

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Service Employees International Union,)
Local 73,)
)
Petitioner)
)
and)
)
Illinois Secretary of State,)
)
Employer)

Case No. S-RC-11-006

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On August 1, 2011, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) in the above-captioned case, recommending that the Illinois Labor Relations Board (Board) grant a petition filed by Service Employees International Union, Local 73 (Petitioner) seeking to add to a previously certified collective bargaining unit approximately 116 employees of the Illinois Secretary of State (Employer) holding the title of Executive I or Executive II.¹ After conducting a hearing on the matter, the ALJ rejected the Employer's contention that all these employees were supervisors within the meaning of Section 3(r) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended, (Act), and the Employer's contention that a number of them were also managers within the meaning of Section 3(j) of the Act.

¹ The petition was filed on July 16, 2010, and initially sought an election, but on July 28, 2010, it was converted to a majority interest petition pursuant to Section 9(a-5) of the Act. The collective bargaining unit to which the petition sought to add the employees had previously been recognized in Case No. S-UC-04-046. The matter was initially assigned to ALJ Deanna Rosenbaum and, upon her resignation from the Board, reassigned to ALJ Hamburg-Gal.

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 and cross-exceptions. After reviewing the record, briefs, exceptions, response and cross-exceptions, we adopt the ALJ's recommendations and find the Executive Is and IIs should be added to the collective bargaining unit previously recognized in Case No. S-UC-04-046.

At issue are whether the 73 Executive Is and 43 Executive IIs who work in the Illinois Secretary of State's Drivers Services Department are supervisors within the meaning of Section 3(r) of the Act.² A component of that inquiry is whether the fourth element to the statutory definition of supervisor—whether the employee in dispute devotes a preponderance of employment time to exercising supervisory authority—applies to employees of the State of Illinois. Also at issue is whether the Executive Is and IIs who are the top-ranking employees in their particular facilities are managerial employees within the meaning of Section 3(j) of the Act,³ though preliminarily the Petitioner questions whether the Employer should have been permitted to raise that issue for the first time on the eve of the hearing. The Petitioner also raises an issue as to whether the fact that Executive IIIs and IVs who are the superiors of most of the

² In relevant part, Section 3(r) defines a supervisor as follows:

“Supervisor” is an employee whose principal work is substantially different from that of his or her subordinates and who has 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.

³ Section 3(j) 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.”

Executive Is and IIs sought in this case are currently in a collective bargaining unit is alone sufficient to necessitate a finding that the employees at issue, too, are public employees within the meaning of Section 3(n) of the Act and should be permitted to organize.⁴ The Petitioner further raises an issue as to whether the Board's inability to resolve this case within the 120-day time frame set out in a recent amendment to Section 9(a-5) of the Act requires us to issue certification of the unit nunc pro tunc to the date that time period lapsed, while based on that same fact the Employer raises the question whether we have continuing authority to rule on the petition after the 120th day from its filing.⁵

In response to the original ALJ's order to show that there were issues that required an oral hearing to resolve, the Employer submitted numerous, fairly detailed questionnaires completed by the challenged employees' supervisors. Ultimately, the ALJ determined that these documents, together with position descriptions submitted with the Employer's initial response to the petition, were sufficient to make the threshold demonstration that a hearing was necessary. After being granted the hearing it requested, the Employer called a single witness, Gary Lazzerini, the director of driver services for the 25 facilities within Cook County and the collar counties (there are 105 facilities outside the metropolitan Chicago area). The Petitioner called no witnesses in rebuttal. The parties stipulated that Lazzerini's testimony would be relevant for all of the employees at issue. They also stipulated to include the questionnaires submitted in response to the order to show cause, and other documents such as organizational charts, a list of

⁴ Section 6 of the Act gives employees of the State the right to organize, while Section 3(n) provides a single definition for the terms "employee" and "public employee," excluding, among other things, supervisors and managerial employees.

⁵ Public Act 96-813 (eff. Oct. 30, 2009) added a requirement that, if the Board determines that a hearing is required to resolve an issue concerning representation, it conclude the hearing and issue certification within 120 days of the filing of the petition for representation. It simultaneously added a requirement that the Board employ a minimum of 16 attorneys and six investigators. The Board did not meet this deadline, and it employs approximately half the mandated number of professional employees.

the Executive Is and IIs and their subordinates, and a list of those Executive Is and IIs who are the top ranking employees at their particular facilities. The entirety of Lazzerini's testimony was able to be transcribed in just 21 pages.

All of the employees at issue are called either facility managers or assistant facility managers, with the Executive Is typically managers and the Executive IIs typically assistant managers. Above them within the Secretary of State's Department of Driver Services' hierarchy are: zone managers, administrators, deputy directors, a chief deputy director, and a director. Below them are, depending upon the size of the facility, from seven to 50 subordinates referred to as public service representatives, public service clerks, or supervisors.⁶

I. The Board's Authority to Issue Certification, and Whether Certification Should Issue Nunc Pro Tunc

We initially reject the Employer's contention that the Board no longer has authority to consider the petition for representation because we were unable to resolve the issues in this case and issue the certification within the 120 days specified by Public Act 96-813. Although an expressly prescribed consequence can overcome the presumption that such a time limit on a governmental official is directory, People v. Four Thousand Eight Hundred Fifty Dollars United States Currency, 2011 IL App (4th) 100,528 (2011) (presumption time limit on governmental official is directory); People v. Robinson, 217 Ill. 2d 43, 53 (2005) (expressly prescribed consequence strong evidence that a time limit is not merely directory); see, e.g., 415 ILCS 5/39(a) (2010) (certain applications deemed granted where agency fails to rule upon them within prescribed time), the Act, as amended, does not provide for that particular consequence, either expressly or implicitly. Indeed, such a consequence would be contrary to the basic purposes of

⁶ In the brief in support of its exceptions, the Employer states 11 Executive Is and IIs supervise five or fewer subordinates, 80 supervise from six to 19 subordinates, and 44 supervise 20 or more subordinates. Per the Employer's counsel, none of the Executive Is or IIs who are facility managers are assigned to a facility within the City of Chicago.

the Act as articulated in Section 2: “to grant public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection.” For these reasons we will not assume we lose authority to consider the petition for representation upon the lapse of the 120-day period.

We similarly reject the Petitioner’s countervailing argument that, if we deem certification of an exclusive collective bargaining representative is warranted, we should make the certification nunc pro tunc to the date the 120th day passed. The ALJ rightly noted doing so would be inconsistent with our past practices, and we are aware adoption of such a practice could work a substantial hardship on employers in circumstances where they share no blame in the delays to certification.

II. Whether the Fact that the Superiors of the Executive Is and IIs Are in a Collective Bargaining Unit Necessitates a Finding that the Executive Is and IIs Are Public Employees

We also reject the Petitioner’s suggestion that we can determine the Executive Is and IIs should be permitted to be organized based solely on the fact that, for many of them, their superiors are already members of collective bargaining units. We recognize that such a situation may have consequences for whether the employees at issue actually function as supervisors or managerial employees, but we must ascertain whether the employees actually meet the statutory standards based upon the evidence presented concerning their actual duties. County of Vermilion v. Ill. Labor Relations Bd., 344 Ill. App. 3d 1126, 1136 (4th Dist. 2003) (deciding whether a person is a ‘supervisor’ must be made in accordance with the particular legislative formula set forth in section 3(r) of the Act.”).

III. Supervisory Status of the Executive Is and IIs

Except with respect to police employees, supervisory status requires: (1) performance of principal work that is substantially different from that of the employee's subordinates; (2) authority in the interest of the employer to perform (or effectively recommend the performance of) one or more of 11 enumerated supervisory functions coupled with (3) use of independent judgment in the performing (or effectively recommending the performance of) those functions; and (4) devotion of a preponderance of the employee's employment time in exercising that supervisory authority. The Employer argues that the fourth element does not apply to employees of the State of Illinois, but that position is inconsistent with Am. Fed'n of State, Cnty. & Mun. Employees, Council 31 v. Chief Judge of the Cir. Ct. of Cook Cnty., 209 Ill. App. 3d 283 (1st Dist. 1991). As explained in that decision, it is also inconsistent with the plain wording of Section 3(r) and with the legislative history, id., 209 Ill. App. 3d at 289, and it is inconsistent with the 20 years of Board and judicial precedent that followed that decision.

Based upon the Petitioner's concession of the point, the ALJ found that the principal work of the Executive Is and IIs differed from that of their subordinates, and thus that they met the first element of supervisory status. The ALJ further found that the employees exercised independent judgment in performing several of the statutory indicia of supervisory authority in that they reward, effectively recommend discharge of, and discipline subordinates. Notably, she did not find that they exercised independent judgment in directing their subordinates in the performance of their work at the drivers' services facilities. Based on both the testimony of the witness and the questionnaires, the ALJ found that each facility had the same work areas, such as the greeter's desk and the camera area, and that assignments and instructions were made based merely on staffing levels, and on available work at the facility. Specific examples of direction

offered by the Employer failed to show the need to make a choice between two or more significant courses of action, the hallmark of use of independent judgment per Metro. Alliance of Police v. Ill. Labor Relations Bd., 362 Ill. App. 3d 469, 477-78 (2d Dist. 2005). Rather, they included things like directing subordinates to use the clock nearest the sign-in/sign-out sheet, to not directly call building maintenance with thermostat complaints, prohibiting nail polish or remover at subordinates' desks, ordering a search for missing notary applications and to send a notary application to a different office, and ordering subordinates to stop using a certain form letter.

Because the Employer failed to evidence how much time was spent in rewarding, disciplining, or discharging subordinates (tasks the ALJ found were indications of supervisory authority), and because the Employer's sole witness provided uncontradicted testimony that the Executive Is and IIs spend 75 percent of their work time performing tasks which, though he labeled them "direction," did not meet the statutory requirements of direction with use of independent judgment, the ALJ concluded that the Executive Is and IIs did not spend a preponderance of their employment time exercising supervisory authority. Consequently, she concluded the Executive Is and IIs were not supervisors within the meaning of Section 3(r).

The Employer excepts to the ALJ's determination that the Executive Is and IIs did not use independent judgment to direct within the meaning of the Act. It quotes portions of the hearing transcript where the witness either used conclusory terms such as that the primary function of the Executive Is and IIs is to "direct, manage, and supervise ... to ensure that procedures and policies are being carried out" or "just kind of [provide] an overall direction and directing and enforcing of the ... facility in general" or merely confirmed the routine nature of their tasks:

There's different work areas within a facility, greeter's desk, all the way through the camera area where there's a final spot. And based upon operational needs, management will assign staff to these various locations in order to ensure that the facility is running properly.

Well, when they're directing, they're directing them to do their job as – that's in the job description, they're directing them as far as different shifts, the different breaks, job assignments, job duties. It's an overall direction of the employees.

[Q. But it's based on the parameters of their job descriptions, the work that needs to get done, and the staffing levels at the time, correct?] Correct.

Having a witness repeat the statutory terms is not the equivalent of demonstrating that tasks performed actually meet the meaning of those terms. N. Ill. Univ. (Dep't of Safety), 17 PERI ¶2005 (IL SLRB 2000) (such evidence "least helpful"); Quadcomm Communications, 12 PERI ¶2017 (IL SLRB 1996), aff'd by unpub. order, Nos. 2-96-0479, 2-96-0728 (Ill. App. Ct., 2d Dist., 1997); cf. Kotarba v. Jamrozik, 283 Ill. App. 3d 595, 598 (1st Dist. 1996) (subjective conclusory testimony that floor was too slick insufficient in slip and fall case). If it were, there would be little point to holding an evidentiary hearing. We have repeatedly indicated to parties that such conclusory testimony is insufficient, State of Ill., Dep't of Cent. Mgmt. Serv., (Dep't of Human Serv.), 27 PERI ¶71 (IL SLRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Serv., (Env'tl Protection Agency), 26 PERI ¶155 (IL SLRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Serv., (Ill. Gaming Bd.), 20 PERI ¶149 (IL SLRB-SP 2010); Vill. of Bolingbrook, 19 PERI 125 (IL LRB-SP 2003), and note that resort to that tactic tends to suggest an inability to support the conclusory assertions with factual evidence.⁷

The testimony that provides some factual detail indicates that the Executive Is and IIs instruct their subordinates to perform the duties as outlined in their job descriptions and as needed to address the flow of work at the facility. That sort of instruction does not involve the

⁷ The Employer also points to the job descriptions of the Executive Is and IIs as evidence that they are supervisors, but these job descriptions suffer from the same defect as much of the testimony. In conclusory terms, they provide that the Executive Is and IIs "direct" their subordinates.

use of independent judgment by the supervisor. N. Ill. Univ. (Dep't of Safety), 17 PERI ¶ 2005. Rather, it indicates use of independent judgment by whoever drew up the subordinates' job descriptions and the plans for drivers services facilities which included their designated work assignments. This portion of the testimony tends to confirm the correctness of the ALJ's determination.⁸

In addition to this testimony, the Employer references several of the questionnaires submitted in response to the order to show cause. None of the referenced documents supports its point. The first contains specific examples of instruction or direction Alta Aten gave to hearing officers; however, the questionnaire also indicates that the hearing officers were *contractual* employees, and thus not subordinates. The second indicates James Piland told a subordinate to scan notary public applications and send them to an assistant general counsel, but there is no indication that this project had been initiated by Piland, or that he had to provide any direction in how to perform it. It shows merely that he picked one employee to do that particular, simple task, a task likely suggested by the assistant general counsel. In the third referenced questionnaire the superior of Michelle Peterson, instead of answering a request for specific examples of direction, merely stated: "The Exec. I provides instructions and/or direction to staff on a daily basis." Again, this assertion of a legal conclusion is not helpful, and the fact the precise question was not answered suggests an inability to provide the specific examples

⁸ The Employer also paraphrases two portions of the testimony that seem to indicate the Executive Is and IIs direct their subordinates by granting or denying time off requests. While at first blush these paraphrases seem to accurately describe particular answers given by the witness, follow-up questions at the hearing elicited admissions that the witness had no personal knowledge on the point. On the same pages cited by the Employer, the witness stated in conclusion to the first line of questioning: "I'm not there every day. I would *imagine* they do or else the vacation time would just be rubber stamped." (Emphasis supplied). And on that same page he concluded the second line of questioning by stating: "I just don't know." The Employer made no attempt to rehabilitate these answers on re-direct examination. Mischaracterizing the testimony is obviously no substitute for providing evidence, and similarly does not serve to show flaws in the ALJ's analysis.

requested. In the fourth referenced questionnaire, the superior of Loretta Cass states: "The PSR was instructed to take someone out on a drive." Again, this is almost certainly a routine assignment at the Secretary of State's office, not likely to involve direction requiring the use of independent judgment. In fact, none of these referenced questionnaires gives examples of use of independent judgment in direction, and none show any defect in the ALJ's analysis.

Relating to other documentary evidence, the Employer states, without any elaboration, that "both the evaluations and counseling documents contain a myriad of examples of direction." It provides a string cite of documents, but provides no explanation at all as to what these documents indicate with respect to direction requiring use of independent judgment. Notably, the ALJ found the Executive Is and IIs reward, discharge, and discipline subordinates (or at least make effective recommendations in these areas), findings to which the evaluations and counseling documents would no doubt be most relevant,⁹ but the evidence demonstrates that performance of those tasks, without more, cannot meet the preponderance of time element. The Employer's failure to show how these documents also indicate that the Executive Is and IIs exercise independent judgment in directing their subordinates strongly suggests it cannot meet this burden.

In fact, none of the Employer's exceptions addresses the precise deficiencies found by the ALJ with respect to alleged supervisory status: that there is insufficient evidence to establish that the Executive Is and IIs exercise independent judgment in directing their subordinates. Based on the scant evidence of record concerning how the Executive Is and IIs spend their day, such a finding would be necessary in order to meet the preponderance of time element, and thus

⁹ While a finding on this point is not necessary to our resolution of this case, we reject the Petitioner's exceptions relating to this portion of the ALJ's analysis and find sufficient evidence of record supporting her conclusion that the manner in which the Executive Is and IIs perform evaluations and counsel can impact the terms and conditions of their subordinates' employment such that they can reward, discharge, and discipline their subordinates as those terms are used in Section 3(r) of the Act.

necessary to find the Executive Is and IIs are supervisors within the meaning of Section 3(r) of the Act. Because the Employer fails to demonstrate any deficiency in the ALJ's determination regarding supervisory status, and our own review fails to uncover a defect in her determination, we adopt the ALJ's recommendation and find that the Executive Is and IIs are not supervisors within the meaning of the Act.

IV. Managerial Status of Some of the Executive Is and IIs

The Petitioner excepts to the ALJ's consideration of the Employer's assertion that some of the Executive Is and IIs are managerial employees. The Employer had not raised the potential for a managerial exclusion in its initial response to the petition for representation, nor in its response to the order to show cause. It raised this issue in its pre-hearing memorandum with respect to 26 employees, after a hearing date had already been set, and it expanded the assertion to cover 80 employees in its post-hearing memorandum. It justifies this course of conduct by arguing that the decision of the Illinois Appellate Court in Dep't of Cent. Mgmt. Serv./Ill. Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766 (4th Dist. 2010) ("ICC"), so fundamentally altered established understandings of the managerial exclusion that it could not have known it had an argument concerning managerial status until that decision was issued in December 2010. We find this explanation without merit, but also find the ALJ's consideration of the issue did not unduly prejudice the Petitioner, even with respect to the broader assertion of 80 employees, and so the Board will also consider the Employer's exceptions relating to the ALJ's determination that those Executive Is and IIs who are the highest ranking employees at their facilities are not managerial employees within the meaning of section 3(j) of the Act.

Twenty-five years of authority provides that to be found a managerial employee, employees must meet a two-part test: 1) they must be engaged predominantly in executive and

management functions and 2) they must exercise responsibility for directing the effectuation of such management policies and functions. Id., 406 Ill. App. 3d at 774; County of Cook (Oak Forest Hosp.) v. Ill. Labor Relations Bd., 351 Ill. App. 3d 379, 386 (1st Dist. 2004); Dep'ts of Cent. Mgmt. Serv. & Healthcare and Family Serv., 23 PERI ¶ 173 (IL LRB-SP 2007); State of Ill., Dep'ts of Cent. Mgmt. Serv. & Public Aid, 2 PERI ¶2019 (IL SLRB 1986).¹⁰ The first prong concerns whether the employees spend most of their time essentially running the agency whether by means of establishing policies, preparing the budget, or otherwise assuring that the agency operates effectively. ICC, 406 Ill. App. 3d at 774-75. The second prong requires that the employees do more than merely perform tasks that are essential to the employer's ability to accomplish its mission, but that the employees "oversee[] or coordinate[] policy implementation through development of means and methods of achieving policy objectives, determine[] the extent to which the objectives will be achieved, and [are] empowered with a substantial amount of discretion to determine how policies will be effected." State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Healthcare & Family Serv.), 388 Ill. App. 3d 319, 331 (4th Dist. 2009).

In ICC, the court remanded for consideration of whether administrative law judges might meet these prongs by means of issuing recommended decisions that may serve as final adjudications of State public utility policy by the Illinois Commerce Commission, but it did not eliminate either prong. 406 Ill. App. 3d 766. The ALJ found the Employer had failed to demonstrate that any of the Executive Is and IIs were managerial employees. Paying particular attention to the ICC decision, she found only one example where an Executive I or II had made a recommendation that could have had a broad impact on how the Secretary of State's Office

¹⁰ There is also a line of cases that applies the managerial exclusion in situations where an employee (in those cases, always an attorney) functions as a surrogate for an elected official, see, e.g., Chief Judge of the 16th Judicial Cir v. Ill. State Labor Relations Bd., 178 Ill. 2d 333, 339-40 (1997), but the Employer does not suggest that line of analysis applies.

effectuated its policies, but no accompanying evidence that indicated the recommendation had ever been followed.

The Employer excepts to the ALJ's finding, primarily arguing that managerial employees need not formulate policy. That may be true, but it does not mean the employee at issue need not meet the first prong of the definition of a managerial employee by being predominantly engaged in other executive and management functions such as establishing the budget or assuring effective operation of the agency. Citing selected portions of ICC where the court discusses nuances within the second prong, the Employer suggests that having a role in implementation of management policies and functions is, alone, sufficient—in other words, that meeting the second prong would be sufficient. That certainly is not the holding in ICC. It unequivocally states the definition consists of two prongs, and goes on to state

Whereas the first part of the statutory definition of a “managerial employee” describes the nature of the work to which the individual devotes most of his or her time, *i.e.*, the performance of “executive or management functions,” that is, running the agency, the second part of the definition emphasizes that a managerial employee’s authority extends beyond the realm of theorizing and into the realm of practice.

406 Ill. App. 3d at 774.

The Employer was required to demonstrate the Executive Is and IIs met both prongs of the definition of a managerial employee, but makes no attempt to demonstrate it met the first, and fails even to demonstrate it met the second. The record does not establish that the Executive Is and IIs “develop[] means and methods of achieving policy objectives, determine[] the extent to which the objectives will be achieved, and [are] empowered with a substantial amount of discretion to determine how policies will be effected.” State of Ill., Dep’t of Cent. Mgmt. Serv. (Dep’t of Healthcare & Family Serv.), 388 Ill. App. 3d at 331.

Nevertheless, the Employer argues that those Executive Is and IIs who are the highest ranking employees at their particular facility “run the show” and therefore must be managerial. We have, indeed, found that the top employee at a particular facility is a managerial employee under circumstances where there is significant variation between facilities and the employee is required to exercise his discretion to determine how that particular facility will operate. For example, in Ill. Dep’t of Cent. Mgmt. Serv. (Dep’t of Conservation), 10 PERI ¶2037 (IL SLRB 1994), there was sufficient evidence to find site managers of State historic sites and conservation areas met both prongs of the managerial employee definition. They were required to assess the operational needs of their unique sites in terms of equipment, staffing, and other resources, and allocate those resources in the manner they felt best met the goals of the site and the agency.

More recently, we have found sufficient evidence presented to demonstrate that top employees at several offices located in various foreign countries, were managerial employees. Dep’t of Cent. Mgmt. Serv. (Dep’t of Commerce & Econ. Opportunity), 27 PERI ¶56 (IL LRB-SP 2011). In attempting to develop trade opportunities for Illinois businesses, these employees negotiated the leases, hired personnel, and contracted for personal services within the context of the particular country within which their offices were located. And we have recently found that local office administrators of facilities of the Illinois Department of Human Services were managerial employees where there was evidence that the varying sizes of the facilities and variances in the poverty levels of the clientele serviced by those facilities required the employees in dispute to determine unique ways in which their particular facilities would provide the agency’s services at those locations. Dep’t of Cent. Mgmt. Serv. (Dept. of Human Serv.), Case No. S-UC-09-182 (IL LRB-SP Oct. 24, 2011).

Here, the Employer has provided no comparable evidence that the Executive Is and IIs make similar sorts of managerial decisions to provide services in a manner unique to their particular facilities. Rather, the evidence indicates that each drivers' services facility performs the same tasks in the same sorts of ways. The evidence presented in this case cannot allow us to find that those Executive Is and IIs whose superior zone managers, administrators, deputy directors, chief deputy director, and director are located off-site are managerial employees within the meaning of the Act. We affirm the ALJ's determination that the Employer has failed to demonstrate that any of the Executive Is and IIs are managerial employees.

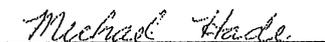
Conclusion

For the reasons expressed above, and those articulated in the ALJ's RDO, we find the Executive Is and Executive IIs employed at the Illinois Secretary of State's Drivers Services Department are neither supervisors or managerial employees within the meaning of the Act, and that their positions should be added to the collective bargaining unit previously recognized in Case No. S-UC-04-046. The Executive Director is ordered to issue a certification consistent with this decision and order, to be effective on the date of issuance.

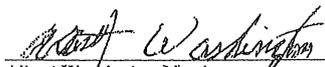
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


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 October 4, 2011;
written decision issued at Chicago, Illinois, October 24, 2011.

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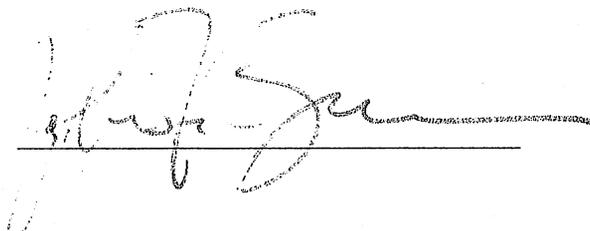
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AFFIDAVIT OF SERVICE

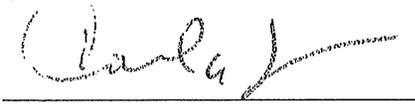
I, John F. Brosnan, on oath state that I have this 24th day of October, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the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

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



NOTARY PUBLIC

