

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

American Federation of State, County,)	
And Municipal Employees, Council 31,)	
)	
Petitioner,)	
)	Case No. L-RC-20-002
and)	
)	
City of Chicago,)	
)	
Employer.)	

ORDER

On October 23, 2019 Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge’s Recommendation during the time allotted, and at its January 9, 2020 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 9th day of January 2020.

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

/s/ Helen J. Kim
Helen J. Kim
General Counsel

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City of Chicago,)	
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Employer)	
)	Case No. L-RC-20-002
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American Federation of State, County and Municipal Employees, Council 31,)	
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Petitioner.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On August 22, 2019, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to add an employee in the title Administrative Services Officer II (“ASO II”), employed by the City of Chicago (Employer or City) in the Department of Family and Support Services to the AFSCME-represented Unit 1. The petitioned-for position is currently occupied by Maribel Chaidez-Munoz. The petition identifies her position as an ASO II position that the Board previously excluded from the bargaining unit.

The Employer objected to the petition on the grounds that the Union had not demonstrated majority support in an appropriate unit. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation.

I. INVESTIGATORY FACTS

The Union represents a broad-based historical unit of City administrative and clerical employees known as Unit 1. The unit includes over 150 different titles and approximately 1738 employees.

On or around March 26, 2015, the Union filed a petition in Case No. L-RC-15-019 seeking to add the title Administrative Services Officer II (ASO II) to Unit 1. There were then 33 employees in the ASO II title. The Employer objected to the petition.

On August 11, 2015, the parties reached an agreement on the petition. They agreed to include 21 ASO IIs in the unit and they agreed to exclude 12 ASO IIs. The parties identified the

excluded positions by the employee's name. The parties' agreement did not identify a reason for any of the exclusions.

Within certain departments, the parties excluded some ASO IIs, but included others. For example, the parties agreed to included one ASO II employed in the Department of Transportation, yet agreed to exclude another ASO II employed in that same department. They agreed to include one ASO II employed in the Department of Streets and Sanitation, yet agreed to exclude two ASO IIs employed in that same department. They agreed to include one ASO II employed in the Department of Buildings, yet agreed to exclude another ASO II employed in that same department. They agreed to include one ASO II employed in the Chicago Public Library, yet agreed to exclude another ASO II employed there. They agreed to include one ASO II employed in the Office of Budget and Management, yet agreed to exclude another ASO II employed in that same office. Among the excluded positions was the ASO II position held by Maribel Chaidez-Munoz within the Department of Family and Support Services. Although the parties' agreement lists her name as Maribel Munoz, the employee list provided by the Employer in Case No. L-RC-15-019 demonstrates that her full name is Maribel Chaidez-Munoz.

On September 23, 2015, the Board's Executive Director issued a Certification of Representative in accordance with the parties' agreement.

II. ISSUES AND CONTENTIONS

The issue is whether the Union's petition has majority support in an appropriate unit.

The Employer argues that the Union does not have sufficient support within an appropriate unit. It asserts that the Union must obtain majority support within a City-wide title, which it identifies as "ASO II-Excluded." It further asserts that there are 12 positions in this title and that the Union must therefore have majority support within that group.

III. DISCUSSION AND ANALYSIS

1. Question of Majority Support

The petition has majority support. When a union seeks to add positions to an existing unit, there is no question of representation in the existing unit. There is only a question of representation among the employees sought to be added. Dupage Area Vocational Educ. Auth. v. State Educ. Labor Relations Bd., 167 Ill. App. 3d 927, 939-40 (4th Dist. 1988) (addressing

similar procedure arising under the Illinois Educational Labor Relations Act). In such cases, the Board considers whether there is sufficient support for the union among the employees that the union seeks to add. Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Children and Family Services), 8 PERI ¶ 2037 n. 2 (IL SLRB 1992) (ALJ found that “there [was] nothing inappropriate in adding employees to an existing unit through a representation petition”; Board affirmed and directed election in petitioned-for group). Here, the petitioned-for group is comprised of one individual, and the Union has demonstrated majority support within that group of one.

2. Appropriateness of the Proposed Unit

The unit proposed by the Union is appropriate even though it omits some employees in the ASO II title. The presumption of inappropriateness is rebutted by the parties' pattern of bargaining and by the fact that maintaining the presumption here would not further its intended purpose.

Section 9(b) of the Act states the following: “The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours[,] and other working conditions of the employees involved; and the desires of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.” 5 ILCS 315/9(b).

In construing this language, the Board has expressed a preference for large, functionally-based bargaining units, which cross departmental lines, to promote stability in labor relations and economy and efficiency in public bargaining and contract administration. County of Cook and Sheriff of Cook County, 15 PERI ¶ 3011 (IL LLRB 1999); County of Cook (Office of the Medical Examiner), 3 PERI ¶ 3033 (IL LLRB 1987); City of Chicago (Department of Law), 3 PERI ¶ 3026 (IL LLRB 1987); County of Cook (Cook County Hospitals), 3 PERI ¶ 3023 (IL LLRB 1087); County of Cook (Office of the Medical Examiner), 3 PERI ¶ 3016 (IL LLRB 1987); County of Cook (Department of Supportive Services), 2 PERI ¶ 3027 (IL LLRB 1986); City of Chicago (Watley), 2 PERI ¶ 3009 (IL LLRB 1986); State of Illinois, Department of

Central Management Services (Department of Employment Security), 1 PERI ¶ 2027 (IL SLRB 1985); DuPage County Board, 1 PERI ¶ 2003 (IL SLRB 1985).

To that end, the Board has held that a petitioned-for unit is presumptively inappropriate where the employer has an established centralized personnel system and the petitioner has sought to represent only a portion of employees in the same job classification or, alternatively, only a portion of employees who perform similar duties. County of McHenry and McHenry County Recorder of Deeds, 31 PERI ¶ 8 (IL LRB-SP 2014); Cnty. of Cook (Medical Examiner's Office), 17 PERI ¶ 3005 (IL LRB 2001); Cook Cnty. (Office of the Medical Examiner), 3 PERI ¶ 3033; Cnty. of Cook and Cook Cnty. Sheriff, 15 PERI ¶ 3011; see also City of Chicago (Law Dep't), 3 PERI ¶ 3026; Cook Cnty. Hosp., 3 PERI ¶ 3023; Cnty. of Cook, 3 PERI ¶ 3016; Cook Cnty. (Dep't of Supportive Serv.), 2 PERI ¶ 3027; City of Chicago, 2 PERI ¶ 3009.

The presumption attaches in this case because the City of Chicago has a centralized personnel system, and the Union has sought to represent fewer than all of the ASO IIs employed by the City. Specifically, the Union has sought to add one ASO II to a unit that contains other ASO IIs, but it has not sought to represent the remaining eleven unrepresented ASO IIs. City of Chicago (Department of Law), 3 PERI ¶ 3026 (City of Chicago has a centralized personnel system that covers all employees).

However, the Union has rebutted the presumption of inappropriateness by showing that the Employer previously agreed to a unit that included less than all of the ASO IIs. An employer undermines the basis for applying the presumption of inappropriateness if it has voluntarily agreed to a petition that encompasses fewer than all employees in the petitioned-for job classification under the employer's centralized job classification system.¹ County of Cook, 24 PERI ¶ 37 (IL LRB-LP 2008); County of Cook, 24 PERI ¶ 36 (IL LRB-LP 2008); cf. County of Cook (Medical Examiner's Office), 17 PERI ¶ 3005. Here, the Employer assented to the petition in Case No. L-RC-15-019, which excluded 12 of the 33 ASO IIs. Furthermore, the Employer not only agreed to split the classification, it even agreed to split unit-placement within departments. It included one ASO II in the Department of Transportation, while excluding another in that

¹ A petitioner may also rebut the presumption of inappropriateness in other ways, but they are not relevant here. See Cnty. of McHenry and McHenry Cnty. Recorder of Deeds, 31 PERI ¶ 8; City of Naperville, 28 PERI ¶ 98 (IL LRB-SP 2011); Rend Lake Conservancy, 14 PERI ¶ 2051 (IL SLRB 1998); see also City of Rolling Meadows, 16 PERI ¶ 2022 (IL SLRB 2000); State of Ill., Dep't of Cent. Mgmt. Services (Dep'ts of Transportation and Natural Resources), 14 PERI ¶ 2019 (IL SLRB 1998).

same department, and it did the same with the ASO IIs in the Department of Streets and Sanitation, the Department of Buildings, the Chicago Public Library, and the Office of Budget and Management. Accordingly, the parties' own arrangement of unit inclusions and exclusions, approved by the Board, provides a rational basis for setting aside the presumption. To do otherwise would deprive employees of the rights granted them under the Act in a case where the "presumption is no longer rooted in fact." County of Cook, 24 PERI ¶ 37.

Contrary to the Employer's contention, the petitioned-for employee does not hold a different title than the ASO IIs at issue in Case No. L-RC-15-019, and the parties' earlier practices regarding the ASO II title remain relevant. The Employer asserts that the petitioned-for position in fact holds the title "ASO II-Excluded." However, the term "excluded" does not denote a different title. It simply signifies the fact that the petitioned-for employee was excluded from the Board's certification in Case No. L-RC-15-019, pursuant to the parties' agreement. Indeed, Maribel Chaidez-Munoz, whom the Board excluded by name under the prior certification of the ASO II title, still holds the same position today and is the subject of this case.

Moreover, maintaining the presumption here would not further its intended purposes. The presumption serves to avoid undue fragmentation by preventing the formation of units with no traditional basis and little internal cohesiveness. DuPage County Board, 1 PERI ¶ 2003. Here, however, the proposed unit has a traditional basis because it is a historical unit of administrative and clerical employees, to which the Employer has already consented to add 21 ASO IIs. These same factors render the unit internally cohesive and also distinguish it from proposed units that the Board has rejected.² Cf. Cnty. of Cook (Medical Examiner's Office), 17 PERI ¶ 3005 (finding that only county-wide unit was appropriate, rejecting departmental unit); cf. Cnty. of Cook and Cook Cnty. Sheriff, 15 PERI ¶ 3011 (same); cf. Cnty. of Cook (Medical Examiner's Office), 3 PERI ¶ 3033 (finding county-wide unit was appropriate, rejecting office-wide unit); cf. Cnty. of Cook, 3 PERI ¶ 3016 (finding historical Administrative Professional unit was appropriate, rejecting office-wide unit of investigators); cf. Cook Cnty. (Dep't of Supportive Serv.), 2 PERI ¶ 3027 (finding unit that included administrative employees was appropriate, rejecting standalone unit of caseworkers).

In addition, the Union's proposed unit does not unduly fragment employee groups because there is no present issue of fragmentation where employees are added to an existing unit.

² The Employer cites to no case analogous to this one in which the Board has dismissed the petition.

County of Cook, 3 PERI ¶ 3024 (IL LLRB 1987) (where both unions sought to add employees to existing units, neither proposed unit would fragment the employer's workforce); City of Chicago, 2 PERI ¶ 3014 (IL LLRB 1986) (ALJ rejected union's contention that addition of detention aides to Unit I would cause overfragmentation).

Finally, the Union's proposed unit configuration presents no greater risk of future fragmentation than the parties' present configuration. The Union's current proposed unit configuration omits some ASO II positions, but in this respect, it is the same as the configuration the parties previously agreed upon, which likewise omitted some ASO II positions. Moreover, the Union's configuration, because it adds the petitioned-for ASO II to a broad-based clerical/administrative unit, does not encourage the creation of small, departmental units, potentially represented by other unions. Cf. Cnty. of Cook (Medical Examiner's Office), 17 PERI ¶ 3005 (rejecting addition of clericals to department-wide unit, fearing that it would set precedent for numerous labor organizations to file petitions in the future likewise seeking smaller departmental units of clericals).

Arguably, it might be more appropriate to add all the remaining ASO IIs to Unit 1, but the standard for judging whether a unit is appropriate is not whether the petitioned-for unit is the most appropriate but whether it is an appropriate unit. City of Chicago, 25 PERI ¶ 77 (IL LRB-LP 2009); City of Chicago, 23 PERI ¶ 172 (IL LRB-SP 2007) (citing Rend Lake Conservancy District, 14 PERI ¶ 2051 (IL SLRB 1998)). Here, the parties' pattern of bargaining and the contours of the proposed unit, discussed above, demonstrate that the proposed unit is appropriate, even though it omits some ASO II positions.

In sum, the proposed unit is appropriate.

IV. CONCLUSIONS OF LAW

1. The petition has majority support.
2. A unit that includes the petitioned-for employee is an appropriate unit.

V. 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: The following position in the Administrative Services Officer II title is to be included in the AFSCME-represented bargaining unit #1: the position in the City of Chicago's Department of Family and Support Services, currently occupied by Maribel Chaidez-Munoz.

EXCLUDED: All supervisory, managerial and confidential employees within the meaning of the 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, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at 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 23rd day of October, 2019

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**