

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

American Federation of State, County and Municipal Employees, Council 31,)	
)	
Petitioner)	
)	Case No. S-RC-11-097
and)	
)	
Illinois State Toll Highway Authority,)	
)	
Employer)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On May 16, 2011, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Petitioner), filed a Representation/Certification Petition based on a showing of majority support with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 9 (a-5) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), in the above-captioned case. The Petition seeks to include the Safety and Training Manager title, currently held by Dawn Sirianni, employed at the Illinois State Toll Highway Authority (Employer or Tollway), in the existing AFSCME represented bargaining unit of Tollway employees certified in Case No. S-RC-05-121.

A hearing in this case was held on September 20, 2011, in the Chicago office of the Illinois Labor Relations Board. All parties were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs. After full consideration of the parties' stipulations, evidence, and arguments, and upon the entire record of the case, I recommend the following.

I. PRELIMINARY FINDINGS

The Parties stipulate and I find as follows:

1. At all times material, the Petitioner has been a labor organization within the meaning of the Section 3(i) of the Act.
2. At all times material, the Employer, Illinois State Toll Highway Authority has been a public employer within the meaning of Section 3(o) of the Act.
3. At all times material, the Employer has been subject to the jurisdiction of the Board's State Panel pursuant to Sections 5(a) and 20(b) of the Act.

II. ISSUES AND CONTENTIONS

The issue is whether the Safety and Training Manager position held by Dawn Sirianni is a confidential position within the meaning of the Act and should therefore be excluded from the petitioned-for bargaining unit.

The Employer contends that as part of her duties as Safety and Training Manager, Sirianni also has to perform tasks assigned outside of the job description. One such task is Sirianni's duties as the assistant secretary to the Tollway's Board of Directors. These duties provide her authorized access to confidential information and for this reason she should be excluded from the AFSCME bargaining unit as a confidential employee within the meaning of the Act.

The Petitioner argues that the Employer failed to prove that Sirianni, in the regular course of her duties as Safety and Training Manager, has authorized access to information concerning matters arising from the collective bargaining process.

III. FINDINGS OF FACT

The Illinois State Toll Highway Authority is responsible for the construction, maintenance, and operation of the Illinois Tollway System. The Safety and Training Division oversees several programs that are designed to keep Tollway employees safe. These programs include providing asbestos awareness and blood-borne pathogen training; overseeing Hepatitis B vaccinations; creating emergency action plans for all 27 Tollway plazas and 11 maintenance

buildings; coordinating with an outside consultant to provide training for managers on how to communicate with employees and deal with difficult employees; and assisting with ethics training.

Dawn Sirianni works in the Safety and Training Division as Safety and Training Manager. She began working for the Employer in 1985 and became Safety and Training Manager in 2006. In this title, Sirianni's duties include developing and directing the implementation of mandates and standards set by the Occupational Safety and Health Act (OSHA), the Environmental Protection Act (EPA), the National Drowning & Protection Act (NDPA), as well as U.S. and Illinois Department of Labor directives. The safety and training manager also oversees the job training of toll collectors and lane walkers. This description was created in 2007 and updated in 2010. Although the job description does not specifically state so, the Employer's witness testified that job descriptions are not limited and often employees perform other duties as assigned at the direction of upper management.

In 2004, prior to becoming Safety and Training Manager, Sirianni was asked by then secretary of the Board of Directors, Trudy Steinhauser, if she would become the assistant secretary for the Tollway's Board of Directors. This is an unpaid position. Sirianni accepted and, by a Tollway board resolution, was appointed to the position on April 29, 2004. The same resolution reappointed Trudy Steinhauser as Secretary. Steinhauser and Sirianni were reappointed as Secretary and Assistant Secretary, respectively, on June 29, 2006, and again on June 26, 2008. On October 21, 2010, Tranece Artis was appointed Secretary. Sirianni was not mentioned in that Tollway board resolution. No Tollway board resolution has reappointed Sirianni since June 26, 2008. Nor has any resolution rescinded Sirianni's appointment to the board. The Tollway bylaws require that a secretary be appointed every two years. The bylaws

also require the board to approve the assistant secretary, but are silent on the issue of how often an assistant secretary must be appointed.

The 2006 and 2008 board resolutions state that the assistant secretary has the authority to exercise all the powers of the secretary in the absence of the secretary or as directed by the chairman. These duties include attending and preparing minutes from Tollway board meetings and executive session meetings, downloading and linking documents to be distributed to board members prior to meetings (director's briefings), creating board meeting agendas, and stamping board resolutions, contracts, or other documents with the Tollway board chairman's signature stamp. Sirianni has done all of these tasks during her time as assistant secretary, in the absence of the secretary and during the period between Steinhauser's resignation and Artis' appointment. However, she has not consistently performed these duties every month.

To prepare minutes from the executive sessions, Sirianni would either attend the meetings or listen to audio tapes of the meetings and transcribe what was said. The topics at executive session meetings included issues with personnel, contracts, collective bargaining, litigation, and property acquisition. Sirianni stopped preparing executive session minutes after Tranece Artis was hired as secretary in 2010, but Sirianni has continued preparing director's briefings when available.

IV. DISCUSSION AND ANALYSIS

The Employer contends that the position of Safety and Training Manager held by Dawn Sirianni is a confidential position and should be excluded from the petitioned-for bargaining unit. The Employer states that through her position as Assistant Secretary, Sirianni is privy to executive session notes from the Board of Directors meetings and these notes discuss contract negotiations, disciplinary matter and other labor related strategy of the Employer. The Employer

maintains that this position is an extension of her duties as Safety and Training Manager. Sirianni still functions as assistant secretary even though she has not been reappointed since June 2008.

Section 3(c) of 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.

5 ILCS 315/3 (2008). Such an exception to the Act's broad extension of collective bargaining rights must be narrowly construed. See City of Decatur v. American Federation of State, County and Municipal Employees, Local 268, 122 Ill. 2d 353, 364-66, 4 PERI ¶4016 (1988); Metropolitan Alliance of Police, Sergeants Chapter No. 534 v. Village of Oak Brook, 26 PERI ¶7 (IL LRB-SP 2010).

A "confidential employee," must have access to confidential information specific to the collective bargaining relationship between labor and management, encompassing ongoing or future collective bargaining negotiations and strategy, not general, though undoubtedly otherwise confidential department administration matters. Chief Judge of Circuit Court of Cook County v. American Federation of State, County, and Municipal Employees, Council 31, 218 Ill. App. 3d 682, 699 (1st Dist. 1991). The purpose of excluding confidential employees is to keep employees from "having their loyalties divided" between their employer and the bargaining unit which represents them. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 523 (1992). There are

two tests for determining whether an individual is a confidential employee under the Act: the “labor nexus test” and the “authorized access” test.¹

The Employer argues that Sirianni has authorized access to confidential information. Under the “authorized access” test, the employees must have authorized access to information concerning matters arising from the collective bargaining process, for example, information regarding the employer’s strategy in dealing with an organizational campaign, actual collective bargaining proposals and information relating to matters dealing with contract administration, all not yet known to a labor representative. County of DeKalb, 4 PERI ¶ 2029 (IL SLRB 1988). The petitioned-for employee must have advance knowledge of specific collective bargaining proposals, or specific information such that premature disclosure would unduly prejudice the employer’s collective bargaining strategy. Id.

An employee will be considered confidential only if he or she regularly handles or has access to information which, if divulged, would give bargaining unit members advance notice of the employer’s policies in regard to labor relations. Chief Judge v. AFSCME, 153 Ill. 2d at 523, 9 PERI ¶ 4004 (1992). Access to personnel files and 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. Id.

The Safety and Training Manager title employed by the Tollway is not a confidential title within the meaning of the Act. In her position as Safety and Training Manager, Sirianni does not have authorized access to confidential information. Sirianni’s main duties include developing and directing the implementation of safety mandates and standards and overseeing the job

¹ The Board has also formulated a third confidential status test, called the “reasonable expectation” test, to be applied where no collective bargaining agreement was previously in place, but it is expected that the establishment of the unit will require that confidential responsibilities be assumed by the employee. Chief Judge, 153 Ill. 2d at 523; City of Burbank and AFSCME, 1 PERI ¶2008 (IL SLRB 1985). Here, where the bargaining unit is already in place, the “reasonable expectation test” is not applicable.

training of Tollway employees. None of these duties inherently involves any information relating to collective bargaining negotiation or strategy or contract administration. Additionally, the Employer presented no evidence to show that the petitioned-for title of Safety and Training Manager provided Sirianni with any access to such confidential information. Instead the Employer argues that although Sirianni's duties as assistant secretary to the Tollway's Board of Directors are not described in her job description, performing other duties as assigned is essential to her title as Safety and Training Manager. This argument is not persuasive.

Sirianni was appointed to assistant secretary of the Tollway's Board of Directors in 2004, while she was working in the Tollway's Real Estate Department. In 2005, Sirianni kept her appointment but then became the Safety and Training Administrator. She was promoted to Safety and Training Manager in 2006. In 2004, Trudy Steinhauser, Secretary of the Tollway's Board of the Directors and Secretary to the Chairman, offered Sirianni the appointment of assistant secretary. Trudy Steinhauser was not Sirianni's superior or supervisor and did not direct or assign the appointment to Sirianni. Sirianni's appointment was and remains unpaid as her salary has come solely from her employment in the Real Estate Department, her title as Safety and Training Administrator and currently through her title as Safety and Training Manager. Sirianni's position as assistant secretary to the Tollway's board has not been linked to any of her paid titles while being employed by the Tollway. The Employer has presented no evidence that being Safety and Training Manager, Safety and Training Administrator or in her position in the Real Estate Department means these titles must also assume the role of assistant secretary. In fact, if that were the case, the employees who assumed those roles prior to Sirianni would have also been appointed as assistant secretary to the Tollway's board.

The Employer's assertion that the job description of Safety and Training Manger includes performing other duties as assigned is not persuasive because Sirianni's appointment as assistant secretary came before she took on the title of Safety and Training Manager. As such, the Employer would be conceding that any position Sirianni was in would be excluded from the bargaining unit as a confidential title.

Moreover, if the assistant secretary title was a part of the duties which the safety and training manager had to assume, the Employer would likely have included those duties in the job description in 2007 or 2010 when the position description was updated. Other than the Employer's reliance on its witness' testimony², the Employer makes no other arguments as to how the Safety and Training Manager and the appointment as Assistant Secretary of the Tollway's board are linked. Sirianni holding both positions is mere happenstance.

Although her duties of Safety and Training Manager do not make Sirianni a confidential employee, as Assistant Secretary to the Tollway's board, Sirianni does have authorized access to confidential information. Sirianni admits that when the secretary is not available, it is her duty to attend board meetings and executive session meetings, take meeting minutes, and distribute these minutes to board members. Sirianni is also responsible for assisting others with the preparation of board meetings. Attending executive session meetings and listening to audio recordings of those meetings grants Sirianni access to the board's discussion of issues including litigation and collective bargaining strategies before they are disclosed to collective bargaining representatives. Her position also requires that she put the chairman's signature stamp on various documents, including contracts. Specifically, Sirianni admitted to being privy to the board's discussion on

² Although the Employer argues such, the position description of the Safety and Training Manager does not actually include the language of performing "other duties as assigned." Instead, the Employer relies on the testimony of Senior Manager of Employees Services who is familiar with job descriptions and testified to them not being drafted "generically" and "generally" and "not limited to other duties."

issues relating to the Tollway's negotiations with Service Employees International Union and Teamsters Union during the period in which Steinhauser left and prior to Artis being appointed. This Board has held that this type of access to executive sessions qualifies the position as confidential in nature. Village of Burr Ridge, 7 PERI ¶2048 (IL SLRB 1991) (deputy village clerk was a confidential employee because she attended and prepared written materials for county board meetings where the employer's response to the union's organizing campaign was discussed). Thus, the position of assistant secretary is a confidential position within the meaning of the Act. Because the positions of assistant secretary and safety and training manager are not in any way tied to one another, finding that the assistant secretary is confidential does not bear on whether the petitioned-for title of Safety and Training Manager is confidential.

The issue now becomes whether or not Dawn Sirianni still maintains the title of Assistant Secretary for the Tollway's Board of Directors. Both parties agree that the bylaws are silent on the resignation of the assistant secretary position. It is clear that when Dawn Sirianni volunteered for the position in 2004, she was reappointed in 2006 and 2008 along with the then Secretary Trudy Steinhauser. When Tranece Artis was hired and appointed Secretary of the Tollway's Board of Directors, Dawn Sirianni was not reappointed as she had been in the past. No assistant secretary was appointed at that time and, unlike in the past, with Artis' appointment, the Secretary began receiving payment for her duties.

Because Sirianni volunteered for her position as assistant secretary, it seems unreasonable that she cannot now decide that she no longer wants to maintain that title. Based on the Employer's argument, because Sirianni was assistant secretary in her title in the Real Estate Department, while she was Safety and Training Administrator, and currently as Safety and Training Manager, all of the aforementioned positions would have to be excluded from the

bargaining unit. Consistent with the fact that the Employer failed to reappoint Sirianni in 2008, as it had in the past, these details lead me to believe that the Employer did not intend for Sirianni to maintain her position.

Because the Safety and Training Manager title does not include performing duties as assistant secretary of the Tollway's board and the Employer did not reappoint Sirianni as assistant secretary, I find that Dawn Sirianni is not a confidential employee within the meaning of the Act.

IV. CONCLUSIONS OF LAW

I conclude that the petitioned-for title of Safety and Training Manager currently held by Dawn Sirianni is not a confidential title within the meaning of Section 3(c) of the Act.

I. RECOMMENDED ORDER

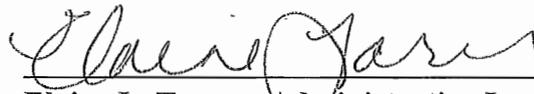
IT IS HEREBY ORDERED that the bargaining unit certified in Case No. S-RC-05-121 is clarified to include all employees in the description of Safety and Training Manager at the Illinois State Toll Highway Authority.

II. 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 21th day of November, 2011
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Elaine L. Tarver, Administrative Law Judge

Issued at Chicago, Illinois, on November 21, 2011.

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American Federation of State, County and)
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And)

Case No. S-RC-11-097

Illinois State Toll Highway Authority,)

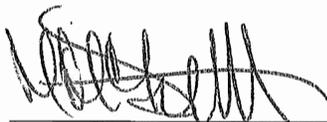
Employer)

AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 21st 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.

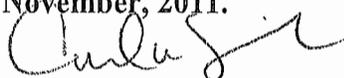
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Melissa L. McDermott, ILRB

SUBSCRIBED and SWORN to
Before me this 21st day of
November, 2011.



NOTARY PUBLIC

