

## PUBLIC EMPLOYEES IN ILLINOIS WIN CARD-CHECK PROCEDURE

The Illinois Supreme Court rules that a labor organization seeking to represent public employees can obtain certification as a bargaining agent by obtaining employee signatures on authorization cards or petitions even if the union fails to submit employee authorizations for the deduction of union dues. Writing for the majority in a 4-3 ruling on the first issue in the case, Justice Thomas R. Fitzgerald says that although the state legislature's 2003 amendment to the Illinois Public Relations Act (IPRA) literally authorizes a state labor relations board to issue a certification on the basis of dues authorizations "and other evidence," the legislature's use of the word "and" was actually intended to mean "or." The Illinois Labor Relations Board (ILRB) interpreted the statute correctly in adopting a regulation that allows unions to rely on "authorization cards, petitions, or any other evidence" without presenting dues authorizations.

The case involves Chapter 126 of the Metropolitan Alliance of Police (MAP), a sheriff's police union, which filed a petition requesting certification as the bargaining agent for a unit of deputy sheriffs in Du Page County.

Section 9(a-5) of the IPRA provides that when a dispute concerning representation arises, "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."

The ILRB regulations provide that a labor organization must submit a "showing of interest" that demonstrates that a majority of employees wish to be represented by the union and that "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."

Du Page County objected to the MAP's petition, arguing that it required both dues authorization cards and some additional evidence of majority support in order to be certified. The board rejected the argument and certified the MAP as the exclusive bargaining agent for the deputy sheriffs. The state appeals courts held for the County and the ILRB appealed the ruling to the state supreme court.

Fitzgerald states that using the word "and" between two statutory elements "generally indicates that both of the elements must be satisfied in order to comply with the statute." However, the majority concludes that "the basic premise underlying the Board's reading of the statute—that 'and' does not necessarily mean 'and'—and the basic premise underlying the Employer's reading of the statute—that 'and' typically means 'and'—both appear, at first blush, to be on solid ground." In reviewing the legislative history of House Bill 3396 to resolve the ambiguity, the majority finds that supporters of the bill were seeking a method of union certification that was less "lengthy and cumbersome" than an election certification procedure. "We therefore cannot agree with the Employer that the legislature would have complicated the card check procedure by requiring two forms of evidence: a dues checkoff card and some other unspecified form of evidence," Fitzgerald writes.

The court also notes that during the debate on the Illinois legislation, a state representative noted that New York's Public Employees' Fair Employment Act referred to determining the desires of public employees based on dues authorizations and other evidence, but the state's labor board adopted a regulation that provided for accepting either dues authorizations or some other form of evidence. "Having adopted language that mirrors in pertinent part the language of the New York statute, we also presume that the legislature intended a similar result," Fitzgerald states.

Although the court was divided on the evidence required to support the union's petition, all of the justices concur with Fitzgerald's opinion that Du Page County could not object to the MAP certification based on the ILRB's failure to give the employer access to the evidence that showed the union's majority support among the deputy sheriffs. "The legislature would not have provided a streamlined 'card check' procedure for union recognition on the one hand, but on the other hand provide an employer the ability to delay a certification order by allowing a fishing expedition in the union's evidence of support," the court said.

The decision is available at <http://op.bna.com/dlrcases.nsf/r?Open=ldue-7mgn7q>.

(Source: *County of Du Page v. Ill. Labor Relations Bd., Ill.*, No. 105395, December 18, 2008, as reported in BNA, *Daily Labor Report*, No. 245, December 22, 2008, pp. A9-A11, E1- E10.)

Industrial Relations Center, University of Hawaii at Manoa  
2425 Campus Road, Sinclair 301 • Honolulu, HI 96822

Telephone: (808) 956-8132 • Facsimile: (808) 956-3609 • Email: [uhirc@hawaii.edu](mailto:uhirc@hawaii.edu) • Website: [www.manoa.hawaii.edu/irc](http://www.manoa.hawaii.edu/irc)