

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
College of DuPage,)	
)	
Petitioner)	
)	
and)	Case No. 2005-UC-0006-C
)	
Illinois Fraternal Order of Police Labor Council,)	
)	
Exclusive Representative)	

OPINION AND ORDER

On October 12, 2004, the College of DuPage (Petitioner or Employer) filed a unit clarification petition with the Illinois Educational Labor Relations Board (IELRB or Board) seeking to remove all regular full-time public safety department employees in the rank of Sergeant from the existing bargaining unit represented by the Illinois Fraternal Order of Police Labor Council (FOP or Union). On November 24, 2004, the Board's Chief Administrative Law Judge (ALJ) issued a Recommended Decision and Order dismissing the petition as untimely filed. For the reasons discussed below, we affirm the ALJ's Recommended Decision and Order in its entirety.

I.

The Illinois Council of Police and Sheriffs (ICOPS) originally organized the bargaining unit. In November 2000, the IELRB certified the ICOPS as the exclusive representative of a bargaining unit consisting of:

Included: All regular full-time public safety department sergeants, patrol officers, community service officers, and dispatchers.

Excluded: Public safety director, chief supervisor, lieutenant and all other employees of the College.

The ICOPS and the Employer entered into a collective bargaining agreement that was effective from July 1, 2001 to June 30, 2004.

In January 2002, the Employer adopted a revised job description for its employees in the rank of Sergeant. According to the Employer, the revised job description began the "evolution" of the Sergeants into an exempt supervisory position.

In or around March 2004, the FOP filed a petition seeking to represent the bargaining unit. The FOP prevailed in an April 2004 representation election. Following the FOP's certification as the exclusive representative of the bargaining unit in June 2004, the Employer and the FOP began bargaining the terms of a new collective bargaining agreement. During bargaining, the FOP rejected the Employer's proposal to remove the sergeants from the unit. The Employer subsequently filed the instant petition on October 12, 2004.

II.

The unit clarification process allows for the removal or addition of employees from an established bargaining unit without the requirement of a showing of interest or election. As the ALJ noted, the unit clarification process is appropriate in the following limited circumstances: (1) a newly-created job classification that entails job functions that are similar to those of classifications covered by the existing unit; (2) an existing classification's job functions have been substantially altered since certification, creating genuine doubt as to whether the classification should continue to remain in, or be excluded from, the existing unit; or (3) there has been a change in statutory or case law that affects the bargaining rights of employees. SEDOL Teachers Union v. IELRB, 276 Ill. App. 3d 872, 658 N.E.2d 1364 (1st Dist. 1995); CBOE, 12 PERI 1089, Case Nos. 96-RC-0006-C and 96-UC-0004-C (IELRB Opinion and Order, September 17, 1996); Lockport Township High School, District 205, 8 PERI 1111, Case No. 92-UC-0003-C (IELRB Opinion and Order, October 2, 1992); Niles Township High School District No. 219, 6 PERI 1124, Case No. 90-UC-0008-C (IELRB Opinion and Order, August 28, 1990). A unit clarification petition seeking to remove allegedly statutorily excluded employees from a bargaining unit must be filed within a reasonable period of time after the change in circumstances. Niles Township High School District No. 219, 21 PERI ____, Case No. 2003-UC-0007-C (IELRB Opinion and Order, June 14, 2005); See also Water Pipe Extension Bureau of Engineering v. Illinois Local Labor Relations Board, 252 Ill. App. 3d 932, 625 N.E.2d 733 (1st Dist. 1993) (a party waives its right to use a unit clarification petition when it fails to do so in a timely fashion).

In this case, the Employer asserts that it substantially altered the job functions of the sergeants when it adopted a revised job description for the sergeants in January 2002. However, the Employer did not file a petition seeking to exclude the sergeants until October 2004, over 33 months later. The Employer

complains that it intended to file the instant petition in March 2004, but was instructed by Board Agents not to file the petition until after the election. This argument is without merit for two reasons. First, assuming, arguendo, that the Board Agents had misinformed the Employer, the erroneous advice of a Board Agent will not toll the limitations period. The Board has repeatedly held that a party relies, to its own detriment on a Board Agent's interpretation of the Act or Rules. Illinois Education Association (Tarr), 11 PERI 1080, Case No. 95-CB-0013-C (IELRB Opinion and Order, September 20, 1995); Board of Trustees of Joliet Junior College Community College District No. 525, 8 PERI 1011, Case No. 92-CB-0024-C (IELRB Opinion and Order, December 27, 1991); Chicago Board of Education, 6 PERI 1149, Case No. 91-CA-0001-C (IELRB Opinion and Order, October 4, 1990). Second, even if the Employer had filed the instant petition in March 2004, the petition would still be considered untimely because it would have been filed approximately 26 months after the Employer substantially altered the sergeants' job functions. Water Pipe Extension Bureau of Engineering, 252 Ill. App. 3d 932, 625 N.E.2d 733 (unit clarification petition untimely where seventeen months elapsed between change in circumstances and filing of the petition); Niles Township High School, 21 PERI ____ (unit clarification petition untimely where two years elapsed between change in circumstances and filing of the petition); Beach Park Community Consolidated School District No. 3, 10 PERI 1089, Case No. 94-UC-0008-C (IELRB Opinion and Order, May 23, 1994) (unit clarification petition untimely where sixteen months elapsed between change in circumstances and the filing of the petition); Tuscola Intermediate School District, 3 MPER 21116 (MERC 1990) (unit clarification petition untimely where approximately seventeen or eighteen months elapsed between change in circumstances and the filing of the petition); State of New Jersey and Communication Workers of America, 15 NJPER 20269 (NJ PERB 1989) (unit clarification petitions must be filed promptly after changes in circumstances).

We find that the instant petition is untimely because it was filed over 33 months after the change in circumstances that allegedly rendered the sergeants excluded from the protections of the Act occurred.

III.

For the above reasons, IT IS HEREBY ORDERED that the Administrative Law Judge's Recommended Decision and Order is affirmed. The unit clarification petition is dismissed in its entirety.

IV. Right to Appeal

This is a final order of the IELRB. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to 115 ILCS 5/16(a), such review must be taken directly to the appellate court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). “Any 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.” 115 ILCS 5/16(a).

Decided: August 9, 2005
Issued: August 11, 2005
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald Ettinger
Ronald Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

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