

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

County of Cook and Sheriff of Cook,)	
)	
Employer/Petitioner)	
)	
and)	Case Nos. L-UC-19-009
)	L-UC-19-010
American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Labor Organization/Petitioner)	
)	
and)	
)	
Metropolitan Alliance of Police,)	
Chapter 438,)	
)	
Labor Organization.)	

ORDER

On January 7, 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 June 18, 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 18th of June 2020.

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

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

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On April 1, 2019, the County of Cook and Sheriff of Cook County (jointly, Employer) filed a petition with the Illinois Labor Relations Board (Board) seeking guidance regarding the identity of the bargaining representative of employees in the position “deputy chief/sergeant,” employed in the Employer’s Electronic Monitoring Unit. The Employer asserts that “deputy chief” and “sergeant” are different names for the same title.

On April 5, 2019, the Metropolitan Alliance of Police, Chapter 438 (MAP), filed a unit clarification petition to add the “Sergeants in the Electronic Monitoring Unit” (EM sergeants) to its certification covering the title deputy chief, issued by the Board in Case No. L-RC-06-001.

The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) objected to both petitions on the same grounds. It asserted that it is the representative of the sergeants in the Electronic Monitoring Unit, pursuant to the certification in Case No. L-UC-15-003. It further asserts that unit clarification is not appropriate because the petitions do not fall within any of the circumstances approved for unit clarification.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question

concerning representation existed. A hearing on the matter was conducted on July 29, 2019, by ALJ Michelle N. Owen. All parties elected to file post-hearing briefs. The case was subsequently transferred to the undersigned.

I. STIPULATIONS

The parties stipulate and I find:

1. There have been no changes regarding the duties of Deputy Chiefs/EM Sergeants of the Electronic Monitoring Unit since the hearing held in Case No. L-RC-15-003.
2. The first four employees listed on Employer Exhibit 5 carry a Deputy Chief badge and the remaining employees, those who have a unit seniority date of February 2017, carry an Electronic Monitoring Sergeant Badge.

II. ISSUES AND CONTENTIONS

The issues are whether the unit clarification petitions are appropriate and whether the unit clarification petitions should be granted.

The Employer asserts that the unit clarification petitions are appropriate because the court in AFSCME v. ILRB¹ stated that the Employer, MAP, or AFSCME could file a unit clarification petition “to clarify the appropriate bargaining unit for the EM sergeants.” The Employer asserts that the parties agree that the EM sergeant title and the deputy chief title are the same position and perform the same duty. It asserts that one union should represent all the employees holding those two titles, but contends that it has no position as to which union should be the representative. The Employer concludes that it would be amenable to holding an election so that the EM sergeants could select their representative, but notes that other parties to the case objected to this solution.

MAP likewise asserts that its unit clarification petition is appropriate and must be granted. It asserts that unit clarification is appropriately used to determine whether particular positions or titles are properly within the scope of the unit and notes that its petition serves that end. It argues that the placement of the EM sergeants with the deputy chiefs is appropriate because “EM sergeant” is a successor title to the title “deputy chief,” and successor titles are

¹ Am. Fed’n of State, County & Mun. Employees (AFSCME), Council 31 v. Illinois Labor Relations Bd., Local Panel (“AFSCME v. ILRB”), 2017 IL App (1st) 160960, ¶ 15.

treated in the same manner as predecessor titles with respect to unit placement. MAP further argues its unit is the only appropriate unit for the EM sergeants because the EM sergeants do not share a community of interest with the correctional sergeants in the AFSCME unit. Finally, MAP asserts that AFSCME's initial petition in Case No. L-UC-15-003 was untimely filed.²

AFSCME argues that the unit clarification petitions are inappropriately filed because they are untimely filed and do not fall within the limited circumstances recognized as appropriate for unit clarification under the Board's rules. AFSCME denies that the Court's decision in AFSCME v. ILRB permits the parties to file another unit clarification petition at any time or under any circumstances. AFSCME further argues that its certification as the representative of the EM sergeants was appropriate because the EM sergeants became functionally integrated with the sergeants in the Department of Corrections after the Employer reorganized, and no longer have a separate identity. In the alternative, AFSCME suggests that MAP and AFSCME retain their respective certifications such that they each represent some of the employees who perform the same functions.

III. FACTS

1. Organization of the Sheriff's Department from 1994 to 2011

The Sheriff's Office is comprised of several departments. It includes the Department of Corrections (DOC). Prior to 2011, it also included the Department of Community Supervision and Intervention (DCSI).

The DCSI had an Electronic Monitoring Unit, which monitored individuals chosen by the court or the Sheriff's Office to enter the Electronic Monitoring Program. Director Greg Shields headed the unit and reported to the Executive Director of the DCSI. The unit had its own management staff. It also employed merit-ranked investigators and non-merit-ranked deputy chiefs. A position is non-merit-ranked if the Employer can hire an individual into the position without examination or testing.

The DOC has multiple units, which each perform a variety of functions. Some of these include guarding the jails and handling basic maintenance. The DOC also performs electronic monitoring functions, which it administers through its Sheriff's Women's Justice Program. The

² MAP also asserts that the Employer is estopped from arguing that AFSCME is the appropriate unit; however, the Employer has made no such argument.

DOC has its own management staff. It also employs correctional officers and correctional sergeants, who work in units throughout the DOC, including the Women's Justice Program. The sergeants in the DOC are merit-ranked.

2. Certification and Bargaining History of the Sheriff's Department Prior to 2011

On January 2, 2002, in Case No. L-RC-03-005, the Board's executive director certified AFSCME as the exclusive representative of "all Cook County Sheriff's Department of Correction employees in the rank of Sergeant."

On May 24, 2007, in Case No. L-RC-06-001, the Board's executive director certified MAP as the exclusive representative of all "Deputy Chiefs employed by the Sheriff of Cook County and County of Cook in the Sheriff's Electronic Monitoring Unit within the Sheriff's Department of Community and Supervision Intervention."³

On September 1, 2010, MAP and the Employer executed a collective bargaining agreement covering the deputy chiefs. The agreement was effective from September 1, 2010 through November 30, 2012.

3. Reorganization of the Sheriff's Department

In 2011, the Sheriff's Office reorganized. It disbanded the DCSI and administratively moved the Electronic Monitoring Unit to the DOC by changing its reporting structure. Following that change, the Electronic Monitoring Unit Director reported to the DOC Assistant Executive Director. However, the Sheriff's Office did not transition all of the EM Unit into the DOC. It moved the fugitive section of the EM Unit into the Sheriff's Police Department's Central Warrant Unit.

In August 2012, as part of this reorganization, the Sheriff's Department changed job titles of employees formerly within the DCSI. Relevant to this case, it changed the title of deputy chief to EM sergeant. Chief of Staff for the Sheriff, Brian Towne, announced the change in a memo dated August 8, 2012. His memo clarified that the new title was "not a promotional/merit board promoted rank title but [was] a change of operational title only used in the daily operation of the Electronic Monitoring Unit within the Department of Corrections." At hearing in Case No. L-UC-15-003, Peter Kramer, the Sheriff's Special Counsel for Labor Affairs, testified that

³ The certification excluded two deputy chiefs by name, James Bibb and Thomas Neal.

the EM sergeant positions and deputy chief positions were “[o]ne and the same” and that the Employer’s “intent was just to change the title.” At hearing in this case, Kramer confirmed that the individuals in the deputy chief position and the EM sergeant position have the same job duties and responsibilities. MAP Union President, Deputy Chief Rotonda Malone-Cole, likewise testified that the EM sergeants and the deputy chiefs perform the same job function. The EM sergeant position, like the deputy chief position, is not merit-ranked.

However, the County never changed the budget titles of the affected positions to reflect the title change effectuated by the Sheriff’s Department. Accordingly, employees who use the operational title of EM sergeant are, to this day, referenced as deputy chiefs by the County. Kramer noted that the County sometimes does not timely update its budget titles.

4. Bargaining History of the Sheriff’s Department After the Reorganization and Subsequent Certifications

On August 10, 2012, MAP filed a grievance over the Sheriff’s decision to change the title of deputy chief to EM sergeant.

On September 11, 2013, MAP and the Sheriff settled the grievance by entering into a memorandum of understanding (MOU). Under that MOU, MAP and the Sheriff agreed that all employees who then held the title deputy chief would retain that title. MAP agreed that current deputy chiefs would retire with the title and that new employees transferred or promoted to perform the duties of deputy chief would receive the job title Electronic Monitoring Sergeant (EM sergeant). The parties agreed that “Electronic Monitoring Sergeants will be covered employees within the Metropolitan Alliance of Police Cook County DCSI Deputy Chiefs Chapter #438 and [will] have the same level of authority as the Deputy Chief employees.” The parties further agreed that the EM sergeant title would be interchangeable with the title deputy chief for the purpose of enforcing the rights and benefits of employees covered under the collective bargaining agreement between MAP and the joint employers.

Currently, four employees hold the operational title deputy chief and six employees hold the operational title EM sergeant. The County’s budget refers to all holders of the EM sergeant title as deputy chiefs.

On September 24, 2014, AFSCME filed a unit clarification petition in Case No. L-UC-15-003 seeking to add the EM sergeants to its existing bargaining unit of corrections sergeants.

The Employer posted the notice of the petition. No party filed objections.

On November 6, 2014, the Board's Executive Director issued a certification order that added the title "sergeant in Electronic Monitoring Unit" to the AFSCME-represented bargaining unit of correctional sergeants. No party filed an appeal of the certification within the ten-day appeal period.

On February 17, 2015, MAP informed the Board that the Executive Director's certification in Case No. L-UC-15-003 covered employees already represented by MAP. In response, the Executive Director revoked AFSCME's certification on February 20, 2015. The Board's General Counsel then bifurcated the issues in the case. He allowed AFSCME to immediately appeal the revocation order to the Board. However, he also assigned the case to an ALJ to consider whether AFSCME's underlying unit clarification petition was appropriately filed under the Board's rules. The Employer determined that it would not be a party to the unit clarification petition litigation at issue in that case and chose not to participate in the hearing.

AFSCME filed a timely appeal of the revocation, contending that the Board had denied it due process. MAP intervened in the appeal. While AFSCME's appeal was pending before the Board, ALJ Kelly Coyle issued a Recommended Decision and Order addressing the second issue, the propriety of AFSCME's unit clarification petition seeking to represent the EM sergeants. County of Cook and Sheriff of Cook County, 33 PERI ¶ 18 (IL LRB-LP ALJ 2016). She found that AFSCME's petition was not appropriate because it did not fall into any of the recognized circumstances deemed appropriate for unit clarification. County of Cook and Sheriff of Cook County, 33 PERI ¶ 18. She declined to adopt the NLRB's accretion standard, advanced by AFSCME as another basis for finding unit clarification appropriate. Finally, she noted that the title of EM sergeant was a successor title to the title of deputy chief and that, under the Board's rules, a bargaining unit described as consisting of particular job titles shall also include any subsequently-created successor job titles. Id.

Meanwhile, on April 12, 2015, MAP filed a grievance alleging that the Employer violated its 2013 MOU with MAP to add the EM sergeant title to MAP's bargaining unit through a unit clarification petition. In the alternative, MAP requested that the Employer revert to using the title of deputy chief for all EM sergeants.

On March 9, 2016, the Board affirmed the Executive Director's revocation of AFSCME's certification and held that the Executive Director possessed the authority to take such action.

County of Cook and Sheriff of Cook County, 32 PERI ¶ 154 (IL LRB-LP 2016). On June 29, 2016, the Board affirmed ALJ Coyle’s determination that AFSCME’s unit clarification petition was inappropriately filed. County of Cook and Sheriff of Cook County, 33 PERI ¶ 18 (IL LRB-SP 2016). In addition to the reasons offered by the ALJ for dismissal, the Board noted that the unit clarification petition was also untimely filed. AFSCME appealed both decisions of the Board to the Illinois Appellate Court.

During the pendency of the appeal, on October 26, 2016, MAP and the Employer executed a collective bargaining agreement covering both the deputy chiefs and the EM sergeants. By its terms, the agreement was effective from December 1, 2012 through November 30, 2017. The contract contained a recognition clause which stated the following: “In accordance with the [Board’s certification], dated May 24, 2007, the Employer hereby recognizes the Chapter as the sole and exclusive collective bargaining representative for all Deputy Chiefs and Electronic Monitoring Sergeants employed by the Sheriff of Cook County and County of Cook in the Sheriff’s Electronic Monitoring Unit within the Sheriff’s Office...”

It also contained a provision clarifying the meaning and use of the title deputy chief. It stated that “the title ‘Deputy Chief’ in this document is understood to be for clerical convenience only, and it is further understood that this shall include any and all positions held by individuals of the rank of Deputy Chief and Electronic Monitoring Sergeant within the Central Warrant Fugitive Unit and Electronic Monitoring Unit.”

On April 23, 2017, MAP filed a demand to bargain with the Employer over a successor agreement to cover the deputy chiefs and the EM sergeants.

On May 26, 2017, the Illinois Appellate Court issued a consolidated decision in the two cases considered by the Board in 2016, discussed supra. It reversed the Board’s decision on the revocation issue and vacated the Board’s decision on the propriety of AFSCME’s unit clarification petition. Am. Fed’n of State, County & Mun. Employees (AFSCME), Council 31 v. Illinois Labor Relations Bd., Local Panel (“AFSCME v. ILRB”), 2017 IL App (1st) 160960, ¶ 22. The Court held that the Executive Director lacked the authority to revoke a certification of representative in the same case where she had issued it, after the appeal period had passed. AFSCME v. ILRB, 2017 IL App (1st) 160960, ¶ 12. It concluded that the originally-granted certification therefore remained in place. Id. The Court then considered the Board’s subsequent decision on the appropriateness of AFSCME’s petition and found it to be void. Id. at 21 & 22.

The Court reasoned that the Board lacked jurisdiction to dismiss the petition where the Executive Director acted outside her authority in revoking the certification. Id. at 21 & 22.

On November 14, 2018, the Employer's Board of Commissioners approved a collective bargaining agreement between the Employer and AFSCME, which covered the Employer's correctional sergeants, job code 1361. The agreement was effective from December 1, 2017 through November 30, 2020. It did not cover the EM sergeants.

In early 2019, MAP began negotiations with the Employer over a successor agreement to cover the EM sergeants and the deputy chiefs.

On October 28, 2019, the Employer issued a job posting for the EM sergeant position. On February 1, 2019, AFSCME Staff Representative David Dorn contacted Kramer and asked him to remove it. Dorn informed Kramer that AFSCME was the EM sergeants' exclusive representative based on the appellate court's decision in AFSCME v. ILRB. He further asserted that the posting was not consistent with postings for AFSCME positions and did not identify AFSCME as the position's exclusive representative.

Kramer testified that until February 2019, he was unaware of the appellate court's decision and believed that MAP represented the EM sergeants. He asserted that none of the EM sergeants had identified themselves as an AFSCME representative. To his knowledge, AFSCME had never filed a grievance on behalf of an EM sergeant and had never requested to represent an EM sergeant during an investigation. In addition, EM sergeants and deputy chiefs had continuously paid their union dues to MAP. AFSCME never challenged this payment.

In March 2019, MAP Union President Malone-Cole, represented an EM sergeant in a grievance, at his request, and bargained with the Employer over the resolution of the grievance. No EM sergeants ever informed Malone-Cole that they were union representatives for AFSCME.

On April 1, 2019, the Employer filed a unit clarification petition in this case, seeking guidance as to the identity of the bargaining representative of employees in the position "Deputy Chief/Sergeant," employed in the Employer's Electronic Monitoring Unit. The Employer informed the Board that it was "in a difficult position because it [did] not know with whom it should bargain."

On April 5, 2019, MAP filed a unit clarification petition seeking to add the “Sergeants in the Electronic Monitoring Unit” to its certification of representative, issued by the Board in Case No. L-RC-06-001.

On April 24, 2019, AFSCME filed a demand to bargain with the Employer over the wages, hours, terms and conditions of employment of the EM sergeants.

IV. DISCUSSION AND ANALYSIS

1. Propriety of the Unit Clarification Petitions

The unit clarification petitions are procedurally appropriate.

The unit clarification petitions are procedurally appropriate based on the appellate court’s holding in AFSCME v. ILRB. Am. Fed’n of State, County & Mun. Employees (AFSCME), Council 31 v. Illinois Labor Relations Bd., Local Panel (“AFSCME v. ILRB”), 2017 IL App (1st) 160960, ¶ 15.

In AFSCME v. ILRB, the court reversed the Executive Director’s revocation of AFSCME’s certification in Case No. L-UC-15-003 covering the EM sergeants. The Court held that the Executive Director lacked the authority to revoke a certification of representative in the same case where she had issued it, after the appeal period had passed. AFSCME v. ILRB, 2017 IL App (1st) 160960, ¶ 12-18. The Court reasoned that in cases where the Executive Director issues a certification, the appropriate process for review of the certification is an appeal to the Board, and then to the court, in accordance with the Administrative Review Law. Id. at ¶ 11. It rejected the Board’s argument that the Executive Director exercised an implied power of revocation out of necessity, to avoid disruption of the collective bargaining process. AFSCME v. ILRB, 2017 IL App (1st) 160960 ¶ 15. It reasoned that the Board “expressly provides methods of untangling the question of the employees’ representation before the collective bargaining process is disrupted.” Id. To that end, it noted that the Employer could file a unit clarification petition alleging that both AFSCME and MAP presented a claim that they represent the EM sergeants. Id. Alternatively, the Employer, AFSCME, or MAP could file a new unit clarification petition seeking to clarify the appropriate bargaining unit for the EM sergeants. Id. The court held that the Board could reconsider and, if necessary, revoke AFSCME’s certification under either of these proceedings. Id.

Here, the Employer and MAP followed the court's guidance and filed their respective petitions to seek guidance as to the identity of the EM sergeants' exclusive representative and to determine their appropriate unit placement. Thus, according to the court's express ruling, the petitions are the appropriate means by which the parties can obtain Board review of their dispute.⁴

Contrary to AFSCME's contention, the court was not merely offering guidance to the Executive Director on what she should have done in lieu of summarily revoking AFSCME's petition. Rather, it was offering guidance on what the parties should do next in a case where, due to actions taken by the Board, two unions could each claim to represent the same group of employees. AFSCME v. ILRB, 2017 IL App (1st) 160960 ¶¶ 2, 14. & 15. Indeed, if the Executive Director could not summarily revoke the certification upon learning of the error and the parties also could not use unit clarification to remedy it, the error might exist in perpetuity and hamper effective bargaining.

Furthermore, the petitions are timely filed. The Board and appellate court have generally held that parties must exercise due diligence in filing unit clarifications petitions. Water Pipe Extension, Bureau of Engineering, Laborers Local 1092 v. Illinois Local Labor Relations Board ("Water Pipe Extension"), 252 Ill. App. 3d 932, 937 & 941 (1st Dist. 1993); State of Illinois, Department of Central Management Services (Department of Public Health), 2 PERI ¶2005 (IL SLRB 1985). The Board has dismissed unit clarification petitions where parties did not file them timely, within two years of the asserted basis for the petition. City of Chicago, 7 PERI ¶ 3029 (IL LLRB 1991) (more than two-year delay rendered petition untimely) aff'd sub nom. Water Pipe Extension, 252 Ill. App. 3d 932; State of Illinois, Department of Central Management Services (Department of Public Health), 2 PERI ¶2005 (two-year delay rendered petition untimely).

Here, both the petitions are timely filed because the parties filed them within two years of the court's decision in AFSCME v. ILRB. The court's decision was the impetus for the parties' petitions because it revived a conflict of representation between AFSCME and MAP by

⁴ Notably, the Court's decision should not be viewed as allowing parties to use the Board's representation processes to collaterally attack petitions to which they did not timely object. The Board has soundly rejected such an approach. Plainfield Fire Protection District, 23 PERI ¶ 105 (IL LRB-SP 2007). Rather, the Court's decision is better viewed as standing for the proposition that parties may use unit clarification when two unions, as a result of Board action, possess arguably competing certifications that cover the same employees.

reinstating AFSCME's certification of the EM sergeant title. Following the court's decision, both AFSCME and MAP possessed Board-issued certifications that covered the employees who held that title. Although MAP's certification mentions only the deputy chief title, it nevertheless overlaps with AFSCME's certification because every EM sergeant concurrently holds the title of deputy chief. The Sheriff and the County—joint employers—facilitated this overlap because they use different titles for the same employees. The Sheriff unambiguously changed the deputy chief title to that of EM sergeant for all new hires performing deputy chief work, starting in 2013. However, the County has maintained its use of the deputy chief title for all employees performing deputy chief work, irrespective of when they began their employment. Accordingly, the parties timely filed their respective petitions to untangle the conflict of representation revived by the court's reinstatement of AFSCME's certification in 2017.

AFSCME asserts that the timeliness of the petitions must be judged by the date on which the Employer created the EM sergeant title (2012), but that is not the appropriate benchmark under the circumstances presented here. This case is not merely a delayed attempt by MAP to expand its certification by adding a newly created job classification entailing job functions already covered in the unit.⁵ Rather, it is an effort by both MAP and the Employer to resolve a bona fide conflict of representation and to ensure that MAP's certification appropriately reflects both alternate titles for the same position. Indeed, every EM sergeant is already expressly covered under MAP's certification by virtue of holding a second title, that of deputy chief.

In the alternative, if the Board determines that the question of timeliness is best judged by the date on which the Employer created the EM sergeant title (2012), I recommend that the Board nevertheless accept and consider the petitions. The Board has recognized that there may be some cases in which it is appropriate to set aside the timeliness rule when doing so effectuates the policies of the Act. City of Aurora, 18 PERI 2020 (IL LRB-SP 2002). There is good reason to do so here because this case involves conflicting certifications and bona fide claims of concurrent representation by two separate unions that can only be resolved through Board action.

Indeed, this characteristic renders the petitions distinguishable from those in which the Board has strictly applied the timeliness rule. For example, the petition at issue in City of Chicago involved two unions but raised no ambiguity as to which union represented the

⁵ City of Evanston v. Ill. State Labor Relations Bd., 227 Ill. App. 3d 955, 969-70 (1st Dist. 1992) (noting that this is an appropriate use of a unit clarification petition) (citing State of Ill. (Dep'ts of Cent. Mgmt. Serv. & Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986)).

petitioned-for title at the time the petition was filed. City of Chicago, 7 PERI ¶ 3029. Rather, the petitioner asked the Board to *restore* employees to its bargaining unit after the employer had reclassified them into titles represented by another union. Id. The Board dismissed the petition on timeliness grounds noting that the Employer had effectuated the representational change at least two years earlier. Id. The court affirmed the Board's decision, reasoning that the Board "could well be reluctant to permit a unit clarification to "reshuffle bargaining units" when considerable time had passed and "employees [had] become solidly rooted in another bargaining unit." Water Pipe Extension, 252 Ill. App. 3d at 939 & 941 aff'g City of Chicago, 7 PERI ¶ 3029.

Here, by contrast, there is a present conflict in representation rather than a clear change of representative, as there was in City of Chicago. MAP remained the representative of employees who obtained the EM sergeant title, pursuant to the Sheriff's directive, because the County retained reference to those same employees as deputy chiefs, the title covered under MAP's certification. Although the EM sergeants were likewise covered under AFSCME's certification, following the court's decision in AFSCME v ILRB, they never became "solidly rooted" in AFSCME's bargaining unit. Indeed, AFSCME never collected dues from EM sergeants and never negotiated contract terms on their behalf, although it had held a certification for their title for nearly two years following the court's decision in AFSCME v. ILRB. Cf. Water Pipe Extension, 252 Ill. App. 3d at 941 (employees were firmly rooted in their new union where they had been paying that union dues for many years).

In light of the unresolved conflict in representation, discussed above, the petitions should not be dismissed merely because MAP and the Employer understood that a unit clarification would have been advisable in 2013, when the Sheriff created the new EM sergeant title. A unit clarification petition indeed would have been appropriate then, to add a newly created successor title to MAP's certified bargaining unit. County of Peoria and Sheriff of Peoria County, 14 PERI ¶ 2049 (IL SLRB 1998). In fact, such a petition might have avoided the present conflict in representation caused at least in part by the joint employers' use of different titles for the same employees. Yet, the parties' earlier inaction should not preclude the Board from resolving this matter, where the Employer is facing competing demands to bargain from two unions that each have Board-issued certifications supporting their claims that they represent some of the same employees.

Thus, the petitions are appropriately filed.

2. Reconsideration and Revocation of AFSCME's Certification of Representative

It is appropriate to reconsider and revoke AFSCME's certification. As a preliminary matter, the Board has authority to reconsider and, if necessary, revoke AFSCME's certification in this case, provided it gives all parties notice and an opportunity to be heard. AFSCME v. ILRB, 2017 IL App (1st) 160960, ¶ 11. The Board has provided all parties that opportunity in this case, and any subsequent modifications to AFSCME's certification are therefore procedurally sound.

Turning to the merits, AFSCME certification is revoked because the Board granted AFSCME's unit clarification petition in error. AFSCME's unit clarification petition was procedurally inappropriate for at least three reasons. First, AFSCME lacked standing to file the petition because it was not the representative of the employees in the petitioned-for group, i.e., the EM sergeants. Pursuant to Section 1210.170(a) of the Board's Rules, only "an exclusive representative or an employer may file a unit clarification petition to clarify or amend an existing bargaining unit." 80 Ill. Admin. Code 1210.170(a). The Board has held that "it is axiomat[ic] that the exclusive representative or employer filing such a petition must hold that status with respect to the employees which are the subject of the petition." International Brotherhood of Electrical Workers, Local 21, City of Chicago and Service Employees International Union, Local 73, 26 PERI ¶ 44 (one union lacked standing to bring a unit clarification petition where the employees at issue were represented by a coalition; internal quotes omitted) (citing City of Aurora, 7 PERI ¶ 2018 at fn. 2 (IL SLRB 1991)). Here, MAP represented the EM sergeants when AFSCME filed its petition because all the EM sergeants concurrently held the title of deputy chief, a title covered under MAP's certification. AFSCME therefore had no standing to file the petition to "clarify" the EM sergeants into its unit of correctional sergeants. Indeed, the purpose of the unit clarification process is not to change the scope of a bargaining unit, as AFSCME attempted to do, but to resolve unit composition questions that arise within the context of the parties' recognition agreement, the provisions of the Act, or the unit described in a Board certification. Champaign County State's Attorney, 16 PERI 2024 (IL SLRB 2000); City of Chicago, 9 PERI ¶ 3026 (IL LLRB 1993).

Second, AFSCME improperly sought to use unit clarification to sever a segment of MAP's employees from an existing bargaining unit. Severance cannot be accomplished through

unit clarification. International Brotherhood of Electrical Workers, Local 21 and City of Chicago and Service Employees International Union, Local 73, 26 PERI ¶ 44 (IL LRB-LP 2010) aff'd by Intl Broth. of Elec. Workers v. Illinois Labor Relations Bd., 2011 IL App (1st) 101671 (citing City of Chicago (Bridgetenders), 2 PERI ¶ 3022 (IL LLRB 1986)). To sever the MAP unit, AFSCME would have had to file an election petition with a showing of interest from 30% of the entire MAP bargaining unit—all employees holding the deputy chief title, not just those who also held the EM sergeant title. Id. In addition, it would have had to satisfy the Board's stringent severance standard. AFSCME did neither. Id.

Third, even setting aside these critical deficiencies, AFSCME failed to demonstrate that its petition in Case No. L-UC-15-003 fell within any of the recognized circumstances deemed appropriate for unit clarification under the Board's rules and case law. Rather, it urged the Board to adopt the National Labor Relations Board's accretion standard. County of Cook and Sheriff of Cook County, 33 PERI ¶ 18 (IL LRB-SP 2016). The Board declined to do so. Id. Although the court later found the Board's decision to be void for lack of jurisdiction, the analysis contained therein is sound and it is adopted here.

Furthermore, revocation furthers the policies of the Act by promoting stability in labor relations. It permits the Board to correct an error that produced two competing certifications covering the same employee group and raised ambiguities regarding the Employer's bargaining obligations. County of Cook and Sheriff of Cook County, 27 PERI ¶ 38 (IL LRB-LP 2011) (in case of competing petitions and premature certification, Board corrected error in part through revocation). It also frees MAP and the Employer to resume their previously stable collective bargaining relationship that has already resulted in two successive collective bargaining agreements covering the deputy chiefs.

Revocation of AFSCME's certification likewise does not contravene policies underlying the Act. It does not disrupt any stable bargaining relationships because AFSCME did not engage with the EM sergeants for nearly two years after the Court reinstated its certification. It never collected dues from them or objected to such dues collection by MAP. It never represented them in grievances. It did not negotiate a collective bargaining agreement on their behalf, although it did negotiate an agreement for the correctional sergeants during that time. Only in February 2019 did AFSCME first begin to advocate for the EM sergeants, when it objected to the Employer's job posting for an EM sergeant position. And only after MAP and the Employer

filed their petitions in this case, nearly two years after the court reinstated AFSCME's certification, did AFSCME demand to bargain over the EM sergeants' terms and conditions of employment. Int'l Broth. of Elec. Workers v. Illinois Labor Relations Bd., 2011 IL App (1st) 101671 ¶ 44 (Board favors policies that foster existing, stable bargaining relationships). In addition, revocation does not undermine employees' prior selection of representative because AFSCME obtained representative status through unit clarification, which did not permit employee choice.

Finally, adding the EM sergeant title to the unit represented by MAP through unit clarification likewise furthers the policies of the Act. In City of Aurora, the Board articulated the criteria for determining whether unit clarification was an appropriate means to add a title to a unit, even if it had existed for some time, and whether such inclusion furthered the policies of the Act. City of Aurora, 18 PERI 2020. The relevant factors were (1) whether the titles were within the scope of the existing unit; (2) whether the employees occupying those titles had been treated as unit members prior to the filing of the petition; (3) whether excluding the titles would result in those employees being the only similarly situated individuals in their workplace excluded from the bargaining unit; and (4) whether there is an agreement between the parties to include the titles and, relatedly, whether there are employee objections to that agreement. Id. (reversing the Executive Director's dismissal of a stipulated unit clarification petition on timeliness grounds, even though at least some of the petitioned-for titles had been "in existence for some time," and remanding for analysis of the stated factors)

Considering these factors, below, it is clear that adding the EM sergeant title to the MAP-certified unit furthers the purposes of the Act under the Board's criteria. First, the EM sergeant title is within the scope of MAP's unit because it is a successor title to the deputy chief title, covered under MAP's certification. Successor titles are treated in the same manner as their predecessor titles with respect to unit placement. City of Aurora, 18 PERI 2020; County of Peoria and Sheriff of Peoria County, 14 PERI ¶ 2049; 80 Ill. Admin. Code 1210.37. Here, the parties agree that the EM sergeants and the deputy chiefs perform identical work and have identical authority. Indeed, as discussed above, all the EM sergeants are also deputy chiefs because one of the joint employers (the County) preserved that predecessor title.

Second, the Employer and MAP continuously treated the EM sergeants as members of MAP. In 2013, the Employer agreed that the EM sergeants would be covered by the existing

MAP collective bargaining agreement. Then in 2016, the Employer and MAP executed an agreement that covered both the deputy chiefs and the EM sergeants. The Employer has also continuously, to date, deducted dues from the EM sergeants for MAP's benefit. Finally, the Employer negotiates with MAP representatives in settling grievances filed by EM sergeants.

Third, if the EM sergeants were excluded from the MAP unit, they would be the only employees left out of the bargaining unit whose functions, authority, and terms and conditions of employment are identical to those of employees within the bargaining unit. The EM sergeants and the deputy chiefs have the same duties and authority. They have satisfied the same criteria for hire, which does not require merit-ranking. They also have identical terms and conditions of employment, which are defined by the now-expired MAP contract. There are no other employees outside the unit who share all these features. Although there are some correctional sergeants who perform electronic monitoring, they have different employment criteria because they are merit ranked. In addition, they have different wages and other terms and conditions of employment because they are covered by the AFSCME contract, which has its own distinct terms.

Even the last factor is satisfied in material respects. There are no employee objections to either petition. In addition, both MAP and the Employer agree to this configuration. Although the Employer has not favored either union in this case, it stated that it would be satisfied with any configuration that places the deputy chiefs in a single unit, regardless of whether they also hold the EM sergeant title. The configuration recommended below satisfies this preference.

Only AFSCME objects, but such an objection should not result in an order for an election among the EM sergeants, whom AFSCME sought to represent in Case No. L-UC-15-003. The Board has suggested in dicta that it could order an election within the context of a competing unit clarification petitions file by different unions where the two petitions present equally meritorious claims.⁶ City of Chicago ("Detention Aides"), 2 PERI ¶ 3014 n. 7 (IL LLRB 1986). Here however, as discussed above, the petitions filed by MAP and AFSCME do not have equal merit because AFSCME's petition was inappropriate on a number of grounds, whereas MAP's petition was appropriate.

⁶ An election in such a case would be contingent on the petitioner mustering an adequate showing of interest. City of Chicago, Department of Law, 3 PERI ¶ 3026 (IL LLRB 1987).

Notably, AFSCME is not precluded from seeking to represent the *entire* MAP unit through an election petition, provided it demonstrates the requisite 30% showing of interest. 80 Ill. Adm. Code 1210.40(d). There is currently no contract bar to filing such a petition because the MAP contract expired in 2017. 80 Ill. Admin Code 1210.35. Likewise, the Board's modification of MAP's certification through this unit clarification does not create a certification bar. State of Illinois, Department of Central Management Services, 33 PERI ¶ 111. AFSCME may use such a petition to present arguments concerning the appropriateness of its proposed unit.

In sum, the petitions are appropriately filed, AFSCME's certification is revoked, and MAP's certification is clarified to include the EM sergeant title.

3. Further Direction to MAP and the Employer

The certification, as modified below, still contains errors that must be corrected using a petition to amend certification.

An employer or exclusive representative shall file a petition to amend a unit certification whenever there is a change in the employer's structure or when the certification incorrectly identifies the bargaining unit or contains any other errors. 80 Ill. Admin. Code 1210.180(a).

Here, MAP's certification does not accurately reflect the Employer's modified organizational structure. It states that MAP represents the deputy chiefs and EM sergeants "employed by the Sheriff of Cook County and County of Cook in the Sheriff's Electronic Monitoring unit within the Sheriff's Dept. of Community and Supervision Intervention [DCSI]." Although the Electronic Monitoring Unit still exists, now in a different department, the DCSI does not. Accordingly, the parties should petition to remove the certification's reference to the DCSI.

Such a change cannot be effectuated through this petition because it requires a new notice posting. 80 Ill. Admin. Code 1210.180 and County of Cook, 27 PERI ¶ 50 (IL LRB-LP 2011) (a posting is required for a petition to amend certification, and if employer refuses to post, Executive Director can order employer to give access to the union so that it can post the notice).

V. CONCLUSIONS OF LAW

1. The unit clarification petitions filed by MAP and the Employer are appropriately filed and are timely.
2. It is appropriate to reconsider AFSCME's certification in Case No. L-UC-15-003.
3. AFSCME's certification in Case No. L-UC-15-003 was procedurally inappropriate.
4. AFSCME's certification in Case No. L-UC-15-003 is revoked.
5. MAP's unit clarification petition is granted.
6. The issues raised by the Employer's unit clarification petition are resolved by revoking AFSCME's certification and granting MAP's unit clarification petition.
7. MAP and/or the Employer must file a petition to amend MAP's certification so that it correctly reflects the Employer's modified organizational structure.

VI. RECOMMENDED ORDER

AFSCME's certification in Case No. L-UC-15-003 is revoked.

Unless this Recommended Decision and Order is rejected or modified by the Board, the existing bargaining unit, as certified in Case No. L-RC-06-001 will be clarified as follows:

INCLUDED: All Deputy Chiefs and Electronic Monitoring Sergeants employed by the Sheriff of Cook County and County of Cook in the Sheriff's Electronic Monitoring unit within the Sheriff's Dept. of Community and Supervision Intervention.

EXCLUDED: Deputy Chief James Bibb and Deputy Chief Thomas Neal; all other employees of the Sheriff of Cook County and the County of Cook; all employees of the County of Cook; all confidential, managerial or supervisory employees, or short-term employees, as defined by the Act and the Sheriff and all elected officials of the County of Cook.

VII. 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 7th day of January, 2019

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

/S/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**