

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

Policemen’s Benevolent and Protective,)
Association – Labor Committee,)
)
Petitioner,)
and)
)
County of Marion and County Clerk,)
Treasurer, Supervisor of Assessments, Coroner)
and Sheriff of Marion County,)
)
Employer,)
and)
)
Laborers International Union of North America,)
)
Incumbent.)

Case No. S-RC-19-060

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On July 10, 2019, Executive Director Kimberly Stevens issued an order directing a representation election after an investigation of the petition filed by the Policemen’s Benevolent and Protective Association-Labor Committee (Petitioner). The petition initially sought to represent a bargaining unit comprising employees working for the County of Marion and County Clerk, Treasurer, Supervisor of Assessments, Coroner, and Sheriff of Marion County (Employer) pursuant to the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2018), as amended, and the Board’s rules, 80 Ill. Adm. Code 1200-1240. Petitioner later confirmed that it was also seeking to represent the bargaining unit as described in the certification under Case No. S-RC-05-128, which added certain employees at the County’s Highway Department to the unit at issue.

The petitioned-for unit is currently represented by Laborers International Union of North America (Incumbent). The Employer objected to the petition asserting the petition's unit description failed to include certain employees in the Highway Department and that petition was barred by an existing collective bargaining agreement covering unit employees in the Highway Department.

After an investigation, the Executive Director determined the Employer's objections failed to raise issues warranting a hearing. She observed that the Board, in S-RC-05-128, certified the Incumbent as the exclusive representative of the bargaining unit comprising "all full and permanent part time employees employed in [the County of Marion offices of the] County Clerk, Treasurer, Supervisor of Assessments, Coroner, Highway Department and [Sheriff] in positions of Secretaries, Clerks, Cooks, Laborers and Process Server" (Unit) but the Incumbent and Employer agreed entered into a collective bargaining agreement for Highway Department employees (HD CBA) separate from the other unit employees. The HD CBA is set to expire on November 30, 2020, whereas the collective bargaining agreement covering the remaining unit employees expired on November 30, 2018. The Executive Director further observed that the Incumbent and Employer did so without undertaking representation proceedings to separate the Highway Department employees from the rest of the unit and into a separate unit. The Executive Director reasoned that under Section 1210.135 of the Board's rules, the Board does not recognize a separate unit of Highway Department employees or the HD CBA negotiated by the Incumbent and the Employer to govern the Unit and thus the HD CBA did not act a contract bar to the filing of the instant petition.

On July 9, 2019, the Employer filed an appeal of the Executive Director's order directing an election contending the petition should be dismissed because it is barred by Section

1210.135(a)(1) of the Board's rules. The Employer asserts that there is one certified bargaining unit but two separate collective bargaining agreements—one, the HD CBA, covering employees in the Highway Department and the other covering the remaining employees in the Unit. The Employer points to Section 1210.135(a)(1) which bars the filing of representation and decertification petitions filed outside the designated window “[w]hen there is in effect a collective bargaining agreement of 3 years or shorter duration covering all *or some of the employees in the bargaining unit.*” 80 Ill. Adm. Code 1210.135(a)(1) (emphasis added). The Employer claims that in the instant case, the HD CBA which covers *some* of the employees in the Unit, is valid and in effect, and thus bars the filing of the instant petition in accordance with the Board's rules.

The Petitioner's response to the appeal echoes the Executive Director's reasoning and further notes that the cases cited by the Employer are inapposite and more notably, asserts that the Employer's position creates an “absurdity.” The Petitioner asserts that by negotiating separate agreements expiring on different dates, the Incumbent and Employer have created an absurdity wherein a representation or decertification would be perpetually barred, undermining public employees' right to freely choose their exclusive representatives.

After a review of the dismissal, the record, and appeal, we reverse the Executive Director's order for an election and remand the matter for hearing.

This matter presents several novel issues of representation raised by the existence of two collective bargaining agreements each covering discrete parts of one bargaining unit and the lack of settled legal authority relating to these issues. As the Employer notes, the phrase “or some of the employees in the bargaining unit” in the language of Section 1210.35(a)(1) raises at least an issue of law under these circumstances regarding whether HD CBA which arguably covers “some” of the Unit employees acts as bar to the instant petition despite the expiration of the agreement

covering the remaining Unit employees. In addition to the contract bar issue, this matter raises several issues of law and fact regarding whether the Incumbent and the Employer improperly negotiated separate agreements and its effect on the representation of the Unit, and whether the Unit is an appropriate unit given that the parties saw fit to negotiate separate agreements. Finally, as Petitioner points out, the circumstances in this case creates the potential for perpetual representation but this potential raises an issue of law warranting a hearing rather than providing a basis for affirming the order for an election.

For the reasons set forth above, we reverse the Executive Director's order for an election and remand the matter for hearing before an administrative law judge on the issues described above and/or any other issue(s) deemed appropriate by the ALJ to resolve the issues.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John S. Cronin
John S. Cronin, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on September 10, 2019, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois (via videoconference) on October 8, 2019, and issued on October 9, 2019.

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Policemen's Benevolent and Protective
Association - Labor Committee,

Petitioner

and

County of Marion and County Clerk,
Treasurer, Supervisor of Assessments, Coroner
and Sheriff of Marion County,

Employer

and

Laborers International Union of North
America,

Incumbent

Case No. S-RC-19-060

DIRECTION OF REPRESENTATION ELECTION

On May 13, 2019, Policemen's Benevolent and Protective Association - Labor Committee (Petitioner), filed a representation/certification petition in Case No. S-RC-19-060 with the State Panel of the Illinois Labor Relations Board seeking to represent a bargaining unit (Unit) composed of certain employees of the County of Marion and County Clerk, Treasurer, Supervisor of Assessments, Coroner and Sheriff of Marion County (Employer). The Unit is currently represented by Laborers International Union of North America (Incumbent).

I. BACKGROUND

The Board certified Incumbent as exclusive representative of the Unit on April 2, 2003, in Case No. S-RC-03-042. The Unit was amended by the Board on July 6, 2005, in Case No. S-RC-05-128, and is described as follows:

Included: All full time and permanent part time employees employed in the following County of Marion offices: County Clerk, Treasurer, Supervisor of Assessments, Coroner, Highway Department and Sheriff's Office in the positions of Secretaries, Clerks, Cooks, Laborers, Janitors and Process Server.

In 2017, it appears that the Employer and Incumbent internally agreed to separate the Highway Department employees (Highway Unit) from the Unit for purposes of collective bargaining. Thereafter, the Employer and Incumbent negotiated separate collective bargaining agreements for the two groups. The Unit's collective bargaining agreement (CBA), which expired November 30, 2018, describes the bargaining unit as follows:

Included: All full time and permanent part time clerical employees employed in the following County of Marion offices: County Clerk, Treasurer, Supervisor of Assessments, Coroner and Sheriff's Office in the positions of Secretaries, Clerks, Cooks, Laborers, Janitors and Process Server.

The Highway Unit's collective bargaining agreement (HU CBA), which does not expire until November 30, 2020, describes the bargaining unit as follows:

Included: All full time and permanent part time in the Highway Department.

The Employer and Incumbent did not undertake representation proceedings with the Board to separate the employees into separate units pursuant to their internal agreement to negotiate separate CBAs for two groups of employees, all of whom are officially recognized by the Board as members of the Unit pursuant to the Board's most recent certification.

II. INVESTIGATION

In compliance with Section 1210.100(a)(1) of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300, the Board provided the Employer with a Notice to Employees, requesting the notice be posted on bulletin boards and other places where notices to employees are customarily posted. The Notice to Employees described the Unit as it was certified by the Board in Case No. S-RC-05-128, despite the fact that the instant petition's description of the Unit is identical to the description in the CBA for the Unit.

Per the Board's request, the Employer submitted a document that identified 26 employees as members of the Unit and listed their titles as follows:

Assessor Clerk; County Clerk – Clerk; Highway – Administrative Assistant; Highway – Assistant Engineer; Highway – Foreman; Highway – Laborer; Sheriff – Cook; Sheriff – Custodian; Treasurer Clerk

On June 3, 2019, the Employer submitted a Position Statement in Objection to the Representation/Certification Petition. The Employer asserts that the instant petition must be amended because the Petitioner’s unit description did not include secretaries, clerks and laborers in the Highway Department. Section 1210.10 of the Board’s Rules provides, in relevant part, that the Board only recognizes representation proceedings that have been certified in accordance with the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), *as amended*. Therefore, the Board recognizes the Unit as it was certified in Case No. S-RC-05-128, and not as listed on the petition. In addition, Petitioner has subsequently confirmed that the Unit is the group of employees it is seeking to represent. Therefore, I find this objection does not raise an issue for hearing.

The Employer also asserts that the HU CBA bars the election in accordance with Section 1210.35 of the Board’s Rules, because it does not expire until November 30, 2020. In accordance with Section 1210.35 of the Rules, the Board does not recognize the Highway Unit as separate from the Unit, nor does the Board recognize the HU CBA negotiated by the parties as governing the Unit. Therefore, such agreement will not bar the filing of the instant representation petition for the Unit. Therefore, I find this objection does not raise an issue for hearing.

Accordingly, I find that there are no issues warranting a hearing in connection with this petition. I find that the petition is timely filed and is accompanied by a sufficient and adequate showing of interest. In accordance with the provisions of Section 1210.100(a)(7)(C) of the Board's Rules, I direct an election be conducted by mail ballot for the following bargaining unit:¹

Included: All full-time and permanent part-time employees of the County of Marion, County Clerk, Treasurer, Supervisor of Assessments, Coroner, Highway Department and Sheriff’s Office in the following titles: Assessor Clerk; County Clerk – Clerk; Highway – Administrative Assistant; Highway – Assistant Engineer; Highway – Foreman;

¹ As set forth in the list of employees submitted by the Employer, the titles have changed over the years. Therefore, the voting unit will be described as provided in the list from the Employer.

Highway – Laborer; Sheriff – Cook; Sheriff – Custodian; Treasurer Clerk.

Excluded: All elected officials, the County Board Secretary, all professional, supervisory, managerial and confidential employees, and all other employees within the meaning of the Illinois Public Labor Relations Act.

III. DIRECTION OF ELECTION

The Board shall conduct a mail ballot election as will be set forth in a Board-issued Notice of Election. The eligible voters shall be those employees in the bargaining unit described above during the payroll period ending prior to July 10, 2019. Eligible voters include those who did not work during said payroll period because they were ill or on vacation (or temporarily laid off), but excluding any persons who have since quit or been discharged for cause. Eligible employees shall be given the opportunity to vote on the following choices: “Laborers’ International Union of North America,” “Policemen's Benevolent and Protective Association - Labor Committee,” and “No Representation.”

Pursuant to Section 1210.130(c) of the Rules, the Employer shall within seven days of the date of this Order, furnish the Board and the labor organizations with a list of full names, alphabetized by last name, and addresses of the employees eligible to vote in the election.

In the event that a party exercises the right to appeal this order to the Board, further processing of the election will cease pending resolution of the appeal.

IV. ORDER

This Executive Director Order may be appealed to the Board any time within 10 calendar days of service of this order. The appeal must be in writing, contain the case caption and number, and be addressed to the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103 or filed electronically at ILRB.Filing@Illinois.gov in accordance with Section 1200.5 of the Board’s Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. The appeal must contain detailed reasons in

support thereof, and must be provided to all other persons or organizations involved in this case at the same time it is served on the Board. Please note that the Board's Rules and Regulations do not allow electronic service of the other persons or organizations involved in this case. The appeal sent to the Board must contain a statement listing the other parties to the case and verifying that the appeal has been provided to them. The appeal will not be considered without this statement. If no appeal is received within the time specified, this Order will be final.

Issued at Springfield, Illinois, this 10th day of July, 2019.

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**Kimberly F. Stevens
Executive Director**