

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

American Federation of State, County and Municipal Employees, Council 31,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-10-196
	)	
State of Illinois, Department of Central Management Services,	)	
	)	
Respondent	)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

On April 28, 2011, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) in the above-captioned case, finding that employees in the job title of Public Service Administrator, Option 8L employed by the State of Illinois Department of Central Management Services (Employer) working at the Illinois Pollution Control Board (PCB), should be added to the existing RC-10 bargaining unit represented by the American Federation of State, County and Municipal Employees, Council 31 (Petitioner). She rejected the Employer's contentions that these employees were precluded from organizing under the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), because they were managerial or confidential employees within the meaning of Section 3(j) and 3(c) of the Act, or because they were excluded from certain protections of the Personnel Code, 20 ILCS 415 (2010), as amended.

The Employer filed timely exceptions to the RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200

through 1240 (Rules), and the Petitioner filed a timely response. After reviewing the record, briefs, exceptions and response, we adopt the ALJ's findings of fact and recommended decision for the reasons that follow.

At issue is whether four attorney assistants, or "clerks", who are assigned to individual members of the Illinois Pollution Control Board and work closely with those members to draft and issue administrative adjudicative decisions, are managerial employees.<sup>1</sup> The RDO thoroughly and accurately applies the controlling statutory language and judicial precedent, and we adopt the ALJ's analysis. We add to it only to more thoroughly address the Employer's arguments on appeal.

In support of its argument that the attorney assistants are managerial employees, the Employer relies on two appellate court decisions issued 20 years ago: Chief Judge of the Cir. Ct. of Cook Cnty. v. Am. Fed'n of State, County & Mun. Empl., Council 31, 229 Ill. App. 3d 180 (1st Dist. 1992) (Chief Judge Cook County) (concerning assistant public guardians) and Salaried Employees of N. Am. v. Ill. Local Labor Relations Bd., 202 Ill. App. 3d 1013, 1021 (1st Dist.

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<sup>1</sup> The Petition sought to include seven attorneys employed at the PCB, but the parties stipulated that three attorneys not functioning as clerks should be included in the unit. There is a fifth clerk assigned to the fifth member of the PCB, but she is an SPSA Option 8L, not a PSA Option 8L, and her position is not included in the petition.

The Employer has not raised the issue of potential confidential status in its exceptions, and we find that issue waived pursuant to Section 1200.135(b)(2) of the Board Rules.

The Employer continues to raise its argument that the employees should be excluded from the unit because they are exempt from certain provisions of the Personnel Code, but we have previously rejected that argument and find no basis for deviating from our prior holdings. State of Illinois, Dep't of Cent. Mgmt. Serv. (Ill. Env'tl Protection Agency, et al.), 26 PERI ¶155 (IL LRB-SP 2011); State of Illinois, Dep't of Cent. Mgmt. Serv. (Option 1s), 25 PERI ¶184 (IL LRB-SP 2009), appeal pending, No. 4-10-149 (Ill. App. Ct., 4th Dist.). We add that the Employer's argument that the General Assembly did not contemplate that the Illinois Public Labor Relations Act would apply to employees exempted from the Personnel Code is inconsistent with Section 15 of the Act and with supreme court precedent. City of Decatur v. Am. Fed'n of State, Cnty. & Mun. Empl., Council 31, 122 Ill. 2d 353, 364 (1988) ("We do not believe that the legislature intended to make the broad duties imposed by the Act hostage to the myriad of State statutes and local ordinances pertaining to matters of public employment.").

Finally, we note that the Employer has stipulated that, if the attorney assistants are permitted collective representation, the unit proposed would be appropriate.

1990) (SENA) (concerning assistant corporation counsel).<sup>2</sup> We find neither case controls: The line of analysis used in the first of these cases does not fit with the basic situation in the case currently before the Board, and the facts of the second case render it distinguishable.

The most significant aspect of Chief Judge Cook County was that the public guardian delegated to his assistants the vast majority of his decision-making responsibility with respect to fulfilling his fiduciary obligations toward the legally incompetent—his primary statutory duty. See Chief Judge of the 16th Judicial Cir. v. Ill. Labor Relations Bd., 275 Ill. App. 3d 853, 860 (2d Dist. 1995) (stating court had emphasized that fact), aff'd, 178 Ill. 2d 333 (1997). The court's decision in that case is in line with those cases that subsequently found managerial status where the employees in question were found to be alter egos or surrogates for an office holder. See Chief Judge of the 16th Judicial Cir. v. Ill. State Labor Relations Bd., 178 Ill. 2d 333 (1997), aff'g, 275 Ill. App. 3d 853 (2d Dist. 1995); Ofc. of Cook County State's Atty. v. Ill. State Labor Relations Bd., 166 Ill. 2d 296 (1995) (finding assistant state's attorneys managerial). They require: 1) close identification of the office holder with the actions of his assistants; 2) a unity of their professional interests; and 3) power of the assistants to act on behalf of the office holder. Cook County State's Atty., 166 Ill. 2d at 304. This line of analysis is inapplicable here because the attorney assistants never function *in place of* the Board members.

SENA is factually distinguishable. The Employer stresses the attorney assistants' close working relationships with their PCB members, and likens them to the assistant corporation

<sup>2</sup> The Employer disavows any attempt to qualify the attorney assistants as managers under two recent appellate court decisions which found one group of agency administrative law judges managerial as a matter of law, and remanded for further Board consideration another group of agency administrative law judges to determine the effectiveness of their recommendations for decisions. Dep't of Cent. Mgmt. Serv./Ill. Human Rights Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 310 (4th Dist. 2010); Dep't of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766 (4th Dist. 2010). It acknowledges that the attorney assistants in issue do not function in the same manner as administrative law judges in these cases, and consequently made no attempt to demonstrate that their recommendations were "effective."

counsel at issue in SENA, claiming that the City Law Department there, and the PCB here, had a diffused authority structure. It noted that in SENA, the City's Law Department operated in a team fashion, and any one of the assistant corporation counsels could be assigned to work closely with the Mayor of the City of Chicago or his advisors on projects important to the interests of the City. However, the Employer ignores several key components of the SENA decision. First is the SENA court's emphasis that it considered the facts in that case to be "most unique." 202 Ill. App. 3d at 1023. The court was clearly cautioning against attempts to broaden applicability of its holding to categories of other employment situations, as the Employer here seeks to do.

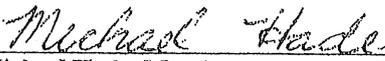
Second, though the Employer quotes the language, it does not come to terms with the initial statement in the SENA court's analysis: "Managerial employees are those involved in the direction of the governmental enterprise or a major unit thereof who possesses authority to *broadly* affect its *mission* or *fundamental methods*." 202 Ill. App. 3d at 1021 (emphasis added). Both the mission of the PCB and its fundamental methods are closely prescribed by statute, 415 ILCS 5/5 *et seq.* (2010), and the attorney assistants' tasks in assisting PCB members in issuing decisions in particular contested cases, and even in promulgating rules on specific environmental topics, cannot be said to "broadly" affect its mission or fundamental methods. There is no evidence of any such broad recommendations, let alone effective broad recommendations. State of Ill., Dep't of Cent. Mgmt. Serv. (Env'tl Protection Agency), 26 PERI ¶155 (IL LRB-SP 2011).

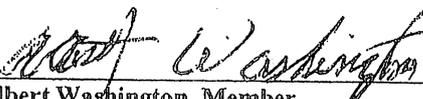
In contrast, there is evidence that PCB members are careful to retain their authority. That is true not only in voting on proposed decisions, but during the process of drafting a proposed decision to present for a vote. Even in the context of the additional duties performed by Attorney Assistant Marie Tisdale in responding to Freedom of Information Act requests (duties often

considered merely administrative), Chairman Girard was quick to add to his testimony that he retained final authority regarding responses. The attorney assistants work very closely with the true managers—the PCB members—but the evidence fails to establish that they are themselves managerial employees.

For these reasons, we affirm the ALJ's RDO and order that the PSA Option 8Ls employed at the Illinois Pollution Control Board be added to the existing RC-10 bargaining unit represented by the Petitioner.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Michael Hade, Member

  
Albert Washington, Member

  
Jacalyn J. Zimmerman, Chairman

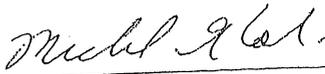
Members Coli and Kimbrough, dissenting:

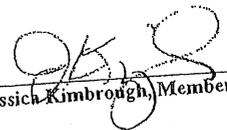
We respectfully disagree with the majority opinion, and would instead find that the attorney assistants employed at the Pollution Control Board are managerial employees who should not be added to the bargaining unit.<sup>1</sup> We find controlling the holding in Salaried Employees of N. Am. v. Ill. Local Labor Relations Bd., 202 Ill. App. 3d 1013, 1021 (1st Dist. 1990) (SENA), in which the appellate court affirmed the Board's determination that assistant corporation counsel within the City of Chicago's Legal Department were, as a matter of fact,

<sup>1</sup> We would not disturb the parties' stipulation to include in the bargaining unit the three other petitioned-for PSA Option 8L employees who do not function as attorney assistants. We also do not take issue with the majority's application of waiver to the issue of confidential status, or rejection of the Employer's arguments based on exemptions from the Personnel Code.

managerial employees within the meaning of Section 3(j) of the Act. As with the City of Chicago's Legal Department, the PCB has a diffused authority structure within which the employees at issue have an opportunity to work very closely with top management. In fact, the one-to-one ratio of attorney assistants to board members that is present within the PCB necessitates a much closer working relationship with upper management than could possibly be achieved by many of the hundreds of assistant corporation counsel found to be managerial in SENA.

Furthermore, we find the SENA court's concern with dividing loyalties between an employer and a bargaining representative particularly keen in the intimate working relationship between PCB member and attorney assistant. The record reveals the attorney assistants collaborate one-on-one with their PCB members, not only in authoring decisions, but in arriving at decisions. We would find the managerial exclusion applicable in this context.

  
Michael Coli, Member

  
Jessica Kimbrough, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on July 12, 2011; written decision issued at Chicago, Illinois, August 24, 2011.

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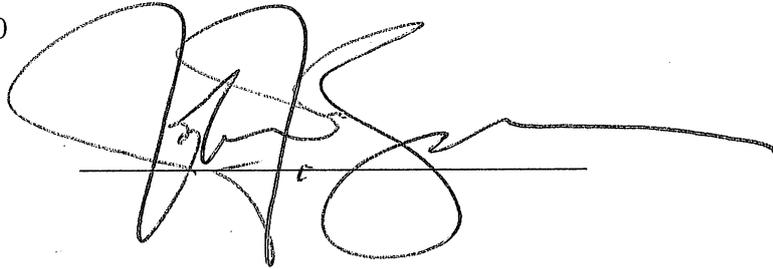
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**AFFIDAVIT OF SERVICE**

I, John F. Brosnan, on oath state that I have this 24th day of August, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Gail Mrozowski  
Cornfield and Feldman  
25 E. Washington Suite 1400  
Chicago, Illinois 60602

Helen Kim  
CMS  
100 W Randolph Street, Suite 4-100  
Chicago, Illinois 60601



**SUBSCRIBED and SWORN to**  
before me this **24th day**  
of **August 2011**.

  
\_\_\_\_\_  
**NOTARY PUBLIC**

