

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

International Union of Operating Engineers,	)	
Local 399,	)	
	)	
Petitioner,	)	
	)	Case No. S-RC-21-016
and	)	
	)	
Village of Watseka,	)	
	)	
Labor Organization	)	

**ORDER**

On April 28, 2021, Administrative Law Judge Matthew Nagy, 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 Decision and Order 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 September 28, 2021.**

**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**

International Union of Operating Engineers, Local 399,	)	
	)	
Petitioner,	)	
	)	
Laborers International Union of North America, Local 751,	)	
	)	Case Nos. S-RC-21-016
Intervenor, and	)	
	)	
City of Watseka,	)	
	)	
Employer.	)	

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

On September 14, 2020, Petitioner, International Union of Operating Engineers, Local 399 (Local 399) filed a majority interest petition with the Illinois Labor Relations Board (ILRB or Board) seeking to represent certain employees of the City of Watseka (City). Specifically, Local 399, by its petition, seeks to represent “[a]ll full-time and regular part-time Operators, Foreman and Directors working for the City of Watseka Waterworks located at 487 N Brianna Dr, Watseka, IL 60970.” On October 23, the City filed an objection to the petition, asserting that the petition was barred by the Board’s contract bar doctrine because the petitioned-for employees were covered under a collective bargaining agreement (CBA) between the City and Laborers International Union of North America, Local 751 (Local 751). The City also asserted that one of the petitioned-for employees, Greg Marks, was a manager and/or supervisor under the Illinois Public Labor Relations Act (Act). On January 29, 2021, Local 751 filed a motion to intervene in this matter, and on February 8, I, the undersigned, granted Local 751’s motion. On or about February 11, pursuant to an agreement between Local 399 and the City, Local 399 excluded Marks from the unit and the City withdrew its objections to the petition.<sup>1</sup>

On March 1, I issued an Order to Show Cause, pursuant to Section 1210.100(6) of the Board’s Rules and Regulations, directing Local 399 to show cause why its petition should not be dismissed pursuant to the contract bar doctrine on the basis that Local 751 and the City had demonstrated sufficient evidence to conclude that the petitioned-for employees were represented by Local 751 and covered under the CBA. On March 15, Local 399 filed its response to the Order

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<sup>1</sup> Although the City withdrew its objections, I will nonetheless rely on the factual assertions it made in its objections.

to Show Cause. After investigation of the petition and the parties' responsive filings thereto, I recommend the following:

### **I. INVESTIGATORY FINDINGS**

The City operates a water and wastewater department (Water and Wastewater). Prior to 1998, the City's Public Works department ran the operations of the water and wastewater department. In 1998, the City outsourced the operations of the department to E.R.H. Enterprises, Inc. (ERH), and ERH ran the operations of the department thereafter. In 2018, the City engaged its consulting engineer, Robinson Engineering, to develop a plan to insource the water and wastewater department in order to bring it back under City control. As part of that process, Robinson Engineering posted a job opening for the position of "Chief Water/Wastewater Operator" in early 2019. That posting provided that the position would become part of Local 751's bargaining unit. In July 2019, the City hired Marks into the position. The City asserts that it does not maintain formal written job classifications for its employees. Accordingly, the City did not assign Marks an official job classification when he was hired, nor did it provide Marks a hire letter or any document which provides Marks's job title.

In January 2020, the City hired Dustin Standish (Standish) to fill a position which it refers to as "laborer/foreman." The City asserts that Standish was informed upon hire that he was a member of Local 751's unit. Over the subsequent months, the City hired Jonathan Dafcik (Dafcik), Rob Christensen (Christensen), and Tarren Rosado (Rosado) to fill positions it refers to as "Water and Wastewater laborers." Local 399's refers to these employees as "Operators" in the instant petition. The City asserts that Dafcik, Christensen, and Rosado were informed upon hire that they were members of Local 751's bargaining unit. In addition, the City assigned Scot Deneau (Deneau), an employee in Public Works, to the new water and wastewater department to work in the same position as Dafcik, Christensen, and Rosado. Deneau was hired by the City in 2018 to work in its Public Works department, and since that time, he had been a member of Local 751's bargaining unit. The City did not provide hire letters or any document to Standish, Dafcik, Christensen, Rosado, or Deneau which listed the job title they were being hired into. However, the City asserts that it recognizes all the employees that Local 399 seeks to represent as "laborers," as the term is used in the CBA. Moreover, the City avers and that Dafcik, Christensen, Rosado, and Deneau receive the wages and benefits provided for by the CBA.

The City re-took control of the water and wastewater department from ERH in May 2020, and in June 2020, the City separated the department from the control of Public Works, making Water and Wastewater a stand-alone department with Marks responsible for the department's day-to-day operations. Marks, Standish, Dafcik, Christensen, Deneau, and Rosado constitute the entirety of the employees in Water and Wastewater.

The CBA between the City and Local 751 has effective dates of May 1, 2019 through April 30, 2022. Article 1, Section 1 of the CBA provides the following:

The City recognizes the Union as the exclusive bargaining agent for all full- and regular part-time employees of the City of Watseka in the following titles: Laborers, Working Supervisors, Clerks, and Clerical-employees; excluding all supervisory, managerial, and confidential employees within the meaning of the Act and all other employees of the City of Watseka.

The Certification of Representative for Local 751's unit issued by the Board in Case No. S-RC-09-003 issued in August 2008 describes the unit slightly differently; that document certified a unit of "[a]ll full time and part time Laborers, and the Foreman in the Public Works Department; and all Clerks and Clerical Workers employed by the City of Watseka." The City does not employ Laborers in any department aside from Public Works.

In or about January of 2021, the parties and I had a conference call to discuss the case. During that call, the City indicated that it was considering withdrawing the entirety of its objections to the petition. Local 751 subsequently filed its motion to intervene in order to assert the contract bar objection on behalf of its purported bargaining unit members.<sup>2</sup> On or about February 11, pursuant to an agreement between Local 399 and the City, Local 399 excluded Marks from the proposed unit, and the City withdrew its objections to the petition. The effect of this was that Standish, Dafcik, Christensen, Rosado, and Deneau became the only remaining petitioned-for employees in this case.

During the investigation into the petition, Local 751 provided a letter from the City's Public Works Director Marvin DeLahr (DeLahr) in which DeLahr asserted that all of the remaining petitioned-for employees receive the benefits provided in the CBA, including but not limited to: vacation, personal leave, sick leave, holidays, comprehensive time, bereavement leave, overtime, wage increases, uniform allowance, seniority, and City-paid insurance. DeLahr also noted in that letter that the petitioned-for employees have been receiving these benefits from their date of hire. Moreover, the hourly wage for one petitioned-for employee, Deneau, is explicitly provided for in the CBA by virtue of his prior position as a Laborer in Public Works.

Also during the investigation, the City asserted that City employees not covered under a collective bargaining agreement are instead subject to the City's Employee Handbook, and provided a copy of such. The City averred that the Employee Handbook provides for the wages,

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<sup>2</sup> Local 751 filed an objection to the petition on October 13, 2020, at which time it asserted the contract bar, but at the time, it was not a party to the petition and had not sought to intervene.

hours, and terms and conditions of employment for non-unionized City employees. The Employee Handbook and the CBA differ in several respects, including but not limited to: the increments in which personal days may be used, reimbursement of non-refundable expenses incurred upon cancellation of a scheduled vacation, payout of sick leave, health insurance deductibles, the amount of employee life insurance premium paid by the City, uniform allowance, and discipline.

## **II. ISSUES AND CONTENTIONS**

The lone remaining issue in this case is whether the CBA between the City and Local 751 serves as a contract bar to the instant petition. To answer this question, a threshold question must first be answered: does Local 751 in fact represent the employees that Local 399 seeks to represent?

Local 751 asserts that the petitioned-for employees are included in its bargaining unit as Laborers, evidenced by the fact the employees receive the benefits provided for in the CBA which affect the wages, hours, and terms and conditions of employment of the petitioned-for employees. It further asserts that Local 399's use of the term "Operator" in its petition is simply an attempt to avoid the contract bar.

Local 399 asserts that the petitioned-for employees perform work separate and distinct from those in the title of Laborer. It points to the fact that Marks's job advertisement was for a "Chief Water/Wastewater Operator," and not Laborer, which it believes demonstrates that the employees in Water and Wastewater are not Laborers. It argues that the work of Water and Wastewater is focused on "water-centered" operations, as opposed to the maintenance of infrastructure done by those in the Laborer job title covered by Local 751. In addition, it argues that the mere fact that the petitioned-for employees receive the benefits of the CBA does not automatically make them a part of Local 751's unit because it asserts there are three non-bargaining unit employees at the City of Watseka who receive compensation set by a CBA. It finally argues that to conclude the petitioned-for employees are a part of the Local 751's unit would essentially be an end-around of the Board's unit clarification procedures, which require that a unit clarification petition be filed in order to accrete newly-created job classifications entailing job functions already covered by an existing bargaining unit.

The City, having withdrawn its objections, does not make an argument as to this issue.

## **III. DISCUSSION AND ANALYSIS**

Section 9(h) of the Act sets forth the contract bar doctrine, which in pertinent part, provides that "[n]o election shall be directed by the Board in any bargaining unit where there is in force a valid collective bargaining agreement." 5 ILCS 315/9(h). Section 1210.35(a) of the Board Rules gives more guidance with respect to the contract bar, providing that:

When 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, representation and decertification petitions may be filed during the window period (between 90 and 60 days prior to the scheduled expiration date of the collective bargaining agreement) or anytime after the expiration of the collective bargaining agreement. However, the collective bargaining agreement shall serve as a bar (contract bar) to filing representation or decertification petitions outside of the window period.

80 Ill. Admin. Code 1210.35(a).

Despite the fact that the City does not maintain a written job classification or position description for the title of “Laborer,” and despite the fact the City did not provide the petitioned-for employees with hire letters or any documentation which listed the job title they were being hired into, it is clear that both Local 751 and the City consider the employees to be Laborers and considers them to be a part of Local 751’s unit. First, the City asserts it informed Standish, Dafcik, Christensen, and Rosado that they were in Local 751’s unit when they were hired. Although there is no evidence that Deneau was informed that he was a member of the unit when he was hired into Water and Wastewater, he was already in Local 751’s unit by virtue of his position in Public Works when the hiring occurred. Next, both the City and Local 751 presented evidence that the petitioned-for employees receive the benefits of the CBA and that they have received those benefits since they were hired. The totality of this un rebutted evidence supports the City’s contention that it considers the employees at issue to be Laborers and is consistent with its categorization of Standish as “laborer/foreman” and the remaining employees as “Water and Wastewater laborers.”

However, the ultimate arbiter as to what titles are included in a unit is the Board’s certification of that unit, not the treatment of those titles by the employer and the incumbent union. In other words, just because the City and Local 751 treat the employees at issue as “Laborers” does not mean those employees fall within the bargaining unit that Local 751 represents. Parties may not create a new bargaining relationship without the explicit approval of the Board, nor may parties add positions to a unit without the Board’s involvement. See Chief Judge of the 13th Judicial Circuit, 15 PERI 2006 (ISLRB 1999); Chicago Transit Auth., 17 PERI 3003 (IL LRB-LP 2000); City of Chicago, 16 PERI 3016 (IL LRB-LP 2000). Moreover, the Board’s Rules make clear that the Board does not recognize, nor does the Act apply to, collective bargaining agreements negotiated by parties pursuant to other forms of recognition, and further, that those agreements will not bar the filing of a representation petition. 80 Ill. Admin. Code 1210.10.

Here, the critical distinction between the CBA's recognition clause and the Board's certification of Local 751's unit is that the Board's certification limits Local 751's representation of Laborers only to those in the City's Public Works department, whereas the CBA's recognition clause does not limit by department. It is true that the certification starts with "[a]ll full time and part time Laborers" followed by a comma, then followed by "and the Foreman of the Public Works Department," which in isolation could be read as applying the Public Works limitation only to the Foreman position and not to the Laborer position. However, these two clauses are then followed by a semicolon, which, when preceding a conjunction, can serve to effect a stronger separation between the two clauses. See Chicago Manual of Style, § 6.59 (17th Edition 2017). Thus, it seems that the "Laborers" in the certification was intended to mean Laborers in Public Works, as both that title and the Foreman title are listed in the same clause which precedes the semicolon. Indeed, if the titles had no relationship to each other, it is a safe inference that the certification would have simply listed them, along with the remaining titles, in a series, separated by commas. This conclusion is even more evident when viewed in light of the fact that the City does not employ Laborers in any other unit aside from Public Works. Thus, I would find that the Board's certification limits Local 751's representation of Laborers to those in Public Works.

It is not in dispute that Water and Wastewater is a newly in-housed, stand-alone City department that is separate and distinct from Public Works. Thus, even if the petitioned-for employees are truly "Laborers," they would be outside of Local 751's unit because they do not work in Public Works, but rather, in Water and Wastewater, a unit that was not under the City's control when Local 751's unit was certified by the Board. I would also weigh any ambiguity here against the City and Local 751, because as Local 399 correctly points out in its response to the Order to Show Cause, the Board's Rules require an employer or union to file a unit clarification petition to add newly-created job position to an existing bargaining unit on the grounds that the position performs work similar to titles already in the bargaining unit. See Dep't of Cent. Mgmt. Servs. (Corrections) v. ILRB, 364 Ill. App. 3d 1028, 1032 (4th Dist. 2006); City of Evanston v. ISLRB, 227 Ill. App. 3d 955, 969-70 (1st Dist. 1992) (unit clarification petition may be used to add newly-created title to a bargaining unit when that new title has job functions similar to those already covered in the unit). Neither the City nor Local 751 has filed such a petition, and I would conclude that it does not effectuate the purposes of the Act to allow an employer to create a new department, staff that department, and then unilaterally designate those new employees—whose job titles are ambiguous at best—to an existing bargaining unit, without having filed such a petition. It would also not effectuate the policy the Act in this particular instance because the employees at issue have shown their desire to be represented by Local 399 through their signed authorization cards which demonstrate majority support, and the public policy of the Act is to grant

employees the full freedom of association, self-organization, and designation of representative of their own choosing. 5 ILCS 315/2.

Accordingly, I find that the contract bar does not apply in this case, because the employees sought to be represented are outside of bargaining unit certified by the Board in S-RC-09-003.

#### **IV. CONCLUSION OF LAW**

The contract bar does not apply in this case because the petitioned-for employees are not in the bargaining unit certified by the Board in S-RC-09-003.

#### **V. RECOMMENDED ORDER**

The instant petition is granted. Because of the ambiguity surrounding the official job titles of the petitioned-for employees, as well as Marks, I recommend the Board certify the unit as follows:

INCLUDED: All employees of the City of Watseka's Water and Wastewater department.

EXCLUDED: The position referred to in practice as Water and Wastewater Supervisor/Superintendent, currently held by Greg Marks.

#### **VI. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 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, or to the Board's designated email address for electronic filings, at [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov) in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. 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. The 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. The exceptions and/or cross-exceptions will not be

considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Dated: **April 28, 2021**  
Issued: Springfield, Illinois

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*/s/ Matthew S. Nagy*

Matthew S. Nagy  
Administrative Law Judge