BCC-ALD

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

BEFORE THE ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PETITIONS FOR MUNICIPAL AND ALDERMANIC OFFICES, FEBRUARY 24, 1987 ELECTION

IN RE: Objection of)
EDMUND J. SWAIN)
To the Nominating Petition of)
JOHN G. FREZADOS) NO. 87-EB-ALD- 87
Candidate for the Office of Alderman,)
18TH ward, in the City of)
Chicago, Cook County, Illinois)

D E C I S I O N

The duly constituted Electoral Board, consisting of MICHAEL E. LAVELLE, JAMES R. NOLAN and NIKKI M. ZOLLAR organized by law in response to a Call issued by MICHAEL E. LAVELLE, Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nominating Petitions for the Offices of Alderman and Ward Committeeman, having convened on December 29, 1986 at 10:30a.m. in Room 1703, Richard J. Daley Center, Chicago, Cook County, Illinois; and having heard and determined the objections to the petition in the above entitled matter find that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;
2. Objections to the nominating petition of the candidate herein were duly filed;
3. A Call to the hearing on said objections was duly issued and was served upon the members of the Electoral Board, the objector and the candidate by mail and by personal service as provided by statute;
4. A public hearing was held on these objections commencing December 29, 1986.
5. The following persons, among others, were present at such hearings: the members of the Electoral Board, the objector, [illegible] by counsel; and the candidate, [illegible] by counsel;
6. The Board heard and considered all evidence and arguments tendered by those appearing at the hearing;
7. The Board ordered an examination of the precinct binders to be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board;
8. During examination of the precinct binders, the Board directed all parties to appear and to be present, either personally and/or by their authorized representatives, duly appointed and authorized by said parties;
9. The candidate and/or his duly authorized representatives were present during the examination of the binders at all times;

10. The objector and/or his duly authorized representatives were present during the examination of the binders at all times;

11. Examination of the precinct binders was completed;

12. The Board having heard oral arguments and consider all evidence hereby finds:

a. The statutory minimum number of signatures required for placement on the ballot is 397

b. The number of signatures filed by the candidate total 493

c. The number of signatures because of objections sustained deemed invalid total 103

d. The remaining number of signatures deemed valid total 390

The written report of the Board's findings sustaining signature objections are contained in the Board's file in this cause, and is available upon request of any party.

The Board further finds that the number of valid signatures on the nominating petitions ~~exceeds~~ (or) falls below the minimum number of signatures required by law to be placed upon the ballot as candidate for election to the Office of Alderman, 18th ward.

The Board further ~~finds~~ adopts the finding of the Hearing Examiner (attached) as the findings of the Board.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the objections of Edmund J. Swain to the nominating petition of John G. Frezados as candidate for election to the Office of Alderman, 18th ward, are hereby sustained ~~(or) overruled~~ in conformity with the findings in Paragraph 12 hereof and the said petition is hereby declared ~~valid~~ (or) not valid, and the name of John G. Frezados, as candidate for election to the Office of Alderman, 18th ward, ~~shall~~ (or) shall not be printed on the ballot for the Municipal Election to be held on February 24, 1987.

Dated: Chicago, Illinois, this 29th day of January, 1987.

Chairman

Member

THE CHICAGO BOARD OF ELECTION COMMISSIONERS

ELECTORAL BOARD
FOR HEARING AND PASSING UPON OBJECTIONS TO
NOMINATION PETITIONS FOR MUNICIPAL AND ALDERMANIC OFFICES
OF THE CITY OF CHICAGO FOR THE MUNICIPAL PRIMARY
AND ALDERMANIC FEBRUARY 24, 1987, ELECTIONS

IN THE MATTER OF OBJECTIONS OF EDMUND J. SWAIN TO THE NOMINATING PETITIONS OF JOHN G. FREZADOS AS A CANDIDATE FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 18TH WARD OF THE CITY OF CHICAGO, STATE OF ILLINOIS, TO BE HELD ON FEBRUARY 24, 1987.	)))))))	87 EB-ALD 87

HEARING OFFICER'S REPORT AND RECOMMENDATION

After numerous hearings, full argument, a complete binder check and the presentation of evidence by both parties, the Hearing Officer makes the following evidentiary findings and the following recommendation.

There were three Motions to Strike filed by the candidate against the Objector's Petition. The original of each Motion to Strike has been numbered by the Hearing Officer for identification. The Motions to Strike, bearing the identification numbers 1 and 2 are denied by the Hearing Examiner. Motion to Strike #1 is denied because the Election Code does not require verification of the objector's petition and therefore the form of the unnecessary verification is immaterial; however, even if verification is required, the Hearing Examiner believes that the form of verification used by the objector is adequate to bind the objector. Motion to Strike #2 is denied because the Hearing Examiner finds that the last day for filing

objections under Chapter 46, Section 10-8 of the Illinois Revised Statutes is the fifth business day after the last day for filing, which is December 22, 1986 and the day that objector filed his objection petition. In addition, even if December 22, 1986 was not the proper day, the fact that the Chicago Board of Election Commissioners publically declared that day to be the last day for filing binds them to this declaration. See Briscoe v. Kusper.

The Motion to Strike bearing the identification number 3 is denied except as to the following paragraphs of the Objection Petition, 8, 9, 10, 12, 13 and 14, as to which the Motion to Strike is granted. As to paragraphs 8, 9, 10 and 12, the Motion to Strike is granted with the agreement of the parties. As to paragraph 14, the Motion to Strike is granted because the form of the notarization on the nomination papers is sufficient and is in substantial compliance with the Election Code. Willhoite v. Chicago Board, 86 CO 235.

As to whether or not paragraph 15 of the objector's petition should be struck, the Hearing Examiner recommends that this paragraph should not be struck. The law provides that the signers may execute only one candidate's petition and the signature which was executed first is the valid one, Watkins v. Burke, 761 N.E.2d 625. Accordingly, paragraph 15 is a valid objection.

As to that portion of the Motion to Strike #3 directed to paragraph 13 of the objector's petition, the Hearing Examiner

originally granted the Motion on January 15, 1987. However, the objector filed a Motion to Reconsider and the issue was fully briefed and argued on January 21, 1987. After reconsideration, the Hearing Examiner continues to recommend, notwithstanding the dicta contained in Oliver v. Municipal Officers Electoral Board, 83 CO 14, that the Electoral Board does not have jurisdiction to determine the accuracy of the contents of an Ethics Statement. Therefore, the fact that the candidate did not answer question 7 on his Ethics Statement correclty, see transcript of December 31, 1986 at page 17, the Electoral Board has no authority to remove this candidate from the ballot for this inaccuracy. Accordingly, the Motion to Strike paragraph 13 is granted. Thus, the question reduces itself to one of numbers.

Initial Binder Check

The results of the initial binder check, after correction, indicated that the nomination papers contained a total of 493 signatures, that 98 of the objections were sustained for various reasons other circulation, that 50 of the objections were sustained on the grounds of invalid circulation and that the nomination papers therefore contained 345 valid signatures, or 52 less than the 397 signatures required. The results initially appeared as follows:

Total signatures filed:	493
Objections sustained except as below:	98
Objections sustained, circulators:	50

Objections sustained, duplicates:	0
Total valid signatures:	345

The Candidate's Presentation

The candidate presented evidence, by way of testimony of the circulator, upon which the Hearing Officer found that the 50 signatures removed for reason of invalid circulation were in fact validly circulated and therefore restored the 50 signatures previously removed. However, of the 50 signatures thus restored, 3, appearing on lines 9, 16 and 18 on sheet 22, were otherwise objectionable as being signatures of persons not registered (in the case of lines 9 and 18) or being a name not signed in own proper person (in the case of line 16). Thus, the net increase over the original binder check result was 47, thereby increasing the total valid signatures to 392 or five below the minimum.

The candidate presented nine affidavits allegedly representing sworn statements of persons whose names had been removed in the binder check as not being genuine. Of the nine, two of the affidavits were of persons whose names were not in fact removed, and therefore these affidavits were so marked and set aside. The remaining seven affidavits were sent to the Board's handwriting expert for an opinion concerning the validity of his original call in light of the affidavit. The handwriting expert reached his opinion after reviewing the original petition pages, the original binder cards and the affidavits. His opinion was written on each affidvit and the Hearing Officer reviewed this

opinion and the documentation reviewed by the handwriting expert. Of the seven affidavits submitted, the handwriting expert and the Hearing Officer found five to be valid without question, and one to be invalid without question; thereby increasing the number of valid signatures to 397, or the minimum.

The remaining affidavit is that of a Thomas J. Wiggins. The handwriting expert and the Hearing Officer agree that the signature on the binder card and on the affidavit match and therefore the affidavit was executed by a registered voter who could properly sign the nominatin papers. However, except for the letter "T" of the first name, the handwriting expert and the Hearing Officer agreed that the signature on the nomination papers does not match the signatures appearing on the binder card or the affidavit. But, the registered voter named Thomas J. Wiggins acknoweldged under oath that the signature, whether it matches the binder card or not, on the nomination papers is his signature and swears that he signed the nomination papers on sheet 5, line 2. The Hearing Officer believed that the signature on line 2, sheet 5 should be considered valid and the number of signatures at this stage of the proceeding was increased to 398, or one above the minimum.

Next a master file check was held covering 18 names. This check resulted in ten additional signatures, previously found to be objectional, to be valid and increased the number of valid signatures, to 408 or 11 over the minimum. The results appeared

in chart form as follows:

Total signatures filed:	493
Objections sustained except as below:	85
Objections sustained, circulators:	0
Objections sustained, duplicates:	0
Total valid signatures:	408

The Objector's Rebuttal

The objector then presented forty two exhibits, a majority of which were documents purporting to be affidavits which claimed that particular individuals had signed petitions for other candidates before signing the petitions for Mr. Frezados. See objector's petition paragraph 15. The candidate vigorously objected to these alleged affidavits as being without evidentiary value because of their form. The hearing officer believes the candidate is correct and the affidavits were disregarded.

However, other evidence was presented involving live testimony and a requested comparison of certain pages of the petition circulated for other candidates in the 18th Ward and those circulated, by one Patsy Scala, for Mr. Frezados. Mr. Patsy Scala was called and testified under oath that he had circulated numerous petition pages for Mr. Frezados beginning in the first week in December, 1986. One Matthew Neubauer was also called and testified, under oath, that he had circulated numerous petition pages for one Robert T. Kellam for the same office sought by Mr. Frezados. Mr. Neubauer further testified that he circulated the

pages for Mr. Kellum during November 1986 and he completed his circulation before the end of November 1986.

Mr. Scala and Mr. Neubauer were both credible witnesses and the Hearing Officer finds that Mr. Neubauer circulated the petition pages for Mr. Kellum and obtained the signatures thereon prior to Mr. Scala's circulation of the pages for Mr. Frezados.

In addition, the candidate's petition of a Robert Jones was compared to the petition of Mr. Frezados, specifically those pages of Mr. Jones' petition circulated by a Mr. Nolan and pages of Mr. Frezados' petition circulated by Mr. Scala. Mr. Nolan's circulator's affidavit was notarized in November 1986 thereby clearly indicating that the pages had been signed and circulated prior to the end of November, 1986 or before those of Mr. Scala.

The comparison of the signatures on Mr. Jones' nomination papers and Mr. Kellums' nomination papers indicates 18 duplicate signatures appearing on those pages and upon the pages circulated by Mr. Scala, thereby requiring an additional 18 objections to be sustained. See Watkins, supra. Removing these signatures, the final results are as follows:

Total signatures filed:	493
Objections sustained except as below:	85
Objections sustained, circulators:	0
Objections sustained, duplicates:	18
Total valid signatures:	390

The minimum number of signatures required in this Ward is 397.

Hence the candidate's valid signatures fall 7 short of the minimum. Accordingly, the Hearing Officer recommends that the candidate's name not appear upon the ballot.

FRANKLIN J. LUNDING, JR.

Franklin J. Lunding, Jr.
180 N. LaSalle Street
Chicago, Illinois 60601
236-9119