NBCON-ALD

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD**

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| Objections of: JAMES WALTER REED, JR. | ) | |
| | ) | |
| To the Nomination | ) | |
| Papers of: MICHAEL J. HARRINGTON | ) | No.: 03-EB-ALD-103 |
| | ) | |
| Candidate for the office of | ) | |
| Alderman of the Forty-ninth Ward, | ) | |
| City of Chicago | ) | |

## FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Theresa M. Petrone, and Richard A. Cowen, 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 JAMES WALTER REED, JR. ("Objector") to the nomination papers ("Nomination Papers") of MICHAEL J. HARRINGTON, candidate for the office of Alderman of the Forty-ninth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 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 December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner LYNNE R. OSTFELD 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, JAMES WALTER REED, JR., by counsel; and the Candidate, MICHAEL J. HARRINGTON, by counsel.

7. The Objections allege that the Candidate's Nomination Papers were "not neatly fastened together in book form, nor were they fastened together at one edge in a secure and suitable manner," in violation of the Election Code.

8. The Candidate testified that he filed approximately 1,200 petition sheets and that the sheets were bound with two metal binder clips and that the clips were in place when he filed his Nomination Papers with the Board of Election Commissioners. A volunteer for the Candidate testified that the papers were clipped by two metal binder clips when they were given to the Candidate to be filed the next day.

9. There was also testimony from someone who is a political organizer for Alderman Joe Moore, the Candidate's opponent in this election, who testified that on the morning that the Candidate's Nomination Papers were filed with the Board, he stood three to four feet behind the Candidate when the Candidate's Nomination Papers were presented for filing. The witness testified that the Candidate's Nomination Papers were not bound in any way and he did not see anything resembling black metal binder clips clipped to the Candidate's papers.

10. Steve Cieslicki, a Board employee, testified that he received the Candidate's Nomination Papers when the Candidate filed them with the Board but he could not recall whether they were bound in any way.

11. The Hearing Examiner inspected the Candidate's Nomination Papers and concluded that there were impressions in the papers on the top of the Statement of Candidacy which resembled the impressions that could have been left by two binder clips on the top -- one on the right side, one on the left side. The impressions were consistent with the testimony of the Candidate and his volunteer in regards to how the papers were allegedly bound. The Hearing Examiner concluded, based on the evidence presented, that the Objector did not carry his burden of proving that the petitions had not been held together by binder clips.

12. The Objector argues, citing *Wollan v. Jacoby*, 274 Ill.App. 3d 388, 653 N.E.2d 1303 (1st Dist. 1995), that the requirement in Section 10-4 of the Election Code that nomination papers be fastened together is mandatory and that strict compliance, not substantial compliance, is necessary. Objector also cites *El-Aboudi v. Thompson,* 293 Ill.App.3d 191, 687 N.E.2d 1166 (2nd Dist. 1997) for the same proposition. While both *Wollan* and *El-Aboudi* involved Section 10-4 of the Code, neither case rested upon the fastening language. Objector also cites two decisions of the Circuit Court of Cook County – *Anderson v. Municipal Officers Electoral Board of the City of Prospect Heights,* 99 CO 53, (March 12, 1999) and *Rivers v. Calumet City School District #155 Education Officers Electoral Board,* 01 CE 16 (March 9, 2001) – for the proposition that strict compliance

with the fastening provision is required. While both those cases dealt directly with the fastening provision of Section 10-4, in neither of those cases was there any attempt to bind or fasten the candidate's nomination papers.

The Objector also cites three cases from New York courts. While instructive, none of those decisions pertain precisely to the requirements of Illinois law and none are binding precedent on Illinois law.

13. The Electoral Board finds that none of the Illinois cases cited specifically address how nomination papers must be bound. Here, the evidence supports the conclusion that the Candidate's nomination papers were fastened together by two metal binder clips. It is interesting to note that the judge in the Anderson case, supra, observed that it was undisputed in that case that the candidate's nominating petitions "were neither stapled nor clipped together." By implication, if the candidate's nomination papers in that case had been "clipped together" there would have been compliance with Section 10-4. Here, the Candidate's Nomination Papers were clipped together. The Electoral Board finds, therefore, that the Candidate's Nomination Papers were fastened together in a manner to meets the requirements of Section 10-4. Accordingly, the Objections are overruled and the Candidate's Nomination Papers are declared valid.

IT IS THEREFORE ORDERED that the Objections of JAMES WALTER REED, JR. to the Nomination Papers of MICHAEL J. HARRINGTON, candidate for election to the office of Alderman of the Forty-ninth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MICHAEL J. HARRINGTON, candidate for election to the office of Alderman of the Forty-ninth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Thirty-First day of January, 2003.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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.**