BCCON-WC

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE MARCH 21, 2000 GENERAL PRIMARY ELECTION FOR STATE SENATOR, REPRESENTATIVE IN THE GENERAL ASSEMBLY AND WARD COMMITTEEMAN IN THE CITY OF CHICAGO

Objections of: LASZLO A. NAGY	)	
	)	
To the Nomination	)	
Papers of: ROBERT N. OBERG	)	
	)	No. 00-EB-WC-036
Candidate for the office of Ward Committeeman for	)	
the 44th Ward of the City of Chicago, Republican	)	
Party	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Theresa M. Petrone, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of LASZLO A. NAGY ("Objector") to the nomination papers ("Nomination Papers") of ROBERT N. OBERG, candidate for election to the office of Ward Committeeman for the 44th Ward of the City of Chicago, Republican Party ("Candidate"), having convened on January 10, 2000, at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois; and having heard and determined the Objections to the Nomination Papers in the above-entitled matter finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

2. The said Electoral board has been legally constituted according to the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on January 10, 2000 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner TERENCE FLYNN for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing: the Objector, LASZLO A. NAGY, by counsel; and the Candidate, ROBERT N. OBERG, by counsel.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the record examination.

9. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

10. The Objector or his duly authorized representative(s) was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

12. The Electoral Board has considered all evidence and arguments tendered by the parties.

13. The Electoral Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 59;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 146;

    c. The number of signatures deemed invalid because of objections sustained total 66;

d. The remaining number of signatures deemed valid total 80.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 44th Ward of the City of Chicago, Republican Party.

15. The Electoral Board finds, therefore, that paragraph(s) 4(a) through 4(p) and 4(r) through 4(v) of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. The Objector also alleges in paragraph 4(q) that the purported circulator of certain petition sheets did not circulate those sheets. Objector alleges in paragraph 5 that the nomination papers contain sheets circulated by individuals whose sheets demonstrate a patter of fraud and disregard of the Election Code to such a degree and to such an extend that every sheet circulated by such individuals are invalid and should be invalidated to protect the integrity of the electoral process.

17. The Objector produced a total of 12 affidavits purportedly from persons who signed the Candidate's nominating petition and who purportedly stated that the person who presented them with the petition for signature was not the person who signed the petition as the circlator. Five affidavits were regarding Sheet 8, two affidavits each for Sheets 2 and 9, one affidavit each for Sheets 3, 7 and 11. The Hearing Examiner found the affidavits to be prone to ambiguity, less than clear, having the potential for confusion and not definitive enough to be fully credited given the nature of the identification issue. The Objector produced no live witnesses to testify as to who circulated these petition sheets.

18. The Candidate testified that he did indeed circulate the sheets which he signed as circulator, including Sheet 8. However, as to Sheet 8, against which 5 affidavits were filed, the Candidate testified that a Ms. Niehuis had the petition sheet, while the Candidate was in the room. The Candidate testified that with people milling around, he could not see the people signing the petition. Based on this testimony, the Hearing Examiner concluded that Sheet 8 was not signed in the presence of the Candidate. Therefore, the Hearing Examiner recommends that Sheet 8 be stricken in its entirety.

19. The Hearing Examiner found that the striking of Sheet 8 did not justify an inference of fraud or intentional wrongdoing with respect to the other sheets circulated by the Candidate because the Candidate's testimony regarding Sheet 8 was candid and credible and did not suggest any intentional wrongdoing on the Candidate's part.

20. In the absence of proof by a fair preponderance of the evidence that a circulator has acted fraudulently in obtaining false signatures. *In re Bower*, 41 Ill.2d 277,

242 N.E.2d 252 (1968). No evidence has been adduced to establish that intentional fraud, wilful misconduct or guilty knowledge on the part of those who circulated the petition sheets. "Pattern of fraud" cases such as *Fortas v. Dixon*, 122 Ill.App.3d 697 (1st Dist. 1984), *Huskey v. Municipal Officers,* 156 Ill.App.3d 201 (1st Dist. 1987), and *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364 (1st Dist. 1988) all required direct testimony or adverse inferences inculpating the circulator. No such testimony was offered by the Objector here. The affidavits standing alone do not provide sufficient quality or quantity of evidence to sustain a pattern of fraud claim.

21. Based on the evidence adduced at the hearings, the Hearing Examiner has recommended that the 7 valid signatures on Sheet 8 be stricken, leaving the Candidate with a total of 73 valid signatures. The minimum signature requirement is 59. Thus the Candidate has a sufficient number of valid signatures.

22. The Hearing Examiner has also recommended that the Objections raising a "pattern of fraud" claim be overruled.

23. The Electoral Board adopts the recommended findings and conclusions of the Hearing Examiner.

24. For the reasons stated above, the Electoral Board finds that the Nomination Papers of ROBERT N. OBERG are valid.

IT IS THEREFORE ORDERED that the Objections of LASZLO A. NAGY to the Nomination Papers of ROBERT N. OBERG, candidate for election to the office of Ward Committeeman for the 44th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ROBERT N. OBERG, candidate for election to the office of Ward Committeeman for the 44th Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 21, 2000.

Dated: Chicago, Illinois, this 4th day of February, 2000.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Theresa M. Petrone, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.