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-13-003
Village of Niles,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On July 13, 2011, American Federation of State, County and Municipal Employees, Council 31 (Union), filed a majority interest representation/certification petition in the above-captioned case with the State Panel of the Illinois Labor Relations Board (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). On July 25, 2012, the petition was amended to include an additional employee. The Union seeks to become the exclusive representative of approximately 34 employees at the Village of Niles (Employer).[1] Based upon the showing of interest cards filed by the Union and

[1] The petitioned-for unit consists of all full-time, non-exempt, clerical and technical non-professional employees of the Village of Niles in the following job titles: Accountant I – A/P (Finance), Accounting Assistant (Finance), Administrative Assistant (Community Development), Administrative Assistant (Fire), Administrative Assistant (Police), Administrative Assistant (Public Services), Building Inspector (Community Development), Division Supervisor (Community Development), Electrical/Sign Inspector (Community Development), Engineering Technician (Public Services), Fire Inspector (Fire), Fleet Manager (Public Services), Inspector I (Community Development), Inspector II (Health), Office Manager (Family Services), Office Manager (Senior Center), Payroll Clerk (Finance), Records Clerk (Fire), Records Clerk (Police), Secretary (Community Development), Secretary (Public Services), Secretary/Deputy Village Clerk (General Government), Secretary to the Village Attorney/FOIA Officer (General Government), Sewer Manager (Public Services), Shop Supervisor (Public Services), Streets &

the employee names and signature exemplars, which the Employer provided, the Union has satisfied the required majority showing of interest.[2]

The only issue is whether the Union's evidence of majority support was obtained fraudulently or through coercion. After consideration, I find that the parties have failed to provide evidence demonstrating a material issue of fact or law relating to fraud or coercion. I recommend the following.

I. BACKGROUND

On July 20, 2012, the Board received an unfair labor practice charge in Case No. S-CB-13-005 from Dennis O'Donovan, a petitioned-for employee, which contained allegations of potential fraud and/or coercion relating to the authorization cards filed in Case No. S-RC-13-003. Since the charge asked the Board to reject the Union's petition in the representation case, it was treated as an objection to the petition, and I was provided with a copy of the charge. Meanwhile, the Board Investigator assigned to the unfair labor practice charge continued with his investigation.

Signs Manager (Public Services), Switchboard/Receptionist (Senior Center), Switchboard/Receptionist (Finance), Water Manager (Public Services), and Water Plant Manager (Public Services).

[2] The Employer asserted that seven of the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act: Division Supervisor (Community Development), Fleet Manager (Public Services), Sewer Manager (Public Services), Shop Supervisor (Public Services), Streets & Signs Manager (Public Services), Water Manager (Public Services), and Water Plant Manager (Public Services). In addition, the Employer asserted that four of the petitioned-for employees are confidential employees within the meaning of Section 3(c) of the Act: Administrative Assistant (Fire), Administrative Assistant (Police), Secretary to the Village Attorney/FOIA Officer (General Government), and Secretary/Deputy Village Clerk (General Government Department). The Employer did raise an issue of law or fact regarding the supervisory and confidential status of these seven employees. According to the Board's rules, where there are unit or exclusion issues, but the number of the contested positions is not sufficient to affect the determination of majority support, the Executive Director will prepare a tally of the finding of majority support and issue a certification and the tally concerning the employees not in dispute. The Union may thereafter invoke the Board's unit clarification procedures to determine the status of the disputed employees' inclusion in the unit. See Section 1210.100(b)(7)(B) of the Board's Rules.

On August 22, 2012, I issued a letter to the parties and Mr. O'Donovan, asking whether the Employer and the Union wished to forgo an investigation and possible hearing relating to the allegations of fraud and/or coercion, and instead agree to a Board-conducted election in accordance with Section 1210.100(b)(5)(A) and (B) of the Rules. The Employer agreed; the Union did not. Therefore, I proceeded with the investigation into the allegations of potential fraud and/or coercion.

On September 6, 2012, I issued a letter to Mr. O'Donovan, the Employer, and the Union directing Mr. O'Donovan to provide a detailed account of the basis for his allegations including the names of witnesses and/or witness statements by September 20, 2012. I also asked the Employer and Union to provide evidence supporting their positions on the matter if they wished. I further notified the parties that if Mr. O'Donovan failed to provide sufficient evidence raising a question of law or fact relating to fraud and/or coercion that I would recommend that the Executive Director certify the Union as the unit's exclusive bargaining representative provided the proposed unit, excluding those objected to by the Employer, had majority support.

To date, Mr. O'Donovan has not responded to the September 6, 2012 directive. The Employer and the Union have also not responded.

II. DISCUSSION & ANALYSIS

Sections 1210.100(b)(5)(A) and (B) of the Board's Rules state:

> A party or individual alleging that the petitioner's evidence of majority support was obtained fraudulently or through coercion must provide evidence of that fraud or coercion to the Board or its agent. If a party has not provided evidence demonstrating a material issue of fact or law relating to fraud or coercion, the Board will certify the union as the unit's exclusive representative if it is determined to have majority support.
>
> If the Board finds a party has provided evidence demonstrating a material issue of fact or law relating to fraud or coercion, it will conduct a hearing to determine

> whether there is clear and convincing evidence of fraud or coercion. All parties shall be given a minimum of 14 days notice of the hearing. If the Board finds clear and convincing evidence of fraud or coercion, the Board will conduct an election in the petitioned for unit to determine majority support for the petitioner. If the Board finds clear and convincing evidence of fraud or coercion to be lacking, it will determine majority support for the petitioner based upon the evidence filed with the petition. As an alternative to submitting the issue of clear and convincing evidence to hearing, the parties may agree to a Board-conducted election in the unit.

In this case, Mr. O'Donovan failed to provide a response, statements, or any other evidence in support of his allegations of fraud and/or coercion.[3] Thus, I find that Mr. O'Donovan has not provided sufficient evidence demonstrating a material issue of fact or law relating to fraud or coercion. Accordingly, I will recommend that the Executive Director certify the Union as the unit's exclusive representative, excluding those positions objected to by the Employer.

III. CONCLUSION OF LAW

I find that the Mr. O'Donovan has not provided sufficient evidence demonstrating a material issue of fact or law relating to fraud or coercion.

IV. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the American Federation of State, County and Municipal Employees, Council 31 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.

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[3] On September 21, 2012, Mr. O'Donovan withdrew his unfair labor practice charge in Case No. S-CB-13-005.

INCLUDED: All full-time, non-exempt, clerical and technical non-professional employees of the Village of Niles in the following job titles: Accountant I – A/P (Finance), Accounting Assistant (Finance), Administrative Assistant (Community Development), Administrative Assistant (Public Services), Building Inspector (Community Development), Electrical/Sign Inspector (Community Development), Engineering Technician (Public Services), Fire Inspector (Fire), Inspector I (Community Development), Inspector II (Health), Office Manager (Family Services), Office Manager (Senior Center), Payroll Clerk (Finance), Records Clerk (Fire), Records Clerk (Police), Secretary (Community Development), Secretary (Public Services), Switchboard/Receptionist (Senior Center), and Switchboard/Receptionist (Finance).

EXCLUDED: Administrative Assistant (Fire), Administrative Assistant (Police), Division Supervisor (Community Development), Fleet Manager (Public Services), Streets & Signs Manager (Public Services), Water Manager (Public Services), Water Plant Manager (Public Services), Sewer Manager (Public Services), Secretary/Deputy Village Clerk (General Government), Secretary to the Village Attorney/FOIA Officer (General Government), Shop Supervisor (Public Services), and all supervisory, confidential, and managerial employees as defined by the Act.[4]

V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. 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/or

[4] Pursuant to Section 1210.100(b)(7)(B), the Union may file a unit clarification petition to address the inclusion of those three positions in the petitioned-for bargaining unit.

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 28th day of September, 2012.

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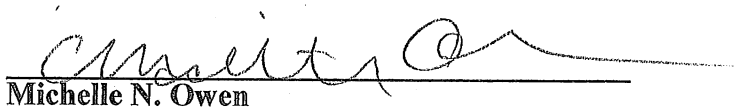

Michelle N. Owen
Administrative Law Judge