# STATE OF ILLINOIS
# ILLINOIS LABOR RELATIONS BOARD
## STATE PANEL

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| Illinois Council of Police, | ) | |
| | ) | |
| Petitioner | ) | |
| | ) | Case No. S-RC-14-043 |
| and | ) | |
| | ) | |
| Memorial Park District (Police Department), | ) | |
| | ) | |
| Employer | ) | |

## ORDER

On February 25, 2014, Administrative Law Judge Michelle N. Owen, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its April 1, 2014 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

**THEREFORE,** pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

**Issued in Chicago, Illinois, this 1st day of April 2014.**

**STATE OF ILLINOIS**
**ILLINOIS LABOR RELATIONS BOARD**
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**Jerald S. Post**
**General Counsel**

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## ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On December 10, 2013, Illinois Council of Police (Union), filed a majority interest representation/certification petition in the above-captioned case with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On December 27, 2013, the Memorial Park District (Employer) filed its response and objection to the petition. On December 30, 2013, the petition was amended.[1] On January 15, 2014, the Employer indicated that it had the same objection to the amended petition as it did to the original petition.

The Union seeks to become the exclusive representative of approximately 15 corporals and patrol officers employed at the Employer's police department. Based upon the showing of interest cards filed by the Union and the employee names and signature exemplars, which the Employer provided, the Union has satisfied the required majority showing of interest.

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[1] The original petition sought to represent a unit composed of "All part-time Memorial Park District Police Department Officers holding the rank of *Sergeant*, Corporal, and Patrol Officer" (emphasis added). The amended petition seeks to represent a unit composed of "All certified part-time Memorial Park District Police Department Officers holding the position of Corporal and Patrol Officer."

The first issue is whether the certification of the proposed unit is inappropriate at this time because, as the Employer asserts, the Employer's Board of Directors has allegedly been planning and taking steps to eliminate the police department. The second issue is whether the Union's evidence of majority support was obtained fraudulently or through coercion.

After consideration, I find that the Employer's objection regarding the inappropriateness of certification at this time is without merit. I also find that there is not sufficient evidence demonstrating a material issue of fact or law relating to fraud and/or coercion.

## I. BACKGROUND

In its objection to the petition, the Employer asserts that certification is not appropriate at this time because "all of the positions in the proposed unit are expected to be eliminated based on a vote scheduled to occur on January 21, 2014." The Employer argues that its Board of Directors has been planning and taking steps to eliminate the police department for "many months." The Employer contends that the final details of the decision and implementation of the decision were scheduled to be voted upon at the Employer's next monthly board meeting, scheduled for January 21, 2014.

On January 23, 2014, the Union notified the undersigned that the Board of Directors, at its monthly meeting on January 21, 2014, voted not to disband the police department. The Employer does not dispute this.

On January 10, 2014, the Board received an allegation of potential fraud and/or coercion relating to the representation/certification petition from Terrance Carr, an employee in the petitioned-for unit. On February 11, 2014, I issued a letter to Carr, the Employer, and the Union directing Carr to provide a detailed account of the basis for his allegation including the names of witnesses and/or witness statements by February 21, 2014. I also asked the Employer and Union

to provide evidence supporting their positions on the matter if they wished. On February 18, 2014, the Union filed a response, which included affidavits from Carr; Richard Bruno, a Union staff representative; and Enrique Barrientos, an employee in the petitioned-for unit. Carr's affidavit stated, in relevant part, that "I have no evidence of fraud or coercion by the Illinois Council of Police regarding the [m]ajority interest petition; and . . . I am not pursuing a fraud or coercion allegation against the Illinois Council of Police." Bruno's affidavit stated, in relevant part, that "I did not engage in any coercion or intimidation regarding the procurement of signatures or informational sessions for the Union nor did I witness any such conduct." Barrientos' affidavit stated, in relevant part, that "[t]here was no use or threat of intimidation or coercion at anytime during the discussions process or the actual signing of the cards; . . . I did not exercise any intimidate [sic] or coercion as to the Union efforts, card signing or the Majority Interest Petition; . . . Terrance Carr, like all Memorial Park employees were not restrained in any way from speaking about the Union issue or attending the information session." To date, Mr. Carr has not responded to the February 11, 2014 directive. The Employer has also not responded.

## II. DISCUSSION & ANALYSIS

### A. Appropriateness of Certification

"It is well established that, in analyzing representation cases arising under the Act, the petition's filing date is the significant date for purposes of resolving such issues as whether a public employer is covered by the Act or whether a petitioned-for bargaining unit is appropriate." Cnty. of Boone & Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003), citing Northwest Mosquito Abatement Dist., 13 PERI ¶ 2042 (IL SLRB 1997), aff'd, 303 Ill. App. 3d 735 (1st Dist. 1999); Village of Highwood, 15 PERI ¶ 2040 (IL SLRB ALJ 1999); City of

Sparta, 9 PERI ¶ 2029 (IL SLRB ALJ 1993); Village of Hartford, 4 PERI ¶ 2001 (IL SLRB H.O. 1987); City of Shelbyville, 2 PERI ¶ 2051 (IL SLRB H.O. 1986). The Employer argues, however, that the Board should apply the National Labor Relations Board (NLRB) "contracting unit" doctrine and find that certification of the unit would be inappropriate at this time. The "contracting unit" doctrine states that where there is definite evidence of an expanding or contracting unit, the NLRB will postpone an immediate election, if the current work force will not be a substantial and representative complement of the employees that will be employed in the near future, as projected both as to the number of employees and the number and kind of job classifications. City Colleges of Chicago, 15 PERI ¶ 1056 (IELRB 1998), citing Douglas Motor Corp., 128 NLRB 307 (1960). In Douglas Motor Corp., the NLRB stated that "it would not be consistent with the provision and policies of the Act to direct an immediate election which might result in the certification of a union not truly the choice of the employees of the new business operation to commence." Thus, the "contracting unit" doctrine is concerned with ensuring that the selection of bargaining unit representative reflect the true choice of the employees in that unit. In this case, the Employer does not assert that the unit is expected to contract or expand. Rather, the Employer asserts that the unit may be eliminated altogether. Thus, the "contracting unit" doctrine is not applicable to this case, and the Employer's objection is without merit.

**B. Fraud or Coercion**

Sections 1210.100(b)(5)(A) and (B) of the Board's Rules state:

> A party or individual alleging that the petitioner's evidence of majority support was obtained fraudulently or through coercion must provide evidence of that fraud or coercion to the Board or its agent. If a party has not provided evidence demonstrating a material issue of fact or law relating to fraud or coercion, the Board will certify the union as the unit's exclusive representative if it is determined to have majority support.

> If the Board finds a party has provided evidence demonstrating a material issue of fact or law relating to fraud or coercion, it will conduct a hearing to determine whether there is clear and convincing evidence of fraud or coercion.

In this case, Carr failed to provide a response, statements, or any other evidence in support of his allegations of fraud and/or coercion. Moreover, the Union provided an affidavit from Carr, which specifically states that Carr did not have evidence of fraud or coercion and that he was not pursuing any such allegations. In addition, the Union provided affidavits from Bruno and Barrientos, which supported Carr's statement. The Employer did not file a position on the matter of fraud and/or coercion. Thus, I find that there is not sufficient evidence demonstrating a material issue of fact or law relating to fraud and/or coercion.

## III. CONCLUSIONS OF LAW

I find that the Employer's objection to the petition is without merit. I also find that there is not sufficient evidence demonstrating a material issue of fact or law relating to fraud and/or coercion.

## IV. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the Illinois Council of Police shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: All certified part-time Memorial Park District Police Department Officers holding the position of Corporal and Patrol Officer.

EXCLUDED: Any and all full and part-time employees of the Memorial Park District Police Department including the Police Chief, Police Lieutenant, Sergeants and Auxiliary Officers along with any other Memorial Park District full or part-time employees covered under the Act.

## V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois, this 25th day of February, 2014.**

**STATE OF ILLINOIS**
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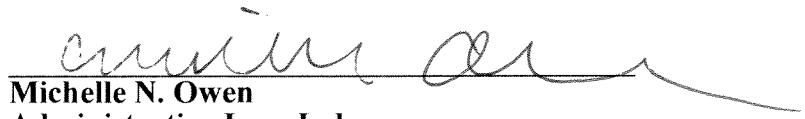

**Michelle N. Owen**
**Administrative Law Judge**