STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Service Employees International Union, Local 73,	)	
Petitioner	)	Case No. S-RC-12-103
and	)	
Village of Libertyville,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. Background

On July 5, 2012, the Service Employees International Union, Local 73 (SEIU or Union) filed a majority interest petition with the Illinois Labor Relations Board (Board) seeking to represent the titles Parks Facility Technician, Parks Equipment Technician, Arborist, Assistant Arborist, Parks Grounds Technician, and Parks Ground Assistant employed by the Village of Libertyville (Village or Employer) in its Public Works Department. The Village opposes the petition, asserting that the proposed unit is inappropriate under the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on November 14, 2012. Both parties elected to file post-hearing briefs.

II. Preliminary Findings

The parties stipulate and I find that:

1. At all times material, the Village has been a public employer within the meaning of Section 3(o) of the Act and the Board has jurisdiction over this matter pursuant to Sections 5(a) and 20(b) of the Act.

2. SEIU is a labor organization within the meaning of Section 3(i) of the Act.
3. SEIU filed a majority interest petition on or about June 5, 2012. The petitioned-for bargaining unit is as follows:

   Included: All full-time and part-time Parks Facility Technicians, Parks Equipment Technicians, Arborists, Assistant Arborists, Parks Grounds Technicians, and Parks Ground Assistants in the Department of Public Works.

   Excluded: All managerial, confidential, and supervisory employees as defined by the Act.

III. Issues and Contentions

The sole issue in this case is whether the petitioned-for unit is appropriate.

The Employer argues that the proposed unit is inappropriate because it fragments employee groups by separating the petitioned-for Parks Maintenance Division employees from the Streets and Utilities Division employees, currently represented by the International Union of Operating Engineers (IUOE). In support, the Employer asserts that the employees in the two divisions share a significant community of interest because they have similar skills, functions, supervision, wages, hours, and conditions of employment. Further, the Employer argues that the two groups of employees are functionally integrated and have contact with each other. The Employer also notes that it has no historical pattern of recognizing SEIU as the Parks Maintenance Division employees' exclusive representative which would warrant placing those employees in a stand-alone SEIU unit. As such, the Employer argues that the Board should add the petitioned-for employees to the Streets and Utilities unit.

Similarly, the Employer asserts that the petitioned-for unit is inappropriate because it does not follow the Village's centralized job classification system and rather seeks to "cherry-pick" from employees who share a community of interest. In particular, the Employer notes that its classification system groups Public Works technicians and specialists together, respectively, and pays them the same wages whether they are in the Parks Maintenance or the Streets and Utilities Division. The Employer argues that its centralized classification system therefore unites employees in the two divisions, overrides the more specific factors such as supervision and functional integration which might separate them, and thus mandates that the Board add the petitioned-for employees to the IUOE unit.

Further, the Employer argues that the proposed unit is inappropriate because there is no probative evidence that the petitioned-for employees wish to be represented by SEIU in a stand-alone unit rather than by IUOE in a combined unit with employees in the Streets and Utilities Division. In the alternative, the Employer contends that any evidence concerning employees' desire to be represented by SEIU is outweighed by the community of interest that the Parks Maintenance Division employees share with the Streets and Utilities Division employees. Moreover, the Employer asserts that the Board should add the petitioned-for employees to the IUOE unit because there is no evidence that IUOE would refuse to represent the Parks Maintenance Division employees if the Board selected IUOE as the employees' exclusive representative.

Finally, the Employer argues that the proposed unit is inappropriate because it does not include all non-supervisory positions in the Parks Maintenance Division and instead excludes the Parks Equipment Supervisor and the Parks Facility Specialist.

The Union counters that the petitioned-for unit is appropriate because the employees share a community of interest and have their own building, their own superintendent, and separate direct supervision. Further, the Union argues that the Employer failed to carry its burden to show that the petitioned-for employees lack a community of interest because it did not present "specific and apposite examples of regular work duties that destroy the community of interest among the petitioned-for employees."

In addition, the Union asserts the proposed unit would not result in undue fragmentation of employee groups, but that even if it did, fragmentation alone is not an adequate basis on which to dismiss a petition.

Finally, the Union asserts that it is irrelevant that the petitioned-for employees share various factors in common with employees in an existing bargaining unit because it is inappropriate to place the petitioned-for employees into a unit represented by a union that does not want to represent them. To do so, the Union contends, would deny the petitioned-for employees the right to a free choice of representative guaranteed by the Act.

IV. Facts

Director of Public Works and Village engineer John Heinz heads the Village's Public Works Department (Department). The Department is comprised of five divisions, the Parks

Maintenance Division, the Engineering Division, the Streets and Utilities Division, the Waste Water Treatment Division, and the Fleet Services Division.

1. Parks and Maintenance Division

Superintendent of Parks James Barlow oversees the Parks and Maintenance Division ("Parks Division" or "Parks"). This Division is responsible for the upkeep and maintenance of all the parks in the Village. The Parks employees maintain several pools, a golf course, the grounds at the Libertyville Sports Complex, several other buildings and grounds, the forestry area, and the equipment necessary to maintain those buildings and grounds. According to Heinz, Barlow supervises nine employees, the Parks Maintenance Supervisor, the Golf Maintenance Specialist, the Arborist, the Assistant Arborist, the Parks Equipment Supervisor, the Parks Facility Technician, and four Parks Grounds Technicians. Barlow testified that he also oversees a Facility Specialist.

2. Parks and Maintenance Division Employees' Skills and Functions

Barlow testified that all Parks Maintenance Division employees are responsible for plowing snow and removing ice.

Jeff Fanella is the Parks Equipment Supervisor. He is a mechanic who maintains and repairs the equipment used by Parks Division employees. This includes approximately 128 pieces of equipment including chain saws, chippers, mowers, pumps, and other equipment. Fanella performs these repairs at the Parks Division building which is located at 544 North Avenue in Libertyville.

According to Fanella's job description which sets out examples of his essential duties, Fanella performs complex mechanical repair and maintenance of reel mowers, trimmers, tractors, chainsaws, gasoline and diesel powered engines, and other related equipment. Further, he reads and follows service manual guidelines and techniques, conducts inspections, and documents the repairs and services he performs. He also performs intensive preventative maintenance, diagnoses difficult operating problems and operates various power and hand tools, air tools and electronic meters. In addition, he orders and maintains inventory of supplies, assists in budgeting for all equipment repairs, maintenance and supplies, and trains other employees. Finally, he observes standard operating procedures and safety practices, attends training, and

actively promotes, supports, and adheres to the Village's safety programs, and performs other duties as assigned.

Dennis Matusek is the Village Arborist. The Arborist is responsible for the maintenance and well-being of all the Village's street trees and park trees. According to Matusek's job description which sets out examples of his essential duties, Matusek prunes, removes, plants, and reutilizes the Village's trees, diagnoses tree disorders and diseases, prunes or removes storm damages tree/debris and responds to permit requests. In addition, he cuts grass, trims, edges, and removes debris from the sidewalk, removes snow and ice from Village sidewalks, steps and street corners, and assists other departments as required. He also performs record keeping and maintains files on work performed, attends training, supports and actively promotes the Village's safety programs, assists with periodic safety inspections, identifies and corrects safety hazards, responds to emergency calls for service and works outside of normal working hours as needed. He works closely with residents, nurseries, landscape/tree contractors, and state agencies, and makes budget recommendations. Finally, he maintains and updates the parkway tree software program, the tree planting and pruning programs and the memorial tree planting and Tree City Awards.

Dave Heurich is the Assistant Arborist. He has the same responsibilities as the Arborist but has a lower skill level and performs more manual labor. According to Heurich's job description which sets out examples of his essential duties, Heurich assists with pruning, removal, planting, and fertilizing of the Village's trees. He also assists in the diagnosis of tree disorders and diseases, picks up branches, twigs, and other debris from storm-damaged trees and responds to permit requests. He cuts grass, trims, edges, and removes debris from Village sidewalks, steps and street corners. He assists other departments as required. He attends training, supports and actively promotes and adheres to the Village's safety programs, assists with periodic safety inspections, identifies and corrects safety hazards, responds to emergency calls for service and works outside of normal working hours as needed. Finally, he performs snow and ice removal, maintains ice skating rinks, performs park and restroom maintenance and performs herbicide treatment of trees and shrubs.

The Parks Grounds Technicians "do everything." They landscape, weed, and pick up the trash. Occasionally, they perform chemical controls, snow removal, and ice rink maintenance and assist the Arborists when needed. According to the job description which sets out examples

of their essential duties, the Parks Grounds Technicians perform mowing and edging of walkways and curbs. They clean up trash, clippings, leaves and debris. They also prune and trim small trees, shrubs, and flowers and perform brush removal. They inspect and maintain irrigation systems, water non-automated landscape areas, remove snow and ice, maintain ice skating rinks and clean up graffiti. They stock and clean public restrooms, perform minor repairs on park buildings and shelters, install and maintain playground equipment and assist with special events and seasonal activities. Finally, they attend training, support and actively promote and adhere to the Village's safety programs, assist with periodic safety inspections, and identify and correct safety hazards.

The Parks Facility Specialist position is responsible for all the Village's buildings, building maintenance, and pool operations. According to the job description which sets forth the Parks Facility Specialist's essential duties, the specialist organizes, schedules, and coordinates daily cleaning and maintenance of facilities. He schedules, assists and inspects work completed and makes recommendations for preventative maintenance and facility improvement. The specialist also works with facility managers and supervisors to coordinate events and rentals. He assists with maintaining an inventory of cleaning supplies and paper products, performs repairs to heating, air conditioning, electrical and plumbing systems, completes special projects and maintains records and files. He mows, trims, picks up trash and debris at Village owned facilities, assists with snow and ice removal from streets and sidewalks, responds to emergency calls for service on a call out basis, and works outside normal business hours as required. He supervises full-time seasonal/summer staff and monitors janitorial services. He also maintains and repairs automated pitching machines, tee-up machines and climbing wall equipment, repairs ceramic tiles, paints walls, and maintains the lightening detection system. Finally he observes standard operating procedures and safety practices, attends training, and actively promotes, adheres to and supports the Village's safety programs.

3. Parks and Maintenance Division Wages, Hours, and Working Conditions

The Parks employees' hours are 6:30 am to 3:00 pm, Monday through Friday. The Parks Maintenance Division has its main offices at 544 North Avenue. However, the Parks Division employees spend only 5-10 percent of their work time in the buildings and spend the rest of their time in the Village's parks and streets.

The Parks employees are governed by the Employee Handbook which applies to all Village employees including managers, supervisors, and unionized employees.[1]

The Parks employees are paid according to the Village's Pay Plan and job classification system. They receive pay increases based on merit and also receive slight cost of living adjustments. On May 1, 2012, the Parks employees received a 1% wage increase. Further they receive health care under the Village's insurance plan and thus pay a portion of their health insurance premiums out of their paychecks. They do not receive double time for overtime work. The Parks Grounds Technician, the Parks Facility Technician and the Assistant Arborist titles earn approximately $41,000 to $63,000 per year. The Parks Grounds Specialist and the Parks Facility Specialist titles earn approximately $43,000 to $67,000 per year. The Arborist title earns approximately $46,000 to $72,000 per year. The Parks Equipment Supervisor title earns approximately $49,000 to $75,000 per year.

The Parks Equipment Supervisor, Arborist, Assistant Arborist, Parks Grounds Technicians, and Parks Facility Specialist must stand, sit, stoop, bend, work in confined spaces, lift heavy objects (up to 100 pounds), and perform other similar actions during the course of the work day. The Parks Equipment Supervisor, Parks Facility Specialist, and the Parks Grounds Technician perform work that involves exposure to potential physical harm. All positions must perform moderate to heavy work in all types of weather. In particular the Village Arborist and the Assistant Arborist must perform medium to heavy work outside in inclement weather and difficult conditions. The Parks Equipment Supervisor, the Parks Grounds Technicians and the Parks Facility Specialist must perform tasks that expose them to dangerous chemicals, machinery and/or infectious diseases.

The Parks Facilities Specialist, the Grounds Maintenance Technicians, the Arborist and the Assistant Arborist all receive daily assignments from Parks Maintenance Supervisor, Dave Thornborough or Parks Superintendent Barlow between 6:30 and 6:40 am at 544 North Ave., either in the break room or in the front office. While Parks Equipment Supervisor Fanella also reports to Thornborough and Barlow, he does not receive daily assignments from them because he generally performs the same tasks each day. Some Parks Division employees sometimes received job assignments from Martin Wittrock, the Superintendent of the Streets and Utilities

[1] With respect to unionized employees, the collective bargaining agreement governs when there is a conflict between the handbook and the collective bargaining agreement.

Division when the employees from the Park Division and Streets Division work together to remove snow.

4. Parks Maintenance Division Employees' Education, License, Certification, and Experience Requirements

The Parks Equipment Supervisor, Arborist, Assistant Arborist, Parks Grounds Technicians, and Parks Facility Specialist positions require a high school diploma or the equivalent. However the Arborist position additionally requires arboriculture industry-related courses.

Each position listed above requires different licenses and certifications, however all positions require a driver's license of some nature. The Parks Equipment Supervisor position requires a Class A Commercial Driver's License and Maintenance Core of Landscape Technician Certification; the Arborist position similarly requires a Class A Commercial Driver's License, but also requires an Illinois Arborist Certification and a Pesticide Applicator's License for Ornamentals; the Assistant Arborist position likewise requires Class A Commercial Driver's License, an Illinois Arborist Certification, and a Pesticide Operator's License or ability to obtain both within 1 year of employment; the Parks Grounds Technician title requires a Class A Commercial Driver's License and the ability to obtain an Illinois Pesticide Operator's License; the Parks Facility Specialist position requires a valid motor vehicles "Class C" operator's license.

The Parks Equipment Supervisor position requires four years of small engine repair experience including two years of turf equipment repair experience. The Arborist position requires five years experience in tree pruning or arboriculture and two years of supervisory experience. The Assistant Arborist position requires one year experience in tree pruning or grounds maintenance. The Parks Grounds Technician position requires no prior work experience, but benefits from knowledge of trees, shrubs, and turf. The Parks Facility Specialist position requires three years electrical, plumbing, and HVAC experience.

5. Streets and Utilities Division

Superintendent Martin Wittrock heads the Streets and Utilities Division which maintains the Village's water system, sanitary sewer system, storm sewer system, streets, curbs, gutters, sidewalks, street lighting, fleet of Village vehicles, and all the equipment that relates to the

Village's fleet except those which are maintained by the Parks Maintenance Division. The Division's building is located kitty corner from the Parks Maintenance Division building and is surrounded by a fence.

The Streets Division is comprised of three sections, the Fleet Maintenance Operations section, the Utilities section and the Streets section. The Fleet Maintenance Operations section maintains all of the Village's vehicles, other than those maintained by the Parks Division. Specifically, it repairs the fire department and police department's vehicles and all the public works trucks. It also maintains the larger trucks which belong to the Parks Maintenance Division. Further, it fixes mowers, blowers, generators, and other similar equipment. The Utilities Division maintains the Village's infrastructure including the water system, the sewer collection system, and the storm sewer system. It maintains the water lines, the water mains and the water meters. The Streets Department maintains the streets and fixes potholes, sidewalks, parkways, curbs, and streetlights.

On November 18, 2011, the Board certified IUOE as the exclusive representative of the following titles within the Streets and Utilities Division: Equipment Mechanic I and II, Water System Operator, and Maintenance Technician. The Village began negotiating a contract with IUOE-represented employees in February 2012. The contract became effective as of August 1, 2012.

a. Streets and Utilities Division Employees' Skills and Functions

The Equipment Mechanic I performs mechanical repair and maintenance of automobiles, trucks, tractors, and equipment such as graders, scrapers, dozers, backhoes, and sweepers; follows service manual guidelines and techniques; conducts inspections; and documents repairs and services performed. He also performs preventative maintenance, diagnoses operating problems, operates various power and hand tools including pc hand-held scanners, air tools, electronic meters, wrenches, and sockets, and cleans vehicles and equipment. Finally he observes standard operating procedures and safety practices, attends training and actively promotes and supports the Village's safety programs.

The Water System Operator performs water sample collections per the Illinois Environmental Protection Agency (IEPA) requirements, performs water sample analysis for hardness, iron, lead/copper, chlorine, and fluoride content. He also responds to service calls for

meter changes, leaks, water quality, and high usage. In addition, he repairs, replaces and overhauls hydrants, valves, pumps, and other components of the water distribution system. He maintains wells, pumping stations, water storage tanks, and associated electrical, mechanical and control equipment. He also monitors and makes periodic adjustments as necessary to the computerized water control system. Finally he performs record keeping and maintains files, supports and actively promotes the Village's safety programs, assists with periodic safety inspections, identifies and corrects safety hazards, responds to emergency calls for service on a call out basis, and works outside normal business hours as needed.

The Public Works Technician is responsible for operating various vehicles and equipment and performs semi-skilled tasks in the maintenance of the Village's infrastructure. His essential duties include establishing a safe work area, coordinating activities with employees, contractors or the general public as necessary, operating a variety of maintenance equipment not limited to dump trucks, backhoes, loaders, sewer cleaning equipment, street sweepers, mower and or leaf machines, performing duties associated with that equipment such as paving, patching, painting and snow/ice removal, installing and replacing street signs, performing pavement repair, maintaining and repairing Village buildings, fixing water main breaks, and rebuilding storm inlets and sanitary manholes. In addition he inspects, maintains, and repairs department equipment.

All Streets and Utilities Division employees plow snow and mow grass.

b. Streets and Utilities Division Employees' Education, License, Certification and Experience Requirements

All positions in the Streets and Utilities Division, referenced above, require a high school diploma or the equivalent.

All the Streets and Utilities Division positions require a valid "Class A" Commercial Driver's License. In addition, the Water System Operator position requires a "Class C" Water Operator's license or ability to obtain one within one year of employment. Further, the Equipment Mechanic II position requires Master ASE Certification as an Automobile Technician or a Medium Heavy Truck Technician.

All positions require one to four years experience. The Equipment Mechanic I position requires two years vehicle maintenance experience. The Equipment Mechanic II position

requires two years vehicle maintenance experience. The Water System Operator position requires three years mechanical repair and maintenance experience in the water distribution field. The Public Works Maintenance Technician position requires one year maintenance experience.

c. Streets and Utilities Division Employees' Wages, Hours, and Working Conditions

The Streets and Utilities Division employees work from 7:00 am to 3:30 pm, Monday through Friday. They receive assignments from Streets and Utilities Division Superintendent Wittrock.

The Streets and Utilities employees' terms and conditions of employment are set by the collective bargaining agreement between IUOE and the Village. The Village compensates employees based on their position in the contract's 20-year step system. The Village's 2011-2012 Salary Plan played a direct role in negotiating the wage ranges in the contract. The minimum and the maximum salaries in the salary plan correlate with the one-year step and the 20-year step salary figures in the collective bargaining agreement's step system. On May 1, 2012, the Village granted a 1% wage increase to IUOE-represented employees. Employees also receive cost-of-living increases each year and double time for overtime work. Further, the Village pays the entire cost of their health insurance.

The contract between the Village and IUOE became effective on August 1, 2012. Prior to August 1, 2012, the Streets and Utilities employees currently represented by IUOE received the same insurance benefits as the Village's other non-represented employees. Further, prior to August 1, 2012, the Streets and Utilities employees were covered by the same pay plan as the Parks Division employees.

All Streets and Utilities Division employees must frequently stand, stoop, walk, climb, balance, lift heavy objects (up to 75 pounds; or 100 pounds for the Water System Operator), and perform other similar actions during the course of the work day. In addition, they all perform work which involves exposure to potential physical harm, dangerous machinery, hazardous materials and/or potentially infectious disease. Additionally, the Water System Operator and the Public Works Maintenance Technician perform moderate to heavy work in all types of weather.

6. Overlapping Duties of Employees in the Two Divisions and Interaction Between the Groups

The Parks Division has grown smaller over the past four years. As a result, it relies heavily on employees from the Streets and Utilities Division for assistance to perform certain tasks. Employees in one division will ask employees from the other division for help if they need assistance in the other division's area of expertise. Barlow and Wittrock also converse a couple times a week to coordinate work between the divisions and to ask for help on projects. However, Parks Maintenance employees and the Streets and Utilities employees do not work together except during the summer and during snowfall emergencies.

Both the Parks Maintenance and the Street and Utilities employees mow grass. Parks employees mow the parks and public retention ponds; the Streets and Utilities employees mow the water building areas and public rights of way. The Parks Maintenance Division and the Streets and Utilities Divisions have shared responsibility for mowing the Village Hall grounds and the Schertz Building grounds.

Both the Parks employees and Street and Utilities employees perform debris cleanup when storms damage the Village's street trees.

Both the Parks employees and the Street and Utilities employees work on the Village's many special events. The two divisions jointly decide where to place snow fences and barricades. The Parks Division installs snow fences; the Streets Division installs barricades.[2] After the events, Parks employees perform manual clean up; the Streets employees clean the streets with street cleaners.

Both the Parks employees and the Streets and Utilities employees perform snow and ice removal. Before plowing, a Streets and Utilities Division crew identifies trees that must be trimmed, so that the trees do not break the mirrors off the snowplow trucks. The crew gives a list of those trees to Barlow or directly to the Arborist so that the trees may be trimmed. Then, the Parks employees clear park roads, trails, bike paths, and sidewalks throughout the Village; the Streets and Utilities employees clear the Village roads, streets, parking lots, parking garages and some sidewalks. The Streets employees repair sidewalks if the Parks employees damage them when they plow snow. In addition, employees from both divisions perform downtown

[2] The Streets and Utilities division provides buckets to use with the snow fence posts provided by the Parks Division employees.

clean up to remove accumulated snow from the area after frequent and heavy storms. Finally, Streets and Utilities Superintendent Wittrock uses Parks Maintenance employees as backup drivers in snow emergencies.

Both Park employees and Streets and Utilities employees perform mechanical repairs. The Streets and Utilities employees maintain the Village's fleet including the Parks Maintenance Division's trucks while the Parks Maintenance Division maintains the small equipment. The mechanics from the two divisions interact with each other to discuss issues. Occasionally, mechanics from the Streets and Utilities Division ask advice from Parks Equipment Supervisor Fanella because he is skilled in certain areas including hydraulics and small equipment repair. Likewise, Fanella also consults with individuals in the Streets and Utilities Division to troubleshoot. The Streets and Utilities Division once sent a mower to the Parks Maintenance Division for repair because they could not fix it themselves. However, Fanella does not work alongside the mechanics in the Streets and Utilities Division.

The Parks Maintenance Division employees install most of the Village's park signs, although the Streets and Utilities employees have installed signs for the Parks Division on occasion. Barlow and Wittrock determine by consensus which Division will install and repair the signs depending on the location of the sign, which employees are available, and how quickly the work needs to be done.

The Parks Maintenance Division employees ask the Streets and Utilities Division employees to assist them in removing the sidewalks so that they may remove or maintain leaky irrigation systems. The Streets and Utilities Division employees then replace the sidewalk after the Parks Division employees repair the irrigation system.

When there is a storm that knocks down trees, the Parks Division supplies a chipper and the Streets and Utilities Division provides trucks and personnel to clean up the trees that were knocked down.

The Village will sometimes send employees from the Streets and Utilities Division and the Parks Division to help other towns in emergencies. The employees from the two divisions work together under those circumstances.

Finally, there is cross training between the Streets and Utilities employees and the Parks Maintenance employees. Both sets of employees attended an annual meeting concerning snowplow operations and take a snowplowing-related test. In addition, employees from both

divisions are involved in the Safety Committee to ensure that they follow safety guidelines. They also participate in confined space training for work performed at the pools.

7. Employees' desires

A majority of employees in the petitioned-for titles signed SEIU authorization cards. However, Barlow testified that Fanella told him that he initially contacted IUOE to obtain their representation but that IUOE agents stated they did not want to represent the Parks Division employees.

Ken Edwards, field attorney/organizer for IUOE, testified that he invited employees from the Streets and Utilities Division and the Parks Division to the initial organizer meeting during IUOE's organizing drive but that no employees from the Parks Maintenance Division showed up. Edwards further testified that, as a result, he believed that the Parks Division employees had no desire to join IUOE. As far as Edwards was aware, none of the employees in the Parks Division signed cards to join IUOE. IUOE currently has no interest in representing employees in the Parks Division.

V. Discussion and Analysis

The petitioned-for unit is appropriate because the employees at issue share a community of interest and have expressed a clear desire to be represented by SEIU.

Section 9(b) of the Act provides that, "[t]he 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 involved; and the desire of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit." 5 ILCS 315/9(b) (2010). Section 9(b) of the Act does not require that a proposed unit be the most appropriate or the only appropriate unit. Cnty. of Cook (Provident Hosp.), 369 Ill. App. 3d 112, 118 (1st Dist. 2006).

Here, the petitioned-for employees share a community of interest because they have similar wages, hours, and working conditions, common supervision, similar skills and functions, have contact with each other, are interchangeable with respect to some tasks, and are functionally integrated.

First, the petitioned-for employees have similar wages and benefits. Here, the employees earn, at minimum, approximately $40,000 to $50,000 a year, and at maximum, approximately $63,000 to $75,000 a year, under the Village's Pay Plan and job classification system. See Elmhurst Park Dist., 16 PERI ¶ 2042 (IL LRB-SP ALJ 2000) (finding full-time employees shared similar wages where employee with highest hourly rate earned $20.81 while employee with lowest hourly rate earned $14.31). Further, they all receive slight cost of living adjustments (most recently a 1% increase) and increases based on merit. Next, none of the petitioned-for employees receive double-time for their overtime work. Finally, they all receive health care under the Village's insurance plan.

Next, the petitioned-for employees share the same hours and have similar working conditions. All petitioned-for employees work from 6:30 am to 3:00 pm, Monday through Friday. They are all governed by the Employee Handbook. They all spend 90-95% of their time in Village's parks and streets performing manual labor which requires them to stand, sit stoop, bend, work in confined spaces, lift heavy objects (up to 100 pounds), and perform other similar actions during the course of the work day. Further, employees in all positions must perform moderate to heavy work in all types of weather and must perform work that is physically trying or possibly dangerous. For example, the Parks Equipment Supervisor[3] and the Parks Grounds Technicians must perform tasks that expose them to dangerous chemicals, machinery and/or infectious diseases while the Village Arborist and the Assistant Arborist must perform medium to heavy work outside in inclement weather and difficult conditions. City of Geneva, 10 PERI ¶ 2031 (IL SLRB 1994) (considering danger of work performed in assessing community of interest).

In addition, the petitioned-for employees are subject to common supervision because they all report to, and receive assignments from, Parks Maintenance Supervisor Dave Thornborough

[3] As discussed below, SEIU petitioned for this employee in this position but made a clerical error in designating the individual's proper title on the petition.

and Parks Superintendent Barlow in the Parks Maintenance Division's main offices at 544 North Avenue.[4]

Further, the petitioned-for employees have similar skills and functions, even though certain positions require greater skill than others, because all employees perform blue-collar work and share certain basic qualifications. Vill. of Woodridge, 18 PERI ¶ 2001 (IL LRB ALJ 2001) (employees had similar skills and functions where they performed blue collar work); see also Vill. of Worth, 3 PERI ¶ 2042 (IL SLRB ALJ 1987) (finding that mechanics and public works employees' skills and functions were similar because they performed blue collar work). Here, all positions require a high school diploma or the equivalent, all positions require a driver's license of some sort, and all employees in the petitioned-for titles work with tools, equipment, and vehicles. Although the different positions require different licenses, certifications and training, these differences are not so significant that they undermine the employees' community of interest. Vill. of Worth, 3 PERI ¶ 2042 (IL SLRB ALJ 1987) (noting that employees who performed manual labor and work with tools, equipment, and vehicles shared similar skills and functions, even those some employees had different or greater skills than other employees) (citing DuPage Cnty. Bd., 1 PERI ¶ 2003 (IL SLRB 1985).

Next, there is sufficient interchangeability between employees to support a finding that they share a community of interest with respect to this factor, even though some positions perform specialized tasks, because all Parks Maintenance Division employees assist with snow and ice removal from streets and sidewalks and all employees except for the Parks Equipment Supervisor perform some type of trimming of foliage or mowing of grass. As such, the petitioned-for Park Maintenance employees are interchangeable with respect to those particular tasks. Vill. of Woodridge, 18 PERI ¶ 2001 (IL LRB ALJ 2001) (finding that interchangeability among some employees with respect to some tasks warranted a finding that this factor supported the proposed unit's community of interest).

In addition, there is contact among employees because they see each other regularly. Here, all but one petitioned-for employee receive daily assignments from Thornborough or Barlow between 6:30 am and 6:40 am in the break room or in the front office of 544 North Ave. While the Parks Equipment Supervisor does not receive such assignments daily, he is present when the others receive them. Id. (finding that contact among employees existed where all

[4] Not all petitioned-for employees receive new assignments daily from these individuals.

public works employees reported for duty at the department's facility and saw each other as they walked through the building, even though one title did not attend the morning meeting attended by the others in the proposed unit).

Similarly, the petitioned-for employees share some functional integration because the Parks Equipment Supervisor repairs equipment used by other employees in the proposed unit and because all the employees work to further the purpose of the employer in maintaining the Village's Parks. City of Geneva, 10 PERI ¶ 2031 (IL SLRB 1994) (finding functional integration between linemen and coordinator where the coordinator enabled the linemen to perform their functions by keeping them supplied with the materials and equipment they need); Vill. of Woodridge, 18 PERI ¶ 2001 (IL LRB ALJ 2001) (finding functional integration existed where Head Equipment Technician and Equipment Technician repaired vehicles and equipment used by the Maintenance Workers and other employees in the proposed unit); Elmhurst Park Dist., 16 PERI ¶ 2042 (IL LRB-SP ALJ 2000)(finding some functional integration between full- and part-time employees of the Park District where they all worked to further the overall purpose of the employer in providing recreational activities and programs).

Moreover, the petitioned-for employees demonstrated a clear desire to be represented by SEIU in a stand-alone unit because a majority of employees in the petitioned-for titles signed SEIU authorization cards. City of Chicago v. Ill. Labor Rel. Bd., Local Panel, 396 Ill. App. 3d 61, 71 (1st Dist. 2009) (tally of majority interest reflected employees' desire to have their own bargaining unit); see also Ill. Council of Police v. Ill. Labor Rel. Bd., Local Panel, 404 Ill. App. 3d 589, 599 (1st Dist. 2010); But see DuPage Cnty. Bd., 1 PERI ¶ 2003 FN 22 (IL SLRB 1985) (no clear desire of employees demonstrated where petitioner asserted a willingness to accept an election in a combined unit).

Finally, contrary to the Employer's contention, the remaining 9(b) factors, historical pattern of recognition and fragmentation, do not warrant dismissal of the petition. First, the "historical pattern of recognition" factor favors neither party because the petitioned-for employees have never been represented by a union in the past. City of Chicago v. Ill. Labor Rel. Bd., Local Panel, 396 Ill. App. 3d at 70 (no historical pattern of recognition where employees at issue had never been represented by a union). Second, although the proposed unit fragments employee groups by placing the Parks Maintenance Division employees in a separate bargaining unit from the Streets and Utilities Division employees, this factor does not

warrant dismissal because "fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit." 5 ILCS 315/9(b) (2010).

Further contrary to the Employer's contention, it does not matter whether the IUOE unit is an appropriate one for the petitioned-for employees because IUOE did not seek to represent the employees at issue here. Ill. Council of Police, 404 Ill. App. 3d at 600 (noting that question at issue concerned whether ICOP's petition for a stand-alone unit of sergeants was appropriate and not whether the sergeants should be placed in Unit II, a different unit, whose representing unions never moved to represent the petitioned-for sergeants); City of Chicago, 396 Ill. App. 3d 70-71 (affirming Board's rejection of City's argument that petitioned-for nurses should be included in an INA-represented bargaining unit with other City nurses when INA never sought to represent the petitioned-for employees); see also State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Agriculture, et al.), 29 PERI ¶ 63 (IL LRB-SP 2012). This reasoning applies, even though the Employer asserts that there is no evidence that IUOE would refuse to represent the Parks Maintenance employees if the Board selected IUOE as the employees' exclusive representative, because the Board cannot choose a representative for the employees which has not sought to represent them and which has not obtained a sufficient showing of interest. Thus, to countenance the Employer's argument here would be to deny the petitioned-for employees their rights under Section 2 of the Act to "full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection." City of Chicago, 396 Ill. App. 3d at 70; 5 ILCS 315/2 (2010).

Notably, the cases cited by the Employer in support of a combined unit are inapposite because they do not address the instant circumstance where one group of employees in that proposed unit is already represented by another union which has not sought to represent the petitioned-for group. Cf. Quincy Park Dist., 10 PERI ¶ 2015 (IL SLRB ALJ 1994) (applying presumption of inappropriateness where union sought only a portion of employees who perform duties in identical job classifications where the remaining employees were yet unrepresented); Cf. Village of Woodridge, 3 PERI ¶ 2035 (IL SLRB 1987) (finding that appropriate unit was blue-collar unit of municipality's employees from all departments, as opposed to stand-alone public service department unit, where none of the employees at issue were represented by another union); Cook Cnty. (Office of Medical Examiner), 3 PERI ¶ 3033 (IL LLRB 1987)

(Union's representation petition, seeking election and certification in unit consisting of clerical employees in county medical examiner's office, was dismissed as seeking inappropriate unit where proposed unit did not include unrepresented clerical employees in other county departments).

By the same rationale, the Employer is incorrect in its assertion that the SEIU unit seeks to "cherry pick" from employees who share a community of interest by seeking to represent only the Parks Maintenance employees and not the Streets employees because the Streets employees are already represented by IUOE and are not free to be represented by SEIU at this time.

Next, this petition should not be dismissed, even though SEIU did not state the correct name of one title it sought to represent (Parks Equipment Supervisor), because SEIU's mistake was a clerical error and the Employer was placed on notice that SEIU sought to represent that title. Here SEIU formally petitioned for the Parks Equipment Technician position, which does not exist, instead of petitioning for the Parks Equipment Supervisor position, a non-supervisory title which does appear in the Village's documents. However, the petition should not be dismissed for failure to include this position because the omitted title is so similar to the included one that the Board may infer that SEIU made a clerical error. Further, the Employer, in this case, may be deemed aware of this clerical error because the incumbent of the Parks Equipment Supervisor position testified that he chose SEIU as his collective bargaining representative. Thus, the Employer was placed on notice both that SEIU intended to petition for the Parks Equipment Supervisor title and that SEIU's substitution of "Parks Equipment Technician" for "Parks Equipment Supervisor" in its petition was a clerical error.

Similarly, the petition should not be dismissed, even though SEIU did not petition for the Parks Facility Specialist position, a non-supervisory title in the Parks Maintenance Division. Rather, the Board should add that position to the petitioned-for unit because it shares a community of interest with the petitioned-for titles.[5] The Parks Facility Specialist shares a community of interest with the petitioned for employees because that position has similar wages, hours, and working conditions, common supervision, and similar skills and functions as the petitioned-for titles. Further the Parks Facility Specialist has contact with the petitioned-for

[5] Notably, the Employer implicitly concurs in this finding because it asserts that the unit is otherwise inappropriate *without* the Parks Facility Specialist position.

employees, is interchangeable with them with respect to some tasks, and is functionally integrated with them.

Like the petitioned-for employees, the Parks Facility Specialist earns at minimum, approximately $40,000 to $50,000 a year, and at maximum, approximately $63,000 to $75,000, receives slight cost of living adjustments and increases based on merit, receives healthcare under the Village's insurance, and does not earn double time for overtime performed. Like the petitioned-for employees, the Parks Facility Specialist works from 6:30 am to 3:00 pm, Monday through Friday, is governed by the Employee Handbook, spends 90-95% of his time in Village's parks and streets performing manual labor, and is exposed to physical danger in the course of his work. Further, the Parks Facility Specialist is overseen by the same supervisors as the petitioned-for employees. In addition, like the petitioned-for employees, the Parks Facility Specialist performs blue collar work and is interchangeable with the petitioned-for employees when he plows snow and mows grass. Further, the Parks Facility Specialist has contact with the petitioned-for employees because he sees them daily and receives assignments alongside most of them. Finally, the Parks Facility Specialist is functionally integrated with the petitioned-for employees because the Parks Equipment Supervisor repairs the equipment and machinery that the specialist uses for his day-to-day tasks. Thus, the Parks Facility Specialist shares a community of interest with the petitioned-for employees and should be included in the unit.[6]

In conclusion, the petitioned-for unit is appropriate because the employees share a community of interest as demonstrated by their similar wages, hours, and other working conditions, common supervision, their degree of functional integration, the interchangeability and contact among employees, and their desire to be represented by SEIU. Further, the unit, as certified by the Board, should include the non-petitioned-for Parks Facility Specialist position because that position shares a community of interest with the petitioned-for titles.

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[6] SEIU maintains a sufficient showing of interest despite the addition of one title which has a single incumbent.

VI. Conclusions of Law

1. The petitioned-for unit is appropriate.
2. The unit as certified by the Board should include the Parks Facility Specialist position.

VII. Recommended Order

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the Service Employees International Union, Local 73, shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: All full-time and part-time employees of the Village of Libertyville in its Public Works Department in the following classifications: Parks Facility Technician[7]; Parks Facility Specialist[8]; Parks Equipment Supervisor; Arborist; Assistant Arborist; Parks Grounds Technician; Parks Ground Assistant.[9]

EXCLUDED: All managerial, confidential, and supervisory employees as defined by the Act.

VIII. 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

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[7] This position is included in the unit, even though there was little testimony concerning this position's functions, because neither party disputes that the position shares a community of interest with the other petitioned-for titles.

[8] As noted, above, this position is included in the unit, even though SEIU did not petition for it, because it shares a community of interest with the other petitioned-for titles.

[9] This title is petitioned-for but does not appear in the Village's organizational chart or its pay plan. Further, neither party introduced evidence on this title. If this title does not exist or was inadvertently included, then the Employer may file a unit clarification petition to exclude it.

of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, 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 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 27th day of February, 2013

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge