STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Service Employees International Union, Local 73,	)	
Petitioner	)	
and	)	Case No. L-RC-12-007
County of Cook, Department of Environmental Control,	)	
Employer	)	

ORDER

On November 27, 2012, Administrative Law Judge Kimberly Faith Stevens, 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 January 8, 2013 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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, this 8th day of January, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Jerald S. Post
General Counsel

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Petitioner	)	
and	)	Case No. L-RC-12-007
County of Cook, Department of Environmental Control,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 6, 2011, Service Employees International Union, Local 73 (Union) filed a majority interest petition in Case No. L-RC-12-007 with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). This petition seeks to add the titles of Full and Part Time Environmental Engineer III, Manager of Technical Services, and Inspector Supervisor with the Cook County Department of Environmental Control to the existing bargaining unit certified by the Board in Case No. L-RC-07-036. Initially, the Employer objected to the inclusion of all three of the petitioned-for titles. Prior to hearing, the Employer withdrew its objection to the certification of the Environmental Engineer III positions. Therefore, these full and part-time positions will be certified as part of the bargaining unit as petitioned. The Inspector Supervisor position is vacant. Therefore, hearing was not held with regard to this position, and it cannot be certified as part of the bargaining unit at this time.

A hearing regarding the Manager of Technical Services position was held on April 27, 2012, before Administrative Law Judge Eileen L. Bell at the Board's offices in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, introduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 5(a) and 20(b) of the Act.
2. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.
3. The parties stipulate, and I find, that the Employer is a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate, and I find, that the Employer is a local government subject to the jurisdiction of the Board's local panel pursuant to Sections 5(b) and 20(b) of the Act.
5. The parties stipulate, and I find, that, in the event that the manager of technical services is found to be a public employee within the meaning of the Act, the proposed bargaining unit is appropriate to the extent that the bargaining unit does not consist of the direct subordinates of the manager of technical services position.

II. ISSUES AND CONTENTIONS

The central issues to be resolved are whether the manager of technical services is a supervisor within the meaning of Section 3(r) of the Act and/or a managerial employee within

the meaning of Section 3(j) of the Act. The Employer contends that this employee is a supervisor and a managerial employee within the meaning of the Act and therefore is not a public employee under the Act. The Union contends that the record does not support the Employer's contention and that the petitioned-for employee is a public employee as defined by the Act.

III. FINDINGS OF FACT

The Cook County Department of Environmental Control is responsible for enforcement of the County's ordinances as they relate to air pollution and air monitoring devices. The Department has an air monitoring portion that works to quantify particulate matter in the ambient air. This information is used as part of the Department's work plans with the United States Environmental Protection Agency (USEPA) and Illinois Environmental Protection Agency (IEPA) in compliance with federal law regarding emissions standards for hazardous material and air quality.

The Department has a manager of technical services position, which was occupied at the time of hearing by Leslie Young. Young has been in this position for approximately 7 years. Young reports to the deputy director, Kevin Givens, who provided testimony on behalf of the Employer. Givens reports to the director of the department, who reports to the chief administrative officer. The technical services branch employees work out of the Maybrook Courthouse in Maywood, Illinois.

The technical services branch is directly responsible for managing air monitoring responsibilities in conjunction with work plans with USEPA and IEPA. As part of this function, the branch manages 15 to 19 air monitoring sites throughout suburban Cook County and the City of Chicago. The staff of the technical services branch maintains and repairs the equipment from

these sites, conducts lab analyses of the samples taken at the sites, and develops technical reports that are forwarded to the IEPA and USEPA related to the ambient air measurements collected by the air monitoring equipment.

As manager of technical services, Young has approximately eight subordinates in the titles of Environmental Field Technician, Monitoring Technician II, Electronics Engineer Technician III, Chemist II, Chemist I, Monitoring Equipment Tech I, and an Administrative Assistant IV. The Monitoring Equipment Tech I conducts field observations of air monitoring equipment and repairs and maintains the equipment to ensure accuracy of data collected. The Chemist II position conducts highly technical chemical analysis of the samples taken from the air monitoring sites. The Environmental Field Tech, which is currently vacant, performs field maintenance of electronic equipment and maintenance of air monitoring sites. The Electronic Engineer Tech III repairs highly complex electrical equipment within the monitoring sites. Young seldom performs the type of work performed by his subordinates. Due to the highly specialized nature of the positions within the branch, Young's qualifications would not allow him to perform a large portion of the work performed by his subordinates. Givens described Young as the expert related to the administration of air monitoring for the department.

Young reports directly to deputy director Givens. Givens speaks with Young multiple times per week by telephone and in person, with the in person contact taking place largely at Givens' office. At times, Givens assigns work to Young, including modifications to the work plans, procurement activities, and research. Givens testified that Young is responsible for and performs the duties in his job description along with some duties that are not contained in the job description. Specifically, Young is responsible for managing a radon awareness program, expansion of USEPA/IEPA work plan objectives, and quality assurance work plan development.

Givens explained that the duties change as work plans are implemented and completed. Givens stated that Young is the sole managing authority at the Maywood site.

Young is the Department's liaison with the IEPA and USEPA. As such, Young is directly responsible for developing work plans in coordination with the USEPA, the IEPA, and the Department's administration and for then developing resource plans for these work plans. The work plans detail the type of monitoring sites to be utilized, sampling frequency, reporting requirements, and quality assurance requirements. Resource plans consist of the assignments to the field staff necessary to implement the work plans. The work plans are often subject to grants that fund their activities. Some of these grants are in the hundreds of thousands of dollars. Young assists in budgeting for procurement activities and engages in procurement of equipment, and he is responsible for making sure that work plan activities stay within the budget. He is also responsible for ensuring that his subordinates complete the activities of the work plans successfully and in a timely fashion. Young makes recommendations regarding these work plans and how to implement them, and these recommendations are rarely changed by his superiors. Young is also responsible for reporting information to the USEPA and IEPA. He creates the reports, and these do not have to be approved by his superiors before they are sent to the USEPA and IEPA. Young is in constant contact with the IEPA and USEPA regarding the work plans, and he is responsible for implementing the work plans as it relates to air monitoring activities.

Young is responsible for creating and developing policies and procedures for the staff of the technical services section, such as policies regarding attendance and corrective action. These policies apply only to the Maybrook technical services staff. Young created a policy that allows his staff to combine their break periods with their lunch period due to unavailability of dining options in the area that can be accessed over an hour lunch break.

Young makes decisions regarding procurement and repair of equipment that is malfunctioning in the field, including whether equipment should be repaired, replaced, and when and by whom this should be performed. These decisions are not reviewed above Young's level. Some of the daily assignments of Young's subordinates are determined by the work plans currently in place and activities scheduled in conjunction with those work plans. Other daily assignments are made by Young to respond to issues occurring with elements of the work plans or maintenance issues of the air monitoring sites and equipment. The decisions on how to respond to emergency issues with equipment and work plans are solely in the discretion of Young. Young must make quick decisions on how to remedy issues with the sites and equipment because their proper functioning is essential to the reporting of the data collected. Givens testified that any lapse in the data being captured would result in the data being invalid for the whole day, so any issues must be remedied quickly. Young assigns a member or members of his staff to respond to such issues based on their experience with the department, background prior to their employment with the department, and their analytical and laboratory experience.

Young has authority to discipline his subordinates, and he does issue discipline. Young is responsible for identifying and consolidating evidence supporting discipline, following progressive discipline, developing disciplinary paperwork, and presenting it to management for signatures and approval. Givens testified that his level of management would typically support the decision to discipline made at Young's level and that he has always approved discipline recommended by Young. Evidence at hearing showed that Young has issued an oral and a written reprimand regarding attendance issues. Givens also testified that Young, as a manager, has authority and discretion not to give discipline even for violations of policy where he sees fit.

While department employees do not receive traditional overtime pay, Young has authority to approve paid compensatory time off for employees required to work more than 40 hours in a given week. Young decides whether to award this type of overtime and schedules it based on work assignment requirements. Young also handles staff requests for time off.

IV. DISCUSSION AND ANALYSIS

A. Supervisory Exclusion

The Employer asserts that the manager of technical services is a supervisor within the meaning of Section 3(r) of the Act.[1] Under that Section, petitioned-for employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the Employer to perform one or more of the eleven indicia of supervisory authority enumerated in the Act, (3) consistently exercise independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 162 (1990); Village of New Lenox, 23 PERI ¶104 (IL LRB-SP 2007); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). The party which seeks to exclude an individual from a proposed bargaining unit has the burden of proving that statutory exclusion by

[1] Section 3(r) of the Act states, in relevant part:

> "Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding. In addition, in determining supervisory status in police employment, rank shall not be determinative. The Board shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service law, ordinances, personnel codes, or Division 2.1 of Article 10 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status.

a preponderance of the evidence. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

Principal Work Requirement

In determining whether the principal work requirement has been met, the initial consideration is whether the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Northwest Mosquito Abatement District, 13 PERI ¶2042 (IL SLRB 1997), aff'd. Northwest Mosquito Abatement Dist. v.Illinois State Labor Relations Board, 303 Ill. App. 3d 735, 708 N.E.2d 548 (1st Dist. 1999). If that work is obviously and visibly different, the principal work requirement is met. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162. However, in other cases, where the alleged supervisor performs functions facially similar to those of his or her subordinates, the Board has looked at what the alleged supervisor actually does to determine whether the "nature and essence" of his or her work is substantially different from that of his or her subordinates. See Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Village of Alsip, 2 PERI ¶2038 (IL SLRB 1986); City of Burbank, 1 PERI ¶2008 (IL SLRB 1985).

Although the manager of technical services can and perhaps occasionally performs a limited number of job duties that his subordinates also perform, his essential functions are substantially different from that of his subordinates. The manager of technical services is responsible for a variety of administrative and planning duties that his subordinates do not perform. Moreover, the unrebutted testimony was that Young would not be qualified or able to perform a large portion of the duties performed by his subordinates. Therefore, I find that the

Employer has met the first prong of the supervisory test in that the principal work of the manager of technical services is substantially different from that of his subordinates.

Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the eleven indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007. An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superiors. Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 959 N.E.2d 114, 123 (Ill. App. 4th Dist. 2011).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[2] See City

[2] There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB, State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks

of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); County of Union, 20 PERI ¶9 (IL LRB-SP 2003); Northern Illinois University (Department of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Illinois, Department of Central Management Services (Department of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); County of Union, 20 PERI ¶9. Notwithstanding these considerations, a single indicium of supervisory authority (of eleven possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 529, 607 N.E.2d at 192. In this case, the evidence establishes that the manager of technical services does perform more than one of the supervisory indicia using independent judgment.

i. Direct

The indicium "direct" includes a variety of job functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL SLRB 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). In order to constitute "direction" within the

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with significant discretionary authority). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

meaning of the Act, an employee's responsibility for his or her subordinates' work performance must also involve discretionary authority that affects the subordinates' terms and conditions of employment. County of Cook, 28 PERI ¶85 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 25 PERI ¶186 (IL LRB-SP 2009).

In the instant case, the record demonstrates that the manager of technical services performs the supervisory indicium of directing employees with independent judgment. It appears from the record that he performs this function without consulting a supervisor in order to obtain approval or review. Indeed, where an employee considers "knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the Employer's operational needs" without review by a supervisor, that employee engages in assigning work with independent judgment. County of Cook, 15 PERI ¶3022 (IL LLRB 1999). The record demonstrates that this is precisely the type of activity in which Young engages with regard to assignment of work. Although some work assignments appear to be routine, Young decides which subordinates to assign to respond to emergencies or critical issues with equipment. The record further shows that Young is responsible for deciding how the work plans will be accomplished by assigning subordinates to different portions of a plan in order to ensure that it is completed.

Moreover, Young monitors the work performance of his subordinates to ensure that the work plans are being completed properly. Where a supervisor has an active role in "checking, correcting, and giving instructions to subordinates" and "assesses his subordinates' performance and behavior to ensure compliance with departmental norms," this is evidence of directing subordinates with independent judgment. County of Cook, 15 PERI ¶3022, citing City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). In

addition, in the case of supervising sanitarians for the City of Chicago, the Board has found that reviewing subordinates' work and monitoring and instructing subordinates in the field are examples of directing the work of subordinates. City of Chicago (Department of Public Health), 17 PERI ¶3016 (IL LRB-LP 2001). The record reflects that this is precisely the type of activity in which Young engages with regard to monitoring the work of his subordinates, as he is ultimately responsible for implementing the work plans.

Young is responsible for approving time off requests for his subordinates. He is also responsible for approving compensatory time for subordinates who work in excess of their scheduled hours. He decides whether compensatory time will be granted and schedules it based on operational needs. For the foregoing reasons, the Employer has demonstrated that the manager of technical services directs subordinates using independent judgment and discretion as required by the Act.

ii. Discipline

Young has authority to discipline his subordinates, and he does issue discipline. Young is responsible for identifying and consolidating evidence supporting discipline, following progressive discipline, developing disciplinary paperwork, and presenting it to management for signatures and approval. Upper management typically supports the decision to discipline made at Young's level, and Young's supervisor testified that he has always approved discipline recommended by Young. Evidence at hearing showed that Young has issued an oral and a written reprimand regarding attendance issues. Young, as a manager, has authority and discretion not to give discipline even for violations of policy where he sees fit.

The evidence shows that the manager of technical services both disciplines and makes effective recommendations for discipline. A recommendation is not ineffective "simply because

it is not rubber-stamped." City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290 (3d Dist. 1988). Moreover, the fact that the specific level of discipline may not always remain the same does not render the recommendations ineffective so long as a form of discipline is imposed per the recommendation of the supervisor. See City of Chicago (Department of Public Health), 17 PERI ¶3016. Young's supervisor has always accepted his recommendations on discipline, making these recommendations effective.

iii. The remaining indicia

With regard to the other supervisory indicia, the record does not show that the manager of technical services has authority to hire, transfer, lay off, recall, reward, promote, or effectively recommend any of the remaining indicia of supervisory authority using independent judgment of the kind that would satisfy the requirements of the Act. Notwithstanding these considerations, because the Employer has submitted evidence showing that the manager of technical services directs the work of subordinates and makes effective recommendations on discipline using independent judgment, I find that the second and third prongs of the supervisory test are satisfied.

Preponderance Requirement

Except with respect to police employment, petitioned-for employees are only deemed supervisory if they spend the preponderance of their work time performing supervisory functions. To satisfy this test, employees must spend more time on supervisory functions than on any one nonsupervisory function. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 83-85 (4th Dist. 1996); State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (IL LRB-SP 2011). The Employer must demonstrate such allotments of time by setting forth the

employees' day-to-day activities, as documented by specific facts in the record. State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (citing Stephenson County Circuit Court, 25 PERI ¶92 (IL LRB-SP 2009)); Village of Bolingbrook, 19 PERI ¶125. The calculation of time under the preponderance requirement is based on time spent in the exercise of supervisory authority that qualifies as such under the Act. See Department of Central Management Services, 26 PERI ¶155 (citing Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 55 (2nd Dist. 1992) (noting that actual time does not include work time spent instructing or directing employees, when such instruction or direction does not qualify as supervisory direction under the Act)). An alternate test for preponderance focuses on importance of supervisory job duties to the position rather than mathematical time spent on the duties. Specifically, the Fourth District of the Illinois Appellate Court has stated that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions." Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 86 (4th Dist. 1996).

In this case, no estimates of time spent performing the supervisory indicia are provided in the testimony. Moreover, as discussed below, the more significant portion of work performed by Young is with regard to policy implementation and work plans. Accordingly, I find that the Employer has not demonstrated that the manager of technical services is a supervisor within the meaning of Section 3(r) of the Act.

B. Managerial Exclusion

The Employer also argues that the manager of technical services is a managerial employee as a matter of fact under Section 3(j) of the Act.[3] The Board and the courts have applied a two-pronged test in order to determine whether an employee is a managerial employee within the meaning of the Act. Department of Central Management Services (Department of Healthcare and Family Services) v. Illinois Labor Relations Board (State Panel), 388 Ill. App. 3d 319, 330 (4th Dist. 2009). "First, the employee must be engaged predominantly in executive and management functions. Second, the employee must be charged with the responsibility of directing the effectuation of management policies and procedures." Id. "Management functions" include such activities that relate to running a department, formulating policy, preparing the budget, and assuring effective and efficient operation of the department. Id. (citing Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 121-22 (2nd Dist. 1993)). Other managerial duties have been found to include using discretion to make policy decisions rather than simply following established policy, changing the focus of an organization, responsibility for day-to-day operations, negotiating with employees or the public on behalf of the employer, or pledging the employer's credit. Id., at 330-331, citing Department of Central Management Services, 21 PERI ¶205 (2005). Central to the determination of whether an employee is a managerial employee is the employee's ability to broadly affect the department's goals and means of achieving those goals. Department of Central Management Services, 278 Ill. App. 3d at 87.

An employee need not necessarily formulate policy to be considered a managerial employee; rather, directing effectuation of policy is the hallmark of an employee engaged in

[3] Section 3(j) of the Act provides: "'Managerial employee' means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices."

running a department. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board (State Panel), 406 Ill. App. 3d 766, 780 (4th Dist. 2010). The Fourth District has also noted that directing a division of a department "in a hands-on way" is evidence of managerial activity. Department of Central Management Services, 959 N.E.2d at 122. The court further noted that "exclusivity in the implementation of management policy is not a requirement" of the Act, and "[t]he fact that these employees do not [direct effectuation of policy] 'independently' is unimportant, given that the Act does not require such independence in management functions." Id. For purposes of the Act, recommendations on policy actions are effective if they are almost always accepted by the recommending employee's superiors. Department of Central Management Services, 406 Ill. App. 3d at 777.

In this case, the manager of technical services is responsible for the day-to-day operation of his section, from the administrative functions to planning and budgeting to implementation of policy. Young works in conjunction with the USEPA, IEPA, and his own employer to formulate work plans, and then he implements those work plans by deciding how they will be carried out by his staff. He ensures that his staff is performing the necessary work in conjunction with the plan, and he is responsible for procuring the necessary equipment to carry out the plans. In other words, he is responsible for the entire operation of his section. The evidence also shows that Young's recommendations with regard to policy implementation are effective as they are generally accepted by his superiors.

The Petitioner argues that Young does not engage in managerial functions because he does not implement the work plans independently. However, as the Appellate Court has noted, this is not the appropriate benchmark by which to judge managerial activity. More important is Young's responsibility for directing his section in such a way that he is appropriately

implementing the work plans, which he participates in formulating, designing, and executing. While the Petitioner is correct that Young's ability to set policy within his section on things such as attendance is limited and confined to his section, this does not diminish his role with regard to effectuation of policy in the form of the work plans. The fact that he does not do so in a vacuum does not destroy the managerial nature of this work. Moreover, Young is actually the chief representative of his employer with these two outside agencies.

The record shows that, once a work plan is formulated, Young has sole responsibility at the County level for making sure that the plan is implemented and executed by his staff. The fact that he discusses this implementation with representatives of the USEPA and IEPA, along with his own superiors, also does not diminish the managerial nature of this work. The Petitioner cites Department of Central Management Services (IEPA, DPH, DCEO), 26 PERI ¶155 (2011), in support of its position. However, unlike the employees at issue in that case, Young does appear from the record to have real control over effectuation of policy at the County level on behalf of his Employer. Young is responsible not only for the day-to-day operations of his section, but for ensuring that these day-to-day operations are properly implementing policy in the form of the work plans. This appears from the record to be the most important aspect of Young's job, both for purposes of his section and for the County as a whole. For these reasons, the manager of technical services is a managerial employee as a matter of fact pursuant to Section 3(j) of the Act.

V. CONCLUSIONS OF LAW

I find that the manager of technical services is a managerial employee within the meaning of Section 3(j) of the Act and is therefore excluded from collective bargaining under the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the majority interest petition filed by the Union be denied as to the manager of technical services as this position is managerial within the meaning of the Act. The Employer having withdrawn its objection to inclusion of the Environmental Engineer III positions, the Environmental Engineer III positions are certified as part of the bargaining unit as petitioned. Hearing was not held with regard to the vacant Inspector Supervisor position, and the petition is denied with respect to this position.

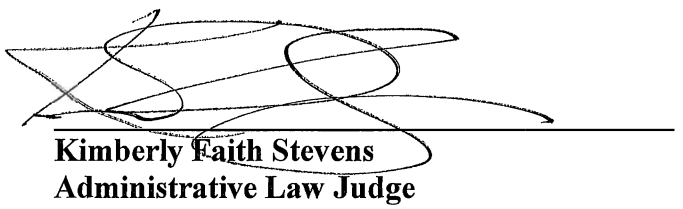
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and 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, and 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 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 27th day of November, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Kimberly Faith Stevens
Administrative Law Judge