STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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| International Union of Operating Engineers Local 649,<br><br>Petitioner<br><br>and<br><br>Village of Germantown Hills,<br><br>Employer | ) | Case No. S-RC-11-128 |

# ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 17, 2011, International Union of Operating Engineers Local 649 (Petitioner or Union), filed a majority interest representation/certification petition in Case No. S-RC-11-128 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin Code, Parts 1200 through 1240 (Rules). The Petitioner seeks to become the exclusive representative of all maintenance personnel in the public works department employed by the Village of Germantown Hills (Village).

A hearing was held on September 8, 2011, in Springfield, Illinois, at which time all parties appeared and were given a full opportunity to participate, present evidence, examine witnesses, argue orally, and file written briefs. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

## I. ISSUES AND CONTENTIONS

The first issue in this case is whether the Village employs five or more public employees and thus satisfies the jurisdictional requirement of Section 20(b) of the Act. The Union contends that the Village employs six public employees within the meaning of Section 3(n) of the Act: three full-time maintenance personnel in the Public Works Department, the Superintendent of the Public Works Department, one part-time maintenance worker, and the Village Treasurer/Deputy Clerk, and accordingly, the petitioned-for unit should be certified.[1]

The Village contends that the Village employs only three public employees, the three full-time maintenance personnel, and thus does not satisfy the jurisdictional requirement.[2] The Village contends that the Superintendent of Public Works is a supervisor, a confidential employee, a managerial employee, and an executive head of a department within the meaning of the Act, and thus not a public employee.[3] The Village alleges that the part-time maintenance worker is a short-term employee within the meaning of the Act, and thus not a public employee. The Village also argues that the Village Treasurer/Deputy Clerk is a confidential employee, a managerial employee as defined by the Act and/or as a matter of law, an executive head of a department, and an elected official within the meaning of the Act, and thus not a public employee. Therefore, the Village asserts that the petition must be dismissed because the three full-time maintenance personnel are the only "public employees" of the Village, and the Village is therefore excluded from the Board's jurisdiction.

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[1] The Union initially contended that the Village Clerk was also a public employee. However, in its post-hearing brief, the Union concedes that the Village Clerk is not a public employee.

[2] The Village stipulated that the three full-time maintenance personnel in the Public Works Department are public employees within the meaning of Section 3(n) of the Act.

[3] The Village did not explicitly state that the Superintendent of Public Works is a supervisor. However, in its post-hearing brief, the Village, when addressing the managerial exclusion, essentially argues that he is a supervisor. Therefore, I will address the supervisory exclusion as well.

## II. FINDINGS OF FACT[4]

### A. Background

The Village of Germantown Hills is a unit of local government with a population of approximately 3,443. The Village is governed by a mayor and a six member board. Kenny Mitchell, the mayor since 2009, oversees the board and the Village's employees.[5] He also runs the Village board meetings. The Village board has six different committees. Clark Hopkins is a board member and chairman of the personnel committee. The personnel committee handles personnel issues including performance evaluations and hiring. The Village's Public Works Department includes three full-time maintenance personnel, one superintendent, and one part-time maintenance worker. The Village Clerk and the Village Treasurer/Deputy Clerk work in the Village hall.

1. Public Works Department

a. Superintendent of Public Works

Rich Brecklin is the Superintendent of the Public Works Department. He is in charge of the streets, parks, sewer, and animal control for the Village. He reports directly to the Village board. Trustee Hopkins oversees the activities of the Public Works Department in regard to the streets. The Department's activities in regard to the parks, sewer, and animal control are overseen by another Village committee member.

Operating the sewer plant requires conducting operational tests three days a week and taking Environmental Protection Agency (EPA) samples once a week. Brecklin also handles complaints from the public. A majority of the time, Brecklin is running the sewer plant and "troubleshooting" i.e., taking care of any issues that may arise in the Village. When Brecklin is

[4] The facts are based on the testimony of Clark Hopkins, Kenny Mitchell, Ann Sasso, Trent Passwater, and Bret Wernsman.

[5] The parties also referred to the mayor as the Village president.

absent, one of the maintenance employees will operate the sewage treatment plant. The three other maintenance employees can also conduct the sewer plant operational tests and take EPA samples. Only Brecklin, however, can sign off on the reports that must be submitted to the EPA. The maintenance employees also respond to public complaints.

The three uncontested maintenance employees also maintain the streets, sewer and perform animal control. The public works employees also perform street plowing. Brecklin on occasion assists the other maintenance employees with street work like plowing.

Hire

The Village has only hired two people since 2009: one part-time maintenance worker and one Village Treasurer/Deputy Clerk. Brecklin was on the panel that interviewed candidates for the part-time maintenance worker position. Brecklin and Hopkins agreed that Trent Passwater was the best candidate. Brecklin recommended Passwater because he had experience doing mechanical work. The panel presented their recommendations to the Village board, which made the final hiring decision.

Direct

Brecklin assigns the maintenance employees duties each morning. They are assigned different duties depending on what is needed that day. Brecklin also assigns the maintenance employees to on call status. Those assignments are based on a rotation that is determined at the beginning of the year. All of the employees in the public works department have pager duty except Brecklin.

On occasion, Hopkins and the mayor will give the maintenance employees assignments. When Brecklin was absent due to an injury, Hopkins and the mayor assigned work to the public works employees. When Brecklin was placed on light duty, Hopkins and the mayor still made

some assignments. The majority of the time, however the maintenance employees receive their assignments from Brecklin.

If there is a sewage or road problem, the maintenance employee on pager duty will contact Brecklin, and Brecklin will determine how to handle the problem. Brecklin also determines whether street plowing is needed.

Brecklin, along with the Village Clerk, handles the part-time maintenance worker and the full-time maintenance employees' leave requests. The Village Clerk checks the schedules of the maintenance employees with Brecklin to ensure that the absence will not cause a scheduling conflict. If an employee does not have the available leave time, Brecklin does not have authority to approve it. In that case, the leave must be approved by the Village board. If employees are sick, they call into the Village Clerk's office to report it. If a maintenance employee needs to take a leave of absence, Brecklin, the Village Clerk, and the personnel committee would be involved in approving the leave.

Brecklin determines whether the maintenance employees need to work overtime to complete street plowing. He does not need approval before authorizing overtime for street plowing.

The three maintenance employees are evaluated annually by the personnel committee. Village Clerk Sasso testified that the committee is made up of herself, Brecklin, Hopkins and one other board member. However, the one maintenance employee who testified stated that Brecklin and Sasso are not on the committee. This maintenance employee was last evaluated in May 2011.

Discipline

Brecklin has never suspended an employee or recommended that he or she be discharged. Brecklin does not have the authority to terminate employees. Rather, that authority is vested in the board. He does have authority to recommend discipline and suspend employees. The board typically conducts a due process hearing before imposing any discipline. The Village board ultimately determines what discipline will be issued.

Only one employee has been disciplined since 2009. The incident occurred in the summer of 2011. In that instance, the mayor made a complaint about one of the maintenance employees making a lewd gesture toward him. The issue went before the personnel committee during a closed session. The personnel committee then brought the issue before the full board. Brecklin had recommended that the employee take time off. The board, however, chose not to issue any discipline.

Confidential

The mayor alleges that if the public works employees are certified as a bargaining unit, Brecklin would be appointed to the Village's negotiation team, along with Trustee Hopkins and the Village Clerk. In that role, Brecklin would assist in formulating strategies and proposals, and also have access to the Village's collective bargaining strategies and proposals.

Managerial Employee/Executive Head

Brecklin can make purchases for the public works department of $200 or less without board approval. For purchases over $200, Brecklin must receive prior approval from the board.

Brecklin provides recommendations for the public works department budget to the Village's finance committee chair. The chair can overrule his recommendations. The finance committee makes the budget recommendation to the board.

Brecklin attends almost every Village board meeting. He also spends time meeting with the Village's engineer to discuss the condition of the Village's roads. Brecklin and the engineer will decide which roads are in the worst condition and require maintenance. The engineer will then bring recommendations to the board. The board must approve any road maintenance requests. Brecklin does not have the authority to approve them.

b. Part-Time Maintenance Worker

The Village's public works department has hired at least one seasonal part-time maintenance worker for the last fourteen years. The part-time maintenance worker assists the maintenance employees with mowing grass, painting, landscaping, and weeding. The part-time maintenance worker does not receive any benefits except wages. Trent Passwater was hired as a part-time maintenance worker for the summer of 2011. He was employed from around May 15, 2011 to August 19, 2011. He received positive performance reviews and received a $0.50 an hour raise during his employment. Trustee Hopkins and Brecklin interviewed Passwater and two other individuals for the position. During Passwater's interview, Hopkins and Brecklin asked Passwater about his plans for the fall. Passwater indicated that he would be available to work three days a week in the fall because he was going to school locally. Hopkins and Brecklin told Passwater that Passwater's availability would work out well because the public works' department sometimes has work in the fall. Passwater was told that the position typically only lasts through the summer because the part-time maintenance workers are generally students who return to school in the fall. However, in the past, the Village has employed one part-time maintenance worker through the fall and winter to assist with snow plowing.[6]

Hopkins testified that there was no statement or assurance of any nature given to Passwater that he could continue working beyond the summer. Hopkins further testified that

[6] The parties did not state on which dates this occurred.

Passwater's ability to work in the fall was not the reason why Passwater was hired. However, at the May 12, 2011 board meeting in which Passwater's employment was approved, the minutes state that "Rich [Brecklin] recommends that the village hire Trent Passwater. Clark [Hopkins] noted that with this individual there might be potential for him to help part time in the fall since he is going to school locally."

On or about August 5, 2011, Passwater was told that his employment would be ending on August 19, 2011. Passwater was told the reason for his termination was that Passwater was starting school. In regard to working the following summer, Hopkins told Passwater to come talk to him about the same time of the year next year. Passwater reports that he was not sure whether Hopkins meant that he would have to apply again or if he would be automatically rehired. He was told that his being rehired would be based on the performance reviews he received. Hopkins reports that he did not indicate to Passwater or make any statement to him that would indicate that he would be re-hired without applying.

Brecklin was not working on the day Passwater was terminated. Later, Brecklin came to Passwater and told him that he would like to hire Passwater back because there was still work that he could be doing, but that at that time there was nothing Brecklin could do.

2. Village Hall

a. Village Clerk

Ann Sasso has been the Village Clerk for approximately 16 years. The Village Clerk is appointed to a four year term by the mayor. The Village Clerk and the Village Treasurer/Deputy Clerk work in the same office. The Village Clerk reports to the Village board and mayor. The Village Clerk also acts as the Village's administrative assistant, FOIA officer, representative for the Illinois Municipal Retirement Fund, and zoning officer. As zoning officer, Sasso approves or

denies construction projects based on her assessment of whether the project meets zoning requirements. Denials can be appealed to the Village board.

Sasso records the Village board and committee meetings and maintains those records. Sasso is occasionally present for executive sessions. If the board is discussing personnel issues related to her position, then Sasso is not allowed in the executive session. If the board is discussing personnel issues related to other Village employees, then Sasso is allowed in the executive session if the board needs her input. Sasso would be responsible for keeping minutes and typing up proposals for any future labor negotiations.

Sasso prepares the Village's payroll and issues paychecks. She is responsible for determining whether the employee time is compensable and ensuring that the level of compensation is correct. If an employee disputes the amount of his or her paycheck, he or she will go to Sasso. If the paycheck contains a small error, Sasso has the authority to correct it. If it contains a large error, Sasso must bring the issue to the personnel committee or the mayor.

Sasso also approves leave requests for the public works department employees and the Village Treasurer/Deputy Clerk. This duty requires her to check the schedules of the maintenance employees with the Superintendent of Public Works to ensure that the absence will not cause a scheduling conflict. Sasso does not participate in the hiring of public works department employees.

Sasso participated in the interview process for the current Village Treasurer/Deputy Clerk. The personnel chair was also involved in the interview. Sasso and the chair, through a consensus, made a recommendation to the Village board, which approved their recommendation. Sasso does not set the salary or benefits for any Village employees.

Sasso, the Superintendent of Public works, the Village board's personnel chair, and one other board member complete performance evaluations for the public works employees. Each evaluation is done by consensus of the group. The performance evaluation will note whether the panel is recommending a wage increase. The panel then takes the evaluations to the Village board, which must approve any wage increases. The board routinely approves the recommendations.

In regard to the budget, Sasso tells the finance department what her department needs. The finance department then prepares the budget and presents it to the board for approval. Sasso can make purchases of $200 or less for her department without prior approval. For purchases over $200, she must get approval from a Village board committee, the Village board, or the mayor.

b. Village Treasurer/Deputy Clerk

Doreen Paul is the Village Treasurer and Deputy Clerk. She has held these positions for approximately one year. Paul works part-time and does not receive benefits like health insurance, vacation, and personal time. In her role as Deputy Clerk, she is the assistant to the Village clerk. For example, when Paul is working on bookkeeping, she reports to Sasso. When she is not working on bookkeeping, she reports to the Village board. She is responsible for performing all of Sasso's duties when Sasso is absent.

Confidential

Paul attends Village board meetings in Sasso's absence. Paul has access to Village board and committee minutes and executive session minutes. Paul also has access to the Village's financial records. The mayor testified that if the public works employees were certified as a bargaining unit, he would appoint Sasso to handle negotiations, along with Brecklin. The mayor

stated that in Sasso's absence, Paul would be responsible for keeping minutes at labor negotiations and typing up proposals. Paul would also allegedly be responsible for providing input and financial data in order to develop proposals.

Managerial Employee/Executive Head

Paul can issue paychecks in Sasso's absence. Paul provides input to the finance committee on the budget.

Elected official

The Village Treasurer was appointed by the mayor. She was not elected.

## III. DISCUSSION AND ANALYSIS

### A. Jurisdictional Requirement

The Village contends that the Village employs only three employees and thus does not satisfy the jurisdictional requirement in the Act. Section 20(b) of the Act states:

> This Act shall not be applicable to units of local government employing less than 5 employees at the time the Petition for Certification or Representation is filed with the Board. This prohibition shall not apply to bargaining units in existence on the effective date of this Act and units of local government employing more than 5 employees where the total number of employees falls below 5 after the Board has certified a bargaining unit.

In this case, as I explain below, I find that the part-time maintenance worker and the Village Treasurer/Deputy Clerk are public employees within the meaning of the Act. The Village stipulated that the three full-time maintenance workers are public employees within the meaning of the Act. Thus, the Village employs five public employees and therefore, satisfies the jurisdictional requirement.

B. Supervisor

The Village argues that the Superintendent of Public Works is a supervisor within the meaning of Section 3(r) of the Act.[7] A supervisor is not a "public employee" or "employee" for purposes of the Act. To be deemed a supervisor, an individual must (1) perform principal work substantially different from that of his or her subordinates; (2) possess authority to perform one or more of the 11 indicia of supervisory authority, or to effectively recommend such performance; (3) consistently exercise independent judgment in exercising supervisory authority; and (4) devote a preponderance of his or her time to exercising that authority. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 505 (1990).

1. Principal Work Requirement

If the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different, the principal work requirement is satisfied. Id. If not, it must be determined whether the "nature and essence" of the alleged supervisor's principal work is substantially different than the "nature and essence" of his or her subordinates' principal work. Id.

In this case, the Superintendent's work is not obviously and visibly different from that of the maintenance employees. He shares some common duties with his subordinates including street plowing, conducting operational tests, and responding to public complaints. However,

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[7] Section 3(r) of the Act states:

> "Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has the 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 individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.

Brecklin also performs certain administrative tasks, which are unique to his position, including participating in a hiring committee, assigning duties, handling leave requests, and authorizing overtime. Being responsible for these duties makes the nature and essence of his work substantially different from that of his subordinates. Vill. of Chatham, 16 PERI ¶2017 (IL LRB-SP 2000), City of Tuscola, 15 PERI ¶2034 (IL SLRB 1999). Thus, I find that the nature and essence of Brecklin's work is substantially different than the nature and essence of the maintenance employee's work, and the principal work requirement is satisfied.

2. Supervisory Indicia and Independent Judgment

To fulfill the second and third prongs of the Act's supervisory definition, the Village must establish that the Superintendent of Public Works has the authority to perform or effectively recommend any of the 11 factors listed in the Act and consistently exercise that authority with independent judgment. A decision requires independent judgment when it involves a choice between two or more significant courses of action; it cannot be routine or clerical in nature or made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. City of Freeport, 135 Ill. 2d at 521. A recommendation is effective when it is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Ill. State Labor Relations Bd., 167 Ill. App. 3d 284, 290 (3d Dist. 1988); Vill. of Justice, 17 PERI ¶2007 (IL LRB-SP 2000). In this case, the Village asserts that Brecklin has the supervisory authority under the Act to hire, direct, and discipline, or effectively recommend the same.

a. Hire

If an individual participates in a hiring committee that includes his or her supervisors and committee decisions are reached by consensus, his or her recommendation is not "effective"

within the meaning of the Act. Cnty. of Lake, 16 PERI ¶2036 (IL SLRB 2000). In this case, Brecklin was on an interview panel for the part-time maintenance. However, Hopkins, his superior, was also on the panel. In addition, it appears from the record that the decision to hire Passwater was reached by consensus. Therefore, I find that Brecklin does not possess the authority to hire or effectively recommend hire within the meaning of the Act.

b. Direct

The authority to direct involves functions relating to overseeing the employer's operations or which indicate responsibility for the performance of a subordinate's work. Vill. of Glen Carbon, 8 PERI ¶2026 (IL SLRB 1992); City of Lincoln, 4 PERI ¶2041 (IL SLRB 1988). These functions include reviewing and monitoring work activities, instructing employees on how work is to be performed, assigning work if it is not based on routine factors like balanced workload, scheduling work hours, training if a supervisor is choosing between discipline or training, approving requests for leave or overtime if the requests are not routinely granted, and completing performance evaluations if the evaluations are used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 518-19 (1992); City of Freeport, 135 Ill. 2d at 513; Vill. of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook Cnty. (Adult Prob. Dep't), 19 PERI ¶123 (IL LRB-SP 2003); County of Boone, 19 PERI ¶74 (IL LRB-SP 2003); State of Ill., Dep't of Cent. Mgmt. Servs., 12 PERI ¶2032 (IL SLRB 1996). These functions are not supervisory unless the alleged supervisor also has significant discretionary authority to affect his or her subordinates' employment in areas likely to fall within the scope of union representation, such as discipline, transfer, promotion, or hire. State of Ill., Dep't of Cen. Mgmt. Servs. (State Police) v. Illinois Labor Relations Board, 382 Ill.

App. 3d 208, 224 (4th Dist. 2008); County of Lake, 16 PERI ¶2036; City of Bloomington, 13 PERI ¶2041 (IL SLRB 1997); City of Sparta, 9 PERI ¶2029 (IL SLRB 1993). The authority to direct requires more than simply observing and monitoring subordinates or being responsible for the operation of a shift. City of Chicago, 10 PERI ¶3017 (IL LLRB 1994). The authority to direct requires that the employee be actively involved in checking, correcting, and giving instructions to subordinates without guidelines or review by others. Id.; City of Lincoln, 4 PERI ¶2041.

1. Reviewing and monitoring work activities, instructing employees

In this case, if a sewage or road problem arises, the maintenance employees will contact Brecklin, and Brecklin will instruct them on how to handle the problem. Brecklin also determines whether street plowing is needed and whether the maintenance employees need to work overtime. The Employer failed to provide sufficient evidence that Brecklin performs these duties with the requisite independent judgment. Rather, the evidence suggests that Brecklin's instruction is derived from his superior skill, experience, and/or knowledge and is thus not supervisory within the meaning of the Act. City of Freeport, 135 Ill. 2d 499; City of Sparta, 9 PERI ¶2029; Vill. of Chatham, 16 PERI ¶2017 (IL SLRB 2000).

2. Assigning work

In this case, Brecklin assigns the maintenance employees duties each day. Brecklin also assigns the maintenance employees to on call status. On call assignments are based on a rotation, which is determined at the beginning of the year.

The Village did not provide evidence to show how making assignments each morning involves a consistent choice between two or more significant courses of action. City of Freeport, 135 Ill. 2d at 521. In addition, assignments are not indicative of the supervisory authority to

direct if they are based on routine factors. Cnty. of Vermillion, 18 PERI ¶2050 (IL LRB-SP 2002). Thus, I find that Brecklin's assigning of work is not supervisory within the meaning of the Act.

3. Scheduling work hours, approving leave requests

Brecklin handles the part-time maintenance and full-time maintenance employees' leave requests. The evidence indicates that the leave requests are routinely granted based upon whether the employee has the available time, and thus are not indicative of supervisory authority. Chief Judge of the Circuit Court of Cook Cnty., 153 Ill. 2d at 518-19. Brecklin also determines whether overtime should be assigned for street plowing. Again, this duty does not indicate supervisory authority, but rather seems to be based upon routine factors, like whether or not the street plowing was able to be completed during the regular work day.

4. Conducting performance evaluations

The three maintenance employees are evaluated annually by the personnel committee. There was conflicting testimony as to whether Brecklin is included in this committee. Moreover, the evidence did not reveal the extent of Brecklin's involvement in completing performance evaluations. Thus, I find that there is insufficient evidence to determine that Brecklin conducts performance evaluations. The evidence also did not reveal whether performance evaluations affect the employees' pay or employment status. For these reasons, I find that Brecklin's involvement in performance evaluations is not indicative of the supervisory authority to direct within the meaning of the Act.

e. Discipline

Only one employee has been disciplined since 2009. In that case, Brecklin recommended time off, however the Village board chose not to issue discipline. The Village failed to show that

Brecklin's recommendations are adopted by his superiors as a matter of course with very little, if any, independent review. City of Peru, 167 Ill. App. 3d at 290. Thus, I find that Brecklin does not have the authority to discipline or effectively recommend discipline within the meaning of the Act.

3. Preponderance Requirement

The fourth prong of the Act's definition of a supervisor requires that the alleged supervisor spend a preponderance of his or her employment time exercising supervisory authority, as defined by the Act.

Here, I have found that Brecklin does not have authority to hire, direct, or discipline or effectively recommend the same. Therefore, I cannot find that he exercises such authority for a preponderance of his employment time. In sum, I find Brecklin is not a supervisor within the meaning of Section 3(r) of the Act.

C. Short-term Employee

The Village contends that the part-time maintenance worker is a short-term employee within the meaning of the Act. A short-term employee is not a "public employee" or "employee" for purposes of the Act. Section 3(q) defines a short-term employee as follows: "an employee who is employed for less than two consecutive calendar quarters during a calendar year and who does not have a reasonable assurance that he or she will be rehired by the same employer for the same service in a subsequent calendar year." The definition is in the conjunctive, therefore if either element is not met, the employee cannot be excluded as a short-term employee. City of Washington, 23 PERI ¶101 (IL LRB-SP 2007). The Board considers the following factors in determining whether there is a reasonable assurance of rehire: (1) whether any preference is given to employees who worked for the employer during previous years; (2)

whether employees are required to reapply each year; (3) whether the position requires a special license or certification; (4) the numbers of employees rehired from year to year; and (5) whether the employer has made any assurance or indicated that it will rehire the individual. City of Morrison, 14 PERI ¶2041 (IL SLRB 1998); Nw. Mosquito Abatement Dist. v. Ill. State Labor Relations Bd., 303 Ill. App. 3d 735, 743 (1st Dist. 1999); Quincy Park Dist., 11 PERI ¶2009 (IL SLRB 1994), aff'd by unpub. order sub nom Quincy Park Dist. v. Int'l Ass'n of Machinists & Aerospace Workers, 13 PERI ¶4004 (4th Dist. 1996); City of Rushville, 8 PERI ¶2042 ( IL SLRB 1992). Reasonable assurance of rehire requires "some evidence that the employer made some representation (of whatever nature) that the employee could reasonably construe as an 'assurance' that he or she would be rehired at a later date." City of Tuscola v. Ill. State Labor Relations Bd., 314 Ill. App. 3d 731 (4th Dist. 2000). An employee has a reasonable assurance of rehire if, when he or she leaves employment, "he or she has a strong belief that he/she will be able to work there again in subsequent years . . . Reasonable assurance is not quite a guarantee, but almost." Nw. Mosquito, 303 Ill. App. 3d at 743.

In this case, the Union argues that the part-time maintenance worker is not a short-term employee. The Union asserts that the May 12, 2011 Village board meeting minutes, which stated "there might be potential for him [Passwater] to help part time in the fall since he is going to school locally," show that at the time of hiring, Passwater's employment was not limited to summer work, and the Village expected to use his services into the fall. In addition, the Union argues that the Village regularly hires a part-time worker each year and has done so for several years. The Union asserts that there is clearly precedent for the claim that Passwater was not simply a short term seasonal employee due to the fact that the Village had, at least one prior time, employed the part-time worker through the fall season. Finally, the Union also argues that

the Village terminated Passwater's employment in August in order to evade jurisdiction of the Act.[8]

The Village argues that the part-time maintenance worker is a short-term employee. The Village notes that the Union did put forth evidence that the Village historically hires a college student each year to mow grass during the summer months. However, the Village asserts that in all but one case, the employment ended when the student returned to school in the fall. The Village argues that because Passwater's employment ended on August 19, 2011, he was employed less than two calendar quarters. The Village also argues that Passwater did not have a reasonable assurance of rehire. The Village notes that when Hopkins told Passwater that his last day would be August 19, 2011, Hopkins also informed Passwater that he could apply for the job again the next year. The Village contends that Passwater was given no assurance of further employment. The Village also argues that the evidence provides no basis for any assertion by the Union that Passwater could or would have worked beyond the date he was to return to school for the fall semester. The Village notes that even the Union's witness, Bret Wernsman,

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[8] On August 29, 2011, Passwater and the Union filed separate unfair labor practice charges. In Case No. S-CA-12-050, Passwater alleges that the Village violated Section 10(a) (2) and (1) when it terminated him. Case No. S-CA-12-050 alleged as follows: "I was the 5th employee in the public works department. After learning that the Union filed for representation of the department I was terminated August 19, 2011. When hired it was with the understanding I would work throughout the fall." In Case No. S-CA-12-052, the Union alleges that the Village violated Section 10(a)(2) and (1) by terminating Passwater's employment and by changing the terms and conditions of employment involving employee break time. Case No. S-CA-12-052 alleged as follows:

> The Board of Trustees of the Village of Germantown Hills has evidence of anti-union animus by its conduct since it learned that employees of the Public Works Department were considering Union affiliation. It has done so by changing the terms and conditions of employment involving employee break time and has attempted to unlawfully reduce the size of the employee staff by terminating a seasonal employee who had been hired with the understanding he would work through the fall season. The Village has had seasonal employees for several years many of whom work throughout the fall and winter. Part-Time seasonal employee Trent Passwater was terminated on 8-19-11 in an effort to reduce the size of the bargaining unit below the statutory requirement.

Both unfair labor practice cases are being held in abeyance until the recommended decision and order has been issued in this case.

acknowledged that the part-time maintenance worker has been traditionally employed only for the summer months. Finally, the Village argues that the official action of the Village board at the May 12, 2011 meeting only authorized his employment as "Part Time Summer Help."

I find that Passwater was employed for less than two consecutive calendar quarters during a calendar year. Passwater worked from mid-May through mid-August.[9] Therefore, the first element of the short-term employee test is met.

However, I find that as of May 17, 2011, Passwater had a reasonable assurance that he would be rehired by the Village the following year. The evidence did not reveal whether the Village historically rehires particular part-time maintenance workers, whether the Village gives special considerations to employees who have worked for it in the past, or whether Passwater would be required to reapply the next year. However, the Village did tell Passwater that his being rehired would be based on the performance reviews he received during his employment in 2011. Passwater received positive performance reviews and a raise, indicating that if re-hire was based on performance reviews, which is what he was told, Passwater would indeed be re-hired the next year. In sum, I find that Passwater had a reasonable assurance of rehire and thus is not a short-term employee within the meaning of the Act.

**D. Confidential Employee**

The Village asserts that the Superintendent of Public Works and the Village Treasurer/Deputy Clerk are confidential employees within the meaning of Section 3(c) of the Act.[10] Three tests have been formulated to determine whether an employee is "confidential":

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[9] Although I recognize there are issues concerning the nature of Passwater's termination that remain pending, I nonetheless find that Passwater was employed for less than two consecutive quarters.

[10] 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

the labor nexus test, the authorized access test, and the reasonable expectation test. Chief Judge, 153 Ill. 2d at 523. The labor nexus and authorized access tests require analysis of the employee's "regular course of duties." State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶34 (IL LRB-SP 2010).

Under the labor nexus test, an employee is a confidential employee if he or she assists in a confidential capacity in the regular course of his or her duties a person or persons who formulates, determines, or effectuates labor relations policies. Chief Judge, 153 Ill. 2d at 523. The person being assisted must perform all three of these functions. 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. Id. The reasonable expectation test applies where no collective bargaining unit was previously in place. Id. at 524. The reasonable expectation test was formulated to determine, in the absence of a collective bargaining relationship, whether the onset of collective bargaining would reasonably lead to an employee performing confidential duties. City of Burbank, 2 PERI ¶2036 (IL SLRB 1986). The Board will attempt to ascertain an employee's (and his or her supervisor's) future role in collective bargaining, based upon the employee's current job duties and whether there exists a reasonable expectation that the employee alleged to be confidential will in fact be performing confidential duties that satisfy the statutory definition. Chief Judge, 153 Ill. 2d at 527.

In this case, the reasonable expectation test applies because there is no history of collective bargaining either between the parties, between the Village and another labor

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course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies.

organization, or with respect to any Village personnel including the petitioned-for bargaining unit.

1. Superintendent of Public Works

Brecklin is a confidential employee within the meaning of the Act. Based upon Brecklin's current job duties, I find that there exists a reasonable expectation that Brecklin will in fact be performing confidential duties that satisfy the statutory definition. The mayor testified that Brecklin would be appointed to the Village's negotiating committee along with Trustee Hopkins and the Village Clerk. In that role, Brecklin would assist Trustee Hopkins and the Village Clerk in developing strategies and proposals. In that role, Brecklin would also have access to information concerning proposals and strategy in dealing with the Union. It is reasonable to expect that Brecklin will act in such a capacity: Brecklin currently reports directly to the board, attends almost every board meeting, and makes recommendations to the board regarding personnel actions such as hiring and discipline. It is reasonable to expect that under these circumstances, an employee in Brecklin's position would be called on to assist in negotiations. See Pike County Hous. Auth., 28 PERI ¶13 (IL LRB-SP 2011). Thus, I find that Brecklin is a confidential employee under the reasonable expectation test.

2. Village Treasurer

Paul is not a confidential employee within the meaning of the Act. Based upon the Village Treasurer/Deputy Clerk's current job duties, I find that there is not a reasonable expectation that Paul will in fact be performing confidential duties that satisfy the statutory definition. The mayor testified that Paul would keep minutes at labor negotiations and type up proposals in the Village Clerk's absence. In County of Rock Island, 3 PERI ¶2001 (IL SLRB 1986), the Board found that a bookkeeper was not a confidential employee despite the fact that

the Village stated that she would be assigned another employee's confidential duties when the confidential employee was absent. The Board stated that the likelihood that the bookkeeper would actually perform confidential duties depended on "several contingencies that may never happen." Id. The Board further stated that "Since collective bargaining has not yet occurred it is unknown at this time whether [the other employee] will require back-up or overflow assistance. In this case, the possibility that a second person will be needed to perform these functions, given the relatively small size of the unit, is remote." Id. Here, I find that the possibility that Paul will be needed to perform Sasso's confidential duties also "depends on several contingencies that may never happen." I also find that the possibility that Paul will be needed to perform confidential duties is remote as well, given the small size of the unit.

The Village also states that Paul would be responsible for providing input and financial data in order to develop collective bargaining proposals. 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 Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶161 (IL LRB-SP 2009), citing Chief Judge, 153 Ill. 2d 508. Further, merely supplying raw financial data for use in negotiations is insufficient to establish confidential status. Chief Judge of Circuit Court of Cook Cnty., 218 Ill. App. 3d 682, 705 (1st Dist. 1991).

Currently, Paul has access to Village board and committee minutes and executive session minutes. However, the record did not indicate that Paul has attended board meetings where personnel matters are discussed or attended executive sessions. Access to these minutes alone does not establish that she will be privy to information concerning collective bargaining. In City of Chicago, the support employees' access to their supervisor's files, office, and email did not

establish that the employees were confidential under the authorized access test, where the employer failed to provide examples of employees accessing documents that disclosed the employer's collective bargaining strategy. 26 PERI ¶114 (IL LRB-LP 2010). I find that there is not a reasonable expectation that Paul will be performing confidential duties, and thus she is not a confidential employee within the meaning of the Act.

E. **Managerial Employee**

The Village asserts that the Superintendent of Public Works and the Village Treasurer/Deputy Clerk are managerial employees within the meaning of Section 3(c) of the Act. The Village further asserts that the Village Treasurer/Deputy Clerk is a managerial employee as a matter of law.

1. Managerial within the meaning of the Act

A managerial employee is not a "public employee" or "employee" for purposes of the Act. An individual must meet a two-part test to be found a managerial employee. He or she must be (1) engaged predominantly in executive and management functions and (2) obligated to exercise responsibility for directing the effectuation of management policies and practices.[11] State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶83 (IL LRB-SP 2010), citing Dep't of Cent. Mgmt. Servs./Dep't of Healthcare & Family Servs. v. Ill. Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 330 (4th Dist. 2009).

The first prong concerns whether the individual uses independent discretion to make policy decisions as opposed to merely following established policy, changes the focus of an

[11] Section 3(j) of the Act states:

> "Managerial employee" means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.

employer's organization, is responsible for day-to-day operations, negotiates on behalf of the employer, exercises authority to pledge an employer's credit, formulates policies, prepares a budget, and oversees efficient and effective operations. Id.; Vill. of Elk Grove Village v. Ill. State Labor Relations Bd., 245 Ill. App. 3d 109, 121-122 (2d Dist. 1993); State of Ill., Dep't of Cent. Mgmt Servs. (Ill. Dep't of Revenue), 21 PERI ¶205 (IL LRB-SP 2005). The first prong of the test requires more than exercising professional discretion and technical expertise. Dep't of Healthcare and Family Servs., 388 Ill. App. 3d at 331; Cnty. of Cook v. Ill. Labor Relations Bd., 351 Ill. App. 3d 379, 386 (1st Dist. 2004). The individual must exercise independent judgment and possess a level of authority sufficient to broadly affect the organization's purpose or its means of effectuating those purposes. State of Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶161. Managerial status is not found where the individual merely serves a subordinate or advisory function in developing policy. Dep't of Healthcare and Family Servs., 388 Ill. App. 3d at 331.

The second prong requires that the individual oversee or coordinate policy implementation by developing the means and methods of reaching policy objectives and by determining the extent to which the objectives will be achieved. Id. It is not enough to merely perform "duties essential to the employer's ability to accomplish its mission." Id. If the alleged managerial employee's decisions are "significantly circumscribed by predetermined requirements and procedures, the employee's activities are not managerial." Chief Judge of Eighteenth Judicial Circuit v. Ill. State Labor Relations Bd., 311 Ill. App. 3d 808, 815 (2d Dist. 2000), citing Vill. of Elk Grove, 245 Ill. App. 3d at 121-22. The individual must possess substantial discretion to determine how policies will be effected. Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 331, citing State of Ill., Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79, 87 (4th Dist. 1996). However, "the relevant consideration is

effective recommendation or control rather than final authority over employer policy." Chief Judge of the Sixteenth Judicial Circuit v. Ill. State Labor Relations Bd., 178 Ill. 2d 333, 339-40 (1997); State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶155 (IL LRB-SP 2011).

a. Superintendent of Public Works

Brecklin is not a managerial employee within the meaning of the Act. In regard to the first part of the test, the Village failed to show that Brecklin has the authority to establish Public Works Department or Village policies or procedures or to change the focus of the Village's Public Works Department or the Village. Rather, the evidence suggests that this authority is vested in the Village board and/or mayor. In working with the Village engineer to determine which roads require maintenance, Brecklin does have some responsibilities in regard to street maintenance planning. However, the evidence suggest that his role is advisory, as it is the Village engineer who ultimately brings the recommendation to the Village board for approval. Moreover, the Village did not state how much time Brecklin spends working with the engineer. Thus, I am unable to determine if he is predominantly engaged in this activity. The Village also did not establish that Brecklin negotiates on behalf of the Village. In regard to Brecklin's authority to make purchases of $200 or less without prior board approval, the Village did not provide sufficient evidence that this authority requires the use of independent judgment or broadly affects the Village's purpose or policies.

In regard to the Public Works Department's budget, Brecklin provides budget recommendations to the finance committee chair. However, it is the finance committee which actually prepares the budget and presents it to the board for approval. The Village failed to establish that Brecklin's recommendations are adopted as a matter of course by the finance committee or by the Village board. City of Peru, 167 Ill. App. 3d at 290. Further, even if his

budgetary role did qualify as an executive or management function, the Village failed to establish that Brecklin is predominantly engaged in this activity. Thus, I cannot conclude that Brecklin is predominately engaged in executive and management functions for the Village.

As to the second part of the test, the Village failed to show that Brecklin exercises responsibility for the effectuation of management policy or oversees the implementation of policy. There is insufficient evidence to establish that Brecklin possesses substantial discretion to determine how Public Works Department policies will be implemented or put into effect. Thus, I find that Brecklin is not a managerial employee as defined by the Act.

b. Village Treasurer

Paul is not a managerial employee within the meaning of the Act. In regard to the first part of the managerial test, Paul does not have the authority to develop methods, policies, or regulations on behalf of the Village. She does not have the authority to change the focus or purpose of the Village Clerk's office, the Village Treasurer's role, or the Village. In addition, although Paul provides input to the finance committee on the budget, she does not prepare the budget. Rather, it is the Village Clerk who works with the finance committee chair to develop a budget for the Village Clerk's office, and it is the finance committee which is actually responsible for preparing the budget and presenting it to the board for approval. See Vill. of Hartford, 4 PERI ¶2001 (IL SLRB H.O. 1987) (village treasurer's administrative responsibilities including overseeing the spending of village officials were not "executive and management function", where treasurer had no subordinate responsibilities, did not attend executive or management meetings, had no input into drafting the village budget, and had no input into the spending decisions of village officials). In addition, Paul's authority to assume the duties of the Village Clerk in Sasso's absence does not make her a managerial employee where her essential

duty is to act as Sasso's assistant. Vill. of New Baden, 19 PERI ¶72 ( IL LRB-SP 2003) (village treasurer was not a managerial employee where her duties were clerical and routine in nature and she did not have the authority or responsibility to establish policies or regulations on behalf of the Village, to change the focus of the Village Clerk's office generally or the Treasurer's position in particular, to determine the budget for either the village clerk's office or the village, or to negotiate with the public or employees on behalf of the village).

Moreover, the evidence did not establish that Paul actively participates in Village board meetings. Paul attends those in Sasso's absence, but her role amounts to merely recording the meetings and maintaining those records. Thus, Paul's duties are fundamentally clerical. See City of Sparta, 9 PERI ¶2029 (deputy city clerk was not a managerial employee although she had the authority to assume the duties of the city clerk in the city clerk's absence, including attending city council meetings, where deputy city clerk did not actively participate in meetings but merely recorded the council's activities and had no authority to change the filing system established by the city clerk). Moreover, the Village failed to establish what amount of time Paul spends performing any of her duties. Thus, I am unable to determine that she is engaged predominantly in "executive and management functions." Paul fails to satisfy the first prong of the managerial test.

Paul also fails to satisfy the second prong of the test. The Village failed to show how Paul's duty as treasurer and her duties as Sasso's assistant establish that she oversees policy implementation for the Village by developing the means, methods, and extent of reaching policy objectives. I conclude that Paul is not a managerial employee within the meaning of the Act.

2. Managerial as a matter of law

Illinois courts have developed an alternative analysis in which certain employees are held to be managerial employees as a matter of law and thus excluded from collective bargaining. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d 333; Office of the Cook Cnty. State's Attorney v. Ill. Local Labor Relations Bd., 166 Ill. 2d 296 (1995). Three factors have been identified that support a finding that an employee is managerial as a matter of law: 1) close identification of an office holder with the actions of his or her assistants; 2) unity of their professional interests; and 3) power of the assistants to act on behalf of the office holder. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 344; Office of Cook County State's Attorney, 166 Ill. 2d at 304. The Illinois Supreme Court has emphasized that the managerial as a matter of law analysis has limited applicability and should not be used to deem all professional employees managerial employees under the Act. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 347. The test considers whether the functions of the employees so align them with management that if they were represented by a labor organization, they would be put in a position of divided loyalty between their employer and the labor organization. Id. at 333; Office of the Cook County State's Attorney, 166 Ill. 2d 296; State of Illinois, Department of Central Management Services, 388 Ill. App. 3d 319.

In this case, Paul is not a managerial employee as a matter of law. The Village did not establish that Paul makes decisions that effectively control or implement Village policy or that she possesses absolute discretion in her role as Village Treasurer/Deputy Clerk. The Village did not demonstrate that Paul acts independently or has the authority to make any decisions, which would bind or commit the Village to any course of action. State of Illinois, Department of Central Management Services, 21 PERI ¶205; Chief Judge of the Sixteenth Judicial Circuit, 178

Ill. 2d 333; Office of the Cook County State's Attorney, 166 Ill. 2d 296. Rather, the evidence suggests that any decisions would require review or approval by the Village Clerk, Village board, or mayor. The Village also failed to establish that Paul exercises authority reserved to the Village Clerk or the Village. Rather, Paul's authority seems to be advisory in nature. In addition, it should be noted that in this case, the Union does not seek to add Paul to the proposed bargaining unit. Rather, the examination of whether she is a "public employee" is merely to determine whether the Village satisfies the jurisdictional requirement in Section 20(b) of the Act. Therefore, an argument that she would be put in a position of divided loyalty between the Village and the union is speculative. Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 338. In sum, I find that Paul is not a managerial employee as a matter of law.

F. **Executive Head of a Department**

The Village contends that the Superintendent of Public Works and the Village Treasurer/Deputy Clerk are executive heads of a department within the meaning of Section 3(n) of the Act. An executive head of a department is not a "public employee" or "employee" for purposes of the Act. The Act does not define executive head of a department. The Board has held that an executive head of a department is an employee who controls or directs a major administrative division of municipal government. City of Highwood, 17 PERI ¶2021 (IL LRB-SP 2001) aff'd by unpub. order, 18 PERI ¶4005 (2nd Dist. 2002); City of Sparta, 9 PERI ¶2029. An employee controls or directs a department if he or she prepares the department's budget, regularly attends department head meetings with superiors, and reports directly to superiors on a one-to-one basis to discuss the department's operations. City of Sparta, 9 PERI ¶2029 (city code enforcement officer not an executive head although he spoke with commissioner of public health a few times a week because he was not involved in budget formulation, did not attend city

council meetings, and did not have responsibility for the overall operations and management of the department as that was the duty of the commissioner of public health and safety); City of Highwood, 17 PERI ¶2021 (city collector not an executive head because she did not prepare a budget or attend department head meetings, although she had daily communications with the city administrator and oversaw the city's payroll and handled workers' compensation claims); Vill. of New Baden (Pub. Works Dep't), 22 PERI ¶98 (IL LRB-SP ALJ 2006) (director of public works department not an executive head because he only prepared a "wish list" for his department not a budget, did not attend executive session meetings on a regular basis, and did not regularly meet with the committee having oversight over the department or with the mayor).

1. Superintendent of Public Works

The Superintendent of Public Works is not an executive head of a department. The evidence fails to establish that Brecklin controls or directs a "major" administrative division. Rather, the Public Works Department is made up of five people: Brecklin, three full-time, and one-part time employee. In addition, Brecklin does not create the Public Works Department budget. Rather, he provides recommendations to the finance committee chair, which then prepares it and presents it to the Board. Further, the Village did not provide evidence of Brecklin regularly attending meetings with other Department heads, the Village board, or the mayor. Brecklin does attend almost every Village board meeting. However, the Village did not establish that he attends executive sessions on a regular basis. Although, Brecklin is responsible for the Village's streets, parks, sewer, and animal control, the evidence suggests that it is Trustee Hopkins and other Village committee members who have responsibility for the overall operations and management of the Public Works Department. Thus, I find that Brecklin is not an executive head of a department within the meaning of the Act.

2. Village Treasurer/Deputy Clerk

Paul is not an executive head of a department. As previously stated, Paul does not prepare the budget for the Village Clerk's office. Rather, she merely provides "input" to the finance committee. Further, the Village did not provide evidence of her regularly attending meetings with the Village Clerk, Superintendent of Public Works, the Village board, or the mayor. In addition, Paul does not regularly attend Village board meetings, but rather attends them only when Sasso is absent. The Village did not provide any evidence of Paul discussing the Village Clerk's office operations when reporting to the Village Clerk or the Village board. Moreover, Paul does not have responsibility for the overall operations and management of the Village Clerk's office. Rather, the evidence suggests that it is the Village Clerk who has responsibility for the overall operation and management of the Village Clerk's office. I conclude that the Village Treasurer/Deputy Clerk is not an executive head of a department.

G. **Elected Official**

The Village contends that the Village Treasurer/Deputy Clerk is an elected official within the meaning of Section 3(n) of the Act. An elected official is not a "public employee" or "employee" for purposes of the Act. The Act does not define elected official. In Village of Bellwood, the Board held that individuals who are appointed to their positions were meant to be included under the Act's coverage as "employees", since Section 3(n) specifically excludes "employees appointed to State positions of a temporary or emergency nature." 4 PERI ¶2042 (IL SLRB 1988). The Board stated: "[c]learly the only 'appointees' that the Legislature meant to exclude were those working a State government on a temporary or emergency basis." Id. The Board thus held that all other "appointees" are public employees, if they otherwise meet the definition in Section 3(n). Id. In this case, the Village Treasurer/Deputy Clerk was appointed to

her position as Village Treasurer. Therefore, she is not an "elected official", but rather a public employee for purposes of the Act.

## IV. CONCLUSIONS OF LAW

1. I find that the Village employs five or more employees and thus satisfies the jurisdictional requirement of Section 20(b) of the Act.

2. I find that the Superintendent of Public Works is not a supervisor, a managerial employee, or an executive head of a department within the meaning of the Act.

3. I find that the Superintendent is a confidential employee and thus not a public employee within the meaning of the Act.

4. I find that the part-time maintenance worker is not a short-term employee within the meaning of the Act and thus is a public employee within the meaning of the Act.

5. I find that the Village Treasurer/Deputy Clerk is not a confidential employee, a managerial employee as defined by the Act or as a matter of law, an executive head of a department, or an elected official within the meaning of the Act and thus is a public employee within the meaning of the Act.

## V. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, International Union of Operating Engineers Local 649 shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: All maintenance personnel in the Public Works Department (the titles currently held by Brett Benefield, Trent Passwater, Bret Wernsman, and Raymond Zimmerman).

EXCLUDED: All supervisory, confidential, and managerial employees within the meaning of the Act.

## VI. 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 Chicago, Illinois, this 6th day of September, 2012.**

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

**Michelle N. Owen**
**Administrative Law Judge**

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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| International Union of Operating Engineers Local 649,<br><br>Petitioner<br><br>and<br><br>Village of Germantown Hills,<br><br>Employer. | Case No. S-RC-11-128 |

DATE OF
MAILING: September 6, 2012

**CERTIFICATE OF SERVICE**

I, Michelle N. Owen, an attorney, 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 5:00 p.m., on the date listed above, copies thereof in the United States mail pickup at 160 N. LaSalle, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

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