



Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240 (Rules), and the Employer filed a timely response and cross exceptions. After reviewing the record, briefs, exceptions, response and cross exceptions, we adopt the ALJ's findings of fact and recommended decision for the reasons that follow.

At issue in this case is whether the petitioned-for employee, Patterson,<sup>1</sup> is a confidential employee<sup>2</sup> and/or a managerial employee<sup>3</sup> within the meaning of the Act.<sup>4</sup> The ALJ found Patterson to be a confidential employee under the authorized access test established in the statutory definition based on her access to information relating to contract administration that was not yet known to the Petitioner.

The ALJ found that, in her role as legislative liaison for the CDB, Patterson was involved in closed meetings with the very few members of the Governor's legislative affairs team regarding proposed legislation, some of which could affect specific positions on collective bargaining agreements with State employees, including members of the RC-62 bargaining unit. Patterson had access to contemplated changes in pensions and budgets before such information was shared with unions, specifically with respect to the Emergency Budget Act, Public Act 96-

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<sup>1</sup> The petition for representation originally sought certification of a bargaining unit of nine administrators, but the parties reached a settlement concerning all but Patterson.

<sup>2</sup> Pursuant to Section 3(c):

"Confidential employee" means an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies.

<sup>3</sup> Pursuant to Section 3(j):

"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.

<sup>4</sup> The Employer did not except to the ALJ's determination that Patterson's "Rutan exempt" status rendered her excluded from the protections of the Act, and we decline to address the issue on our own initiative. 80 Ill. Admin. Code §1200.135(b)(5).

0958 (eff. July 1, 2010), which decreased the State's budget and affected employment status, salaries and benefits. She was also privy to strategy regarding proposed pension reform, affecting the pensions of all State employees, including those within RC-62. The ALJ found attendance at such meetings to be within the regular course of Patterson's duties, and consequently found that it was foreseeable that Patterson would remain privy to information which, if divulged, would give the Petitioner an advantage in the collective bargaining process.

Petitioner excepts to the ALJ's finding that Patterson's duties differed from those of legislative liaisons who the Board had previously found were not confidential, and excepted to the ALJ's conclusion that Patterson, unlike those legislative liaisons, is a confidential employee. Specifically, Petitioner takes exception to the distinction the ALJ drew between Patterson's duties and those of Department of Children and Family Services legislative liaison at issue in Am. Fed'n of State, County and Mun. Empl., Council 31, and State of Ill. Dep't of Cent. Mgmt. Serv., 25 PERI 168 (IL LRB-SP G.C. 2009)("AFSCME I"). Petitioner also points to Department of Aging legislative liaison at issue in Am. Fed'n of State, County and Mun. Empl., Council 31, and State of Ill. Dep't of Cent. Mgmt. Serv., 25 PERI 184 (IL LRB-SP 2009)("AFSCME II"), arguing his duties were the same as Patterson's and that, like him, Patterson should not be found a confidential employee. Neither of these decisions is controlling in this case.

AFSCME I is a non-precedential decision in which neither party filed exceptions to the ALJ's determination that the Employer failed to present sufficient evidence to warrant a hearing on legislative liaison's confidential status, and the Board declined to address the issue on its own initiative. 80 Ill. Admin. Code §1200.135(b)(5). The Acting General Counsel's order notes this fact, and specifically states that the decision is non-precedential. Further, the fact that there was not sufficient evidence submitted to warrant a hearing readily distinguishes the facts of that case

from those of the case presently before the Board where there was testimony that Patterson had access to information potentially impacting bargaining strategy and contract administration before the Petitioner could have had access to that information.

AFSCME II was a precedential decision of the Board, but is also readily distinguishable as there was not sufficient evidence presented in that case to warrant a hearing on the question of whether the legislative liaison at issue had the requisite access to the employer's collective bargaining strategy to meet the authorized access test. The ALJ's analysis of the potential applicability of the authorized access test to the legislative liaison (which was adopted by the Board) consisted of a single sentence: "As for the authorized access test, [the employee] attends management meetings, but there are not specific examples of instances in which he has been privy to the Employer's collective bargaining strategy." In the present case, the record contains specific examples of Patterson's access.

In AFSCME I and in AFSCME II, neither ALJ explicitly reached the question of whether the legislative liaison at issue had access to information relating to contract administration, which would also demonstrate confidential status, as held by the Board in County of DeKalb, 4 PERI 2029 (IL SLRB 1988), and by the Illinois Appellate Court in Chief Judge of the Cir. Ct. of Cook Cnty. v. Ill. State Labor Relations Bd., 218 Ill. App. 3d 682, 699 (1st Dist. 1991), aff'd on other grounds, 153 Ill. 2d 508 (1992). By contrast, in the present case, the ALJ's analysis was based on a full evidentiary hearing at which it was established that Patterson's job duties involved access beyond that available to the public to proposed legislation that might impact collective bargaining and contract administration.

Petitioner criticizes the ALJ for citing, but purportedly not applying, a portion of the decision in Chief Judge that suggests a narrow interpretation of the authorized access test that

limits it to matters specific to the bargaining relationship between labor and management, but the Petitioner cuts off its own quotation from Chief Judge just prior to this sentence: “An individual will be considered a confidential employee if that person regularly handles or has access to information which, if divulged, would give bargaining unit members advanced notice of the department’s policies in regard to labor relations.” Chief Judge, 218 Ill. App. 3d at 699-700 (citing West Harvey-Dixmoor School District No. 147, 2 PERI 1054 (IL ELRB 1986)). The standard expressed in that sentence is applicable to the type of information of concern to the ALJ in the instant case: early knowledge of contemplated changes in pension and budget, particularly with respect to the Emergency Budget Act, which pertained to the State’s budget and affected employment status, salaries and benefits.

The Petitioner also argues that the ALJ construed Section 3(c) too broadly so as to create an exclusion of public employees who have advance knowledge of the employer’s legislative proposals, asserting that: “virtually any proposed legislation could have some tangential impact on the circumstances within which the employer engages in collective bargaining.” This argument ignores the fact that the type of legislative proposals to which Patterson has advance knowledge includes those pertaining to changes in pension and budget, which are likely to have an impact on labor relations strategies.

Finally, Petitioner contends that the National Labor Relations Board (NLRB) and New York Public Employee Relations Board (PERB) cases relied upon by the ALJ are factually distinguishable in that they involved access to employer information beyond that to which Patterson has access. We disagree. In Pullman Standard Div., 214 NLRB 762, 763 (1974), the employees at issue determined the costs of proposals to build railroad freight cars, and in that capacity had access to the employer’s projected labor costs, giving insight into the labor rates to

which the employer, in pursuit of its own labor policy, would be willing to agree in some future collective bargaining agreement. The NLRB found this went beyond mere access to personnel or statistical information upon which an employer's labor relations policy would be based—access the NLRB had previously deemed insufficient to establish confidential status.

In Saugerties Cent. School Dist., 17 PERB 3092 (NY PERB 1984), the PERB found to be confidential school district employees who were aware in advance where the district had placed monies available for negotiation concessions and had advance information on topics like the fact that the district had been contemplating a change in health insurance carriers or contemplated layoffs. It noted a previously drawn distinction between

a bookkeeper [found] to be confidential because she was called upon “to cost out the District’s salary and benefits proposals, both actual and potential ... [making] her aware of the District’s likely negotiation stratagem...” [and] a payroll clerk and ... account clerk not [found] to be confidential because, while they “validate figures presented by the unions during negotiations ... [and] compile statistical information for the District’s use in negotiations..., they are not involved in the extrapolation of this raw material for labor relations purposes.”

It found the school district employees more akin to the former than the latter.

While the information to which Patterson has access may not be as precise as the projected labor costs to which the employees in Pullman Standard Div. had access, the information she has goes beyond raw statistics and includes the Governor’s priorities, including his budget and pension priorities. Patterson is more akin to the New York school district employees in Saugerties Cent. School Dist. who knew how much money would be available for concessions and contemplated changes in insurance carriers than the payroll clerks who merely validate figures used in negotiations.

For these reasons we affirm the ALJ’s Recommended Decision and Order finding that Patterson is excluded from the RC-62 bargaining unit as a confidential employee.

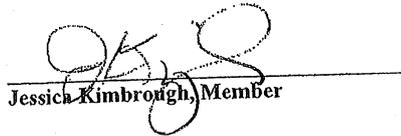
Based on our ruling that Patterson is excluded due to her status as a confidential employee, we find it unnecessary to address the issue of her managerial status.

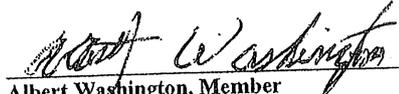
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Jacalyn J. Zimmerman, Chairman

  
Michael Coli, Member

  
Michael Hade, Member

  
Jessica Kimbrough, Member

  
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on August 9, 2011;  
written decision issued in Chicago, Illinois on August 26, 2011.

