

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

Illinois Council of Police,)	
)	
Petitioner)	
)	
and)	
)	
County of Lake and Sheriff of Lake County,)	
)	Case No. S-RC-13-031
Employer)	
)	
and)	
)	
Illinois Fraternal Order of Police Labor)	
Council,)	
)	
Incumbent)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On October 30, 2012, the Petitioner, Illinois Council of Police, filed a majority interest petition in Case No. S-RC-13-031 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 Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The petitioned-for unit is currently represented for purposes of collective bargaining by the Incumbent, Illinois Fraternal Order of Police Labor Council.¹

¹ The instant representation petition specifically seeks a unit that includes certain job classifications in the peace officer unit of the Employer, County of Lake and Sheriff of Lake County, including a number of positions characterized as law enforcement (deputy sheriff, highway patrol, detective, warrant process server, process supervisor, and court security) and law enforcement support (radio dispatcher, assistant dispatch supervisor, lead dispatch supervisor, senior utility worker, and magnetometer operator). According to the petition, this petitioned-for unit excludes the communications director; all sworn deputy sheriffs in the classification of sergeants and above; all professional, confidential, supervisory, and managerial employees as defined by the Act; and all other employees of the County of Lake. To avoid any potential ambiguities, I note that the unit at issue appears to have been originally certified by the Board on June 20, 1986 in Case No. S-VR-43. Later, on August 2, 1990, in Case No. S-RC-90-19, the Incumbent was recertified as the exclusive representative of the bargaining unit after an election. This Case No. S-RC-90-19 unit was later amended or clarified to include some positions and exclude others on January 19, 1995 in

On November 9, 2012, the Incumbent filed a position statement with the Board which objects to and seeks dismissal of the instant representation petition. The Employer, County of Lake and Sheriff of Lake County, later filed its own position statement on November 21, 2012. Subsequently, on December 12, 2012, the Petitioner filed a position statement responding to the other two parties' position statements. After full consideration of all aspects of the controversy, I recommend the following.

I. ISSUES AND CONTENTIONS

In an effort to establish a new collective bargaining agreement, the Incumbent and the Employer held an interest arbitration hearing on January 27, 2012 and subsequently filed post-hearing briefs. As of November 9, 2012, the date the Incumbent filed its position statement with the Board, the arbitrator had not issued an arbitration award.² In this context, the Incumbent's November 9, 2012 position statement objects to the instant petition on the grounds that, according to the Incumbent, there is a "de facto contract bar" and on grounds the Incumbent alleges are rooted in the public policy of the Act and demand "an expeditious, equitable and effective procedure for the resolution of contract disputes or employees who perform essential services." As noted above, the Incumbent ultimately concludes that the Board should dismiss the instant representation petition.

The Employer's November 21, 2012 position statement does not explicitly address the arguments provided by the Incumbent's position statement and does not object to the instant

Case No. S-UC-(S)-95-15. On March 6, 1995, in Case No. S-RC-95-31, the Incumbent was once again certified as the exclusive representative after another election. Although not overtly acknowledged by the instant representation petition, the Incumbent's unit was subsequently formally clarified on July 7, 2000 in Case No. S-UC-99-017 to include a new radio communications shift manager position. Presumably, a future election would include this new position and only those positions that have been formally included by the Board.

² The arbitrator, Steven M. Bierig, later issued an arbitration award on November 29, 2012.

petition.³ In sum, the Petitioner's December 12, 2012 position statement requests that the undersigned hold that the instant petition is not contract barred within the meaning of Section 9(h) of the Act and, accordingly, proceed to an election. Thus, the sole issue or question to be determined is whether or not, under the circumstances, the instant petition should be dismissed.

II. DISCUSSION AND ANALYSIS

The instant matter ostensibly involves the Board's "contract bar" doctrine. Broadly speaking, a contract bar prevents the Board from conducting an election in any bargaining unit where there is a valid collective bargaining agreement. In other words, once a new agreement is reached, it bars the filing of a representation petition. Chicago Housing Authority, 14 PERI ¶3013 (IL LLRB 1998). This doctrine is generally derived from Section 9(h) of the Act, which specifically states,

No election shall be directed by the Board in any bargaining unit where there is in force a valid collective bargaining agreement. The Board, however, may process an election petition filed between 90 and 60 days prior to the expiration of the date of an agreement, and may further refine, by rule or decision, the implementation of this provision. Where more than 4 years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such an agreement, and between 90 and 60 days prior to the end of each successive year of such agreement.

Correspondingly, Section 1220.35(a) of the Rules states, in pertinent part,

³ Before noting that it considers the County of Lake and the Lake County Sheriff to be joint employers for purposes of this petition, the Employer's November 21, 2012 position statement indicates that the Employer does not intend to raise any issues concerning the appropriateness of the bargaining unit or, to the extent known, whether any employees sought by the Petitioner to be included in the petitioned-for unit should be excluded from the same. The Employer's position statement also notes that it takes this position based upon an alleged representation from the Petitioner's counsel that the composition of the bargaining unit which the Petitioner seeks to represent will remain the same in terms of the current description of the unit. Furthermore, the Employer asserts that, in the event the Petitioner should attempt to change this alleged position and seek to add or include any positions from the unit not currently represented by the Incumbent, the Employer reserves the right to raise any issues concerning the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by the Petitioner to be included in the unit should be excluded.

- 1) When there is in effect a collective bargaining agreement of 3 years or shorter duration covering all or some of the employees in the bargaining unit, representation and decertification petitions may be filed during the window period (between 90 and 60 days prior to the scheduled expiration date of the collective bargaining agreement) or anytime after the expiration of the collective bargaining agreement. However, the collective bargaining agreement shall serve as a bar (contract bar) to filing representation or decertification petitions outside of the window period.
- 2) Where more than four years have elapsed since the effective date of the agreement, the agreement shall continue to bar an election, except that the Board may process an election petition filed between 90 and 60 days prior to the end of the fifth year of such agreement. (Section 9(h) of the Act) This bar shall also apply to the filing of majority interest petitions.

Here, it is fairly plain that, at the time the instant petition was filed with the Board on October 30, 2012, the Incumbent and the Employer were operating according to a collective bargaining agreement which had been in effect since December 1, 2006 and expired on November 30, 2010. To this extent, it appears that the Petitioner was not contract barred or untimely when it filed its petition on October 30, 2012. However, in this instance, the Incumbent asserts that the Incumbent and the Employer have a de facto collective bargaining agreement through November 30, 2013. At the outset, I note that neither the Act nor the Rules expressly recognize the Incumbent's proffered policy. Moreover, the Incumbent has presented no prior Board decision to support its position. Nevertheless, to the extent possible, it will be considered.

To determine whether an "agreement" is sufficient to bar an otherwise timely-filed petition, the Board follows the National Labor Relations Board's rules set forth in the case of Appalachian Shale Products Co., 121 NLRB 1160 (1958), and followed thereafter. As set forth in that case, to bar such a petition, the agreement (1) must be signed by the parties prior to the filing of the rival petition and (2) must contain terms and conditions substantial enough to stabilize the parties' bargaining relationship. County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115 (IL LRB-SP 2009); City of Calumet City, 21 PERI ¶98 (IL LRB-SP 2005); Chicago

Housing Authority, 14 PERI ¶3013; City of Chicago, 2 PERI ¶3015 (IL LLRB 1986). The minimal requirement that a document be signed by both parties establishes a “bright line” in an area where predictability is paramount. County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115; City of Calumet City, 21 PERI ¶98 (IL LRB-SP 2005); see Seton Medical Center, 317 NLRB 87, 88 (1995).

Concerning the first element, I readily find that, at the time the instant petition was filed, the relevant collective bargaining agreement had plainly not yet been “signed” by the parties. Rather, at the time, the parties were clearly still waiting for an award from the January 27, 2012 interest arbitration. As it is well-established that contracts not signed before the filing of a petition cannot serve as a bar, it is clear that the instant circumstances are simply insufficient to constitute a contract bar. See Crothall Hospital Services, Inc., 270 NLRB 1420, 1422 (1984), citing Appalachian Shale Products Co., 121 NLRB at 1161.

Separately, I must also note that even the issuance of an award does not necessarily signify that contract negotiations have concluded. Putting aside the fact that no final signature could have been presented when the petition was filed, it can hardly be argued that the new collective bargaining agreement had been “fully executed,” reduced to writing, or ratified by that date. Indeed, here, there is no document, formal or informal, reflecting the parties’ full agreement. See County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115; Seton Medical Center, 317 NLRB at 87. Likewise, it generally follows that it cannot be found that there was “no doubt” in the minds of the employees about whether the new contract was in place (as prescribed by the Board’s contract bar doctrine) when certain aspects were, quite literally, still in dispute. See County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115. In addition, I presume that, at the time the petition was filed with the Board, the parties were in fact operating solely in

accordance with the terms of the expired contract rather than those of a future, unknowable agreement. As the parties intuitively cannot simultaneously operate according to two dissimilar collective bargaining agreements, it would be inconsistent to find that the new agreement was also in place at the time of filing.

Granted, it is not strictly required that the parties execute a formal document. County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115; City of Calumet City, 21 PERI ¶98; see Appalachian Shale Products Co., 121 NLRB at 1162. Yet, I nevertheless find that the instant circumstances are not easily characterized as the requisite signature and are largely the kind of circumstances Appalachian Shale Products Co. was directed at avoiding. Because this first element has thus not been satisfied, I will not address the second in detail. Moreover, experience has indicated that true stability of labor relations is not obtained until collective bargaining agreements have been reduced to writing and signed. See B.C. Acquisitions, Inc., 307 NLRB 239, 240 (1992); Eicor, Inc., 46 NLRB 1035, 1037 (1943). Based on the foregoing, I must ultimately conclude that the instant circumstances do not meet the Board's bright line standard.⁴ Accordingly, I also conclude and hold that the instant petition is not contract barred within the meaning of Section 9(h) and should proceed, as in the normal course, to election.

Inter alia, the Incumbent asserts that the Board should recognize the good faith efforts of the Incumbent and the Employer. According to the Incumbent, this would allow the Employer to avoid suffering "the expense of starting all over again at the bargaining table." While this particular consideration is admittedly valid to a degree, I find that it nevertheless does not outweigh the variety of decidedly valid policy considerations behind the Board's established contract bar rules. See County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115. The

⁴ To clarify, in reaching this conclusion, I have not strictly viewed the matter as one in which any party bears a burden of proof, since no party is presently attempting to assert a statutory exclusion or inclusion. See County of Pulaski/Sheriff of Pulaski County, 25 PERI ¶115.

contract bar doctrine was in fact developed to achieve a balance between the conflicting goals of insuring stability in labor relations and permitting employee freedom of choice. See City of Calumet City, 21 PERI ¶98; City of Chicago, 2 PERI ¶3026 (1986).

III. RECOMMENDED ORDER

IT IS HEREBY ORDERED that a secret ballot election shall be conducted among employees in the election unit defined above at a time and place set forth in the Board-issued Notice of Election. In accordance with the Act and the Board's Rules, eligible employees shall be given an opportunity to vote between representation by the Illinois Fraternal Order of Police Labor Council, the Illinois Council of Police, or "No Representation."

IV. 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 30 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 General Counsel of the Illinois Labor Relations Board 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 cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 7th day of January, 2013.

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**Martin Kehoe
Administrative Law Judge**