along with signature exemplars of the employees in the proposed unit."
- ♦ The employer has 14 days from receiving a card check petition to submit its written response to any matters raised by the petition, including any issues with respect to "the appropriateness of the bargaining unit, any alleged fraud or coercion in obtaining employees' signatures and, to the extent known, whether any employee sought by petitioner to be included should be excluded from the unit."
- ♦ "If a party has not provided clear and convincing evidence of fraud or coercion, the union will be certified as the unit's exclusive representative if it is determined to have majority support."
- ♦ "Determination of majority support based upon the Board's card check procedures will not apply to decertification petitions."

At yesterday's meeting, the Board heard from four labor attorneys - Gil Feldman on behalf of AFSCME, Lisa Moss on behalf of the Chicago Federation of Labor, Steve Yokich on behalf of the Affiliated Firefighters of Illinois, and Joel D'Alba on behalf of the AFL-CIO. Ted Clark, who made a presentation on behalf of IPELRA, was the only management representative to address the Board.

While the Board readily adopted two modifications to the draft rules suggested by the union attorneys, the Board refused to adopt the earlier recommendations submitted by IPELRA, or any of the following recommendations orally offered in the meeting by Ted Clark:¹

- ♦ That the Board should prescribe the form to be used to demonstrate majority support by unions, a form that

would advise employees of their right to sign or not sign the form and of their right to subsequently revoke the form.

- ♦ That employee signatures on cards or petitions should only be valid for a period of not more than six (6) months, not the twelve (12) months contained in the draft emergency rules.
- ♦ That the period of time that an employer has to respond to a "card check" petition should be three weeks rather than two weeks as set forth in the draft rules.
- ♦ That a petitioner seeking bargaining rights based on cards should verify under oath the authenticity of the signatures submitted in support of the petition.
- ♦ That an employer should have the right to see any cards or petitions that are submitted in order to determine their validity.

As mentioned above, these emergency rules will be in effect for not more than 150 days. During that time the Board will institute formal rulemaking proceedings in which all interested parties will have an opportunity to present their views to the Board. In addition to being able to submit written comments, the Board promised that there would be hearings at which interested parties could appear and make presentations to the Board.

Because the Board's emergency rules do not deal with many issues that are likely to arise in "card check" cases and because many of the issues that the rules do touch on are seriously flawed, there will undoubtedly be litigation over these emergency rules. In the meantime, it is our understanding that the major public sector unions are presently engaged in large scale union-organizing activities in an effort to capitalize on this new law.

If you have any questions or if we can be of any further assistance with respect to this significant new development, please contact your Seyfarth Shaw attorney.

1. Clark also questioned whether there was a true "emergency" that would justify the issuance of emergency rules rather than following the formal rule-making process outlined in the Illinois Administrative Procedure Act.

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