

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

American Federation of State, County
and Municipal Employees, Council 31,

Petitioner

and

State of Illinois, Department of Central
Management Services,

Employer

Case No. S-UC-09-182

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

On April 27, 2011, Administrative Law Judge (ALJ) John L. Clifford issued a Recommended Decision and Order (RDO) in the above-captioned case, finding that one employee in the job title of Public Service Administrator, Option 6 should be added to the previously certified RC-150 collective bargaining unit represented by the American Federation of State County and Municipal Employees, Council 31 (Petitioner), while 68 other such employees in the same title should be excluded from the unit. He found the employee to be included was neither a managerial employee within the meaning of Section 3(j) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), nor a supervisor within the meaning of Section 3(r) of the Act. He found the others should be excluded because they were managerial employees within the meaning of Section 3(j), supervisors under Section 3(r), or confidential employees within the meaning of Section 3(c) of the Act.¹

¹ Per 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."

The Petitioner 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 Employer filed a timely response and a cross-exception concerning the one employee recommended to be included in the unit.

After reviewing the record, briefs, exceptions, response and cross-exceptions, we agree with the ALJ's recommended determination that the Option 6 position held by Janette Michels should be added to the unit, and the other Option 6 positions should not. More specifically, we adopt those portions of the ALJ's findings of fact and recommended decision relating to the following findings:

- 1) Janette Michels, employed as an Option 6 at the Department of Human Services, is neither a supervisor nor a managerial employee and her position should be added to the bargaining unit;
- 2) Elizabeth Delheimer, employed as an Option 6 at the Department on Aging, is a confidential employee within the meaning of the Act, and her position should not be added to the bargaining unit;

For employees who are not police officers, Section 3(r) provides: "'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."

Section 3(c) provides: "'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."

- 3) Diana Meyers, employed as an Option 6 at the Department of Human Services' John Madden Mental Health Center is a confidential employee within the meaning of the Act, and her position should not be added to the bargaining unit;
- 4) Sherrie Bridges, employed as an Option 6 at the Department of Human Services and working as a personnel liaison is a confidential employee within the meaning of the Act, and her position should not be added to the bargaining unit; and
- 5) The 64 employees employed as Option 6s at the Department of Human Services and working as local office administrators are managerial employees within the meaning of the Act, and their positions should not be added to the bargaining unit.

The Petitioner has not filed exceptions to the ALJ's findings that Jeff Pharis and Rachel Peters, employed as Option 6s at the Department of Human Services and working as directors of, respectively, the forensic and civil programs at the Elgin Mental Health Center are both supervisors and confidential employees whose positions should not be added to the unit. We find the issues concerning these employees to have been waived, and, while the ALJ's recommendations concerning them are binding on the parties to this case, his reasoning on these points remains non-precedential. 80 Ill. Admin. Code §1200.135(b)(2).

In their exceptions, the parties have raised additional issues that need not be addressed for us to resolve this case. Consequently, we specifically do not address: 1) whether the local office administrators are also supervisors, 2) whether Meyers is also a managerial employee, or 3) whether Delheimer and Bridges meet some, but not all, of the criteria for supervisory status.

We find portions of the Employer's argument that Michels is a supervisor warrants additional discussion and consequently add a few small points to the ALJ's otherwise thorough analysis on this topic. First, we reject the Employer's contention that we must find Michels a

supervisor because the Petitioner has failed to demonstrate that another individual is supervising her subordinates in her stead. The appellate court has rejected a similar line of reasoning in a manner we find fully applicable here: “we note that the employers do not appear to challenge the Board’s determination directly, asserting instead that because the sergeants are often the only on-duty employees in a supervising capacity at the Vermilion County jail, they must necessarily be spending a preponderance of their time engaged in supervision. We disagree that such a conclusion follows where, as here, 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.” County of Vermilion v. Ill. Labor Relations Bd., 344 Ill. App. 3d 1126, 1136 (4th Dist. 2003). Our focus is similarly on the legislative formula, and we find the Employer has failed to demonstrate that Michels meets the statutory elements for supervisory status.

Second, the Employer argues that the final statutory element for supervisory status requiring the employee to spend a preponderance of her employment time engaged in the exercise of one or more of the 11 statutory indicia of supervisory authority does not apply to employees of the State of Illinois like Michels. We reject this contention because it is even more clearly contrary to appellate court precedent. It was specifically rejected in Am. Fed’n of State, County and Mun. Employees, v. Chief Judge of the Cir. Ct. of Cook County, 209 Ill. App. 3d 283, 288-89 (1st Dist. 1991), and is contrary to the 20 years of judicial and Board precedent that followed that decision.

Finally, the Employer argues that the ALJ erroneously analyzed whether Michels met the preponderance of time element of the definition of a supervisor by using the test articulated in a 1993 appellate court decision, State of Illinois, Dep’t of Cent. Mgmt. Serv. (Dep’t of Children and Family Serv.) v. Ill. State Labor Relations Bd., 249 Ill. App. 3d 740 (4th Dist. 1993)

(whether the employee spends a majority of time on supervisory functions), instead of the test articulated in a subsequent, superseding appellate court decision issued in 1996, State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep't of Corrections) v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79 (4th Dist. 1996) (whether the employee spends more time on supervisory functions than on any one non-supervisory function). This assertion is simply untrue. The ALJ analyzed preponderance under both articulations, tying his conclusion to the latter decision. RDO at pp. 146-48. Michels' duties failed to meet the preponderance requirement under either articulation of the test, and consequently the ALJ's recommendation is consistent with the 1996 appellate court decision.

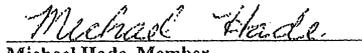
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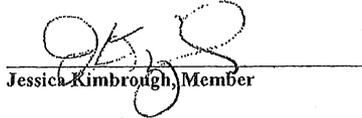
The certification of the RC-150 collective bargaining unit is clarified by the addition of the Public Service Administrator Option 6 position held by Janette Michaels. All other portions of the unit clarification petition are dismissed.

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 September 13, 2011; written decision issued at Chicago, Illinois, October 24, 2011.

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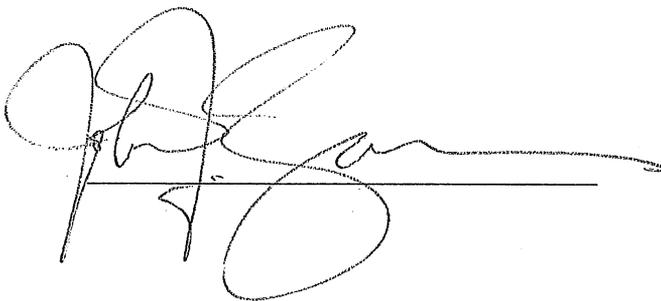
Employer

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.

Scott Miller
AFSCME Council 31
205 North Michigan Ave, 1st floor
Chicago, Illinois 60601

Mark Bennett
Jeremy Edelson
Laner, Muchin
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SUBSCRIBED and SWORN to
before me this **24th day**
of **October 2011**.



NOTARY PUBLIC

