

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Petitioner)	
)	
and)	Case No. S-RC-11-035
)	
City of Naperville,)	
)	
Employer)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On November 12, 2010, American Federation of State, County and Municipal Employees, Council 31, (Petitioner) filed a Representation/Certification Petition, based on a showing of majority support, with the State Panel of the Illinois Labor Relations Board, pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Petitioner seeks to represent full-time and part-time employees in the Department of Utilities – Electric & Water/Wastewater including the following titles:

Administrative Assistant, Customer Service Representative, Drafter, Electrical Engineering Technician, Engineering Technician, Financial Engineering Specialist, GIS Specialist, GIS Technician, Mapping Technician, Office Assistant, Records Technician, Safety & Training Assistant, Safety Program Supervisor, Sr. Administrative Assistant, Sr. Electrical Engineering Technician, Sr. GIS Mapping Technician, Technical Specialist, Utilities Safety and Training Instructor, Utility Analyst, Utility Specialist and all other eligible employees as defined by the Act.

A hearing in the above-referenced matter was held on February 14, 15 and March 15, 2011, in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs.

Briefs have been timely filed on behalf of both parties. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act.
2. The Employer is a unit of local government and is subject to the jurisdiction of the State Panel of the Board pursuant to Sections 5(a) and 20(b) of the Act.
3. The Union is a labor organization within the meaning of the Section 3(i) of the Act.
4. The Safety Program Supervisor position is currently vacant and if there is a certification based on this petition, the inclusion of this title shall be subject to a unit clarification petition.

II. ISSUE AND CONTENTIONS

The issue is whether the petitioned-for bargaining unit is appropriate as a stand-alone unit.

The Employer asserts that the petitioned-for unit is presumptively inappropriate because the Petitioner is seeking a unit limited to administrative and engineering titles in the City's Electric Department and Water/Wastewater Department, excluding titles that are identical or perform the same functions found throughout other departments in the City of Naperville. The Employer claims that the Petitioner has not proffered sufficient evidence that the smaller unit has a stronger community of interest and therefore the petition should be dismissed in its entirety.

The Petitioner states that the City of Naperville has 13 bargaining units, each based within a single department, and several limited to a single title. Given this history of recognizing

smaller units, the Petitioner argues the Employer cannot now claim the petition unduly fragments the City's workforce. The Petitioner asserts that the unit sought by the petition is appropriate and should be certified.

III. FINDINGS OF FACT

The City of Naperville (City) is organized as a "Council-Manager" form of government with Doug Krieger in the position of City Manager. The City is organized into eight separate departments and has approximately 950 employees. Those departments include the following: Police, Fire, Public Works, Transportation Engineering and Development (TED), Electric Utility, Water/Wastewater (Water), Finance and Legal. Each department is headed by a director or chief who reports to the city manager.

Prior to May 2010, there was a single Department of Public Utilities - Electric and Water, managed by its Director, Allan Poole, who reported to the City Manager. Poole retired in April 2010 and the Assistant Director of Electric, Mark Curran, and the Assistant Director of Water, James Holzapel, were each promoted to Director of their respective departments. Since then, both Holzapel and Curran report to the City Manager. Their offices are located in the same suite within the former Department of Public Utilities. Their respective utility analysts are also located in this suite, and they currently share an administrative assistant. The office of the Safety Department's utility safety instructor, John Flannery, is also located in this suite. The Safety Department operates as a part of the Electric Department's budget. The remainder of the employees in both the Electric Department and Water Department are located elsewhere. With the exception of a storage unit, the two departments do not share any other facilities.

James Holzapel and Mark Curran are in charge of day-to-day operations of their respective departments. For Holzapel this includes strategic planning, long-term planning for

utilities and budget preparation for both capital improvement and operations. Holzapel's duties are essentially the same as they were when he was the assistant director of the department. The only differences are that now he reports to the City Manager instead of the Director of Public Utilities and the way he handles long-term planning.

Each department operates under its own fund: the Water/Wastewater Enterprise Fund or the Electric Enterprise Fund. Neither department is a part of the General Fund in the City of Naperville, out of which all other departments within the City operate. The Electric and Water departments operate their budgets by collecting revenues either through Water Utility rates, Wastewater Utility rates and Electric rates. Each department generates 100% of its own revenue through the imposition of user rates and fees. Although the Finance Department employees issue bills to customers under the designation of "Department of Public Utilities", including their electric and water bill on one document, each department is responsible for paying its employees separately for the duties they perform.

Although the Electric and Water departments operate using separate budgets from each other and from the rest of the departments in the City of Naperville, everything else about each department is the same as the rest of the City of Naperville. The City of Naperville maintains a centralized system of operations. There is only one Human Resource Department and that department hires, transfers, promotes and demotes all employees, including those in the Electric and Water departments. With the help of each department, the Human Resources Department also drafts job descriptions for every position within the City of Naperville. All employees have to follow the rules and policies in the City Employee Policy Manual. These policies include probation, training, discipline, resignation, salary and performance, retirement, medical and insurance benefits, time off and timekeeping. All employees have access to the centralized

“Intra-net” where they have access to the employee manual, training information, the City website and board meeting information. All employees with computer access are also assigned an email address. Lastly, all employees within the City are eligible to receive recognition as “Employee of the Month” and receive monthly copies of “Naper Insight” (the City’s newsletter).

In the Water Department there are currently two bargaining units in place. One unit consists of utility technicians I-IV and is currently represented by International Brotherhood of Electrical Workers (IBEW), Local 196. The other unit is of field supervisors and they are represented by IBEW, Local 150. In the present matter, the Water Department has the following petitioned-for titles: administrative assistant, customer service representative, GIS specialist, technical specialist, utility analyst and utility specialist.

In the Electric Department there is one unit of employees currently being represented. These employees primarily consist of electric linemen, but also contain employees operating electric substations, meters and warehouse operations. These employees are represented by IBEW, Local 9. The Electric Department has the following petitioned-for titles: administrative assistant, senior administrative assistant, electrical engineering technicians, senior electrical engineer technician, financial engineering specialist, senior GIS technician, technical specialist, safety and training assistant, safety program supervisor, mapping technician, senior GIS mapping technician, GIS technician, office assistant, records technician and utility specialist.

The Electric Department does have a financial engineering specialist whose duties are to keep all financial and physical records for electric assets pursuant to federal standards. In 2009 she was asked to assist the Water Department with these exact duties. She averages about 8 hours a month performing these duties for the Water Department. There have also been several employees who have either made lateral or promotional transfers between the Electric and Water

departments. These employees applied for their new positions and were subject to the standard six-month probationary period to which all employees are subject. The same is true for several employees who either transferred into or out of the Electric or Water departments to other city departments.

There are 10 additional bargaining units throughout the City of Naperville. The Police Department has five bargaining units each representing one of the following position titles: police patrol officers, police detention officers, 911 telecommunicators, police sergeants and police records technicians. The Fire Department has one bargaining unit which represents both the firefighters and paramedics. The Department of Public Works has four bargaining units and they each represent one position title.

Of the petitioned-for titles, five within the Electric and Water departments are identical to titles in other departments throughout the City of Naperville that are not being petitioned-for in this matter. Those titles are administrative assistant, senior administrative assistant, G.I.S. technician, engineering technician, and records specialist. The Employer testified that the remaining titles perform work similar to other titles throughout the City of Naperville and therefore those other titles should be included in the petitioned-for bargaining unit. The Employer refers to these titles as being in distinct "job families." The following are the "job families" to which the Employer refers.

Administrative Support Job Family: petitioned-for titles of office assistant and financial engineering specialist are in the same family as messenger, administrative supervisor, community relations assistant, senior administrative assistant, riverwalk administrator, procurement assistant, payroll/accounts payable representative, assistant forester, public works specialist, reprographics supervisor, reprographics assistant, senior records specialist, records

specialist and executive secretary. These titles all require a minimum of a high school degree; working in an office environment with files, reports, and invoices; use of a computer to enter data; answering telephones; and some level of clerical skills including typing, and operating a fax machine, photocopier and printer.

Customer Service Job Family: the petitioned-for title of customer service representative share duties and functions with the following: customer service assistant, customer care specialist, claims administrator, account representative, senior account representative, vehicle reclamation officer, community education specialist, community service officer, animal control officer, crime prevention specialist, code enforcement officer, TED inspection team lead inspector, TED inspector city dispatcher and cashier throughout the City of Naperville. The Employer asserts that these titles all require a minimum of a high school diploma or equivalent; ability to operate computer systems and office equipment; training to maintain composure when dealing with irate or upset customers; ability to receive and process large quantities of phone calls from internal and external customers; and ability to answer questions and receive complaints. These employees also act as liaisons between customers and their respective departments; maintain service request logs; manage and analyze data and prepare reports regarding their activities. These titles index, prepare and file data in accordance with the rules of their database systems and the established procedures by the Employer.

Technician Job Family: the petitioned-for titles of electrical engineering technician, senior mapping technician, senior electrical engineering technician, GIS specialist, technical specialist, drafter and mapping technicians perform the same or similar job functions as GIS technician, senior mapping technician, crime scene technician, network administrator, senior network administrator, forensic unit technician I, personal computer technician, engineering

technician, chemist and human resources technician. The Employer asserts that these positions all require an associate's degree and knowledge of office equipment and general office procedure and operations. These titles are also required to review and analyze data or technical plans; provide technical assistance and/or field support; assist with design investigation, quality control, and maintenance of their department and in Employer-wide projects/investigations. They also collect data, enter data, create reports, and must have knowledge of the technical standards and procedures for their respective systems. They provide technical expertise for problem solving and assistance to other employees and third parties. Lastly, they work in teams and collaborate with other city departments on projects and investigations.

Analyst Job Family: the petitioned-for titles of utility analyst and utility specialist are in the same job family as benefits specialist, technical services assistant, benefits and wellness specialist, criminal intelligence analyst, administrative analyst, and budget and CIP analyst. The Employer states that these titles require the minimum of a high school diploma, knowledge of general office procedures and operations, strong presentation skills, and ability to: receive and analyze information; input pertinent information and facts into their proper relationship to the projects assigned; perform research and identify historical trends; maintain the integrity of data and documents they analyze; communicate information to department personnel, customers, vendors and third parties; engage in significant customer service (both internal and external); and use spreadsheets, word processing and other data systems to create and process reports and documents that demonstrate their analyses.

Safety and Training Job Family: the petitioned-for job titles of utilities safety and training instructor and safety & training assistant are in the same job family as the fire prevention inspector. These titles coordinate and conduct safety inspections and training; determine

compliance with local, state and federal rules and regulations; analyze plans and contingencies to evaluate their safety; monitor projects and report on their progress; engage in internal and external customer service; gather data and maintain detailed records of training, inspections and investigations; and these employees are often “on call” and must be available to perform their required functions.

IV. DISCUSSION AND ANALYSIS

The Employer argues that the petitioned-for unit is an inappropriate unit for bargaining within the meaning of Section 9(b) of the Act. This section states in relevant part that:

The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit 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. For the purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.

In applying these factors, the Board has made clear its preference for broadly-based bargaining units of municipal employees occupying identical job titles or performing similar job functions. Village of Bartlett, 3 PERI ¶ 2010 (IL SLRB 1986); DuPage County Board, 1 PERI ¶2003 (IL SLRB 1985). Pursuant to this policy, the Board has adopted a presumption that a unit is not appropriate where the employing entity operates under an established, centralized personnel system and the petition seeks to represent only a portion of employees possessing identical job titles and/or performing similar duties. Village of Bartlett, 3 PERI ¶2010 (IL SLRB 1986); DuPage County Board, 1 PERI ¶2003 (IL SLRB 1985). However, the Act does not mandate that a petitioned-for unit be the most appropriate unit, rather that the petitioned-for unit be an appropriate unit. Rend Lake Conservancy District, 14 PERI ¶ 2051 (IL SLRB 1998).

The Board has also held that where the employees in the larger unit share a community of interest, the smaller unit is appropriate only where the employees in the smaller unit share a “strong, identifiable community of interest separate from that of other employees” in the larger unit as a whole. City of Calumet City, 4 PERI ¶ 2037 (IL SLRB 1988); see also, County of DuPage, 1 PERI ¶ 2003 (IL SLRB 1985).

The evidence provided by the Employer supports a finding that a broader, city-wide unit has similar collective bargaining needs and similar terms and conditions of employment. These employees, including those petitioned-for in the Electric Department and Water Department, are all recruited, promoted and transferred by the Human Resource Department, are all subject to a uniform probationary period of six months and must attend compliance training and orientation; are subject to the same disciplinary policy conducted through Human Resources; must follow the same resignation policy, are paid according to a centralized cross-departmental salary range in their respective pay grades, are required to participate in the Illinois Municipal Retirement Fund and participate in the same benefit plans provided by the Employer; participate in the same centralized vacation, sick time, holiday and personal day policy; have access to the Employer’s Intra-Net and are eligible to receive recognition for “Employee of the Month.” Accordingly, the petitioned-for employees share a community of interest with those employees excluded from the petition who possess identical job titles and/or perform similar duties, making a city-wide unit appropriate.

Fragmentation

The Board has held that fragmentation of a classification raises a presumption that the proposed bargaining unit is inappropriate. The Board has said:

Where the employing public entity has an established and centralized job classification system, a presumption of inappropriateness is warranted solely by virtue of the fact that the petitioner has sought only a portion of employees who perform duties in identical job classifications. In the public sector, a commonality of functions and community of interest generally exists among people in the same job classification, which would often override such specific factors as common supervision and functional integration.

DuPage County Board, 1 PERI ¶ 2003 (IL SLRB 1985). The Board has provided the following rationale for this “presumption of inappropriateness”:

In the public sector, the concepts of community of interest and commonality in wages, hours, and working conditions are given expansive interpretations, to yield broad-based bargaining units whenever feasible. Larger, broad-based units are preferred in order to facilitate stability in labor relations and avoid excessive expense and difficulty in public bargaining and administration.

General Service Employees Union, Local 73 and County of Cook, 3 PERI ¶ 3033 (IL LRB 1987), quoting American Federation of State, County & Municipal Employees and Cook County, 2 PERI ¶ 3027 (IL LRB 1986). The Board has found it difficult to square the “presumption of inappropriateness” approach with section 9(b) of the Act, which states: “fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.” The Board has even decided not to apply the presumption in several recent cases.

If the presumption still exists, it can be rebutted. Dep’t of Cent. Mgt. Serv/Dep’t of Healthcare & Family Serv. v. Illinois Labor Relations Bd., State Panel, 388 Ill. App. 3d 319 (4th Dist. 2009); Int’l Bhd. of Teamsters, 23 PERI ¶173 (IL LRB 2007). If the “presumption of inappropriateness” is rebutted, the presumption vanishes. Then the issue will be determined as if no presumption ever existed. Lipscomb v. Sisters of St. Francis Health Services, Inc., 343 Ill. App. 3d 1036, 1041 (1st Dist. 2003), quoting Lehman v. Stephens, 148 Ill. App. 3d 538, 551 (4th Dist. 1986). To rebut the presumption, the evidence must be sufficient to support a finding of the

nonexistence of the presumed fact. Franciscan Sisters Health Care Corp. v. Dean, 95 Ill. 2d 452, 463 (4th Dist.1983). The weight of the rebutting evidence will depend on the strength of the presumption. Franciscan Sisters, 95 Ill. 2d at 463. Where there was evidence that a classification encompassed employees who did not have the same functions and community of interest, the Board found that the presumption was successfully rebutted. Dep't of Healthcare & Family Serv., 388 Ill. App. 3d at 337; Int'l Bhd. of Teamsters, 23 PERI ¶ 173.

In Dep't of Healthcare & Family Serv., 388 Ill. App. 3d at 337, the Board found a unit of only six attorneys to be appropriate where the State of Illinois objected claiming that the presumption of inappropriateness should be applied because the petition excluded approximately 120 attorneys in the “public service administrator option 8L” (PSA, opt. 8L) position title. The court relied on the fact that the publicly employed attorneys did not have the same job description and were not interchangeable within the State of Illinois in the sub-classification of PSA, opt. 8L. Id. Moreover, the court held that the six attorneys should not belong to same bargaining unit with the 120 PSA, opt. 8Ls simply because they are all attorneys. Id. Applying the section 9(b) factors, the court held that the smaller unit encompassing the six petitioned-for attorneys had the same skills and serve the same functions; that they were functionally integrated, interchangeable and had regular contact with each other; and that they had the same supervisor, hours, and working conditions making the smaller unit an appropriate unit, successfully rebutting the presumption. Id.

Applying the “presumption of inappropriateness,” the petitioned-for unit is inappropriate. There is little evidence to rebut the presumption in this case. Unlike the attorneys in the Dep't of Healthcare & Family Serv., here the smaller unit is not more functionally integrated with each other than they are with the larger, city-wide unit. The petitioned-for employees in the Water

Department do not share the same working conditions, supervisors or have more regular contact with the petitioned-for employees in the Electric Department. With the exception of the financial engineering technicians, there is no evidence that any other petitioned-for title is interchangeable within the Electric Department and Water Department. Although the Employer also argues interchangeability between several titles, the only evidence presented was that of several employees applying for and being hired in positions in different departments. An employee making lateral or promotional changes in employment is not considered interchangeable. The record is clear that when these employees changed department and/or position title they applied for the position and were subject to a new six-month probationary period.

Because larger, broad-based units are preferred in order to facilitate stability in labor relations and avoid excessive expense and difficulty in public bargaining and administration; certifying the petitioned-for unit, fragmenting it from other employees in the same title and/or performing the same or similar functions is inconsistent with the Board's presumption of inappropriateness. However, fragmentation cannot be the sole factor when addressing unit appropriateness and the remaining factors are addressed below.

Degree of Functional Integration and Historical Pattern of Bargaining

The Petitioner maintains that a unit composed solely of employees in the former Department of Utilities is an appropriate unit for purposes of collective bargaining as it is consistent with the Employer's past practice of organizing within single departments. The Employer does not have a historical pattern of recognition regarding the petitioned-for titles because they have never been organized. However, the Employer does have a historical pattern of organizing units departmentally, consisting of employees in one specific job classification.

The Employer has approximately 13 bargaining units and 12 of them are department specific, representing one title.

Currently, the petition is seeking to organize approximately 19 titles within two departments. This is not consistent with the Employer's past practice of organizing. The Petitioner argues that the Electric Department and Water Department still operates as one department – the Department of Utilities. The evidence demonstrates that the Department of Utilities recently went through reorganization when its director retired in April 2010. Now both the Electric Department and the Water Department have their own directors. Although the Petitioner is correct in stating that not much else has changed, this change is significant. Every other department within the City has only one director per department.

Also, but for the directors, two utility analysts, the safety instructor and their shared administrative assistant, no other employees share the same work space, have the same supervisors or have more interaction with each other within these two departments than they do with other City departments. The one instance of integration is the Electric Department's financial engineering technicians who worked between 8 and 20 hours a month for the Water Department. However, the Petitioner also admits that utility technicians in the Water Department perform inspections side-by-side with employees in the T.E.D. Department, who are not included in this petition.

The fact that the Electric Department and Water Department continue to have an annual breakfast with the Safety Department is not enough to conclude that the departments are in fact one or functionally integrated. Each department continues to have separate budgets, and they pay the administrative assistant and the Finance Department employees separately for duties performed for each department. The same is true for any other department. If the Water

Department does work for the Electric Department or any other department, that department has to pay for those services and vice versa. Thus, the Electric Department and Water Department are two separate departments and their employees are not functionally integrated. So although the Petitioner is correct in stating that the Employer has a history of bargaining departmentally, because the Electric Department and Water Department are two separate departments, this petition is not consistent with the Employer's historical bargaining practices.

Community of Interest Including Employee Skills and Functions

The Employer asserts that the Petitioner is selectively petitioning a group of administrative and engineering employees in and Electric Department and Water Department who share identical job classifications and functions with other employees located throughout the Employer's departments. The Board has held that where employees in the same job title function under a centralized personnel system, they should be combined in the same bargaining unit, even though they are not functionally integrated, have no interchangeability or regular contact with their counterparts in other agencies, and are supervised at the departmental level. County of Cook (Office of the Medical Examiner), 3 PERI ¶ 3033 (IL LLRB 1987); County of Cook (Office of the Medical Examiner), 3 PERI ¶ 3016 (IL LLRB 1987). However, in the above-mentioned cases, the Local Board held that in recent years the County of Cook has failed to consistently insist that petitioners seek all employees in the petitioned-for job classifications under its centralized job classification system. Therefore, the existence of smaller, less than county-wide bargaining units had become more prevalent. As a result of this development, the Local Board has been reluctant to apply its preference for county-wide large, functionally based bargaining units under circumstances in which a finding of inappropriateness would deprive public employees of the rights granted to them by the Act. County of Cook (Highway

Department and Purchasing Department), 24 PERI ¶ 36 (IL LLRB 2008); County of Cook (Office of Medical Examiner), 24 PERI ¶ 37 (IL LLRB 2008).

The Petitioner contends that the Board should apply these Cook County cases here and decline to apply the Board's preference for a larger bargaining unit because the Employer failed to seek all employees that perform the same job functions while the 911 telecommunicators were being organized. The 911 telecommunicators perform the same functions and have the same pay grade as the 311 telecommunicators who are not in the same bargaining unit. The same is argued with respect to the utility technicians in the Water Department who perform inspections with employees in the T.E.D. Department who the Petitioner admits the Employer is currently seeking to include in the petitioned-for unit. The Employer has only had the opportunity to seek a city-wide unit in one of the 13 bargaining units currently in place, and I find that hardly enough evidence to suggest that the Employer has – like the County of Cook – consistently failed to insist that petitioners seek all the employees in the petitioned-for job classifications under its centralized job classification system.

Of the 19 petitioned-for titles, the Employer states that five have the same classification and functions, and therefore argues the petition should include all employees in those titles throughout the City. The Employer further argues that the remaining petitioned-for titles perform the same or similar duties and functions with many other titles throughout the City of Naperville and therefore should also be included in the petitioned-for unit.

Unlike the attorneys in Dep't of Healthcare & Family Serv., here the evidence is not clear that the five titles with the same classifications perform the same duties. Moreover, there is no evidence that these titles are interchangeable. They do not have the same supervisor. The only thing that is consistent with Dep't of Healthcare & Family Serv., is that the titles have the same

pay grade. The Employer entered in evidence job descriptions for these titles as evidence that they are “universal” job descriptions and therefore the positions are interchangeable. The job descriptions provided only confirm that two of the five titles are actually “city-wide”. The other descriptions are department specific. The administrative assistant job description is for the position in the City Manager’s Office. The senior administrative assistant job description is for that position in the T.E.D. Department. Lastly, the engineering technician job description is for the Public Works Department. As such, the Employer’s reliance on these job descriptions as evidence that these five titles are interchangeable is not reasonable.

Regarding the “job families”, the Employer also argues that these titles are closely related to several titles throughout the City of Naperville, and therefore share a strong community of interest with the petitioned-for unit because they perform the same functions, possess the same skills and training and are subject to the same policies and rules of the Employer. The Employer’s position on “job families” introduces another scenario of organizing. The five “job families” described by the Employer are evidence of five possible groups of employees who share a stronger identifiable community of interest with each other than they do with a larger, city-wide bargaining unit. Although this was not the Employer’s intent, these “job families” are more appropriate as separate bargaining units than as an addition to the larger city-wide unit which the Employer advocates.

Distinct and Identifiable Petitioned-for Unit

Remaining is the question of whether the smaller petitioned-for unit is a sufficiently distinct and identifiable group that warrants being separately represented. Because I find there are two separate departments, I am also inclined to find that these two departments do not constitute a sufficiently distinct and identifiable group with each other anymore than they do

with the rest of the departments within the City of Naperville. First, as indicated in DuPage, a demonstration of an internal cohesiveness in the smaller group and existence of such factors as a traditional pattern of recognition or functional integration, may sufficiently outweigh considerations of common pay classification and “fragmentation”. DuPage. For that reason the Illinois Appellate Court for the First District held that departmental-based bargaining units within the State of Illinois government, less than State-wide classifications, are not presumptively inappropriate. Illinois Federation of Public Employees, Local 4408, IFT-AFT, AFL-CIO v. ISLRB, 12 PERI ¶ 4014 (IL SLRB 1996). As such the Board must determine unit appropriateness based upon all factors. Second, any presumption will not overcome any legitimate and rational basis for the appropriateness of the smaller unit. Rend Lake Conservancy, 14 PERI ¶ 2051. See, also, City of Rolling Meadows, 16 PERI ¶ 2022 (IL SLRB 2000); State of Illinois, Department of Central Management Services (Departments of Transportation and Natural Resources), 14 PERI ¶ 2019 (IL SLRB 1998).

I find little evidence to support a finding that the unit sought by the Petitioner constitutes a distinct and identifiable group in relation to other City employees. There is no evidence of an internal cohesiveness between the Electric and Water employees. Referencing those factors which I find make the larger city-wide unit appropriate and the other Section 9(b) factors there is nothing substantially different to distinguish the employees in the smaller unit. The evidence demonstrates that the petitioned-for employees within the Electric Department and Water Department do not share a stronger community of interest with each other than they do the employees in the same title or performing the same functions throughout the City of Naperville. The petitioned-for titles are not functionally integrated, they do not have the same supervisors or work in the same location and there is little evidence of interchangeability. The petitioned-for

titles are, however, in a centralized classification scheme with the remaining titles within the City of Naperville, there is one Human Resource Department that implements policies and procedures and rules that all employees have to follow. The Petitioner has not put forth a legitimate and rational basis for the appropriateness of the smaller unit. Therefore, I find that the smaller unit proposed by the petition is inappropriate.

V. CONCLUSIONS OF LAW

I find that the unit proposed by the petition is inappropriately narrow and therefore the petition should be dismissed.

VI. RECOMMENDED ORDER

I recommend that the petition be dismissed. Because the Petitioner did not express interest in any alternative structure of this bargaining unit, I decline to recommend an alternative.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommended Decision and Order. 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, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or

cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and 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 16th day of August 2011

**ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

A handwritten signature in cursive script, appearing to read "Elaine L. Tarver", written over a horizontal line.

Elaine L. Tarver, Administrative Law Judge