

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

Illinois Federation of Public Employees,	)	
Local 4408, IFT-AFT, AFL-CIO,	)	
	)	
Petitioner,	)	
	)	
and	)	Case No. S-RC-09-182
	)	
State of Illinois, Department of Central	)	
Management Services,	)	
	)	
Employer	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On May 29, 2009, the Illinois Federation of Public Employees, Local 4408, IFT-AFT, AFL-CIO (Union or Petitioner) filed a majority interest representation petition with the State Panel of the Illinois Labor Relations Board (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Sections 1200 through 1240 (Rules). The Union seeks to represent five Senior Public Service Administrators (SPSAs) in the working title of Regional Land Manager<sup>1</sup> at the Department of Natural Resources (Employer or DNR) to be included in the existing bargaining unit RC-56.

A hearing was held on September 8, 2010, in Springfield, Illinois, at which time all parties appeared and were given a full opportunity to participate, present evidence,

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<sup>1</sup> In its petition, the Union sought to also represent employees in the title of Assistant Regional Land Manager. However, in its brief, the Union states only that it seeks to represent Regional Land Managers. In its listing of the petitioned-for employees, the Employer included the names of Regional Land Managers but not Assistant Regional Land Managers. On this record, it is unclear why the Union apparently no longer seeks to represent Assistant Regional Land Managers.

examine witnesses, argue orally and file written briefs.<sup>2</sup> After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

The parties stipulate and I find as follows:

1. The State of Illinois, Department of Central Management Services is a public employer within the meaning of Section 3(o) of the Act.
2. The State of Illinois, Department of Central Management Services is subject to the jurisdiction of the Illinois Labor Relations Board's State Panel pursuant to Section 20(b) of the Act.
3. The Illinois Federation of Public Employees, Local 4408, IFT-AFT, AFL-CIO, is a labor organization within the meaning of Section 3(i) of the Act.
4. There is no contract bar in this case.
5. There is no history of collective bargaining with respect to the petitioned-for employees.

**II. ISSUES AND CONTENTIONS**

The issues in this case are whether employees in the title of Regional Land Manager (RLM) are supervisory, managerial or confidential employees within the meaning of the Act. The Employer contends that RLMs are high level administrators who manage day-to-day operations of facilities within the Illinois Department of Natural Resources (DNR). The DNR is divided into five geographic districts. On average, each RLM is responsible for 20 staffed parks and 35 unmanned sites in each region. The

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<sup>2</sup> Administrative Law Judge (ALJ) Martin Kehoe presided over the hearing, and thereafter the case was transferred to ALJ Sylvia Rios for decision and then to the undersigned.

Employer further contends that RLMs plan, direct, coordinate and oversee the operations of multiple land management sites including state parks, recreation areas, forests, and fish and wildlife areas. According to the Employer, RLMs implement agency policy, set region or site policy, control budgets, and are responsible for the annual plans of work. The Employer additionally contends that although RLMs' decisions are subject to review, they operate with considerable independence.

According to the Employer, RLMs assign and direct the work of subordinates; approve and deny requests for time off and for overtime; are responsible for training and for performance evaluations that affect pay, promotion, and continued employment; issue oral and written reprimands and recommend suspensions; and adjust grievances at the first or second level, and are instrumental in deciding who gets laid off. The Employer contends that RLMs formulate budgets, determine composition of the work force, operating hours and services provided. They participate in labor relations and have access to confidential labor information; they conduct labor management meetings, make recommendations to the Employer regarding labor matters, and propose contract provisions.

The Union seeks to include the RLMs in a bargaining unit with their subordinate Site Superintendents, who have been in a bargaining unit since 2006. The Union contends that there are seven levels of staffing at the DNR: Site Superintendent, RLM, division head, land manager, director of parks and recreation, deputy directors, chief of staff and director. The Union contends that RLMs communicate information, but do not make policy. According to the Union, RLMs work collaboratively with Site Superintendents and the amount of time RLMs spend on supervisory duties is minimal,

less than one percent. According to the Union, because the DNR's workforce has been reduced by twenty percent, RLMs perform clerical and office functions performed by bargaining unit members. They also perform the functions of Site Superintendents whose salaries are higher than the salaries of RLMs.

### **III. FINDINGS OF FACT**

The DNR is headed by a Director. Below him in the organization chart is a chief of staff, three deputy directors, an office director and the chief of the Division of Land Management, Tim Hickmann. Hickmann, who has served in that position for 7 ½ years, has been employed at the DNR since 1980.<sup>3</sup> The Office of Land Management is responsible for 500,000 acres owned by the DNR, including 120 manned sites out of a total of 320 different properties.<sup>4</sup> The Office of Land Management is divided into five regions with a Regional Land Manager (RLM) in charge of each region.

Hickmann oversees the five RLMs and is responsible for assuring that the RLMs have the tools and information they need to do their jobs. Consequently, each RLM oversees a number of staffed sites, as well as unstaffed sites, in their region. Thus each RLM oversees numerous Site Superintendents and as many as 35 or 40 sites in their regions. On average, each region has about 20 staffed parks and 35 unmanned facilities. Some RLMs have as many as 25 Site Superintendents reporting to them on a regular basis. Hickmann is in contact with individual RLMs as often as multiple times in one day or sometimes only a couple of times in a week. He communicates with them often by email and he also travels to the various regions.

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<sup>3</sup> Prior to 1995, Hickmann worked for the Abandoned Mine Reclamation Council and Office of Mines and Minerals which became part of DNR in 1995.

<sup>4</sup> The Office of Land Management is not responsible for managing the Office of Resource Conservation Property in Jasper County.

### RLM Subordinates

Employees in the following job titles report to RLMs: assistant RLMs, Site Superintendents, account technicians,<sup>5</sup> administrative assistants and office administrators. Assistant RLMs assist the RLMs and perform duties delegated to them when there are not enough employees to perform necessary office duties.<sup>6</sup> Site Superintendents are responsible for maintenance and upkeep of property and ensure adequate distribution of resources across their region. Site Superintendents are operating, or working, managers. To facilitate the performance of their on-site duties, many Site Superintendents live on-site.

Site Superintendents were certified by the Board in 2006. Site Superintendents I and II may report to Site Superintendent IIIs. Site Superintendents I and II are responsible for smaller sites while Site Superintendent IIIs have more than one site. Presently there are 80 such positions. However, because of the budget, many positions have not been filled. Positions reporting to Site Superintendents include site technicians, security officers, and site assistant superintendents.

### Plan of Work

RLMs coordinate the “plans of work” for the individual sites in their regions. A plan of work is a document stating operation and maintenance requirements, new initiatives and other changes at the site. They are prepared annually in the spring and due by the end of May. The planning process begins at the site level rather than the regional level. At the regional level, RLMs discuss with Site Superintendents the plans

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<sup>5</sup> In the regional offices, account technicians report directly to the office administrator. They process regional funds by the use of vouchers and they have signature authority for the office director. The RLM controls the region’s budget and the account technician is a process agent.

<sup>6</sup> The pay for Site Superintendents ranges from \$55,500 to \$94,000 compared to the salaries for RLMs which range from about \$61,000 to \$74,000.

for their respective sites and coordinate the process. Site Superintendents identify projects they want funded such as new roofs, repairs and maintenance work. District biologists<sup>7</sup> also develop parts of a plan of work. They and the Site Superintendents agree on plans of work, recommend priorities and submit them to the RLM.<sup>8</sup>

The plan of work for a site describes the next fiscal year's operations as to what will be happening at the site. For example, a plan of work will note, that there will be a new trail or additional hunting programs. Each RLM then develops an accompanying memorandum to be sent to the Department's executives at its Springfield office that summarizes and characterizes such plans' changes, new initiatives, and programs that might be controversial.

Hickmann, as chief of the Division of Parks and Recreations, receives the various plans of work. RLMs do not seek his approval in advance for the plans. Prior to receiving such plans, Hickmann does not usually know their contents. However, he might have advance notice of certain contents when there has been an ongoing issue. As a consequence of a plan's recommendation, there might be discussions with individuals from other divisions of the department and Hickmann himself might consult with others to resolve issues involving the plans. However, the plans of work are not routinely changed.

When such plans include issues that are problematic, controversial or a significant change requiring public input, the Governor's Office is informed and there may be

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<sup>7</sup> Regions are subdivided into districts. It is unclear on this record whether District biologists are assigned to such districts.

<sup>8</sup> District biologists are in the same bargaining unit as Site Superintendents.

additional decision making required before proceeding with the plan.<sup>9</sup> Approval of a plan of work does not mean that there are funds to completely implement its recommendations.

### Regional Meetings

RLMs host regional meetings held quarterly or less often. There is no fixed schedule for such meetings. The meetings are informational and instructive and are also attended by Site Superintendents and administrative staff to review directives, budgets, constraints and policy. Jim Modglin, the RLM in Region 1 which is headquartered in Sterling, is responsible for the agenda for such meetings but may ask Hickmann whether there any items that should be added. Also in attendance at such meetings is Michelle Brown, the HR liaison in the Office of Land Management.<sup>10</sup>

The Employer introduced into evidence minutes of such meetings held October 27, 2006, October 24, 2007, November 3, 2009, and March 30, 2010 (Em. Ex. No. 3(a) to (d)). The minutes of the October 2006 meeting included the following agenda items: activity permits, adventure races, group use permits, filming on State property, training, tire collection,<sup>11</sup> progress reports, archery range information, security items, the CMS contract site, mail to Springfield, fiscal year 08 equipment, a fiscal year 07 farm lease equipment request, surplus equipment, campground hosts and volunteer reports, accident follow up procedures, holidays and overtime, plans of work, a visit by Ellen King-Peitzak, budgets, and reports involving specific employees of the DNR. There is no

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<sup>9</sup> RLM Modglin testified that in the last seven years, RLMs had not been involved in a director-level review of plans of work for unresolved issues.

<sup>10</sup> Brown processes personnel transactions and works with seasonal employees.

<sup>11</sup> For example, the minutes indicated that information on tire collection had been submitted to Jeri Knaus in Springfield who notified EPA to schedule pick ups at sites.

evidence that the RLMs who attended the meeting engaged in policy-making regarding agenda items.

The minutes of the October 2007 meeting included reports on the following: deadlines and assignments, disabled hunt opportunities, conservation workers, 104 position descriptions, Site Superintendents' Union, CDL/Pesticide/Timekeeper List, workman compensation forms, service awards, retirements, W-4 cards, hazardous materials signage, farm lease dollars, budgets, weekly reports, breakers, cell phones, furbearer projects, site brochures, the beginning of union contract negotiations, gas tank screens, activity permits, new deer hunting laws,<sup>12</sup> CMS 95 forms, monthly vehicle reports, training, carbon monoxide detectors, new legislative office contacts, volunteers, concessions and miscellaneous matters. There is no evidence in the minutes that RLMs who attended the meeting engaged in policy-making regarding agenda items.

The minutes of the November 2009 meeting included the following agenda items: programmatic timekeeping, vouchers, purchase requests, BETS program, state contracts,<sup>13</sup> small business set asides, holiday time, computer purchases/leases, copiers, CDLs, transfers, training, waste management universal waste disposal program, bird feed, mulch, signs, equipment, segways, calendar orders, safety, safety committee and OSHA inspection, reserves/budgets, weekly reports, plans of work, the field management committee, matters involving specific employees, RTP projects, roads, regional lists, fee increases, evaluations, furlough days, and the updated policy on public office. There is

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<sup>12</sup> For example, the minutes reported that the hours for shotgun deer shooting was one-half hour before sunrise until one half-hour after sunset.

<sup>13</sup> For example, employees were instructed to call a certain person if they did not know how to get to the State Contracts web site.

no evidence that the RLMs who attended that meeting engaged in policy-making regarding agenda items.

The minutes of the March 2010 meeting included the following items on the agenda: conservation workers,<sup>14</sup> training, longevity awards, the budget, equipment including small equipment, CDL, the surplus deficit report, recreational trails program, reserve America, outreach grants, plans of work, campground hosts, LWIA program, holidays, overtime and comp time, evaluations, programmatic, OSHA, safety and the health and safety committee, vendor vehicle reports, internal audits including time sheets and petty cash accounts, the world shooting complex and miscellaneous topics, including the CERP program, the approved burn plan list, program enhancement funds, park road funds, farm lease dollars, heavy equipment crew, voluntary furlough days, Earth Day in the parks, and EAB – Ad rules. There is no evidence that the RLMs who participated in that meeting engaged in policy-making regarding agenda items.

The Employer also introduced into evidence its Exhibit No. 13, which is minutes, dated April 6, 2010, of a conference call that included RLMs and administrative staff, Jeff Oxencis, the fiscal officer, Michelle Brown, the HR liaison, Holly Hollis, who takes notes, and Diane Kitchen. Program managers might also participate in such conference calls although not in this one. The purpose of such meetings are to provide information and/or instructions and to discuss issues with RLMs. Such meetings are chaired by office director Tony Mayville or by Hickmann in Mayville's absence. Agenda items for that April 6, 2010 meeting included the following: interpreters, W & F Funds/Interpreter Equipment, hunting program sites, wildlife, free site hunting permits, windshield cards,

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<sup>14</sup> For example, employees were instructed to be careful and thorough when completing paperwork on conservation workers and submitting it to Springfield.

HazMat training,<sup>15</sup> health/safety manual, missing tenant payment reports, fee breakdown sheet, CW packets, RTP program and LWIA. Anyone who participates may suggest an item for the agenda. Hickmann testified that after the Site Superintendents were included in the bargaining unit, the Employer stopped including them in field management committee meetings because there might be discussion of management and executive issues and confidential matters. According to Hickmann, if RLMs were included in a bargaining unit, the Employer might not want to include them in the monthly conference calls. However, there is no evidence in the exhibit that suggests that RLMs engaged in policy-making during the conference call.

#### Miscellaneous Duties

RLMs submit prioritized lists regarding equipment. Usually, those priorities are not changed.<sup>16</sup> Hickmann helps prepare weekly informational reports for the Governor's Office and RLMS provide information on topical and controversial issues for those reports. RLMs advise Hickmann as to whether there are any union contract issues when collective bargaining negotiations are imminent. The Employer presented no evidence with regard to any specific contract issues presented to Hickmann by RLMs.

#### Budgetary matters

RLMs manage fiscal activities, submit budgets and authorize purchases. Regions are allocated funds from certain line items in the budget. RLMs each have budgets of about \$10 million for their respective regions. A RLM may hold in reserve some money allocated to his region for unanticipated events such as a storm or sewer line break.

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<sup>15</sup> The minutes reported that OSHA regulations require an eight-hour course and a follow-up refresher course.

<sup>16</sup> Kim Clark, the equipment inventory manager, coordinates the disposal of equipment no longer needed.

Modglin recommended a personal vehicle for a newly hired Site Superintendent. Modglin had been asked what sites and what man months will be applied for seasonal conservation workers.<sup>17</sup> Within the allocation he is given, Modglin apportions employees as he sees fit.

At a conference call in August 2010, RLMs were told that before spending any money, they must submit for approval by the DNR director their spending plans by site. Before that change, the fiscal office of land management would send out an allotment to the region consisting of different funding sources. The RLMs would break down the allotments by site as to fixed costs, utilities, garbage, and so forth and each site would get the amount of money necessary based on what had happened historically. Each site would be allocated a fixed amount. Then, the RLM, on his own discretion, would allocate the amount left over for repairs, building issues, supplies, and cleaning materials. The Site Superintendents would then have authority to spend the money. However, the regional office would hold back part of the money for emergencies and unexpected expenses.

#### Farm Lease Dollars

There are agricultural tenants who operate farms on state properties. The revenue from farm tenants is then allocated to regions. The Site Superintendent and the District Biologist coordinate use of the lease money. Previously, after a spending plan was approved and some emergency occurred requiring the expenditure of funds, the spending plan would have to again be approved by the Director. However, now the site budget

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<sup>17</sup> Site Superintendents make recommendations as to whether historical homes should have tenants so as to preserve security at a site.

would have to be submitted to the Department for approval. Site Superintendents, in most cases, handle issues with farm tenants.

#### RLMs' Alleged Supervisory Duties

RLMs directly oversee the work of employees in the following positions: Site Superintendent, Assistant RLM, Office Administrator, and Account Technician. Except for the Site Superintendent, the other positions work in the regional office.

RLMs indicate to their superiors the need to fill vacant positions. RLMs may also recommend applicants for positions. There is no evidence in the record that an applicant recommended by a RLM was, in fact, hired. RLMs are not otherwise involved in the hiring of permanent employees and they do not hire seasonal employees. The Human Resources division of the DNR is responsible for hiring.

Site Superintendents work with volunteers. RLMs recruit the volunteers who work with Site Superintendents on habitat projects, youth hunts, and shooting clinics. Site Superintendents, rather than RLMs, mostly handle agreements with volunteer groups. Site Superintendents and RLMs do not need the approval of higher authorities to utilize volunteers.

RLMs have authority to detail employees and assign overtime in order to cover vacancies. For example, a RLM can detail a Site Superintendent to another site but the RLM may discuss such a decision with his superior before implementing it.<sup>18</sup>

In a memorandum dated February 27, 2008, from Tim Hickmann to all RLMs and Site Superintendents, Hickmann instructed them, in accordance with the new collective bargaining agreement, that payment of all authorized overtime shall be in compensatory

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<sup>18</sup> A RLM might delegate an Assistant RLM to serve as a Site Superintendent when there is a vacancy in such as position.

time, that RLMs had authority to schedule compensatory time and to deny requests for overtime if the employee could not demonstrate that the time could be liquidated by use of compensatory time by the end of the year. According to the memo, RLMs were free to devise their own procedures with respect to the approval of overtime for emergencies but that all overtime work had to be verified on the Department's work hours and pay variance form.

The Employer introduced into evidence a six-page report by Modglin dated March 21, 2008, titled "Position Vacancies and Requested Solutions." There is no record evidence as to whether any of the recommendations were adopted. The Employer also introduced into evidence another report by Modglin dated April 21, 2010, entitled "Conservation Worker Impacts - after July 1, 2010." In the report, Modglin explained the impact to his region if he were unable to hire conservation workers. Ultimately, three-quarters of the money for conservation workers was restored to the budget.

RLMs evaluate subordinates. Assistant RLM Doug Farster has assisted Modglin in completing evaluations. Evaluations of employees other than Site Superintendents take up 10 to 15 percent of Modglin's time. Hickmann and Tony Mayville initial evaluations after the RLMs and employees have signed them. Hickmann does not change evaluations or discuss them beforehand. However, he might ask a RLM to include a new objective in an evaluation. A RLM may develop objectives for a Site Superintendent, but a Site Superintendent could develop his own objectives. RLMs complete performance reviews for probationary Site Superintendents as well as Site Superintendents. An unsatisfactory evaluation could result in the termination of a probationary employee. The

Employer presented no evidence of a RLM making an unsatisfactory evaluation of a probationary employee that resulted in the employee's termination.

RLM Capel testified at the hearing in this case that he evaluates the two individuals who work in the regional office who are in an AFSCME bargaining unit. Evaluations do not affect the wages of those individuals. However, Capel testified that evaluations present opportunities to communicate and discuss expectations and issues.

RLMs approve overtime based on whether funds are available and overtime is needed.<sup>19</sup> Site Superintendents may approve overtime during the fall due to staff shortages rather than due to emergencies. RLMs and Site Superintendents have to be careful about the amount of overtime they authorize. RLMs check with Hickmann who in turn checks with either his superior or with Jeff Oxencis in the budget office to determine whether there is overtime money available. The superior considers whether funds are available and whether overtime is needed. The determination is first program driven and then budget driven.

RLM Modglin testified that overtime has been reduced in his region, Region 1, but there is no cash overtime for emergencies. Seven or eight years ago, the allotment for overtime to be used at the RLM's discretion was eliminated. RLM Modglin has asked Site Superintendents to inform him of their overtime needs. Modglin then compiles that information and submits it to the Department's Springfield office.

RLMs approve leave for their subordinates. In approving leave, RLMs consider operational needs. The Employer presented no specific evidence of the factors a RLM

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<sup>19</sup> The Employer introduced into evidence a memo from Hickmann to RLMs and Site Superintendents dated February 17, 2008, stating that all authorized overtime must be compensatory time and setting forth other requirements as to overtime.

considers in deciding whether to approve requests for leave. Site Superintendents are required to take eight furlough days subject to the approval of the RLM.

RLMs can issue an oral reprimand and refer employees for more severe discipline. RLM Modglin has talked to Hickmann prior to issuing a reprimand. The Employer introduced into evidence its Exhibit No. 7 which consists of two oral reprimands issued by Modglin, one on January 9, 2009, and the other on February 3, 2009. There is no evidence in the record as to the particular circumstances giving rise to these reprimands.

The Employer introduced into evidence Exhibits 15(a) and (b). The parties stipulated that if Michelle Cusumano were called to testify that she would state that the exhibit is a printout of data regarding discipline issued under RLMs Modglin and Capel during their tenures. Exhibit 15(a) lists 19 disciplinary actions under Jim Capel as occurring between August 1995 and December 2009: 6 oral reprimands, 3 written reprimands, three one-day suspensions, two three-day suspensions, one five day suspension, one 30-day suspension, and three instances of no discipline: Exhibit 15(b) lists 13 disciplinary actions as occurring between January 1998 and February 2009 under Modglin: three oral reprimands, two written reprimands, two three-day suspensions, one five day suspension, one seven-day suspension and one suspension pending, and three instances of no discipline. The persons disciplined included employees in the following job titles: Site Superintendent, natural resource specialist, ranger, public service administrator, site technician, account technician, account clerk, office coordinator and office associate. The exhibits do not indicate and there is no record evidence as to who

initiated the discipline, what the initial recommended discipline, if any, was, and whether the recommendation was followed.

RLMs hear grievances from Site Superintendents at the first step of the grievance procedure. RLM Modglin has resolved some grievances at that level. He does not have final authority to decide grievances and he requests prior approval for such decisions. Modglin has also consulted with Hickmann about grievances. Hickmann handles grievances at the second step. However, Modglin was also involved in a grievance concerning an employee, Larry Roagy, at the second step. .

In the last four years, RLM Capel has handled only one or two grievances. The grievances were not resolved at the first step and, therefore, there is no record evidence that Capel can resolve grievances. Capel estimated that the amount of time spent on grievances is less than one percent. Modglin corroborated Capel's testimony regarding the grievance process.

In 2004, Hickmann asked Modglin for input on the possibility of layoffs. Modglin made certain recommendations as to layoffs but they were not all adopted. I am unable to determine on this record how many such recommendations in that 2004 report were accepted.

Capel summarized his duties with respect to the communication of departmental policies and directives as follows:

I basically see my function as I receive information from Springfield or requests for information from Springfield. I disseminate it, collect it, and send it back up to Springfield and it works both in collecting material and distributing material or reports or whatever data they're looking for.

To understand the RLMs' duties, it is also necessary to understand the duties of their immediate subordinates, Site Superintendents.

### Site Superintendents' Duties

Randy Hawkins,<sup>20</sup> a Site Superintendent at Spittler Woods State Natural Area in Zion, Illinois, which is in Region 3, described the bargaining unit of Site Superintendents at the hearing in this case. In addition to Site Superintendents, I to III, other job titles in the unit are Natural Resource Manager III,<sup>21</sup> who have statewide responsibilities; Conservation Resource Manager II, who have regional responsibilities; and District Biologists who report to Conservation Resource Manager IIs..

Hawkins does not need prior authorization for day-to-day functions such as making routine purchasing, performing maintenance duties, and making reservations. For other functions, Hawkins requests prior approval. Hawkins attends regional meetings at least three times a year. Site Superintendents are asked to suggest agenda items for such meetings and those suggestions are accepted. When there have been major problems in his region, Hawkins' RLM, Capel, has informed Hawkins he would get back to him. Hawkins has interpreted that response to mean that Capel consults his superiors before deciding such matters. As RLM, Capel informs Hawkins of new policies. From time to time, Hawkins provides input to his superiors on matters such as staffing requests, program changes and requests for equipment.

At Hawkins's site, there are no overtime opportunities for AFSCME-represented employees. Occasionally, because of an emergency, there is overtime for non AFSCME-represented employees. In such cases, Hawkins may make the overtime request after the

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<sup>20</sup> Hawkins has been a Site Superintendent for ten years. and is vice president of the Illinois Federation of Public Employees for RC-56. He has been a union officer for about 10 years.

<sup>21</sup> The salaries for Natural Resource Managers I, II and III range from \$58,632 to \$97, 476.

fact. He has also requested compensatory time when he was short staffed. At Hawkins' site, it has been almost ten years since there has been monetary overtime,

A Site Superintendent may perform hands-on duties such as mowing the grass. RLMs do not perform such hands-on duties.

#### RLM Jim Capel

Jim Capel has been a RLM for Region 3 for 15 ½ years. Region 3 is a 16 county area in east central Illinois. There are 12 Site Superintendents subordinate to him. From December 2005 to December 2009, Capel performed as Clinton Lake State Recreation Area Site Superintendent. Those duties took up 15 to 20 percent of his time. During his tenure, the number of manned sites has remained the same but there has been an increase in the satellite and habitat areas. There has also been a reduction in staff at the regional office level. Unfilled positions include Public Service Administrator, Student Intern, Office Administrator II, Office Associate, Account Clerk II and Administrative Assistant II. The only remaining regional staff are the assistant RLM, an AA II and an Account Technician I.

In Capel's office, three employees work nine days during a two week period. At times, Capel is alone and has to answer the phones, wait on customers, sell licenses, fill out boat registrations, provide information and hand out brochures. This accounts for about 15 percent of his time. In Capel's office, Debbie Combs, the Assistant RLM, tracks the budget, is responsible for bulk orders, contracts, vouchers and timekeeping and substitutes for Capel.

Capel estimated the amount of time he spends on various tasks as follows. He receives, transmits and disseminates information to and from Springfield about 30

percent of his time. He communicates with Site Superintendents by phone, email, fax and U.S. mail. He spends another 15 percent of his time receiving, organizing and sending out information he receives just from Site Superintendents. He spends about two weeks a year on evaluations of Site Superintendents, 5 to 10 percent of his time.

Capel tries to visit each site three times a year but has not done so lately because of the lack of staff in the regional office. When he visits a site, he delivers items such as computers and magazines and talks to the Site Superintendent about issues or problems.

RLM Jim Modglin

Modglin has been a RLM for 14 years in Region I, which is comprised of 25 counties in northwest Illinois. Within his region, there are positions that have not been filled. For example, the Site Technician II position has never been filled during his tenure; the Office Associate position has been vacant for five years and the Student Worker was filled for the first time in 2009. The Apple River Canyon Site Superintendent position has been vacant since Sept. 2009. Modglin spends 10 to 15 percent of his time as its Site Superintendent. Additionally he spends 2 or 3 percent of his time serving as the Site Superintendent at Lowden State Park, White Pines Forest State Park, and an additional two or three percent of his time at Green River State Wildlife Area.

The Employer submitted certain exhibits that were memos involving Modglin and others. On or about August 24, 2010, Modglin asked permission from Hickmann to assign a personal vehicle for a newly hired Site Superintendent. In a memo dated July 8, 2019, Modglin agreed to a Site Superintendent's recommendation regarding the renewal of a lease of a historical home to a tenant to preserve security at that site. In a memo

dated March 13, 2010, Modglin made comments on the agenda for an upcoming meeting. In a memo dated February 9, 2009, to Modglin, Michele Brown informed him of “man month” allocations by funding source for Region 1. Brown sent Modglin another memo on that issue on August 5, 2010. Modglin was asked what sites and what man months would be applied for seasonal conservation workers. Within the allocation he is given, Modglin apportions employees as he sees fit. In a memo from Modglin to Brown and Tony Mayville dated July 9, 2010, Modglin informed them that he would need an emergency Site Technician to substitute for an employee who would be having surgery. Modglin made a request for an emergency site technician at another site in a memo dated May 5, 2010.

About 10 or 11 years ago, Modglin did an intense investigation of a Site Superintendent. Modglin made a recommendation that the Site Superintendent be demoted to the to office director. The recommendation was rejected.

Modglin spends the month of May doing evaluations which accounts for about 40 percent of his time, I infer, during that month.

#### **IV. DISCUSSION AND ANALYSIS**

The Employer contends that RLMs are supervisory, managerial and confidential employees within the meaning of the Act. Section 3(r) of the Act establishes the requirements for a supervisor.<sup>22</sup> The alleged supervisor must (1) have principal work

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<sup>22</sup> Section 3(r) of the Act defines a supervisor as 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

substantially different from that of his subordinates; (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act along with the consistent exercise of independent judgment in exercising such authority and; (3) spend a preponderance of employment time engaged in supervisory duties. Northwest Mosquito Abatement District, 13 PERI ¶2042 (IL SLRB 1997), aff'd, 303 Ill. App. 3d 735, 708 N.E. 2d 548, 15 PERI ¶4007 at XII-29 (1<sup>st</sup> Dist. 1999); Village of Wheeling, 3 PERI ¶2005 (IL SLRB 1986), aff'd sub nom, City of Freeport v. ISLRB, 135 Ill. 2d 499, 554 N.E. 2d 155, 6 PERI ¶4019 (1990). Only when each of these elements of the supervisory test are met will an employee be deemed a supervisor and excluded from membership in a bargaining unit. Village of Wheeling, 6 PERI ¶4019 at XII-88.

#### Principal Work Requirement

In determining whether the principal work requirement has been met, the initial consideration is whether the work of the alleged supervisor and that of his subordinates is obviously and visibly different. City of Freeport v. ISLRB, 554 N.E. 2d 155, 6 PERI ¶4019, at XII-87; Northwest Mosquito Abatement District, 13 PERI ¶2042, at X-250. In its brief, the Union did not address the issue of whether the principal work of the RLMs is different from that of his subordinates. The Employer asserts that RLMs and their subordinates have no overlapping duties and in no way perform the same or similar work.

The record evidence establishes that RLMs are responsible for their regions and directly oversee the work of Site Superintendents who are responsible only for the sites assigned to them. Site Superintendents are operating, or working, managers responsible

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individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.

for the day-to day maintenance and upkeep of property and the adequate distribution of resources. Many Site Superintendents live on site. Employees who directly report to the RLM in the regional office include employees in the job titles of Assistant RLM, Administrative Assistant II, Account Technician and Office Administrator. The Assistant RLM tracks the budget, is responsible for bulk orders, contracts, vouchers and timekeeping and substitutes for the RLM. Office Administrators and Administrative Assistants provide high level clerical support and may compile information, for example, information submitted by Site Superintendents. Account Technicians process vouchers and make accounting entries so that spending is signed off on and approved.

In light of the fact that RLMs have overall responsible for their regions and oversee the work of employees in their regional offices as well as oversee the Site Superintendents who have day to day responsibilities for their sites, I find that the work of the RLMs is substantially different from that of their subordinates.

#### Indicia of Supervisory Authority

The Employer contends that RLMs exercise the following indicia of supervisory authority: direction, discipline and the adjustment of grievances. The Employer argues that RLMs direct subordinates by evaluating employee performances and drafting objectives for them, by assigning them duties, by reviewing and monitoring work, and by approving or denying time off requests, by approving overtime, and by detailing Site Superintendents to other sites. According to the Employer, RLMs' evaluations of probationary employees affect terms and condition of employment in that they can prevent an employee from being certified or else result in termination. Also, the Employer asserts that a contractual pay increase may be withheld if the employee's

performance is not satisfactory. The Employer further argues in support of its contention that RLMs are supervisors that RLMs are responsible for the plans of work, that their conduct of quarterly regional meetings provides training and awareness to subordinates, and that they control the meeting agenda, determine equipment and budget priorities, and determine hiring needs for the region including the number of seasonal workers needed. Finally, the Employer urges that RLMs are authorized to utilize volunteers, decisions not subject to review.

#### Authority to Direct

The supervisory authority to direct employees encompasses several distinct yet related functions including reviewing and monitoring work activities, scheduling work hours, approving time off and overtime, assigning duties, instructing them on how their work is to be performed and formally evaluating work performance when the evaluation is used to affect the employees' pay or employment status. County of Lake, 16 PERI ¶2036, at X-158 (IL SLRB-SP 2000); City of Naperville, 8 PERI ¶2016, at X-105 (IL SLRB 1992); County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶3022, at XI-130 (IL LLRB 1999), aff'd by unpub. order, 16 PERI ¶4004 (1999).

Only employees who possess the authority to make decisions affecting their subordinates' employment in areas that are typically within the scope of union representation will potentially be deemed supervisors. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 554 N.E. 2d 155, 6 PERI ¶4019, at XII-85 (1990), County of Lake, 16 PERI ¶2036, at X-159 (IL SLRB-SP 2000).

Thus, for the RLMs' oversight and review of their subordinates to constitute the statutory authority to direct, they must be responsible not only for their subordinates'

work but must also oversee them in a manner that involves more than mere observation and monitoring and responsibility for a shift. They must be actively involved in checking, correcting and giving instructions to subordinates, without guidelines or review by others. County of Lake, 16 PERI ¶2036, at X-158 (IL SLRB-SP 2000); City of Chicago, 10 PERI ¶3017 (IL LLRB 1994).

### Evaluations

The record evidence in this case establishes that RLMs evaluate the clerical support personnel in their own regional offices as well as the Site Superintendents and probationary Site Superintendents in their regions. An RLM may develop objectives for a Site Superintendent, but a Site Superintendent could develop his own objectives. Modglin estimated that evaluations of employees other than Site Superintendents account for 10 to 15 percent of his time. Capel estimated that he spends about two weeks a year on evaluations of Site Superintendents, 5 to 10 percent of his time.

Hickmann and Tony Mayville initial such evaluations after the RLMs and employees have signed them. Hickmann does not change evaluations or discuss them beforehand, although, he might ask an RLM to include a new objective in an evaluation. An unsatisfactory evaluation could result in the termination of a probationary employee but there is no evidence in the record that that has ever occurred. Capel evaluates the two individuals who work in the regional office who are in the AFSCME bargaining unit but those evaluations do not affect their wages.

There is testimony in the record that RLMs' evaluations of probationary employees affect terms and condition of employment in that they can prevent an employee from being certified and can result in termination. Also a contractual increase

may be withheld if the employee's performance is not satisfactory. However, there is no evidence that either of those consequences has ever occurred. Even though the evaluation of a subordinate involves the use of independent judgment in assessing the subordinate's competence, in the absence of any evidence that an RLM's evaluation of a subordinate has ever affected any subordinate's terms and conditions of employment, I find that an RLM's evaluation of a subordinate does not itself constitute direction within the meaning of the Act or establish the requisite control over an employee's terms and conditions of employment such that instructions contained in an evaluation constitute direction within the meaning of the Act.

#### Assignment of Duties

With respect to the assignment of duties, the record evidence reveals that RLMs delegate to Assistant RLMs certain duties when there is not enough staff to perform those duties. Thus, the assignment of such duties to Assistant RLMs appears to be routine and not an exercise of independent judgment. Also, employees at regional offices who are subordinates of RLMs have continuing assigned duties that arise from their positions. For example, the Assistant RLM in Capel's office tracks the budget and is responsible for bulk orders, contracts, vouchers and timekeeping. Therefore, RLMs do not consistently assign duties.

RLMS do not tell Site Superintendents what to do on a daily basis. Site Superintendents are responsible for the day-to-day operations of their sites and do not need prior authorization for day-to-day functions such as purchasing, maintenance and reservations. A RLM may detail a Site Superintendent to a site for which there is a vacancy in that position but the RLM would discuss that matter with his superior before

implementing it. I infer that the RLM seeks the approval of his superior before detailing a Site Superintendent to a vacant site. The Employer did not introduce into evidence any factors that the RLMS consider in making assignments. Thus, on this record, it does not appear that RLMs consistently exercise independent judgment in making assignments. I conclude that assigning duties to RLMs' subordinates is routine and not an exercise of independent judgment.

#### Approval of Leave, Overtime

The record evidence reveals that RLMs have authority to schedule compensatory time for authorized overtime and to deny requests for overtime if the employee could not demonstrate that the compensatory time could not be used by the end of the year. RLMs approve overtime based on whether funds are available and overtime is needed. RLMs have authority to create their own procedures regarding the approval of overtime for emergencies. All overtime work has to be verified on the departmental work hours and pay variance form. RLMs as well as Site Superintendents have to be careful about the amount of overtime they authorize. RLMs check with Hickmann who in turn checks with either his supervisor or with Jeff Oxencis in the budget office to see if there is overtime money available.

RLM Modglin testified that overtime has been reduced in his region and that there is no cash overtime for emergencies. Seven or eight years before he testified, the allotment for overtime to be used at the RLM's discretion was eliminated. Modglin has asked Site Superintendents to inform him of their overtime needs. Modglin then compiles that information and submits it to the Department's Springfield office. Because of the Department's scrutiny of the use of overtime, I do not find that RLMs consistently

exercise independent judgment in approving or denying requests for overtime. Rather, RLMs rely on their superiors to approve those requests before they (RLMs) convey their own approval to their subordinates.

In support of its contention that RLMs are supervisors, the Employer argues that RLMS are authorized to utilize volunteers and that those decisions are not subject to review. However, in light of the fact that volunteers are not public employees, I do not consider that any authority RLMs have over volunteers could constitute the supervisory authority to direct. Further, I note that Site Superintendents directly work with volunteers and mostly handle agreements with volunteer groups. RLMs merely recruit volunteers.

#### Discipline

The record evidence establishes the following with respect to the RLMs' exercise of disciplinary authority. RLMs can issue oral reprimands and refer employees for more severe discipline. RLM Modglin talked to Hickmann prior to issuing such an oral reprimand. In 2009, Modglin issued two oral reprimands which were memorialized, one on January 9, 2009 and the other on February 3, 2009. There is also an exhibit that is a printout of data regarding discipline issued under RLMs Modglin and Capel during their tenures. However, there is no indication on the exhibit as to who initiated the discipline and whether the discipline imposed was the discipline recommended. Finally, Modglin testified that about 10 or 11 years ago, he did an intense investigation of a Site Superintendent and recommended a demotion to the office director. The recommendation was rejected. Although, I find that RLMs issue oral reprimands, I cannot determine that RLMs effectively recommend such discipline, in the absence of information as to whether the RLMs' recommendations were followed. Further, there is

testimony as to one of the RLMs that his particular recommendation was not followed. I find that RLMs do not effectively recommend discipline.

#### Detailing of Site Superintendents

RLMs have authority to detail Site Superintendents to sites where there is a vacancy in the Site Superintendent position. However, the RLM may discuss such a decision with his superior before implementing it. There is no evidence in the record as to what factors the RLM considers in determining whether to detail a Site Superintendent to a vacant position or even how frequently that occurs. On this record, I do not find that Site Superintendents exercise independent judgment in detailing Site Superintendents to vacant positions.

#### Preponderance Requirement

The fourth prong of the supervisory test requires that the alleged supervisors devote a preponderance of their employment time to exercising supervisory authority. In City of Freeport, 554 N.E. 2d at 171, the Illinois Supreme Court interpreted the preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions, that is, the employee must spend more time on supervisory functions than on any one non-supervisory function. State of Illinois Department of Central Management Services (Department of Corrections and Illinois State Labor Relations Board), 278 Ill. App. 3d 79, 662 N.E. 2<sup>nd</sup> 131, 123 (1996), citing City of Freeport, 554 N.E. 2d at 171. Since the City of Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued two different interpretations of how to analyze the preponderance standard. The first interpretation defined preponderance as requiring that the employee spend a majority, or more than 50

per cent of his time engaged in supervisory activity. State of Illinois Department of Central Management Service (Department of Children and Family Services) v. Illinois State Labor Relations Board, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 245 (4<sup>th</sup> Dist. 1993). The second interpretation of preponderance considers whether the supervisory functions are more significant than the non-supervisory functions. State of Illinois Department of Central Management Services (Department of Corrections) v. Illinois State Labor Relations Board, 278 Ill App. 3d 79, 663 N.E. 2d 131, 136, ( 4<sup>th</sup> Dist. 1996).

In a recent decision, the Board relied on the second interpretation in determining that an alleged supervisory spent more time on supervisory tasks than on any one non-supervisory task. American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services (Department of Human Services, S-RC-10-176, at p. 12 (June 2011).

With respect to the amount of time RLMs devote to supervisory tasks, the record evidence establishes the following: Capel estimated that he spent less than one percent of his time handling grievances. Over a four-year period, Capel handled only one or two grievances. Capel estimated that when he performed duties for a vacant Site Superintendent position, they took up 15 to 20 percent of his time. At times, Capel is the only employee in his office, as there are only two other employees. They all work nine days during a two week period. Capel estimated that 15 percent of his time was spent answering phones, waiting on customers, selling licensees, filling out boat registrations, providing information and handing out brochures. Capel estimated he spent as much as 30 percent of his time receiving, transmitting and disseminating information to and from the Department's Springfield office. He spends another 15 percent of his time receiving,

organizing and sending out information to Site Superintendents. He spends between 5 and 10 percent of his time on evaluations.

Modglin estimated that he spends 10 to 15 percent of his time substituting as a Site Superintendent and additional 2 or 3 percent of his time as the Site Superintendent for two other sites and another two or three percent at a third site. Thus, Modglin spends approximately 20 percent of his time functioning as a Site Superintendent.

From the testimony of Capel and Modglin, I conclude that Capel spends as much as 45 percent of his time transmitting or receiving information and fifteen percent of his time performing the work of bargaining unit employees. Thus, Capel spends the majority of his time performing non supervisory tasks. Modglin spends one fifth of his time performing the work of Site Superintendents. Inasmuch as the parties stipulated that Modglin's and Capel's testimony would be similar, I also conclude that Modglin spends a majority of his time in non-supervisory tasks. I conclude that RLMs do not spend a preponderance of their time exercising supervisory authority. I also conclude that the Employer has not met its burden in establishing the four prongs of the definition of a supervisor.

#### Confidential Issue

The Employer argues that RLMs should be excluded from any bargaining unit as a confidential employee because they meet the labor-nexus and authorized access tests. The Employer contends that RLMs are responsible for labor/management relations; that they solicit suggestions from subordinates for proposed changes for upcoming collective bargaining negotiations; and they determine who will be subject to layoff; and that

certain meetings would not occur if RLMs were included in a bargaining unit with subordinates.

The Act defines a confidential employee as 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. The Act thus sets forth two specific tests for determining an employee's confidential status pursuant to this section: the labor-nexus test and the authorized access test.

An individual satisfies the labor nexus test if, in the regular course of his or her duties, he or she acts in a confidential capacity to a person who formulates, determines and effectuates management policies regarding labor relations. The person being assisted by the alleged confidential employee must perform all three functions evidenced by whether the individual has primary responsibility for labor relations matters, makes recommendations with respect to collective bargaining policy and strategy, drafts management proposals and counterproposals, evaluates proposals and participates in collective bargaining negotiations. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 9 PERI ¶ 4004, at XII-15 (Sup. Ct. 1992).

Under the authorized access test, an employee will be deemed a confidential employee if, he or she has authorized access to information concerning sensitive matters arising from the collective bargaining process, such as information concerning the employer's strategy in dealing with an organizational campaign, actual collective

bargaining proposals and information relating to matters dealing with contract administration. County of DeKalb, 4 PERI ¶2029, at XII-187 (IL SLRB 1988). However, mere access to personnel files, “confidential information” concerning general workings of a department or to personnel or statistical information upon which an employer’s labor relations policy is based is insufficient to confer confidential status. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 9 PERI ¶4004. At XII-15, 16 (Sup. Ct. 1992).

The record evidence as to the alleged confidential duties of RLMs is as follows: Hickmann testified that after the Site Superintendents were included in the bargaining unit, the Employer stopped including Site Superintendents in field management committee meetings because there might be discussion of management and executive issues and confidential matters. RLMs advise Hickmann as to whether there are any union contract issues when collective bargaining negotiations are imminent. Modglin wrote a report on “Position Vacancies and Requested Solutions.” However, there is no record evidence as to whether any of the recommendations in that report were adopted. In another report by Modglin entitled “Conservation Worker Impacts - after July 1, 2010,” Mdoglin explained the impact to his region if he were unable to hire conservation workers. Ultimately, three-quarters of the money for conservation workers was restored to the budget. The RLM hears grievances at the first step, but in the last four years, Capel has handled only one or two grievances. He did not resolve those grievances. RLMs were asked to make reports on the impact of layoffs and Modglin made

recommendations as to the impact of layoffs. However, not all of his recommendations were adopted.

Although Hickmann testified at the hearing in this case, he did not describe any duties he himself has with respect to labor relations matters. Hickmann testified at hearing that RLMs perform personnel and labor management functions, but he did not describe those functions. For that reason, I cannot conclude that RLMs act in a confidential capacity toward Hickmann with respect to labor relations matters. Although there are exhibits in which Modglin explained the impact of layoffs on his region, the report appeared to be an extraordinary request rather than a task he performed in the regular course of his duties. The Employer made no showing that the information presented in the report was information not known to the Union. Also there is no evidence that RLMs have access to information regarding labor relations matters either under the labor nexus or authorized access tests. For these reasons, I conclude that RLMs are not confidential employees.

#### Managerial Issue

An individual is considered a managerial employee under Section 3(j) of the Act if he is both engaged predominantly in executive and management functions and directs the effectuation of such management policies and procedures. Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill App. 3d 109, 613 N.E. 2d 311, 319, 320 (1993); Chicago Housing Authority, 11 PERI ¶3027, at XI-124 (IL LLRB 1995). With respect to the first part of the test, the Act does not define executive and management functions but the Board and the Illinois Appellate Court have held that those functions specifically relate to the running of an agency or department including

developing policies and procedures, preparing the budget and assuring the efficient and effective operation of the agency or department. City of Evanston v. Illinois State Labor Relations Board, 227 Ill. App. 3d 955, 592 N.E. 2d 415, 428 (1992); Chicago Housing Authority, 11 PERI ¶3027, at XI-124.. Moreover, an advisory or subordinate role in developing policy or procedure is not an indication of managerial authority. City of Evanston, 592 N.E. 2d at 428. Neither is the mere exercise of professional discretion or technical expertise sufficient to render an individual a managerial employee. Rather, “an individual must possess and exercise authority and discretion sufficiently to broadly affect a department’s goals or means of achieving its goals.” City of Evanston, supra, 592 N.E. 2d at 428.

With regard to the second part of the managerial employee test, the Act requires that an individual have substantial discretion in developing the methods, means and extent of reaching a policy objective and have the authority to oversee and direct the same by line supervisors. Village of Elk Grove Village v. Illinois State Labor Relations Board, 613 N.E. 2d at 320; Chicago Housing Authority, 11 PERI ¶3027, at XI-124.

In this case, the Employer argues that RLMs are managers because they have certain responsibilities with respect to the plans of work, an allegedly managerial task; they determine priorities for the regional budgets, recommending cuts and allocating funds and staff and they address issues of staff reductions.

#### Plans of Work

The Employer contends that the RLMs’ involvement in the plans of work amount to an exercise managerial authority. The record evidence establishes that RLMs coordinate the “plans of work” for their regions. The plans state operation and

maintenance requirements, new initiatives and other changes at each site for the next fiscal year with the planning process beginning at the site level rather than the regional level. Site Superintendents and District Biologists identify projects they want funded such as new roofs, repairs and maintenance work. RLMs discuss with Site Superintendents the plans for their respective sites. Each RLM then drafts a memorandum that is sent to the Department's executives at its Springfield office that summarizes and characterizes changes, new initiatives, and programs that might be controversial.

The chief of the Division of Parks and Recreation receives the plans of work but RLMs do not seek his approval in advance. Prior to receiving such plans, the chief does not usually know their contents. However, he might have advance notice of certain contents when there has been an ongoing issue. As a consequence of a plan's recommendation, there might be discussions with individuals from other divisions of the department and the chief himself might consult with others to resolve issues involving the plans. The plans of work are not routinely changed. When plans include issues that are problematic, controversial or constitute a significant change requiring public input, the Governor's Office is informed and there may be additional decision-making required before proceeding with the plan.

In my opinion, the RLMs' oversight of the plans of work do not render them managers within the meaning of the Act, because their input is too limited. The Site Superintendents compose the plans of work. The Site Superintendents are at their sites and have first-hand knowledge of what needs to be done at those sites. Although they discuss their plans for their sites with their RLMs, there was no indication in the

testimony that the RLMs tell them what to put into the plans of work or otherwise approve such plans. RLMs merely collate and forward them up the chain of command. Further, the testimony with respect to plans of work indicates that when there are problematic issues within a plan of work, those issues are discussed at the highest levels of management. For these reasons, I conclude that the RLMs' participation in the plans of work is collegial or collaborative rather than managerial.

#### Budget Responsibilities

The record evidence establishes that RLMs each have budgets of about \$10 million for their respective regions. A RLM may hold in reserve some money allocated to his region for unanticipated events. RLM Modglin recommended a personal vehicle for a newly hired site superintendent. Modglin also made recommendations as to what sites and what man months would be applied for seasonal conservation workers. Within the allocation he is given, a RLM apportions employees as he sees fit. However, in August 2010, RLMs were told that before spending any money, they must submit for approval by the director their spending plans by site. Before that change, the fiscal office of land management would send out an allotment to the region consisting of different funding sources. The RLMs would break down the allotments by site as to fixed costs, utilities, garbage, and so forth. Each site would ultimately receive the amount of money necessary based on what had happened historically. Then, the RLM at his own discretion would allocate the amount left over for repairs, building issues, supplies, and cleaning materials but would hold back part of the money for emergencies and unexpected expenses.

In my opinion, the RLMs satisfy the definition of a managerial employee in that they are responsible for budgeting in their regions. Those regional budgets amount to approximately ten million dollars per region. I conclude that RLMs are managerial employees within the meaning of the Act.

**V. CONCLUSIONS OF LAW**

Regional Land Managers are not supervisory employees within the meaning of the Act.

Regional Land Managers are not confidential employees within the meaning of the Act.

Regional Land Managers are managerial employees within the meaning of the Act.

**VI. RECOMMENDED ORDER**

I recommend that this petition be dismissed.

**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 Recommended Decision and Order. 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 Board's General Counsel, 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 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 26<sup>th</sup> day of August 2011**

**ILLINOIS LABOR RELATIONS BOARD**

**STATE PANEL**

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**Sharon B. Wells, Administrative Law Judge**