STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Homewood-Flossmoor Classified Staff Organization, IEA-NEA,	)	
Petitioner	)	
and	)	Case No. 2020-RC-0005-C
Homewood-Flossmoor Community High School District 233,	)	
Employer	)	

OPINION AND ORDER

I. Statement of the Case

Homewood-Flossmoor Classified Staff Organization, IEA-NEA (Union) filed a majority interest petition with the Illinois Educational Labor Relations Board (IELRB or Board) seeking to represent approximately 32 persons employed by Homewood-Flossmoor Community High School District 233 (District) in various support staff titles. The District opposed the petition on the basis that it did not include all its support staff employees. The parties appeared for a hearing before an Administrative Law Judge (ALJRDO). Following the hearing, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the petitioned-for unit was appropriate for the purposes of collective bargaining within the meaning of Section 7(a) of the Illinois Educational Labor Relations Act (Act or IELRA), 115 ILCS 5/1 *et. seq*. The District filed exceptions to the ALJRDO, and the Union filed a response to the exceptions. For the reasons discussed below, we affirm the ALJRDO.

II. Factual Background

We adopt the facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except where necessary to assist the reader.

III. Discussion

In determining whether a bargaining unit is appropriate, the Board is guided by Section 7(a) of the Act, which provides, in relevant part: "the Board shall decide in each case, in order to ensure employees, the fullest freedom in exercising the rights guaranteed by this Act." Bargaining unit appropriateness is

based on, but not limited to, such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervisor, wages, hours and other working conditions of the employees involved, and the desires of the employees. 115 ILCS 5/7(a).

The District's central argument throughout its exceptions is that its own proposed bargaining unit of all support staff employees is appropriate, which in the District's eyes renders the petitioned-for unit inappropriate. The ALJ found that the historical pattern of recognition did not support the petitioned-for unit or the unit suggested by the District because none of the support staff employees are or have ever been represented for purposes of collective bargaining. According to the ALJ, the petitioned-for unit satisfied many of the community of interest factors, including functional integration, interchangeability and contact among employees, common supervision, wages, hours and other working conditions, and the desires of the employees. The District insists that the support staff committee and the support staff handbook establish a historical pattern of recognition in favor of a bargaining unit of all support staff employees, not the petitioned-for unit. Even assuming, arguendo, there was a historical pattern of recognition of an all-support staff unit, that does not render the petitioned-for unit inappropriate. This Board is simply tasked with determining whether the petitioned-for unit is an appropriate unit, not finding the most appropriate unit. Just because the unit proposed by the District is, like the petitioned-for unit, an appropriate unit, does not render it the only appropriate unit configuration possible. The District argues that the ALJ erred in finding that the desires of the employees favored the petitioned-for unit. But the desires of the employees are an important consideration because the goal in determining the appropriateness of a bargaining unit is to ensure employees the fullest freedom in exercising the rights guaranteed them by the Act for the purpose of collective bargaining. 115 ILCS 5/7(a); *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill. App. 3d 189, 655 N.E.2d 1054 (1st Dist. 1995); *Board of Trustees of the University of Illinois*, 29 PERI 6, Case No. 2011-RS-0018-C (IELRB Opinion and Order, May 24, 2012). We find that the ALJ did not err in determining that the historical pattern of recognition favors neither of the proposed units and that the petitioned-for unit satisfied many of the community of interest factors.

This Board has certified bargaining units that exclude central or business office support staff but include other support staff positions. *North Shore SD 112*, 32 PERI 200, Case No. 2016-UC-0005-C (IELRB EDRDO, April 18, 2016) (unit description includes support staff employees but excludes

business office secretary); *North Chicago Classified Staff Union, Lake County Federation of Teachers Local 504*, 9 PERI 1147, Case Nos. 92-CA-0059-C & 93-CB-0006-C (IELRB ALJRDO, October 5, 1993) (unit description listed in ALJRDO in unfair labor practice charge case includes support staff but excludes business office and central office secretaries). We have likewise certified bargaining units that include all the educational employer's support staff employees. *Community High School District No. 94*, 30 PERI 276, Case No. 2014-UC-0003-C (IELRB EDRDO, March 4, 2014). As the ALJ acknowledged, neither the District's proposed unit nor the petitioned-for unit is inappropriate. Just because a possible unit configuration is appropriate does not render other possible configurations inappropriate. The existence of more than one appropriate unit configuration does not mean that the Board must order an election and majority interest procedures may not be used. The Board has recognized that more than one appropriate bargaining unit may cover the same employees. *Edwardsville Community Unit School Dist. No. 7*, 8 PERI 1003, Case Nos. 91-RC-0022-S, 91-RC-0023-S (IELRB Opinion and Order, November 21, 1991). The Board has rejected any requirement of maximum coherence or selection of the most appropriate unit if more than one potential configuration would be appropriate. *Id.* It bears repeating that the Act does not require that a petitioned-for unit be the *most appropriate* unit, but rather *an appropriate* unit (emphasis added). *Black Hawk College*, 275 Ill. App. 3d 189, 655 N.E.2d 1054; *University of Illinois*, 7 PERI 1103, Case No. 90-RS-0017-S (IELRB Opinion and Order, September 13, 1991), *rev'd on other grounds*, 235 Ill. App. 3d 709, 600 N.E.2d 1292 (4th Dist. 1992). "A proposed unit should be certified if it meets the applicable standards in the [Act], even though a separate unit" of employees would also be an appropriate unit. *Board of Trustees of the University of Illinois v. IELRB*, 2015 IL App (4th) 140557, quoting *Sandberg Faculty Association v. IELRB*, 248 Ill. App. 3d 1028, 618 N.E.2d 989 (1st Dist. 1993). To refuse to find a bargaining unit appropriate because of the possible existence of a more appropriate alternative unit would not serve the statutory purpose of ensuring employees the fullest freedom in exercising the rights guaranteed them by the Act. *Board of Trustees of the University of Illinois*, 21 PERI 119, Case No. 2005-RC-0007-S (IELRB Opinion and Order, July 14, 2005), *aff'd*, No. 4-05-0713 Ill. App. Ct. (4th Dist. 2006) (unpublished order).

IV. Order

We find that the petitioned-for unit is appropriate under Section 7 of the Act and affirm the ALJRDO in its entirety. The Executive Director is directed to process the petition in accordance with our opinion.

V. Right to Appeal

This Opinion and Order is not a final order of the Illinois Educational Labor Relations Board subject to appeal. Under Section 7(d) of the Act, "[a]n order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order." Pursuant Section 7(d) of the Act, aggrieved parties may seek judicial review of this Opinion and Order in accordance with the provisions of the Administrative Review Law upon the issuance of the Board's certification order through the Executive Director. Section 7(d) also provides that such review must be taken directly to the Appellate Court of a judicial district in which the Board maintains an office (Chicago or Springfield), and that "[a]ny direct appeal to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision." The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **October 21, 2021**
Issued: **October 21, 2021**

/s/ Lara D. Shayne
Lara D. Shayne, Chairman

/s/ Steve Grossman
Steve Grossman, Member

/s/ Chad D. Hays
Chad D. Hays, Member

/s/ Michelle Ishmael
Michelle Ishmael, Member

/s/ Gilbert F. O'Brien
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

I. BACKGROUND

Petitioner, Homewood-Flossmoor Classified Staff Organization, IEA-NEA (Union), filed a petition with the Illinois Educational Labor Relations Board (Board) on January 29, 2020, seeking pursuant to a showing of majority interest, to represent approximately 32 persons employed by Homewood-Flossmoor Community High School District 233 (District), in various support staff titles. The petitioned-for employees are currently unrepresented for purposes of collective bargaining. The District opposed the petition, asserting as configured, the petitioned-for unit was inappropriate because it did not include all the District's support staff employees.

The hearing in this matter was conducted before the undersigned on January 27, 2021, pursuant to Section 1110.105 of the Board's Rules and Regulations (Rules), 80 Ill. Admin. Code §§1100-1135. Both parties were afforded and took advantage of an opportunity to file post-hearing briefs.

II. ISSUES AND CONTENTIONS

Petitioner: The Union seeks to represent approximately 32 of the approximately 48 persons employed by the District in various support staff job titles. The Union asserts, as configured, the petitioned-for unit is appropriate.

Employer: The District opposes the Union's petition, asserting that the unit it seeks is underinclusive and therefore inappropriate under Section 7(a) of the Illinois Educational Labor Relations Act (Act), 115 ILCS 5/1, *et seq*. Additionally, the District contends the titles used by the Union in its petition make it unclear for whom exactly it is petitioning.

III. FINDINGS OF FACT

On the basis of the testimony of the witnesses, my observation of their demeanors, and the documentary evidence in the record, I make the following findings of fact:

At all times material, Homewood-Flossmoor Community High School District 233 was an educational employer within the meaning of Section 2(a) of the Act and subject to the jurisdiction of the Board. Likewise, at all times material, Homewood-Flossmoor Classified Staff Organization, IEA-NEA, was a labor organization within the meaning of Section 2(c) of the Act and subject to the jurisdiction of the Board.

In or about October 2019, certain of the District's support staff employees began meeting to discuss organizing and obtaining representation in collective bargaining, which ultimately led them to contact the Union.[1] Tr. 121-23, 155-57, 169. To aid its organizing efforts, on November 19, 2019, the Union filed an Illinois Freedom of Information Act (FOIA), 5 ILCS 140/1, *et seq*., request with the District, seeking information about its support staff employees, including the following: official job titles current as of November 18, 2019; which such employees were already represented; their hours of work; and their work locations. Tr. 31-32, 49, 94-95, 177-78; Un. Ex. 2. Based on the response to the FOIA request, the Union organized the unit and drafted the unit description using the information supplied by the District. Tr. 62-73, 173, 179-81; Un. Ex. 3. Because the District, in its FOIA response, in some instances, did not provide the exact job titles of its support staff employees to the Union, the unit description is not as precise as it could be, yet both parties are clear on exactly which employees are included in the petitioned-for unit.[2] Tr. 30-32, 94-98, 99-101, 104, 109-110.

For at least the past 20 years, the support staff employees' wages, hours, and terms of employment have been governed by the "Support Staff Handbook." Tr. 18-30, 141; Un. Ex. 6; Dist. Ex. pp. 13-40. The Handbook is a product of employees elected to the support staff committee and the District's representatives. Tr. 18-30. The parties agree it is not a collective bargaining agreement, or even a contract, and the support staff employees are unrepresented for purposes of collective bargaining. Tr. 46, 83, 158-161, 171. As a result of the District's use of the Handbook, however, the support staff employees have common wages, benefits, and working conditions. Tr. 136-37.

Additionally, all support staff employees work in two buildings approximately one city block apart. Tr. 120, 136. They are all hourly employees, with workdays which are similar in content. Tr. 135-36. All are payees into the Illinois Municipal Retirement Fund. Tr. 135-36.

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[1]Reference to exhibits in this matter will be as follows: Union exhibits, "Un. Ex. ____"; District exhibits, "Dist. Ex. pp. ____". References to the transcript of proceedings will be "Tr. ____."

[2]At hearing and in its post-hearing brief, the District contended the description of the Union's petitioned-for unit was unclear. To the extent it is, and this is doubtful given the District's witness' testimony at hearing and the parties' discussions in this matter, the fault lies with the District's response to the Union's FOIA.

IV. DISCUSSION AND ANALYSIS

Section 7(a) of the Act provides the following with regard to determining whether a petitioned-for unit is appropriate:

> In determining the appropriateness of a unit, the Board shall decide in each case, in order to ensure employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as historical pattern of recognition, community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours and other working conditions of the employees involved, and the desires of the employees.

Herein, the District proposes a unit which includes all support staff employees, except those it considers statutorily excluded, a total of approximately 48 employees, while the Union proposes a smaller unit of approximately 32 employees.

Most of the factors listed in Section 7(a)—community of interest, including employee skills and functions, degree of functional integration, interchangeability and contact among employees, common supervision, wages, hours, and other working conditions of the employees involved—do not favor either the unit proposed by the District or the Union. In other words, within each of the proposed units, there exists a valid community of interest, functional integration, interchangeability and contact among employees. Likewise, as noted earlier, they all have common supervision, wages, hours, and other working conditions. The "historical pattern of recognition" favors neither proposed unit, as all the support staff employees are unrepresented, and have never been represented for purposes of collective bargaining. The "desires of the employees" factor tends to favor the unit proposed by the Union, as there is evidence of employee support for it.

Nonetheless, neither of the proposed units is inappropriate for collective bargaining, and as the District argues, the unit it proposes may be the most appropriate unit and the most efficient for its purposes. However, the Act does not mandate that a petitioned-for unit be the most appropriate unit, only that it be an appropriate unit Sandburg Faculty Association, IEA-NEA v. Illinois Educational Labor Relations Board, 248 Ill. App. 3d 1028, 1036, 618 N.E.2d 989, 995, 144 LRRM 2543 (1st Dist. 1993). The Board noted likewise in Downers Grove Education Association, IEA-NEA/Downers Grove Community High School District No. 99, 1 PERI ¶1105 at VII-207 (IL ELRB 1985):

> Although the employee groups petitioned for here arguably might be included in a more comprehensive bargaining unit, we are not compelled to determine whether a unit not petitioned-for is possibly more appropriate, but need only to determine whether the unit actually petitioned for meets at least the minimum standards necessary for appropriateness. An important statutory purpose in bargaining unit determinations is to ensure employees the fullest freedom in exercising the rights guaranteed by this Act. To

> refuse to find a unit appropriate because of the possible existence of a more appropriate alternative unit would not serve that statutory purposes.

Thus, the question is not whether there is a more appropriate bargaining unit for the placement of the employees petitioned-for herein, but rather, whether the petitioned-for bargaining unit, as configured, is an appropriate unit. Based on consideration of the 7(a) factors above, therefore, the petitioned-for unit is appropriate.

In support of its position, the District urges the application of the presumption used by the Illinois Labor Relations Board (ILRB) in determining the appropriate unit issue, which is as follows: in public sector labor relations, a preference exists for large, functionally based bargaining units which cross departmental lines, in order to promote stability in labor relations and economy and efficiency in public bargaining and contract administration. State of Illinois, Department of Central Management Services (Department of Employment Security), 1 PERI ¶2027 (IL SLRB 1985); DuPage County Board, 1 PERI ¶2003 (IL SLRB 1985). The District cites Service Employees International Union, Local 73/County of McHenry, 31 PERI ¶8, 2014 WL 3108242 (ILRB-SP 2014), noting therein, the State Panel of the ILRB upheld an administrative law judge's decision finding a petitioned-for unit inappropriate because it did not include all the employees with the same community of interest. In theory, the application of this presumption is attractive, as it simplifies the process of applying the appropriate unit factors. However, in practice, the ILRB learned the use of the presumption led to "excessive concern with avoiding fragmentation" such that the other statutory appropriate unit factors, and even the right to organize, were "consumed" by it.[3] As indicated therein, the benefit of applying this presumption is dubious at best.

V. CONCLUSIONS OF LAW

The bargaining unit as petitioned for herein by the Union is appropriate for purposes of collective bargaining, within the meaning of Section 7(a) of the Act.

VI. ORDER

Unless this order is rejected or modified by the Board, the instant petition shall be remanded to the executive director for processing in accordance with Section 1110.105 of the Board's Rules.

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[3]The full quotation is as follows:

> excessive concern with avoiding fragmentation and promoting economy and efficiency in public bargaining and contract administration consumed not only the employees' right to organize, but also the criteria set forth in Section 9(b). See Illinois Nurses Association/State of Illinois, Departments of Central Management Services and Healthcare and Family Services, 23 PERI 173 (IL LRB-SP 2007). The Act demands that we strike a balance between these extremes so as to avoid regularly and completely depriving public employees of the rights granted therein.

International Brotherhood of Electrical Workers, Local 51/City of Peru, 25 PERI ¶6 (IL SLRB 2009).

VII. EXCEPTIONS

In accordance with Section 1110.105(k)(2) of the Board's Rules, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than seven (7) days after receipt hereof. Parties may file responses to exceptions and briefs in support of the responses not later than seven (7) days after receipt of the exceptions and briefs in support thereof. Exceptions and responses must be filed, if at all, at **ELRB.mail@illinois.gov and** with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, exceptions and responses sent to the Board must contain a certificate of service, that is, **"a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service."** If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. See Section 1100.20 of the Rules, concerning service of exceptions. If no exceptions have been filed within the seven (7) day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois, this 30th day of August, 2021.

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

/s/ John F. Brosnan

John F. Brosnan
Administrative Law Judge