

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

Illinois Council of Police,	)	
	)	
Petitioner/Labor Organization,	)	
	)	
and	)	Case No. S-RC-23-017
	)	
Village of Bellwood,	)	
	)	
Respondent/Employer.	)	

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

On May 22, 2024, Administrative Law Judge (“ALJ”) Anna Hamburg-Gal issued a Recommended Decision and Order (“RDO”) in the above-referenced case, resolving the majority interest petition filed by Petitioner Illinois Council of Police (“Union”) pursuant to Section 9 of the Illinois Public Labor Relations Act (“Act”), 5 ILCS 315/1 *et seq.*, seeking to represent all full-time peace officers in the rank of Master Sergeant employed by Respondent Village of Bellwood (“Employer” or “Village”). Based on the parties’ stipulation that the Master Sergeants “are supervisors as currently defined in Section 3(r) of the Illinois Public Labor Relations Act,” ALJ Hamburg-Gal concluded that they are excluded from collective bargaining and recommended dismissing the petition. In her RDO, the ALJ did not provide a recommendation regarding the Union’s contention that the Workers’ Rights Amendment (“Amendment”) to the Illinois Constitution invalidates the Act’s exclusions from collective bargaining. She explained that under the Illinois Supreme Court’s decision in Goodman v. Ward, 241 Ill. 2d 398 (2011), administrative agencies, such as the Board, lack the authority to determine the constitutionality of statutes or question their validity and cited previous cases in which we noted that the Board lacked the

authority to rule on the constitutionality of statutes, State of Ill. Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 80 (ILRB-SP 2013) aff'd Am. Fed'n of State, Cnty., & Mun. Emps., Council 31 v. State of Ill. Dep't of Cent. Mgmt. Servs., 2015 UL App (1st) 133454, and County of Cook, 4 PERI ¶ 2025 (IL SLRB 1988).

The Union filed exceptions to which the Employer filed responses. In its exceptions, the Union contends the ALJ erred by determining that the issue presented in this case involved the constitutionality of the Act, which the Union claims was not at issue, and then by failing to rule on the constitutional question because the Board lacked such authority. The Union claims that it did not ask that the Act be declared unconstitutional, and as such, the ALJ should have analyzed and ruled on the effect of the Amendment on the Act's exclusions from collective bargaining. The Union now asks the Board, as the "governmental body that oversees the administration of all things Labor Law in the State of Illinois," to provide its "opinion" on the Amendment and its effect on the Act's exclusions.

We find the Union's exceptions to be unfounded. The ALJ correctly and appropriately relied on the court's holding in Goodman as well as Board precedent in declining to provide a ruling on the constitutionality of the Act's provisions that exclude certain employees from collective bargaining.

The Union fails to provide any cogent argument in support of its contention that the ALJ erred. In support of its contention that the ALJ was, and now the Board is, obligated to opine on the Amendment's effect on the Act's statutory exclusions, the Union asserts on brief that the court in Goodman held that the "Will County Election Board's interpretation of the governing law was incorrect and that candidates for judicial office must meet the eligibility requirements imposed by the Illinois Constitution." (Un. Ex. Br., p.3). This assertion, however, misconstrues the court's

holding. Although the court did note that candidates for judicial office must meet constitutional eligibility requirements, it did not find that the electoral board *incorrectly interpreted* the statutory requirements of the Election Code, as the Union asserts. Rather, the court noted that the electoral board “did not construe those statutory [eligibility] requirements *at all*” and instead, looked to the eligibility provisions of the Illinois Constitution, which the court found tantamount to the electoral board deeming the statutory provisions unconstitutional. Goodman, 241 Ill. 2d at 410-11 (emphasis added) (“Implicit in the electoral board majority’s approach was that the Constitution’s eligibility requirements differed from those contained in the Election Code and that to the extent of the difference, the provisions of the Election Code were unconstitutional and could be disregarded.”). The court then concluded that the electoral board had no authority to disregard statutory provisions as unconstitutional and set aside the electoral board’s decision. See id., 241 Ill. 2d at 411.

The Union does, however, correctly assert that the Board and its agents are obligated to administer and enforce the Act. And the ALJ did precisely that in issuing her RDO. She found that the Master Sergeants are supervisory employees within the meaning of Section 3(r) of the Act based on the parties’ express stipulations and appropriately recommended dismissal of the instant majority interest petition. But neither the ALJ nor the Board is obligated to provide an opinion on the effect of the Amendment on the Act’s provisions excluding employees from collective bargaining as the Union asserts. Notwithstanding the court’s holding in Goodman, issuing such an opinion would be tantamount to providing an administrative advisory opinion or declaratory ruling, which is governed by Section 5-150 of the Administrative Procedures Act (“APA”). 5 ILCS 100/5-150. That section permits an administrative agency “to provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the

person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency.” 5 ILCS 100/5-150(a).¹ Although our rules provide a process for parties to request a declaratory ruling on mandatory or permissive subjects of bargaining, the rules do not provide a declaratory ruling process regarding the Act’s statutory exclusions or any other topic. Moreover, even if such a process existed, for reasons set forth in Goodman and the Board cases cited in the RDO, the Board would lack the authority to disregard any of the Act’s provisions because they conflicted with the Illinois Constitution. See Goodman, 241 Ill. 2d 398 (2011).

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¹ Sec. 5-150(a) states:

- (a) Requests for rulings. Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling before making it available.

5 ILCS 100/5-150(a).

For the above reasons, we accept the ALJ's findings and recommendations dismissing the majority interest petition and adopt the RDO as a decision of the Board.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry

William E. Lowry, Chairman

/s/ Kendra Cunningham

Kendra Cunningham, Member

/s/ Frances A. Hurley

Frances A. Hurley, Member

/s/ Jeffrey W. Mears

Jeffrey W. Mears, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois, via videoconference on August 8, 2024, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois via videoconference on September 12, 2024, and issued on September 12, 2024.

This Decision and Order is a final order of the Illinois Labor Relations Board. Aggrieved parties may seek judicial review of this Decision and Order in accordance with the provisions of Section 11(e) of the Act and the Administrative Review Law. Petitions for review of this Decision and Order must be filed within 35 days from the date the Decision and Order is served upon the party affected by the decision. 5 ILCS 315/11(e).

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On November 21, 2022, the Illinois Council of Police (Petitioner or Union) filed a majority interest petition with the Illinois Labor Relations Board’s State Panel (Board) seeking to represent all full-time peace officers in the rank of Master Sergeant employed by the Village of Bellwood (Employer). The Employer objected to the petition on the grounds that the petitioned-for positions were supervisory within the meaning of Section 3(r) of the Illinois Public Labor Relations Act (Act) 5 ILCS 315 (2023), as amended.

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. The parties agreed to proceed on a stipulated record. Both parties elected to file post-hearing briefs.

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. All sworn full-time peace officers (police officers) in the rank of Master Sergeant employed by the Village of Bellwood are supervisors as currently defined in Section 3(r) of the Illinois Public Labor Relations Act.

II. ISSUES AND CONTENTIONS

The issue is whether the petitioned-for Master Sergeants may be added to the bargaining unit where the parties stipulate that they are supervisors, where the Employer objects to their

inclusion in the unit, and where there is no claim that the Employer historically recognized the proposed unit.

The Employer argues that the Master Sergeants are appropriately excluded from the bargaining unit as supervisors under Section 3(r) of the Act. It further contends that the Workers' Rights Amendment (Amendment) to the Illinois Constitution does not change Illinois law or invalidate the Act's statutory exclusions. The Employer asserts that the Amendment was intended solely to protect against the passage of future laws that might seek to limit employees' right to bargain collectively and that it did not include any provisions repealing the Illinois Public Labor Relations Act. The Employer denies that the Amendment confers new collective bargaining rights on individuals who fall within the Act's statutory exclusions. It contends that the Amendment's use of the term "employee" means that it applies solely to those who meet the definition of that term as set forth in the Act. The Employer further argues that its construction of the Amendment is supported by both legislative history and statements made by labor unions who advocated for its passage.

The Union does not dispute that the Master Sergeants are supervisors under Section 3(r) of the Act but contends that the Amendment preempts the Act's statutory exclusions by creating a fundamental right for all employees to organize even if they are supervisors. The Union contends that the Amendment was intended to have expansive meaning because it applies to "employees" without qualification and does not reference other laws, limitations, or existing statutory exclusions. The Union argues that the Amendment would contain surplus language unless it were construed as conferring new rights upon all employees to unionize. The Union further contends that the language of the Amendment is unambiguous and that reliance on legislative history is inappropriate. It argues, in the alternative, that legislative history shows that the Amendment was intended to allow supervisors to unionize.

III. FINDINGS OF FACT

On June 19, 2003, the Board affirmed an ALJ's dismissal of a representation petition filed by a different union¹ seeking to represent the Employer's sergeants and lieutenants, finding that the petitioned-for employees were supervisors. Vill. of Bellwood, 19 PERI ¶ 106 (IL LRB-SP

¹ The petitioner in that case was Metropolitan Alliance of Police, Bellwood Command Chapter No. 339.

2003). The ALJ noted that there was no pre-Act historical unit covering the petitioned-for employees. Vill. of Bellwood, 19 PERI ¶ 106.

The Employer asserts that the positions at issue in Vill. of Bellwood are the same positions as those at issue here, though the currently-petition-for title is that of Master Sergeant rather than merely sergeant, at issue in the prior case. The Union does not expressly address the existence of the prior case except to note that the Workers' Rights Amendment grants individuals bargaining rights even if the Board previously excluded them from the bargaining unit as supervisors.

Irrespective of the earlier case, both parties agree that the employees in the rank of Master Sergeant employed by the Employer are supervisors as that term is currently defined in Section 3(r) of the Act. The Employer does not agree to a bargaining unit of supervisors. The Union does not contend that the Employer has historically recognized a bargaining unit of Master Sergeants.

In May of 2021, the Illinois House and Senate adopted the Workers' Rights Amendment, which proposed to amend the Illinois Constitution. The Workers' Rights Amendment was later placed on the ballot for voters in the November 2022 election. On November 8, 2022, the Workers' Rights Amendment passed and became part of the Constitution of the State of Illinois. It states the following:

- (a) Employees shall have the fundamental right to organize and to bargain collectively through representatives of their own choosing for the purpose of negotiating wages, hours, and working conditions, and to protect their economic welfare and safety at work. No law shall be passed that interferes with, negates, or diminishes the right of employees to organize and bargain collectively over their wages, hours, and other terms and conditions of employment and work place safety, including any law or ordinance that prohibits the execution or application of agreements between employers and labor organizations that represent employees requiring membership in an organization as a condition of employment.
- (b) The provisions of this Section are controlling over those of Section 6 of Article VII.

Ill. Const. art. I, § 25

IV. DISCUSSION AND ANALYSIS

The Master Sergeants are supervisors within the meaning of Section 3(r) of the Act and must be excluded from the bargaining unit where there is no claim that the Employer has historically recognized a unit of Master Sergeants and where the Employer has not agreed to a supervisory unit.

The Illinois Public Labor Relations Act provides a comprehensive system of collective bargaining for those public employees and employers who fall within its scope. City of Freeport v. Illinois State Lab. Rels. Bd., 135 Ill. 2d 499, 505 (1990). In relevant part, the term “public employee” or “employee” means “any individual employed by a public employer...but excluding...supervisors except as provided in [the] Act.” 5 ILCS 315/3(n). The Act further provides that “...with respect to non-State peace officers...a bargaining unit determined by the Board shall not include both supervisors and nonsupervisors, or supervisors only” unless the public employer agrees to permit its supervisory employees to form a bargaining unit, or the bargaining unit was in existence on January 1, 1986. 5 ILCS 315/3(s)(1) & (2); City of Chicago, Dep’t of Police, 13 PERI ¶ 3001 (IL LLRB 1996) (discussing historical recognition).

Here, the petitioned-for Master Sergeants are appropriately excluded from the bargaining unit because the parties stipulated that the Master Sergeants are supervisors within the meaning of Section 3(r) of the Act and no exceptions apply that would permit their inclusion. The Union has not claimed that the proposed unit is historically recognized, and the Employer has not agreed to a supervisory unit. Accordingly, the petition must be dismissed.

The Union’s constitutional arguments cannot alter the outcome here because this agency cannot question the validity of the Act or its statutory exclusions. See infra. Indeed, it is beyond this administrative agency’s capacity to rule that the Illinois Public Labor Relations Act is preempted by the Workers’ Rights Amendment of the Illinois Constitution² or that that it is otherwise unconstitutional, as argued by the Union. Goodman v. Ward, 241 Ill. 2d 398, 411 (2011) (“Administrative agencies...have no authority to declare statutes unconstitutional or even to question their validity. [citations omitted] When they do so, their actions are a nullity and cannot be upheld.”); State of Illinois, Department of Central Management Services, 30 PERI ¶ 80 (IL LRB-SP 2013) aff’d Am. Fed’n of State, Cnty., Mun. Emps., Council 31 v. State, Dep’t of Cent.

² Ill. Const. art. I, § 25.

Mgmt. Servs., 2015 IL App (1st) 133454; County of Cook, 4 PERI ¶ 2025 (IL SLRB 1988)(“It is not our prerogative to declare the invalidity of Illinois statutes.”).

For these reasons, the petition is dismissed and no ruling on the constitutionality of the Act is provided.

V. CONCLUSIONS OF LAW

1. The Master Sergeants are appropriately excluded from the bargaining unit because they are supervisors within the meaning of Section 3(r) of the Act.
2. No ruling on the constitutionality of the Act is provided here.

VI. RECOMMENDED ORDER

The petition is dismissed.

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 Board's General Counsel, Helen J. Kim, by electronic mail to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov, with copy to helen.j.kim@illinois.gov, or by regular U.S. Mail or hand delivery at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. 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 22nd day of May, 2024

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

/S/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**