

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Charging Party,)	
)	
and)	Case No. S-CA-14-156
)	
County of Macoupin (Public Health,)	
Department),)	
)	
Respondent.)	

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

On March 31, 2015, Executive Director Melissa Mlynski dismissed a charge filed by the American Federation of State, County and Municipal Employees, Council 31 (Union or Charging Party) on June 27, 2014 (Charge), which alleged that the County of Macoupin (Public Health Department) (Respondent or Employer) engaged in unfair labor practices within the meaning of Section 10(a)(4) and (1) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) (Act).

The Charging Party filed a timely appeal of the Executive Director's Dismissal pursuant to Section 1200.135(a) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(a). The Respondent filed a response. After reviewing the record, appeal, and the response, we orally voted at the Board Meeting held on May 19, 2015, to uphold the Executive Director's Dismissal (Oral Decision). That Oral Decision has not been reduced to writing.

Since the May 19, 2015 Board Meeting, we have been advised that the Union and Employer (Parties) wish to enter into a Memorandum of Understanding (MOU), which includes

the stipulation that Charging Party withdraw the Charge. Pursuant to the agreement of the Parties, and for the sole, limited and exclusive purpose of promoting labor harmony by facilitating the Parties' MOU, at the Board Meeting held on July 7, 2015, we took up the above-captioned matter on our own motion and voted to set aside the Oral Decision. This enables the Charging Party to withdraw the Charge in accordance with the MOU. Charging Party's written withdrawal had been submitted to the Board and is effective upon the entry of this Order.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on July 7, 2015, written decision issued in Chicago, Illinois on July 21, 2015.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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American Federation of State, County and
Municipal Employees, Council 31,

Charging Party

and

County of Macoupin (Public Health
Department),

Respondent

Case No. S-CA-14-156

DISMISSAL

On June 27, 2014, the American Federation of State, County and Municipal Employees, Council 31(Charging Party or Union) filed an unfair labor practice charge with the State Panel of the Illinois Labor Relations Board (Board), in Case No. S-CA-14-156, alleging that the County of Macoupin (Public Health Department) (Employer or Respondent) violated Section 10(a) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), *as amended*. After an investigation conducted in accordance with Section 11 of the Act, I determined that the charge fails to raise an issue of law or fact sufficient to warrant a hearing and hereby issue this dismissal for the reasons stated below.

I. INVESTIGATORY FACTS

The Respondent is a public employer within the meaning of Section 3(o) of the Act. The Charging Party is a labor organization within the meaning of Section 3(i) of the Act and the exclusive representative of a bargaining unit (Unit) consisting of employees in the Respondent's Public Health Department. Charging Party and the Respondent are parties to a collective

bargaining agreement (CBA) setting forth the terms and conditions of employment for the Unit. The CBA had a term of September 1, 2010 through August 31, 2011. Charging Party and Respondent agreed to maintain the status quo while negotiations with other units were ongoing. Charging Party asserts that in or about June of 2014, it learned that the Respondent was engaged in direct dealing with a Unit member in the position title of Dental Office Assistant. Apparently this employee was served a separate contract, outside the scope of the parties' CBA, when she was hired in or about November 7, 2013, and she was also allegedly promised a raise that was outside the scope of the CBA. Once the employee did not receive the promised raise, she contacted the Charging Party. Charging Party alleges that the conduct of the Respondent constitutes direct dealing and a violation of Section 10(a)(4) of the Act.

The Respondent claims that the instant unfair labor practice charge concerns a non-bargaining unit member. The original Board certification of the Unit, Case No. S-RC-07-026, provides for the following position titles to be included in the Unit:

All full-time employees in the classifications of: Immunization Clerk; DV Advocate Outreach Worker; Secretary Clerk; MCH/WIC Clerk; Support Specialist/Family Assessment Worker; Dental Assistant; Dental Clinic Receptionist; DV Advocate; Support Specialist; MH/WIC Clerk; Dentist; Educator/Dietician; Lead Family Case Manager; IBCCP Case Manager; Teen Services Case Manager/Educator; Wellness Educator; TPS Case Manager/Counselor; Sanitarian; including all RNs in the classification of Staff Nurse; Lead Case Manager; Lead Family Case Manager/WIC CHP; Public Health Nurse; Nurse Clinic Coordinator/WIC CHP; MCH/WIC Case Manager; and all part-time professional employees in the classifications of: LEHP Sanitarian; Case manager/WIC CHP; RN/Lead Family Case Manager/WIC CHP; and all part-time employees in the classifications of: Dental Clerk; Clerk; and Janitor.

The title of Dental Office Assistant does not appear in the certification. The Respondent further asserts that a bargaining unit may only be modified by Board certification. There have been no unit clarifications filed for this particular Unit.

II. DISCUSSION AND ANALYSIS

While both the parties may have treated the position within the Unit up until this point, Charging Party has not provided, and I have been unable to locate, any subsequent certification that includes the title of Dental Office Assistant in the Unit. Board case law establishes that as parties may not create a new bargaining relationship without the explicit approval of the Board, likewise parties may not add positions to a bargaining unit without the Board's involvement. In other words, parties cannot add a title to the bargaining unit by virtue of adding the title to the collective bargaining agreement. Chief Judge of the 13th Judicial Circuit. 15 PERI ¶2006 (ISLRB 1999).

Even though the parties included the title of Dental Office Assistant in previous collective bargaining agreements, the title can only be recognized by the Board if it was certified through the Board via a representation or unit clarification petition. There is no evidence that the title was ever certified by the Board as included in the Unit. As such, the Respondent has no legal obligation under the Act to engage in bargaining with respect to this title. For this reason, the instant charge does not raise an issue for hearing.

III. ORDER

Accordingly, the portion of the charge as described above is hereby dismissed. The Charging Party may appeal this partial dismissal to the Board any time within 10 days of service hereof. Such appeal must be in writing, contain the case caption and number, and must be addressed to the Board's General Counsel, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. The appeals must contain detailed reasons in support thereof, and the Charging Party must provide to all other persons or organizations involved in this case at the same time it is served on the Board. The appeals sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal; has been provided to them. The

appeal will not be considered without this statement. If no appeal is received within the time specified, the Dismissal will be final.

Issued at Springfield, Illinois, this 31st day of March, 2015.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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**Melissa Mlynski
Executive Director**