

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

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| International Brotherhood of Electrical Workers, Local 51, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| and |) | Case No. S-UC-15-074 |
| |) | |
| City of Bushnell, |) | |
| |) | |
| Employer |) | |

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 9, 2014, the International Brotherhood of Electrical Workers, Local 51 (IBEW), filed a unit clarification petition seeking to add the City of Bushnell’s (Employer) Recreation and Cultural Center Director position to an IBEW-represented existing bargaining unit. On June 6, 2012, in case S-RC-12-064, the Board certified IBEW as the exclusive bargaining representative for a unit described as follows:

- Included: All employees of the City of Bushnell in the following job classifications: Assistant City Clerk; Clerk I; Clerk II; Utility Office Manager.
- Excluded: All other employees of the City of Bushnell.

In the petition, the IBEW identifies the following basis for the petition, “The Recreation Center clerical position was excluded by the parties at the time the unit was established. This is because the Rec Center position was part-time but has since been made into a full-time position.” The Employer objected to the unit clarification arguing only that the Recreation and Cultural Center Director does not share a community of interest with the clerical employees who work in the Employer’s utility office and city clerk’s office.

Upon review of the petition and objection, the administrative law judge scheduled the matter for hearing. On February 4, 2015, the parties appeared for a hearing before the undersigned administrative law judge. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. After full consideration of the pleadings and evidence presented, I recommend the following:

I. FINDINGS OF FACT

The IBEW filed a majority interest petition seeking to represent a unit consisting of four employees described as “clerical employees for electric and water (utility) departments and

clerical employee for City Hall” on May 11, 2012.¹ The Employer did not object to the petition, and on June 6, 2012, Executive Director Melissa Mlynski certified IBEW as the exclusive bargaining representative for a unit described as follows:

Included: All employees of the City of Bushnell in the following job classifications:
Assistant City Clerk; Clerk I; Clerk II; Utility Office Manager.

Excluded: All other employees of the City of Bushnell.

Janet Bowers is currently employed in the at-issue position. She has served as the full-time Recreation and Cultural Center Director since November 2012. From April 2012 to November 2012, Bowers was employed as a part-time Assistant Director, while another employee served as the full-time Recreation and Cultural Center Director. The Employer’s witnesses and Bowers, the Union’s only witness, consistently testified that the Recreation and Cultural Center Director position has always been a full-time position. Bowers also testified that her duties have remained the same the entire time she has held the Recreation and Cultural Center Director position, and that, to her knowledge, she performs the same duties as the prior Recreation and Cultural Center Director. City Clerk Donna Coates testified that the position description for the Recreation and Cultural Center Director position was created prior to Bowers’ hire as the full-time Director and has not been updated or changed.

II. ANALYSIS

Section 1210.170(a) of the Board's regulations allow for the filing of unit clarification petitions under three sets of circumstances:

An exclusive representative or an employer may file a unit clarification petition to clarify or amend an existing bargaining unit when:

- 1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement;
- 2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established; and
- 3) a significant change takes place in statutory or case law that affects the bargaining rights of employees.

The Board has recognized two other circumstances under which a unit clarification petition is properly filed. The Courts have identified a third. First, an employer or union may file a unit clarification petition when there are newly created job classifications entailing job functions already covered in the unit. City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App.

¹ I take administrative notice of the content of the Board’s file for Case S-RC-12-064.

3d 955, 969-70 (1st Dist. 1992) (citing State of Ill. (Dep'ts of Cent. Mgmt. Serv. & Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986)); Treasurer of the State of Ill., 30 PERI ¶ 53 (IL LRB-SP 2013). Second, unit clarification petitions may be used in the processing of majority interest petitions under Section 9(a-5) of the Act. 5 ILCS 315/9(a-5) (2012). “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, advising the petitioner to use a unit clarification petition to add in the objected-to positions.” City of Washington v. Ill. Labor Relations Bd., 383 Ill. App. 3d 1112 (3d Dist. 2008); Treasurer of the State of Ill., 30 PERI ¶ 53; 80 Ill. Admin. Code 1210.100(b)(7)(B). Third, a unit clarification petition is appropriately filed when alleged statutorily excluded positions were improperly included in a bargaining unit. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections) v. Ill. Labor Relations Bd., 364 Ill. App. 3d 1028 (4th Dist. 2006); Treasurer of the State of Ill., 30 PERI ¶ 53.

The uncontested evidence in this case reveals that a unit clarification petition is not the appropriate method to seek inclusion of the Recreation and Cultural Center Director position.

The uncontested evidence indicates that there has not been substantial changes in the duties and functions of an existing title, raising an issue as to the title's unit placement. It appears that the information underlying the petition were factually incorrect. While Bowers went from being a part-time employee to a full-time employee after the existing unit was certified, the Recreation and Cultural Center Director position did not change. There was not evidence adduced or argument made that the duties of the at-issue position have changed since before the initial petition was filed. Similarly, the pleadings in this case indicate that the Recreation and Cultural Center Director position was not inadvertently excluded. No evidence to the contrary exists in the record. Finally, no party has raised an argument that a significant change has taken place in statutory or case law that affected the bargaining rights of the Recreation and Cultural Center Director position.

Similarly, the Board and Court-extended circumstance do not apply in this case such that the unit clarification petition is appropriate. There is no argument that the Recreation and Cultural Center Director position is statutorily excluded (supervisory, confidential, etc.). The Recreation and Cultural Center Director position was not excluded by objection during the investigation of a majority interest petition. In fact, the four petitioned-for positions in Case No.

S-RC-14-064 are the four positions certified by the Board with no objection from the Employer. The at-issue position is not a newly created position; it is uncontested that the position was in existence as a full-time position before the original petition was filed in May 2012.

III. CONCLUSIONS OF LAW

The unit clarification is inappropriate in this case.

IV. RECOMMENDED ORDER

The unit clarification petition is dismissed.

V. 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 no later than 14 days after service of this recommendation. Parties may file responses to any 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 Relation 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 at Springfield, Illinois, this 6th day of February, 2015.

**STATE OF ILLINOIS
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/s/ Sarah R. Kerley

**Sarah R. Kerley
Administrative Law Judge**