STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Brotherhood of Teamsters, Local 700,	)	
Petitioner	)	
and	)	Case No. S-RC-17-022
Illinois State Toll Highway Authority,	)	
Employer	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On November 10, 2016, the International Brotherhood of Teamsters, Local 700, (IBT or Union) filed a majority interest petition with the Board seeking to represent the title Intelligent Transportation Systems (ITS) Field Technician, employed by the Illinois State Toll Highway Authority (ISTHA or Employer). The Employer opposed the petition, asserting that the proposed unit is inappropriate under the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended.

In accordance with Section 9(a) of the Act, 5 ILCS 315/9(a), Administrative Law Judge (ALJ) Anna Hamburg-Gal investigated the petition and issued a Recommended Decision and Order (RDO) on February 24, 2017, concluding that the petitioned-for unit was appropriate and recommending certification of the Union as the exclusive representative of all employees at the ISTHA in the ITS Field Technician title. The Employer filed timely exceptions to the RDO. The Union filed no response.

After reviewing the RDO, exceptions, and the record, we reject the ALJ's findings and conclusions contained in her RDO and instead find as follows:

In her RDO, ALJ Hamburg-Gal concluded that the petitioned-for unit is appropriate and recommended certifying the Union as the exclusive representative of the ITS Field Technicians. The ALJ reached her conclusion after considering the issue of whether the presumption of inappropriateness created by DuPage Cnty Bd., 1 PERI ¶ 2003 (IL SLRB 1985), applied in this case, where an employer has an established centralized personnel system and the petitioner has sought only a portion of employees who perform similar duties. She also considered whether the unit was appropriate under the statutory factors contained in Section 9(b) of the Act.

Regarding the presumption of inappropriateness, where an employer has an established centralized personnel system, the petitioned-for unit is presumptively inappropriate where the petitioner has sought only a portion of employees in the same job classification or, alternatively, only a portion of employees who perform similar duties. Cnty. of McHenry and McHenry Cnty. Recorder of Deeds, 31 PERI ¶ 8 (IL LRB-SP 2014); DuPage Cnty. Bd., 1 PERI ¶ 2003 (IL SLRB 1985) (creating the presumption); Vill. of Bartlett, 3 PERI ¶ 2010 (IL SLRB 1986) (using employees' similar duties to support a presumption-type weighing analysis). Here, the ALJ found that every position identified by the Employer as performing duties similar to the ITS Field Technicians was already represented by the American Federation of State County and Municipal Employees (AFSCME), which has not sought to represent the petitioned-for title, and that when presented with such fact patterns courts have declined to apply the presumption on the grounds that doing so would effectively place the rights of the petitioned-for employees in the hands of a third party. See Ill. Council of Police v. Ill. Labor Rel. Bd., 404 Ill. App. 3d 589, 600

(1st Dist. 2010). Because she found as a threshold matter that the presumption of inappropriateness did not apply in such circumstances, the ALJ found it unnecessary to determine whether the Employer has a centralized personnel system or whether in fact the identified positions perform similar duties to the petitioned-for titles.

The ALJ then found the petitioned-for unit was appropriate under Section 9(b) of the Act. She found that the petitioned-for unit shares a community of interest and that the Employer conceded that the petitioned-for employees have similar wages, hours, and working conditions, common supervision, similar skills and functions, have contact with each other, are interchangeable, and are functionally integrated. The ALJ also determined that the only factor that weighed against certification of the unit was fragmentation but ultimately determined the unit appropriate based on Section 9(b) of the Act which specifically mandated that fragmentation could not be the sole factor used to determine an appropriate unit.

The Employer excepted to the ALJ's finding that the presumption of inappropriateness did not apply in this case, that the statutory factors weighed in favor of the appropriateness of the petitioned-for unit, and that she made these findings without conducting an evidentiary hearing. The Employer first takes issue with the ALJ's finding that the presumption of inappropriateness did not apply. It contends the ALJ's findings that the Employer failed to identify positions which should have included in the proposed unit and were not already represented by a different union, were factually incorrect. The Employer claims that contrary to the ALJ's findings, it did identify at least two such positions in its position statement and accompanying exhibits, ITS Document and Inventory Control Technician and the ITS Specialists.

The Employer further contends that the ALJ's findings were based on its response to her Supplemental Request for Information to "[p]lease identify, in a clear list, which positions you believe the Teamsters should have included in the proposed unit and whether those positions are currently represented by another union." The Employer asserts that its response to the ALJ's request identified positions that *it believed* should be included in the petitioned-for unit but was not intended to identify *all* positions with similar duties as the ITS Field Technicians because it had already done so in its position statement.

The Employer similarly contends that the ALJ's finding that the petitioned-for unit is appropriate was in error because she incorrectly found that the Employer conceded the factors of similar wages, hours, and working conditions, common supervision, similar skills and functions, contact with other petitioned-for employees, interchangeability, and functionally integration. The Employer again pointed to its position statement and accompanying exhibits which it claims contested each of these factors.

We find that Employer's exceptions have merit and sufficiently raise issues of fact or law to require a hearing as to whether the petition-for unit is appropriate. As the Employer contends, it did identify positions that were omitted by the IBT that were not already represented by a different union in its position statement, and at the very least, we find that this raises an issue of fact requiring a hearing on whether the presumption of inappropriateness applies. Furthermore, we find a hearing would afford the Employer an opportunity to present evidence that it has an established centralized personnel system and that the petitioner has sought only a portion of employees who perform similar duties. We also find that should the Employer successfully establish the presumption of appropriateness, a hearing would afford the Union an opportunity to

rebut that presumption, allowing for a fully developed record on this issue. Likewise, we find that the Employer's exceptions and arguments in support also sufficiently raise issues of fact regarding the statutory factors contained in Section 9(b) of the Act, that would require a hearing to provide a fully developed record.

Accordingly, we reject the ALJ's RDO and remand the matter to the ALJ to conduct a hearing on the whether the presumption of inappropriateness applies and whether the unit is appropriate under Section 9(b) of the Act.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ Kathryn Zeledon Nelson
Kathryn Zeledon Nelson, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on May 16, 2017, written decision approved at the State Panel's public meeting in Springfield, Illinois on June 13, 2017, and issued on this date.

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International Brotherhood of Teamsters, Local 700,	)	
Petitioner	)	Case No. S-RC-17-022
and	)	
Illinois State Toll Highway Authority,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. Background

On November 10, 2016, the International Brotherhood of Teamsters, Local 700, (IBT or Union) filed a majority interest petition with the Illinois Labor Relations Board (Board) seeking to represent the title Intelligent Transportation Systems (ITS) Field Technician, employed by the Illinois State Toll Highway Authority (ISTHA or Employer). The Employer opposes the petition, asserting that the proposed unit is inappropriate under the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation.

II. Background and Investigatory Facts

All employees of the Illinois State Toll Highway Authority (ISTHA) are covered by the Illinois Tollway Employee Policies and Procedure Manual ("manual"). The manual includes policies that govern employment and personnel actions, benefits/approved leaves, hours of work, use of tollway property/employee responsiblities, employee conduct and discipline, drug and alcohol use, and ethics. ISTHA employees, who are members of a bargaining unit, may be subject to different policies if the unit's collective bargaining agreement specifies terms that conflict with the manual.

Elyse Morgan is the Traffic Operations Center Manager for the ISTHA. She oversees the Engineering Section of Traffic Operations. She supervises two ITS Field Technicians, petitioned-for by IBT in this case, six Traffic Operations Technicians, an ITS Deployment Engineer, and an ITS Document & Inventory Control Technician. Traffic Operations also includes one vacant ITS Specialist position.

ITS Field Technicians perform routine and preventative maintenance on the Tollway's Intelligent Transportation system. They also provide emergency service to that system 24 hours a day, 7 days a week.

The Employer concedes that the two ITS Field Technicians perform the same skills and have the same functions, are functionally integrated with each other, are interchangeable with each other, and have contact with each other. The Employer likewise concedes that the ITS Field Technicians have common supervision, wages and working conditions, and that they desire representation by IBT.

The Employer asserts that the positions of Systems Technician I, Field Technician, Communications Equipment Operator, Antenna Specialist, Mobile Bench Technician, and Mobile Installer, perform duties similar to those performed by the petitioned-for ITS Field Technicians. The American Federation of State, County and Municipal Employees, Council 31 (AFSCME) represents each listed title with duties allegedly similar to those performed by the ITS Field Technicians. There are no positions within the ISTHA, not already represented in a collective bargaining unit, which perform duties similar to those performed by the petitioned-for ITS Field Technicians.

III. Issues and Contentions

The sole issue in this case is whether the petitioned-for unit is appropriate.

The Employer asserts that the unit is presumptively inappropriate because it excludes the following six titles, covered under the same centralized classification system, that perform similar duties to those performed by the petitioned-for titles: Systems Technician I, Field Technician, Communications Equipment Operator, Antenna Specialist, Mobile Bench Technician, and Mobile Installer. The Employer asserts that the community of interest shared by the petitioned-for group does not justify certification where the IBT has failed to include these

listed positions in its proposed unit. These positions are currently represented by AFSCME, which has not sought to represent the petition-for positions.

In addition, the Employer contends that the proposed unit is inconsistent with historical patterns of recognition because it includes only a fraction of the total number of employees under the same supervision.

The Employer argues that certification of the unit would cause undue fragmentation. It also asserts that adding another bargaining unit within the Traffic Operations Center would increase the Employer's administrative burden.

The Employer concludes that there is no appropriate unit for the petitioned-for employees because a standalone unit is inappropriately small and the petitioned-for employees cannot join the existing, appropriate unit where the bargaining representative of that unit has not sought to represent them.

IV. Discussion and Analysis

The petitioned-for unit is appropriate because the employees at issue share a community of interest and have expressed a clear desire to be represented by IBT.

Section 9(b) of the Act provides that, "[t]he 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 desire 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). Section 9(b) of the Act does not require that a proposed unit be the most appropriate or the only appropriate unit. Cnty. of Cook (Provident Hosp.), 369 Ill. App. 3d 112, 118 (1st Dist. 2006).

However, a presumption of inappropriateness applies where the employer has an established centralized personnel system and the petitioner has sought 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); DuPage Cnty. Bd., 1 PERI ¶ 2003 (IL SLRB 1985) (creating the presumption); Vill. of Bartlett, 3 PERI ¶ 2010 (IL SLRB 1986) (using employees' similar duties to support a presumption-type weighing analysis).

As a threshold matter, the presumption of inappropriateness does not apply here. The Board and the Courts have declined to apply the presumption where the only positions identified by the Employer as improperly omitted from the unit are ones already represented by a different union. Ill. Council of Police v. Ill. Labor Rel. Bd., 404 Ill. App. 3d 589, 600 (1st Dist. 2010) affirming City of Chicago, 25 PERI ¶ 77 (IL LRB-LP 2009) (not applying presumption; placing security sergeants in stand-alone unit rather than finding Unit II to be the only appropriate unit); City of Chicago (Public Health Nurses) v. Ill. Labor Rel. Bd. Local Panel, 396 Ill. App. 3d 61, 69 (1st Dist. 2009)(not applying presumption; placing nurses into stand-alone unit instead of finding only an existing unit of public health nurses to be the appropriate unit); City of Chicago, 23 PERI ¶ 172 (IL LRB-LP 2007) (not applying the presumption; placing SPCOs into stand-alone unit instead of finding only Unit II to be the appropriate unit).

Here, the Employer has identified no omitted positions, which it claims the IBT should have included in the proposed unit, that are not already represented by a different union. Instead, every position that the Employer has identified as performing duties similar to the ITS Field Technicians is already represented by AFSCME, a union that has not sought to represent the petitioned-for title. When presented with this fact pattern, the Courts have declined to apply the presumption on the grounds that "[i]t is fundamentally at odds with the Act itself to place the petitioned-for employees' right to organize completely under the control of a third party." Ill. Council of Police, 404 Ill. App. 3d at 600 (internal quotes omitted); City of Chicago, 396 Ill. App. 3d at 70-71 (affirming Executive Director's decision not applying the presumption). Thus, it unnecessary to determine whether the Employer has a centralized classification system or whether in fact the identified positions perform similar duties to the petitioned-for titles because the presumption would not apply in any event.

Moreover, the petitioned-for unit is appropriate under Section 9(b) of the Act. First, the petitioned-for unit shares a community of interest. The Employer concedes that the petitioned-for employees have similar wages, hours, and working conditions, common supervision, similar skills and functions, have contact with each other, are interchangeable, and are functionally integrated.

In addition, the desire of the employees weighs in favor of certification because a majority of the petitioned-for employees signed cards indicating they wish to be represented by IBT. The Employer likewise concedes this factor.

The historical pattern of recognition factor does not favor either party because the petitioned-for employees have never belonged to a bargaining unit. City of Chicago, 396 Ill. App. 3d at 70 (no historical pattern of recognition where employees at issue had never been represented by a union); State of Ill. Dep't of Cent. Mgmt. Servs., 1 PERI ¶ 2025 (IL SLRB 1985) (there can be no historical pattern of recognition where the classification has never been represented); see also State of Ill. Dep't of Cent. Mgmt. Servs., 1 PERI ¶ 2011 (SLRB 1985). Although the Board has occasionally considered employers' recognition practices more broadly,[1] the Employer here points to no uniform practice. It concedes that some existing units are large and based predominantly on job functions, while others are much smaller. The Employer further admits that, to the extent that there had been a historical pattern of bargaining, another union (AFSCME) already "broke with that pattern" and established a unit based predominantly on common supervision.

Only the fragmentation factor weighs against certification of the unit, but fragmentation does not warrant dismissal of the petition. In fact, the Act mandates that "fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit." 5 ILCS 315/9(b). Accordingly, the addition of one rather small bargaining unit to the workplace does not render the unit inappropriate, standing alone, even though the Employer already bargains with a number of other unions.

Notably, there is no merit to the Employer's claim that an analysis of the Section 9(b) factors in this case must consider the characteristics of the omitted positions. They are irrelevant because the presumption does not apply and the sole inquiry is therefore whether the unit *as*

[1] Cnty. of Cook (Provident Hospital), 22 PERI ¶ 12 (IL LRB-LP 2006).

petitioned for is appropriate. Compare City of Chicago, 396 Ill. App. 3d at 70 (where presumption does not apply, the proper inquiry is whether the petitioned-for unit is appropriate) and County of McHenry and McHenry County Recorder of Deeds, 31 PERI ¶ 8 (where presumption applies, the inquiry is whether a legitimate and rational basis for the smaller unit exists or whether employees in the broader classification do not have the same functions and community of interest).

In conclusion, the petitioned-for unit is appropriate.

V. Conclusions of Law

The petitioned-for unit is appropriate.

VI. Recommended Order

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the International Brotherhood of Teamsters, Local 700, 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 employees of the Illinois State Toll Highway Authority in the following title: Intelligent Transportation Systems (ITS) Field Technician.

EXCLUDED: All other employees of the Illinois State Toll Highway Authority.

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 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 24th day of February, 2017

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge