

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

Policemen’s Benevolent and Protective Association,)	
)	
)	
Charging Party,)	
)	Case No. S-RC-23-021
and)	
)	
City of East St. Louis,)	
)	
Respondent.)	

ORDER

On July 14, 2023, Administrative Law Judge Joseph S. Moy, 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 October 12, 2023, 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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, on October 12, 2023.

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

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

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

Policemen’s Benevolent and Protective Association,)	
)	
)	
Petitioner,)	
)	Case No. S-RC-23-021
and)	
)	
City of East St. Louis,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On January 24, 2023, the Policemen’s Benevolent and Protective Association (Petitioner or Union) filed a majority interest petition with the Illinois Labor Relations Board (Board) seeking to represent a unit of police lieutenants employed by the City of East St. Louis (Respondent or Employer). The Employer filed an objection to the Union’s petition. The Employer asserted that the employees sought to be represented are excluded from coverage under the Illinois Public Labor Relations Act (Act), 5 ILCS 315/3 (2014), as amended, because the “[u]nit consists entirely of managerial employees.” The Employer further asserted that the petitioned-for employees are exempt under the Act and that “there is no requirement that a preponderance of their time be devoted to supervisory duties.” In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation.

I. BACKGROUND

On April 27, 2023, I issued an order to show cause to the Employer requiring the Employer to provide evidence and argument in support of its objection by May 12, 2023. The order stated that if the Employer did not provide evidence and argument in support of its objection, the Union would be certified as the petitioned-for employees’ exclusive representative. On May 12, 2023, Petitioner’s counsel emailed the undersigned with a joint request for an extension of the order to show cause. I granted a 30-day extension and directed that the Employer is to provide evidence

and argument in support of its objections by June 12, 2023. No response to the order to show cause was filed.

II. ISSUES AND CONTENTIONS

The issue is whether the Employer raised issues for hearing on its objections to the petition.

III. DISCUSSION AND ANALYSIS

The Employer failed to raise issues for hearing on its objections; therefore, it is appropriate to certify the Union as the petitioned-for employees' exclusive bargaining representative. Section 9(a) of the Act provides that when a representation petition is filed, "the Board shall investigate such petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice." 5 ILCS 315/9(a). The Act, therefore, on its face provides for the evaluation of evidence gathered and a determination of its sufficiency before an appropriate hearing must be held. Illinois Council of Police v. Illinois Labor Relations Board, Local Panel, 387 Ill.App.3d 641, 659. The Board's Rules, in relevant, provides:

All employers served with a majority interest petition shall file a written response to the petition within 14 days after service of the petition. The response filed shall set forth the party's position with respect to the matters asserted in the petition, including, but not limited to, the appropriateness of the bargaining unit and, to the extent known, whether any employees sought by petitioner to be included should be excluded from the unit. ... If a party agrees to the appropriateness of the unit proposed in the petition, it shall so indicate. If a party disagrees with the unit proposed in the petition, it shall describe with particularity what it considers to be an appropriate unit, and shall include a description of the job titles and classifications of the employees to be included and of those to be excluded. The Board's agent shall grant reasonable requests for extensions of time to prepare a position statement based upon the size or scope of the petitioned for unit.

80 Ill. Admin. Code 1210.100(b)(3).

The Board's Rules also provide that:

If, for any reason during the investigation, the Board or its agent discovers that the petition may be inappropriate, the Board or its agent may issue an order to show cause requesting that the petitioner provide sufficient evidence to overcome the inappropriateness. Failure to provide sufficient evidence of the petition's appropriateness can result in the dismissal of the petition. Moreover, in conjunction with subsection (b)(3), if, for any reason during the investigation, the Board or its

agent discovers that the employer's objections to the majority interest petition are insufficient in either law or fact, the Board or its agent may issue an order to show cause requesting that the employer or union provide sufficient evidence to support its defenses. Failure to provide sufficient evidence can result in the waiver of defenses.

80 Ill. Admin. Code 1210.100(b)(6).

Thus, the Act and the Board's rules do not guarantee an objecting party a right to a hearing; instead, it requires the objecting party to first demonstrate that a genuine question of law or fact exists. See State of Illinois, Dep't of Cent. Mgmt. Services (Dep't of Public Health and Pollution Control Board), 26 PERI ¶ 113. The Illinois Appellate Court has further approved the Board's methodology on this. State of Illinois, Cent. Mgmt Services, 26 PERI ¶ 58 citing City of Chicago v. Illinois Labor Relations Board, Local Panel, 396 Ill. App. 3d 61, 71-72 (1st Dist. 2009) and Illinois Council of Police v. Illinois Labor Relations Board, Local Panel, 387 Ill. App. 3d 641, 659 (1st Dist. 2008).

Here, the Employer's objection that the employees were managerial employees was not supported by any evidence or argument. The Employer simply stated that the "Lieutenants of the East St. Louis Police Department should not be certified based upon 5 ILCS 315/3(j) in that the Unit is excluded under the Act because the Unit consists entirely of managerial employees." The Employer's assertion did not explain why lieutenants should be considered managerial employees. The Employer further stated that the petitioned-for employees "should not be certified based upon 5 ILCS 315/3(r) in that all members of the proposed Unit are exempt under the Act. Further, under ILCS 315/3(r), there is no requirement that a preponderance of their time be devoted to supervisory duties." However, the Employer's assertion simply recited the Act's exclusions without giving any specific examples of the alleged managerial or supervisory authority the employer relies on. The Employer then failed to respond to an order to show cause seeking evidence and argument in support of the Employer's objections. As a result, the investigatory file contains no evidence to support the Employer's objections. The Employer's conclusory assertions that the petitioned-for employees are managerial employees and that they are exempt under the Act do not justify the commitment of Board resources for an oral hearing. Dep't of Cent. Mgmt. Services 24 PERI ¶ 112 (Board certified the unit without a hearing, rejecting the Employer's mere conclusory assertion that the petitioned-for employees were statutory excluded from bargaining).

Therefore, the Employer failed to raise issues for a hearing, and the Union is appropriately certified as the petitioned-for employees' exclusive bargaining representative.

IV. CONCLUSIONS OF LAW

1. The Employer failed to raise issues for hearing on unit appropriateness or on the alleged managerial status of the petitioned-for employees.

V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the Policemen's Benevolent and Protective Association 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 police lieutenants employed by the City of East St. Louis.

EXCLUDED: All supervisory, managerial, and confidential employees within the meaning of the Act.

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, 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 14th day of July 2023

**STATE OF ILLINOIS
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/s/ Joseph S. Moy

**Joseph S. Moy
Administrative Law Judge**