

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

American Federation of State, County
and Municipal Employees, Council 31,
Petitioner

and
City of Naperville,
Employer

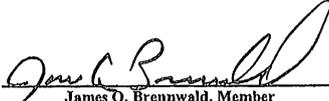
Case No. S-RC-11-035

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

On August 16, 2011, Administrative Law Judge Elaine L. Tarver issued a Recommended Decision and Order in the above-captioned case, finding that the petitioned-for bargaining unit of full-time and part-time employees in the City of Naperville's (Employer) Department of Electric and Department of Water/Wastewater was not an appropriate bargaining unit for the purposes of collective bargaining as defined by Section 9(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and ordering that the petition be dismissed. The American Federation of State, County and Municipal Employees, Council 31 (Petitioner) filed timely exceptions to the Recommended Decision and Order pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240, to which the Employer filed a timely response. After reviewing the record, exceptions and response we hereby uphold the Recommended Decision and Order for the reasons set forth by the Administrative Law Judge, giving Petitioner leave to file a representation petition consistent with the Recommended Decision and Order along with the required showing of interest.

BY THE ILLINOIS LABOR RELATIONS BOARD, STATE PANEL


Paul S. Besson, Member


James Q. Brennwald, Member


Michael G. Coll, Member


Albert Washington, Member

Chairman Zimmerman, dissenting:

I would find the petitioned-for unit an appropriate one for the purposes of collective bargaining, and would certify the American Federation of State, County & Municipal Employees, Council 31, as the collective bargaining representative of those employees pursuant to the Act's majority interest procedures. I therefore respectfully dissent from my colleagues' decision to dismiss the petition.

It appears from the record that the instant petition seeks the unrepresented employees in the Employer's Department of Public Utilities—Water and Wastewater Division, and Department of Public Utilities—Electric Division, asserted "departments" that functioned as divisions of one department until approximately May 2010, when that single department's director retired and the two deputy directors were each appointed director of their respective departments. The record demonstrates that the two divisions had functioned largely autonomously prior to their separation, and their operations remained virtually unchanged thereafter, except that they no longer had a common director. The Employer promulgated an

organization chart in August 2010, well after the split, still showing the two “departments” as a single entity. Separate organization charts were not promulgated until after the instant petition was filed, and even then each chart was captioned “Department of Public Utilities” with a hyphen followed by “Water and Wastewater Division” or “Electric.”

The Employer asserts that it maintains a City-wide position classification system which requires, pursuant to long-standing Board precedent, bargaining units that include all employees in a given classification, regardless of the department to which they are assigned. The record indicates that there are four titles which exist within both the Department of Public Utilities—Water and Wastewater and the Department of Public Utilities—Electric which do not exist within any other departments. The record also shows that only two of the titles sought to be included in the unit, comprising a total of three employees, exist in other departments.

There are currently 13 bargaining units within the City, each consisting of a single title or group of titles within a single department. However, those titles do not exist in other departments. Therefore, the Employer asserts, its history does not support the conclusion that the less than City-wide unit sought here is appropriate.

In my view, the Employer has demonstrated a pattern of bargaining with single-department units, most of which include only a single title. The two “departments” at issue were a single department until shortly before the petition was filed, and continued to operate in the same manner after a change in the organizational structure which resulted only in the appointment of two directors rather than one. The employees in both departments perform general utility work not performed by employees in any other departments, and four titles are common to the two departments, which, by the Employer’s reasoning, would require that they be represented in a single unit. I do not believe that the fact that there are three other employees in

other departments, who share nothing with the employees sought other than a job classification, mandates the conclusion that this is an inappropriate unit for the purposes of collective bargaining. I would therefore certify this unit.



Jacaly A. Zimmerman, Chairman

Decision made at the State Panel's public meeting in Chicago, Illinois, on December 6, 2011;
written decision issued at Chicago, Illinois, December 29, 2011.

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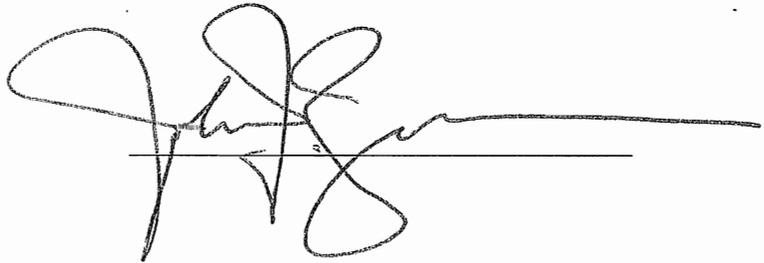
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AFFIDAVIT OF SERVICE

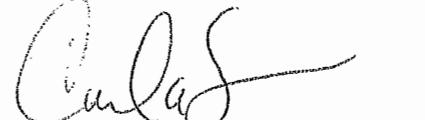
I, John F. Brosnan, on oath state that I have this 29th day of December, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Gail Mrozowski
Cornfield and Feldman
25 East Washington Street, Suite 1400
Chicago, IL 60602

Dwight Pancottine
Mark Scarlato
City of Naperville
400 S. Eagle Street
Naperville, IL 60540
Chicago, IL 60602



SUBSCRIBED and SWORN to
before me this **29th** day
of **December 2011**.



NOTARY PUBLIC