

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

State of Illinois, Department of Central Management Services ,)	
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)	
Employer/Petitioner,)	
)	
)	Case Nos. S-UC-16-032
and)	S-UC-16-033
)	S-UC-16-034
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Labor Organization.)	

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

On March 11, 2016, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) dismissing the above-captioned unit clarification petitions. The State of Illinois, Department of Central Management Services (CMS or Employer) filed these petitions seeking to exclude three vacant Public Service Administrator (PSA) positions from units represented by the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union).¹

The ALJ dismissed the petitions, concluding that a hearing on the positions' duties is inappropriate at this time because the positions are vacant. The ALJ noted that the Board has a long history of declining to hold hearings regarding vacant titles because such hearings result in inadequate evidence as to the actual duties of any employee who might hold the disputed position at some time in the future.

¹ The Employer sought to exclude a PSA Option 1 position (# 37-15-44-40-220-00-31) from bargaining unit RC-63, and two PSA Option 8L positions (# 37015-16-03-130-60-01 and # 37015-16-03-110-60-01) from the RC-10 unit.

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1300, the Employer, filed timely exceptions to the ALJ's RDO. The Employer argues that requiring the dismissal of such unit clarification positions, simply because the position is vacant, yields a result that runs contrary to the purpose of the exceptions carved out of the Act. The Union filed a timely response, supporting the ALJ's analysis. For the reasons set forth below, we reverse the ALJ's dismissal of the consolidated petitions and remand the case to the ALJ for a hearing on the merits.

We acknowledge that the Board has previously and historically declined to hold hearings on vacant positions as a matter of policy,² but we find compelling reasons to modify that policy here. The policy we applied in the past is rooted in the belief and expectation that because a position is vacant there necessarily will be an inability to adduce evidence that sufficiently defines the actual duties of the prospective employee who eventually holds the position in question. However, the Employer in this case has provided an abundance of information that very clearly and specifically defines the duties that prospective employees will be expected to perform. We find that the evidence presented by the Employer during investigation raises a question of fact as to whether the positions' anticipated duties would be sufficient to sustain the exclusion, and it offers some challenge to the assumption that underlies our historical policy.

We recognize that this modification of our policy with respect to vacant positions necessarily requires a shift toward relying on position descriptions as evidence of a position's duties, but we note that such reliance on position descriptions is not a novel concept. Position

² See *State of Ill., Dep't of Cent. Mgmt. Serv.*, 20 PERI ¶ 2027 (IL LRB –SP 2004) (“lack of evidence makes it virtually impossible to determine whether the position is statutorily excluded as supervisory, confidential or managerial”).

descriptions are fundamental to Rutan compliance, and the Seventh Circuit repeatedly has held that it is appropriate to rely on position descriptions in that context. *See Moss v. Martin*, 473 F.3d 694 (7th Cir. 2007); *Riley v. Blagojevich*, 245 F.3d 357 (7th Cir. 2005). We also note that our now-modified approach retains the safeguard that the Union could use the unit clarification process to address a situation where the Employer does not deliver on the promised duties that it relied upon to establish the exclusion.

For these reasons, we reverse the ALJ's dismissal of the petitions and remand the case to the ALJ for hearing.

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/ John R. Samolis
John R. Samolis, Member

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

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Springfield, Illinois on June 14, 2016, written decision issued in Chicago, Illinois on September 2, 2016.

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

I. Background

On January 22, 2016, the State of Illinois Department of Central Management Services (Employer or Petitioner) filed three unit clarification petitions with the Illinois Labor Relations Board (Board) seeking to exclude three vacant Public Service Administrator (PSA) positions from units represented by the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union). In Case No. S-UC-16-032, the Employer seeks to exclude a PSA Option 1 position (# 37-15-44-40-220-00-31) in the Department of Employment Security from bargaining unit RC-63 as supervisory and managerial within the meaning of Sections 3(r) and 3(j) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended. In Case No. S-UC-16-033, the Employer seeks to exclude a PSA Option 8L position (# 37015-16-03-130-60-01) in the Department of Children and Family Services from bargaining unit RC-10 as managerial within the meaning of Section 3(j) of the Act. In Case No. S-UC-16-034, the Employer seeks to exclude a PSA Option 8L position (# 37015-16-03-110-60-01) from bargaining unit RC-10 as managerial within the meaning of Section 3(j) of the Act.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation. On February 29, 2016, the Union filed objections to the petitions. On March 7, 2016, the Employer filed a response.

For the reasons stated below, the petitions must be dismissed.

II. Issues and Contentions

The Employer argues that the Board must exclude the three listed positions from their respective bargaining units as managerial and/or supervisory employees.¹

The Union argues that the unit clarification petitions must be dismissed because the Employer has not explained how the unit clarification petitions are procedurally appropriate. The Union also argues that the unit clarification petitions are premature because the positions at issue are vacant. Finally, the Union argues that the petitions must be dismissed on their merits because the Employer has provided in sufficient evidence in support of the stated exclusions.

III. Discussion and Analysis

The petitions are dismissed because a hearing on the positions' duties is inappropriate at this time when the positions are vacant.

The Board has long declined to hold hearings regarding vacant titles because holding such hearings "necessarily result[s] in a lack of evidence as to the actual duties of any employee who may someday hold the disputed title." State of Ill. Dep't of Cent. Mgmt. Serv., 20 PERI ¶ 105 (IL LRB-SP 2004); State of Ill., Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2027 (IL SLRB 1986). The Board has further stated that this "lack of evidence makes it virtually impossible to determine whether the position is statutorily excluded as supervisory, confidential or managerial." State of Ill., Dep't of Cent. Mgmt. Serv., 20 PERI ¶ 105 (IL LRB-SP 2004); see also Vill. of Bolingbrook, 31 PERI ¶ 124 (IL LRB-SP ALJ 2015). In sum, a hearing at this time would not adequately resolve the matter of the positions' unit placement, even assuming, *arguendo*, that the Employer raised issues of fact for hearing.

Thus, the petitions are dismissed and it is unnecessary to address the Union's remaining arguments in opposition to the petitions.

¹ The Employer also asserts that it is "not conceding the point that these positions are already in the bargaining unit." However, if the positions are not included in the unit, as claimed by the Employer, then the Employer's petitions to exclude them serve no purpose.

IV. Conclusions of Law

The unit clarification petitions are dismissed because the positions are vacant.

V. Recommended Order

The unit clarification petitions are dismissed.

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, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and 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 11th day of March, 2016

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**