



## I. BACKGROUND

On January 19, 2011, the Administrative Law Judge (ALJ)<sup>2</sup> assigned to the case issued a Recommended Decision and Order rejecting the Employer's argument. The ALJ found no basis of law denying the petitioned-for employees the ability to organize simply because they are exempt from the Illinois Personnel Code under Section 4d(1), citing to the Board's long standing decision that if the legislature had intended for "Shakman-exempt" or "Rutan-exempt" status, or "at-will" classification to serve as a basis for excluding employees from collective bargaining, it would have expressly stated as much in the Act itself. AFSCME, Council 31 and State of Illinois, DCMS, 25 PERI ¶184 (IL LRB-SP 2009); Service Employees International Union, Local No. 73 and County of Cook, 24 PERI ¶36 (IL LRB-LP 2008); City of Chicago (Mayor's Office of Information and Inquiry), 10 PERI ¶3003 (IL LLRB 1993). Deciding that the petitioned-for employees are public employees within the meaning of the Act, the ALJ recommended the employees be appropriately included in the RC-62 bargaining unit.

On June 10, 2011 the Board issued its decision remanding this case for further review. The Board agreed with the ALJ's decision that being "Shakman" and "Rutan" exempt and exempt from Jurisdiction B of the Personnel Code were not automatic exceptions from the protections available under the Illinois Public Labor Relations Act. However, the Board held that, although the exclusions above had no bearing on the whether an employee is excluded from the protections of the Act, they may be relevant when determining whether a unit is appropriate. As such, the Board remanded the case to explore whether the code-exempt employees share a sufficient community of interest with those employees already in the RC-62 bargaining unit.

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<sup>2</sup> This case was initially assigned to ALJ Joseph Tansino. On remand this case was administratively transferred to the undersigned.

Upon remand both parties were asked to respond to a questionnaire intended to explore the composition of the RC-62 bargaining unit. After reviewing those answers, I determined that this matter should be resolved without resorting to a hearing. On October 31, 2011, the Employer fully articulated its objections to the petition as it related to the factors according to Section 9(b) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).

**I. ISSUE AND CONTENTIONS**

The issue is whether the petitioned-for employees would appropriately be included in the RC-62 bargaining unit.

The Employer maintains its objection that the petitioned-for employees should be excluded from the petitioned-for unit because they are exempt from Jurisdiction B of the Personnel Code under Section 4d(1). The Employer further argues that based on several Section 9(b) factors, the RC-14 bargaining unit would be the more appropriate bargaining unit for the petitioned-for employees.

In response to the questionnaire, both parties agree that the RC-62 bargaining unit currently includes employees exempt from Jurisdiction B of the Personnel Code; that in some instances the Employer objected to their inclusion and in some instances the Employer agreed to their inclusion; and that all employees in the RC-62 bargaining unit are subject to the same "just cause" provision contained in the parties' collective bargaining agreement.

**II. DISCUSSION AND ANALYSIS**

The Board has noted that the effects of being subject, or not subject to, the Personnel Code, may change the calculus of factors required to be considered for determining whether the employees share a community of interest, and the appropriateness of a unit under Section 9(b) of

the Act.<sup>3</sup> State of Illinois, Dep't of Cent. Mgmt. Serv. (Dep'ts of Transp. and Natural Resources), 14 PERI §2019 (IL SLRB 1998); State of Illinois, Dep't of Transp., 1 PERI §2011 (IL SLRB 1985).

I find that the petitioned-for employees are appropriately included in the RC-62 bargaining unit. The Employer's continued objection that the petitioned-for employees should be excluded from the protections of the Act because they are exempt from the Personnel Code still lacks merit. Because the Board already decided this issue, I will not provide further discussion on this point.

The Employer additionally raises the objection that the petitioned-for employees would be more appropriately included in the RC-14 bargaining unit based on Section 9(b) factors. The Employer maintains that Private Secretary Is share a community of interest with the Executive Secretary title series in the RC-14 bargaining unit for the following reasons: they have similar employee skills and functions, as they both perform secretarial work for a director or chairperson; they have similar educational backgrounds and experience requirements;<sup>4</sup> and they share common supervision since both groups of employees work for some of the same department or division heads in the same locations.

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<sup>3</sup> Section 9(b) of the Act, in relevant part, states:

The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees.

<sup>4</sup> The Employer argues that the Private Secretary Is and those in the Executive Secretary title series require identical education listing the following: knowledge, skill and mental development of two years of secretarial or business college and three years of secretarial experience; or completion of high school and five years secretarial experience.

The Employer is asking the Board to decide that the RC-14 bargaining unit is more appropriate than the RC-62 bargaining unit. The Board has consistently held that Section 9(b) of the Act does not require that a proposed unit be the most appropriate or the only appropriate unit. City of Chicago (Public Health Nurses), 396 Ill. App. 3d 61, 67 (1st Dist. 2009) quoting County of Cook (Provident Hospital), 369 Ill. App. 3d 112, 118 (1st Dist. 2006) (affirming the certification of a bargaining unit made up of upper level administrative assistants (AAIIIs and IVs) at one hospital in the county hospital system).

I note that Private Secretary Is and Executive Secretaries share some of the same skills and education requirements, and have common supervision in some instances. Nonetheless, the issue before the Board is not whether the placement of Private Secretary Is in the RC-14 bargaining unit represented by AFSCME, which did not seek to represent the Private Secretary Is, is appropriate. The Employer has presented no evidence to show that the RC-62 bargaining unit is inappropriate. Further, to accept the Employer's argument that the RC-14 bargaining unit is the only appropriate unit would be to deny the petitioned-for employees their rights under section 2 of the Act to "full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours and other conditions of employment or other mutual aid or protection." City of Chicago and Illinois Labor Relations Board, 396 Ill. App. 3d 61, 71(1st Dist. 2009) citing 5 ILCS 315/2 (2006).

The Employer admits that the RC-62 bargaining unit already includes employees who are exempt from Jurisdiction B of the Personnel Code and that it has agreed to include at least some of these employees. It also obviously agreed to the collective bargaining agreement that makes all RC-62 bargaining unit members subject to the same "just cause" provision. The Employer's present objection is in direct conflict with what the Employer has agreed to in the past. Without

evidence that the petitioned-for employees lack community of interest with those employees in the RC-62 bargaining unit, and without having any other objections, I cannot conclude that they should be placed in the RC-14 bargaining unit rather than the unit that they have selected.

Accordingly, I find that it is appropriate to include the Private Secretary Is in the RC-62 bargaining unit.

### III. CONCLUSION

The Private Secretary Is are public employees within the meaning of the Act and the petition to represent them within the RC-62 bargaining unit should be granted.

### IV. RECOMMENDED ORDER

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

**INCLUDED:** The Private Secretary I positions currently held by Lanade Bridges at the Illinois Human Rights Commission; Nicole Di Turi and Beverly Womack-Holloway at the Illinois Department of Revenue; Pamela Dryden at the Illinois Department of Employment Security; Gloria Jimenez and Nancy Miller at the Illinois Pollution Control Board; Kerry Lofton at the Illinois Department of Agriculture; Cecelia McNair at the Illinois Investment Board; and Katrina Weinert at the Illinois Department of Historic Preservation.

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

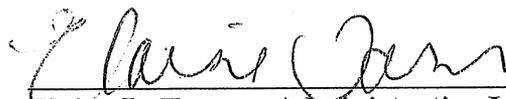
### V. EXCEPTIONS

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 have been provided to them. The exceptions and 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 15<sup>th</sup> day of November, 2011

**ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**



**Elaine L. Tarver, Administrative Law Judge**

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

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

Petitioner )

And )

Case No. S-RC-11-004

State of Illinois, Department of Central )  
Management Services (Department of )  
Agriculture, et al.), )

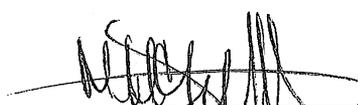
Employer )

**AFFIDAVIT OF SERVICE**

I, Melissa L. McDermott, on oath state that I have this 15<sup>th</sup> day of November, 2011, 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 5:00 p.m., copies thereof in the United States mail at 100 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

Mr. Justin Smock  
State of Illinois  
Department of Central Management Services  
Labor Relations Counsel  
100 West Randolph Street  
Suite 4-500  
Chicago, Illinois 60601

Mr. Jacob Pomeranz  
CORNFIELD & FELDMAN  
25 East Washington Street  
Suite 1400  
Chicago, Illinois 60602

  
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Melissa L. McDermott, ILRB

**SUBSCRIBED and SWORN to**  
Before me this 15<sup>th</sup> day of  
**November, 2011.**

  
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**NOTARY PUBLIC**

