STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Union of Operating Engineers, Local 148,	)	
Petitioner,	)	Case No. S-RC-21-053
and	)	
City of Roodhouse,	)	
Employer.	)	

ORDER

On September 8, 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 October 21, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 October 21, 2021.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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/s/ Helen J. Kim
Helen J. Kim
General Counsel

STATE OF ILLINOIS
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International Union of Operating Engineers, Local 148, Petitioner, and City of Roodhouse, Employer.	)	Case No. S-RC-21-053

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 20, 2021, Petitioner, International Union of Operating Engineers, Local 148 (Union) filed a majority interest petition with the Illinois Labor Relations Board (ILRB or Board) seeking to represent certain employees of the City of Roodhouse (City). The City subsequently filed an objection to the petition. After investigating the petition and the parties' responsive filings thereto, I, the undersigned, recommend the following:

I. INVESTIGATORY FINDINGS

The Union's instant petition describes the unit it wishes to represent as: "[f]ull time and part time employees in the City of Roodhouse, Illinois Public Works Department in gas, water, water plant, sewer, streets, parks and secretary." In the section of the petition which asks "ARE ANY OF THE EMPLOYEES IN THE PROPOSED UNIT *CURRENTLY* REPRESENTED BY A LABOR ORGANIZATION?", the Union selected "No."

The City subsequently filed a response to the petition in which it asserted that "part-time and seasonal employees should not be included in the union," although it did not assert which employees sought by the Union were part-time or seasonal. During the course of the investigation, it was discovered that the Union was certified by the Board in July of 2011 as the exclusive representative of the following unit: "[a]ll persons employed full-time by the City of Roodhouse in its Water, Gas, Streets, or Sewer Departments, in the title or classification of Laborer," in case number S-RC-11-132.

Also during the investigation, the City clarified that it does not have a Public Works Department, but rather, the following departments: Water, Sewer, Gas, and Streets & Alleys. Subsequently, on August 10, 2021, the Union amended its petition via email to seek representation of: "[f]ull time and part time employees in the City of Roodhouse Departments of: Water, Sewer, Gas, Streets & Alleys."

I provided the City the opportunity to object based on the Union's amendment to its petition, and on August 26, the City provided those objections. Therein, the City clarified that there are five full-time employees and one part-time employee in the departments sought by the Union; specifically, it asserted that there are four Full-Time Laborers, one Part-Time Laborer, and one Secretary. The signature exemplar document provided by the City gives a more specific description of each title: one Laborer Water Maintenance, two General Laborers, one Secretary, one General Laborer/Gas Maintenance, and one Part-Time Laborer/Brush Pickup. The City asserts that the because the Full-Time Laborers are already included in the unit certified in S-RC-11-132, the instant petition is redundant and improper. Rather, it avers that the unit clarification process is the proper vehicle for adding the two positions listed on the instant petition that are not subject to the Board's certification in S-RC-11-132: the Part-Time Laborer and the Secretary. The City stated that it has no other objections to the petition.

II. ISSUES AND CONTENTIONS

Although the City initially objected to the inclusion of part-time employees in the proposed unit, its objections on August 26 make clear that its only remaining objection is that the Union's use of the majority interest petition is improper and that instead a unit clarification petition should be utilized to include the Secretary and Part-Time Laborer into the S-RC-11-132 unit. Moreover, the City did not provide any argument as to what employees it believed were part-time or seasonal. Accordingly, the issues in this care are therefore, 1) what the effect of the Board's certification in S-RC-11-132 is on this case, and 2) whether the instant petition is proper in this case.

III. DISCUSSION AND ANALYSIS

It is well-settled that the Board has the exclusive and affirmative duty to resolve questions concerning representation and to closely regulate and oversee the process by which employee representatives are designated, removed, and replaced. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI 74 (ILRB-SP 2003); Cnty. of Woodford, 14 PERI 12015 (IL SLRB 1998). Accordingly, parties may not create a new bargaining relationship without the explicit approval of the Board and may not add positions to a unit without the Board's approval. Chief Judge of the 13th Judicial Circuit, 15 PERI 2006; Chicago Transit Auth., 17 PERI 3003 (IL LRB-LP 2000); City of Chicago, 16 PERI 3016 (ILRB-LP 2000).

Here, the Board's certification in S-RC-11-132 makes clear that the Union is presently the exclusive representative of Full-Time Laborers in the City's Water, Gas, Streets, and Sewer departments and has been so since June 2011. The Board's Rules provide that the Board will only process majority support petitions for employees who are not presently represented by the petitioning labor organization. See 80 Ill. Admin. Code 1210.40 (providing that a majority interest petition "must be accompanied by a showing of interest . . . evidencing that a majority of the employees in the petitioned-for bargaining unit *wish to be represented* by the labor organization) (emphasis added). Because the Full-Time Laborers are already represented by the Union, those titles, and any signed majority cards submitted by employees in those titles, will not be considered by the Board in this case.

Although the Full-Time Laborers are not counted for the purposes of determining majority support for this petition, the fact that the Union submitted authorization cards from both Full-Time Laborers and the Part-Time Laborer and Secretary leads to a clear inference that the Union wishes to include all three titles in the same unit, and that the employees in those titles who signed authorization cards likewise wish to be represented in the same unit. Consequently, I will interpret the instant petition as an attempt by the Union to accrete the Secretary and Part-Time Laborer positions into the existing unit certified in S-RC-11-132.

Contrary to the City's assertions, the Board's unit clarification procedure is not the proper method by which to accrete the two positions at issue into S-Rc-11-132 unit. Use of the unit clarification procedure to accrete employees to an existing bargaining unit circumvents the regular representation procedures, thereby denying the employees an opportunity to participate in a representation campaign and election. Accordingly, the Board limits the circumstances in which the unit clarification procedure may appropriately be invoked. City of Chicago, 2 PERI 3014 (ILLRB 1986); City of Chicago, 7 PERI 3013 (ILLRB 1991). Section 1210.170 of the Board's Rules and Regulations (Rules) permit unit clarification under three circumstances: 1) when substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement; 2) when 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) when a significant change takes place in statutory or case law that affects the bargaining rights of employees. 80 Ill. Admin. Code 1210.170(a).

The City does not make an argument that any of the three above-listed circumstances are present in the instant matter, and there is nothing based on my investigation to conclude any of these three circumstances exist. Nothing suggests the work of the Secretary or Part-Time Laborer has changed dramatically since 2011. Moreover, neither the Secretary nor the Part-Time Laborer were logically encompassed in the Board's 2011 certification, which contemplated Laborers, and no other title. Even more, only full-time laborers were included in the unit certified in 2011, not

part-time. Finally, there has been no significant change in statutory or case law that affects the rights of the Secretary or Part-Time Laborer. Thus, unit clarification is not a proper means to accrete the two positions into the existing unit.

However, the two positions can still be accreted into an existing unit by use of the majority interest petition. See State of Illinois, Department of Central Management Services (Dept of Public Health), 2010 IL LRB LEXIS 190 (ILRB-SP 2011) (demonstrating use of majority interest petition to accrete position into an existing unit). The Union in this case has filed a majority interest petition and has demonstrated sufficient majority support from the two positions at issue.

Both the Act and the Board's rules authorize the Board to issue decisions in the absence of conducting an evidentiary hearing. The Act declares that its purpose is to provide an "expeditious, equitable and effective procedure for the resolution of labor disputes." 5 ILCS 315/2 (West 2010). To achieve this goal, the Act does not require the Board to hold evidentiary hearings in every instance on disputed questions of representation. Rather, it provides that when considering a representation petition, "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). Thus, the Act allows the Board to forego a hearing if the Board's investigation finds the absence of "reasonable cause." Id.; see also Illinois Council of Police v. ILRB, 387 Ill. App. 3d 641, 663 (1st Dist. 2008); Int'l Bhd. of Elec. Workers v. ILRB, 2011 IL App (1st) 101671, ¶¶ 29-31.

Here, the City's sole objection to the petition is on the issue of unit clarification, which for the reasons explained above does not rise to the level of reasonable cause to suggest a question concerning representation exists. While the Union would have been well-served to perform its due diligence before filing the instant petition, including determining that it already represents a unit of the City's Full-Time Laborers, its missteps are not fatal, as it is clear the petition, read in full context, demonstrates that the Union seeks to represent Full-Time Laborers, the Secretary, and the Part-Time Laborer in the same bargaining unit. Its petition, exclusive of the Full-Time Laborers, is sufficient to accrete the positions of Secretary and Part-Time Laborer into the existing unit, which would accomplish this goal. Accordingly, I recommend the petition be granted and the Board amend its certification of the unit in S-RC-11-132 to include the Part-Time Laborer and the Secretary.

IV. CONCLUSIONS OF LAW

1. The City's objections do not present reasonable cause to determine that a question concerning representation exists.
2. The Union's majority interest petition is properly filed.

3. The Union has demonstrated sufficient majority support to accrete the positions of Full-Time Laborer and Part-Time Laborer into the bargaining unit certified by the Board in S-RC-11-132.

V. RECOMMENDED ORDER

The instant petition is granted. I recommend the Board amend the unit certified in S-RC-11-132 to the unit described as follows:

INCLUDED: All full-time and part-time employees employed by the City of Roodhouse in its Water, Sewer, Gas, Streets & Alleys Departments, in the title or classification of Full-Time Laborer, Part-Time Laborer, and Secretary.

EXCLUDED: All other persons employed by the City of Roodhouse.

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 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: **September 8, 2021**
Issued: Springfield, Illinois

/s/ Matthew S. Nagy

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Matthew S. Nagy
Administrative Law Judge