

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

Service International Employees Union,	)	
Local 73,	)	
	)	
Petitioner,	)	
	)	Case No. L-UC-21-008
and	)	
	)	
Cook County Health and Hospital Systems,	)	
	)	
Employer.	)	

**ORDER**

On April 28, 2021, Administrative Law Anna Hamburg-Gal, 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 July 15, 2021 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 July 22, 2021.**

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

/s/ Helen J. Kim \_\_\_\_\_  
**Helen J. Kim**  
**General Counsel**

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Service Employees International Union,	)	
Local 73,	)	
	)	
Petitioner/Labor Organization,	)	
	)	
and	)	Case No. L-UC-21-008
	)	
Cook County Health and Hospital Systems,	)	
	)	
Employer.	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On December 23, 2020, the Service Employees International Union, Local 73, (Petitioner or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to add four titles employed by the Cook County Health and Hospital Systems (Employer) to its Health Care Professionals Unit, certified by the Board in Case No. L-RC-20-011. The petitioned-for titles included Medical Lab Scientist, Clinical Lab Scientist, Behavioral Health Triage Social Worker, and Psychiatric Social Worker. On January 29, 2021, the Union filed an amended unit clarification petition in which it narrowed the petitioned-for titles to that of Medical Lab Scientist and Clinical Lab Scientist. The Employer responded, noting that the Union had misidentified the titles of the petitioned-for positions. To cure this issue, the Union filed a second amended unit clarification petition on February 25, 2021, which referred to the petitioned-for positions by their correct titles, Medical Laboratory Scientist and Clinical Lab Assistant. The Union argued that these positions have job duties that are substantially similar to those already covered in the bargaining unit.

On March 19, 2021, the Employer objected to the inclusion of the Medical Laboratory Scientist title to the bargaining unit on the grounds that the position is vacant and has been vacant since its creation in April 2019.<sup>1</sup> The Employer argues that the Board’s policy on vacant positions does not permit their addition to the bargaining unit through unit clarification, only their removal when the positions satisfy a statutory exclusion. The Employer does not dispute that the Medical Laboratory Scientist performs duties that are substantially similar to those already covered in the

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<sup>1</sup> The Employer did not object to the inclusion of the Clinical Lab Assistant.

bargaining unit. It does not contend that the petitioned-for unit is inappropriate or that the Medical Laboratory Scientist position satisfies any statutory exclusion.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation. During the investigation, the Employer asserted that it has a job description for the position and that it intends to fill the position as soon as possible. The Employer explained that the position has remained vacant thus far because the Employer has been unable to find a qualified candidate who is willing to accept it. The Employer asserted that it would not object to the inclusion of the Medical Laboratory Scientist position in the Health Care Professionals Unit if the position were filled.

## **I. ISSUES AND CONTENTIONS**

The issue is whether it is appropriate to grant a unit clarification petition seeking to add a vacant position to a bargaining unit where the Employer concedes that the petitioned-for title has job duties substantially similar to those already covered in the bargaining unit and where the Employer asserts that it would not object to the petition if the petitioned-for position were filled.

## **II. DISCUSSION AND ANALYSIS**

The unit clarification petition is appropriately filed. Furthermore, it is appropriate to add the vacant Medical Laboratory Scientist position to the Union's Health Care Professionals Unit.

There is no dispute that the Union's petition falls into one of the circumstances deemed appropriate for filing a unit clarification petition. The Board's rules set forth three circumstances under which an exclusive representative or an employer may file a unit clarification petition, but this list is not exclusive. 80 Ill. Admin. Code. 1210.170(a).<sup>2</sup> The Board also permits unit clarification petitions in additional circumstances, such as when a newly created job classification

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<sup>2</sup> Under the Board's rules, a unit clarification petition is appropriate if

- 1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement;
- 2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established; and
- 3) a significant change takes place in statutory or case law that affects the bargaining rights of employees.

has job functions similar to functions already covered in the bargaining unit.<sup>3</sup> State of Illinois Departments of Central Management Services & Public Aid, 2 PERI ¶ 2019 (IL SLRB 1986). Here, the Medical Laboratory Scientist position is newly created, and the parties agree that the position has job functions similar to those performed by employees in the existing Health Care Professionals Unit. Thus, the petition is appropriately filed.

Next, it is appropriate to add the vacant Medical Laboratory Scientist position to the bargaining unit because the parties stipulate to the key issues concerning the position's job duties and appropriate unit placement. As discussed below, the Board's caselaw indicates that it is proper to grant a unit clarification petition seeking to add a vacant position to the bargaining unit under such circumstances.

In a 1986 case, the Board articulated a policy of declining to hold hearings on vacant positions, but it did not intend to preclude unit clarification where, as here, the parties are in accord regarding a vacant position's duties and appropriate unit placement. Ill. Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2027 (IL SLRB 1986). There, the Board dismissed two competing petitions filed by separate unions seeking to add a newly created but still-vacant title to their respective units. Id. The Board reasoned that it was "virtually impossible" to resolve issues involving community of interest or statutory exclusions because hearings on vacant titles "necessarily result in a lack of evidence as to the actual duties of any employee who may someday hold the disputed title." Id. However, the Board went on to explain that its holding was not an absolute prohibition against adding vacant positions to the bargaining unit through unit clarification. Id. at n. 4. To the contrary, the Board indicated that it would be appropriate to allow such clarification if the parties were in agreement on all critical issues: "We do not suggest that there may not exist some exceptional circumstances, such as the stipulation of all parties as to the duties and unit placement of a vacant position, in which we would allow such a unit clarification." Id.

Here, the absence of any disputed issues of fact justifies the addition of the vacant Medical Laboratory Scientist position to the bargaining unit. There are only two parties to this case, the

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<sup>3</sup> The other permissible circumstances for unit clarification include the following: A union may file a unit clarification petition when processing a majority interest petition, and parties may file a unit clarification petition to remove confidential employees from the unit at any time. State, Dept. of Cent. Mgmt. Services v. State, Labor Relations Bd., State Panel, 364 Ill. App. 3d 1028, 1034 (4th Dist. 2006) (discussing the confidential exclusion circumstance); Treasurer of the State of Illinois, 30 PERI ¶ 53 (IL LRB-SP 2013) (discussing the majority interest process).

Employer and the Union, and all parties agree on the relevant facts. They agree that the Health Care Professionals Unit is the appropriate unit for the Medical Laboratory Scientist position, and they agree as to the duties that the position holder will be expected to perform. Indeed, the Employer asserts that it would not object to the petition if the position were filled. It further specifies that its objection arises solely from the fact of the position's vacancy, and notes that it intends to fill the position as soon as possible. Thus, certification is appropriate pursuant to the Board's rationale in Ill. Dep't of Cent. Mgmt. Serv., Ill. Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2027.

The Board's subsequent modification of its policy on vacant positions in 2016 supports this outcome. In 2016, the Board held that a position's vacancy, standing alone, no longer impedes resolution of a dispute over whether that position belongs in the bargaining unit. Id. The Board found it appropriate to hold hearings on vacant positions, as long as the petitioner provided sufficient evidence of the duties that the prospective employee would be expected to perform. Id. The Board thereby demonstrated a willingness to change the scope of a bargaining unit even when that change involved vacant positions. Id. Thus, under the Board's new policy, the vacancy of the Medical Laboratory Scientist position would not bar consideration of the Union's petition, even if the parties had a live dispute over the position's duties or unit appropriateness.

The Employer contends that the Board's shift in policy applies only to petitions seeking to exclude positions from the bargaining unit, but the Board's 2016 decision expressed no such limitation. Although the case undeniably concerned an employer's petition to exclude positions from the unit, the Board focused its analysis exclusively on the nature of evidence that it deemed sufficient to obtain an adequate resolution of disputed issues. State of Illinois, Department of Central Management Services, 33 PERI ¶ 55 (IL LRB-SP 2016). The Board acknowledged its past policy, which was "rooted in the belief" that the Board could not "adduce evidence that sufficiently define[d] the actual duties" of a prospective position holder of a vacant position. Id. It then articulated a shift toward relying on position descriptions as evidence of a position's duties, and it held that a hearing could resolve the disputed issues in light of this new evidentiary focus. Id.; cf. Ill. Dep't of Cent. Mgmt. Serv., 2 PERI ¶ 2027 (holding that a hearing concerning vacant titles necessarily results in a lack of evidence as to the future position holder's actual duties; existence of a position description did not warrant a contrary result). Absent from the Board's decision was any indication that the Board would decline to hold hearings on vacant positions if a

union sought to add them to the bargaining unit. Indeed, the Board's new reliance on position descriptions would be equally applicable to petitions filed by a union, and the nature of the evidence adduced regarding a vacant position's duties would be similar irrespective of a party's desired outcome.

Moreover, it is appropriate to grant the Union's petition even if the Board determines that its policy change in 2016 applies solely to petitions seeking to exclude vacant positions. As indicated above, both the Board's initial policy, articulated in 1986, and its subsequent modification to that policy in 2016, apply in cases where there is a dispute concerning a position's duties or unit appropriateness. In this case however, the parties agree on the Medical Laboratory Scientist position's job duties and they agree that the Health Care Professionals Unit is an appropriate unit for that position. There is also no dispute that the Employer intends to fill the position as soon as possible. Thus, the Board's various policies concerning the propriety of holding hearings on vacant positions are inapplicable because the parties' agreements render a hearing unnecessary.

Thus, the unit clarification petition is procedurally appropriate and properly granted.

### **III. CONCLUSIONS OF LAW**

1. The unit clarification petition is appropriately filed.
2. It is appropriate to add the vacant Medical Laboratory Scientist position to the Union's Health Care Professionals Unit.

### **IV. RECOMMENDED ORDER**

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the Service Employees International Union, Local 73, 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: The titles Medical Laboratory Scientist and Clinical Lab Assistant<sup>4</sup> are to be included in the existing Health Care Professionals Unit.

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<sup>4</sup> The Employer did not object to the inclusion of this title.

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

V. **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](mailto: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 28<sup>th</sup> day of April, 2021**

**STATE OF ILLINOIS  
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*/s/ Anna Hamburg-Gal*

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**Anna Hamburg-Gal  
Administrative Law Judge**