

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

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

Petitioner

and

State of Illinois, Department of Central
Management Services,

Employer

Case No. S-RC-10-052

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On August 9, 2010, the State Panel of the Illinois Labor Relations (Board) issued a Decision and Order in the above-captioned case, adopting the Administrative Law Judge’s (ALJ) recommendation that the State of Illinois, Department of Central Management Services (Employer or CMS) had failed to raise an issue of fact or law warranting a hearing regarding four employees in the title of Public Service Administrator, Option 8L.¹ The Board adopted the ALJ’s recommendation that four of the petitioned-for employees were not managers or confidential employees, but public employees within the meaning of the Illinois Public Labor Relations Act, 5 ILCS (2010) as amended (Act), and should be added to the existing RC-10 collective bargaining unit (Unit) represented by American Federation of State, County and Municipal Employees, Council 31 (AFSCME). However, the Board found that the Employer had raised an issue of fact or law warranting a hearing with respect to whether one of the petitioned-for employees, Erin Davis, is a confidential employee within the meaning of the Act.

¹ State of Illinois, Department of Central Management Services, 26 PERI ¶83 (IL LRB-SP 2010).

A hearing was held on February 8, 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 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 Section 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. ISSUES AND CONTENTIONS

The issue in this case is whether the petitioned-for employee, Public Service Administrator, Option 8L, Erin Davis, is a confidential employee within the meaning of Section 3(c) of the Act. The Employer contends that the petitioned-for employee is a confidential employee and cannot be included in the Unit. AFSCME asserts that the petitioned-for employee is, instead, a public employee as defined by the Act, and accordingly, should be included in the Unit.

III. FINDINGS OF FACT

The petitioned-for employee, Erin Davis, is a Public Service Administrator, Option 8L employed by CMS.² Davis has worked as an Assistant Counsel in the Personnel section of its legal department since 2007. The Personnel section includes a Deputy General Counsel and two Assistant Personnel Counsels. Jeffrey Shuck became Deputy General Counsel of Personnel in 2005. He left the position in 2008, and then returned as Deputy General Counsel in August 2009. During his absence, Margaret Van Dijk served as Deputy General Counsel. The other Assistant Counsel in Personnel is Courtney O'Connell, who works in the Chicago office.³ Both O'Connell and Davis report directly to Shuck.

A. Davis' Duties

Davis is responsible for counseling State agencies on interpreting and applying the Illinois Personnel Code, personnel rules, pay plan, and various federal and state laws and regulations. Davis spends the majority of her time defending the State of Illinois against charges of discrimination before the Equal Employment Opportunity Commission (EEOC) and the Human Rights Commission (HRC). Davis is also the Employer's primary expert on the Fair Labor Standards Act (FLSA) and spends about 15% of her time on those duties. As part of her overall duties, Davis spends time coordinating with the Illinois Attorney General's Office and outside counsel when a matter involves personnel issues.

1. Collaboration with Labor Relations

The Labor Relations section of CMS' legal department handles traditional union-management labor relations functions such as grievances, arbitrations, unfair labor practices, and

² The facts are based on the testimony of the following witnesses: Jeffrey Shuck, Stephanie Shallenberger, Margaret Van Dijk, Robb Craddock, and Erin Davis.

³ The Employer had also claimed that O'Connell, a Public Service Administrator, Option 8L, was a confidential employee. However, the Board found that the Employer had failed to raise an issue of fact or law warranting a hearing on that claim.

negotiating collective bargaining agreements. Labor Relations is also responsible for reviewing all discharges and suspensions over 30 days in a 12-month period. Stephanie Shallenberger is Deputy General Counsel of Labor Relations. Robb Craddock is Deputy Director of Labor Relations. He is in charge of developing and implementing the governor's labor relations policy as it relates to State employees. Davis reports that in the last two years she has spent a very small amount of time, less than .01%, in contact with Shallenberger. She reports spending about .02% of her time with Craddock.

Personnel and Labor Relations often must coordinate their efforts in advising other State agencies on various issues. One instance involved an employee who left his personal USB flash drive in a State computer. The State was concerned over a potential breach in security. Davis consulted with Shallenberger to see if there was anything in the State's collective bargaining agreements that would prohibit the employer from looking at the flash drive.

Another example of Labor Relations and Personnel coordinating efforts involved an employee who was terminated. The employee filed a grievance and also filed charges of discrimination with the HRC. The grievance sought reinstatement for the employee. Shallenberger represented the State in the grievance. Davis represented the State against the HRC discrimination charges. Davis informed Shallenberger that she was representing the State against the HRC discrimination charges. Initially, Davis advised that she was not in favor of the grievance being settled. Davis and Shallenberger discussed the basis of the discharge and the HRC discrimination charges. Shallenberger reported that "I worked with her" to formulate a pre-arbitration resolution.⁴ As part of the resolution, the employee agreed to drop the grievance and the HRC discrimination charges in exchange for reinstatement at a different work location. Davis had recommended the change of job location and the dropping of the HRC discrimination

⁴ A pre-arbitration resolution is a complete settlement of a grievance prior to a case going to arbitration.

charges. A copy of the settlement entered into evidence stated that Shallenberger signed the resolution on behalf of the Employer.⁵

Davis was also involved in a class action grievance filed by AFSCME regarding employee travel time outside of regular work hours. Shallenberger negotiated a resolution with AFSCME's counsel prior to arbitration. As part of the resolution, the Employer agreed to review each grievant's job description to determine whether they were covered or exempt under FLSA. Davis was responsible for this task. Shallenberger stated that she will be entering into a resolution with AFSCME for the positions deemed covered by FLSA. For the exempt employees, she will be proceeding to arbitration. Shallenberger stated that she will be calling Davis to testify at the arbitration regarding Davis' determination of the grievants' statuses under FLSA. At hearing, Davis testified that the first time she was informed that she was going to be called as a witness in the arbitration was during Shallenberger's testimony.

Davis also worked with Labor Relations on alternative work schedules for State employees. The alternative work schedules, called 1040/2080 plans, provide a partial exemption from the FLSA overtime requirement and are only valid for employees under collective bargaining agreements. Davis worked on the matter by seeking guidance from the U.S. Department of Labor, and then provided advice to Labor Relations on the legality of the alternative work schedules under FLSA.

Davis was also part of a work group tasked with developing a telecommuting/telework policy for State employees. The group developed a set of minimum guidelines and procedures for State agencies to use when implementing such a policy. Davis participated in the drafting of the policy.

⁵ The resolution was dated October 2010. The majority interest representation petition was filed in August 2009.

Davis has consulted with Craddock regarding the State's light duty policy. Davis was contacted by a State agency regarding an employee who was being placed on light duty. Davis e-mailed Craddock to determine whether any of the State's collective bargaining agreements had a light duty policy and if so, whether the agency was responding consistent with the terms of the collective bargaining agreement.

Davis also provides legal review and guidance to State agencies in responding to Freedom of Information Act (FOIA) requests. For many requests, Personnel must consult with the Labor Relations' section of CMS' legal department. This consultation involves finding out whether certain documents are in Labor Relations' possession and whether there are any objections to releasing the documents. FOIAs are frequently filed by AFSCME members and representatives.

At the end of June 2009, no State budget had been passed by the legislature. Davis was involved in conference calls and attended meetings where discussions occurred regarding the various options and scenarios if State government had to shut down. The calls and meetings involved Craddock, Van Dijk, CMS General Counsel, Director of CMS, and the Governor's Office. One of the major concerns over a possible government shutdown was potential violations of the Fair Labor Standards Act.

2. Civil Service Commission Case

In 2002, AFSCME filed a charge against the Employer and about 23 State agencies with the Civil Service Commission over the use of "personal service contracts."⁶ AFSCME alleged that the people performing personal service contracts were functioning as employees, and thus

⁶ The Civil Service Commission is the administrative agency responsible for hearing alleged violations of the Illinois Personnel Code.

the State was in violation of Illinois Personnel Code requirements.⁷ The case is still ongoing, having been appealed to the Illinois Appellate Court on two occasions.

Shuck was appointed as a Special Assistant Attorney General to represent the State before the Civil Service Commission.⁸ Shuck testified that, as is the case with many matters Personnel handles, he coordinated his efforts and the State's position with Labor Relations.

According to Shuck, he and Davis worked collaboratively on the case. They discussed whether to litigate or settle, the State's possible positions, AFSCME's possible positions, and what the ramifications of those positions would be. Davis asserts, however, that Shuck did not discuss strategy or any other substantive issues with her. Davis reports that Shuck did ask her to provide him with an opinion regarding timelines for serving pleadings and also asked her to obtain an extension for filing a pleading. Davis reports that she was involved in only one phone call during that time regarding the case, which involved Shuck and counsel for AFSCME.

When the Civil Service case went up to the appellate court the second time, Shuck was still acting as lead counsel. In 2008, Shuck left CMS and Van Dijk became Deputy General Counsel. In November 2008, Van Dijk received notification that the case had been remanded and was back before the Civil Service Commission.⁹ In consultation with the Employer's

⁷ AFSCME had also filed a grievance over the issue of personal service contracts, which resulted in an arbitration award. AFSCME's collective bargaining agreement with the State contains memorandums of understanding regarding the use of personal service contracts. Counsel for Labor Relations handled the matter at arbitration.

⁸ Only the Attorney General, Assistant Attorneys General, and those appointed Special Assistant Attorneys General can represent the State before courts. Before administrative agencies, this requirement varies from agency to agency. Shuck testified that it was not "absolutely necessary" for him to be appointed in this case, but that someone in the Attorney General's Office thought it "wouldn't be a bad idea."

⁹ Van Dijk testified that when the case was at the appellate level, it was basically "stale" in terms of Personnel's involvement with it.

general counsel, Van Dijk assigned Davis as lead counsel.¹⁰ Shuck returned to CMS in August 2009, and he was reinstated as lead counsel.

During Shuck's absence, Davis, as lead counsel, was the State's contact person on the case and was responsible for communicating with the Civil Service Commission and counsel for AFSCME. Van Dijk reports that Davis would keep her advised on the case, but that Van Dijk tried to not get too involved because of the potential conflict of interest. Davis reports that during her time as lead counsel, there was "virtually no movement for the case." No hearings were held during her time as lead counsel. She did appear before the Civil Service Commission for status conferences. Van Dijk also appeared at one status conference.

Davis reports that her role during her year as lead counsel was that of the "dreaded messenger." Davis stated that she was given strict orders to not admit liability. Davis reports that for every action that was taken in the case, she was told specifically what to do and then told to communicate it to AFSCME. Davis asserts that Van Dijk gave her directions on the case, told her exactly what to say before the Civil Service Commission, and gave her settlement offers to type up. She reports not having authority to answer questions before the Commission. Rather, she was told to tell the presiding ALJ that she "would have to get back" to him.

During Davis' time as lead counsel, the executive director of the Civil Service Commission asked the parties to explore settlement options. Davis, Van Dijk, Shallenberger, Craddock, and counsel in the Attorney General's Office were involved in discussing and proposing settlement language.¹¹ Davis reports that there was not a discussion of strategy during this time because Craddock had already made it clear that the State's position was to neither

¹⁰ Van Dijk testified that she chose to not act as lead counsel herself because she had previously been an AFSCME steward and felt there may be a conflict of interest. During her time as steward, she had filed grievances on behalf of AFSCME regarding personal service contracts.

¹¹ The Attorney General's Office was handling a similar matter in front of the Civil Service Commission at that time.

accept nor admit liability. Craddock had been in consultation with all CMS' legal counsel to insure that the State's arguments and any potential settlement language were consistent in each venue.

Davis and counsel for AFSCME, Tom Edstrom, sent settlement proposals back and forth. One e-mail exchange between Edstrom and Davis involved a settlement proposal from AFSCME. Davis forwarded it to Van Dijk, Craddock, Greg Newton (Deputy General Counsel for Labor Relations at that time), Thomas Klein (Assistant Attorney General), and Karen McNaught (Bureau Chief of General Law for the Attorney General's Office) asking if the group could meet the next morning to discuss it. In response to Davis' e-mail, Van Dijk replied:

Paragraph 5 is unacceptable in any fashion. The only authority CSC [Civil Service Commission] has is to order agencies to comply if it finds a violation. Please communicate immediately to Tom that if the union insists upon paragraph 5 or any language similar that we may as well go to hearing. We will discuss in more detail the language of proposed order and will have revisions, but please reach out immediately to Tom and advise of this.

[AFSCME Exhibit 3]

The last correspondence Craddock had with Davis on the case involved an e-mail from Davis asking him if the State had copies of personal service contracts. The last discussion Shuck reports having with Davis on the case was several weeks before this Board hearing. AFSCME phoned him to propose letting the Civil Service Commission rely upon its proposed findings with respect to one agency to be representative of all 23 agencies involved, in order to make the case move more quickly. Davis was not involved in the call; however, Schuck and Davis met in his office afterward to discuss the proposal. They discussed whether it was in the State's interest to agree to it. He reports that "we kicked it around for considerable time" and then agreed that it would be in the State's interest to agree to it.

IV. DISCUSSION AND ANALYSIS

The Employer asserts that the petitioned-for Public Service Administrator, Option 8L is a confidential employee within the meaning of Section 3(c) of the Act.¹² A confidential employee is not a “public employee” or “employee” for purposes of the Act. The purpose of the confidential exclusion is to prevent employees from “having their loyalties divided” between their employer and union which represents them. City of Wood Dale, 2 PERI ¶2043 (IL SLRB 1986). Two primary tests have been developed to determine whether an employee is “confidential”: the labor nexus test and the authorized access test.¹³ City of Burbank, 1 PERI ¶2008 (IL SLRB 1985). Each test requires analysis of the employee’s “regular course of duties.” State of Illinois, Department of Central Management Services, 26 PERI ¶34 (IL LRB-SP 2010). The frequency in which an employee assists in a confidential capacity is relevant; however the fact that a task is performed only occasionally does not necessarily mean that it is not performed in the regular course of duties. City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010). The distinction is between infrequent but normal tasks and mere ad hoc assignments. State of Illinois, Department of Central Management Services (Illinois State Police), 27 PERI ¶31 (IL LRB-SP 2011), citing City of Chicago, 26 PERI ¶114.

In this case, the Employer argues that Davis is a confidential employee under both the labor nexus test and authorized access test. As the party seeking to exclude an individual from a

¹² Section 3(c) of the Act states:

“Confidential employee” means any employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer’s collective bargaining policies.

¹³ A third test, the “reasonable expectation” test, applies only where there has been no history of collective bargaining between the parties. Chief Judge of Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 524 (1992). Here, the RC-10 unit, among others, was already in place so the “reasonable expectation” test does not apply.

proposed bargaining unit, the Employer has the burden of proving the statutory exclusion. City of Washington v. Illinois Labor Relations Board, 383 Ill. App. 3d 1112, 1120 (3rd Dist. 2008); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

A. Labor Nexus Test

Under the labor nexus test, an employee is a confidential employee, when in the regular course of his or her duties, the employee assists in a confidential capacity a person who formulates, determines, or effectuates labor relations policies. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 523. The person being assisted by the employee must perform all three functions: formulating, determining, and effectuating. Id. However, the person being assisted does not need to be primarily responsible for the formulation, determination, or effectuation of the employer's labor relations policies. City of Chicago, 26 PERI ¶114. "Confidential status is not so broad that it includes those who assist all who participate in labor relations policies, but is also not so narrow that it applies only where the person assisted is the ultimate decision maker and implementer of labor relations policy." Id. Personnel duties including hiring, promotion, firing, discipline, and participation in grievance procedures pertain to the effectuation of established policy, not its formulation and determination. Chief Judge of Circuit Court of Cook County v. American Federation of State, County, and Municipal Employees, Council 31, 218 Ill. App. 3d 682, 702 (1st Dist. 1991).

In City of Chicago (Law Department), 4 PERI ¶3028 (IL LRB-SP 2009), the Board disagreed with the employer's contention that all city attorneys were confidential employees:

Simply representing the City in litigation brought by or against City employees, or rendering legal advice on matters affecting employee rights, does not necessarily immerse the attorneys in subject matter satisfying the "labor nexus" test." Likewise, simply converting labor contracts into ordinance form or suggesting contract changes affecting the City's obligations to defend its

employees does not entail advance access to the confidential labor relations strategy of the City.

Here, the Employer argues that Davis is a confidential employee under the labor next test because Craddock and Shallenberger have requested her legal opinion in order to assist Labor Relations in making decisions regarding Unit members. The Employer contends that Davis assisted in a confidential capacity by collaborating with Shallenberger on the pre-arbitration resolution of a discharge grievance and the related HRC discrimination charges and by providing legal advice on the telecommuting/telework policy and alternative work schedules. The Employer also argues that Davis' role in advising Labor Relations and various State agencies on wage and hour issues, like FLSA status, alternative work schedules, and telecommuting/telework policies directly impact how the agencies negotiate those issues during collective bargaining. Finally, the Employer contends that Davis' position requires her to provide advice to Labor Relations that may be directly adverse to the grievants' and AFSCME's interests.

AFSCME argues that Davis spends a minimum amount of time interacting with superiors who meet the criteria for the labor nexus test.¹⁴ It also argues that her interactions with such persons is more in the nature of providing technical, professional information to the ultimate decision-makers, rather than the ultimate decision-makers sharing their decisions with her.

Initially, I find that Davis has assisted the Deputy Director and Deputy General Counsel of Labor Relations.¹⁵ Further, Craddock and Shallenberger are clearly the types of superiors for which the labor nexus test may apply; they formulate, determine, and effectuate labor relations

¹⁴ I must consider the entire record and, therefore, cannot accept AFSCME's argument that "[a]s Courtney O'Connell had the same relationship to the same superiors as did Ms. Davis and the Board determined that Ms. O'Connell was not a confidential employee, the law of the case is that Ms. Davis cannot be excluded under the labor nexus prong of a confidential test because of anything other than her involvement" in the Civil Service Commission case.

¹⁵ The Employer does not argue that Shuck is a person who formulates, determines and effectuates labor relations policies and I do not find that he is.

policy by being directly responsible for handling grievances, arbitrations, unfair labor practice hearings, and the negotiation of collective bargaining agreements.

I find that Davis' collaboration with Labor Relations on the USB flash drive issue, the class action grievance involving FLSA status, the alternative work schedule plan, the telecommuting/telework policy, the light duty policy, FOIA requests, and the State budget does not establish that she assists in a confidential capacity. Davis provides legal advice to Labor Relations on subjects that may affect employee rights, but these examples do not constitute confidential labor relations matters. As the Board noted in State of Illinois, Department of Central Management Services, 26 PERI ¶83, "Davis and O'Connell may play an important role in funneling information regarding various legal requirements to management, but in this role they function much like employees who provide financial information that may be relevant to collective bargaining strategy, a capacity that does not, in itself, make them confidential employees under the Act."

However, Davis' collaboration with Shallenberger on the grievance and related HRC discrimination charges establishes that Davis assists Shallenberger in a confidential capacity. Davis and Shallenberger discussed the grievance and the HRC discrimination charges and they worked together to formulate a pre-arbitration resolution. Davis in fact recommended terms and conditions of the settlement: the change of job location in exchange for the dropping of the HRC discrimination charges. Through these duties, Davis provided confidential assistance on a grievance resolution. In addition, the evidence suggests that Davis' collaboration with Shallenberger on grievances occurs in the regular course of her duties. Davis spends the majority of her time defending the State against HRC discrimination charges. Therefore, if an employee in the future were to file both a grievance and HRC charges, it appears likely that

Davis would again collaborate with Shallenberger, making this a normal task, not a mere ad hoc assignment.

I also find that Davis assisted Shallenberger and Craddock in a confidential capacity through her work on the Civil Service Commission case. Davis provided confidential assistance by discussing with Shuck the State's position and strategy, representing the State as lead counsel, and by discussing and proposing settlement language with Van Dijk, Shallenberger, Craddock, and counsel in the Attorney General's office. Further, the assistance appears likely to be a normal task and not a mere ad hoc assignment since Davis and Shuck were only recently involved in a discussion regarding whether it was in Employer's best interest to agree to AFSCME's proposal regarding proposed findings. In sum, I conclude that Davis is a confidential employee under the labor nexus test.

B. Authorized Access Test

Under the authorized access test, an employee is a confidential employee if he or she has authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management. Chief Judge of Circuit Court of Cook County, 153 Ill. 2d at 523. Those matters include information concerning the employer's strategy in dealing with an organizational campaign, collective bargaining proposals, and matters dealing with contract administration. County of DeKalb, 4 PERI ¶2029 (IL SLRB 1988). However, mere access to personnel files and information concerning the general workings of a department, general personnel matters, or statistical information upon which an employer's labor relations policy is based is insufficient to establish confidential status. State of Illinois, Department of Central Management Services, 25 PERI ¶161 (IL LRB-SP 2009), citing Chief Judge of the Circuit of Cook County, 153 Ill. 2d at 508. The "inquiry is limited to whether the

employee in question has unfettered access ahead of time to information pertinent to the review or effectuation of pending collective-bargaining policies.” State of Illinois, Department of Central Management Services, 25 PERI ¶161, quoting Board of Education of Community Consolidated High School District No. 230 v. Illinois Educational Labor Relations Board, 165 Ill. App. 3d 41, 62 (4th Dist. 1987). The purpose of the test is to guard against the premature disclosure of an employer’s ongoing or future labor relations positions, which would undermine an employer’s ability to negotiate on an equal footing with a union. Village of Homewood, 8 PERI ¶2010 (IL SLRB 1992).

Here, the Employer contends that Davis is a confidential employee under the authorized access test because she provides legal advice to Labor Relations on subjects that impact wages, discipline, discharges, grievances, arbitration, and litigation matters. The Employer notes that Davis provides consultation to Labor Relations officials who are developing and implementing collective bargaining strategies and administration. It points to Davis’ role on the telecommuting policy as evidence of this. The Employer argues that by providing advice and acting on behalf of the State in the Civil Service Commission case and pending litigation against AFSCME, Davis has access to the Employer’s position in these cases, which deal with past collective bargaining and contract administration. Finally, the Employer contends that through this litigation Davis has developed strategy and negotiated settlements in ways that will directly affect the employment of contractual employees versus Unit employees.

AFSCME asserts that even if the Civil Service Commission case does constitute a collective bargaining matter, there was no showing that Davis had advance knowledge of the Employer's position so that it being divulged to AFSCME would prejudice the Employer.

AFSCME argues that Davis was given the Employer's position "precisely to convey it to the Union."

I find that Davis' collaboration with Labor Relations on the USB flash drive issue, the class action grievance involving FLSA status, the alternative work schedule plan, the telecommuting/telework policy, the light duty policy, FOIA requests, and the State budget does not establish that she has authorized access to matters specifically related to collective bargaining. As stated previously, these examples do not constitute confidential labor relations matters. Further, Davis may have access to general confidential information through these duties, but not confidential information as defined by the Act. The Employer fails to show how Davis has unfettered access ahead of time to the Employer's ongoing or future labor relations positions through these duties.

However, through her work on the grievance and related HRC discrimination charges, Davis had authorized access to information concerning contract administration. Davis and Shallenberger discussed the grievance, the HRC discrimination charges, and the possibility of settlement. Davis recommended terms and conditions of the settlement, which gave her advanced access to the Employer's position and strategy. Davis had access to information that was not yet known to AFSCME; information, which if revealed, could have hampered the Employer's ability to negotiate on an equal footing with AFSCME. As noted previously, the evidence also suggests that this task occurs in the regular course of Davis' duties.

Davis' work on the Civil Service Commission case also establishes that she has authorized access to matters specifically related to collective bargaining. The issue of personal service contracts is a matter specifically related to collective bargaining because it involves shifting work out of the bargaining unit. Davis has been privy to sensitive information regarding

the Employer's position on the use of personal service contracts and its strategy in handling the case before the Civil Service Commission. Davis also had advance knowledge of potential settlement terms and conditions. Specifically, Davis was involved in discussions over settlement language with Van Dijk, Shallenberger, Craddock and counsel in the Attorney General's Office. Davis was also involved in an e-mail string in which Van Dijk notified her that AFSCME's proposed settlement language was unacceptable. Her access to information regarding the Civil Service Commission case also appears to be in the regular course of her duties. As noted previously, Davis was recently involved in a discussion with Shuck, in which they discussed whether it was in the Employer's best interest to agree to AFSCME's proposal regarding proposed findings. In sum, I conclude that Davis is a confidential employee under the authorized access test.

V. CONCLUSIONS OF LAW

1. I find that the petitioned-for Public Service Administrator, Option 8L, Erin Davis, is a confidential employee as defined by Section 3(c) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Public Service Administrator, Option 8L position currently held by Erin Davis is excluded from the RC-10 bargaining unit.

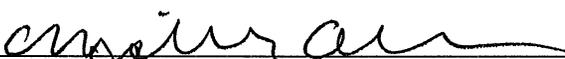
VII. EXCEPTIONS

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 Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 28th day of October, 2011.

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


Michelle N. Owen
Administrative Law Judge

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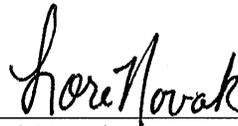
DATE OF
MAILING: October 28, 2011

AFFIDAVIT OF SERVICE

I, Lori Novak, on oath, state that I have served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

Jacob Pomeranz
Cornfield and Feldman
25 East Washington Street, Suite 1400
Chicago, IL 60602

Mark Bennett
Laner Muchin
515 N. State St., Suite 2800
Chicago, IL 60610



Lori Novak

SUBSCRIBED and **SWORN** to
before me, October 28, 2011


NOTARY PUBLIC

