

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

Service Employees International Union,	)	
Local 73,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-14-001
	)	
County of McHenry and McHenry County	)	
Recorder of Deeds,	)	
	)	
Employer	)	

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

On March 6, 2014, Administrative Law Judge (ALJ) Deena Sanceda issued a Recommended Decision and Order (RDO), recommending that the Illinois Labor Relations Board, State Panel, dismiss a petition filed by Service Employees International Union, Local 73, (“Union” or “Petitioner”) seeking to represent the titles Recording Specialist, Part-time Recording Specialist, and Record/Office Clerk employed by the County of McHenry and Recorder of Deeds of McHenry County (jointly, “Employer”). The ALJ found that the proposed unit was inappropriate because it failed to include the position of Accounting Coordinator in the Accounting Department and Personal Computer Specialist in the Computer Technology Department. The Union filed timely exceptions pursuant to Section 1200.135(b) of the Board’s Rules and Regulations, 80 Ill. Admin. Code §1200.135(b), and the Employer filed a response. For the reasons that follow, we dismiss the petition.

## 1. Facts

We adopt the ALJ's findings of fact as supplemented in this Opinion and Order. In order to assist the reader, we set forth the facts to the extent necessary to decide the issues presented.

The Office of the McHenry County Recorder records and maintains all land records in McHenry County. The Office is comprised of the following eight departments: Administration; Accounting; Computer Technology; Recording, Public Service, and Mail (RPSM); Scanning; Microfilm; Indexing; and Receipting. The petitioned-for positions work in five of the eight departments, Microfilm, Indexing, Scanning, Receipting, and RPSM. The Accounting Coordinator works in the Accounting Department and the Personal Computer Specialist works in the Computer Technology Department.

The ALJ found that the County of McHenry and the Recorder of Deeds of McHenry County operate under a centralized personnel system, and the Union does not except to this finding. All County employees are covered by the County Personnel Policy Manual. According to the Manual, all full-time County employees have the same health, disability, pension, and insurance benefits. Further, full-time employees are covered by the same military and bereavement leave policies. Part-time employees are not eligible for the County's benefit programs. However, both full- and part-time employees are eligible to take personal days, sick days, and vacation days.<sup>1</sup> Both full- and part-time employees have the same holidays off. Both full- and part-time employees are subject to the same County disciplinary policies and procedures, drug and alcohol policies, computer/email/internet policies, and jury duty policies. Finally, if County employees receive an annual increase, employees in the Recorder's Office likewise receive that increase.

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<sup>1</sup> These are computed pro-rata for part-time employees.

Employees in the Office are also covered by the Recorder's Office Employee handbook. The handbook expressly incorporates provisions of the County Handbook with respect to employee benefits and paid leaves. It also contains additional provisions not included in the County Personnel Policy Manual.

All full-time employees come in to work at 8 am, with the exception of some computer department staff. Each day, one member of the computer department staff comes in at 7:30 am to start the computers. The computer department staff members rotate in this responsibly. Full-time employees leave at 4:30 pm when the office closes. All employees use the copy room and the break room/ lunch room. There is a common restroom right outside the office. All employees in the Recorder's Office typically rotate through the eight departments. The Recorder and the Chief Deputy Recorder oversee all Office employees. However, the petitioned-for employees do not share common direct supervision.

Petitioned-for employees' actual wages fall between \$10.62 and \$19.55 an hour. The actual wages of the Personal Computer Specialist (\$18.00 per hour) and the Accounting Coordinator (\$16.75 per hour) likewise fall within this bracket. The ALJ disregarded the scheduled hourly rate range because the Personal Computer Specialist's wages fell outside the wage bracket for his position and neither party explained this discrepancy.

The Office conducts office-wide training. A deputy recently instructed employees on customer service and safety procedures, i.e., the manner in which employees should handle angry customers. In addition, all office employees are trained on how to record certain documents.

The Office has a cross training program which allows employees to learn the duties, skills, and functions of employees in other departments. Such training lasts 90 days and may be

voluntary or mandatory. The Office has a document that outlines the separate tasks required of employees in each department, so as to track employees' skills and cross training goals. On this document, the office indicates the level of an employee's knowledge in each particular skill or duty. An employee is considered to have "knowledge" of duties performed by employees in another department if that employee is able to perform some of their duties. An employee is considered to be a "backup" for employees in another department if the employee is capable of performing 95% of their duties. The duties and skills listed under each department heading are unique to that department.

The Accounting Coordinator spends three days a week in the Recording, Public Service, and Mail Department performing the duties of the petitioned-for employees in that department. During that time, she performs the office's mail backs, waits on customers, answers the phone, and works at the stamp desk. When the Accounting Coordinator is absent from the Recording, Public Service, and Mail Department, a petitioned-for employee in that department can substitute for her. Conversely, when a petitioned-for employee is absent from the Recording, Public Service, and Mail Department, the Accounting Coordinator can substitute for that employee.

The Accounting Coordinator cross trains in the Accounting Department two days a week. No petitioned-for employee can substitute for the Accounting Coordinator when she is absent from the Accounting Department because no petitioned-for employee is capable of performing Accounting Department work.<sup>2</sup>

The Personal Computer Specialist spends three days a week in the Indexing Department. While serving in the Indexing Department, the Personal Computer Specialist acts as a verifier. An individual becomes a verifier if he performs his work for a certain period of time without

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<sup>2</sup> There are currently no petitioned-for employees cross training in the Accounting Department; however, there were in the past.

errors. When the Personal Computer Specialist is absent from the Indexing Department, a petitioned-for employee is able to substitute for him if that employee is also a verifier. Not all petitioned-for employees in the Indexing Department can substitute for the Personal Computer Specialist because not all of them are verifiers. When a petitioned-for employee in the Indexing Department is absent, the Personal Computer Specialist can substitute for that employee.

The Personal Computer Specialist cross trains in the Computer Department two days a week. He is able to act as backup for the Computer Network Analyst and can substitute for her when she is absent. Two petitioned-for employees, cross training in the computer department, are able to substitute for the Personal Computer Specialist in checking the server backups and getting the computers running in the morning. None of the petitioned-for employees are able to substitute for the Personal Computer Specialist in his capacity as backup for the Local Network Analyst.

Office Manager Deborah Merrill testified that the “Recorder can use the funds [from the Rental Housing Support Program surcharge] for anything to administer the program within our office.” Merrill further stated that the Recorder “chose to create a position” and “chose to use the funds for [the Accounting Coordinator] position.”

## **2. Discussion and analysis**

The Union’s exceptions raise the following issues: (1) the status of the presumption under Board case law; (2) the propriety of applying the presumption to this case; (3) the test for rebutting the presumption once it has attached; (4) the manner in which the ALJ undertook the community of interest analysis, following the presumption’s application; and (5) the manner in which the ALJ assessed the Union’s alternate bases for certification of the smaller unit. We address each in turn below.

## a. The Presumption Remains Intact

The presumption remains intact despite the court's observation that the Board revised its preference for broad-based units. Although we have not applied the presumption in every recent case, neither have we abandoned it. A brief history of our approach to unit appropriateness and the presumption follows.

We have historically expressed a preference for broad-based units. Cnty. of Cook (Medical Examiner's Office), 17 PERI ¶ 3005 (IL LLRB 2001); Cook Cnty. (Office of the Medical Examiner), 3 PERI ¶ 3033 (IL LLRB 1987); Cnty. of Cook and Cook Cnty. Sheriff, 15 PERI ¶ 3011 (IL LLRB 1999); see also City of Chicago (Law Dep't), 3 PERI ¶ 3026 (IL LLRB 1987); Cook Cnty. Hosp., 3 PERI ¶ 3023 (IL LLRB 1987); Cnty. of Cook, 3 PERI ¶ 3016 (IL LLRB 1987); Cook Cnty. (Dep't of Supportive Serv.), 2 PERI ¶ 3027 (IL LLRB 1986); City of Chicago, 2 PERI ¶ 3009 (IL LLRB 1986). To that end, we have held that when the employer has an established centralized personnel system, the petitioned-for unit is presumptively inappropriate where the Petitioner has sought only a portion of employees in the same job classification or, alternatively, only a portion of employees who perform similar duties. DuPage Cnty. Bd., 1 PERI ¶ 2003 (IL SLRB 1985) (creating the presumption); Vill. of Bartlett, 3 PERI ¶ 2010 (IL SLRB 1986)(using employees' similar duties to support a presumption-type weighing analysis).

The Court observed that starting around 2007 we began "reconsidering [our] preference for large units" and began "certifying small, stand-alone units." Ill. Council of Police v. Ill. Labor Rel. Bd. Local Panel, 404 Ill. App. 3d 589, 600 (1st Dist. 2010) (citing City of Chicago, 23 PERI ¶ 172 (IL LRB-LP 2007) (Board certified unit of 23 supervising police communications operators, SPCOs); State of Ill. Dep't of Cent. Mgmt. Services/Dep't of

Healthcare & Family Services v. Ill. Labor Rel. Bd., State Panel (“CMS/DHFS”), 388 Ill. App. 3d 319 (4th Dist. 2009) (affirming decision of the Board in State of Ill. Dep’t of Cent. Mgmt. Services/Dep’t of Healthcare & Family Service, 23 PERI ¶ 173 (ILRB–SP 2007) (certifying a unit of six Bureau of Administrative Litigation staff attorneys)). In each cited case, the employers argued that the petitioned-for employees belonged in a preexisting unit, represented by a non-petitioning union. In each of these cases we rejected this argument. In so holding, we explained that we needed to weigh administrative efficiency against the right of petitioned-for employees to engage in collective bargaining. We concluded that the balance favored certification of the smaller unit because wide-spread unionization eliminated the risk that small units would proliferate, and applying the preference for broad-based units would eliminate employees’ right to organize by placing it under the control of a third party that might not wish to represent them.

However, we did not uniformly abandon the presumption in these cases. In three, we declined to apply the presumption; in a fourth, we applied the presumption and found it rebutted. Although we clearly rejected the contention that an existing unit is the only appropriate one, we established no clear pattern with the respect to the presumption’s application in these cases. See Ill. Council of Police, 404 Ill. App. 3d at 600 affirming City of Chicago, 25 PERI ¶ 77 (ILRB-LP 2009) (not applying presumption; placing security sergeants in stand-alone unit rather than finding Unit II to be the only appropriate unit); CMS/DHFS, 388 Ill. App. 3d 319 (2009) (presumption applied, finding it rebutted; placing six staff attorneys in stand-alone unit instead of finding RC-10 to be the only appropriate unit); City of Chicago (Public Health Nurses) v. Ill. Labor Rel. Bd. Local Panel, 396 Ill. App. 3d 61, 69 (1st Dist. 2009)(not applying presumption; placing nurses into stand-alone unit instead of finding only an existing unit of public health

nurses to be the appropriate unit); City of Chicago, 23 PERI ¶ 172 (not applying the presumption; placing SPCOs into stand-alone unit instead of finding only Unit II to be the appropriate unit).

Our recent approach to the presumption is no more uniform outside the “third party” context, described above. The Board applied dissimilar analyses in City of Peru (2009) and City of Naperville (2011), even though the employers in both cases sought a broader unit of yet unrepresented employees. See City of Naperville, 28 PERI ¶ 98 (IL LRB-SP 2011)(applying presumption); City of Peru, 25 PERI ¶ 6 (IL SLRB 2009)(not applying presumption).

Contrary to the Union’s contention, our previously articulated difficulty in “squaring” the presumption with the language of Section 9(b) fails to show that we have eschewed the presumption. In fact, we have not used this language to consistently justify the presumption’s abandonment. See CMS/DHFS, 388 Ill. App. 3d at 334-338 (quoting that language but affirming the Board’s use of the presumption); see also City of Naperville, 28 PERI ¶ 98 (IL LRB-SP 2011).

For the same reason, our stated mandate to certify “an” appropriate unit fails to demonstrate that we have abandoned the presumption because this language appears in virtually all our cases, regardless of whether we applied the presumption. Ill. Council of Police v. Ill. Labor Rel. Bd., 404 Ill. App. 3d 589, 600 (1st Dist. 2010)(“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.”); City of Chicago (Public Health Nurses), 396 Ill. App. 3d at 67; State of Ill. Cent. Mgmt. Serv. (Dep’t of Healthcare and Fmly. Serv.), 23 PERI ¶ 173 (IL LRB-SP 2007) aff’d CMS/DHFS, 388 Ill. App. 3d at 334-338; City of Naperville, 28 PERI ¶ 98; City of Rolling

Meadows, 16 PERI ¶ 2022 (IL SLRB 2000); Rend Lake Conservancy Dist., 14 PERI ¶ 2051 (IL SLRB 1998).

In sum, we have not abandoned the presumption.

b. The Presumption Applies to this Case

We find that the presumption applies in this case because the Union petitioned for only a portion of employees under a centralized personnel system who perform similar duties.

As noted above, when the employer has an established centralized job classification system, the petitioned-for unit is presumptively inappropriate where the petitioner has sought only a portion of employees in the same job classification or, alternatively, only a portion of employees who perform similar duties. DuPage Cnty. Bd., 1 PERI ¶ 2003 (creating the presumption); Vill. of Bartlett, 3 PERI ¶ 2010 (using employees' similar duties to support a presumption-type weighing analysis).

Here, the Union does not dispute the existence of a centralized personnel system. Further, the Union does not dispute the fact that two non-petitioned-for employees, the Accounting Coordinator and the Personal Computer Specialist, perform similar duties to those in the petitioned-for group. Accordingly, the presumption applies.

The Union's first exception to this finding is meritless because it is based on a selective reading of the Board's case law. The Union observes that under DuPage, the presumption does not apply because the Union sought to represent all the employees within each job title for which it petitioned. DuPage Cnty. Bd., 1 PERI ¶ 2003 (presumption applies when union petitions for "only a portion of employees [under a centralized personnel system] who perform duties in identical job classifications"). However, the Union disregards the fact that the statement of law in DuPage is not the most recent or the most comprehensive articulation of the presumption.

Under City of Naperville, the presumption also applies where the Union petitions for only a portion of employees under a centralized personnel system who *perform similar duties*. City of Naperville, 28 PERI ¶ 98; Vill. of Bartlett, 3 PERI ¶ 2010 (reversing ALJ who found the presumption did not apply since the union had petitioned for all employees in each title; applying presumption based on similarity of duties performed by employees within the proposed unit and those excluded). Accordingly, it is immaterial that the Union did not selectively petition for a portion of employees in a single *title* because the presumption applies by virtue of the positions' similar duties.

The Union's second exception is likewise meritless because it similarly ignores the facts that trigger the presumption. Here, the Union wishes us to apply the presumption when it finds the omitted positions are interchangeable with the petitioned-for positions, rather than when they merely perform duties similar to the petitioned-for employees' duties. To that end, the Union argues that the petitioned-for employees are not interchangeable with the omitted ones because they cannot perform all the duties performed by the omitted positions. In particular, they cannot substitute for the Personal Computer Specialist in all his computer duties and they cannot substitute for the Accounting Coordinator in her accounting duties. Yet it is not strict interchangeability that triggers the presumption under a centralized personnel system, but a similarity of duties. See cases *supra*. Accordingly, the Union's exception misses the mark.

Thus, the presumption applies here.

c. Test for Rebutting the Presumption

The ALJ presented a correct statement of law with respect to the evidence necessary to rebut the presumption and to find the smaller unit appropriate.

The presumption of inappropriateness can be rebutted by evidence that the classification encompasses employees who do not in fact have the same functions and community of interest. CMS/DHFS, 388 Ill. App. 3d at 336. Thus, the presumption may be rebutted by showing that it is based on a faulty premise.

Alternatively, the presumption can be rebutted where the union shows that there is a legitimate and rational basis for the smaller, petitioned-for unit. City of Naperville, 28 PERI ¶ 98; Rend Lake Conservancy, 14 PERI ¶ 2051; see also City of Rolling Meadows, 16 PERI ¶ 2022; State of Ill., Dep't of Cent. Mgmt Services (Dep'ts of Transportation and Natural Resources), 14 PERI ¶ 2019 (IL SLRB 1998). The Board will find a legitimate and rational basis for the smaller unit where the smaller group is internally cohesive such that it shares a strong, identifiable community of interest separate from that of employees in the larger proposed unit. City of Naperville, 28 PERI ¶ 98 (citing DuPage); Cook Cnty. (Office of the Medical Examiner), 3 PERI ¶ 3033 (department-specific commonalities did not outweigh broader commonalities in skill level, type of functions, and wages, hours and other conditions of employment); Cnty. of Cook and Cook Cnty. Sheriff, 15 PERI ¶ 3011 (applying presumption, finding larger unit appropriate unless smaller unit shared a unique community of interest which outweighed the community of interest of the broader group); see also City of Calumet City, 4 PERI ¶ 2037 (IL SLRB 1988); City of Chicago (Law Dep't), 3 PERI ¶ 3026; Cook Cnty. Hosp., 3 PERI ¶ 3023; Cnty. of Cook, 3 PERI ¶ 3016; Cook Cnty. (Dep't of Supportive Serv.), 2 PERI ¶ 3027; and City of Chicago, 2 PERI ¶ 3009.

Likewise, a legitimate and rational basis for the smaller unit exists when employees in the petitioned-for unit have different collective bargaining needs or objectives than those outside the unit. City of Naperville, 28 PERI ¶ 98 (employees in the petitioned for unit did not have

different collective bargaining needs where they had similar terms and conditions of employment); Rend Lake Conservancy, 14 PERI ¶ 2051 (seasonal workers had different collective bargaining interests from full time workers).

By contrast, no legitimate and rational basis exists for certification of the smaller, petitioned-for unit when the smaller unit is an artificial and arbitrary selection of employees. City of Rolling Meadows, 16 PERI ¶ 2022 (finding smaller unit artificial and arbitrary when the petitioned for employees were functionally integrated with non-petitioned for employees and where there were few job functions that were unique to the petitioned-for positions).

Here, the ALJ properly applied the presumption analysis by comparing the community of interest of the smaller group with the community of interest of the larger one, and then assessing the Union's remaining arguments to determine whether they presented a rational basis for certification of the smaller unit.

The Union cannot rebut the presumption in this case simply by demonstrating that employees in the larger group are not interchangeable and do not share the same job description. The Appellate Court case cited by the Union for this proposition applied the presumption under different circumstances than did the ALJ here, and its reasoning is therefore inapplicable. In that case, the Court applied the presumption based on the fact that the union had not petitioned for all employees in a single *classification*. CMS/DHFS, 388 Ill. App. 3d at 336. Accordingly, the Court held that that the presumption could be rebutted by showing that the *classification* was not uniform, such that it would warrant the presumption's application. Id. To make that showing, the Union was required to show that the "classification encompassed employees who did not have the same functions and community of interest." Id. The Court found the presumption rebutted where employees within the classification did not have the same job description and

were not interchangeable.<sup>3</sup> Id. Here, the same rationale does not apply because the ALJ applied the presumption based on the *similarity of duties* shared by employees in the larger proposed unit and not based on the fact that they share a *classification* (they don't). Accordingly, there is no underlying assumption that the employees within the petitioned-for group possess the same job description, or indeed, that they are perfectly interchangeable. As such, different job descriptions and an alleged lack of interchangeability are insufficient to rebut the presumption where it was applied based on a mere similarity of duties.

Thus, the ALJ set forth the proper test to determine whether the Union rebutted the presumption, or alternatively, set forth a rational basis for the certification of the smaller unit.

d. Communities of Interest Compared

The ALJ properly found that the smaller group does not share a strong and identifiable community of interest separate from that of the larger group.

The record amply supports the ALJ's finding that the smaller group is not distinct from the larger one, based on four community of interest factors: similar working conditions, functional integration, contact, and (lack of) common supervision. First, employees in both groups have similar working conditions because they are covered by the same disciplinary, drug/alcohol, computer/email/internet, and jury duty policies. They have the same holidays off and are entitled to personal, sick, and vacation days, based on their service time. They are covered by the same employee handbooks and receive some of the same office-wide training. Finally, they earn similar wages and receive the same County-wide raises. Indeed, both the Personal Computer Specialist (\$18.00) and the Accounting Coordinator (\$16.74) earn less per

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<sup>3</sup> Citing that case, the Board in City of Naperville, rejected the Employer's assertion that employees in a City-wide classification should all be included in a single unit, finding that they did not have the same job descriptions and were not interchangeable. City of Naperville, 28 PERI ¶ 98.

hour than the highest paid petitioned-for employee (\$19.55). The ALJ was justified in disregarding the fact that the wage schedule called for higher salaries for these two positions where the County did not adhere to the wage schedule and there was no explanation for the deviation. Second, employees in both groups are functionally integrated because they act in concert to further the goals of the office, they rotate through the Office's departments, and they receive cross training so as to be able to perform each others' duties. Third, employees in both groups have contact with each other because they are at work at the same time,<sup>4</sup> function in a single office suite, and share the same break/lunch room, bathroom, and copy room. Fourth, employees in neither group share common supervision.

Further, the record likewise supports the ALJ's conclusion that she could not compare the skills, job functions, and educational requirements of employees in each group, where there was no evidence as to the Record/Office Clerks' skills, job functions, and educational requirements. We cannot adequately compare communities of interest where the record is devoid of evidence necessary for such comparison. CMS/DHFS, 388 Ill. App. 3d at 336 (finding that the record did not provide enough information to apply the factor in Section 9(b) to Option 8L as a whole where the record did not reveal the duties and functions of 120 non-petitioned-for attorneys).<sup>5</sup>

Finally, the record supports the ALJ's finding that a total of five community of interest factors weigh in favor of the larger group while only one weighs in favor of the smaller group. As noted above, four community of interest factors support certification of the larger group—

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<sup>4</sup> There is necessarily overlap between the full- and part-time employees.

<sup>5</sup> In this case, the Court nevertheless determined that there was no interchangeability amongst petitioned-for attorneys and Option 8Ls more generally. Id. The Court noted that the petitioned-for employees were homogenous with respect to their job descriptions and duties while the larger group contained attorneys within DHFS who had different job descriptions and different functions. Id. The same analysis cannot be applied here because the absence of evidence concerning the Record/Office Clerks renders it impossible to determine that the petitioned-for group is homogeneous with respect to employees' job descriptions and functions. Id.

similar working conditions, functional integration, contact, and lack of common supervision. One additional factor, fragmentation, weighs in favor of certifying the larger group. By contrast, only employees' desires indicate that the smaller unit is appropriate.

The Union erroneously disregards the commonalities shared amongst employees in the larger group when it asserts that only two community of interest factors, similarity of duties and fragmentation, favor its certification.

The Union's remaining arguments in favor of the smaller group are likewise unavailing. First, the mere fact that the petitioned-for employees share a community of interest does not render the petitioned-for unit appropriate. Rather, once we have determined that the presumption applies, the Union must show that the petitioned-for group shares a strong and identifiable community of interest separate from that of employees in the larger proposed unit. City of Naperville, 28 PERI ¶ 98; Chief Judge of the Cir. Court of Cook Cnty., 18 PERI ¶ 2016 (ILLRB-LP 2002).

Similarly, the ALJ did not apply a backward analysis by addressing the appropriateness of the larger proposed unit. Rather, she simply responded to the Union's arguments. Here, the Union argued that the Accounting Coordinator and the Personal Computer Specialist should be excluded from the unit because they possess specialized skills. In essence, the Union argued that the larger group would be inappropriate because it included those two employees. The ALJ squarely addressed this argument by noting that the larger group would still be appropriate even if employees within that group had some specialized skills. Although she cited dicta from City of Peru for that proposition, her conclusion is similarly supported by black letter law set forth in Chief Judge of the Circuit Court of Cook County. City of Peru, 25 PERI ¶ 6 (noting that "combined unit of the employees in Electric and Public Works, in all likelihood, would be

appropriate” even though the electrical workers had some unique and specialized skills; ultimately finding the smaller unit appropriate and finding that employees’ specialized skills supported that outcome); Chief Judge of the Cir. Court of Cook Cnty., 6 PERI ¶ 2047 (IL SLRB 1990)(attorneys’ unique skill and functions did not outweigh the strong community of interest they shared with other petitioned-for employees who were non-lawyers).

Further, the ALJ did not use fragmentation as the sole or predominant factor by applying the presumption in reaching her decision. Although the presumption’s successful application limits fragmentation by promoting broader bargaining units, fragmentation is not the sole or predominant factor in cases which apply the presumption. In fact, application of the presumption requires an initial consideration of a number of 9(b) factors—working conditions, skills, and functions—to determine whether employees are subject to a centralized personnel system and perform similar duties. A completion of the presumption analysis likewise requires a fact-intensive inquiry which compares two groups of employees using all the 9(b) community of interest factors. Thus, equating the presumption with the fragmentation factor does not capture the full analysis performed by the Board and the ALJ’s use of the presumption does not demonstrate that she disproportionately considered fragmentation in reaching her decision.<sup>6</sup>

Contrary to the Union’s contention, there is no historical pattern of recognition that supports certification of the smaller unit because the petitioned-for employees have never been represented. We assess historical patterns of recognition with respect to the petitioned-for employees. Where the employees are new to collective bargaining, as they are here, there is no

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<sup>6</sup> Notably, the Union’s use of the phrase “presumption against fragmentation” does not transform an otherwise multifaceted approach into a one-dimensional analysis sufficient to equate the presumption with the fragmentation factor. A review of the case law reveals that neither the Board nor the courts have called the presumption a “presumption against fragmentation.” Instead, they use the phrase “presumption of inappropriateness.” CMS/DHFS, 388 Ill. App. 3d at 334.

historical pattern of recognition. See State of Ill. Dep't of Cent. Mgmt. Servs., 1 PERI ¶ 2025 (IL SLRB 1985) (there can be no historical pattern of recognition where the classification has never been represented); see also State of Ill. Dep't of Cent. Mgmt. Servs., 1 PERI ¶ 2011 (SLRB 1985). Although we have occasionally considered employers' recognition practices more broadly, we have never used employers' past arguments to substitute for that evidence, as the Union does here. Cnty. of Cook (Provident Hospital), 22 PERI ¶ 12 (IL LRB-LP 2006)(declining to apply presumption where the employer had repeatedly stipulated to the appropriateness of county hospitals-only units).

Finally, the Union's emphasis on the omitted employees' specialized skills does not alter the ALJ's conclusion for two reasons. First, the omitted employees' specialized skills do not factor into this analysis where the record bars an assessment of every title's skills and consequently prohibits a comparison of the two groups with respect to this criterion. It is for this reason that the ALJ expressly refused to compare the skills and consequent interchangeability of employees in the two groups. Second, even upon this incomplete record, it is clear that employee interchangeability is similar within each group because there are employees within both groups who lack the specialized skills to substitute for each other. The Union correctly notes that the petitioned-for employees cannot perform all of the Personal Computer Specialist's computer tasks and that they cannot perform all of the Accounting Coordinator's accounting tasks. However, the Union overlooks the fact that a petitioned-for employee in one department similarly cannot perform the tasks of a petitioned-for employee in another department unless he has been cross-trained in the specialized skills specific to that department.<sup>7</sup> Moreover, petitioned-for employees are not perfectly interchangeable even within a single department. For

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<sup>7</sup> There is no evidence that all petitioned-for employees have cross trained to learn the skills used in the other departments.

example, not all Recording Specialists in the Indexing Department can substitute for each other because not all Recording Specialists are verifiers. Accordingly, if a Recording Specialist verifier is absent, only another verifier can substitute to perform those discrete verifying tasks. Therefore, interchangeability amongst employees within both groups is similar such that the employees in the smaller group do not share a separate and distinct community of interest apart from employees in the larger group with respect to this factor.

Contrary to the Union's contention, the NLRB's holding in Hillhaven Convalescent Center does not justify the Union's exclusion of the Personal Computer Specialist and the Accounting Coordinator based on their specialized skills. In Hillhaven, the NLRB excluded 12 Licensed Practical Nurses (LPNs) from the broader unit of Certified Nursing Assistants (CNAs) not merely because of their specialized skills, but because their licenses "*permitted* them to perform functions" that employees in the broader unit were not permitted to perform. Hillhaven Convalescent Center, 318 NLRB 1017, 1018 (1995) (emphasis added). In this case, there is no licensure requirement which bars petitioned-for employees from performing the work of the Personal Computer Specialist and the Accounting Coordinator. In fact, the petitioned-for employees can learn these "specialized skills" by undergoing 90 days of cross training and the Office may even require them to do so. Thus, one of the primary bases for the NLRB's decision—possession of a technical license—is not present here and this case therefore does not warrant the same outcome.

In sum, the smaller petitioned-for group does not share a community of interest that is separate and distinct from that of the larger group.

- e. No other rational and legitimate basis exists to warrant certification of the smaller group – funding source issue

We find that there is no other rational and legitimate basis which justifies certification of the smaller unit. Contrary to the Union's argument, the separate funding stream used for the Accounting Coordinator position does not warrant that position's exclusion from the unit. Further, evidence concerning that position's separate funding source does not impact any portion of the ALJ's analysis, discussed above.

Here, the ALJ held that the separate funding stream for the Accounting Coordinator's wages did not justify the position's exclusion from the unit where there was no evidence that this separate source funded the Accounting Coordinator's wages exclusively and entirely. The Union objected to the ALJ's conclusion, arguing that in light of the testimony and in the absence of evidence to the contrary, the ALJ should have inferred that the separate funding source supplied the entirety of the Accounting Coordinator's wages and that the Office used the separate funding source solely for that purpose. The Union concluded that this separate funding source, "standing alone," justified the position's exclusion from the unit.

We need not choose between the ALJ's interpretation of the evidence and the Union's because it is well established that a position's separate funding source is not alone a sufficient basis on which to exclude a position from the unit.<sup>8</sup> The Illinois Educational Labor Relations Board, the National Labor Relations Board, and other public sector labor relations boards have held that bargaining units are appropriate despite the fact that the employer funds certain employees' wages from a separate source. Chicago Bd. of Educ., 18 PERI ¶ 1158 (IELRB 2002)(unit was appropriate even though board of education argued that positions were funded by

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<sup>8</sup>Indeed, such a rule could preclude a separately funded position from collective bargaining if it were uniquely funded in that manner. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011) (there can be no bargaining unit of one).

the local school counsel; IELRB rejected argument that community of interest did not exist where the local school counsel could eliminate the positions in question by deciding to spend funds allocated to wages on other expenditures); Northern Montana Health Care Center v. NLRB, 178 F.3d 1089 (9th Cir. 1999)(employees who worked at a nursing home but were paid by a hospital were properly included in the bargaining unit at the nursing home); City of Grand Haven, 21 MPER ¶ 25 (MERC 2008)(“mere presence of separate funding sources does not destroy community of interest”); City of Cocoa Beach, 6 FPER ¶ 11206 (PERC 1980)(including employees in a bargaining unit “regardless of source of funding.”). The source of a position’s funding may be relevant to the appropriateness of a bargaining unit because the holders’ separately funded positions are dependent on an entity other than the common employer for the continuation of their employment. Chicago Bd. of Educ., 18 PERI ¶ 1158. However, it is only one factor that must be weighed with other factors to justify separate bargaining for separately funded employees. Id.; but see Danville Area Comm. College Dist. 507, 4 PERI ¶ 1001 (IELRB ALJ 1987) (using evidence of separate funding source as lack of functional integration, not as sole justification for a standalone unit). Thus, contrary to the Union’s contention, the separate funding stream for the Accounting Coordinator position does not by itself warrant that position’s exclusion from the unit.

Further, evidence concerning the Accounting Coordinator’s funding source does not demonstrate that the smaller group shares a distinct and identifiable community of interest separate from that of the larger group. The funding source for the Accounting Coordinator position cannot serve as a point of comparison where there is no evidence as to the source of the other positions’ funding.

In sum, there is no other rational and legitimate reason which supports certification of the smaller unit proposed by Petitioner. Consequently, we affirm the ALJ's dismissal of the petition.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett  
John J. Hartnett, 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 Chicago, Illinois on May 13, 2014; written decision issued in Chicago, Illinois on June 20, 2014.

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

Service Employees International Union	)	
Local 73,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-14-001
	)	
County of McHenry and Recorder of	)	
Deeds of McHenry County,	)	
	)	
Joint Employer	)	
	)	

**ADMINISTRATIVE LAW JUDGE'S  
RECOMMENDED DECISION AND ORDER**

On July 2, 2013, Service Employees International Union Local 73 (Petitioner), filed a majority interest petition in Case No. S-RC-14-001 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules).

The Petitioner seeks to represent a bargaining unit that includes all employees of the County of McHenry and Recorder of Deeds of McHenry County (Joint Employer) in the following titles: full time Recording Specialist, part time Recording Specialist, and Record/Office Clerk.<sup>1</sup> On July 10, 2013 the Joint Employer notified the Board that it objected to the proposed bargaining unit. A hearing was held on November 12, 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 full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

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<sup>1</sup> The petition identifies the positions as Full Time Recording Specialist, Part Time Recording Specialist and Part Time Recorders/Office Specialist. The record indicates that the position of Recorders/Office Specialist does not exist at the Recorder's Office. Consequently, on January 24, 2014, the Petitioner requested to correct the job title from Part Time Recorders/Office Specialist to Record/Office Clerk.

## **I. PRELIMINARY FINDINGS**

1. The Board has jurisdiction to hear this matter pursuant to the Act.
2. Service Employees International Union Local 73 is a Labor Organization within the meaning of Section 3(i) of the Act.
3. County of McHenry and Recorder of Deeds of McHenry County is a Public Employer (Joint Employer) within Section 3(o) of the Act.
4. The budget organizational charts graphically represent the organizational structure of the Recorder's Office.<sup>2</sup>

## **II. ISSUES AND CONTENTIONS**

The central issue presented in this case is whether the petitioned-for unit is appropriate for the purposes of collective bargaining. The Joint Employer objects that because the employees in the petitioned-for unit and the employees holding the positions of Local Network Analyst/Network Engineer, the Personal Computer Specialist, and the Accounting Coordinator all share a community of interest, the petitioned-for unit is presumptively inappropriate because it excludes the Local Network Analyst/Network Engineer, the Personal Computer Specialist, and the Accounting Coordinator. The Petitioner contends that the petitioned-for unit of the employees with the titles of Recording Specialists and Record/Office Clerks is appropriate because these employees share a community of interest of within the meaning of the Act. It also argues that the Joint Employer only contends that adding the Local Network Analyst/Network Engineer, the Personal Computer Specialist, and the Accounting Coordinator to the unit would *also* be appropriate, but that the Joint Employer does not adequately address the issue of whether the unit as petitioned-for is appropriate under the Act.

## **III. INVESTIGATORY FACTS**

The Recorder of Deeds of McHenry County (Recorder) is responsible for creating, storing, and maintaining public records for all land transactions and any other documents relating to any ownership interest in all real property located in McHenry County. The Recorder has the

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<sup>2</sup> The stipulated to budget organizational chart provides that there are seven Record/Office Clerks, each working between .24 and .31 hours per week. This chart is inconsistent with the "Recorder's Roster as of 7/2/2013" submitted by joint exhibit, which identifies that only six Record/Office Clerks work at the Office. The Roster is consistent with the Petitioner's position that it seeks to include the 28 employees, identified as 22 Recording Specialists and six Record/Office Clerks. Thus, I find that the organizational chart graphically represents the organizational structure of the Recorder's Office, except that it identifies one unaccounted for Record/Office Clerk.

statutory authority to control the internal operations of the Office of the Recorder (Office) which includes the right to staff the Office with the personnel of her choosing.

**A. personnel policies**

All McHenry County employees operate under a Personnel Policy Manual. The Personnel Manual sets forth the policies regarding the employees' terms and conditions of employment. The Recorder is an elected official, and under Illinois law is allowed to adopt and disseminate internal personnel policies and guidelines separate from the Personnel Policy Manual disseminated to all County employees. Employees within the Office are subject to the County Personnel Policy *and* any guidelines disseminated by the Recorder. The Recorder's Office Employee Handbook specifically incorporates the provisions of the McHenry County Personnel Policy Manual regarding County benefits. These provisions state that all County employees, including all Office employees, are subject to the same centralized vacation schedule, bereavement time, personal time, sick time, health and dental insurance, holidays, and are required to participate in the Illinois Municipal Retirement Fund. Also, the County Administrator's Office retains records of disciplinary actions taken against employees. Aside from these specifically incorporated benefits, the Recorder has the sole discretion to hire, terminate, promote, and train, and is the final authority in disciplinary matters. The Office has also established its own employee benefits and leave allowances, and maintains its own personnel files.

**B. departments and training**

According to the most current organizational chart, the Office is comprised of the Recorder, the Chief Deputy Recorder, and 37 employees in the following eight internal departments: Accounting; Administration; Indexing; Microfilm; Receipting; Recording, Public Service and Mail; Scanning; and the Computer Department. The departments are comprised of the Recorder Office Manager, the Accountant I, the Accounting Coordinator, the Local Network Analyst/Network Engineer, the Personal Computer Specialist, four Recorder Officer Supervisors, three Recording Specialists IIIs, nine Recording Specialists IIs, ten Recording Specialists Is, and six Record/Office Clerks. With the exception of Record Specialist I Barbara Baker, the Record/Office Clerks are the only part time employees in the Office.

All Office employees are trained in how to record a real estate documents on property's chain of title. The level of training depends on the department the employee is assigned. The Office maintains a cross-training program where an employee may be trained in a different department to a certain level of expertise. The training program has the following levels of expertise: "primary," "cross-training," "backup," and "knowledge." An employee has "primary" expertise when the employee is completely trained in a specific duty or function, and this duty of function is the employee's daily primary responsibility in the office. An employee has "cross-training" expertise is when the employee is completely trained in a function or a department, but is assigned a different primary duty. "Backup" expertise requires that an employee has the ability to conduct 95% of the duties so she can fill-in when a person calls in sick or is out for the day. An employee has "knowledge" level expertise when the employee has enough knowledge of the department required to give an employee a break, but the employee does not have sufficient knowledge to conduct all the required duties, nor can the employee function in that position for an entire day.

Training outside an employee's primary duty is called cross-training, and typically lasts about 90 days. Employees in all departments are eligible to cross-train, but cross-training is conducted on an as-needed basis. The Recorder periodically rotates employees between departments, making all employees eligible for cross-training. When an employee transfers departments, the employee is directly responsible to the supervisor of that department. Chief Deputy Recorder Nancy Walkington and Recorder Officer Supervisor Heather Spenard previously rotated into Accounting, and Local Network Analyst Cathleen Cwick and Accounting Coordinator Marybeth Vogrinc are currently being trained in Accounting.

#### 1. Accounting

The Accounting Department is comprised of an Accountant and the Accounting Coordinator. The department is responsible for daily bookkeeping, balancing charges, preparing billings to title companies, making daily bank deposits, and distributing regular financial reports. The department is also responsible for administering and calculating the funds received from the Rental Housing Support Program (RHSP) surcharge. The Office charges each document it stores the \$10 RHSP surcharge, and the revenue from the surcharge is tracked separately from other Office revenue. In 2005, the Recorder created the Accounting Coordinator position with the additional funds from the surcharge.

## 2. Administration

The Administration Department consists of the Recorder Office Manager and Recorder Office Supervisor Heather Spenard. The department is responsible for preparing and maintaining the Office's personnel records, payroll records, and employee evaluations. It is also responsible for tracking employees' cross-training throughout the Office and addressing personnel problems within the office. Along with the Recorder and Chief Deputy Recorder, the department prepares and tracks the Office's internal budget, and plans the future goals of the Office. It is responsible for periodic maintenance of office equipment, oversees inventory, and maintains the Office's website.

## 3. Computer Department

The Computer Department is comprised of the Local Network Analyst and the Computer Specialist. The Local Network Analyst/Network Engineer's job description identifies that this position reports directly to the Recorder.<sup>3</sup> The department is responsible for daily operation of all computers and computer-related equipment, such as printers and scanners, and is responsible for maintaining plat indexes. Three employees are currently responsible for computerizing the plat information. In order to maintain the daily operation of the computer-related equipment, the Local Network Analyst/Network Engineer must communicate with the County-wide IT department and vendors to ensure that the necessary software is installed and working properly in each computer.

The Personal Computer Specialist is the backup for the Local Network Analyst/Network Engineer. Two Recording Specialist trainees assigned to the front office are currently undergoing cross-training to become additional backups for the Local Network Analyst/Network Engineer. Once a week a Recording Specialist trainee arrives at the office 30 minutes early in order to open the office by starting the computers and ensuring that the server is running correctly. The trainees do not have the requisite knowledge to restart the server if the server shuts down.

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<sup>3</sup> The Local Network Analyst/Network Engineer's job description states that the Personal Computer Specialist reports to her, but the Personal Computer Specialists' job description states that he reports directly to the Recorder. The testimony indicates that the employee who holds Personal Computer Specialist position works the majority of his time in the Indexing Department, which is directly supervised the Indexing Supervisor. Based upon these discrepancies, there is no preponderance to support a finding of to whom the Personal Computer Specialist directly reports.

#### 4. Indexing

The Indexing Department consists of Recorder Office Supervisor Lisa Cummings, two Recording Specialist IIIs, four Recording Specialist IIs, three full time Recording Specialist Is, the part time Recording Specialist I, and one part time Record/Office Clerk. The employees within the department are required to be able to record all 280 types of documents recorded i.e. warranty deeds, quit claim deeds, assignments of beneficial interest, liens, mortgages, judgments, assignments, releases, and plats of subdivision. Office employees outside the Indexing Department are not required to be able to record every type of document. Indexing requires the employee to twice enter the relevant recording information into the computer database, and if the database indicates there is a discrepancy between the first and second entry, a verifier will step in to ensure that the information submitted is correct. An employee is allowed to verify recordings after she has indexed for a certain period of time without error, and under the supervision of Supervisor Cummings, is then allowed to verify, until Cummings determines that the employee no longer requires explicit supervision to verify. The department has four verifiers.

#### 5. Microfilm

The Microfilm Department consists of one Recording Specialist II and two Record/Office Clerks, with three or four employees in other departments serving as backups. The department is responsible for scanning and logging in plats of subdivisions, making copies of plats from KIP and aperture cards, and maintaining the equipment in the microfilm room.

#### 6. front office departments

The Recording, Public Service and Mail Department and the Receipting Department are located in the front office. The Recording, Public Service and Mail Department consists of a Recorder Office Supervisor, four Recording Specialist IIs, three Recording Specialist Is, and a Record/Office clerk. The Receipting Department consists of a Recorder Office Supervisor and three Recording Specialist Is. The departments are responsible for assisting customers when they come in, answer telephone calls, and assist title company representatives when they come in for corrections to documents. There are six Office employees who are not assigned to the front office, but have been cross-trained and are capable of working in the front office.

## 7. Scanning

The Scanning Department is responsible for scanning all paper documents using the department's iScan and maintaining the scanning equipment. The department consists of a Recording Specialist III and a Record/Office Clerk. The Personal Computer Specialist was formerly a part of Scanning, but was reorganized into the Computer Department in 2013.

### **C. position requirements and duties**

#### 1. Recording Specialists<sup>4</sup>

All the Recording Specialists are required to have a high school diploma or a GED. They are required to have knowledge of legal real estate documents, accurate typing of 40 to 60 words per minute, some knowledge of computer and computer applications related to work flow, customer service skills, skills in record keeping and filing techniques, knowledge of office policies and procedures and Illinois State statutes as they pertain to the Office, and the ability to interpret and understand instructions and carry out such instructions.

Recording Specialist Is are required to have a minimum of one year of experience. In addition to the experience and skills required of all Recording Specialists, Recording Specialist IIs are required to have a minimum of two years experience, must be knowledgeable of all departments and Office workflow, have the experience and ability to perform all job functions with their assigned department to perform some cross-training functions in other departments, and carry out report preparations and project-specific notifications for the office. In addition to the experience and skills required of all Recording Specialists, Recording Specialist IIIs are required to have a minimum of three to four years of experience, are able to serve as a lead over Recording Specialist Is and IIs, and are responsible for meeting any and all department deadlines. The lead worker responsibilities include training in job skills, assigning and directing work, making recommendations in performance appraisal, and reporting problems to a supervisor.

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<sup>4</sup> The petition identifies the positions as Full Time Recording Specialist, Part Time Recording Specialist, and Part Time Recorders/Office Specialist. The Petitioner only requested to amend the petition *after* the hearing. Accordingly, at the hearing, all the petitioned-for positions were referred to as "Recording Specialists." Given that the Office has a part time Recording Specialist, I cannot make a finding that the distinction between Recording Specialists and Record/Office Clerks is based upon the Record/Office Clerks' part time status. Thus, the record does not identify the job requirements or the specific duties of the Record/Office Clerks.

The specific duties of each Recording Specialist and Record/Office Clerk are based upon the specific department the employee is assigned.

2. Local Network Analyst/Network Engineer

Cathleen Cwick, the Local Network Analyst/Network Engineer is the Computer Department's primary employee. She is a liaison between the County's IT Department and the vendor who provides the Office with its recording system software. Her main function is to ensure that the computers are running, and to troubleshoot printers and computer hard drives. The position is required to have a bachelor's degree in the computer technology field and is required to have three to four years of experience in computer technology and applications.

Cwick became the Local Network Analyst/Network Engineer in mid-2013. She was previously the Personal Computer Specialist in the Scanning Department for 10 years. Cwick obtained her bachelor's degree while she was employed at the Recorder's Office. She is currently cross-training with the Accountant. While she is available to function as a backup at the front counter if another Office employee is at lunch or on break, Cwick has only performed these duties on three or four occasions since becoming the Local Network Analyst.

3. Personal Computer Specialist

The Personal Computer Specialist's job description states that the job's primary purpose is to act as the designated backup for the Local Network Analyst/Network Engineer, and is required to be fully capable of completing all the Local Network Analyst/Network Engineer's duties. The position is also required to have the knowledge to serve as a backup for the Accountant by balancing daily transactions, and being responsible for reconciling monthly refund checking account and providing an annual report to the County Auditor. The position requires a minimum of a two-year associate's degree, and three to four years of experience with computer technology and applications.

Anthony Zidek has been the Computer Specialist since mid-02013. He has a college degree, and prior to becoming the Computer Specialist he was in Indexing for 10 years. Zidek is a verifier in Indexing three days a week and is training to be backup to the Local Network Analyst/Network Engineer two days a week. Zidek has not been cross-trained in Accounting.

4. Accounting Coordinator

The Accounting Coordinator Marybeth Vogrinc works in the front office where she interacts with customers, and she is responsible for processing and mailing back deeds to title

companies. The Accounting Coordinator position is organized into the Account Department, and Vogrinc is currently being trained by the Accountant two days a week. Vogrinc was hired as the Accounting Coordinator rather than a Recording Specialist because the Recorder thought she had more office experience and knowledge than that of the Recording Specialists. However, her front office duties are identical to the duties of the Recording Specialists in the front office. Vogrinc has completed at least some college.

**D. pay scale**

The Office maintains a scheduled minimum and maximum pay rate for each position. The Chief Deputy Recorder, Recorder Office Manager, Recorder Office Supervisor and the Accountant receive a salary rate. The remaining Office employees receive an hourly rate, subject to a minimum and maximum range for each title. The scheduled hourly range and the *actual* pay rate of the hourly positions as of July 2013 are as follows:

	scheduled hourly rate range	actual hourly rate range
Local Network Analyst/Network Engineer	\$23.07 - \$34.27	\$24.05
Personal Computer Specialist	\$20.74 - \$30.46	\$18.00
Accounting Coordinator	\$16.74 - \$24.08	\$16.74
Recording Specialist III	\$16.74 - \$24.08	\$16.74 - \$17.74 <sup>5</sup>
Recording Specialist II	\$15.04 - \$21.41	\$15.04 - \$19.55 <sup>6</sup>
Recording Specialist I	\$12.44 - \$17.35	\$12.44 - \$15.96 <sup>7</sup>
Record/Office Clerk	\$11.12 - \$15.34	\$10.68 - \$13.11 <sup>8</sup>

**E. Office layout**

The Office of the Recorder of McHenry County functions out of a single suite. The Recorder, the Chief Deputy, the Accountant, and the Local Network Analyst/Network Engineer each have their own office. The Administration Department is organized directly outside the

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<sup>5</sup> Of the three Recording Specialist IIIs, the lowest paid receives an hourly rate of \$16.74, and the highest paid receives an hourly rate of \$24.08.

<sup>6</sup> Of the nine Recording Specialist IIs, the lowest paid receives an hourly rate of \$15.04, and the highest paid receives an hourly rate of \$19.55.

<sup>7</sup> Of the ten Recording Specialist Is, the lowest paid receives an hourly rate of \$12.44, and the highest paid receives an hourly rate of \$15.96.

<sup>8</sup> Of the six Record/Office Clerks, the lowest paid receives an hourly rate of \$10.68, and the highest paid receives an hourly rate of \$13.11.

Recorder's office. The remaining Office employees are divided into several sections and shared offices that are generally organized by department. The suite has a common copy room and a common break room.

The Accounting Coordinator sits with the Recording Specialists from the Recording/Public Service Department. The Personal Computer Specialist sits with the Recording Specialists and the Record/Office Clerk from the Indexing Department.

#### **IV. DISCUSSION AND ANALYSIS**

##### **A. analytical framework**

To determine whether a petitioned-for unit is appropriate for the purposes of collective bargaining Section 9(b) of the Act states, in relevant part:

The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.

The standard for judging unit appropriateness is whether the petitioned-for unit is an appropriate unit, not whether it is the most appropriate unit, or even more appropriate than the unit proposed by the employer. Ill. Council of Police v. Ill. Labor Rel. Bd. Local Panel, 404 Ill. App. 3d 589, 600 (1st Dist. 2010); Village of Franklin Park (Dep't of Pub. Works and Utilities), 30 PERI ¶52 (IL LRB-SP 2013); State of Ill., Dept. of Cent. Mgmt. Serv., 1 PERI ¶2025 (IL SLRB 1985); Cnty. of McHenry, Valley-Hi Nursing and Rehab., 29 PERI ¶153 (IL LRB-SP ALJ 2013). However, the Board has a clear preference for broadly-based bargaining units, and has developed a presumption in favor of such broad units. City of Naperville, 28 PERI ¶98 (IL LRB-SP 2011); Vill. of Bartlett, 3 PERI ¶2010 (IL SLRB 1986); DuPage Cnty. Bd., 1 PERI ¶2003 (IL SLRB 1985).

**B. presumption against fragmentation**

The Joint Employer argues that the petitioned-for unit is presumptively inappropriate because it does not include all eligible Office employees.<sup>9</sup> In support of its position the Joint Employer cites Ill. Dep't. of Cent. Mgmt. Serv. (Dep'ts of Trans. and Nat. Res.), 24 PERI ¶2019 (IL SLRB 1998), which applies the Board's long-standing presumption that a petitioned-for unit is inappropriate where the petition seeks to represent only a portion of the employees possessing similar job classifications and/or performing similar duties when the employer operates under a centralized personnel system. See City of Naperville, 28 PERI ¶98; Ill. Dep't of Cent. Mgmt. Serv. (Dep'ts of Trans. and Nat. Res.), 14 PERI ¶2019; Vill. of Bartlett, 3 PERI ¶2010; DuPage Cnty. Bd., 1 PERI ¶2003; see also City of Naperville, 18 PERI ¶2038 (IL LRB-SP ALJ 2002) (finding that there is a presumption that employees share a community of interest when they are in similar job classifications under a centralized personnel system).

In support of its position that the petitioned-for unit comprised solely of Recorder Specialists and Record/Office Clerks is appropriate, the Petitioner argues that the Appellate Court has recently upheld the Board's deliberate shift away from emphasizing that fragmentation of a classification raises a presumption of inappropriateness. See Ill. Council of Police v. Ill. Labor Rel. Bd. Local Panel., 404 Ill. App. 3d at 589; City of Chicago (Public Health Nurses) v. Ill. Labor Rel. Bd. Local Panel, 396 Ill. App. 3d. 61, 66-67 (1st Dist. 2009); Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d 319, 334-338 (4th Dist. 2009). The Petitioner is correct that the Board has specifically addressed that "excessive concern with avoiding fragmentation and promoting economy and efficiency in public bargaining can consume both the employees' right to organize and the considerations identified in Section 9(b)," but the Board has also observed that the "preference for large, functionally-based units was, and continues to be, an important consideration," and the Act requires the balance these two extremes so as to "avoid regularly and completely depriving public employees of their rights" granted by the Act. Ill. Cent. Mgmt. Serv. (Dep't of Healthcare and Fmly. Serv.), 23 PERI ¶173 (IL LRB-SP 2007) (*aff'd* Dep't of Cent. Mgmt. Serv. /Dep't of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d at 334-338). The

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<sup>9</sup> The Joint Employer's argument is that all Office employees should be included in the unit unless there is a statutory reason to exclude the employment position. The Joint Employer states that the Deputy Chief Recorder, the Office Manager, the Recorder Supervisors and the Accountant cannot be included in the proposed unit because they are managers, supervisors, and the Accountant is a professional employee.

Appellate Court's rulings in the cited cases are consistent with Board precedent that certification of narrower units may be appropriate where the facts in each case present a rational and legitimate basis for doing so. See County of Cook (Provident Hospital), 22 PERI ¶12 (IL LRB 2006) (certifying a unit of administrative assistants at a single county hospital by declining to apply the presumption that that only appropriate unit consisted of the administrative assistants at all county hospitals because in previous cases the county-employer repeatedly stipulated to the appropriateness of county hospital-only units); Dep't. of Cent. Mgmt. Serv. (Dep'ts of Trans. and Nat. Res.), 24 PERI ¶2019 (holding that the dispositive inquiry is whether all of the relevant circumstances provided sufficient rational basis to override the presumption of inappropriateness); DuPage Cnty. Bd., 1 PERI ¶2003 (observing that the petitioner provided no rational basis for its petition which, the Board found, attempted to "artificially and arbitrarily carve out small segments of employees for purposes of separate representation.").

The Appellate Court upheld the Board's certifications of smaller bargaining units where, upon review of all the relevant circumstances, there was a rational and legitimate basis for certification of the smaller unit when either applying the presumption would create a result contrary to the purpose of the Act, or because the petitioner successfully rebutted the presumption. The certification of a smaller, presumptively inappropriate unit is rational and legitimate when denying the certification would deny the employee's their right to representation of a bargaining unit. The Court has upheld decisions where the Board did not apply the presumption that only the broader unit is appropriate when applying it would have required the action of a third party union who did not seek to represent the petitioned-for unit, effectively denying the employees the protection of the Act. Ill. Council of Police v. Ill. Labor Rel. Bd. Local Panel, 404 Ill. App. 3d at 600 (affirming the Board's certification of a stand-alone unit of sergeants because the sergeants became an unrepresented/fringe group when the larger, more appropriate bargaining unit took no action to include the sergeants into the larger unit); City of Chicago (Public Health Nurses) v. Ill. Labor Rel. Bd. Local Panel, 396 Ill. App. 3d. at 77 (affirming the Board's declination to apply the presumption to the certification of a stand-alone unit of nurses because the nurses had never been represented, the union representing other nurses in a larger bargaining unit did not seek to represent the petitioned-for nurses, and fragmentation was the sole factor in favor of denying certification). When it affirmed the Board's certification of a small stand-alone bargaining unit of six attorneys, the Court noted that treating

“fragmentation as presumptively decisive seems to elevate it to predominance.” Dep’t of Cent. Mgmt. Serv. /Dep’t of Healthcare & Fmly. Serv. v. Ill. Labor Rel. Bd. State Panel, 388 Ill. App. 3d at 335. It nonetheless applied the presumption and determined that, “like all presumptions, this ‘presumption of inappropriateness’ is rebuttable,” and provided the necessary framework for such rebuttal. Id. at 335-336. The Court stated that if contrary evidence is introduced that sufficiently rebuts the presumption, then it vanishes and the issue will be determined as if no presumption ever existed. Id. at 335. To rebut the presumption, the evidence must be sufficient to support a finding that the presumed fact does not exist. Id. at 335-336. The weight of the rebutting evidence depends on the strength of the presumption, and the strength of the presumption is a question of fact. Id. at 336 (*citing* Franciscan Sisters Health Care Corp. v. Dean, 95 Ill.2d 452, 463 (1983)). The Court found that the presumption was sufficiently rebutted when the classification included attorneys who did not share the same functions and community of interest because the petitioned for attorneys shared a stronger community of interest than that of the larger unit of 120 attorneys employed by the State of Illinois. Id. at 336-337.

In order to determine whether the petitioned-for unit is appropriate, I must first be address whether the presumption of inappropriateness applies to the facts of this case. It is applicable here if the Joint Employer has a centralized personnel system and the Petitioner seeks to represent only a portion of the employees possessing similar job classifications and/or performing similar duties. See City of Naperville, 28 PERI ¶¶98; DuPage Cnty. Bd., 1 PERI ¶¶2003.

1. centralized personnel system

The Board has found a centralized personnel system to exist where the employer has one human resources department that hires, transfers promotes, and demotes all employees, including the employees in the petitioned-for unit, and the employer proposed unit. City of Naperville, 28 PERI ¶¶98; see also City of Rolling Meadows, 16 PERI ¶¶2022 (IL SLRB 2000) (finding that the personnel system was sufficiently centralized to apply the presumption even though the employer and an internal department each had personnel policies, because the department’s operating procedures were supplemental to the employer’s personnel policies, and the employer’s human resources managed some of the employees’ terms and conditions of employment).

Here, the Recorder and the County are joint employers with all the employees at issue within their joint control, and subject to the same centralized personnel policies. The Recorder maintains its own employee handbook applicable only to its employees. The Recorder maintains the sole responsibility to hire, promote, demote, transfer, assign and direct, determine the hours of employment, suspend, and terminate employees, and is the final authority in disciplining Office employees. All Office employees are subject to County-wide annual compensation increases. Finally, Office employees are eligible to receive the same benefits available to all County employees, such as sick leave, bereavement leave, applicable vacation, and holiday pay as determined by Resolution of the McHenry County Board. Accordingly, I find that the Joint Employer operates a centralized personnel system

2. job duties

In City of Naperville, the Board dismissed a certification petition seeking to represent full time and part time employees in the city's utilities departments because the petitioned-for unit was not a sufficiently distinct and identifiable group in relation to other city employees as proposed by the employer. 28 PERI ¶98. The employer argued that the petitioned-for unit excluded titles that were identical or performed the same functions throughout other departments in the city and therefore shared a strong community of interest with the petitioned-for unit. Id. The employer also argued that some of the petitioned-for titles performed work similar to other titles throughout the city and these different titles created distinct "job families." Id. In her recommendation to the Board, the Administrative Law Judge (ALJ) found that while it was not the employer's intent, the "job families" were "more appropriate as separate bargaining units than as an addition to the larger city-wide unit." Id. The Board adopted the ALJ's finding that the presumption of inappropriateness applies not only to employees possessing identical job titles but *also* employees performing similar duties. The Board held that there is a "presumption that a unit is not appropriate where the employing entity operates under an established centralized personnel system and the petition seeks only a portion of the employees possessing identical job titles and/or performing similar duties." Id. This is consistent with previous Board precedent where it required that the employees be within the same "job classification" because the classifications were based upon the positions' job duties. See DuPage Cnty. Bd., 1 PERI ¶2003.

The record supports the Joint Employer's argument that the petitioned-for unit is presumptively inappropriate because the petitioned-for employees, the Accounting Coordinator,

and the Personal Computer Specialist all have similar job duties such that there is a presumption that the petitioned for unit is inappropriate because it does not include the Accounting Coordinator and the Personal Computer Specialist. However, I find that the petitioned-for employees and the Local Network Analyst/Network Engineer do not have sufficiently similar job duties such that the absence of this position in the petitioned-for unit does not create a presumption of inappropriateness.

Accounting Coordinator Vogrinc works in the front office where she processes the mail backs, assists customers, answers the telephone, and uses the transfer stamp machine to calculate and affix the appropriate tax transfer stamp to deeds. While her position falls under the Accounting Department and she is being trained in the Accounting Department two days a week, the majority of her duties are in the Recording Public Service and Mail Department, which is supervised by Natalie Burns, and is organized to operate with Recording Specialists and Record/Office Clerks only. Thus, Vogrinc's role is split between performing the duties of a Recording Specialists, and performing the duties of an Accountant trainee.<sup>10</sup>

The job duties identified in the Personal Computer Specialist job description only identify that the position serves as a back-up for the Local Network Analyst/Network Engineer, but the testimony demonstrates that Personal Computer Specialist Zidek is a verifier in the Indexing Department three days a week and is currently training for two days a week to function as a backup in the Computer Department. As a verifier, when Zidek is absent one of the three Recording Specialists who also function as verifiers fill-in for him. The role of the Personal Computer Specialist is to be able to function as the Local Network Analyst/Network Engineer in her absence, but the majority of Zidek's duties are identical to that some of the Recording Specialists in Indexing. Accordingly, like Vogrinc, Zidek's role is split between performing the duties of a Recording Specialist, and performing the duties of the Personal Computer Specialist.

While some of the petitioned-for positions sometimes perform some of the duties identified in the Local Network Analyst/Network Engineer's job description, there is no indication that the Local Network Analyst/Network Engineer's duties include duties identified in the petitioned-for employees' job description. Cwick's main function is to ensure that the

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<sup>10</sup> The absence of the a job description for the Accounting Coordinator leads me to conclude that since the only other position in the Accounting Department is the Accountant, Vogrinc is training to function as the main back-up for the Accountant.

computers are running, to troubleshoot computer and printer equipment, and to function as a back-up for the Accountant. The two Recording Specialists that are training to become backups for Cwick also perform some of these duties for a half an hour each week. The record is unclear as to whether this training will continue so that these two Recording Specialists will be able to troubleshoot problems with servers, or whether their abilities are designed to be limited to starting the computer network servers one day a week. Cwick has been the Local Network Analyst/Network Engineer in the Computer Department for six months. She does not serve as a backup for any department other than her current cross-training in Accounting. Since Cwick was the lead in the Indexing Department for ten years prior to her recent job change, she possesses the necessary skills to fill-in for petitioned-for employees at the front counter if another Office employee is at lunch or out sick, but the record reflects that she almost never does this. I find that Cwick's ability to fill-in at the front counter for petitioned-for employees stems from her previous experience in Indexing, and is unrelated to her current role in the Computer Department. Thus, I find that Cwick and the petitioned-for employees do not perform sufficiently similar duties to constitute a presumption that the petitioned-for unit is inappropriate.

In sum, because the presumption is applicable, the Joint Employer's argument that the petitioned-for unit is presumptively inappropriate does go to the appropriateness of the unit. Also, applying the presumption would not deny the employee's the protection of the Act, because there is no evidence that a third party union would not seek to represent these employees. Accordingly, in order to resolve the central issue of whether the unit is appropriate under the Act, the remaining issue is whether this presumption has been rebutted.

### **C. rebutting the presumption**

Where the employees in the larger unit share a community of interest, the presumption that the smaller unit is inappropriate is successfully rebutted when the smaller unit is appropriate under the factors listed in Section 9(b) of the Act; and when it possesses a "unique and distinct community of interest separate from that of the broader unit such that the exclusion of other employees is neither illogical nor artificial." City of Rolling Meadows, 16 PERI ¶2022 (*citing Rend Lake Conservancy Dist.*, 14 PERI ¶2051 (IL SLRB 1998)); see also City of Naperville, 28 PERI ¶98; City of Calumet City, 4 PERI ¶2037 (IL SLRB 1988); DuPage Cnty. Bd., 1 PERI ¶2003.

Certification of a narrower unit is neither illogical nor artificial where the facts present a rational and legitimate basis for doing so. Rend Lake Conservancy Dist., 14 PERI ¶2051 (finding that a rational and legitimate basis existed to certify a unit that excluded seasonal and part time employees because, though the employees shared a community of interest, the record suggested that, as a group, the seasonal workers may have had different collective bargaining needs or objectives than the district's regular full-time employees); Ill. Dep't. of Cent. Mgmt. Serv. (Dep'ts of Trans. and Nat. Res.), 24 PERI ¶2019; c.f. City of Naperville, 28 PERI ¶98 (finding that there was no rational or legitimate basis to certify the smaller group, because there was insufficient evidence that the petitioned-for unit constituted a distinct and identifiable group compared with other city employees); State of Ill. Dep'ts of Cent. Mgmt. Serv. and Corrections), 24 PERI ¶33 (IL LRB 2010); Chief Judge of the Circuit Crt. of Cook Cnty., 18 PERI ¶2016 (IL LRB SP 2002); Vill. of Mount Prospect, 17 PERI ¶2010 (IL LRB-SP 2000); City of Rolling Meadows, 16 PERI ¶2022 (dismissing the petition because no rational or legitimate basis existed where so few job functions were unique to the telecommunicators compared to the city's other clerical employees, such that it was not possible to conclude that a unit of solely of telecommunicators was appropriate).

1. analysis of the petitioned-for unit's appropriateness under 9(b)

The Union and Joint Employer agree that the petitioned-for unit of employee's possess a community of interest under Section 9(b) of the Act. However, in order for the certification of the unit to be rational and legitimate, the strength of the petitioned-for unit's community interest must first be established.

Both parties agree that the petitioned-for employees do not have a historical pattern of recognition. Regarding the education and skills factor, every Recording Specialist is required to have a high school diploma or a GED, and the skills vary by department. Along with the specified departmental skills, all Recording Specialists are required to also have general skills. These general skills require that all Recording Specialists have knowledge of legal real estate documents, accurate typing of 40 to 60 words per minute, some knowledge of computer and computer applications related to work flow, customer service skills, skills in record keeping and filing techniques, knowledge of office policies and procedures and Illinois State statutes as they pertain to the Office, and the ability to interpret and understand instructions and carry out such instructions. The minimum experience required for a Recording Specialist I is one year. In

addition to the experience and skills required of all Recording Specialists, Recording Specialist IIs are required to have a minimum of two years experience, must be knowledgeable of all departments and Office workflow, have the experience and ability to perform all job functions with their assigned department and to perform some cross-training functions in other departments, and carry out report preparations and project-specific notifications for the Office. As well as the experience and skills required of all Recording Specialists, Recording Specialist IIIs are required to have a minimum of three to four years of experience, are able to serve as a lead worker over Recording Specialist Is and IIs, and are responsible for meeting any and all department deadlines. The lead worker's responsibilities include training in job skills, assigning and directing work, making recommendations in performance appraisal, and reporting problems to a supervisor. The record includes no evidence regarding the educational requirements and skills required by the Record/Office Clerk. There is also no evidence regarding whether the Record/Office Clerks share the same duties as the Recording Specialists in their respective departments.

All the employees in the petitioned-for unit have a strong degree of functional integration because they all record land title documents in furtherance of the Recorder's mission. The petitioned-for employees are fairly interchangeable within their own departments and are interchangeable subject to cross-training in other departments within the Office. The employees all work in the same office suite during the same hours of operation. The office suite has one bathroom, one break room, and all employees have access to the copy room.

The petitioned-for unit would not fragment employees with the same job titles because it includes all Recorder Specialist Is, IIs, and IIIs, and all Record/Office Clerks, but the unit would fragment all the Joint Employer's employees with similar job duties.

The employees within petitioned-for unit do not have common supervision, nor are they subject to the same minimum and maximum wage scale. The Recorder Specialists and Record/Office Clerks are divided into five departments supervised by four different supervisors. The petitioned-for unit includes both full time and part time employees, so while they are all subject to the same hours of operation, Monday through Friday from 8am to 4:30pm, the full time employees work 37.5 hours a week, and the part time employees all work less 12 hours per week. All the employees share the same working conditions, but since 7 of the 28 petitioned-for employees are part time they do not all receive the same benefits.

Finally, while there is no direct evidence that the petitioned-for employees rejected the inclusion of the Accounting Coordinator and the Personal Computer Specialist, however the petitioned-for employees presumably were aware of the group of employees that the union sought to represent, accordingly the desires of the petitioned-for employees favor the stand-alone unit of Recording Specialists and Record/Office Clerks. See Bd. of Trustees of the Univ. of Ill., 29 PERI ¶6 (IL ELRB 2012).

2. stronger of community of interest

The second step involves weighing the strength of the petitioned-for unit's community of interest against the strength of the broader group's community of interest. In order to determine whether the petitioned-for employees have a stronger community of interest than the community of interest of the broader group, the strength of the broader group must be established.

i. community of interest among the broader unit

The employees in a unit composed of the Recording Specialists, the Record/Office Clerk, the Accounting Coordinator, and the Personal Computer Specialist also share a community of interest under factors identified in Section 9(b) of the Act. As stated above, the parties agree that the Office employees do not have a historical pattern of recognition.

The petitioned-for employees and the Accounting Coordinator, and the Personal Computer Specialist do not share the same educational requirements, nor do they have the same years of experience. The Recording Specialists are required to have a high school diploma or a GED and at least one year of experience, and the Computer Specialist is required to have a two-year associate's degree and three to four years of experience. Vogrinc has some college education, but whether the Accounting Coordinator position is required to possess education beyond a GED or high school diploma is not indicated. All Office employees are required to have knowledge of legal real estate documents, knowledge of Office policies and procedures and Illinois State statutes as they pertain to the Office, and the ability to interpret and understand instructions and carry out such instructions, and they are all required to have specific knowledge of varying departments, depending on their assignments. The Personal Computer Specialist has extensive knowledge of the Office's computer and technology systems. The Recording Specialist trainees also have computer skills separate from the petitioned-for employees that are not being trained to be a backup for the Local Network Analyst/Network Engineer.

All the employees in the broader unit have a strong degree of functional integration, are interchangeable depending on specific training and are subject to consistent contact among all other employees. The hearing testimony specifically provides that all the Office employees are subject to rotation in all eight departments. The Petitioner argues that the five departments that the Recorder Specialists and the Record/Office Clerks occupy are distinct from the Accounting and Computer Departments because they have different functions. The appropriate consideration is the function of the employees within the departments. See City of Naperville, 28 PERI ¶98. The record clearly demonstrates that Vogrinc and Zidek perform functions of the Indexing and “front office” Departments, though they are organized into the Accounting and Computer Departments respectively. While the record reflects that none of the petitioned-for employees have been trained in Accounting, the Office maintains a cross-training program that provides for training in *every* department and that all employees are subject rotation into *every* other department.

Certification of this broader unit would also not cause fragmentation among employees engaging in similar duties because it encompasses all the employees who perform similar duties at the Office. The broader group does not have common supervision, wages, or hours of employment because the petitioned-for group has part time employees. All Office employees report to one of the four supervisors or directly to the Recorder. The Personal Computer Specialist’s job description identifies the Recorder as his direct supervisor, however given that Zidek functions as a verifier in the indexing department, for which Supervisor Lisa Cummings is responsible, I find it unlikely that Zidek only reports to the Recorder. Also, while there is no evidence regarding to whom Vogrinc reports, given that she functions in the front office which two supervisors are responsible for, I find it likely that for the majority of her work time she has the same supervisor as some of the petitioned-for employees.

Finally, as stated above, the desires of the petition is evidence that the petitioned-for employees want to be in a stand-alone bargaining unit separate from the Accounting Coordinator and the Personal Computer Specialist, and there is no indication of Vogrinc’s or Zidek’s desires to be included to the petitioned-for unit. See Bd. of Trustees of the Univ. of Ill., 29 PERI ¶6.

ii. distinct and identifiable community of interest

I find that the Petitioner does not rebut the presumption that the petitioned-for unit is inappropriate because the facts do not demonstrate that the petitioned-for unit possesses a distinct community of interest separate from that of the broader unit.

In comparing whether the petitioned-for unit shares a distinct community of interest separate from that of the broader unit, of the seven statutorily enumerated considerations governing unit determinations, five factors (fragmentation, common supervision and working conditions, functional integration, and contact) militate against a unit composed solely of Recording Specialists and Record/Office Clerks, one factor (employee desires) mitigates in favor the petitioned-for unit, and one factor (education, skills and job functions)<sup>11</sup> goes to neither.

3. other rational and legitimate basis

The record indicates that the Petitioner's basis for seeking to represent such a limited group of employees at the Office is that these employees are organized into five departments separate from the other employee departments. However, this is not a legitimate reason because while other employees are not organized into the five departments the petitioned for-employees are organized into, the majority of the duties conducted by the Accounting Coordinator and the Personal Computer Specialist are the same duties as those of the employees within two of those five departments. Thus, I also find that seeking to represent a group of employees based upon the departments they are organized into, in this case is artificial and arbitrary.

The Petitioner also argues that the Board should certify the petitioned-for unit and exclude the "IT and accounting" positions because the employees in the petitioned-for unit do not spend any appreciable time in the Accounting or Computer Departments, the Accounting Coordinator and the Computer Specialist are required to have higher education and more specialized skills than that of the petitioned-for employees, are paid at a higher rate than the petitioned-for titles, and because the Accounting Coordinator position is funded out a specific fund apart from the general fund that *presumably* funds the remainder of the Office positions.

The Petitioner argues that since Vogrinc and Zidek have specialized skills separate from that of the employees in the petitioned-for unit, Vogrinc and Zidek should be excluded from the

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<sup>11</sup> Whether the petitioned-for employees share a community of interest is not in dispute, but, because the record contains no information regarding the educational requirements, the skills, or the functions of the Record/Office Clerks, I cannot determine whether this factor either supports or negates whether the petitioned-for unit possesses a unique and distinct community of interest separate from the broader unit's community of interest.

petitioned-for unit of Recording Specialists and Recorder/Office Clerks. There is no indication that when a group of employees possess specialized skills they are precluded from forming a bargaining unit with employees that do not possess such skills. See In City of Peru, 25 PERI ¶ 6 (IL LRB-SP 2009) (certifying a stand-alone unit of electric workers, but noting that a unit of electric workers and public works employees would likely be appropriate even though the public works employees lacked the specialized skills of the electric workers). In this case, the petitioned-for employees do not possess specialized skills distinct from the Accounting Coordinator and the Personal Computer Specialist, and the fact these two employees respectively have accounting and computer skills does not require that they be excluded from a unit limited to employees without such specialized skills. Moreover, the specialized skills Zidek possesses is to function as the primary backup for the Local Network Analyst/Network Engineer, but there are two Recording Specialists who are also training to be a backup for the Local Network Analyst/Network Engineer and the Petitioner does not seek to exclude these two Recording Specialists from the petitioned-for unit.<sup>12</sup>

The Petitioner's argument that the petitioned-for employees are paid less than Vogrinc and Zidek is not supported by the facts. While the scheduled rate of pay does vary between the petitioned-for positions and the Accounting Coordinator and the Computer Specialists, Zidek is earning a rate lower than the scheduled range for his positions, and the record does not account for Zidek's lower pay rate. Accordingly, I find that the schedule has little value, and I will only consider what the positions are actually paid in determining the distinction between pay rates. The employees in the petitioned-for unit earn a range between \$10.62 and \$19.55. Zidek earns \$18 per hour and Vogrinc earns \$16.74 per hour, both rates well within the range of the petitioned-for employees pay rate.

The Petitioner's final argument that the Accounting Coordinator position should be excluded because it is funded from the RHSP surcharge has no merit. The facts of this case do not indicate how the Office is funded. The Office charges the \$10 surcharge for every document that it stores. While the Accounting Coordinator position was created and paid with the additional funds from the surcharge, the facts do not support that the surcharge is the only revenue source that funds the Accounting Coordinator's salary, nor does this demonstrate that

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<sup>12</sup> As stated above, the record is unclear as to whether the two Recording Specialists' have completed their Computer Department training.

the Accounting Coordinator's salary is the only expense that the revenue from the RHSP surcharge funds.

In conclusion, because the petitioned-for unit does not have a unique and distinct community of interest separate from that of the Accounting Coordinator and Personal Computer Specialist, and because the Union has not identified any other rational and legitimate reason to certify the petitioned-for unit of Recorder Specialists and Record Office Clerks, the Petitioner has not rebutted the presumption that the petitioned-for unit is inappropriate for the purposes of collective bargaining.

**V. CONCLUSIONS OF LAW**

I find that the petitioned-for-bargaining unit is inappropriately narrow because it excludes the Personal Computer Specialist and the Accounting Coordinator.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the petition be dismissed.

**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 five (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 Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, IL 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 of 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 6th day of March, 2014.**

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

A handwritten signature in cursive script, reading "Deena Sanceda", written in black ink. The signature is positioned above a horizontal line.

**Deena Sanceda  
Administrative Law Judge**