

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

International Brotherhood of Teamsters,)	
Local 722,)	
)	
Petitioner)	
)	
and)	Case No. S-RC-16-067
)	
County of Ogle and County Clerk)	
and Recorder of Ogle County,)	
)	
Employer)	

ORDER

On January 17, 2017, Administrative Law Judge Deena Sanceda, 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 April 11, 2017 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 17th day of April 2017.

**STATE OF ILLINOIS
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**Helen J. Kim
General Counsel**

**STATE OF ILLINOIS
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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 29, 2016, the Petitioner, International Brotherhood of Teamsters, Local 722 (“Union”) filed a majority interest petition (“Petition”) with the State Panel of the Illinois Labor Relations Board (“Board”) in the above-captioned case as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended, (“Act”). The Union seeks to become the exclusive representative of the employees of the County of Ogle and County Clerk and Recorder of Ogle County, (“Employer”) employed in the titles of Chief Deputy Clerk, Chief Deputy Recorder, Deputy Clerk, and Deputy Recorder. On July 19, 2016, the Employer filed a response objecting that the petitioned-for unit was inappropriate. On December 6, 2016, the Employer raised an additional objection, contending that the Union lacks majority support because a petitioned-for position became vacant after the Union filed the Petition. The Employer subsequently abandoned its unit appropriateness objection. Accordingly, the parties were granted leave to brief “any and all questions of law” relevant to the Board’s determination in this case. After full consideration of the parties’ stipulations, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. PRELIMINARY FINDINGS:¹

The parties stipulate, and I find, that:

1. At all relevant and material times, the Employer has been a public employer within the meaning of Section 3(o) of the Act.
2. At all relevant and material times, the Employer has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. The County is a unit of local government within the meaning of Section 20(b) of the Act.
4. At all relevant and material times, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
5. On June 29, 2016, the Union filed a Petition with the Board seeking certification as the exclusive representative of the bargaining unit:

INCLUDED: All full-time and part-time employees in the County of Ogle Clerk and Recorder's Office in the following titles: Chief Deputy Clerk, Chief Deputy Recorder, Deputy Clerk, Deputy Recorder.

EXCLUDED: All supervisory, managerial, and confidential employees, and all other employees of Ogle County Clerk and Recorder's Office.

6. There is one (1) Chief Deputy Clerk and two (2) Deputy Recorders.
7. [As of November 30,] there [were] four (4) Deputy Clerks. There presently is no Chief Deputy Clerk.
8. At the time the Union filed the Petition, positions [identified in paragraphs 6 and 7] in the Office of the Clerk and Recorder consisted of the following [seven (7)] employees:

¹ On November 30, 2016, each party filed a statement of uncontested facts. Paragraphs 1 through 10 stem from those uncontested facts. On December 6, 2016, the Employer filed a statement of additional facts, to which the Union stipulated to one of those facts. That *new* stipulation is reflected in paragraph 11. On December 14, 2016, the Employer filed a statement of facts, and on December 23, the Union stipulated to some of those facts. Those *new* stipulations are reflected in paragraphs 12, 13, and 14. While the Union stipulates to the facts identified in paragraphs 12, 13, and 14, it denies that they are relevant to the Board's determination of whether to certify the Union and the petitioned-for unit's certified bargaining representative.

- 1) Jennifer Albright
- 2) Heather Barcai-Mowry
- 3) Rebecca Bolthouse
- 4) Tiffany O'Brien
- 5) Shari Stump
- 6) Julie Thomas
- 7) Linda Walters

9. As of on or about September 13, 2016, the positions [identified in paragraphs 6 and 7] in the Office of the Clerk and Recorder [consisted] of the following [seven (7)] employees:

- 1) Heather Barcai-Mowry
- 2) Lisa Barkalow
- 3) Rebecca Bolthouse
- 4) Tiffany O'Brien
- 5) Shari Stump
- 6) Julie Thomas
- 7) Linda Walters

10. The Employer does not dispute the appropriateness of a bargaining unit consisting of all Deputy Clerks and Deputy Recorders, subject to a vote by said employees.

11. [On July 29, 2016,] the Employer responded [to the Petition] and moved for an [evidentiary] hearing to determine the supervisory status of two "chief deputy" positions within the proposed bargaining unit: the Chief Deputy Clerk and the Chief Deputy Recorder.

12. There was a personnel change in the proposed bargaining unit on or about September 13, 2016. Specifically, Jennifer Albright resigned during the time period between the filing of

the Petition and September 13, 2016, following which Lisa Barkalow replaced Ms. Albright as a Deputy Clerk.

13. Lisa Barkalow has also resigned, effective December 6, 2016. The Albright/Barkalow Deputy Clerk position is presently vacant.

14. As a result, the proposed bargaining unit currently consists of six (6) individuals.

II. ISSUES AND CONTENTIONS

The issues are as follows: 1) Is the Employer's objection to the Board's administrative procedure for determining whether the Union has established majority support appropriate? 2) If the Employer's procedural objection is appropriate, how do Albright's and Barkalow resignations affect the Board's determination of whether the Union has established majority support? 3) Is it proper for the Board to determine whether the Union has established majority support through an election rather than utilizing the Board's card check procedures?

The Employer argues the Board should order an election because a majority interest no longer exists as one of the positions in the petitioned-for unit became vacant after the Union filed the Petition. The Employer urges the Board to use the filed authorization cards as evidence of employee support for an election, but disregard them as evidence of a majority interest pursuant to the Board's card check procedures, which provide for certification without an election. In the alternative, the Employer requests that the Board determine whether the Union has established a majority interest based upon authorization cards signed by those employees *currently* employed, and remove any cards signed by employees who worked for the Employer on the date the Union filed the Petition but have subsequently resigned.

The Union objects to the Employer's contention that the Union failed to establish majority support because the parties are not permitted to litigate over the Board's determination

of whether the Union has established majority interest. The Union also argues that the Board may only proceed to an election in majority interest cases where it determines there is clear and convincing evidence of fraud or coercion. Since the Employer does not allege either fraud or coercion, the Board must determine whether the Union has established majority support based only on the proof submitted in support of the majority interest petition, *i.e.*, the authorization cards filed on June 29, 2016.

III. PROCEDURAL BACKGROUND

On June 29, 2016, the Union filed a Petition with the Board seeking to be certified as the exclusive representative of certain employees of the County of Ogle Clerk and Recorder pursuant to Section 1210.80(b) the Rules and Regulations of the Board, 80 Ill. Adm. Code §§ 1200-1300 (“Board’s Rules”). The Petition was accompanied by signed authorization cards to demonstrate that a majority of the employees in the petitioned-for bargaining unit wish to be represented by the Union, as the Board’s Rules required. Pursuant to Board Rule 1210.100(b)(2), on July 11, 2016, the Employer submitted the names, job classifications, and signature exemplars of the employees in the petitioned-for unit. 80 Adm. Code § 1210.100(b)(2). On July 19, 2016, the Employer filed objections to the Union’s Petition, maintaining that the petitioned-for positions of Chief Deputy Recorder and Chief Deputy Clerk must be excluded from the bargaining unit because they are supervisory employees within the meaning of the Act. On July 27, 2016, a Board agent informed the Employer that in order for the Board to certify the bargaining unit, the Union must establish a majority of the undisputed employees have signed authorization cards, and that there was not a majority interest without the two disputed employees. Also on July 27, 2016, the Board agent reassigned the case to the undersigned Administrative Law Judge for investigation.

On October 7, 2016, the undersigned ordered a hearing in the above-captioned case to commence on October 26, 2016, to determine whether the Chief Deputy Recorder and the Chief Deputy Clerk are supervisory employees as defined by Section 3(r) of the Act.² On October 17, 2016, the parties filed a Joint Motion to Reschedule because the Employer was unable to secure the availability of its witnesses prior to November 8, 2016. I subsequently rescheduled the hearing to the parties' agreed-upon dates of December 8, 2016, and December 9, 2016.

On December 6, 2016, the Employer filed a Motion For Election in Lieu of Petitioned-For Majority Interest Petition to which the Union filed a brief in opposition. The parties stipulated that the Deputy Clerk position Jennifer Albright held on the date the Union filed the Petition was vacant as of December 6, 2016. In its Motion, the Employer theorized that Albright was one of the employees who signed the filed authorization cards, and because she is no longer an employee to be included in the petitioned-for bargaining unit, the Union no longer has majority support. As the authorization cards are confidential, the Employer's theory is not based on actual knowledge of which employees signed authorization cards, but rather upon deducing which employees signed cards after the Union disclosed to the Employer the number of cards filed with the Board. See 5 ILCS 315/9(a-5); 80 Ill. Adm. Code § 1210.80(e)(1). Based upon that deduction, the Employer contended that certification utilizing the Board's authorization card check procedure is no longer appropriate, and that the Union only has sufficient support to

² Section 3(r) of the Act provides:

“Supervisor” is an employee whose principal work is substantially different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust their grievances, or to effectively recommend such actions, if the exercise of such authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment.

proceed to an election.³ In the alternative, the Employer requested that the hearing scheduled for December 8, 2016 and December 9, 2016, be rescheduled for it to prepare to litigate the “newly-developed question of representation.” On December 6, 2016, the undersigned issued an Interim Order denying Employer’s Motion, finding that the Employer’s newly raised objection did not preclude proceeding to the evidentiary hearing on the issues of whether the Chief Deputy Recorder and the Chief Deputy Clerk are supervisory employees as defined by the Act.

On December 7, 2016, the Employer withdrew its objection to including Chief Deputy Recorder and the Chief Deputy Clerk in the unit, submitting that at that time it was unable to provide sufficient evidence to demonstrate that these positions satisfy the Board’s supervisory test. However, the Employer maintained its argument that Albright’s resignation affected the Union’s majority interest. Thus, on December 7, 2016, the undersigned ordered that the Employer file a brief containing “any and all issues of law in support its position that the Union’s petition [is] inappropriate” and that the Union file a response brief. As of December 23, 2016, the parties filed their respective briefs.

IV. DISCUSSION AND ANALYSIS

The Employer’s objections do not preclude the Board from determining whether the Union has established a majority interest based solely upon the evidence provided by the parties.

The Act grants public employees “full freedom of association, self-organization, and designation of representatives of their own choosing for the purposes of negotiating wages, hours and other conditions of employment.” 5 ILCS 315/2. In order for a labor organization, i.e., a union, to become a certified bargaining representative of a unit of public employees, the union,

³ When a petitioner files a representation petition seeking an election, the showing of interest evidence must demonstrate that “that at least 30% of the employees wish to be represented by the labor organization.” 80 Ill. § 1210.80(d)(1)(A).

must establish that a majority of the employees in the proposed bargaining unit want the union to represent them for the purpose of collective bargaining. See 5 ILCS 315/3(f), 6(c). A union must file a representation petition with the Board seeking such certification. See 5 ILCS 315/9(d), 80 Adm. Code § 1210.20. At the time the Act was enacted in 1984, the only method by which a Union could become the certified bargaining representative of a newly created bargaining unit where the employer objected to such certification was by filing an election petition with the Board, as set forth in Section 9(a)(1) of the Act. Certifying a bargaining unit through an election petition is a two-step process. See 5 ILCS 315/9(a)(1), (d). The first step requires a union to establish through evidence, such as authorization cards, that at least 30% of the employees in the petitioned-for bargaining unit support the union becoming their certified bargaining representative. 5 ILCS 315/9(a)(1). The second step requires that the Board hold a secret ballot election where the employees may vote for or against the union becoming their certified bargaining representative. 5 ILCS 315/9(d). In order for the union to prevail, a majority of the employees casting ballots must vote in favor of Union representation. Id.

In August 2003, the Illinois General Assembly added Section 9(a-5) to the Act as an alternative to the election process. Section 9(a-5), in pertinent part, provides:

The Board shall designate an exclusive representative for purposes of collective bargaining when the representative demonstrates a showing of majority interest by employees in the unit. If the parties to a dispute are without agreement on the means to ascertain the choice, if any, of employee organization as their representative, the Board shall ascertain the employees' choice of employee organization, on the basis of dues deduction authorization or other evidence, or, if necessary, by conducting an election If either party provides to the Board, before the designation of a representative, clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the Board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the Board shall promptly thereafter conduct an election.

Since the addition of Section 9(a-5) to the Act, a union may file a representation petition

to determine a union's majority support through an election (election petition) as set forth in Section 9(a)(1) and (2) of the Act, or a petition filed pursuant to the Board's card check procedures (majority interest petition) as set forth in Section 9(a-5) of the Act by filing a majority interest petition filed pursuant to the Board's card check procedures as set forth in Section 9(a-5) of the Act. 5 ILCS 315/9(a)(1)(2)(a-5); 80 Adm. Code § 1200.10. The Board's Rules set forth the procedures a union must follow to be certified under Section 9(a-5) of the Act. See 80 Ill. Adm. Code §§ 1210.80(b), (d)(2)(B), (d)(2)(C), (d)(2)(D), (d)(2)(E). A union must file with the Board a majority interest petition, "accompanied by a showing of interest evidencing that a majority of the employees in the petitioned-for bargaining unit wish to be represented by the labor organization." 80 Ill. Adm. Code § 1210.80(b). The showing of interest in support of such a petition "may consist of authorization cards, petitions, or any other evidence that demonstrates that a majority of the employees wish to be represented by the union for the purposes of collective bargaining." Id. The "evidence submitted as a showing of interest must contain legible signatures and each signature must be dated by the employee." 80 Ill. Adm. Code § 1210.80(d)(2)(B). The signature on the evidence submitted in support of a showing of interest is only valid if it predates the petition's filing date by no more 6 months. 80 Ill. Adm. Code § 1210.80(d)(2)(C). "The Board also will not count signatures from employees who were not employed by the employer on the date the majority interest petition was filed." 80 Ill. Adm. Code § 1210.80(d)(2)(D). In addition, the showing of interest "shall state that by signing the card the employee acknowledges that if a majority of his/her coworkers in an appropriate unit sign evidence of majority support, the card can be used by the petitioner to obtain certification as the employees' exclusive representative without an election." 80 Ill. Adm. Code § 1210.80(d)(2)(E).

The Board's Rules also set forth the procedures an employer must follow when a union seeks to represent a bargaining unit. The employer is required to submit signature exemplars for the employees in the petitioned-for bargaining unit and must respond to the petition. 80 Ill. Adm. Code §§ 1210.100(b)(2), (b)(3). In its response, the employer must indicate whether it opposes the Board certifying the petitioned-for bargaining unit. 80 Ill. Adm. Code § 1210.100(b)(3). If it opposes the certification, the employer must set forth its "position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by petitioner to be included should be excluded from the unit." Id. The employer must also include any "clear and convincing evidence of any alleged fraud or coercion in obtaining majority support." Id.

1. The Employer's procedural objection is not appropriately before me.

The Board's majority interest determination procedure is not subject to litigation. The Employer argues that the Board should determine whether the Union has established majority support by only considering the authorization cards by employees *currently* in the proposed bargaining unit, as opposed to those employees in the bargaining unit when the Union filed its evidence of majority support. Essentially, the Employer is proposing the method by which the Board should determine whether the Union has established a majority interest. The Union argues that the Illinois Supreme Court's decision in County of Du Page v. Illinois Labor Relations Board, precludes the Employer's argument. 231 Ill. 2d 593, 616 (2008).

In County of Du Page, the Court held, relevant to these proceedings, that "[S]ection 9(a-5) [of the Act] precludes an employer from litigating the Board's determination that a union enjoys majority status." Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 616. The Court reached this conclusion by considering the text of Section 9(a-5) of the Act, the Board's Rules,

and the legislative history of Section 9(a-5). Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 614-617. Upon review of Section 9(a-5), the Court found that the employer's role in the Board's majority interest determination procedure was limited to submitting clear and convincing evidence that the majority interest evidence is fraudulent or was obtained through coercion, because the legislature "made no other provision for the employer to involve itself in [...] the process by which the Board determines whether a union has established majority support under section 9(a-5)." Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 614. The Court specifically refused to "assume that the legislature intended a larger role for the employer than the language of section 9(a-5) allows." Id. The Court also relied upon the Board's administrative rule that was in place at the time that the legislature added Section 9(a-5) to the Act, that the "adequacy of the showing of interest shall be determined administratively by the Board or its agent. The showing of interest determination is not subject to litigation." Id. citing 80 Adm. Code § 1210.80(d)(3). The purpose of Section 9(a-5) was to provide an alternative to the "lengthy and cumbersome" Board election procedure, by providing public employees to vote for a union to be their certified bargaining representative through the "simple card check procedure." Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 615 (internal quotes omitted). The Court found that the "General Assembly intended [S]ection 9(a-5) to limit an employer's ability to delay or interfere in the process of union recognition." Id. citing 93d Ill. Gen. Assem., Senate Proceedings, May 21, 2003, at 12 (statements of Senator Sandoval).

The Court also clarified that its "holding does not mean that the Board's certification order is immune from challenge," proclaiming, "other aspects of the Board's order may be challenged." Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 616-617. The Court noted, that in addition to claims of fraud or coercion, an employer may challenge the Board's

interpretation of the Act, the appropriateness of the bargaining unit, and “may also raise other issues pertinent to the facts of the case.” Cnty. of Du Page v. Ill. Labor Rel. Bd., 231 Ill. 2d at 617 citing 5 ILCS 315/9(a-5); 80 Ill. Adm. Code § 1210.100(b)(3). It is this language that the Employer relies upon in making its procedural argument, that it is entitled to challenge whether a majority interest showing is proper.

The Employer’s contention that the Board should consider that one of the petitioned-for positions is now vacant in making its determination of whether the Union has established a majority interest is precluded because it is an attempt to involve itself in the Board’s administrative process for making such a determination. The Court was clear that an employer may challenge *other aspects* of the Board’s order but is not entitled to challenge the Board’s determination of whether the union has demonstrated the requisite showing of interest, or the process by which the Board makes such determination. (Emphasis added). The Act does not allow an employer to insert itself in the Board’s administrative calculation of majority support outside of raising an issue of fraud or coercion. The Employer’s argument that it is entitled to challenge whether a majority interest showing is proper because its objections are pertinent, is contrary to Court’s holding that an employer is precluded from making such an objection. Accordingly, the Employer is not entitled to object to, or even provide input, as to the procedures the Board employs when it determines whether the Union has established majority support.

2. Albright’s and Barkalow’s resignations have no effect in this case.

If the Board determines that the Employer is authorized to challenge the process by which the Board determines majority support, I find that whether an employee who signed an authorization card subsequently resigned after the Union filed the Petition is irrelevant because the Petition’s filing date is the date of significance for purposes of determining whether the union

has established a majority interest. Under Board precedent, it well established that in analyzing representation cases arising under the Act, the petition's filing date is the date of significance for purposes of resolving such issues as whether a public employee is covered by the Act, whether a public employer is covered by the Act, and whether a petitioned-for bargaining unit is appropriate. See e.g., State of Ill., DCMS, 20 PERI ¶ 105 (IL LRB-SP 2004); Cnty. of Boon and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003); Northwest Mosquito Abatement Dist., 13 PERI ¶ 2042 (IL SLRB 1997), aff'd, 303 Ill. App. 3d 735 (1st Dist. 1999).

The Board has declined to consider information concerning employment matters arising after the petition's filing date. See e.g., State of Ill. DCMS, 20 PERI ¶105; Cnty. of Boone, 19 PERI ¶ 74. The Board's Rules provide that where a union utilizes authorization cards containing employees' signatures to demonstrate that a majority of the employees in the petitioned-for unit wish to be represented by the union, "the showing of interest shall be valid only if signed within 6 months prior to the filing of the petition[,]" and that "the Board will not count signatures from employees who were not employed by the employer on the date the majority interest petition was filed." 80 Ill. Adm. Code § 1210.80(d)(2)(C), (D). The Board promulgated its procedural rules for processing majority interest petitions after Section (9-a) was added to the Act in 2003. I find that based upon the Board's Rules and its precedent on the issue of the date of significance, the date of significance for determining majority interest is the date that a union files the petition. Thus, whether any employee in the petitioned-for unit resigned subsequent to the Petition's filing date is irrelevant to determining whether the Union has established majority support.

3. Conducting an election is not proper.

The Employer argues that an election is now necessary because it is reasonable to assume that Albright's resignation caused the Union to lose its majority status. Since, I have already

determined that Albright's resignation is irrelevant to the question of majority support, the basis for the Employer's argument in favor of an election is moot. However, in the event that the Union otherwise does not establish majority support, an election is neither necessary nor proper to ascertain whether a majority of petitioned-for employees choose the Union to be their certified bargaining representative. Section 9(a-5) of the Act provides that "the Board shall ascertain the employees' choice of employee organization [as their representative], on the basis of dues deduction authorization or other evidence, or, if necessary, by conducting an election." 5 ILCS 315/9(a-5). The Board's Rules provide that in a majority interest case an election is necessary only in circumstances where a party or individual has alleged that the petitioner's evidence of majority support was obtained fraudulently or through coercion. See 1210.100(b)(5).⁴ Here, the Employer does not allege that the Union obtained the authorization cards through fraud or coercion. Accordingly, an election in this case is not necessary under the Act.

An election is not permitted under the Board's Rules. If the Board administratively determines that the Union lacks majority support, it must dismiss the petition, not proceed to an election. Section 1210.80 of the Board's Rules provide that in majority interest cases if the Board agent determines that the evidence submitted does not demonstrate the appropriate majority level of interest, the agent shall provide the petitioner with five days to provide the necessary showing of interest to the Board agent. See 80 Ill. Adm. Code § 1210.80 (e)(4). The Board's Rules further provide that if the petitioner "is unable to present any necessary additional evidence of showing of interest within that time, then the petition shall be dismissed." Id.

⁴ In majority interest cases, an election is held, if, after conducting an evidentiary hearing, the Board finds clear and convincing evidence that the petitioner's evidence of majority support was obtained through fraud or coercion, or if the parties agree to proceed to election as an alternative to advancing to an evidentiary hearing on the fraud and coercion issue. 80 Ill. Adm. Code §1210.100 (b)(5)(B).

The Employer further argues that the Board should order an election because other jurisdictions' procedural rules provide as such in cases when a petitioner has filed a majority interest petition but failed to provide majority support. The procedural rules promulgated by other jurisdictions are irrelevant here. When an administrative agency has adopted rules and regulations under its statutory authority for carrying out its duties, the agency is bound by those rules and regulations and cannot arbitrarily disregard them. Springwood Assoc. v. Health Facilities Planning Bd., 269 Ill. App. 3d 944, 948 (4th Dist. 1995) citing Union Electric Co. v. Dep't of Revenue, 136 Ill. 2d 385, 391 (1990). As an administrative agency, the Board is bound to follow the Act and the Board's Rules. Dep't of Cent. Mgmt. Serv./Ill. Commerce Com'n., v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 766, 771 (4th Dist. 2010).

Other agencies, including the Illinois Educational Labor Relations Board, this Board's sister agency, have promulgated rules providing for an election when a majority interest petition falls short of demonstrating majority support. See Civil Service Law § 201.9(g)(1); 80 Ill. Adm. Code § 1110.105(r). However, only in the absence of binding authority on the point of law in question are we to look to other jurisdictions for persuasive authority. Allstate Ins. Co. v. Lane, 345 Ill. App. 3d 547, 552 (1st Dist. 2003) citing People ex rel. Watson v. Spinka, 58 Ill. App. 3d 729, 734 (1978). Since the Board specifically contemplated the applicable procedure in the event that a union that filed a majority interest petition does not demonstrate majority support, and the Board is bound by its administrative rules, the rules promulgated by other agencies are not indicative of how the Board should proceed. Thus, the administrative rules of other jurisdictions have no bearing on the Board's actions because it has established its own administrative rules on the same topic.

V. CONCLUSIONS OF LAW

- 1) The Employer's objection to the Board's administrative procedure is not appropriate.
- 2) The resignation of any petitioned-for employees after the date the Petition was filed has no bearing on the Board's determination of whether the Union has obtained majority support, because the date of significance for determining majority support is the Petition's filing date.
- 3) It is improper to proceed to an election rather than to utilize the Board's card check procedures.

VI. RECOMMENDED ORDER

It IS HEREBY ORDERED that the Board or its agent shall administratively prepare a tally of majority interest based upon the evidence the Union submitted in order to determine whether a majority of the employees in the petitioned-for unit desire that the International Brotherhood of Teamsters, Local 722 to be certified as their exclusive bargaining representative.

VII. 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 in 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 five 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 Helen Kim, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle

Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be 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 this 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 17th day of January, 2017

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

/s/ Deena Sanceda

Deena Sanceda
Administrative Law Judge