STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Metropolitan Alliance of Police, Bolingbrook Professionals Chapter #522	)	
Petitioner	)	
and	)	Case No S-UC-15-053
Village of Bolingbrook,	)	
Employer	)	

ORDER

On December 1, 2014, Administrative Law Judge Deena Sanceda, 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 13, 2015 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 13th day of January, 2015.

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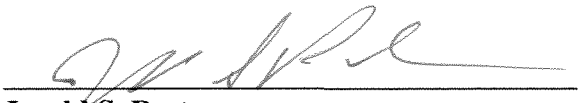

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ADMINISTRATIVE LAW JUDGE'S
RECOMMENDED DECISION AND ORDER

I. BACKGROUND

On October 14, 2014, Metropolitan Alliance of Police, Bolingbrook Professionals Chapter #522 (Union), filed a Petition for Clarification of Unit with the Illinois Labor Relations Board (Board), pursuant to Section 1210.170 of the Rules and Regulations of the Illinois Labor Relations Board (Board's Rules), 80 Ill. Admin. Code, Sections 1200 through 1230. The Union seeks to add the position of "Administrative Aide - Support Services" to the bargaining unit (Unit) of employees in the Village of Bolingbrook (Employer) for which the Board certified the Union as the Unit's exclusive representative in case no. S-RC-09-087, subsequently clarified by the parties stipulations in case nos. S-UC-11-(S)-11-005 and S-UC-13-(S)-013.[1] On October 31, 2014, the Board received the Employer's objections to the petition within which it argues that the petition should be dismissed because it seeks to certify a newly created position has that never been filled and it is the Board's policy to dismiss such petitions as premature, and because the

[1] The bargaining unit is defined as
Included: Administrative Aide (Police Department); Administrative Aide (Fire Department); Administrative Aide (Community Development); Animal Control Supervisor; Applications Manager; Assistant Accounting Manager; CAD/GIS Technician; Civilian Fire Inspector; Community Service Officer (Civilian); Engineer; Engineer Technician/Inspector; ESDA Assistant Director (Civilian); Financial Analyst/Accountant; Insurance Analyst; Network Engineer; Payroll Coordinator; Receptionist Part-Time (Clerk's Office); Receptionist Part-Time (Executive Department); Receptionist Full-Time (Clerk's Office); Planner/Grant Coordinator; Police Secretary; Purchasing Coordinator; Records Director; Senior Accountant; Social Worker; Telecommunications Supervisor; Telecommunications Supervisor/ Management Information System.

Excluded: Administrative Aide/Village Clerk, Assistant to the Mayor, Assistant to the Village Attorney, Administrative Aide/Deputy Village Clerk, Executive Secretary, Administrative Aide Kathleen Tomlinson, Training & Quality Manager, Facilities Coordinator, Telecommunications Director, Village Planner, Administrative Aide Maria Keene, and Administrative Aide Jules Staley; all professional employees and all other employees; and all supervisory, managerial and confidential employees as defined by the Act.

position is statutorily excluded from certification into the bargaining unit because it is confidential[2] within the meaning of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), as amended.

After reviewing the Employer's objections, on November 7, 2014, the undersigned Administrative Law Judge (ALJ) wrote a letter to the Union ordering it to show cause why the petition should not be dismissed as premature. The letter specifically informed the Union that its response must be filed, no later than 9am on November 14, 2014, must comply with the Board's Administrative Rule 1200.20,[3] and that failure to appropriately respond may result in the petition being dismissed. To date the Union has not filed a response to the Order, though it has informally suggested that the Board hold this matter in abeyance until the position is filled. The Employer has not indicated whether it would be amenable to holding this matter in abeyance, nor has it withdrawn or modified its objections.

II. DISCUSSION AND ANALYSIS

The unit clarification petition is not appropriate for adjudication at this time, and allowing it to remain under investigation until the time it becomes appropriate for adjudication is inconsistent with the Board's precedent and past practice.

A. Lack of incumbent in petitioned-for employment position

The petition is premature. Section 9(a-6) of the Act provides that a "labor organization or an employer may file a unit clarification petition seeking to clarify an existing bargaining unit." 5 ILCS 315/9(a-6) (2012). The purpose of unit clarification procedures "is to provide an official determination of a bargaining unit's composition." State of Illinois v. State of Illinois, 364 Ill. App. 3d 1028, 1032, (4th Dist. 2006). A unit clarification petition may be appropriately filed as identified the Board's Rules and legal precedent.

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[2] Section 3 (c) of the Act defines a "Confidential employee" as an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies. 5 ILCS 315/3(c) (2012).

[3] See 80 Ill. Admin. Code 1200.20(c) (Documents may be properly filed by 1)actual delivery of documents to the Board; or 2) by first class, registered or certified U.S. mail or by commercial parcel delivery company postmarked no later than specified date; or 3) by fax subject to limitations including that original documents filed by fax shall be mailed or delivered to the appropriate Board office on the same day the fax is transmitted).

Section 1210.170(a) of the Board's Rules provide:

a) An exclusive representative or an employer may file a unit clarification petition to clarify or amend an existing bargaining unit when:
   1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's 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 rights of employees. 80 Ill. Admin. Code 1210.170(a).

Section 1200.100(b)(7)(B) of the Board's Rules provide, in relevant part, that in reviewing representation petitions filed under Section 9(a-5) of the Act:

> Where there are unit or exclusion issues, but the number of the contested positions is not sufficient to affect the determination of majority support, then the Executive Director will [...] issue a certification [...] concerning the employees not in dispute. The disputed employees' inclusion in the unit will be subject to the Board's unit clarification procedures. 80 Ill. Admin. Code 1210.100(b)(7)(B).

In addition to the four sets of circumstances specifically enumerated in the Board's Rules, the Illinois Appellate Courts and the Board have recognized two additional circumstances under which a unit clarification petition is appropriate. First, an employer or union may file a unit clarification petition when a newly created job classification has job functions similar to functions already covered in the bargaining unit. Am. Fed'n of State, Cnty. & Mun. Emp. Council 31, v. Ill. State Labor Rel. Bd., 333 Ill. App. 3d 177, 182 (5th Dist. 2002); City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App. 3d 955, 969-70 (1st Dist. 1992) citing State of Ill. (Dep't of Cent. Mgmt. Serv. and Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986). Second, an employer may file a unit clarification petition in order remove confidential employees that were improperly certified into a bargaining unit. City of Washington v. Ill. Labor Rel. Bd., 383 Ill. App. 3d 1112, 1118-1119 (3rd Dist. 2008) citing State of Illinois v. State of Illinois, 364 Ill. App. 3d at 1034; Treasurer of the State of Ill., 30 PERI ¶ 53 (IL LRB-SP 2013).

Section 1210.170(e) of the Board's Rules provides that the Board or its agent shall investigate a filed unit clarification petition. After the investigation the petition shall be dismissed, set for hearing, or accepted through an order clarifying the Unit. 80 Ill. Admin. Code 1210.170(e). A hearing is not required where a party seeking to exclude positions from the petitioned-for unit fails to raise an issue of fact or law. City of Chicago v. Ill. Labor Rel. Bd.,

396 Ill. App. 3d 61, 71-72 (1st Dist. 2009) (insufficient evidence to warrant hearing on employer's objections that the petitioned for positions are statutorily excluded from representation under the Act); State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Cent. Mgmt. Serv. Dep't of Public Aid, and Pollution Control Bd.), 26 PERI ¶ 113 (IL LRB-SP 2010). The Board has also found that a hearing is not required when the union fails to raise an issue of fact or law. See State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Human Serv.), 29 PERI ¶ 122 (IL LRB-SP 2013); see also Int'l Bhd. of Elec. Workers v. Ill. Labor Rel. Bd., 2011 IL App (1st) 101671 ¶ 31 (1st Dist. 2011) (explaining the Board's authority to dismiss a representation petition without holding an evidentiary hearing).

The Employer argues that the petitioned-for position of "Administrative Aide - Support Services" is statutorily excluded as confidential within the meaning of the Act. In support of this argument, the Employer has provided the Board with the position's job description.
However, the existence of a position description is insufficient to conclude that the petitioned-for employment position is confidential. See City of Chicago, 5 PERI ¶ 3006 (IL LLRB 1988) citing Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2027 (1986); Ill. Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2016 (Ill. SLRB 1986). Thus, the only way to resolve the issue of "Administrative Aide - Support Services" alleged confidential status is to set the matter for hearing so that the parties may present evidence in support of their respective positions. However, the Board has long declined to hold hearings regarding vacant titles because holding such hearings "necessarily result in a lack of evidence as to the actual duties of any employee who may someday hold the disputed title." State of Ill., Dep't of Cent. Mgmt. Serv., 20 PERI ¶ 105 (IL LRB-SP 2004); State of Ill., Dep't of Cent. Mgmt. Serv., 2 PERI ¶2027 (IL SLRB 1986); but see City of Chicago, 1 PERI ¶ 3009 (IL LLRB 1985). The Board has further stated that this "lack of evidence makes it virtually impossible to determine whether the position is statutorily excluded as supervisory, confidential or managerial." State of Ill., Dep't of Cent. Mgmt. Serv., 20 PERI ¶ 105 (IL LRB-SP 2004). I find that while the Employer does raise an issue of fact or law that requires a hearing to resolve the petitioned-for position's confidential status, but because it is undisputed that the position is vacant, setting the matter for hearing at this time would not adequately resolve the matter. Certification of the petition is also inappropriate because the Unit includes and excludes positions with "Administrative Aide" in their title, the Union has provided

insufficient information and evidence to grant the petition and add the position of "Administrative Aide – Support Services" to the Unit.

B. Abeyance

Holding this matter in abeyance until the Employer fills the position is inconsistent with the Board's policies. The purpose of the Act is to provide an "expeditious, equitable and effective procedure for the resolution of labor disputes." 5 ILCS 315/2 (2012). To that end, Section 9(a-6) of the Act provides that the Board shall conclude its investigation into a unit clarification petition no later than 120 days after the date the petition was filed, which may be extended by the agreement of all parties to a hearing to a date certain. 5 ILCS 315/9(a-6) (2012). Previously, the Board has held a unit clarification petition in abeyance when the parties have sought resolution of the matter through other means. State of Ill. Dep't of Cent. Mgmt. Serv. (Dep't of Transp. and Nat. Res.), 16 PERI ¶ 2033 (IL SLRB 1999) (unit clarification petition held in abeyance because the union was also pursuing the inclusion of the newly created position through the parties' grievance arbitration proceedings, but the employer was disputing whether the matter was appropriate for arbitration).

In representation proceedings involving the creation of a an exclusive bargaining representative the Board has granted abeyances halting the proceedings pursuant to Section 9(a) of the Act where processing the petition would make a fair determination impossible. See e.g. Cnty of DuPage and Sheriff of DuPage Cnty v. Ill. Labor Rel. Bd., 395 Ill. App. 3d 49, 64-65 (2nd Dist. 2009) (noting that the Board held a representation petition in abeyance until the Board's petition for leave to appeal to the Illinois Supreme Court following the Illinois Appellate Court's reversal of the certification of the positions was resolved because both representation petitions involved the same employment positions); Cnty. of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998) (holding a decertification election in abeyance of the resolution of an unfair labor practice pursuant to Section 9(a) of the Act); Sarah D. Culbertson Memorial Hospital, 21 PERI ¶ 139 (IL SRB-LP 2005); City of Chicago (Indep. Bridge Tenders Org.),2 PERI ¶ 3022 (IL LLRB 1986); see also Cnty. of McHenry and McHenry Cnty. Health Dep't., 31 PERI ¶ 1 IL LRB-SP ALJ 2013) (majority interest petition held in abeyance for the resolution of a pending unfair labor practice charge).

The Board certifies bargaining units based upon the status of the positions at the time of the filing of the petition. See State of Ill., Dep't of Cent. Mgmt. Serv., 20 PERI ¶ 105 (IL LRB-

SP 2004); Dep't of Cent. Mgmt. Serv., 2 PERI ¶2027 (IL SLRB 1986). It has been the Board's practice to only grant abeyances when continuing would make a fair determination impossible, or would otherwise deprive the parties their right to the certification of an appropriate unit. The Union's suggestion to halt the processing of its unit clarification petition until the facts are more align with the result it is seeking is inconsistent with this practice. Unit clarification petitions can be filed in any one of the five sets of circumstances identified above. The instant unit clarification petition was appropriately filed because the petitioned for position is a newly created position, but continuing to a hearing to resolve the question of whether the position should be certified into the unit without an incumbent in the position would make a fair determination impossible. Thus, the petition premature for consideration. Since it has long been the Board's policy to dismiss premature petitions, and halting the unit clarification proceedings under these circumstances is inconsistent with Board practice, I find that allowing a premature petition to be filed and then to not proceed with an expeditious resolution places undue frustration upon the Board and its resources. Therefore, the Union's petition must be dismissed.

III. CONCLUSIONS OF LAW

The unit clarification petition is premature.

IV. ORDER

The unit clarification petition is dismissed.

V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the 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 the General Counsel of the Illinois Labor Relations 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 Chicago, Illinois this 1st day of December, 2014.

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Deena Sanceda
Administrative Law Judge