STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Brotherhood of Teamsters, Local 700,	)	
Petitioner,	)	
and	)	Case No. S-RC-13-017
Village of Franklin Park (Department of Public Works and Utilities),	)	
Employer.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On April 12, 2013, Administrative Law Judge Martin Kehoe issued a recommended decision and order (RDO) in the above-captioned case, recommending that the Illinois Labor Relations Board, State Panel, grant the petition for representation filed by the International Brotherhood of Teamsters, Local 700 (Petitioner), finding the bargaining unit proposed was an appropriate unit for the petitioned-for employees of the Village of Franklin Park's Department of Public Works (Employer).

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240, Employer filed timely exceptions to the RDO, and Petitioner filed a timely response to the exceptions. After reviewing the record, exceptions, and response, we adopt the Administrative Law Judge's Recommended Decision and Order.

Petitioner seeks to represent the employees of the three divisions of the utilities department of the Village of Franklin Park. The Employer does not generally object to these

employees being represented for purposes of collective bargaining, but does argue that combining all of the employees in a single a bargaining unit would be inappropriate.

The standard for judging whether a unit is appropriate is not whether the petitioned-for unit is the most appropriate, but whether it is an appropriate unit. Ill. Council of Police v. Ill. Labor Rel. Bd., 404 Ill. App. 3d 589, 600 (1st Dist. 2010). The employer argues that the employees do not perform enough similar work to be considered functionally integrated. However, the record suggests otherwise. Testimony and exhibits show similar job duties, qualifications, benefits, supervision, discipline, and skills. Moreover, the record shows these employees work together to complete projects and make repairs. The Employer also argues that, under the analysis put forth in City of Rockford and City of Rockford Public Library and AFSCME, 2 PERI ¶2003 (IL SLRB 1986), the part-time employees should not be included in the unit because of differences in hours and benefits and slight differences in a small classification of work duties. However, while there are some factors that weigh in favor of the Employer's argument, the evidence as a whole suggests that the part-time employees chiefly perform the same work as the full-time employees, their work is of a regular nature, and there are no significant differences in working conditions while on the job. After considering the factors outlined by the Act for purposes of determining whether a proposed bargaining unit is appropriate, along with the parties' arguments, we find that the proposed bargaining unit is appropriate.

The Employer also argues that, because a majority of water division employees did not sign the petition, we should find that the proposed unit is inappropriate. However, for purposes of determining majority interest, the Board's rules simply require that a majority of the employees to be included in the unit indicate their support for the petition: "The showing of

interest in support of a majority interest petition may consist of authorization cards, petitions, or any other evidence that demonstrates that a majority of the employees wish to be represented by the union for the purposes of collective bargaining." 80 Ill. Adm. Code §1210.80(d)(2)(A). The desires of the proposed unit as a whole, as indicated by the signatures collected, are reflected by the fact that a majority of the employees in the proposed unit indicated their support for the petition. The Employer's argument would seek to impose an artificial construct on the recognition process that is not required by the Board's rules or procedures. The Employer notes that in Department of Central Management Services v. Illinois Labor Relations Board, 388 Ill. App. 3d 319 (4th Dist. 2009), the Board, based on the desire of the employees, recognized a group of six attorneys in a bargaining unit separate from a larger unit. However, the utilities employees at issue here have shown, by a majority interest demonstration, a desire to be represented in this proposed unit. There is no larger unit that is arguably more appropriate than a smaller, stand-alone unit; quite to the contrary, the proposed unit is a functional grouping of employees who have a demonstrated community of interest. Importantly, Department of Central Management Services relies on the fact that the proposed unit was *an appropriate unit* and that fragmentation alone cannot serve to defeat this determination. 388 Ill. App. 3d at 337-338. Because the water division employees are sufficiently functionally integrated with the other utilities employees and share a sufficient community of interest with them, and majority interest has been demonstrated, we find that the proposed unit is appropriate.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

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

/s/ Paul S. Besson
Paul S. Besson, Member

/s/ James Q. Brennwald
James Q. Brennwald, Member

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on June 11, 2013, written decision issued in Chicago, Illinois on July 19, 2013.

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STATE PANEL

Teamsters, Local 700,	)	
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Petitioner	)	
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and	)	Case No. S-RC-13-017
	)	
Village of Franklin Park (Department of Utilities),	)	
	)	
	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 29, 2012, Teamsters, Local 700 (Petitioner) filed a majority interest petition in Case No. S-RC-13-017 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). This initial petition was later amended on September 17, 2012. The Petitioner seeks to represent a bargaining unit that includes all full-time and part-time employees of the utilities department of the Village of Franklin Park (Employer or Village) in the following titles: chauffeur operating sweeper, level I; chauffeur operating sweeper, level II; equipment operator, level I; equipment operator, level II; laborer; mechanic; meter repair technician; truck driver, level I; truck driver, level II; truck driver, level III; truck driver, level IV; and water operator.[1]

A hearing was held on January 29, 2013 before the undersigned in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After

[1] The parties have agreed to exclude "supervisors" and part-time student employees from the petitioned-for bargaining unit. The initial petition also indicates that the petitioned-for bargaining unit excludes clerical employees and all other employees excluded by the Act.

full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate and I find that, at all times material, the Employer has been a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate and I find that, at all times material, the Employer has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5 of the Act.
3. The parties stipulate and I find that, at all times material, the Employer has been a unit of local government subject to the Act within the meaning of Section 20(b) of the Act.
4. The parties stipulate and find that, at all times material, the Petitioner has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The Employer contends that the bargaining unit proposed by the instant petition is inappropriate and thus should not be certified. The Petitioner contends that the Employer has failed to present evidence that demonstrates that the proposed unit is inappropriate and, accordingly, contends that the unit should be certified.

III. FINDINGS OF FACT

The Village's utilities commissioner, Joe Lauro, oversees the Village's utilities department. The utilities department is divided into three divisions: (1) the fleet maintenance division, (2) the water and sewer division ("the water division"), and (3) the streets and

sanitation division ("the streets division").[2] Each of the three divisions is administered by one or two supervisors.[3] These supervisors assign and schedule work for a variety of subordinate employees, each of whom is affiliated with one of the utilities department's three divisions. All of the supervisors of the utilities department report to the Village's deputy utilities commissioner, Andy Smolen, who, in turn, reports to the utilities commissioner.

Each of the three divisions maintains its own office. The offices of the fleet maintenance and water divisions are located in a building at 9300 West Belmont. These two division offices are separated by a wall and share a door at the rear of the building. The office of the streets division is located at 9501 West Belmont, two blocks away from the offices of the fleet maintenance and water divisions.

At the beginning of each work day, each employee "punches in" at his division office's time clock. After punching in, each employee reports to a supervisor affiliated with his division. This supervisor then gives the employee his assignment for the day.

Broadly speaking, each division is responsible for different work and employs certain types of employees to perform that work. Employees are largely expected to perform work that is affiliated with a particular division. Moreover, the employees affiliated with a division can generally perform all of the work associated with that division. Some work is affiliated with a particular job title or requires specialized training or a certification.

The fleet maintenance division is primarily responsible for maintaining all of the Village's vehicles and employs two full-time mechanics (Glenn Matozzi and Paul Melonas) and

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[2] The streets division has also been called the "streets and forestry division."

[3] There are currently five supervisors in the utilities department. The sole supervisor of the fleet maintenance division is Richard Pina. Peter Cajigas is the supervisor of the water portion of the water division while Nicholas Weber is the supervisor of the sewer portion of the water division. Michael Saeli is the supervisor of the streets portion of the streets division while Philip Skortz is the supervisor of the sanitation portion of the streets division. According to the testimony of Matt Christenson, an equipment operator affiliated with the streets division, all streets division employees answer to both streets division supervisors.

one part-time assistant mechanic (Charles Vogelsang) to perform that work. The water division is primarily responsible for maintaining the Village's water and sewer systems. To perform that work, the water division employs a full-time equipment operator (Robert Collins), full-time laborers (Edward Mastny, Donald Mueller, Tony Muench, and Justin Sanchez), a part-time laborer (Luis Hernandez), a full-time meter repair technician (Michael Ponta), and a full-time truck driver (Mike Hillesheim). The streets division, which employs full-time equipment operators (Matt Christenson and Bryan Shelton), full-time truck drivers (William Moroney, Zachary Pritchett, Jason Sharp, Victor Zambetti, and Patrick Zeck), full-time sweeper operators (Duanne Garrett and Anthony Kotsiris), full-time laborers (Jamey Johnsen and Vito Ventrella), and a full-time water operator (Claudio Traversa[4]), is primarily responsible for maintaining the Village's streets, alleys, trees, and signs.

Regardless of this general categorization, however, employees affiliated with one division may be instructed to temporarily perform work for another division. This occurs during emergencies and when a division needs extra manpower. When an employee of one division does temporarily perform work for another division, that employee reports to the supervisor of the other division while that work is being performed. Under different circumstances, employees working for separate divisions work together to complete a particular task or project. Employees may also perform work that closely parallels the work performed by other employees of other

[4] Traversa is generally affiliated with the streets division but, because of a unique certification, is also responsible for taking water samples for the water division every week. Although Traversa performs work for the streets division as well as the water division, Traversa clocks in at the streets division office and generally reports directly to Saeli and Skortz, the two streets division supervisors. However, when he is taking water samples, Traversa reports to Cajigas and Weber, the two supervisors of the water division.

job titles and divisions. Some employees have even been formally "cross-trained" to perform work affiliated with divisions other than their own.[5]

From time to time, utilities department employees are also permanently transferred from one division to another. Once an employee is permanently transferred, he or she subsequently punches in at the new division's office each morning, reports to a supervisor affiliated with the new division, and receives work assignments from the new division's supervisor(s). A permanent transfer may necessitate additional training.

A supervisor of one division generally cannot discipline the employees affiliated with another division. When an employee is disciplined, that employee is normally disciplined by a supervisor affiliated with his or her division. Yet, an employee can be disciplined by a supervisor of another division while that employee is temporarily performing work for the other division. At any time, a supervisor can also report any employee's improper behavior to that employee's supervisor via an incident report. However, this does not necessarily result in discipline.

IV. DISCUSSION AND ANALYSIS

The Employer argues that the Board must dismiss the instant petition because the proposed unit is inappropriate. In resolving unit appropriateness issues, the Board typically looks to the seven factors set forth in Section 9(b) of the Act. City of Peru, 25 PERI ¶6 (IL LRB-SP 2009); State of Illinois, Dept. of Central Management Services (Departments of Transportation and Natural Resources), 14 PERI ¶2019 (IL SLRB 1998); Pleasure Driveway and Park District of Peoria, 13 PERI ¶2033 (IL SLRB 1997). These Section 9(b) factors include: (1)

[5] This cross-training last occurred a number of years ago. While the current utilities commissioner purportedly has been a "big proponent" of such cross-training and has offered it to certain employees, cross-training does not regularly occur.

historical patterns of recognition; (2) community of interest including employee skills and functions; (3) degree of functional integration; (4) interchangeability and contact among employees; (5) fragmentation of employee groups; (6) common supervision, wages, hours, and other working conditions of the employees involved; and (7) the desires of the employees.[6]

When determining whether a unit is appropriate, the Board must strike a fair and workable balance regarding the various factors of unit appropriateness outlined in Section 9(b) of the Act and must take into consideration: the interests of the labor organization in organizing public employees; the needs of the public employer in developing efficient and effective bargaining relationships; and, most importantly, the rights of public employees to meaningfully voice their common and collective concerns regarding wages, hours, and conditions of employment. How these interests are balanced in each case depends on the specific facts and circumstances involved therein. County of Cook (Provident Hospital), 22 PERI ¶12 (IL LRB-LP 2006); City of Chicago, 2 PERI ¶3009 (IL LLRB 1986); DuPage County Board, 1 PERI ¶2003 (IL SLRB 1985).

In light of the preceding, I initially observe that, although each division often performs its own work and certain work is exclusively performed by certain employees or certain divisions, the employees at issue generally can and have performed work for divisions other than their own. Moreover, employees of one division regularly work with or assist employees of other divisions in order to complete interrelated tasks or projects. The petitioned-for employees also routinely

[6] The Act also cautions that fragmentation shall not be the sole or predominant factor used by the Board to determine whether a bargaining unit is appropriate. See Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). In addition, I note that, in the public sector, the concepts of community of interest and commonality in wages, hours, and working conditions are often given expansive interpretations to yield broad-based bargaining units whenever feasible. Larger, broad-based units have been preferred in order to facilitate stability in labor relations and avoid excessive expense and difficulty in public bargaining and administration. County of Cook, Office of the Medical Examiner, 3 PERI ¶3033 (IL LLRB 1987); County of Cook, Department of Supportive Services, 2 PERI ¶3027 (IL LLRB 1986); see City of Naperville, 28 PERI ¶98 (IL LRB-SP 2011); Rend Lake Conservancy District, 14 PERI ¶2051 (IL SLRB 1998).

perform a range of work that parallels or is identical to the work performed by employees of various job titles affiliated with other divisions. These circumstances generally weigh in favor of appropriateness.[7]

Separately, I note that, generally, employees affiliated with one division are not supervised by and do not receive daily assignments from a supervisor from another division. However, I find that the weight of this observation is somewhat lessened by the fact that any supervisor can formally report any employee's improper behavior, regardless of that employee's affiliation. I also note that, under certain circumstances, these employees temporarily report to and may be disciplined by supervisors affiliated with other divisions. Further, all of the employees in the petitioned-for unit are always subject to the ultimate authority of the utilities commissioner and his deputy.

In addition, I note that, while each division maintains its own central office and some employees may punch in at different locations each morning, employees of one division often interact with employees of other divisions. This occurs when these employees work together or meet in "common areas." Notably, in previous cases, the Board has determined that universal contact among all members of a proposed bargaining unit is not essential to establish a meaningful community of interest. See County of Cook, Office of the Medical Examiner, 3

[7] Department-specific commonalities do not necessarily outweigh broader commonalities in skill level, type of functions, and wages, hours, and other conditions of employment. To hold otherwise would be to disregard the sound reasons, alluded to previously, for favoring larger, broad-based units in the public sector. County of Cook, Office of the Medical Examiner, 3 PERI ¶3033. As a related aside, I also note that contracts often have separate or special provisions for separate classifications, departments, or shifts, depending upon the extent to which the bargaining has developed agreement upon whether all-inclusive provisions are adequate – or inadequate – to deal with the problems of each such group. Put differently, parties regularly bargain different or special terms in order to address an employer's circumstances, needs, and desires. See State of Illinois, Department of Central Management Services (Department of Agriculture, et al.), 29 PERI ¶63 (IL LRB-SP 2012); State of Illinois, Department of Central Management Services (Department of Revenue), 29 PERI ¶62 (IL LRB-SP 2012); Federal-Mogul Corporation, 209 NLRB 343, 344 (1974).

PERI ¶3033 (IL LLRB 1987). I also note the relative geographic proximity of the division offices.

At the same time, I note that all of the employees at issue work the same regular hours during a given workday; may perform overtime work; and are, with some variation, similarly "on call." Moreover, each of the employees at issue similarly must maintain a certain type of commercial drivers license (and is expected to drive), must have a high school diploma or its equivalent, and must be able to lift at least 75 pounds. These employees may also share a similar "pay scale" and similar "pay rates." In addition, other than the two part-time employees, all of the petitioned-for employees presently receive the same employment benefits. I also note that, though fairly rare, permanent transfers from one division to another do occur.

On the other hand, I must note that there has never been a bargaining unit that represented employees from all three divisions of the utilities department. In fact, the employees of the fleet maintenance and water divisions have never been organized. Nevertheless, presently, the overall majority of the employees at issue, all of whom are currently unrepresented, evidently desire representation via the proposed unit. This desire has been demonstrated by employees from each division. Further, the Employer introduced no evidence indicating that the employees in question specifically desired a different unit from that defined in the petition. See Downers Grove Community High School District No. 99, 1 PERI ¶1105 (IL ELRB 1985); Dezcon, Inc., 295 NLRB 109, 112 (1989).

The two petitioned-for part-time employees deserve special attention. Notably, during a typical week, both of these employees work according to unique schedules that differ than those of the department's full-time employees. Moreover, because they are part-time employees, the department's employees do not receive comparable employment benefits beyond Illinois

Municipal Retirement Fund benefits; may not take holiday, vacation, sick, or personal leave; and allegedly "have no assurance of continued employment." Testimony also indicates that, "for insurance reasons," the part-time employee who works for the water division is not allowed to enter a hole in the ground to perform certain water division work and therefore, unlike the other employees affiliated with his division, is not required to live in the Village.[8] Admittedly, these differences weigh against appropriateness. That being said, I ultimately do not find that the differences are so fundamental or so significant that they render the proposed unit inappropriate under Section 9(b) of the Act.

There is no question that combinations of full-time and part-time employees have routinely been found to constitute appropriate units. I also note that, in many respects, the department's part-time employees are very similar to their full-time coworkers. Significantly, it generally appears that the part-time employees at issue similarly perform much of the same work that is performed by the department's full-time employees. The part-time employees are also similarly supervised, disciplined, and given assignments. In addition, they generally appear to exercise substantially similar skills and interact and work in similar locations. These factors cannot be overlooked. See County of Kankakee and Coroner of Kankakee County, 28 PERI ¶21 (IL LRB-SP 2011) (While full-time employees had a slightly broader range of duties and different pay and benefits than part-time employees, the differences were insufficient to destroy the community of interest between full-time and part-time employees.); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016; City of Decatur and Decatur Public Library, 7 PERI ¶2036 (IL SLRB 1990) (Even though they did not receive any of the benefits that the regular employees received, it was found that temporary employees shared a community of

[8] The Employer requires that all full-time water division employees live in the Village. Employees affiliated with other divisions are not required to do so.

interest with regular employees because they performed the same duties as the regular employees and there was interchangeability of functions and common supervision.); Village of Worth, 3 PERI ¶2042 (IL SLRB 1987) (A community of interest existed where all of the petitioned-for "blue-collar" employees performed manual labor and worked with tools, equipment, and vehicles.); Elmhurst Park District, 16 PERI ¶2042 (IL SLRB G.C. 2000). Finally, I note that the test regarding whether part-time employees should be included in a bargaining unit is not based on the expectancy of permanent employment. See Rend Lake Conservancy District, 14 PERI ¶2051 (IL SLRB 1998); Children's Hospital of Pittsburgh, 222 NLRB 588, 591 (1976).

Before concluding, I must also comment that the Act merely requires that the petitioned-for unit be an appropriate unit, which frequently is not the most appropriate unit conceivable. City of Chicago v. Illinois Labor Relations Board, Local Panel, 396 Ill. App. 3d 61, 71, 918 N.E.2d 1103, 1112 (1st Dist. 2009); County of Cook v. Illinois Labor Relations Board, Local Panel, 369 Ill. App. 3d 112, 118, 859 N.E.2d 80, 86 (1st Dist. 2006); Village of Frankfort, 20 PERI ¶83 (IL LRB-SP 2004); Rend Lake Conservancy District, 14 PERI ¶2051; Chicago Transit Authority, 11 PERI ¶3022 (IL LLRB 1995); see P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988). Moreover, it is well-settled that there is often more than one way in which employees of a given employer may be appropriately grouped for purposes of collective bargaining. The Board need not decide which unit is the best. See County of Macoupin, Treasurer, Clerk, and Recorder of Macoupin County, 24 PERI ¶129 (IL SLRB-SP G.C. 2009); Overnite Transportation Company, 322 NLRB 723, 725 (1996). With that in mind, and in light of the foregoing, I find that the weight of the instant record supports a finding that the proposed bargaining unit is sufficiently appropriate within the meaning of Section 9(b) of the Act. Thus, I recommend that the petitioned-for unit be certified.

V. CONCLUSIONS OF LAW

I find that the petitioned-for bargaining unit is appropriate for purposes of collective bargaining within the meaning of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the petitioned-for bargaining unit be certified.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to 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 Administrative Law Judge's Recommendation. Within 5 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 with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The 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. The exceptions and/or cross-exceptions will not be considered without this statement.

If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 12th day of April, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge