

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

American Federation of State, County and Municipal Employees, Council 31,)	
)	
Petitioner,)	
)	Case No. L-UC-15-003
and)	
)	
County of Cook and Sheriff of Cook County,)	
)	
Employers.)	
)	
Metropolitan Alliance of Police, Chapter 438,)	
)	
Intervenor.)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On March 6, 2016, Administrative Law Judge, Kelly Coyle (ALJ) issued a Recommended Decision and Order (RDO) dismissing the above-captioned case. On September 24, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Local Panel of the Illinois Labor Relations Board (Board) seeking to clarify the unit, certified by the Board in Case No. L-RC-02-005, pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), *as amended* (Act), and the Rules and Regulations of of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules) to include Sergeants in the Electronic Monitoring (EM) Unit, employed by the County of Cook and Sheriff of Cook County (Joint Employer). The petition was precipitated by the Employer's reorganization that moved EM Sgts. to another operating department staffed by bargaining unit members represented by AFSCME. The Intervenor, Metropolitan Alliance of Police, Local 438

(MAP) opposed the petition on several bases, as detailed in the RDO, including that it is certified representative of the at-issue employees.¹

The ALJ determined that AFSCME's petition was inappropriately filed and dismissed the petition.

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1300, Petitioner, AFSCME, filed timely exceptions to the ALJ's RDO, to which the Intervenor filed a timely response. After reviewing the RDO, exceptions and responses, we hereby affirm the Recommended Decision and Order as written for the reasons set forth by the Administrative Law Judge, with one slight modification as follows. The ALJ expressly determined that even if she had expanded the Board's unit clarification rules to include the National Labor Relation Board's accretion standards, as urged by AFSCME, she still would have found the petition inappropriate. We expand the ALJ's finding to hold that even if the petition could be justified under NLRB rules, the petition would be properly dismissed as untimely under Board precedent. The Board's case law strongly suggests that it is unreasonable to delay filing a unit clarification petition for more than two years after the event that serves as its purported justification. *Water Pipe Extension, Bureau of Engineering*, 252 Ill. App. 3d 932, 941 (5th dist. 1993)(affirming Board's finding that unit clarification petition seeking to add position to unit was untimely where it was filed two years after the position's creation); *City of North Chicago*, 25 PERI ¶ 162 (noting that Board has generally insisted that unit clarification petitions must be filed within two years of the triggering event); *Ill. Depts. of Central Mgmt. Servs. & Public Health*, 2 PERI ¶ 2005 (IL SLRB 1985) (finding two-year delay in filing unit clarification petition after triggering change rendered it untimely). Here the initial triggering event was the Employer's reorganization on February 16, 2011, underscored by title changes in

¹ As the Employer had no objection to the petition, it declined to participate in the hearing.

August 8, 2012 that further clarified the transition that is the predicate for the at-issue petition. Both dates precede AFSCME's petition by more than two years, and therefore, the petition is untimely filed.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert Gierut
Robert Gierut, Chairman

/s/ Charles Anderson
Charles Anderson, Member

/s/ Richard Lewis
Richard Lewis, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on May 10, 2016, written decision issued in Chicago, Illinois on June 29, 2016

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

American Federation of State, County, and Municipal Employees, Council 31,)	
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County of Cook and Sheriff of Cook County,)	Case No. L-UC-15-003
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Metropolitan Alliance of Police, Chapter 438,)	
)	
Intervenor.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On September 24, 2014, the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Petitioner) filed a unit clarification petition in Case No. L-UC-15-003 with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules), seeking to add certain employees of the County of Cook and Sheriff of Cook County (County or Employers) to an existing bargaining unit. In April 2015, Metropolitan Alliance of Police, Chapter 438 (MAP or Intervenor) filed a Motion to Intervene, which was subsequently granted.¹ The County did not object to the petition.

¹ MAP actually titled its motion “Petition to Intervene.” I orally granted MAP’s motion at hearing and subsequently issued a written order on June 26, 2015

A hearing was held on May 28, 2015, before the undersigned Administrative Law Judge (ALJ) in Chicago, Illinois. At that time, both AFSCME and MAP appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. As it had no objection to the petition, the County declined to participate in the hearing. Following the hearing, AFSCME and MAP timely filed written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

- A. At all times material, AFSCME has been a labor organization within the meaning of Section 3(i) of the Act.
- B. At all times material, MAP has been a labor organization within the meaning of Section 3(i) of the Act.

II. PROCEDURAL HISTORY

The background of this case is somewhat complicated, and a brief explanation of its procedural history may be helpful. AFSCME filed the instant petition on September 24, 2014, seeking to add the title of Electronic Monitoring Unit sergeant (EM sergeant) to an existing bargaining unit comprised of all Department of Corrections sergeants (DOC sergeants).² On November 6, 2014, after no objections were filed, the Executive Director issued a Certification of Unit Clarification adding the title of EM sergeant to AFSCME's existing unit.

On February 18, 2015, MAP, the certified representative of all Deputy Chiefs in the Electronic Monitoring Unit (EM Unit), notified the Board of an issue with the EM sergeant position. In short, MAP contended that the EM sergeant and Deputy Chiefs were the same

² AFSCME did not name a specific job title on its petition, stating instead that the County had proposed to create a new position in the Sheriff's Electronic Monitoring Unit that should be included in its DOC sergeants unit. Eventually, AFSCME and/or the County explained that the position title was EM sergeant.

position and that AFSCME should never have been certified. On February 20, 2015, the Executive Director revoked the Certification of Unit Clarification and assigned this case to the undersigned for investigation. On March 16, 2015, AFSCME appealed the Executive Director's revocation order to the Board arguing that the Executive Director did not have the authority to revoke the certification. As such, the major issues in this case were essentially bifurcated. The first issue, whether the Executive Director had the authority to revoke the certification, went directly to the Board. On November 19, 2015, at the meeting of the Local Panel of the Board, the Board issued an oral decision finding the Executive Director was authorized to revoke the certification in this case. As such, I will not address any argument proffered by AFSCME on the revocation question. The second issue, and the sole issue before me, is whether the instant unit clarification petition is appropriate.

III. ISSUES AND CONTENTIONS

There is really no dispute that the EM sergeant title and the Deputy Chief title are the same position. Without waiving its challenge to the Executive Director's authority to revoke the certification, AFSCME argues that the instant petition is an appropriate means of adding the EM sergeant/Deputy Chief position to its bargaining unit of DOC sergeants. More specifically, since the Sheriff's Office reorganized and moved the EM Unit from the Department of Community Supervision and Intervention (DCSI) to the DOC, AFSCME contends that a separate unit of EM sergeants/Deputy Chiefs represented by MAP is no longer appropriate. It also contends that the Board should apply the National Labor Relations Board's (NLRB) accretion rules as they relate to employer reorganization or merger and find that the petition is appropriate.

MAP raises a variety of arguments in opposition to the unit clarification petition. First, it argues that the unit clarification petition is inappropriate because there are no employees in the title of EM sergeant, the actual petitioned-for title, and that there are only employees in the

predecessor title of Deputy Chief, a title represented by MAP. Second, it argues that the unit clarification petition is barred by the doctrine of laches as AFSCME waited too long to file the instant petition. Third, MAP contends that none of the recognized circumstances for filing a unit clarification petition apply in this case. Similarly, MAP argues that the NLRB's accretion rules do not apply here either.

IV. FINDINGS OF FACT

AFSCME has been the certified bargaining representative of the Sheriff's DOC sergeants for several decades. AFSCME and the County were parties to a collective bargaining agreement effective from December 1, 2008, through November 30, 2012. Although they have been in negotiations for a successor agreement, AFSCME and the County have yet to finalize the next contract for the DOC sergeants.

MAP is the certified bargaining representative for the Deputy Chiefs in the EM Unit. MAP and the County were parties to a collective bargaining agreement effective from September 1, 2010, through November 20, 2012, but have not begun successor bargaining.

A. Background of the Sheriff's Office

Like most employers, the Sheriff's Office is divided into several departments. For example, until 2011, the Sheriff's Office maintained a department called the Department of Community Supervision and Intervention (DCSI). The Sheriff's Office created DCSI in 1994 and placed several units or divisions within DCSI's control, one of which was the EM Unit. Until the creation of DCSI, the EM Unit had been part of the DOC. While part of DCSI, the head of the EM Unit, Director Greg Shields, reported to the Deputy Director of DCSI who in turn reported to the Executive Director of DCSI.

As its name would suggest, the EM Unit electronically monitors individuals chosen by the court or the Sheriff's Office to enter the EM program. The EM Unit processes the

individuals, fits them with an electronic band, and investigates possible violations. The EM investigators, the Unit's entry level position, are required to hold a merit rank of correctional officer. Unlike the investigators, the Deputy Chiefs are not a merit ranked position. Joseph Guinta, a DOC lieutenant assigned to the EM unit during the reorganization, testified at hearing that the Deputy Chief position "was a front line supervisor that held the rank and file investigators to tasks. They handed out assignments, they handed out what time was their down time for their lunch, they managed breaks, they managed the staff that was underneath them."

Similarly to DCSI, the DOC is divided into multiple units or subdivisions which perform a variety of functions such as guarding the jails and handling basic maintenance. The DOC also runs the Sheriff's Women's Justice Program which, in part, does some type of electronic monitoring of female detainees. DOC sergeants work in most, if not all, units and subdivisions of the DOC. Lawrence Wayne, a DOC sergeant in its Support Services Unit and president of the AFSCME local, testified at hearing regarding the duties of the DOC sergeants. According to Wayne, the DOC sergeants "supervise correctional officers with respect to the various duties and tasks that might come up and all orders from lieutenants and superintendents and directors, from my supervisor." DOC sergeants are merit ranked positions.

B. The Reorganization of the Sheriff's Office

In 2011, the Sheriff's Office reorganized and disbanded DCSI. On February 16, 2011, Sheriff's Office Chief of Staff Brian Towne issued a memo listing some of the changes to the Sheriff's Office as a result of the reorganization. In particular, Towne noted that the EM Unit would be back under the umbrella of the DOC. Following the reorganization, the EM Unit Director directly reported to DOC Assistant Executive Director John Conrad. However, the Sheriff's Office did not transition all of the EM Unit into the DOC. The fugitive section of the EM Unit moved into the Sheriff's Police Department's Central Warrant Unit.

Shortly after issuing his February 2011 memo, in February or March 2011, Conrad assigned Guinta to work with the EM unit “to help the electronic monitoring unit basically assimilate or come underneath the scope of the Department of Corrections.” Guinta observed the EM Unit on multiple occasions including spending several shifts as a watch commander. According to Guinta, the reorganization “provided a new level of accountability. And at that time, they were only used to basically self-reporting to themselves, to their own staff. Now they had an entire different level of administration that they had to report to and be held accountable for.” After working in the EM Unit and reviewing their work, Guinta made several recommendations regarding the EM Unit’s operations that were subsequently implemented. For example, Deputy Chiefs started wearing uniforms instead of civilian clothes, and the department received new vehicles and vests. Additionally, the EM Unit was now required to follow some of the DOC’s General Orders. Peter Kramer, the Sheriff’s Special Counsel for Labor Affairs, also testified regarding changes to the EM Unit stating “[t]heir location has changed. Their numbers and the numbers of participants and the number of employees [have changed].” He also stated that the technology in the EM Unit has evolved over time.

The following year, the Sheriff’s Office attempted to change several EM Unit job titles. In an August 2012 memo, Chief of Staff Towne wrote “the following additional organizational changes concerning the placement of the Electronic Monitoring Unit under the Department of Corrections.” In the memo, Towne noted that several employees’ would take on the new job title “E.M. Sergeant.” He also wrote that the new title was “not a promotional/merit board promoted rank title but [was] a change of operational title only used in the daily operation of the Electronic Monitoring Unit within the Department of Corrections.” At hearing, Kramer testified that the

EM sergeant and Deputy Chief position were “[o]ne and the same” and that the “intent was just to change the title.” He also testified that the titles were not merit ranked.

On August 16, 2012, AFSCME representative John Di Nicola sent a letter to Peter Kramer stating the Sheriff’s Office “recently announced the revision of job titles in the Electronic Monitoring operational unit at the Cook County Jail. Based upon those changes, AFSCME Council 31 would hereby formally make a demand to bargain over the impact of said action on the personnel of the jail represented by AFSCME Council 31.” On December 17, 2012, Di Nicola wrote Kramer again reasserting AFSCME’s demand to bargain and requesting information regarding the “‘Non-merit Sergeants’ who staff the Electronic Monitoring unit.” Additionally, AFSCME President Wayne testified that at some point during negotiations for a successor bargaining agreement, AFSCME and the County discussed the EM sergeant title. According to Wayne, AFSCME brought up the issue of the EM sergeant title “and pretty much Peter [stated], ‘I can’t make’ – his statement [was] ‘I can’t make a ruling on it.’”

At the same time AFSCME and the County were discussing the EM sergeant title, MAP and the County were having discussions of their own. MAP was not in favor of the new job title. On August 10, 2012, MAP filed a grievance arguing that “[d]uring the course of collective bargaining Chapter 438 Members were impermissibly and without authority demoted on 10-August-2012 to the rank of E.M. Sergeant. This change in title adversely [a]ffects Chapter 438 members[’] potential future promotions and benefits.” After MAP filed its grievance, MAP and the County began settlement discussions. According to Kramer, during the grievance settlement negotiations, “I recall our position, the Sheriff’s position, being that [the deputy chiefs] were the first line of supervision. We needed to eliminate the deputy chief title because it wasn’t consistent with the hierarchy within our office and generally with other law enforcement

agencies.” Kramer also stated that MAP believed the Deputy Chief position “should at least be a lieutenant, if not something better.”

On September 11, 2013, MAP and the County signed a Memorandum of Agreement regarding the change from Deputy Chief to EM sergeant. In particular, MAP and the County agreed that all current employees would retain the title of Deputy Chief but all new employees would be hired as EM sergeants. The County and MAP’s agreement also provided the following:

D. The Electronic Monitoring Sergeants will be covered employees within the Metropolitan Alliance of Police Cook County DCSI Deputy Chiefs Chapter #438 and have the same level of authority as the Deputy Chief employees.

E. The title “Electronic Monitoring Sergeant” will be interchangeable with the title “Deputy Chief” in terms of enforcing the rights and benefits of these covered employees through the collective bargaining agreement between the parties. The Sheriff can alter/amend its General Orders, organizational charts, etc., to reflect the change from Deputy Chief to EM Sergeant.

Lastly, the County and MAP agreed to submit a stipulated unit clarification petition to include the EM sergeant title in the unit description. MAP subsequently gave the County a unit clarification petition to update the unit description. However, the County did not sign the petition, and the petition was never filed with the Board.

In the Fall of 2014, AFSCME President Wayne met with AFSCME’s labor contact for the Sheriff’s Office, Assistant Executive Director Mike Miller, to discuss vacancies at the Jail. AFSCME again brought up the EM sergeant position. Wayne testified “[w]e just discussed that this was the front line supervisor work that was being done, which is a correctional sergeant’s work.” AFSCME asked Miller to put the EM sergeant spots up for bid. Around approximately the same time, on September 24, 2014, AFSCME filed the instant petition seeking to formally add the EM sergeant title to its unit of DOC sergeants. On November 6, 2014, the Board’s Executive Director issued a certification adding the title of Sergeant in Electronic Monitoring to

AFSCME's DOC sergeant bargaining unit. Wayne testified that "[w]hen we actually sat down and hammered out the openings, the administration did recognize that there were some EM spots that should be correctional sergeant's work." According to Kramer, "[t]he DOC thought that [the certification] gave them a green light to get some more supervisors over [in the EM Unit] out of the AFSCME sergeants group."

Almost four months later, on February 18, 2015, the County posted vacancy bids for the EM sergeant title. On or about the same day, MAP informed the Board that it already represented the EM sergeant title. Finding that a question of representation had been raised, the Executive Director revoked the September 6th certification and ordered an investigation.

V. DISCUSSION AND ANALYSIS

Despite the apparent eccentricities of this case, the sole question before me is whether the instant unit clarification petition is appropriate. The revocation issue notwithstanding, AFSCME contends that the unit clarification petition is appropriate and that the Deputy Chiefs/EM sergeants should be added to its DOC sergeant bargaining unit. AFSCME does not argue that the petition is appropriate under the Board's current case law. Instead, it argues that the instant petition is appropriate under the NLRB's accretion standard and that the Board should apply that standard to the position at issue here. For the reasons that follow, I reject AFSCME's arguments and find the petition is inappropriate.

A. None of the Established Circumstances for Filing a Unit Clarification Petition Apply.

MAP contends that none of the established circumstances for filing a unit clarification petition apply in this case. I agree. "The purpose of the unit clarification process is not to change the scope of a bargaining unit, but to resolve unit composition questions which arise within the context of the parties' recognition agreement, the provisions of the Act or the unit described in a

Board certification.” Champaign Cnty. State’s Attorney, 16 PERI ¶ 2024 (IL SLRB 2000). As unit clarification petitions have no showing of interest requirement, these petitions deprive employees of the opportunity to choose their bargaining representative. Id. As such, under the Board’s Rules and established Illinois case law, a party can appropriately file a unit clarification petition in the following circumstances:

- (1) When an existing job’s duties and functions have undergone substantial changes, raising a question as to the position’s unit placement;
- (2) When there has been a significant change in statutory or case law affecting the bargaining rights of employees;
- (3) When a new position has been created with job functions similar to those of employees in the existing unit;
- (4) To remove statutorily excluded employees from the bargaining unit; and
- (5) When an existing job title, which is logically encompassed within the unit, was inadvertently excluded by the parties when the unit was established.

Dep’t of Cent. Mgmt. Servs. V. Ill. Labor Relations Bd., State Panel, 364 Ill. App. 3d 1028, 1032-1033 (4th Dist. 2006); 80 Ill. Admin. Code § 1210.170.³

Several of these circumstances are easily dispatched. This case does not involve an accidentally excluded position; there is no argument that this position should be statutorily excluded; and there is no argument that there has been a change in the law affecting the bargaining rights of the at-issue position. Furthermore, neither of the two remaining circumstances are applicable to this case.

³ One additional circumstance for filing a unit clarification petition exists which is not applicable here. In instances where the employer has filed objections in a majority interest petition but those objections to the inclusion of certain positions do not affect the union’s majority interest, the Board will certify the unit absent those disputed positions, and the union may file a UC petition to add the disputed positions. See City of Washington. v. Ill. Labor Relations Bd., State Panel, 383 Ill. App. 3d 1112 (3d Dist. 2008).

The record does not establish that the EM sergeant title is a new position or that it is a reinterpretation of the Deputy Chief position. Rather, the evidence establishes that it is simply a successor job title. Kramer's testimony, the County's memoranda, and the County and MAP's settlement agreement demonstrate that the County only intended to change the Deputy Chiefs' title, not any of the Deputy Chiefs' functions. Moreover, under the Board's Rules, "[a] bargaining unit described as consisting of particular job titles shall also include any job titles later created that are successor job titles to the currently existing job titles or perform the same or substantially similar job functions as the currently existing job titles." 80 Ill. Admin. Code § 1210.37. As such, I cannot find that AFSCME's unit clarification petition is appropriate under the Board's case law.

B. The NLRB's Accretion Standard Does Not Apply to the Instant Case.

AFSCME does not suggest that its unit clarification petition satisfies any of the Board's existing unit clarification rules. Rather, it contends that the Board should apply the NLRB's accretion rules as applied in cases involving employer reorganization. Until recently, the Board had never considered AFSCME's argument. It has now. In Cnty. of Cook and Cook Cnty. Sheriff, Case No. L-UC-15-004 (oral decision issued Feb. 9, 2016, written decision pending), AFSCME filed a unit clarification petition seeking to add the EM Unit's lieutenants, the immediate superior of the Deputy Chiefs/EM sergeants, to its bargaining unit of DOC lieutenants. Similarly to the instant case, AFSCME argued that its EM lieutenant unit clarification petition was appropriate under the NLRB's accretion rules in light of the Sheriff's reorganization. ALJ Anna Hamburg-Gal issued a recommended decision and order declining to create a new unit clarification rule based on the NLRB's accretion standard. She also found that even if she were to apply the NLRB's accretion rules to AFSCME's EM lieutenant petition, the

petition would still be inappropriate as it failed to meet the NLRB's standards. On February 9, 2016, at its meeting of the Local Panel, the Board adopted the ALJ's recommendation. Given the Board's ruling in the EM lieutenant case, I could simply reject AFSCME's argument on its face and recommend dismissal of the petition. However, as the Board has yet to issue its final written decision in that case and to forestall any argument from AFSCME that these two cases are distinguishable, I will address AFSCME's arguments regardless.

As with ALJ Hamburg-Gal, I am disinclined to add to the Board's unit clarification rules in this instance as that is a decision within the purview of the Board. Furthermore, even if I were inclined to extend the Board's unit clarification rules to include the NLRB's accretion standard as AFSCME requests, I would still find this petition was inappropriate.

As with the Board's own unit clarification case law, under NLRB case law, accretion is only appropriate in a limited number of circumstances. Frontier Tel. of Rochester, Inc., 344 NLRB 1270, 1271 (2005). More specifically, "accretion is [appropriate] only when the employees sought to be added to an existing bargaining unit have little or no separate identity and share an overwhelming community of interest with the preexisting unit to which they are accreted." E. I. Du Pont de Nemours, Inc., 341 NLRB 607, 608 (2004) (internal citations removed). To determine whether accretion is appropriate, i.e. "whether [the] requisite overwhelming community of interest exists to warrant an accretion," the NLRB reviews several factors including:

[i]ntegration of operations, centralized control of management and labor relations, geographic proximity, similarity of terms and conditions of employment, similarity of skills and functions, physical contact among employees, collective bargaining history, degree of separate daily supervision, and degree of employee interchange.

Frontier Tel. of Rochester, Inc., 344 NLRB at 1271. Thus, the question is not whether the employees *could* form an appropriate unit, but whether “they have such a close community of interests with the existing unit that they have no true identity distinct from it.” Id. (citing NLRB v. St. Regis Paper, 674 F.2d 104, 107-108 (1st Cir. 1982)). The NLRB has also held that “[w]hen an employer merges two groups of employees who have been historically represented by different unions, a question concerning representation arises, and the Board will not impose a union by applying its accretion policy where neither group of employees is sufficiently predominant to remove the question concerning overall representation.” Martin Marietta Co., 270 NLRB 821, 822 (1984).

For example, in Martin Marietta Corp., the NLRB addressed whether two separate bargaining units remained appropriate following the employer’s acquisition of a manufacturing plant which employed one of the at-issue bargaining units. Id. at 821. Both bargaining units performed similar functions and used similar equipment to quarry and produce limestone. Id. at 822. Following the employer’s acquisition of the second plant, there was interchange of employees between the plants, and the employer placed the employees under the same overall supervision. Id. Furthermore, the employer literally tore down the wall separating the two quarries creating one large and integrated area. Id. at 821-822. The NLRB found “[t]hese changed circumstances have *obliterated* the previous separate identities of the two units . . . We accordingly find that one overall unit of all production and maintenance employees employed at the combined facility is now the *sole* appropriate unit.” Id. at 822. (emphasis added).

Similarly, in U.S. West Communications, the NLRB found that two separate bargaining units were no longer appropriate following an employer’s merger. 310 NLRB 854 (1993). In short, the employer had merged several companies providing telephone services, each using

different technology. Id. at 854. The bargaining units were comprised of the technicians that maintained the equipment, and each bargaining unit focused on the maintenance of one type of technology. Id. However, over time the differences in technology largely evaporated, and the employees' work became somewhat indistinguishable leading to jurisdictional disputes between the two unions. Id. at 854-855. Following the merger, the employees of the two units operated under the same basic supervision, had the same terms and conditions of employment, worked together side by side, and used the same tools and equipment. Id. at 855. The Board found "that the [e]mployer's reorganization and continuing technological changes have eliminated the separate identity of the employees" Id. at 854.

AFSCME argues that the Sheriff's placement of the EM Unit within the DOC destroyed any separateness of the Deputy Chiefs/EM sergeants from the DOC sergeants. I disagree. While the Deputy Chiefs/EM sergeants may share a community of interest with the DOC sergeants, that is not the question at issue here. Rather, the question is whether the employees share an *overwhelming* community of interest such as to render any other potential bargaining unit inappropriate.

The record does not establish that the Sheriff's reorganization destroyed the characteristics that made the units separate in the first place. First, the Deputy Chiefs/EM sergeants were and remain non-merit ranked positions, while the DOC sergeants are merit ranked. Second, the evidence does not suggest that the employees share mid or lower level supervision, they only share the same Assistant Executive Director. In its post-hearing brief, AFSCME states "Correctional Lieutenants have . . . been assigned as watch commander in the EM unit as necessary just as they serve as watch commander for other units throughout DOC and the EM unit reports to the general DOC shift commander during off-duty hours for its

personnel.” I do note that on several occasions, Guinta worked in the EM Unit as a watch commander while assisting with its transition from DCSI to the DOC. However, the record does not support a finding that anyone else has served as watch commander in the EM Unit or that the EM Unit reports to the DOC shift commanders.

Additionally, while the Deputy Chiefs/EM sergeants and the DOC sergeants perform the same generalized function, i.e. oversee their subordinates, and have to follow some of the same general orders, I find this insufficient to conclude they share an overwhelming community of interest. In particular, the record fails to establish that Deputy Chiefs/EM sergeants and the DOC sergeants perform their work in the same way, that their work is indistinguishable, or that the employees are interchangeable as in U.S. West Communications and Martin Marietta Corp.. Importantly, not all of the EM Unit was placed under the umbrella of the DOC. Part of the EM Unit was transferred to the Sheriff’s Police Department and operates under completely different supervision. Thus, while there may be some similarities between the two units, the reorganization did not “obliterat[e] the previous separate identities of the two units.” Therefore, even if I were to expand the Board’s unit clarification rules to include the NLRB’s accretion standard, I would still find the instant petition inappropriate.

VI. CONCLUSIONS OF LAW

AFSCME’s unit clarification petition is inappropriate.

VII. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the unit clarification petition is dismissed.

VIII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board’s Rules, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any

exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed, if at all, with Kathryn Zeledon Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on March 3, 2016

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

/s/ Kelly Coyle _____
Kelly Coyle
Administrative Law Judge