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-12-004
State of Illinois, Department of Central Management Services,	)	
Employer	)	

ORDER

On January 18, 2013 Administrative Law Judge Elaine L. Tarver, 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 April 16, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 16th day of April, 2013.

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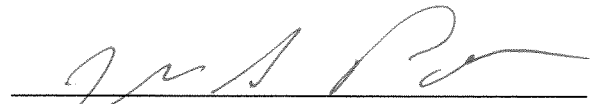

Jerald S. Post
General Counsel

STATE OF ILLINOIS
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State of Illinois, Department of Central Management Services,	)	
Employer	)	
	)	Case No. S-RC-12-004
and	)	
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 1, 2011, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to include the title of State Mine Inspector-at-Large employed in the Office of Mines and Minerals at the Illinois Department of Natural Resources (DNR) in the RC-62 bargaining unit. The State of Illinois, Department of Central Management Services (Employer) opposed the petition, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2010), as amended, pursuant to the exemption for supervisory, managerial and confidential employees. The Employer also objected to the petition on the grounds that the proposed unit is not appropriate for collective bargaining.

A hearing on the matter was conducted on December 13, 2011 by Administrative Law Judge Michelle Owen. The case was transferred to Administrative Law Judge Thomas Allen. Both parties elected to file post-hearing briefs.

I. Preliminary Findings

The parties stipulate and I find:

1) The Employer is a public employer within the meaning of Section 3(o) of the Act and subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a) of the Act.

2) The Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

II. Issues

At issue is whether the petitioned-for employees are supervisors under Section 3(r) of the Act, managerial employees under Section 3(j) of the Act, managerial employees as a matter of law, or confidential employees under Section 3(c) of the Act. The remaining issue is whether the proposed unit is an appropriate unit.

III. Facts

The petitioned-for employees are two State Mine Inspectors-at-Large who work in the Office of Mines and Minerals (OMM) within the Department of Natural Resources (DNR). The OMM is responsible for ensuring mine safety and compliance with the Illinois Mining Act. Mine inspectors and State Mine Inspectors-at-Large are both certified by the Illinois Mining Board. Mine inspectors are responsible for visiting mines on a regular basis to ensure compliance with the Illinois Mining Act.

Joe Angleton is the director of the OMM. Michael Woods is the Manager of the OMM and reports to Angleton. Woods is in charge of the Mine Rescue and the Blasting and Explosives Division within the OMM. In this capacity, Woods oversees the mine safety program. Woods supervised the State Mine Inspectors-at-Large for seven years before the department was reorganized in August of 2011. Beginning in August 2011, the State Mine Inspectors-at-Large

report to Tony Mayville. Woods and Mayville report to Angleton who reports to the Deputy Director of the DNR, who reports to the Chief of Staff of the DNR, who reports to the Director of the DNR.

Roger Spresser is the State Mine Inspector-at-Large for the northern part of the state. Spresser was a mine inspector for twenty years before becoming a State Mine Inspector-at-Large. Spresser is responsible for five or six mines north of I-70. One mine inspector reports to him and a second mine inspector position is vacant. Donald McBride is the State Mine Inspector-at-Large for the southern part of the state. He has held that position since 2001 and has been with the DNR for twenty three years. McBride works out of his home and from an office in Benton, Illinois. He oversees twelve underground mines and ten other facilities with eight mine inspectors reporting to him. State Mine Inspectors-at-Large do not have the authority to hire or fire mine inspectors.

Mine inspector Terry Etling reports to Spresser. Etling makes his own itinerary and Spresser does not tell him where to go each day. Spresser usually spends one day per week reviewing Etling's reports. During his time in the position of Mine Inspector-at-Large, Spresser has never had a grievance filed before him, received training in responding to grievances, issued discipline or received training in issuing discipline. Spresser has never had a problem with a mine inspector. Spresser does not have the authority to issue formal suspensions or issue a formal reprimand to a subordinate without approval from one of his superiors. Spresser last completed a performance evaluation of a mine inspector three or four years ago and may have completed one other performance evaluation in the past. Woods completed performance evaluations of Spressers' subordinates and once asked Spresser if there were any problems with the subordinate he was evaluating. Spresser has no role in collective bargaining, labor/management meetings or

any other management meetings. Spresser has no access to documents regarding collective bargaining or labor relations.

Spresser's subordinate mine inspector, Terry Etling, monitors four or five mines in the northern section of the state. Spresser, or a subordinate mine inspector, go to a mine site in the event of an accident or a dispute regarding safety. They are expected to be available at all times in case that need arises. They have the authority to shut down a mine and a mine inspector may shut down a mine without the approval of the State Mine Inspector-at-Large. Spresser shut down a mine without approval when he was a mine inspector. Mine inspectors work overtime when they have already worked a full shift and then need to respond to an accident. In this situation, the mine inspector calls the State Mine Inspector-at-Large to let him know. Depending on the situation, the State Mine Inspector-at-Large might also respond to the accident. The State Mine Inspector-at-Large has to approve this time as overtime when reviewing the mine inspector's time sheet. The State Mine Inspector-at-Large approves overtime if he believes it was necessary and justified.

Spresser spends 30% of his time inspecting mines, 20% of his time driving to mines for inspections, 30% of his time reviewing federal reports and 20% of his time assigning and reviewing subordinates' work. Spresser reviews his subordinates work by reviewing their time sheets to make sure they show 7.5 hours worked per day, reviewing weekly reports to make sure the mine inspector is checking everything he needs to check at the mines and handling time off requests. Spresser has never denied a time off request.

McBride has eight subordinate mine inspectors in the south who rotate between mines roughly once per year. McBride rotates the subordinates between mines and reviews the mine inspectors' time sheets to make sure that subordinate employees are using time off in categories

in which they have time to use, such as sick and vacation time. On these time sheets the subordinate employees report their actions during the week. Subordinates propose any changes to their schedule and location, subject to McBride's approval. McBride approves all time off requests for subordinate employees and has denied requests once or twice in his ten years as a State Mine Inspector-at-Large. McBride considers denying time off requests if too many mine inspectors request leave and it would result in too few mine inspectors on duty. McBride testified that this might happen during hunting season when many of his subordinates request time off.

McBride visits mines to discuss accident prevention, review subordinates' reports and occasionally at the request of a subordinate who may need help convincing a mine operator to comply with rules. McBride's subordinate mine inspectors can shut down a mine without his approval. A mine inspector often shuts down the mine, then calls McBride after it is clear. McBride then goes to the mine and investigates. In the event of an accident or fire, McBride and a subordinate mine inspector go to the mine, eventually followed by Mayville and Angleton.

McBride has no involvement with collective bargaining or labor/management meetings. McBride does not have access to collective bargaining proposals or documents. McBride does not have access to labor relations proposals or documents. Sometime in the late 1990s, McBride suggested adding two new certifications to the Mining Board's jurisdiction. McBride proceeded to make this recommendation to several different directors over ten to fifteen years before any legislation was passed establishing new certifications. Legislation was passed in 2006 or 2007 following high profile mining accidents. McBride did not draft the legislation establishing the new certifications and had no involvement beyond making the suggestion numerous times over a period of ten to 15 years.

McBride has never responded to a grievance and has no authority to suspend a subordinate employee. McBride must call Angleton and Mayville if he thinks a subordinate employee needs to be disciplined. McBride discusses any problems with a subordinate employee before telling Angleton or Mayville. Angleton or Mayville then tells McBride what to do. McBride was involved in discipline of a subordinate mine inspector named Willard Dame. McBride was directed to put Dame on "proof status" and to document any conversations he had with Dame regarding problems complying with the requirements of "proof status". Part of Dame's "proof status" included changing requirements for reporting his actions to McBride and limiting his access to the Benton office.

McBride spends 30% of his time verbally directing subordinate employees and reviewing their work. He spends three hours each day researching and reviewing accidents and then forwarding this information to subordinate mine inspectors. On two or three days of the week, McBride spends the entire morning traveling to mines, visiting these mines and traveling back to the office. McBride also spends time on outreach and community training with teachers.

The Petitioner proposes adding the title of State Mine Inspector-at-Large to a bargaining unit known as RC-62. RC-62 is the largest bargaining unit of the Employer's employees and it is largely comprised of "technical employees". RC-62 includes both employees and their own subordinates.

IV. Discussion and Analysis

a. Supervisor

The Employer argues that the State Mine Inspector-at-Large is a supervisor within the meaning of Section 3(r) of the Act.[1] A supervisor is generally not a "public employee" or

[1] Section 3(r) of the Act states:

"employee" for purposes of the Act. To be deemed a supervisor, an individual must (1) perform principal work substantially different from that of his or her subordinates; (2) possess authority to perform one or more of the 11 indicia of supervisory authority, or to effectively recommend such performance; (3) consistently exercise independent judgment in exercising supervisory authority; and (4) devote a preponderance of his or her time to exercising that authority. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 505 (1990).

1. Principal Work Requirement

If the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different, the principal work requirement is satisfied. Id. If not, it must be determined whether the "nature and essence" of the alleged supervisor's principal work is substantially different than the "nature and essence" of his or her subordinates' principal work. Id.

The Petitioner claims that the petitioned-for employees perform work that is substantially similar to their subordinates. The Petitioner alleges that both State Mine Inspectors-at-Large and mine inspectors have responsibilities related to inspecting mines. The Employer claims that the petitioned-for employees' work is obviously and visibly different from that of their subordinates because they do not go underground into mines on a regular basis.

"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.

Here, the Spresser and McBride both spend a significant amount of their time traveling to and from mines in order to perform some of the same functions as their subordinate mine inspectors. The mine inspectors also perform this same work. However, Spresser and McBride spend the rest of their time doing work that is substantially different from their subordinate mine inspectors. Spresser and McBride spend the rest of their time reviewing their subordinate employees' reports and time sheets, reviewing reports from other states, directing their subordinate employees regarding which mines to inspect and when. The essence and nature of Spresser and McBride's work is more than just inspecting mines. Therefore, the principal work requirement is satisfied.

2. Supervisory Indicia and Independent Judgment

To fulfill the second and third prongs of the Act's supervisory definition, the Employer must establish that the State Mine Inspectors-at-Large have the authority to perform or effectively recommend any of the 11 factors listed in the Act and consistently exercise that authority with independent judgment. A decision requires independent judgment when it involves a choice between two or more significant courses of action; it cannot be routine or clerical in nature or made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. City of Freeport, 135 Ill. 2d at 521. A recommendation is effective when it is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Ill. State Labor Relations Bd., 167 Ill. App. 3d 284, 290 (3d Dist. 1988); Vill. of Justice, 17 PERI ¶2007 (IL LRB-SP 2000).

The Petitioner claims that the petitioned-for employees do not exercise supervisory authority with independent judgment. The Petitioner alleges that the State Mine Inspectors-at-Large do not review their subordinates' reports or time sheets with any independent judgment

and make mine assignments based on geographic proximity and workload. The Employer claims that the petitioned-for employees have the supervisory authority under the Act to direct and discipline, or effectively recommend the same. The Employer alleges that the State Mine Inspectors-at-Large have the authority to discipline and direct the work of their subordinates with independent judgment.

An employee has the supervisory authority to direct employees when he or she has the authority to make operational decisions affecting subordinates in such areas as granting time off and vacation requests, evaluating personnel, reviewing work and instructing employees on how to perform work. Chief Judge of the Circuit Court of Cook County v. AFSCME, Council 31, 153 Ill. 2d 508, 515 (1992). The authority to direct requires involvement in checking, correcting and giving instructions to subordinates without guidelines or review by others. Id. Here, Spresser and McBride direct their subordinate mine inspectors by granting vacation requests, approving time sheets which include time off requests, reviewing their work and approving proposed changes to job assignments.

The supervisory authority to discipline employees can be established by the authority to give oral reprimands and does not require the authority to impose more severe discipline. State of Illinois (CMS) and Illinois Federation of Public School Employees, Local 4408, 12 PERI ¶2032 (IL SLRB 1996). Here, Spresser and McBride do not consistently use independent judgment but rather generally follow established rules and pre-existing parameters when directing employees. Specifically, while Spresser and McBride must approve their subordinates' use of sick or vacation time, their approval is almost exclusively based on whether or not that employee has enough hours in that particular category. McBride only has denied a subordinate's request to take a vacation once or twice in ten years. McBride denied this request because he could not have too

many subordinates on vacation at the same time of year and many employees wanted to take vacation during hunting season. In this case, McBride did exercise independent judgment to effectuate the employer's policy of ensuring Illinois mines are inspected for safety and compliance with the Illinois Mining Act. However, the fact that he has only done this one or two times in ten years means that this is not something he does consistently.

Here Spresser and McBride do not have the authority to issue discipline of any sort on their own. In all of their combined years in the position of State Mine Inspector-at-Large, only McBride has been involved in the disciplinary process for one subordinate. Throughout that situation, McBride took disciplinary actions on the authority of Angleton, Woods or someone in the Human Resources Department. Throughout that employee's discipline, McBride acted as the informant for employers like Angleton and Woods. McBride provided them information about the subordinate's failure to meet his responsibilities so Angleton and Woods could decide what type of discipline was appropriate. Both Spresser and McBride have the understanding that they can not decide to discipline a subordinate on their own. McBride's experience with Dame is the only example of either employee in the title of State Mine Inspector-at-Large being involved in the disciplinary process. McBride's experience in that situation, along with his and Spresser's understanding of their role in the disciplinary process, show that they do not have the authority to discipline subordinates.

3. Preponderance Requirement

The fourth prong of the Act's definition of a supervisor requires that the alleged supervisor spend a preponderance of his or her employment time exercising supervisory authority, as defined by the Act. The employee must spend the most significant allotment of his or her time exercising supervisory functions. City of Freeport, 135 Ill. 2d at 532-3. The time

spent exercising supervisory functions need not be greater than the total time spent performing other functions, so long as the employee spends more time on supervisory functions than on any non-supervisory function. Id.

The Petitioner claims that the petitioned-for employees do not spend a preponderance of their time exercising supervisory functions. The Petitioner alleges that the State Mine Inspectors-at-Large spend the preponderance of their time inspecting mines, meeting with mine management, researching information on other mines and passing this information along to their subordinates. The Employer claims that the petitioned-for employees spend a preponderance of their time exercising supervisory functions. The Employer claims that the State Mine Inspectors-at-Large spend more time directing their subordinates work than they spend on anything else.

Here, the State Mine Inspectors-at-Large engage in the supervisory function of directing their subordinate mine inspectors. Spresser spends 20% of his time reviewing subordinates' reports and directing their work while McBride spends 30% of his time doing so. They both spend as much or more of their time on other non-supervisory functions. Spresser spends 30% of his time inspecting mines and 30% of his time reviewing federal reports. McBride spends three hours each day researching and reviewing accidents and then forwarding this information to subordinate mine inspectors. On two or three days of the week, McBride spends the entire morning traveling to mines, visiting these mines and traveling back to the office. Therefore, Spresser and McBride do not spend a preponderance of their time directing subordinate mine inspectors and are not supervisors.

b. Managerial

The Employer asserts that the State Mine Inspectors-at-Large are managerial employees within the meaning of Section 3(j) of the Act. The Employer further asserts that the State Mine Inspectors-at-Large are managerial employees as a matter of law.

1. Managerial within the meaning of the Act

A managerial employee is not a "public employee" or "employee" for purposes of the Act. An individual must meet a two-part test to be found a managerial employee. He or she must be (1) engaged predominantly in executive and management functions and (2) obligated to exercise responsibility for directing the effectuation of management policies and practices.[2] Dep't of Cent. Mgmt. Servs./Dep't of Healthcare & Family Servs. v. Ill. Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 330 (4th Dist. 2009).

The first prong concerns whether the individual uses independent discretion to make policy decisions as opposed to merely following established policy, changes the focus of an employer's organization, is responsible for day-to-day operations, negotiates on behalf of the employer, exercises authority to pledge an employer's credit, formulates policies, prepares a budget, and oversees efficient and effective operations. Id.; Vill. of Elk Grove Village v. Ill. State Labor Relations Bd., 245 Ill. App. 3d 109, 121-122 (2d Dist. 1993); State of Ill., Dep't of Cent. Mgmt Servs. (Ill. Dep't of Revenue), 21 PERI ¶205 (IL LRB-SP 2005). The first prong of the test requires more than exercising professional discretion and technical expertise. Dep't of

[2] Section 3(j) of the Act states:

> "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.

Healthcare and Family Servs., 388 Ill. App. 3d at 331; Cnty. of Cook v. Ill. Labor Relations Bd., 351 Ill. App. 3d 379, 386 (1st Dist. 2004). The individual must exercise independent judgment and possess a level of authority sufficient to broadly affect the organization's purpose or its means of effectuating those purposes. State of Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶161. Managerial status is not found where the individual merely serves a subordinate or advisory function in developing policy. Dep't of Healthcare and Family Servs., 388 Ill. App. 3d at 331.

The second prong requires that the individual oversee or coordinate policy implementation by developing the means and methods of reaching policy objectives and by determining the extent to which the objectives will be achieved. Id. It is not enough to merely perform "duties essential to the employer's ability to accomplish its mission." Id. If the alleged managerial employee's decisions are "significantly circumscribed by predetermined requirements and procedures, the employee's activities are not managerial." Chief Judge of Eighteenth Judicial Circuit v. Ill. State Labor Relations Bd., 311 Ill. App. 3d 808, 815 (2d Dist. 2000), citing Vill. of Elk Grove, 245 Ill. App. 3d at 121-22. The individual must possess substantial discretion to determine how policies will be effected. Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 331, citing State of Ill., Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79, 87 (4th Dist. 1996). However, "the relevant consideration is effective recommendation or control rather than final authority over employer policy." Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Relations Bd., 178 Ill. 2d 333, 339-40 (1997); State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶155 (IL LRB-SP 2011).

The Petitioner claims that the petitioned-for employees are not managerial employees under the Act because they are not predominantly engaged in executive and management functions or charged with directing the effectuation of management policies. The Petitioner also

claims that the petitioned-for employees have no role in establishing policy. The Petitioner alleges that the State Mine Inspectors-at-Large are tasked with ensuring the safety of Illinois mines subject to the oversight of two employees within their own office and three other employees in the DNR. The Petitioner also alleges that while McBride recommended two new certifications, his recommendation was not effectively adopted and he had no role in drafting the legislation. The Employer claims that the petitioned-for employees are managerial employees under the Act because they spend most of their time enforcing compliance with the Illinois Mining Act, organizing, planning, executing and evaluating the Coal Mining Safety Inspection Program. The Employer also alleges that the petitioned-for employees have a role in policy because McBride effectively recommended two new certifications.

Here, Spresser and McBride do not consistently use independent judgment but rather generally follow established rules when directing employees. Specifically, while Spresser and McBride must approve their subordinates' use of sick or vacation time, their approval is almost exclusively based on whether or not that employee has enough hours in that particular category. McBride only has denied a subordinate's request to take a vacation once or twice in ten years. McBride denied this request because he could not have too many subordinates on vacation at the same time of year and many employees wanted to take vacation during hunting season. In these situations, Spresser and McBride are acting within pre-existing parameters when making decisions. In the only situation when either State Mine Inspector-at-Large was involved in policy development, McBride recommended new certifications but had no other role in developing or implementing that policy.

Neither Spresser or McBride are involved in managerial functions such as changing the focus of the employer's organization, negotiating on behalf of the employer, exercising authority

to pledge the employer's credit, formulating policies or preparing a budget. Therefore, the State Mine Inspector-at-Large is not a managerial employee under the Act based on the first prong of the test.

The State Mine Inspector-at-Large also fails to meet the second prong of the test because Spresser and McBride do not oversee or coordinate policy implementation by developing the means and methods of reaching policy objectives and by determining the extent to which the objectives will be achieved. The only time either Spresser or McBride was involved in policy implementation was McBride's suggestion to create two new certifications. McBride made this suggestion to several different Directors for years before it was ultimately adopted as policy. McBride had no role in drafting the legislation that created the two new certifications. McBride's role in creating these new certifications was far from making an effective recommendation. Rather, McBride made a general recommendation to different Directors for years before it was drafted into a bill by another employee and then passed as legislation. Therefore, the State Mine Inspector-at-Large does not fulfill either prong of the test and is not managerial under the Act.

2. Managerial as a matter of law

Illinois courts have developed an alternative analysis in which certain employees are held to be managerial employees as a matter of law and thus excluded from collective bargaining. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d 333; Office of the Cook Cnty. State's Attorney v. Ill. Local Labor Relations Bd., 166 Ill. 2d 296 (1995). Three factors have been identified that support a finding that an employee is managerial as a matter of law: 1) close identification of an office holder with the actions of his or her assistants; 2) unity of their professional interests; and 3) power of the assistants to act on behalf of the office holder. Chief

Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 344; Office of Cook County State's Attorney, 166 Ill. 2d at 304. The Illinois Supreme Court has emphasized that the managerial as a matter of law analysis has limited applicability and should not be used to deem all professional employees managerial employees under the Act. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 347. The test considers whether the functions of the employees so align them with management that if they were represented by a labor organization, they would be put in a position of divided loyalty between their employer and the labor organization. Id. at 333; Office of the Cook County State's Attorney, 166 Ill. 2d 296; State of Illinois, Department of Central Management Services, 388 Ill. App. 3d 319.

The Petitioner claims that the petitioned-for employees are not managerial employees as a matter of law because they do not act as surrogates for an office holder like states' attorneys or public defenders. The Employer claims that the petitioned-for employees are managerial employees as a matter of law because they work closely with the highest level of management and exercise managerial discretion when reviewing reports of their subordinates. The Employer also claims that there must be separation between the mine inspectors who conduct inspections and the State Mine Inspectors-at-Large who review their work to prevent any divided loyalty.

Here, the State Mine Inspectors-at-Large do not have any connection to an office holder or power to act on behalf of an office holder. The State Mine Inspectors-at-Large are not managerial as a matter of law.

c. Confidential

The Employer asserts that the State Mine Inspector-at-Large is a confidential employee within the meaning of Section 3(c) of the Act.[3] Three tests have been formulated to determine whether an employee is "confidential": the labor nexus test, the authorized access test, and the reasonable expectation test. Chief Judge, 153 Ill. 2d at 523. The labor nexus and authorized access tests require analysis of the employee's "regular course of duties." State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶34 (IL LRB-SP 2010).

Under the labor nexus test, an employee is a confidential employee if he or she assists in a confidential capacity in the regular course of his or her duties a person or persons who formulates, determines, or effectuates labor relations policies. Chief Judge, 153 Ill. 2d at 523. The person being assisted must perform all three of these functions. Under the authorized access test, an employee is a confidential employee if he or she has authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management. Id. The reasonable expectation test applies where no collective bargaining unit was previously in place. Id. at 524. The reasonable expectation test was formulated to determine, in the absence of a collective bargaining relationship, whether the onset of collective bargaining would reasonably lead to an employee performing confidential duties. City of Burbank, 2 PERI ¶2036 (IL SLRB 1986). The Board will attempt to ascertain an employee's (and his or her supervisor's) future role in collective bargaining, based upon the employee's current job duties

[3] Section 3(c) of the Act states:

> "Confidential employee" means any 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.

and whether there exists a reasonable expectation that the employee alleged to be confidential will in fact be performing confidential duties that satisfy the statutory definition. Chief Judge, 153 Ill. 2d at 527.

The Petitioner claims that the petitioned-for employees are not confidential employees because they do not assist any employee who formulates, determines and effectuates management or labor relations policy. The Petitioner also claims that they petitioned-for employees do not have authorized access to confidential information in the regular course of their duties.

Spresser and McBride do not assist any person who formulates, determines, or effectuates labor relations policies. Additionally, they do not have authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management. Finally, a collective bargaining unit is already in place, so the reasonable expectation test does not apply in this situation. Therefore, the State Mine Inspectors-at-Large fail the labor-nexus test as well as the authorized access test and are not confidential employees.

d. Appropriate Unit

Section 9(b) of the Act says that in determining whether a proposed bargaining unit is appropriate to represent petitioned-for employees, the Board "shall decide... a unit appropriate for the purpose of collective bargaining based upon, but not limited to, such factors as: historical pattern of recognition; community of interest, including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees." A petition must seek an appropriate unit,

which need not be the most appropriate unit. State of Illinois (CMS), 24 PERI ¶112 (IL SLRB 2008); Rend Lake Conservation District, 14 PERI ¶2051 (IL SLRB 1998).

The Petitioner claims that the petitioned-for unit is an appropriate bargaining unit because the petitioned-for employees share a community of interest with other employees in the bargaining unit. The Petitioner alleges that the State Mine Inspectors-at-Large and the mine inspectors perform similar duties, have the same certification and that Spresser and McBride were both formerly mine inspectors. The Employer claims that the petitioned-for unit is not an appropriate bargaining unit because the petitioned-for employees would no longer be able to discipline their subordinate employees if they were in the same bargaining unit. The Petitioner claims that this alone is not enough to make a proposed bargaining unit inappropriate. The Petitioner alleges that the Act requires that an employee and his subordinate must perform substantially different work and the employee must devote a preponderance of time to exercising supervisory authority in order for that employee to be excluded from a bargaining unit. The Employer also claims that the proposed bargaining unit has language regarding layoffs and vacancies that was not negotiated with the petitioned-for employees or other similar employees in mind.

Here, the RC-62 unit is an appropriate bargaining unit based on the factors outlined in Section 9(b) of the Act. The State Mine Inspectors-at-Large perform many of the same functions as the mine inspectors who are included in the RC-62 unit. The fact that the Spresser and McBride go out to mines along with their subordinate mine inspectors shows that the State Mine Inspectors-at-Large and the mine inspectors have frequent contact with each other and can be interchangeable in certain situations. The State Mine Inspectors-at-Large and mine inspectors are all on call at all times to respond to mine emergencies and typically respond to these emergencies

together. Additionally, the State Mine Inspectors-at-Large and mine inspectors hold the same certification and both Spresser and McBride were previously mine inspectors. Ultimately, the State Mine Inspectors-at-Large and Mine inspectors share a community of interest.

The employer claims that employees with the authority to discipline may not be included in a bargaining unit with their subordinates. However, the petitioned-for employees do not in fact have the authority to discipline their subordinates so this issue is moot. Finally, there are other employees included in RC-62 along with their subordinates. Including the State Mine Inspectors-at-Large and their subordinate employees would not fundamentally alter the unit. Therefore, the petitioned-for unit is an appropriate unit for collective bargaining.

V. CONCLUSIONS OF LAW

1. I find that the State Mine Inspectors-at-Large are public employees within the meaning of the Act.

2. I find that the proposed bargaining unit is an appropriate unit for bargaining under Section 9(b) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the State Mine Inspectors-at-Large, as described below, shall be included in the RC-62 bargaining unit currently represented by the American Federation of State, County and Municipal Employees, Council 31.

INCLUDED: The State Mine Inspectors-at-Large positions currently held by Roger Spresser and Don McBride at the State of Illinois, Department of Natural Resources.

EXCLUDED: All supervisors, confidential, and/or managerial employees as defined by the Act.

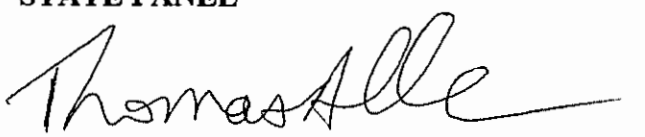
VII. EXCEPTIONS

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 at 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 Chicago, Illinois, this 16th day of January, 2013.

STATE OF ILLINOIS LABOR RELATIONS BOARD

STATE PANEL



Thomas R. Allen

Administrative Law Judge