STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

State of Illinois, Department of Central Management Services,	)	
Employer	)	
and	)	Case No. S-RC-09-136
American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 9, 2009 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 chief hearing officer employed at the Property Tax Appeal Board, a single position, in the RC-10 bargaining unit. On August 17, 2009, the Board's Executive Director issued a Certification of Representative certifying AFSCME as the exclusive representative of the chief hearing officer. On December 28, 2010, the Illinois Appellate Court, Fourth District, reversed the Board's Order and Certification of Representative asserting that the Board erred by denying an oral hearing, and remanded the case for an oral hearing.[1] On August 25, 2011, the Board's Executive Director issued a Revocation of Certification.

A hearing was held on October 13, 2011, in Springfield, Illinois, at which time all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, argue orally, and file written briefs. Briefs were timely filed by both parties. After

[1] Illinois Department of Central Management Services/Illinois Property Tax Appeal Board v. Illinois Labor Relations Board, State Panel, 27 PERI ¶2 (IL LRB-SP 2010).

full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Employer is a public employer within the meaning of Section 3(o) of the Act and is subject to the Board's jurisdiction pursuant to Sections 5 and 20(b) of the Act.

2. The parties stipulate, and I find, that AFSCME is a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUE AND CONTENTION

The issue is whether the petitioned-for employee, the chief hearing officer, is a managerial employee as defined by Section 3(j) of the Act.[2] The Employer argues that the chief hearing officer is a managerial employee within the meaning of Section 3(j) of the Act. The Union argues that the chief hearing officer is not a managerial employee within the meaning of the Act.

[2] Initially, the Employer had also argued that the petitioned-for employee was a managerial employee as a matter of law and/or a supervisor within the meaning of Section 3(r) of the Act. Prior to the hearing, in email correspondence with the undersigned and the attorney for the Petitioner, the Employer argued instead that the only issues were whether the petitioned-for employee was a manager as defined by the Act and/or a supervisor. Later, at hearing and in its post-hearing brief, the Employer did not argue that the petitioned-for employee is a manager as a matter of law. In its post-hearing brief, the Employer also withdrew its challenge that the chief hearing officer should be excluded based on supervisory duties. Thus, I will not address the manager as a matter of law exclusion or determine whether the chief hearing officer is a supervisor within the meaning of the Act.

III. FINDINGS OF FACT

A. Background

The Property Tax Appeal Board (Appeal Board) is a quasi-judicial body that hears tax assessment appeals from boards of review in all Illinois Counties.[3] The Property Tax Code provides that,

> any taxpayer dissatisfied with the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her property for taxation purposes, or any taxing body that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officer, may, . . . appeal the decision to the Property Tax Appeal Board for review.

Illinois Property Tax Code, 35 ILCS 200/16-160 (2010). The Appeal Board handles appeals involving residential, commercial, industrial, and farm property tax assessments. The Appeal Board is charged with determining "the correct assessment prior to state equalization of any parcel of real property which is the subject of an appeal, based upon facts, evidence, exhibits and briefs submitted to or elicited by the Board." Practice and Procedure for Appeals before the Property Tax Appeal Board, 86 Ill. Admin. Code § 1910.10(b) (2010).

The Appeal Board is made up of five members appointed by the Governor. Louis Apostol is the executive director and counsel for the Appeal Board. He has held this position for three years. Property tax assessment appeals are heard by a staff of eleven hearing officers including one chief hearing officer, Steven Waggoner, who is the petitioned-for employee. Waggoner has worked for the Appeal Board as a hearing officer since 1987 and is the Appeal Board's most experienced hearing officer. In 1997, he became the chief hearing officer. Waggoner reports to Apostol. Waggoner has ten subordinate hearing officers. Five of those

[3] Section 35 ILCS 200/16-180 of the Illinois Property Tax Code establishes the procedure for determining the correct property tax assessment: "[t]he Property Tax Appeal Board shall establish by rules an informal procedure for the determination of the correct assessment of property which is the subject of an appeal."

hearing officers are attorneys and five are non-attorneys. The attorneys hold the position of technical advisor and the non-attorneys hold the position of appraisal specialist. The Appeal Board has offices in both Springfield and Des Plaines. Apostol and five of the hearing officers work in the Des Plaines office. Waggoner and the other five hearing officers work in the Springfield office. The attorney hearing officers, besides Waggoner, are represented by AFSCME in its RC-10 bargaining unit.[4] The non-attorney hearing officers are represented by AFSCME in its RC-62 bargaining unit.[5]

B. Chief hearing officer

The hearing officers, including Waggoner, conduct administrative hearings on behalf of the Appeal Board, draft decisions, and determine the correct assessment of real property throughout the state.[6] Hearing officers are expected to conduct hearings at least four to five days per month. That practice has been in effect since Waggoner began employment with the Board. All of the hearing officers including Waggoner handle farm, industrial, residential, and commercial appeals. The non-attorney hearing officers primarily handle residential and small commercial appeals. The attorneys, including Waggoner, handle more of the complex cases.

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[4] The RC-10 bargaining unit was certified by the Board on June 20, 1991, in Case No. S-VR-91-10 pursuant to the Board's voluntary recognition procedures. Waggoner was a technical advisor at the time of the voluntary recognition and is listed in the attachment to the certification as one of the technical advisors included in the unit.

[5] The RC-62 bargaining unit is a historical unit, certified by the Illinois Office of Collective Bargaining on March 13, 1984, prior to the effective date of the Illinois Public Labor Relations Act.

[6] The Union asserts that Waggoner spends most of his time performing hearing officer duties similar to those he performed as a technical advisor within the RC-10 unit and similar to those duties currently performed by other hearing officers currently included in the RC-10 and RC-62 units. The Union asserts that the Employer at the time of the voluntary recognition of the RC-10 unit did not contest the hearing officers being represented for the purposes of collective bargaining and did not challenge their inclusion in a unit based on alleged managerial status at the time of the voluntary recognition. The Union argues, therefore, that the Employer waived the argument that the chief hearing officer is managerial to the extent such argument is based on his duties as a hearing officer. I find this argument unpersuasive. First, the Union does not cite any authority for this argument. In addition, I am bound by the Appellate Court's order to determine whether the chief hearing officer is a managerial employee under the Act. Thus, I find that the Employer has not waived the argument that the chief hearing officer is a managerial employee under the Act.

The hearing officers often work together on cases, particularly in complex cases. Waggoner reports that a hearing officer will come to his office about once a month with a question on a case. Waggoner will then give the hearing officer examples of how he has handled the situation in his past cases.

When filing a case, an appellant can elect to have either a formal hearing or a writing on the evidence, which does not involve a hearing. In either case, the hearing officer reviews the evidence submitted by the parties and makes a written decision based on the manifest weight of the evidence presented. In residential cases, the written decisions are usually about two pages long and the fact pattern is generally straightforward.

Waggoner does not assign cases to the hearing officers. For cases in which the parties request an oral hearing, the assignment is based mostly on a rotation. Mike Bullock, a hearing officer in the Springfield office, assigns cases to the hearing officers in Springfield. Eileen Castrovillari, Apostol's assistant, assigns cases to the hearing officers in Des Plaines. For cases in which the parties do not request an oral hearing, the cases are self-assigned. When a hearing officer has extra time, he or she will pull one of the writing on the evidence cases and draft a decision.

All of the hearing officers' decisions are peer-reviewed before being submitted to Apostol for his approval. Apostol and the Des Plaines hearing officers meet once a week to discuss and review their cases. At this meeting, the hearing officers review and edit each others' decisions. Waggoner is not usually present at these meetings. When he does participate, it is by conference call. Waggoner rarely reviews the decisions of the hearing officers in the Des Plaines office.

The Springfield hearing officers, including Waggoner, meet every Friday to review the decisions that the hearing officers drafted that week. Each hearing officer, including Waggoner, will review an equal amount of the decisions that were drafted that week. Waggoner does not review any more decisions than the other hearing officers. The hearing officers also review Waggoner's decisions. For cases that involved a hearing, the hearing officers, including Waggoner, will randomly select a decision and review it for accuracy, consistency, and typographical errors. They will also review the decisions substantively to make sure they are logical and conform to the evidence. For cases that were based on stipulations, the hearing officers will follow a checklist to make sure that the names of the parties, the county, and other information are correct. The same checklist has been used since the 1980s. Waggoner reviews the hearing officers' decisions in the same way that the other hearing officers review the decisions. The hearing officers can recommend edits or changes during the weekly review session, but it is up to the individual hearing officer to decide whether to incorporate those recommendations into their decision. For some of the more complex cases, hearing officers have asked Waggoner to review their decision before the weekly review session. His review consists of ensuring that the decision comports with decisions the Appeal Board has issued in the past.

At the weekly review, the hearing officers also discuss whether or not they agree with the recommendation by the hearing officer. Any hearing officer can initiate this discussion. Generally, the group comes to a consensus on whether it agrees with the hearing officer's recommendation. If not, Waggoner informs Apostol of the lack of consensus and Apostol then makes his own recommendation.

After the weekly review sessions, the decisions are given to Apostol for review. Apostol can make changes to the hearing officers' decisions. Apostol is the only employee who reviews

all of the hearing officers' decisions before they go to the Appeal Board. Apostol reviews the decisions to determine whether he is in agreement with the hearing officers' recommendations and will also look for legal challenges that the Appeal Board may encounter on administrative review in the circuit or appellate court. Apostol reports that he tries not to interfere with the hearing officers' decisions unless there are mistakes of law in their decisions. Apostol reports that he "pretty much, for all the hearing officers, I pretty much do not change their decisions." Apostol reports that he only makes substantive changes to Waggoner's opinions roughly 5% of the time.

After reviewing all of the hearing officers' decisions, Apostol prepares the agenda for the monthly board meeting and the decisions are sent to the Appeal Board for final approval. All of the decisions have to go to the Appeal Board to be made final. The Appeal Board retains authority to make the final decision and reject any of the decisions or change them. Decisions are not distributed to the parties involved in the case until the Appeal Board has signed off on the decision and it has been certified. The Appeal Board accepts the hearing officers' decisions without substantive change roughly 95% of the time. Apostol reports that the rate of acceptance is so high because the hearing officers have already conducted an internal review before the decisions are presented to the Appeal Board. Final decisions of the Appeal Board are subject to review under the provisions of the Administrative Review Law. Where the change in assessed valuation sought is $300,000 or more, review is afforded directly in the Appellate Court.

At each board meeting, the Appeal Board also reviews motions for extensions of time that were granted in each case. The Appeal Board has a policy, which states that if an extension of 90 days or more is granted, the extension must be reviewed by the Appeal Board. Waggoner has given recommendations on whether an extension should be granted, how many days should

be granted, and whether good cause for the extension has been shown. Waggoner gives the recommendation to Apostol, who presents it to the Appeal Board. The Appeal Board has rejected Waggoner's recommendations and also changed the number of days for an extension.

Waggoner attends management team meetings, which include Apostol, Apostol's assistant, the fiscal officer, the clerical lead worker, and the information technology manager. Apostol proposes ideas and also updates the group so everyone is "on the same page" when it comes to processing appeals, hearing appeals, and handling equipment and space needs for the office. The group tries to meet every second and fourth Thursday of the month.

Waggoner's position description includes conferring with the executive director on proposed administrative rule changes. However, Waggoner's involvement in rule-making has been minimal. Only one proposed rule has been submitted since Apostol became the executive director. That rule involved extending the time for boards of review to file evidence with the Appeal Board from 30 days to 90 days. Waggoner was not involved with this proposed rule. In fact, since Apostol became the executive director, Waggoner has not been involved in any proposed rule changes.

Waggoner acts as the chief administrative staff officer in the executive director's absence. Waggoner was the acting executive director during a two-month interim period between the former executive director and Apostol.

Waggoner spends roughly 80-85% of his time conducting hearings and writing decisions. In 2010, Waggoner drafted 1,492 decisions, more than any of the other hearing officers. Waggoner spends the remaining 15-20% of his time in weekly review sessions; handling leave requests, conducting performance evaluations, and attending management

meetings. Waggoner is rarely in the Des Plaines office. Rather, he spends the majority of his time in the Springfield office drafting decisions.

IV. DISCUSSION AND ANALYSIS

Section 3(j) of the Act provides that a managerial employee is an individual who is both (1) engaged predominantly in executive and management functions and (2) charged with the responsibility of directing the effectuation of management policies and practices.[7] State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Human Servs.), 28 PERI ¶126 (IL LRB-SP 2012), citing Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766, 774-75 (4th Dist. 2010); Vill. of Elk Grove Vill. v. Ill. State Labor Relations Bd., 245 Ill. App. 3d 109, 121 (2nd Dist. 1993); City of Evanston v. Ill. State Labor Relations Bd., 227 Ill. App. 3d 955, 974 (1st Dist. 1992). The Board and courts have found that executive and management functions relate to running an agency or department and include activities such as formulating policy, preparing a budget, and assuring efficient and effective operations. Dep't of Cent. Mgmt. Servs./Dep't of Healthcare and Family Servs. v. Ill. Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 330 (4th Dist. 2009); Vill. of Elk Grove Vill., 245 Ill. App. 3d at 121-22 (2nd Dist. 1993); City of Evanston, 227 Ill. App. 3d at 974; Dep't of Human Servs., 28 PERI ¶ 126.

The first part of the test describes the nature of the work to which the individual devotes most of his or her time. Ill. Commerce Comm'n, 406 Ill. App. 3d at 774. The first part of the test can be satisfied even if the employee does not create new policies, as long as he or she helps

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[7] 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.

run the agency. Id. at 778, 780. One way of determining whether an employee helps run the agency is to compare the job functions of the employee to the overall mission of the agency. Id. "If the responsibilities of a job title encompass the agency's entire mission, or a major component of its mission, one might reasonably argue that by fulfilling those responsibilities, an employee helps to run the agency." Id. The first part of the test requires more than exercising professional discretion and technical expertise. Dep't of Cent. Mgmt. Servs./Dep't of 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 effect the organization's purpose or its means of effectuating those purposes. State of Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶161 (IL LRB-SP 2009).

Assuming arguendo that the chief hearing officer's work involving reviewing other hearing officer decisions, administrative rule-making, participation in management team meetings, acting as the chief administrative staff officer in the executive director's absence, and recommending extensions of time constitutes the performance of executive and management functions, the chief hearing officer is not engaged predominantly in those functions as required for exclusion under the Act. State of Ill., Dep't of Cent. Mgmt. Servs., 5 PERI ¶2012 (IL SLRB 1989); Chief Judge of the 18th Circuit, 14 PERI ¶2032 (IL SLRB 1998); State of Ill., Dep't of Cent. Mgmt. Servs., 28 PERI ¶160 (IL LRB-SP 2012). Section 3(j) specifically contains a predominance component, which requires that an employee can only be excluded as a managerial employee if he or she is engaged "predominantly" in executive and management functions. Here, the chief hearing officer's predominant duty is conducting hearings and writing decisions for which he spends roughly 80-85% of his time. Thus, the chief hearing officer is not

predominantly engaged in reviewing other hearing officer decisions, administrative rule-making, participation in management team meetings, acting as the chief administrative staff officer in the executive director's absence, and recommending extensions of time. Therefore, I will only analyze whether the chief hearing officer's work conducting hearings and writing decisions deems him a managerial employee within the meaning of the Act.

The second part of the managerial test requires that the individual's authority extends "beyond the realm of theorizing and into the realm of practice." Ill. Commerce Comm'n, 406 Ill. App. 3d at 774. A managerial employee "not only has the authority to make policy but also bears the responsibility of making that policy happen. Id. at 774-75. The second part of the test is satisfied if the individual oversees or coordinates policy implementation by developing the means and methods of achieving policy objectives, determining the extent to which policy objectives will be achieved, and is empowered with substantial discretion to determine how policies will be effected. Id. at 775, citing Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79, 87 (4th Dist. 1996). However, it is not enough to merely perform "duties essential to the employer's ability to accomplish its mission." Dep't of Cent. Mgmt. Servs./Dep't of Healthcare and Family Servs., 388 Ill. App. 3d at 331. If an individual'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 (2nd Dist. 2000), citing Vill. of Elk Grove Vill., 245 Ill. App. 3d at 121-22. The individual must be empowered with substantial discretion to determine how policies will be effected. Dep't of Cent. Mgmt. Servs./Dep't of Healthcare and Family Servs., 388 Ill. App. 3d at 331, citing Dep't of Cent. Mgmt. Servs., 278 Ill. App. 3d at 87.

In addition, an advisory employee who makes "effective recommendations" may be managerial. Ill. Commerce Comm'n, 406 Ill. App. 3d at 775; Chief Judge of 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. (Ill. Commerce Comm'n), 29 PERI ¶76 (IL LRB-SP 2012). The test is the "effectiveness, power, or influence of the recommendations." Ill. Commerce Comm'n, 406 Ill. App. 3d at 775, citing National Labor Relations Board v. Yeshiva University, 444 U.S. 672, 677 (1980).

In this case, the chief hearing officer is engaged in executive and management functions because he is widely involved in every type of case that come before the Appeal Board and because the decisions in those cases are the main way in which the Appeal Board carries out its statutory duty to enforce the property tax code by hearing real property tax assessment appeals from boards of review in all Illinois counties. The chief hearing officer is widely involved in all matters that come before the Appeal Board because he conducts hearings on behalf of the Board, drafts recommended decisions, and determines the correct assessment of real property throughout the state. The chief hearing officer's recommended decisions provide the main mechanism by which the Appeal Board exercises its duty to review "the decision of a board of review or board of appeals as such decision pertains to the assessment of his or her [taxpayer] property for taxation purposes, or any taxing body that has an interest in the decision of the board of review or board of appeals on an assessment made by any local assessment officer." Illinois Property Tax Code, 35 ILCS 200/16-160 (2010). The chief hearing officer's decisions recommend to the Appeal Board the "correct assessment prior to state equalization of any parcel of real property, which is the subject of an appeal." Practice and Procedure for Appeals before the Property Tax Appeal Board, 86 Ill. Admin. Code § 1910.10(b)(2010). Thus, the chief

hearing officer helps run the agency by playing a key role in helping the Appeal Board accomplish its statutory duty of reviewing property tax assessment appeals from boards of review in all Illinois counties because he is broadly involved in every type of case that comes before the Appeal Board.

The chief hearing officer is predominantly engaged in executive and management functions because he spends roughly 80-85% of his time conducting hearings and writing decisions. Through these duties, the chief hearing officer exercises discretion to widely affect the Appeal Board's goals. It could be argued that the chief hearing officer does not create new policy in each case but only exercises professional judgment by applying the facts to the law in accordance with established Appeal Board policies. However, "it is not absolutely essential that a managerial employee formulate policy," as long as he or she helps run the agency by "directing the effectuation of existing policies." Ill. Commerce Comm'n, 406 Ill. App. 3d at 780. Further, the difference between the chief hearing officer's job and the Appeal Board members' job appears to be "merely formalistic" and the Court has held that "if an ostensibly advisory employee exercises managerial authority through his or her recommendations on major policy issues, which the superiors almost always accept, we will look beyond the formal structure of the employee's participation in the enterprise, i.e., the making of recommendation, and take account of the power that the employee actually wields." Id., at 779. Thus, the chief hearing officer functions as a manager because the vast majority of the time the only practical difference between his work product and that of the members of the Appeal Board is the addition of the words "Final Administrative Decision" to what was the recommendation of the chief hearing officer. Ill. Dep't of Cent. Mgmt. Servs./Ill. Prop. Tax Appeal Bd. v. Ill. Labor Relations Bd.,

State Panel, 27 PERI ¶2 (4th Dist. 2010) (unpub. order); citing Ill. Commerce Comm'n, 406 Ill. App. 3d at 779.

In addition, through conducting hearings and drafting recommended decisions, the chief hearing officer appears to be the "whole game" when it comes to the larger mission of the Appeal Board. The chief hearing officer is the "whole game" because he helps run the agency by hearing and making recommendations on every type of case that comes before the Appeal Board. See Id. at 778; State of Ill., Dep't of Cent. Mgmt. Servs., 28 PERI ¶160; Dep't of Human Servs., 28 PERI ¶126 (administrative law judge in Bureau of Administrative Hearings was not the "whole game" when it came to the larger mission of either the Bureau or the Department of Human Services (DHS) because DHS also employed administrative law judges in the Bureau of Assistant Hearings, who heard other types of appeals); Ill. Commerce Comm'n, 29 PERI ¶76 (administrative law judges at the Illinois Commerce Commission (ICC) were the "whole game" when it came to utility regulation because they made recommendations on every type of case that came before the ICC, and their recommendations formed the starting point, and in many cases, the sole basis, for the ICC's final orders). Here, like the administrative law judges at the ICC, the chief hearing officer makes recommendations on every type of case that comes before the Appeal Board. In addition, his recommended decisions form the starting point, and in many cases, the sole basis for the Appeal Board's final decision. Thus, the procedure by which the chief hearing officer holds hearings and issues recommended decisions, which the Appeal Board adopts almost all of the time, "is the primary means, if not the exclusive means," by which the Appeal Board fulfills its statutory mandate of hearing appeals from the assessment decisions of boards of review and determining the correct assessment. Illinois Property Tax Code, 35 ILCS 200/16-160 (2010); Ill. Commerce Comm'n, 406 Ill. App. 3d at 779. The whole

purpose of the Appeal Board, and its statutory duty, is to hear appeals from the assessment decisions of boards of review. See Illinois Property Tax Code, 35 ILCS 200/16-160 (2010). The chief hearing officer recommends the decisions that the Appeal Board should make on such appeals directly by holding hearings and drafting recommended decisions. In turn, the subject matter of the chief hearing officer's recommendations encompasses the statutory mission of the Appeal Board: determining the correct assessment of real property which is the subject of an appeal. Illinois Property Tax Code, 35 ILCS 200/16-160 (2010); Ill. Commerce Comm'n, 406 Ill. App. 3d at 778, citing Yeshiva, 444 U.S. at 686. Thus, the chief hearing officer is the "whole game" when it comes to the larger mission of the Appeal Board.

The chief hearing officer's decisions constitute effective recommendations because they are almost always accepted by the Appeal Board and because they influence the Appeal Board's final decisions. See Ill. Commerce Comm'n, 29 PERI ¶76. To determine whether recommendations are effective, factors such as the frequency of acceptance and extent or nature of review are considered. Ill. Commerce Comm'n, 406 Ill. App. at 776-77. The record suggests that due to the large caseload, the members of the Appeal Board accept the recommendations of the chief hearing officer almost all of the time. In 2010, the chief hearing officer drafted 1,492 decisions. Apostol testified that the Appeal Board accepts the chief hearing officer's decisions roughly 95% of the time. Thus, the chief hearing officer's decisions are effective by one measure because they are accepted almost all of the time. Ill. Commerce Comm'n, 29 PERI ¶76; Ill. Commerce Comm'n, 406 Ill. App. 3d at 776-77.

In addition, the extent or nature of the review of the chief hearing officer's decisions demonstrates that they are effective. The chief hearing officer's recommended decisions are peer-reviewed by the other hearing officers in the Springfield office for accuracy, consistency,

typographical errors, and for substance. The substantive review consists of making sure the decision conforms to the evidence. However, it is ultimately up to each hearing officer to decide whether or not to incorporate any changes that the other hearing officers have suggested. Thus, the chief hearing officer maintains discretion to accept or reject any changes to his recommended decisions. His decisions are then given to Apostol for review. Apostol reported that he makes substantive changes to the chief hearing officer's decisions roughly 5% of the time. The decisions are then given to the Appeal Board, which accepts the chief hearing officer's decisions roughly 95% of the time. In Department of Human Services, 28 PERI ¶126, the Board found that although the petitioned-for administrative law judge's decisions were very rarely rejected by the Secretary of DHS, they were not indicative of managerial status, regardless of whether they were effective, because between the employee and the Secretary were layers of intermediate supervisors who reviewed the administrative law judge's drafts and could edit and even alter their substance before they reached the Secretary. Thus, the Board found that under these circumstances, the rate of rejection by the Secretary was alone insufficient to establish that the administrative law judge effectively controlled the outcome of her cases. Id. In this case, there are not "layers of intermediate supervisors" who can review and alter the substance of the chief hearing officer's decisions. As previously stated, the chief hearing officer maintains the discretion to decide whether or not to incorporate any suggested changes made by other hearing officers to his recommended decisions. Further, Apostol reports that he tries not to interfere with the chief hearing officer's decisions unless there are mistakes of law in his decisions. Apostol reports that he makes substantive changes to Waggoner's opinions only roughly 5% of the time. Thus, I find Department of Human Services distinguishable from the instant matter.

Again, the evidence suggests that due to the large caseload, the review by the other hearing officers, Apostol, and the Appeal Board is minimal. Thus, the chief hearing officer's decision necessarily influences the Appeal Board decision because its decision appears to be based solely on the chief hearing officer's recommendation. Ill. Commerce Comm'n, 29 PERI ¶76. In sum, the chief hearing officer effectuates Appeal Board policy through his effective recommendations.

V. CONCLUSION OF LAW

The petitioned-for chief hearing officer is a managerial employee within the meaning of Section 3(j) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Public Service Administrator, Option 8L position chief hearing officer currently held by Steven Waggoner is excluded from the RC-10 bargaining unit.

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, 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 21st day of December, 2012.

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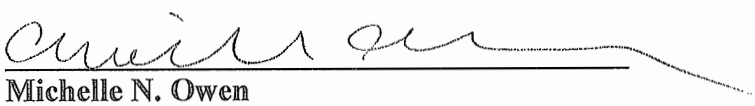

Michelle N. Owen
Administrative Law Judge