

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

International Brotherhood of Electrical	)	
Workers, Local 51,	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. S-RC-15-053
	)	
City of Bushnell,	)	
	)	
Employer.	)	

**ORDER**

On October 29, 2015 Administrative Law Judge Sarah R. Kerley, 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 January 12, 2016 public meeting, the Board, having reviewed the matter, and 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 12th day of January 2016.**

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
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**Kathryn Zeledon Nelson**  
**General Counsel**

**STATE OF ILLINOIS**  
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International Brotherhood of Electrical Workers, Local 51,	)	
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Petitioner	)	
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and	)	Case No. S-RC-15-053
	)	
City of Bushnell,	)	
	)	
Employer	)	

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

On December 9, 2014, the International Brotherhood of Electrical Workers, Local 51 (IBEW or Union), filed a unit clarification petition with the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1-1 *et seq.* (2014), as amended (Act). In Case No. S-UC-15-074, IBEW sought to add the City of Bushnell’s (Employer or City) Recreation and Cultural Center Director position (Rec Center Director) to an IBEW-represented bargaining unit, certified in Case No. S-RC-12-064.

The matter proceeded to hearing on February 4, 2015. At the close of the hearing, it became clear to the undersigned administrative law judge that the evidence did not support any of the circumstances under which a unit clarification petition is appropriate. On February 6, 2015, the undersigned issued a recommended decision and order dismissing the unit clarification petition as procedurally inappropriate.<sup>1</sup>

On February 9, 2015, IBEW filed the present majority interest petition seeking inclusion of the Rec Center Director position. IBEW submitted a sufficient showing of interest. In order to conserve the resources of the Board and the parties, the undersigned and parties agreed to incorporate the pleadings and record developed in Case No. S-UC-15-074, including the Employer’s objections and the transcript of and exhibits admitted at the February 4, 2015, hearing into this case. This would allow the Board to resolve the question of representation regarding the Rec Center Director position without an additional hearing. Pursuant to the parties’ agreement, no further hearing was conducted and the undersigned allowed the parties to

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<sup>1</sup> No party filed exceptions, and the Board declined to take the matter up on its own motion at its March 10, 2015, meeting. On the same day, the General Counsel issued a final, non-precedential Order binding on the parties.

file post-hearing briefs arguing the merits of the representation petition. Each party filed a timely post-hearing brief.

After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

**I. FINDINGS OF FACT**

**A. Parties’ Stipulated Uncontested Material Facts<sup>2</sup>**

The current bargaining unit certified by the Illinois Labor Relations Board for the City of Bushnell consists of four employees - two clerks and one office manager in the Utilities Department and one Assistant City Clerk in City Hall. They perform their duties at City Hall, located at 138/148 East Hail Street, Bushnell, Illinois. The job duties and responsibilities of the Clerk I and Clerk 2 positions are as specified in Joint Exhibits 3 and 4, and their Supervisor is the Utility Manager, whose job description is described in the attached Joint Exhibit 5. The hourly wages paid to employees in the Clerk 1 and Clerk 2 positions are as follows:

- Dawn Duckwiler - \$ 13.12 (Clerk 2)<sup>3</sup>
- Lisa Ludlum - \$16.28 (Utility Office Manager)<sup>4</sup>
- Tina Havens - \$14.54 (Clerk 1)<sup>5</sup>
- Mary Brown - \$ 13.98 (Assistant City Clerk/City Hall)<sup>6</sup>

The hours of work for the Clerk 1 and Clerk 2 positions are 7:00 a.m. to 4:00 p.m., with a one hour unpaid lunch. The employees perform their duties as Clerk 1 and Clerk 2 in the City Clerk's office, where they take care of their billing, metering, and other City business.

The Recreation and Cultural Center Director’s duties are performed at the Recreation Center located at 300 Miller Street, Bushnell, Illinois, telephone number 309-772-3612. Her immediate Supervisor is the Recreation Committee chaired by Jerry McDonald, along with Committee Member Brent Glisan. The hourly compensation received by this employee is \$10.46 per hour. The hours of work begin at 7:00 a.m., and end at 4:00 p.m., with a one hour unpaid lunch. The building in which the Recreation Director works is a center consisting of a gymnasium and work out area, with various break out rooms for civic activities. Community meetings are conducted there, including but not limited to the American Legion who meets once a month, and the Bushnell Prairie City Traveling Basketball Team who practice in the gymnasium during the basketball season. They sell memberships for the work out center, provide facilities and

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<sup>2</sup> The Parties included the following uncontested material facts in their Joint Pre-hearing Memorandum in case S-UC-15-074, which was marked and admitted as ALJ Exh. 1 at the February 4, 2015, hearing. The stipulation is included here verbatim.

<sup>3</sup> Position description identified as Jt. Exh. 4.

<sup>4</sup> Position description identified as Jt. Exh. 9.

<sup>5</sup> Position description identified as Jt. Exh. 3.

<sup>6</sup> Duties are referenced in Jt. Exh. 10.

space for Meals on Wheels, and provide meeting areas for card games and various civic organizations in the City of Bushnell.

**B. Other Findings of Fact**

The City of Bushnell employs approximately 26 full-time employees deployed across seven departments: electric; gas; utility; street and alley; water and sewer; police; and City Hall. In 2012, IBEW filed a majority interest petition seeking to represent a unit consisting of four employees described as “clerical employees for electric and water (utility) departments and clerical employee for City Hall.”<sup>7</sup> The Employer did not object to the petition, and on June 6, 2012, the Board’s Executive Director Melissa Mlynski certified IBEW as the exclusive bargaining representative for a unit described as follows:

Included: All employees of the City of Bushnell in the following job classifications: Assistant City Clerk; Clerk I;<sup>8</sup> Clerk II;<sup>9</sup> Utility Office Manager.

Excluded: All other employees of the City of Bushnell.

The IBEW-represented employees are employed in the Utility Office (Clerk 1, Clerk 2, and Utility Office Manager) and the City Hall department/City Clerk’s Office (Assistant City Clerk). Utility Manager Justin Griffith is the immediate supervisor for the three represented Utility Office employees. The City Clerk, Donna Coates, is the immediate supervisor for the Assistant City Clerk. The negotiated collective bargaining agreement contains a grievance procedure with Step 1 as presentation to the Mayor and City Council, and Step 2 as binding arbitration. The Mayor signed the agreement on behalf of the City.

The City has a personnel handbook that governs all City personnel regardless of whether they are covered by a collective bargaining agreement. City supervisors also have access to a supervisor’s guide for implementing the personnel handbook as it relates to City employees. The City Council is responsible for setting rates of pay for all City employees, including those covered by a collective bargaining agreement. On at least one occasion, the City Council has paid union-represented employees higher than the collective bargaining agreement called for in order to match the level of increase given to non-bargaining unit employees. The City Council, through the Personnel and Finance Committee, reviews all discipline more severe than an oral reprimand, regardless of whether the employee being disciplined is a bargaining unit employee.

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<sup>7</sup> I take administrative notice of the content of the Board’s file for Case S-RC-12-064.

<sup>8</sup> The parties refer to this position as Clerk 1.

<sup>9</sup> The parties refer to this position as Clerk 2.

Supervisors are able to issue oral reprimands and written reprimands without prior City Council approval.<sup>10</sup>

*1. Bowers' Duties*

Janet Bowers is currently employed as the Rec Center Director. She has served in that position full-time since November 2012, after having served seven months as the part-time Assistant Director. The Employer's witnesses and Bowers, the Union's only witness, consistently testified that the Rec Center Director position has always been a full-time position. Bowers also testified that her duties have remained the same the entire time she has held the Rec Center Director position, and that, to her knowledge, she performs the same duties as the prior Rec Center Director. City Clerk Donna Coates testified that the position description for the Rec Center Director position was created prior to Bowers' hire as the full-time Director and has not been updated or changed. Union and Employer witnesses alike confirm that portions of the Rec Center Director position description are inaccurate.

In many instances, including with Bowers' position, there is no formal written chain of command. Instead, departments report their departmental needs through the applicable City Council committee. Bowers reports through the Parks and Recreation Committee (Committee) of which Jerry McDonald is the chairman. McDonald is the individual with whom Bowers has the most supervisor/supervisee-like interaction. Bowers reports absences to McDonald first, then to other Committee members if McDonald is unavailable. Bowers' time off goes through the committee, because it results in an expenditure of funds to have a part-time employee cover her duties. Bowers also directs questions and concerns to McDonald.

None of the Employer's witnesses has observed Bowers perform her duties at the Rec Center other than intermittently and for very brief time intervals.<sup>11</sup> Bowers had not seen her position description until just prior to the hearing in this matter. Bowers' duties can generally be

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<sup>10</sup> City Council member Brent Glisan testified that he was aware of a supervisor sending a seasonal worker home for the day; however, the record is unclear whether a supervisor is authorized to send home, effectively suspending, a full-time, permanent employee.

<sup>11</sup> Employer witness Justin Griffiths testified that he did not believe there were any similarities between the Rec Center Director position and those in the bargaining unit. However, he further testified that he did not know how much clerical work Bowers completed and that he was only at the Rec Center three to four times per year. Donna Coates testified that she does not know if the position description accurately depicts what tasks Bowers performs. Moreover, Coates is only at the Rec Center during Bowers' working hours approximately six times per year, but those visits are usually when some event is going on. As such, Coates is not observing Bowers performing her regular duties.

described as 50/50 janitorial and clerical.<sup>12</sup> Bowers performs the majority of her regular cleaning duties during a four-hour block on Friday afternoons. Bowers' cleaning duties include vacuuming, cleaning bathrooms, emptying trash, mopping, dusting, wiping down exercise machines, and other light cleaning. However, the weather and events at the Rec Center can result in Bowers' cleaning more often than she regularly does.

Bowers' clerical or office type duties include authoring a weekly newsletter that is published in a local newspaper, opening mail, answering the phone, filing paperwork, sorting through old files, processing rental agreements, coordinating activities scheduled at the Rec Center, collecting money, writing out receipts, and ensuring sign-in sheets are available and maintained. Bowers also meets with individuals inquiring about renting the Rec Center and assists citizens and organizations using the Rec Center. Bowers is responsible for taking the bill for beverage, rental payment moneys, and receipts to the City Clerk's office on a weekly basis.

Occasionally, Bowers is also responsible for supervising individuals performing work at the Rec Center. These individuals are often completing community service hours.

## 2. *Functions of bargaining unit positions*

There was very little testimony regarding the duties of the bargaining unit employees; however, position descriptions for the Utility Clerks and Utility Office Manager, as well as a write-up of the duties for the Assistant City Clerk were admitted as joint exhibits. Moreover, no party questioned the accuracy of these documents.

### a. Assistant City Clerk

Mary Brown works with accounts payable entering bills, mailing out payments, and adjusting accounts as needed, and also with accounts receivable by recording all moneys received in City Hall or at the Rec Center. Brown also works with the general ledger comparing

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<sup>12</sup> Though the Employer argues that Bowers' duties are a 90/10 breakdown between janitorial and clerical tasks, it has failed to provide sufficient evidence to support this claim. The Employer's witnesses relied on Bowers' position description, but admitted to having not observed Bowers' duties other than sporadically. Moreover, the Board has long held that it is the employee's duties as actually performed rather than as stated in the position description which is the relevant evidence to determine appropriateness. In *Northern Ill. Univ. (Dep't of Safety)*, 17 PERI ¶ 2005 (IL LRB-SP 2000), the Board held, "In representation hearings, a position's incumbents obviously provide the best evidence of that position's duties..." and noted that "[I]f helpful of all are position descriptions...." The Board also pointed out that the Board has on many occasions "noted dissatisfaction with job descriptions as a means for establishing a position's duties or an employee's status under the Act." *Id.* That is especially important where, as here, the employee credibly testified that she had never seen her position description prior to preparing for the hearing and that the position description was inaccurate.

bank statements and balancing the City's accounts. She addresses customer questions that she receives from walk-ins or telephone calls, fills in for the City Clerk at City Council meetings, documents the City's calendar on the website, assists with payroll, prepares ordinance violation payments, files, and addresses issues raised by the City Treasurer.

b. Clerk 1 in the Utility Office

Tina Havens is identified as the Clerk 1 in the Utility Office. Her general duties are described as follows:

Under general supervision which allows some discretion and independence of action in the event of matters that require a general knowledge of procedures; receives and enters cash payments; prepares cash worksheet and bank deposits; handles customer relations over the counter and on telephone; handles active unpaid accounts; figures level payment plans; assists other office personnel; [and] performs basic clerical function.

Additional specific duties related to payments include completing and returning receipt stubs and balancing the cash drawer at the end of the day. Additional specific duties related to low income funds include receiving funds from the Western Illinois Regional Council for low-income residences, applying the funds to customer accounts, and reconciling emergency fund bank statements with customer ledger sheets. Havens also prints, mails, and sorts disconnect notices, and makes service orders for disconnection. Havens is also charged with preparing lists for the Chamber of Commerce welcoming committee; consumption reports for Fitch Manor apartments; rechecking unusual consumption; and checking master static reports for new, final, and changed accounts.

The position description indicates that the Clerk 1 position requires knowledge, skill, and mental development equivalent to the completion of four years of high school with courses in typing, general office procedures, and computers. It also requires knowledge of the operation of basic office machines and computers.

c. Clerk 2 in the Utility Office

Dawn Duckwiler is identified as working as the Clerk 2 in the Utility Office. Her general duties are described as follows:

Under general supervision which allows some discretion and independence of action in the event of matters that require a general knowledge of procedures; handles over the counter payments and customer relations; enters pre-billing posting; prepares monthly billing using computer; operates two-way radio; assists other officer personnel; [and] performs basic clerical functions.

Other specific duties for Duckwiler include maintaining information for electric, gas, and water meters to be loaded into meter reading device; prints and checks consumption reports; prepares service orders for high usage; balances deposits; applies deposits to customers who have moved; and calculates, prints, and mails bills. Additional specific duties related to payments include completing and returning receipt stubs and balancing the cash drawer at the end of the day.

The Clerk 2 position description does not include any educational requirements.

d. Utility Office Manager/Bookkeeper

Lisa Ludlum is identified as the Utility Office Manager. Her general duties are described as follows:

Under administrative supervision which allows discretion and independence of action in the event of matter that require a knowledge of procedures; supervises and maintains all office operations; prepares materials for Utility Board meetings; compile and pay invoices; calculate and prepare rates; prepare monthly utility reports; enter general ledger and prepare financial statements; balance bank statements; process payroll; [and] collects inactive unpaid accounts.

Ludlum's position is also responsible for specific additional duties related to compiling reports, including power plant reports, electric and gas consumption reports, and sales reports.

## **II. ISSUES AND CONTENTIONS**

The Employer contends that the petition should be dismissed, as Bowers does not share a community of interest with the bargaining unit members. Therefore, the Employer argues the petition fails.

The Union contends that the petition should be granted as it seeks to include Bowers in an appropriate, while perhaps not perfect, unit. Furthermore, Bowers shares more of a community of interest with the bargaining unit members than with any other City employee or employees. To exclude her from the petitioned-for bargaining unit would effectively deprive her from exercising her rights under the Act.

## **III. ANALYSIS**

In order to "assure public employees the fullest freedom in exercising the rights guaranteed by this Act," Section 9(b) of the Act requires the Board to determine whether a petitioned-for unit is "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.” 5 ILCS 315/9(b). To determine whether a unit is appropriate, the Board must strike a fair and workable balance regarding the various factors of unit appropriateness outlined in Section 9(b) of the Act and must take into consideration: the interests of the labor organization in organizing public employees; the needs of the public employer in developing efficient and effective bargaining relationships; and, most importantly, the rights of public employees to meaningfully voice their common and collective concerns regarding wages, hours, and conditions of employment. Village of Franklin Park (Dep’t of Public Works and Utilities), 30 PERI ¶ 52 (IL LRB-SP 2013). How these interests are balanced in each case depends on the specific facts and circumstances involved therein. Id. citing County of Cook (Provident Hospital), 22 PERI ¶ 12 (IL LRB-LP 2006); City of Chicago, 2 PERI ¶ 3009 (IL LLRB 1986); DuPage County Board, 1 PERI ¶ 2003 (IL SLRB 1985).

The Board has long held that representation proceedings are fundamentally fact finding and non-adversarial in nature, such that no burden of proof is placed on either party. *See* County of Will, 4 PERI ¶ 2028 (IL SLRB 1988); Glenside Fire Prot. Dist., 6 PERI ¶ 2027 (IL SLRB 1990). 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 a more appropriate unit proposed by a respondent. Cnty. of McHenry and McHenry County Recorder’s Office, 31 PERI ¶ 8 (IL LRB-SP 2014); Ill. Council of Police v. Ill. Labor Rel. Bd. Local Panel, 404 Ill. App. 3d 589, 600 (1st Dist. 2010).

**A. Evidence regarding the duties of the Rec Center Director**

Bowers testified as to her duties and responsibilities as she understands them. As described above, the Employer’s witnesses lacked the opportunity to observe Bowers’ duties and so that they could testify credibly as to the proportion of her duties that were clerical in nature. At hearing, Bowers attempted to bolster her testimony that her duties breakdown evenly between janitorial and clerical by recalling a conversation she had with Parks and Recreation Committee Chairman Jerry McDonald. The Employer objected to the testimony as impermissible hearsay.<sup>13</sup>

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<sup>13</sup> The ALJ asked counsel for the Employer for a response to the question of whether McDonald’s statements could be considered an admission of a party opponent, such that the statement would fall within an exception to the hearsay rule. Counsel contended that the Mayor would have been considered a party opponent for this purpose.

I took the objection under consideration and indicated that I would address the objection in this recommended decision and order. I do so now.

Hearsay is an out-of-court statement offered to establish the truth of the matter asserted, People v. Banks, 237 Ill. 2d 154, 180 (2010) *citing* People v. Tenney, 205 Ill. 2d 411, 432–33 (2002); People v. Rogers, 81 Ill. 2d 571, 577 (1980), and is generally inadmissible. Ill. R. Evid. Rule 802. Here, Bowers was certainly seeking to offer an out-of-hearing statement for the truth of the matter asserted.<sup>14</sup> However, in Illinois, admissions made by a party-opponent are not hearsay. Ill. R. Evid. Rule 801(d)(2). In order to be deemed an admission of a party-opponent, the statement must be offered against a party and must meet one of six other conditions. Ill. R. Evid. 801(d)(2)(A)-(F).<sup>15</sup> When asked whether McDonald’s statements could be considered an admission of a party opponent, such that the statement would not constitute hearsay, counsel for the Employer contended that the Mayor would have been considered the party opponent for this purpose. The record before me is unclear on McDonald’s role in City governance and personnel matters to determine that one of the six party-opponent admission conditions is met. Therefore, the hearsay objection is sustained.

Notwithstanding the fact that I decline to consider McDonald’s opinion as to the breakdown of Bowers’ duties, I find that the Employer failed to put on any credible evidence that contradicts Bowers’ explanation of her duties. Employer’s witnesses lacked direct knowledge of Bowers’ performance of her work functions. Bowers sufficiently raised concerns about the accuracy of her position description such that the Employer’s witnesses’ reliance on the position

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<sup>14</sup> Because I took the objection under consideration, I allowed the Union to essentially make an offer of proof as to the content of the conversation between Bowers and McDonald. Bowers indicated that when she spoke with McDonald, he indicated that he could not testify that Bowers’ duties were 90/10 or 80/20 janitorial/clerical because it was not true. According to Bowers, McDonald indicated that he would consider her duties more 50/50 janitorial/clerical depending on the day, time of year, and events going on. However, as discussed above, I do not consider these purported statements, because I am not satisfied that McDonald’s statements are attributable as an admission of a party-opponent.

<sup>15</sup> Rule 801(d)(2) applies where “[t]he statement is offered against a party and is (A) the party’s own statement, in either an individual or a representative capacity, or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by the party’s agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy, or (F) a statement by a person, or a person on behalf of an entity, in privity with the party or jointly interested with the party.” Ill. R. Evid. 801(d)(2).

description failed to add credibility to their testimony on this point. Certainly, the best person to contradict Bowers' contention appears to be McDonald, who serves as the closest thing to a direct supervisor for Bowers, but the Employer did not call him. Accordingly, as set out in the findings of fact above, I find the credible evidence in the record supports that Bowers' duties can be broken down as 50/50 janitorial and clerical. With this determination, I turn to the question of whether the petitioned-for unit including Bowers is an appropriate unit.

**B. Analysis of the Section 9(b) factors weigh in favor of inclusion**

I find that when weighing the listed Section 9(b) factors, discussed below in the reverse order as listed in the Act, the petitioned-for unit is appropriate.

*1. Desires of the employees*

In this case, the only evidence regarding the desire of any affected employee is the testimony of Bowers. She has clearly indicated her desire to join the existing bargaining unit. There is no evidence in the record reflecting the position of existing unit members on Bowers' inclusion. Therefore, the only evidence presented by the record weighs in favor of inclusion.

*2. Common supervision, wages, hours and other working conditions*

Bowers has the same working hours as the bargaining unit employees. In its brief,<sup>16</sup> the Employer argues that "no witness testified as to how many hours the bargaining unit employees work or what those shifts were." While no witness may have provided that testimony, the parties stipulated that the bargaining unit employees work 7:00 a.m. to 4:00 p.m. Moreover, the collective bargaining agreement between the parties (Joint Exhibit 6) specifies that the bargaining unit employees work five consecutive eight-hour days per work week and that the schedule of hours of work shall be eight hours between 7:00 a.m. and 4:00 p.m. Therefore, the record supports that Bowers and the bargaining unit members share common hours. The evidence in the record regarding working conditions also reveals that Bowers and the unit members are all subject to the personnel handbook that applies to all City employees. As such, I find that these factors weigh in favor of inclusion.

Though Bowers does not share an immediate supervisor with either the Assistant City Clerk or the Utility Office employees, there is commonality in supervision because the City Council (via the Parks and Recreation Committee) effectively supervises Bowers and is the second level of oversight authority for the bargaining unit. Step 1 of the negotiated grievance

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<sup>16</sup> Employer's brief at page 9.

procedure is presentation to the Mayor and City Council rather than to an immediate supervisor, as is often the case. On brief, the Employer argues that the bargaining unit employees share immediate supervision; however, the record belies this contention. The Employer's witnesses testified that the clerks in the Utility Office report to Utility Manager Griffiths and the Assistant City Clerk reports to City Clerk Coates. The Employer impresses that if Bowers were included in the unit, during negotiations on behalf of the City, Griffiths would have to "take into account interests of a completely separate branch of the services the city provides" and consider another employees' supervisor.<sup>17</sup> However, Griffiths presumably already is doing so, inasmuch as one of the four bargaining unit members works in a different City office "completely separate from" him and is supervised by Coates. As such, I do not find the lack of shared immediate supervision to weigh against the propriety of the proposed unit.

The record reveals that Bowers' pay of \$10.46 per hour is \$2.66 less than the lowest paid bargaining unit employee. However, I find that this, too, fails to weigh against the propriety of the petitioned-for unit. As evidenced by the collective bargaining agreement and the parties' stipulation, each of the four bargaining unit members has a different and distinct pay rate, and there is a \$3.16 difference between the lowest and highest paid unit employees. Therefore, because Bowers' difference in pay is within the parameters of the divergence of the existing unit's pay, I find that this factor weighs in favor of inclusion.

3. *Fragmentation of employee groups*

The record does not reveal any concerns regarding fragmentation of employee groups, and no party raised such concerns. Therefore, I do not find that this factor weighs against propriety of the proposed unit.

4. *Degree of functional integration*

This factor assesses the level to which the functions performed by the at-issue positions are integrated. Bowers performs her janitorial duties independently from other City employees. With regard to these duties, there is no functional integration between Bowers and the bargaining unit employees.

The Employer argues that Bowers "provides a completely different kind of service to city residents than do the bargaining unit employees" specifically citing the fact that Bowers serves only those who use the Rec Center, while bargaining unit employees serve "every city resident

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<sup>17</sup> Employer brief at p. 9.

who receives gas or electric utility services from the City.” However, this argument fails to account for the bargaining unit employee in the City Clerk’s office. The record reveals that Bowers’ position, in light of several of her clerical duties, is somewhat functionally integrated with the City Clerk’s office. The City Clerk is generally responsible for keeping track of the City’s funds, including funds coming in as a result of Rec Center rental revenues, which the Assistant City Clerk processes. Bowers is responsible for gathering those funds and providing them to the City Clerk for deposit and tracking amidst the other funds for the City. Just as Bowers relies on the City Clerk’s office for depositing Rec Center funds and paying its bills, the City Clerk relies on Bowers to collect and accurately document receipt of rental funds and to turn over in a timely fashion any bills that need to be paid.. Bowers also turns in her time sheets to the City Clerk’s office for payroll purposes.

The same level of functional integration does not exist between Bowers and the bargaining unit employees in the Utility Office. However, while the Utility Office employees are very highly functionally integrated with one another, the record does not support finding similar functional integration between the Utility Office and the City Clerk’s office. The evidence adduced through testimony and exhibits reflects that the Utility Office operates quite independently from the City Clerk’s office, even down to making separate deposits at the bank. As discussed below, the Utility Office staff does, from time-to-time, assist the City Clerk’s office with reviewing payroll, and the Clerk’s Office staff will assist the Utility Office in taking and receipting utility payments from customers who come to the office to make their payments. It appears that these functions are more a result of being helpful coworkers than an integration of the offices’ functions.

Accordingly, I find that Bowers’ position is functionally integrated with at least part of the bargaining unit.

##### 5. *Interchangeability and contact among employees*

The record reveals that bargaining unit staff see each other every day by virtue of their location in offices next to each other, connected by an adjoining door, whereas Bowers works at the Rec Center six blocks away. Bowers goes to City Hall, where the City Clerk’s office is located, on a weekly basis, but no evidence was presented that that Bowers’ duties cause her to have contact with the Utility Office or the bargaining unit employees that work there. Therefore, I find that this lack of regular contact weighs against including Bowers in the unit.

The Employer argues that bargaining unit employees would not be able to perform Bowers duties and vice versa based on their experience in their own positions. However, the record reveals that at least some of their shared duties could be performed by the others. For example, like the City Clerk staff, if needed, Bowers could receive payments from customers and write receipts for those payments, as she performs similar tasks for payments received at the Rec Center. Similarly, bargaining unit employees could receive and receipt payments for Rec Center rentals. The Assistant City Clerk maintains the City calendar on the website, so it is reasonable to assume that she is sufficiently skilled to schedule use of the Rec Center. Bowers files her own paperwork and it follows that, with instruction, she could assist other bargaining unit employees with filing and other general clerical duties as well, if not for different working locations.

The record reveals that the unit, while small, is not a cohesive, homogenous unit made up of interchangeable employees. The Utility Office employees perform similar duties and regularly assist one another. However, the same cannot be said for the Assistant City Clerk. The Utility Office employees interact with the public daily. The Assistant City Clerk (along with the non-represented City Clerk Coates) will assist the utility office staff by accepting utility payments and writing receipts for those payments if the utility office needs assistance. Other than in these instances, the Assistant City Clerk does not act as a back-up for Utility Office employees or otherwise perform interchangeable duties with the other bargaining unit employees. Similarly, Utility Office employees only assist the City Clerk staff from time-to-time by double checking payroll. The evidence reveals no other overlapping duties. City Clerk Coates made clear that while the Utility Office staff perform interchangeable work and cover duties for one another, they are not interchangeable with City Clerk staff, including the unit member Assistant City Clerk.

Relying on the position descriptions of the bargaining unit employees, the Employer further argues that the unit members inevitably must have some degree of coordination to complete their job tasks. However, the record does not support this contention. Utility Manager Griffiths testified that he was unsure what business Bowers may have with the City Clerk's office, as it is "completely separate from" his office. City Clerk Coates testified consistently that the Utility Office staff was not interchangeable with her subordinate bargaining unit employee.

6. *Community of interest including employee skills and functions*

Three distinct areas of City government are at issue in this case, and, in a general sense, they all have different functions – providing administrative support for the City’s utilities, ensuring that the City’s funds are accounted for, and ensuring that the citizens are able to fully utilize the Rec Center. Despite these distinct differences, the at-issue employees from each of these areas work to ensure moneys owed the City are received, documented, deposited, and reported, while also ensuring that their program area has sufficient clerical support.

It is undisputed that only Bowers performs any janitorial duties, and these duties require different skills than the purely clerical work performed by the bargaining unit employees. Certainly, the Rec Center is more different from the other two areas than the other two are from each other in light of the facility management component to the position. However, in addition to janitorial duties, Bowers also performs clerical duties similar to the lower level duties performed by the bargaining unit employees, most notably the Utility Office employees. Similar to the City Clerk 1 and 2 positions, Bowers receives money, completes receipts for payments, answers the phone, schedules appointments, opens the mail, and handles customer relations in person and on the telephone. Similar to the Utility Office Manager, Bowers, on occasion, supervises individuals working at the Rec Center. Similar to the Assistant City Clerk, Bowers maintains a calendar of events. Each of the positions requires knowledge and skills of office equipment and procedures related to the services the office provides. Based on the information in the record, the bargaining unit positions do not require special certifications or advanced education<sup>18</sup> such that they are wholly incompatible with inclusion of the Rec Center Director position.

Based on these facts, I find that the positions share a community of interest in that they share at least one primary function, responsible handling of City funds, and that the skills required for the positions are not so unique or specialized such that inclusion of Bowers in the unit would make the unit inappropriate. The Employer argues on brief that the Board should look at whether internal cohesiveness exists in the proposed unit. However, the Board precedent

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<sup>18</sup> Only the position descriptions for Account Clerk 1 and Utility Office Manager contain educational requirements. These positions represent the lowest and highest paid bargaining unit employees. Both positions require only “knowledge, skill, and mental development equivalent to the completion of four years of high school.” (Joint Exhibits 4 and 9). There was no evidence presented to support a contention that the educational requirements for the bargaining unit positions make them so different from the Rec Center Director position such that a unit including both would be inappropriate.

on internal cohesiveness, and in fact the cases cited by the Employer on this point, refer to analysis in instances where the petition seeks certification of a stand-alone unit separate from a larger unit with which the petitioned-for employees also share a community of interest. Similarly, the Employer contends that “not just any community of interest will do: it must be a strong showing of interest.” This again is an appropriately higher burden imposed on petitions that seek recognition of a smaller, stand-alone unit, which is not the situation presented in this matter.

7. *Historical pattern of recognition*

The Board generally assesses historical patterns of recognition with respect to the petitioned-for employees, and finds that where employees are new to collective bargaining, as here, there is no such pattern of recognition. County of McHenry, 31 PERI ¶ 8 (IL LRB-SP 2014) *citing* State of Ill. Dep’t of Cent. Mgmt. Serv., 1 PERI ¶ 2025 (IL SLRB 1985); State of Ill. Dep’t of Cent. Mgmt. Serv., 1 PERI ¶ 2011 (IL SLRB 1985). Therefore, this factor weighs neither in favor of nor against inclusion of Bowers in the unit.

8. *Other factors*

Finally, the Employer seems to invite the Board to consider the fact that the Rec Center is not profitable in the Board’s consideration of the present petition. While the Section 9(b) factors are not exhaustive, the Employer’s desire to have its financial situation serve as a basis for excluding an otherwise appropriately-included position is misplaced. Inclusion of a public employee in an appropriate bargaining unit does not deprive a public employer from making decisions affecting the terms and conditions of employment of that employee, it only requires bargaining with the certified representative when doing so. Therefore, I give this argument no weight in the balancing of factors.

9. *Balancing the factors*

The balancing of factors in this case is a close call. A number of factors weigh in favor of inclusion, specifically the desires of the employees, shared supervision, similarity of wages, and shared hours and working conditions. The lack of contact between employees weighs against inclusion. Fragmentation and a historical pattern of recognition are not at issue here, so these are neutral factors. Other factors are not so clear cut. Given the differences between existing bargaining unit employees, the other factors provide very little guidance. Bowers’ position is somewhat functionally integrated with the Assistant City Clerk, but not with the

Utility Office unit employees. All of the at-issue employees can and do perform duties related to receiving and receipting payments, but their location makes them less than interchangeable. The employees' skills and functions have distinct differences but are not so specialized or unique to make the unit inappropriate.

Moreover, the Board has long assessed the appropriateness of a proposed unit by seeking to balance the "general the interests of the labor organization in organizing public employees; the needs of the public employer in developing efficient and effective bargaining relationships; and, most importantly, the rights of public employees to meaningfully voice their common and collective concerns regarding wages, hours, and conditions of employment." Village of Franklin Park (Dep't of Public Works and Utilities), 30 PERI ¶ 52; *see also* DuPage Cnty. Bd., 1 PERI ¶ 2003. Here, the Employer's need to develop efficient and effective bargaining relationships is not burdened by adding a fifth position to only the second bargaining unit in the municipality. This is especially true where the Employer is already bargaining with a unit made up of two separate offices. Likewise, I do not find that the Union's interest in generally organizing public employees would be greatly affected by the inclusion or exclusion of this single position. To the contrary, this case is likely determinative of Bowers' ability to exercise her rights under the Act not just now but also in the future. Griffiths testified that the only other organized employees in the City are the police officers. Further, Bowers' position was described as separate from nearly any other unit of City government. Griffiths characterized Bowers' position as falling under City Hall (like the Assistant City Clerk), because it did not fit elsewhere. Review of the full record leaves me with the distinct understanding that while Bowers is appropriately included with the Assistant City Clerk and Utility Office staff, she would likely not be appropriately included in any other grouping of City employees.

While there is no historical pattern of recognition regarding the position at issue, the Board has noted that it has occasionally found cause to consider an employer's recognition practices more broadly. County of McHenry, 31 PERI ¶ 8 *citing* Cnty. of Cook (Provident Hospital), 22 PERI ¶ 12 (IL LRB-LP 2006). In Cnty. of Cook (Provident Hospital), 22 PERI ¶ 12 (IL LRB-LP 2006), when assessing an employer's challenge to the appropriateness of a proposed unit, the Board considered the fact that an employer has repeatedly stipulated to the appropriateness of units with the same characteristics it was claiming made the at-issue unit inappropriate. Here, the Employer, like Cook County, is challenging the appropriateness of a

unit based on factors that exist in a unit they have previously stipulated as appropriate. Most of the challenges the Employer raises to the appropriateness of a bargaining unit including the Rec Center Director could have been made regarding the existing bargaining unit (differences in wages and supervision, as well as a lack of interchangeability and functional integration), to which the Employer stipulated just three years ago.

Taking all these things together, I find that the proposed unit, while not perfect, is an appropriate unit. As such, the petition should be granted, and the Rec Center Director position should be added to the unit.

#### **IV. CONCLUSIONS OF LAW**

The majority interest petition is appropriate.

#### **V. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the position of Recreational and Cultural Center Director be added to the unit currently represented by the International Brotherhood of Electrical Workers, Local 51. The new unit shall be described as follows:

Included: All clerical employees of the City of Bushnell in the following job classifications: Assistant City Clerk; Clerk I; Clerk II; Utility Office Manager; and Recreational and Cultural Center Director.

Excluded: All other employees of the City of Bushnell.

#### **VI. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relation Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. 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. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued at Springfield, Illinois, this 29th day of October, 2015.**

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

*/s/ Sarah R. Kerley*\_\_\_\_\_

**Sarah R. Kerley  
Administrative Law Judge**