

ILLINOIS POLLUTION CONTROL BOARD
July 1, 1993

EUGENE DALY, JANE SCHMIT,)
CARL WILLIAMS, SOUTH COOK)
COUNTY ENVIRONMENTAL ACTION)
COALITION,)
)
Petitioner,)
)
v.) PCB 93-52
) (Landfill Siting Review)
VILLAGE OF ROBBINS, AND THE)
ROBBINS RESOURCE RECOVERY)
COMPANY,)
)
Respondent.)

CITIZENS FOR A BETTER)
ENVIRONMENT,)
)
Petitioner,)
)
v.) PCB 93-54
) (Landfill Siting Review)
VILLAGE OF ROBBINS, AND THE)
ROBBINS RESOURCE RECOVERY)
COMPANY,)
)
Respondent.)

DISSENTING OPINION (by B. Forcade):

I respectfully dissent from today's action. For two reasons, I would find that the procedures below were not fundamentally fair. Accordingly, I would have remanded the matter for a new hearing.

My preliminary concern relates to the pro-incineration rally. The location of the official Robbins public hearing, the Robbins recreational training center, should have been content neutral. Instead, the Village allowed a pro-incineration rally to be conducted in the same building immediately prior to and during the published starting time for the public hearing. The rally included pro-incineration speeches by political figures as well as distribution of hats, buttons with the acronym YIMBY, "Yes, In My Back Yard", T-shirts, signs, and food. (Tr. 163).

It is hard for me to believe that any sitting Illinois judge would allow the use of the judge's courtroom for a similar rally

on behalf of one litigant just before the opening of a civil trial. When presented with a somewhat similar issue, this Board found it unacceptable that several individual local government decision makers wore buttons regarding landfill siting:

Consequently, the Board must look to see whether there is evidence that a decision maker had adjudged the City's application prior to completion of the hearing process. After reviewing the record, including information which was brought out at the PCB hearing, the Board finds only one incident which would clearly indicate bias. Specifically, the Board is referring to the instance when four County Board Members wore anti-landfill buttons at hearing. It is the duty of the County Board Members to listen to the evidence with an open and impartial mind and make a decision as to the six criteria based upon that evidence. The wearing of these buttons was certainly not in keeping with the quasi-judicial role that the Board Members must carry out. For these reasons, the Board finds that County Board Members Bell, Barnard, Connelly, and Giorgi were biased against site location suitability approval for the City's proposal. It follows then that these Board Members are to be disqualified from any subsequent decision making process with regard to the City's proposal.

City of Rockford v. Winnebago County Board,
PCB 87-92 (November 19, 1987).

Here, the official decision maker, the Village of Robbins, authorized or allowed a pro-incineration rally in the same room at the same time as scheduled for the public hearing. I do not believe such conduct is fundamentally fair; nor is affirming such conduct consistent with prior Board precedent.

My second area of concern is the time and procedural limitations imposed on public participation by the local siting ordinance. In Zeman v. Village of Summit, PCB 92-174 (February 25, 1993), the Board stated, "The Board notes that it is not ruling today on whether having only one day of hearing, which might run until late at night, could alone constitute fundamental unfairness. That issue is not presently before us." Under the circumstances presented here today, I am prepared to hold that having only a single day of hearing in this case did constitute fundamental unfairness.

First, it should be noted that a formal written request was made, well in advance of hearing for additional hearing dates. In a December 10th letter, Chicago Legal Clinic wrote:

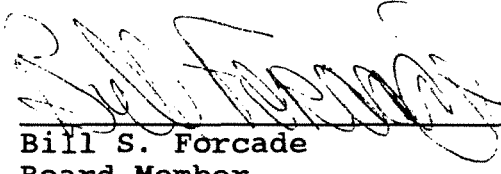
"Because of the importance of the public hearing and the difficulties posed by the December 22nd date for many people, I am formally requesting that an additional hearing date be established. I am not requesting that the December 22 date be abandoned. Instead I am requesting that in the interest of fundamental fairness an additional hearing date be established".
(Tr. 291-292).

The Robbins hearing officer indicated that he lacked the authority to schedule additional hearings. (Tr. 292). In addition, the public hearing ordinance (Resolution No. 12-2-92, Rec. 001804-00180) established the starting time of hearing at 6:30 p.m., established the order of presentation, established no limitation on the presentation of the applicant, and established a 5 minute maximum time limitation on the presentation of any other participant.

Of equal importance is what the ordinance did not do. The ordinance did not establish a party status where those seeking complete participation might be granted unlimited presentation time similar to that granted the applicant. There was only one "litigant" in this adjudication before the Village of Robbins - the applicant. All others were relegated to the role of 5 minute commentor. It is of little consequence to me that the time limitation was not enforced absolutely, or that some chose to exceed the limitation. People who play by the rules in life should be entitled to fundamental fairness. Here, the rules said 5 minutes.

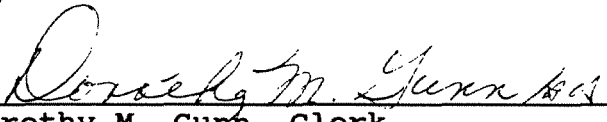
As a consequence of the arbitrary decisions made by Robbins regarding the number of hearing days, order of presentation, and time limitations, public participation was greatly curtailed. The record before this Board is replete with instances of individuals who testified that they were forced to curtail or forego their presentation in order to meet the 5 minute limit. Indeed, testimony by participants did not start until nearly midnight (Tr. 174), and did not conclude until after 3:30 in the morning. (Tr. 142).

I do not consider a proceeding which restrains all but the applicant to a few minutes of presentation in the wee hours of the morning to be fundamentally fair. I would have remanded for a fundamentally fair proceeding. Accordingly, I dissent.



Bill S. Forcade
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was filed on the 7th day of July, 1993.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board