STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

County of Knox and Knox County Nursing Home,	)	
Employer	)	Case No. S-RC-14-036
and	)	
American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. Background

On November 21, 2013, the American Federation of State, County and Municipal Employees, Council 31, (AFSCME) filed a majority interest representation petition with the Illinois Labor Relations Board, State Panel (Board) seeking to add six employees employed by the County of Knox and Knox County Nursing Home (Employer) in the title of Helping Hand to the existing AFSCME-represented bargaining unit. AFSCME supported the petition with the required showing of interest.

On December 5, 2013, the Employer filed a position statement objecting to the representation petition on two grounds. First, the Employer argues that the petition is prohibited by the "contract bar" rule set forth in 80 Ill. Admin. Code 1210.35(a)(1). Second, the Employer asserts that the petition should be dismissed because it meets none of the criteria for unit clarification.

II. Investigatory Facts

The parties have a contract with effective dates of December 1, 2011 through November 30, 2013. It covers employees in the following titles: Activity Aide; Beautician; Cook; Dietary Aide; Floor Care Personnel; General Maintenance; Housekeeping and Laundry Aide; Licensed Practical Nurse; Maintenance Custodian; Maintenance Engineer; Maintenance II; Medical Escort; Medical Records Clerk; Nurses Aide; Occupational Therapy Aide; Painter; Physical

Therapy Aide; PROM Aide; Rehabilitation Aide; Sewing Personnel; Social Service Designee; and Licensed Practical Nurse Supervisor. The contract contains a termination clause that provides, in relevant part, that the contract "shall be automatically renewed from year to year...unless either party notifies the other in writing at least ninety days prior to the anniversary date that it desires to modify the agreement." Further, it provides that "in the event that either party desires to terminate this Agreement, written notice must be given to the other party not less than ten (10) days prior to the desired termination date which shall not be before the anniversary date set forth in the preceding paragraph." No party gave notice to terminate the agreement. The petitioned-for employees are currently unrepresented.

III. Discussion and Analysis

The majority interest petition is procedurally appropriate, and Employer's objections are meritless for the reasons set forth below.

First, the contract bar doctrine does not bar this majority interest petition because it seeks to add an unrepresented title to an existing unit. Section 1210.35(a) of the Board's rules sets forth the contract bar doctrine.[1] It provides the following:

> 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."

80 Ill. Admin. Code 1210.35(a).

The purpose of the contract bar doctrine is "to promote the policy of stability in collective bargaining relationship with an incumbent" and to "give the parties time and opportunity to administer the collective bargaining agreement free of distraction from outside challenges." Rockford School Dist. No. 205, 6 PERI ¶ 1093 (IELRB 1986). As such, the contract bar doctrine bars petitions when they raise a "question concerning representation." Black Hawk College Professional Technical Unit v. State of Ill. Educ. Labor Rel. Bd., 275 Ill. App. 3d 189,

[1] Section 9(h) of the Act also sets forth the contract bar doctrine as it pertains to elections. See 5 ILCS 315/9(h) (2012).

192-93 (1st Dist. 1995)(addressing similar provisions of the Illinois Educational Labor Relations Act and the Illinois Educational Labor Relations Board's rules). "Questions concerning representation" arise in a petition when it seeks to determine whether the employees in an existing unit wish to be represented at all or whether they wish to make a change of representation to a rival union. Black Hawk College Professional Technical Unit, 275 Ill. App. 3d at 192-93. In contrast, petitions that merely propose a change in the scope of the bargaining unit do not raise a "question concerning representation." Id. Accordingly, the Board has held that the contract bar only prohibits a change in the representative of an existing bargaining unit during the term of a bargaining agreement for that unit. Vill. of Oak Brook, 13 PERI ¶ 2025 (IL SLRB 1997); see also Rockford School Dist. No. 205, 6 PERI ¶ 1093 (contract bar doctrine did not apply to bar a petition seeking to "give unrepresented employees the right to decide, for the first time, whether they wished to be represented by [the union] in the existing collective bargaining unit.").

Here, the majority interest petition filed by AFSCME does not trigger the contract bar rule because it seeks to add unrepresented employees to an existing AFSCME-represented bargaining unit and does not attempt to change the representative of presently-represented employees. Thus, there is no contract bar to this petition.

Second, the unit clarification rules do not apply in this case because AFSCME obtained the requisite showing of interest and filed a majority interest petition rather than a unit clarification petition. As a preliminary matter, the Employer has offered no support for the proposition that the Board must reclassify a majority interest petition as a unit clarification petition simply because it seeks to add unrepresented employees to an existing unit. More importantly, neither the Act nor the Rules establish bars to representation petitions filed by unrepresented employees seeking representation in an existing bargaining unit. Vill. of Oak Brook, 13 PERI ¶ 2025 (rejecting employer's assertion that the Board should impose an interest arbitration bar prohibiting the union from adding unrepresented employees to the unit via an election). Accordingly, ALJs have rejected employers' objections to majority interest petitions on the basis that unit clarification petitions are more appropriate. Cnty. of Madison (9-1-1 Department), 26 PERI ¶ 65 (IL LRB-SP ALJ 2010) ("neither the Act, nor the Rules or the Board case law require the use of a unit clarification petition in any of the…circumstances [enumerated in the unit clarification rules] to the exclusion of a representation petition."). Thus, the majority

interest petition in this case is appropriate because there is no basis on which to dismiss it for failing to meet the requirements for filing a unit clarification petition.

In sum, the petition is procedurally appropriate and must be granted in the absence of any other objections.

IV. Conclusions of Law

AFSCME's representation petition to include the title of Helping Hand in the existing AFSCME-represented bargaining unit of employees of County of Knox and Knox County Nursing Home is procedurally appropriate.

V. Recommended Order Directing Certification

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 bargaining representative of 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 Section 6(c) and 9(d) of the Act.

Included: Activity Aide; Beautician; Cook; Dietary Aide; Floor Care Personnel; General Maintenance; Helping Hands; Housekeeping and Laundry Aide; Licensed Practical Nurse; Maintenance Custodian; Maintenance Engineer; Maintenance II; Medical Escort; Medical Records Clerk; Nurses Aide; Occupational Therapy Aide; Painter; Physical Therapy Aide; PROM Aide; Rehabilitation Aide; Sewing Personnel; Social Service Designee; and Licensed Practical Nurse Supervisor.

Excluded: Registered Nurses, High School Students, Supervisory and Management Personnel, confidential employees and other employees excluded from coverage by the Illinois Public Labor Relations Act.

VI. 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 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 14th day of January, 2014

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Anna Hamburg-Gal

Anna Hamburg-Gal
Administrative Law Judge