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-15-049
Lake County Clerk of the Circuit Court,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 20, 2015, the American Federation of State, County, and Municipal Employees, Council 31 (AFSCME or Union) filed a majority interest representation/certification petition in Case No. S-RC-15-049 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Union seeks to represent a unit of approximately 119 employees of the Lake County Clerk of the Circuit Court (Employer). With its petition, the Union also submitted sufficient evidence to demonstrate a majority showing of interest. The Employer subsequently filed objections to the Union's petition. After considering the Employer's objections, I recommend the following.

I. BACKGROUND

On February 6, 2015, the Employer filed its response to the instant petition, objecting to the petition on three grounds: 1) the Union used fraud and coercion to obtain its evidence of majority support; 2) two positions should be excluded from the unit because they are supervisors

or managers as defined by the Act; and 3) the proposed bargaining unit description is overbroad. In support of its objections, the Employer submitted various evidence, including job descriptions and two affidavits. After reviewing the Employer's evidence, I issued an Order to Show Cause, directing the employer to, among other things, submit clear and convincing evidence that the Union used fraud or coercion during its organizing campaign. On March 31, 2015, the Employer submitted a second position statement and two additional affidavits.

All four affidavits describe the Union's organizing efforts.[1] In the first affidavit, Clerk A stated that she had spoken to four other employees about the Union's conduct but did not identify any of those employees by name. According to Clerk A, the Union visited several employees at their homes. One employee believed the Union was watching her house and tracking her schedule. Another employee stated that a union representative "assured [her] that joining the union would result in better salaries, better raises and better vacation benefits" and that her first contract raise would cover her dues. According to the same employee, the representative was condescending and insulted her intelligence. The last employee reported that a union representative "told her that joining the union would be free and that there would not be any dues."

In the second affidavit, Clerk B said she was approached multiple times by a pro-Union coworker. On one occasion, the coworker texted Clerk B, stating that she would be waiting for Clerk B outside of work. That evening, the coworker was waiting for Clerk B. Clerk B told the coworker that she was not interested in signing a card. Later the same night, a Union representative visited Clerk B's home. She told the representative that she was not interested in joining the Union, but the representative said he would come back in a few days. Following these

[1] The Employer did identify the affiants to the Board. However, to protect the employees' anonymity, I refer to them as "Clerk ___" in this decision.

encounters, the coworker texted Clerk B again, stating "[w]hy are you avoiding me? Don't you want help keeping your job?"

Clerk C, in the third affidavit, stated that the Union representative who visited her home was insulting and condescending.[2] The representative also told her she would receive better benefits if she joined the Union and that a contract raise would cover her dues. Clerk C said the representative "appeared to be attempting to use peer pressure and insults to induce [her] into joining the union."

In the last affidavit, Clerk D stated that Union representatives visited her home on several occasions. She noted that the representatives parked away from her home and she could not see their cars. Clerk D "was frightened by their conduct so [she] filed a police report." After she filed the police report, a representative visited her home again. "They appeared to know my schedule and I was concerned that they were watching my house."

Additionally, several of the affiants stated that they felt threatened by the Union's conduct and feared being retaliated against by their pro-Union coworkers.

II. DISCUSSION AND ANALYSIS

In response to the Union's petition, the Employer raises three objections. First, the Employer argues the Union gained support for its organizing campaign through fraud and coercion. Second, the Employer argues that the positions of Ombudsman and Principal Court Clerk/Trainer should be excluded from the proposed bargaining unit as supervisors or managers. Lastly, the Employer contends that the proposed bargaining unit language is overly broad. I will discuss each objection in turn.

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[2] Based on the description of the Union's conduct, it appears that the affiants in the last two affidavits are two of the unidentified employees in the first affidavit.

A. Did the Union use Fraud or Coercion to Obtain Majority Support?

The Employer argues that the Union used fraud and coercion to obtain support for its organizing campaign. The Act states that the Board will certify a union as the exclusive representative of a unit of employees if the union "demonstrates a showing of majority interest." 5 ILCS 315/9(a-5). However, if an employer provides the Board with "clear and convincing evidence that the dues deduction authorizations, and other evidence upon which the Board would otherwise rely to ascertain the employees' choice of representative, are fraudulent or were obtained through coercion, the Board shall promptly thereafter conduct an election." Id. The Board's rules further specify that:

> [a]ll employers served with a majority interest petition shall file a written response to the petition within 14 days after service of the petition. The response filed shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by petitioner to be included should be excluded from the unit. **The employer must also provide at this time clear and convincing evidence of any alleged fraud or coercion in obtaining majority support.**

80 Ill. Admin. Code § 1210.100 (b)(3) (emphasis added). If the employer provides "evidence demonstrating a material issue of fact or law relating to fraud or coercion," the Board will conduct a hearing. 1210.100(b)(5)(B). However, if the employer fails to provide sufficient evidence of fraud or coercion, "the Board will certify the union as the unit's exclusive representative if it is determined to have majority support." 1210.100(b)(5)(A)

In coercion cases, the Board applies "an objective standard to determine whether, from the standpoint of an employee, the challenged conduct would reasonably have a coercive effect." Vill. of Barrington Hills (Police Dep't), 26 PERI ¶ 59 (IL LRB-SP 2010). For example, in Vill. of Barrington Hills (Police Dep't), the Board agreed with the Executive Director's decision to

apply an objective standard, as well as with his determination that the challenged conduct would not have reasonably coerced employees. Id. In support of its argument, the village submitted two affidavits from village supervisors. Id. The supervisors described their conversations with several employees regarding the union's conduct. Id. First, the Board found that the village's evidence did not establish that employees had been threatened or that the employees' fears of being retaliated against were reasonable. Id. More specifically, the village had not presented "evidence of actual retaliation, for example, or even of threatened retaliation." Id. The Board also noted that the affidavits constituted hearsay evidence and "[t]he statutory standard call[ed] for 'clear and convincing' evidence of fraud or coercion." Id. As such, the Board agreed "that the evidence the [v]illage presented here falls far short of meeting the 'clear and convincing' statutory standard." Id.

In this case, the Employer argues that the Union used fraud and coercion during its organizing drive. With regard to its fraud argument, the Employer first contends that the Union provided fraudulent information to employees. In one instance, a Union representative told an employee that she would receive better benefits under Union representation and that her dues would be covered by her first contract raise. According to another employee, a representative said she would not have to pay dues. As an initial matter, I note that the representative's statement that an employee would not have to pay dues is hearsay from an unidentified source and not generally considered clear and convincing evidence. Regardless, I do not find this evidence sufficient to conclude the Union gave employees fraudulent information. While I may find the Union's statements odd, I cannot say they are necessarily false. The Act does not require bargaining unit members to pay dues, and the Employer has not supplied any other evidence on the matter. Further, it is permissible under the Act for a union to promote itself to prospective

members. See PACE Heritage Division, 22 PERI ¶ 59 (IL LRB-SP 2006); Midland Nat'l Life Ins. Co., 263 NLRB 127 (1982). As such, I find the Employer has not established that the Union provided fraudulent information to employees.

The Employer also argues that the Union used pro-Union employees to gain access to employees' home addresses. Under the Employer's policies, employees' personal contact information is kept confidential. Since the Union had the employees' addresses, the Employer suggests the Union must have obtained the information in violation of the Employer's policies. This argument is not supported by the evidence. While it is clear that the Union had at least some of the employees' home addresses, it is not a foregone conclusion that pro-Union employees violated the Employers' policies to retrieve them. There are a variety of ways to learn where someone lives, including the internet, the phonebook, or even word of mouth. Thus, the Employer's suggestion that the Union must have used surreptitious means to access employees' addresses is not supported by the evidence presented.

The Employer's primary argument is that the Union intimidated, threatened, and coerced employees into supporting its organizing drive. However, the evidence does not establish that the Union's conduct was objectively coercive. For example, one employee felt threatened by her pro-Union coworker's text messages. However, the coworker did not threaten the employee or suggest that the employee would be retaliated against for refusing to sign a card. Consequently, I cannot find the messages objectively coercive.

Additionally, I do not find the Union's home visits to be coercive. The Employer argues that "the representatives stalked employees by lying in wait outside of employees' homes." Of the three employees visited by the Union, two employees stated they felt threatened by the Union's conduct. One employee said she was so frightened by the Union's conduct that she filed

a police report. She also believed the Union was tracking her schedule. The other employee stated she felt threatened when the representative told her that he would come back to her home in a few days. However, the evidence does not establish that their fears were reasonable. There is no evidence that the Union actually threatened these employees or used other intimidation tactics to force the employees to sign cards. Thus, under the objective standard, I do not find this conduct would reasonably coerce employees. As to the third employee, she stated that the Union representative she spoke to was condescending and insulting. Although patronizing and rude behavior are not ideal strategies to use during an organizing campaign, in the absence of threats or other forms of intimidation, these tactics are not coercive.

Finally, there is no evidence demonstrating that the employees' fears of being retaliated against by their coworkers were justified. Again, there is no evidence that the coworkers' threatened to retaliate against the employees if they did not sign cards. The employees' assertions, on their own, are not enough to establish coercion. The Employer was required to provide evidence that the employees' fears were reasonable.

In sum, the Employer has failed to establish that the Union used fraud or coercion to gain support for its organizing campaign. Accordingly, I find that this objection is without merit and does not raise an issue for hearing.

B. Is the Proposed Bargaining Unit Appropriate?

Next, the Employer raises two objections regarding the appropriateness of the proposed bargaining unit. First, the Employer argues the Ombudsman and Principal Court Clerk/Trainer positions are supervisory or managerial as defined by the Act. "When, with respect to a majority interest petition, an employer objects to inclusion of certain positions, but its objections, even if well founded, would not eliminate majority support, the Board will certify the proposed unit, but

exclude all objected-to positions." Treasurer of the State of Ill., 30 PERI ¶ 53 (IL LRB-SP 2013). The petitioner may then file a unit clarification petition to add the objected-to positions into the unit. Id. See 80 Ill. Admin. Code § 1210.100(b)(7)(B).

Here, the Employer has raised an issue for hearing regarding the status of the Ombudsman and Principal Court Clerk/Trainer. However, the exclusion of these positions does not eliminate the Union's majority support. Therefore, I recommend the Board certify the bargaining unit as described below and exclude the objected-to positions of Ombudsman and Principal Court Clerk/Trainer.

Finally, the Employer argues that the description is overly broad. The Board has a longstanding preference for wording bargaining unit descriptions with specificity. When a unit description is clear, there are less chances for parties to dispute whether particular positions fall within or outside of a bargaining unit. Given the Board's preferences, I recommend certifying the unit as drafted below.

III. CONCLUSIONS OF LAW

A. The Employer has not demonstrated an issue of law or fact exists regarding fraud or coercion.

B. The Employer has raised an issue of law or fact regarding the status of the Ombudsman and Principal Court Clerk/Trainer positions. However, the exclusion of those positions does not affect the Union's majority status.

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.

> **INCLUDED:** All full-time and part-time non-professional employees employed by the Clerk of the Circuit Court of the County of Lake, in the following job titles: Collections Clerk, Court Clerk, Clerk, Microfilm Coordinator, Office Automation Specialist, Principal Accounting Specialist, Principal Clerk, Principal Court Clerk, Sr. Accountant, Sr. Court Clerk, Sr. Clerk, and Sr. Office Automation Specialist.
>
> **EXCLUDED:** All professional, supervisory, managerial, and confidential employees as defined by the Act.

Additionally, the objected-to positions of Ombudsman and Principal Court Clerk/Yrainer will be excluded from the bargaining unit. The Union may file a unit clarification petition to include the objected-to positions.

V. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any 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 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, if at all, with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. 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 in Chicago, Illinois on April 28, 2015

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/s/ Kelly Coyle
Kelly Coyle
Administrative Law Judge