

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

American Federation of State, County,)	
and Municipal Employees, Council 31,)	
)	
Petitioner,)	
)	
and)	Case No. S-UC-16-012
)	
City of Joliet,)	
)	
Employer.)	

ORDER

On November 2, 2015, Administrative Law Judge Kelly Coyle, 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 Recommended Decision and Order during the time allotted and at its January 12, 2016 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 12th day of January, 2016.

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Kathryn Zeledon Nelson
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On September 1, 2016, the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union) filed a unit clarification petition with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (Rules). The Union seeks to add four job titles employed by the City of Joliet (City or Employer) to an existing bargaining unit. On September 30, 2015, the City filed objections to the Union’s petition, and the Board assigned this case to the undersigned for investigation. After considering the Employer’s objections, I recommend the following.

I. BACKGROUND AND INVESTIGATORY FACTS

On March 12, 2015, later amended April 3, 2015, the Union filed a representation/certification majority interest petition in Case No. S-RC-15-069 seeking to represent multiple City employees. The City objected to several positions. However, as the objected-to positions did not affect the Union’s majority interest, the Board’s Executive Director

certified the unit but held the objected-to titles in dispute. On September 1, 2015, the Union filed the instant petition seeking to add several of the objected-to titles to the existing unit including the Civil Engineer Supervisor, the Civil Engineer/Parking Supervisor, the Traffic Engineer, and Capital Improvement Engineer.¹

On September 30, 2015, the Employer objected to the petition arguing that the Civil Engineer Supervisor, Civil Engineer/Parking Supervisor, and Traffic Engineer were supervisory positions as defined by Section 3(r) of the Act.² The City argued that the three positions “[fit] the description of supervisor as set forth in the Act.” It also contended that placement of the position “in the same bargaining unit as their subordinates would impair the supervisor’s ability to apply the employer’s policies.” In support of its arguments, the City provided three exhibits which listed the specific employees the at-issue positions allegedly supervise. However, it did not provide any information explaining what work the subordinate positions perform or what role the at-issue positions perform in “supervising” the listed employees.

On October 14, 2015, after reviewing the City’s objections, I issued an Order to Show Cause. First, I noted that Section 3(r) of the Act defines a supervisor as:

[a]n employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except

¹ In its position statement, the City comments that there may be some confusion over the job titles in the petition. More specifically, the City states that it actually classifies the Civil Engineer/Parking Supervisor as a “Civil Engineer I.” However, the Union petitioned for the Civil Engineer Is in S-RC-15-069, and the City did not object to their inclusion. Moreover, the City did object to the title the Union referred to as “Civil Engineer/Parking Supervisor.” I also note that the City was able to identify the specific employee working in the at-issue position. As the Civil Engineer Is are already included in the bargaining unit, and given that the City has been able to identify the specific position at-issue, I will continue to refer to the job title as “Civil Engineer/Parking Supervisor.”

² The City did not object to the inclusion of the Capital Improvement Engineer.

with respect to police employment, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.

5 ILCS 315/3(r). I further stated that under this definition, the at-issue employees are only supervisors if they (1) perform principal work that is substantially different from that of their subordinates; (2) have the authority, in the interest of their employer, to perform any of the enumerated supervisory functions; (3) consistently use independent judgment in performing those functions; and (4) spend a preponderance of their time exercising that authority. Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Empls., Council 31, AFL-CIO, 153 Ill. 2d 508, 515 (1992). I then requested the City provide evidence tending to support its argument that the three at-issue positions satisfy these four requirements. Lastly, I stated that “[i]f the City’s response fails to raise an issue of law or fact sufficient for hearing, I may dismiss the City’s objections and recommend that the Executive Director certify the [Union] as the exclusive bargaining representative for the petitioned-for job titles.”

On October 27, 2015, the City filed its Response to the Order. The City’s Response consisted of the following: “Please accept the following as the City of Joliet’s response to the Order to Show Cause dated on or about October 14, 2015: The City has no further documents to submit and stands on its previous submission. Please contact me should you have any questions.”

II. DISCUSSION AND ANALYSIS

Given the City’s failure to provide any evidence in support of its arguments, I recommend the Board dismiss the City’s objections and certify the petitioned-for unit.

Although an employer does not need to *prove* that a position meets the supervisory definition as described above, it at least must provide *some* evidence in support of its position. Here, the City has only provided lists of employees the at-issue positions allegedly “supervise.”

However, this information does not tend to establish any of the elements of the supervisory definition, hence my Order requesting additional information. Why the City failed to provide additional information in support of its position, or even provide a single job description, is unknown. However, given that the City has had two bites at the apple, I am not inclined to grant it a third. As such, I find that the City has failed to raise an issue for hearing and recommend the Board dismiss the City's objections and certify the petitioned-for unit.

III. CONCLUSIONS OF LAW

The City has failed to raise an issue for hearing regarding the supervisory status of the Civil Engineer Supervisor, Civil Engineer/Parking Supervisor, and Traffic Engineer.

IV. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Civil Engineer Supervisor, Civil Engineer/Parking Supervisor, Traffic Engineer, and Capital Improvement Engineer be included in the petitioned-for bargaining unit.

V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any 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 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 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 in Chicago, Illinois on the 2nd day of November, 2015

**STATE OF ILLINOIS
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STATE PANEL**

/s/ Kelly Coyle _____
Kelly Coyle
Administrative Law Judge