STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Council of Police,	)	
	)	
Petitioner	)	
	)	
and	)	Case No S-UC-11-029
	)	
City of South Beloit,	)	
	)	
Employer	)	

ORDER

On August 14, 2012, Administrative Law Judge Eileen L. Bell, 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 12, 2012 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 10th day of October, 2012.

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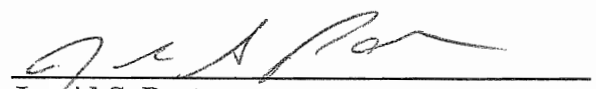

Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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Illinois Council of Police,	)	
	)	
Petitioner	)	
	)	**Case No. S-UC-11-029**
and	)	
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City of South Beloit,	)	
	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 28, 2011, the Illinois Council of Police (ICOP) filed a Unit Clarification Petition (Petition) with the Illinois Labor Relations Board, State Panel (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act) in the above-captioned case. By the Petition, ICOP seeks to add the position of Administrative Assistant (AA) to the bargaining unit of public works employees in the City of South Beloit (City) for which it became the exclusive representative in 2009. This case presents two issues: 1) whether the Unit Clarification Petition is the appropriate procedural mechanism to add the AA to an existing unit of public works employees; and 2) if the Petition is appropriate procedurally, then whether the AA shares a community of interest with the existing unit. My findings and recommendation are set forth below.

I. BACKGROUND

The bargaining unit to which ICOP seeks to add the petitioned-for AA was first established in February 2009 when the Laborers' International Union, Local 32 (Laborers' Local 32) was certified as the exclusive representative of the unit in Case No. S-RC-08-053. The representation petition that the Laborers' Local 32 filed leading to that certification described the

unit that it sought as "all public works employees in the City of South Beloit." The certification which the Board subsequently issued reads "all full-time laborers and operators employed by the City of South Beloit in the streets, waste water or public property departments."

In August 2010, ICOP filed a representation petition in Case No. S-RC-11-011 for that same unit. After September 2010 when Laborers' Local 32 submitted a letter to the Board stating that it did not want to be placed on the election ballot pursuant to ICOP's representation petition, in November 2010 ICOP became the certified representative of the unit of public works employees.

ICOP cites Section 1210.170(a) of the Board's Rules as authority that the instant Unit Clarification Petition is a proper means of adding the AA position to the bargaining unit of public works employees that it represents.[1] As ICOP points out, pursuant to Section 1210.170(a)(1) and (2), an exclusive representative may file a unit clarification petition to clarify or amend an existing bargaining unit in the following circumstances:

1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement; and

2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established.

According to ICOP, this first subsection of Section 1210.170(a) concerning "substantial changes in the duties and functions of an existing title" applies because the title of Radio Dispatcher had evolved into that of AA, involving substantial changes to the duties of its occupant. Further, ICOP maintains that the AA title was created in October 2009 by the Acting

[1] ICOP also advised the Administrative Law Judge (ALJ) of the merits of the Petition, but that issue need not be addressed in this Recommended Decision and Order. In part, ICOP presented its position on the procedural issue in response to the ALJ's Order to Show Cause why the Petition should not be dismissed as an improper means of adding the AA position to the existing bargaining unit.

City Clerk due to a need for a "Sewer Clerk" in the Department of Public Works, and has been occupied from that time by an employee who transferred from her Radio Dispatcher position to the new AA position.

In addition, ICOP cites the second subsection of Section 1210.170(a) which provides that a unit clarification petition may be used to amend an existing unit when an existing job title is "inadvertently excluded by the parties at the time the unit was established." ICOP points out that Laborers' Local 32 was still the exclusive representative of the unit of public works employees in October 2009 when the Radio Dispatcher was transferred to the Administrative Assistant position, "(i.e. Sewer Clerk)." In ICOP's view, it is a reasonable inference that Laborers' Local 32 "at the time failed (i.e., inadvertently) to include the Administrative Assistant" in the bargaining unit of public works employees.

Responding to ICOP's arguments, the City contends that the instant Unit Clarification Petition is improper pursuant to Section 1210.170(a) of the Board's Rules which identify three circumstances when a unit clarification petition is appropriate. The City emphasizes that the AA position was created in 2002 by municipal ordinance, a copy of which it provides. Although the City acknowledges that the AA position was vacant "for some time" during which the Deputy City Clerk performed its duties, the City maintains that those same duties were reassigned to the employee who filled the AA position in October 2009. The City provides an undated copy of the job description for the AA position which sets forth a variety of clerical duties including the collection of water bill payments. In sum, the City contends that the duties of the AA position have not changed since its creation in 2002. The City thus argues that the first situation when a unit clarification petition is appropriate pursuant to Section 1210.170(a)(1) is non-existent in the present case.

Next, the City challenges ICOP's contention that the AA job title was "inadvertently excluded by the parties at the time the unit was established" under Section 1210.170(a)(2). It emphasizes ICOP's contention that Laborers' Local 32—not ICOP at the time of its August 2010 representation petition—inadvertently excluded the AA position in the bargaining unit consisting of the City's public works employees. The City argues that the inadvertence to which this rule allowing unit clarification petitions refers is that of the parties to the unit clarification petition in dispute—in this case, ICOP and the City. Further, the City submits that even if Section 1210.170(a)(2) of the Board Rules could be read to encompass the acts of the previous representative, Laborers' Local 32, ICOP has provided no facts establishing that said labor organization "inadvertently excluded" the AA position. By contrast, the City points out that the representation petition which Laborers' Local 32 filed in Case No. S-RC-08-053 did not seek to represent any of the City's clerical employees along with its public works employees.

Finally, the City argues that the third circumstance described in Board Rule Section 1210.170(a)(3) when a unit clarification petition is warranted—a significant change takes place in statutory or case law that affects the bargaining unit rights of employees—does not apply to the instant case either. The City contends that it is unaware of any change in statutory or case law that affects the rights of the AA position.

II. DISCUSSION AND ANALYSIS

The purpose of unit clarification is not to change the scope of a bargaining unit, but to resolve unit composition questions which arise within the context of the parties' recognition agreement, the provisions of the Act or the unit described in the Board certification. See City of Chicago, 9 PERI ¶3026 (IL LLRB 1993); NLRB v. Mississippi Power & Light, 769 F. 2d 276, 279 (5th Cir. 1985); Union Electric Co., 217 NLRB 666, 667 (1975). Where employees

intentionally and historically have been included in or excluded from a bargaining unit, it is thus inappropriate to use the unit clarification to disrupt the existing agreement. See City of Chicago, 9 PERI ¶3026. Consistent with this narrow purpose of unit clarification proceedings, the Board Rules and case law establish limited circumstances under which a unit clarification petition is the proper procedural means for adding position(s) to or removing position(s) from an existing bargaining unit. Section 1210.170(a) of the Board's Rules lists a unit clarification petition as the appropriate way to clarify or amend an existing unit in the three following situations:

> 1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the titles unit placement;
>
> 2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established; and
>
> 3) a significant change takes place in statutory or case law that affects the bargaining unit rights of employees.

In addition to this cited passage from the Board's Rules, the case law establishes unit clarification procedures are appropriate in certain other circumstances, such as when an employer creates a new job classification, or where an employer alleges the petitioned-for employees are statutorily excluded. See State of Ill. Dep't. of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 364 Ill. App. 3d 1028, 1034, 844 N.E. 2d 118, 22 PERI ¶54 (4th Dist. 2006) (unit clarification petition may appropriately be used to sever confidential employees); City of Washington and Policemen's Benevolent Labor Committee, 27 PERI ¶3 (IL LRB-SP 2011) (Board orders unit clarified to exclude sergeants as supervisors); AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Labor), 2 PERI ¶2029 (IL SLRB 1986) (unit clarification petition appropriate where filed at most five months after positions filled); AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Servs. (Dep't of Public Aid) 2

PERI ¶2019 (IL SLRB 1986) (unit clarification petition appropriate where filed eight months after position created). Because ICOP has failed to present sufficient evidence to raise a question of fact or law concerning the proper use of the Unit Clarification Petition to add the AA position to the bargaining unit of the City's public works employees, no hearing on this issue is necessary.

First, ICOP's contention that Section 1210.170(a)(1) of the Board Rules authorizes the use of the Petition must fail. While the evidence shows that the AA position was created in 2002, and thus was in existence at the time Laborers' Local 32 was certified as the representative of the bargaining unit of the City's public works employees in 2008, ICOP has not presented *any* facts showing that "substantial changes" occurred in the duties and functions of the AA position. It merely asserts that one position—the Radio Dispatcher—"evolved" into another, the AA position which it maintains was created in October 2009.

Nor is the Unit Clarification Petition appropriate on the basis of Section 1210.170(a)(2) of the Board Rules which provides that a unit clarification petition is proper when "[a]n existing job title is logically encompassed within the existing unit and was inadvertently excluded by the parties at the time the unit was established." ICOP simply presents no evidence that the AA position was "inadvertently excluded" at the time the bargaining unit of public works employees was established. Based on ICOP's assertion, the AA position was not even in existence at the time the unit of the City's public works employees was established in February 2009. While the evidence does show that the AA position was created by ordinance in 2002, and was thus in existence at the time the unit of public works employees was established in February 2009, ICOP argues that it is a reasonable inference that Laborers' Local 32 "inadvertently excluded" it from the unit. Instead, the evidence—the petition which Laborers Local 32 filed in Case No. S-RC-

08-053—demonstrates that this predecessor union did not seek to represent any clerical employees in the City of South Beloit, only public works employees. Accordingly, I will not infer that the Laborers' Local 32 "inadvertently excluded" the AA position, a clerical employee.

In making this finding, I reject the City's narrow reading of subsection 1210.170(a)(2). According to the City, the "inadvertence" to which this Board Rule refers is that of the parties to the unit clarification petition—here, ICOP and the City—not that of the predecessor union, the Laborers' Local 32. The City cites no authority for its restrictive reading of subsection 1210.170(a)(2). The language of this Board Rule specifically provides that the "inadvertence" is "by the parties at the time the unit was established." The unit was established in February 2009 when the Laborers' Local 32 were certified as the representative of the public works employees. ICOP was not a party at that time.

Nor does the remaining condition outlined in Section 1210.170(a) of the Board Rules exist to warrant use of a unit clarification petition. That is, there have not been—and ICOP does not allege—any significant changes in statutory or case law that effects the bargaining unit rights of employees.

In addition, the circumstance identified in case law as proper for filing a unit clarification petition—a newly-created job classification involving similar functions to the existing unit—is not present either. See AFSCME, Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Labor), 2 PERI ¶2029 (IL SLRB 1986) (unit clarification petition appropriate where filed at most five months after positions filled); AFSCME, Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Aid) 2 PERI ¶2019 (IL SLRB 1986) (unit clarification petition appropriate where filed eight months after position created). Assuming the AA position was first filled in October 2009 when both Parties initially identify an occupant of this position,

that date is more than a year prior to January 28, 2011 when ICOP filed the instant Unit Clarification Petition. The AA position is thus not "newly created" within the meaning of the Act.

III. CONCLUSIONS OF LAW

The Unit Clarification Petition is procedurally inappropriate.

IV. RECOMMENDED ORDER

It is hereby recommended that the Petition in Case No. S-UC-11-029 be dismissed.

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 the 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 Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions have been provided to them. The exceptions and 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 14th day of August 2012.

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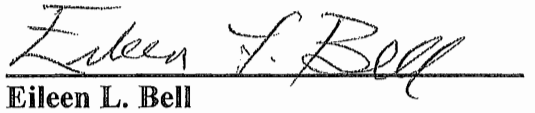

Eileen L. Bell
Administrative Law Judge