

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

City of East Moline,	)	
	)	
Employer/Petitioner,	)	
and	)	Case No.S-UC-08-398
	)	
American Federation of State, County and	)	
Municipal Employees, Council 31,	)	
Local 1234,	)	
	)	
Labor Organization	)	

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

On May 21, 2008, the City of East Moline (City or Petitioner) filed a unit clarification petition in the above-captioned matter with the State Panel of the Illinois Labor Relations Board (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code, Sections 1200 through 1240 (Rules). The City seeks to determine whether employees in three newly created positions: (1) Assistant Director of Engineering; (2) Senior Engineer and (3) GIS/CADD Coordinator are professionals within the meaning of the Act and thus may only be included in the existing bargaining unit by a poll of the petitioned-for employees. The American Federation of State, County and Municipal Employees, Council 31, Local 1234 (AFSCME or Union) represents employees of the City in an historical unit.<sup>1</sup>

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<sup>1</sup> The Unit includes all City employees including Park Board employees and excludes Police, Firemen, City Administrator and his Assistant, Director of Maintenance Services and his Assistant, Director of Walter Filtration, Superintendent of Sewer Plant, City Chemists, City Engineer, Inspectors, Director of Development Services, Assistant Director of Planning and

A hearing in this matter was held on June 22, 2010, in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs. Briefs have been timely filed on behalf of both parties. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. At all times material, the City of East Moline has been a public employer within the meaning of Section 3(o) of the Act.
2. At all times material, the City has been subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.
3. At all times material, the City has been a unit of local government subject to the Act pursuant to Section 20(b) of the Act.
4. At all times material, the American Federation of State, County and Municipal Employees, Council 31, Local 1234, has been a labor organization within the meaning of Section 3(i) of the Act.
5. If any of the employees that are the subject of this petition are found not to be professional employees, they should be included in the existing bargaining unit.

**II. ISSUES AND CONTENTIONS**

The issue in this case is whether the three newly created positions are professional such that they can only be included in the existing bargaining unit by a poll of the

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Development, Deputy City Clerk, City Attorney, Maintenance Services Supervisor, Seasonal Employees, Elected Officials, Administrative, Supervisory and Confidential Employees as defined under the Illinois Public Relations Act.

petitioned-for employees. The City contends that the newly created positions are professional. AFSCME contends that the new positions are not professional and that the work performed by the employees in the new positions is bargaining unit work. In AFSCME's view, the City merely brought in new people and new equipment and re-arranged duties among different employees. AFSCME also contends that the educational qualifications for the new positions are the same as for the previous positions.<sup>2</sup>

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

#### **East Moline Engineering Department**

In 2006 the City employed three employees in its engineering department: the City Engineer, the Assistant Director of Engineering and an Engineering Technician II. In 2006, two of those employees retired, the City Engineer and the Engineering Technician II, Dennis Milburn, with the Assistant Director Donald Mayhew remaining. Following the retirements, the City Engineer title became the Director of Engineering. The City Engineer was specifically excluded from the Unit. The Assistant Director was never included in the unit but was never specifically excluded from the Unit. In 2006, only the Engineering Technician II was included in the bargaining unit.

In December 2006, the City hired Timothy Kammler for the newly created title, Director of Engineering Services.<sup>3</sup> Kammler's job duties were to oversee and direct all engineering activities for the City including administration, oversight of public works

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<sup>2</sup> Neither party has raised the issue of whether the unit clarification petition is appropriate for determining the issue in this case. For that reason, I do not address the issue of whether another type of petition would have been the appropriate vehicle for addressing the issue in this case.

<sup>3</sup> Kammler has been a civil engineer since 1995. Kammler had worked for McClure Engineering Associates which did consulting work for East Moline from the late 1990's until December 2006. He worked on a half dozen larger projects and a multitude of smaller ones such as cost estimates and answering questions. He worked with City Administrator Rich Keehner and also Steve Radick, the Finance Director.

improvements, oversight of private development work; oversight of code related engineering issues, and the upkeep of maps including locations of utilities and infrastructure. Kammler reorganized the engineering department. In doing so, it was Kammler's goal to prepare in-house various complex, multi-million dollar capital improvement plans so as to save the City substantial amounts of money in consulting fees. He hired highly skilled and cross-trained employees capable of independent work. Currently, the department is organized as follows. Below Kammler in the organization chart and reporting to him is the Assistant Director of Engineering, Rich McDaniel;<sup>4</sup> reporting to McDaniel are the GIS/CADD Coordinator, Joseph Miller and the Senior Engineer/Construction and Storm Water, Don Mayhew.<sup>5</sup> Kammler, McDaniel and Miller spend most of their time in the engineering office but Mayhew spends a majority of his time in the field.

Kammler's management style as Director has been to give employees initial instructions and then have them work independently. Also, he provided for cross-training of his subordinates. At the hearing in this case, Kammler described the work of the engineering department as collaborative.

During Kammler's tenure, the City has increased rates such that the City has revenue to fund more capital improvements. Funds increased from one million a year to five million while its engineering staff had four rather than three employees. Also, the staff's workload increased substantially.

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<sup>4</sup> McDaniel is referred to as both Rich and Rick.

<sup>5</sup> When Kammler created the positions of GIS/CADD Coordinator and Senior Engineer, AFSCME grieved the failure to include the positions in the bargaining unit and the City filed the instant unit clarification petition.

### Assistant Director of Engineering

Rich McDaniel, the Assistant Director of Engineering, was hired in January 2008. The position, which had been vacant, had never been within the bargaining unit. The qualifications for the position as stated in the job description<sup>6</sup> are graduation from an accredited four year college or university in civil engineering; a professional engineering license in the State of Illinois or ability to obtain such a license within six months; seven years civil engineering experience, of which five years should have been as a project manager, including three years of experience with motor fuel tax projects<sup>7</sup> or any equivalent combination of training and experience which provides the required knowledge, skill and abilities. McDaniel has a two year degree, but not a bachelor's degree, in civil engineering, a civil engineering license and 19 years of experience. That experience was a dominant factor in Kammler's decision to hire him. According to Kammler, the Assistant Director of Engineering performs work that is varied in nature, depending on the project, the day and the situation. Also, according to Kammler the Assistant Director's work output cannot be standardized in relation to a period of time and cannot be measured except years later by the success or failure of the plans for which McDaniel was responsible.

McDaniel may substitute for Kammler in the latter's absence. For example, McDaniel attended a city council meeting in Kammler's stead. McDaniel assisted in planning for a five-million dollar capital improvement plan and in providing budget

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<sup>6</sup> The current job description for the Assistant Director of Engineering is based on a previous job description that was revised by Kammler.

<sup>7</sup> Mayhew and McDaniel, but not Miller, have experience working with the motor fuel tax.

Prior to Kammler's tenure, the only plans prepared within the engineering department were motor fuel tax projects for resurfacing pavements. Such plans were prepared by the Engineering Technician. During Kammler's tenure, about six motor fuel tax project plans have been prepared annually.

estimates for a project within that plan. Kammler and McDaniel review each other's plans. Currently, McDaniel's responsibilities include functioning as a project or construction manager. Also, McDaniel is consulted when there needs to be a change in a plan for a project. Kammler estimated that McDaniel as Assistant Director of Engineering spends 80 to 90 percent of his time either on the phone or on the computer.

McDaniel reviews development plans for subdivisions or retail stores to ensure that they meet city code requirements and good engineering practices, and to ensure that the developments are in the best public interest.<sup>8</sup> McDaniel decides whether the project is the best product for the City in terms of longevity and aesthetics. For example, if the plan includes a large detention pond, McDaniel would consider the slope of the pond so as to avoid mosquitoes. With the current downturn in the economy, McDaniel does not review as many development plans as before, but, at the hearing in this case, he testified that he had reviewed plans for Hometown Harbor, a senior residential development.

In reviewing development plans, McDaniel considers standards and building codes such as standards articulated by the Illinois Environmental Protection Agency. For example, there are standards regarding how far a water main must be from a sewer, the kinds of pipe that can be used, such as PVC, ductal, iron or concrete and their thickness. Deciding what pipe should be used is a judgment call that is not dictated by code or standards. For example, the code allows the use of PVC pipe for sewers under roadways but in the City's experience the PVC pipe is not the best for longevity. For that reason, the City uses concrete pipe.

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<sup>8</sup> Prior to Kammler's hire, the City used consultants to review such development plans. Currently, Kammler assigns development plans to the employee who is the least busy at the time of the assignment.

In connection with a project involving drainage, McDaniel reviews drainage calculations as he is more proficient in that task than Kammler. In reviewing or making such calculations, McDaniel determines whether the City should require a detention rate for the 100 year storm and a release rate of the five year storm at the “pre-developed” rate. McDaniel would inform Kammler whether the plan’s design met those calculations.

Under Kammler’s oversight, McDaniel designed plans for a \$2 million street reconstruction project and drafted a document for the project.<sup>9</sup> In doing so, McDaniel drafted testing notes onto sheets that showed the separation of water and sewer lines and types of piping. The document also contains “control point data” for various sites to determine elevations. Such document sheets reference state standards.<sup>10</sup> There is also a summary of quantities which is a summary of every type of “unit of pay” item within the project. The above-mentioned project that McDaniel designed had 57 pay quantities. Determining the type of material to be used on the project required the exercise of discretion. There was also a demolition plan, that is, a determination as to what part of the road had to be destroyed and what part could remain. Keeping part of the road would save the City money whereas demolishing part of the road would cost money.

Other considerations include whether stabilization rock core is used in the event the contractor encounters bad soil in paving a road; how to replace the core with good rock; whether to use “geogrid” and what type; whether to use engineering fabric; what

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<sup>9</sup> Contractors do the actual construction on such projects. The City awards the contract for the work to the lowest bidder and provides funds for the project.

Also, the City’s Department of Maintenance Services does some construction such as pavement patching, sidewalk work, water main repairs and repair of sewer mains. The Department of Engineering does not inspect such work unless asked to do so. At the hearing in this case, Kammler testified that he believed the Director of Maintenance made decisions regarding such work.

<sup>10</sup> The Illinois Department of Transportation has hundreds of standards for such matters.

type of rock gradation - six, three, two or one inch - how and whether to compact; and whether the compacting is paid for separately. According to Kammler, the knowledge required for making such determinations requires years of experience.

At the hearing in this case, Kammler explained that among the information in bidding and contract documents for public works projects are specifications for each pay item listed on the summary of quantities as to construction. The creation of such documents involves the use of judgment and discretion.

At hearing, Kammler explained that for McDaniel to “[p]erform and coordinate initial investigation for a scope of work for public works projects,” as described in his job description, meant that the employee visits a site, evaluates the street surface, whether the surface must be removed or replaced or can be salvaged, and, if so, whether the surface needs to be patched or overlaid with varying amounts of asphalt. The latter is a judgment call. Other considerations involving the exercise of discretion would be the condition of the storm sewer inlets, whether there was a history of problems, drainage calculations, the type of pipe to use, and a preliminary cost estimate the last being a component of a capital improvement plan. According to Kammler, substantial discretion is required in the process of prioritization and budget estimates.

According to Kammler, the design of a public works project requires discernment, experience and good judgment. For example, in deciding what to demolish in a street reconstruction project, the engineer considers “lots of options.” Although the engineer works within certain guidelines, there are numerous possibilities in design choices such as the width of the street, the storm sewer material used, erosion control features, the

manner in which a fire hydrant is installed and the material used for backfill and curb details.

With respect to public works projects, Kammler has asked McDaniel, and also Miller and Mayhew to scout sites and to make recommendations. Then, Kammler may independently investigate or he may accept their recommendations. According to Kammler, the higher the cost of the project, the heavier the politics, and the more likely it is that Kammler will be involved. Kammler does not have time to look at every project so he depends on his staff to make good decisions and to use good judgment.

#### GIS/CADD Coordinator Position

The GIS/CADD (Geographic Information System/Computer Aided Drafting and Design) Coordinator is a new position created by Kammler and City Administrator, Rich Keehner.<sup>11</sup> Kammler wanted an employee trained in GIS and CADD who would coordinate GIS and CADD for the City and who ultimately would have a subordinate who would do only drafting and technical work. Kammler wanted an individual who could function independently and who knew more about Geographic Information Systems than he (Kammler) did. The City contends that it created the GIS/CADD position in order to hire a cross-trained individual with both skills to work for it, so as to reduce the amount of time and money it spent on outside consultants.

The Employer required a bachelor's degree in GIS or an engineering related field: The Employer considered a degree to be a strong indicator of a knowledge base. The

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<sup>11</sup> When Kammler began his employment, the City had two licenses for CADD software used for drafting and design for civil engineering and architecture. The design component of CADD has been around since the mid 1990s. Kammler is self-taught in CADD.

When Kammler was hired, the Department had the formal responsibility of maintaining maps of public infrastructure by way of a computer. The City had GIS software but had not used it.

Employer also wanted someone who had experience with software such as ArcMap, ArcInfo and GIS that require advanced training to use in a detailed way.<sup>12</sup>

Joseph B. Miller, the GIS coordinator for the City, has been employed there since August 2007. Miller first used GIS when he worked for the U.S. Army Corps of Engineers in 1991. Thereafter, he worked for a private consulting firm and helped to assemble 911 systems in 16 counties within Illinois. Miller also helped to enhance 911 systems as to data and mapping. He became an authorized instructor for software used in GIS such as ArcView. According to Miller, it takes years to become proficient in GIS software. When he was a consultant to the City, one of its engineering employees, Dennis Milburn would call Miller to find out how to run either software or hardware to obtain the product the City wanted. As GIS coordinator, Miller uses geographic and other data to make decisions. Miller testified that he does not merely draw lines on a computer screen in using GIS but uses it as a tool for decision making.

Miller does not have an engineering degree but does have a degree in geography and considerable work experience. Miller is a certified instructor for the Environmental Systems Research Institute (ESRI), a GIS software company. He helped in designing and drafting AutoCADD and is well known as an expert in the field.

According to the job description, the GIS/CADD Coordinator performs inspections, gathers data, converts it into the proper format and loads it into the GIS system. For example, Miller created a map after a 2008 flood that assisted FEMA and the City in handling flood claims and infrastructure repairs. According the Kammler,

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<sup>12</sup> Miller, who had worked directly as a consulting engineer with the previous Engineering Technician Milburn, testified at the hearing in this case that Milburn was not proficient in using the CADD program, but struggled with it and frequently asked questions. According to Miller, it takes years to become proficient in GIS software.

Miller spends about 75 percent of his time in the office. Kammler considers Miller's work to be exclusively intellectual and to require judgment and expertise.

A Geographic Information System ties data to graphical elements. Instead of having a map showing lines and text, there is an electronic file that with a click will show, for example, a water main and provide data such as the diameter of the main, the water pressure, the fire flow at a hydrant, when the hydrant was installed and when water main breaks occurred. The data, along with the graphical entities, make GIS powerful. The data helps Miller provide recommendations as to where water mains should be replaced. The GIS can be queried and used to manage code enforcement. The GIS can be used to provide information to emergency responders and utility companies, to indicate which houses had water in their basements, what furnaces were not working, when power was shut off and when it was turned back on. The GIS was used extensively during the 2008 flood.

Miller, with Kammler's assistance, designed a pressure sewer to bring sewer service to about 160 residents and solve some health problems.<sup>13</sup> Designing such plans involves looking at equipment and talking to contractors to determine what will or will not work.<sup>14</sup>

Miller also prepared a flood inundation map after the flood in 2008. Kammler merely told Miller that he needed a map of the flood area. Miller had to decide how to input the information into the computer so as to create a document in a format that would

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<sup>13</sup> The City may also hire an outside firm to design a project or to perform other work.

<sup>14</sup> As a certified engineer, Kammler has to sign off on designs and plans and personally supervise the employees who prepare them.

be accessible to the Department's employees.<sup>15</sup> Miller took pictures in the field and downloaded them into the computer. A student intern, under Miller's direction, created a map showing the extent of the flood in a downtown area. Models of water flow at certain heights were also noted. The map Miller created showed houses in the flood area where power was shut off. Prior to Miller's hire, the City had no capacity for making such a map. Although the City had the software, it had no personnel who could utilize it. The map Miller created was used by the City and FEMA to provide assistance and help in infrastructure repairs and to process claims in the flooded area.

Miller prepared a map of pavement patches of a construction project to assist Mayhew. Miller used a computer to cross-check Mayhew's calculations. The document was also used for a federal audit because the project was funded by federal stimulus funds although managed by the State.

#### Senior Engineer Construction/Storm Water

The position of Senior Engineer Construction/Storm Water was created and filled around October 2007. Donald Mayhew who was previously the Assistant Director was appointed Senior Engineer. Some of Mayhew's new job responsibilities had been previously performed by others. In the new position, Mayhew became responsible for performing most inspections. Formerly, a consultant performed construction inspections, although an employee occasionally inspected a site.<sup>16</sup> Now a consultant performs such work only when Mayhew is not available. Thus, there has been a reduction in consultants doing inspections for the City.

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<sup>15</sup> Miller collected data from two databases and downloaded it into the GIS to come up with the City map.

<sup>16</sup> Prior to Mayhew's tenure, the City kept few records of inspections.

According to the job description, the Senior Engineer must have knowledge of civil engineering with respect to design and construction of a variety of public works projects, standard methods and techniques of construction, construction inspection, familiarity with building codes and ordinances, the ability to adapt engineering methods and standards to public works projects; and exercise independence and initiative in performing job duties.

The Senior Engineer is the City's resident engineer<sup>17</sup> on construction projects funded by the City and, thus, is the on-site project manager for capital improvement projects. In other words, a resident engineer is the project manager on-site in charge of a construction project.

According to the job description, the Senior Engineer's responsibilities include the following: on-site construction coordination, observation and inspection of public works projects; maintenance of construction reports and inspection records; ensures that quantities and costs meet approved specifications; coordinates outside construction services by consultants to insure projects meet previously approved specifications; ensures compliance with local, state and federal regulations to conform to acceptable standards and practices relating to quality workmanship and timely compliance. Although Mayhew makes decisions based on the goal of conforming to code and regulations, he can allow deviations from pre-approved plans or projects to address problems. The qualifications for the Senior Engineer position included a degree in civil engineering, a professional license and seven years experience. Mayhew is a licensed engineer and has experience. He had previously been the resident engineer for a utility and roadway improvement project.

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<sup>17</sup> Resident engineer work was contracted out prior to Kammler's arrival.

As Senior Engineer, Mayhew spends a lot of time walking the construction site. Other than walking, the Senior Engineer position requires no physical work. Mayhew's output and work product cannot be measured by periods of time but by the success of projects.

In support of its position that Mayhew is a professional, the City introduced into evidence an exhibit which was construction plans for the 8<sup>th</sup> street and 25<sup>th</sup> avenue utility and roadway improvement project.<sup>18</sup> Mayhew was responsible for the inspections, would decide how far to extend the pipe and whether the water main had to be realigned. Mayhew also made day to day decisions on matters such as how to handle an obstruction and how much pavement had to be removed. As the senior engineer on such a project, he had authority to make such decisions.

On a construction site there are matters that are not specified and that are a matter of discretion for the resident engineer. An example requiring the exercise of discretion is the situation where a crew is digging along a water main and the sewer is not where it was anticipated to be. The engineer might have to decide whether the soil is hard enough for a concrete pour.

Mayhew oversees the City's Storm Water Control Ordinance Regulations. SWPP, that is, Storm Water Pollution Prevention Plan, is recognized by the federal government as required by the National Pollutant Discharge Elimination System Permit. The City is responsible for reviewing erosion control plans and storm water pollution prevention plans (SWPP) to meet the requirements of various state, federal and local codes. As Senior Engineer, Mayhew reviews permits and site plans and makes

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<sup>18</sup> McDaniel primarily put the plans together and Miller also played a roll in formulating the plans.

inspections regarding such matters and insures that the plan that was approved is adhered to during construction. Mayhew can allow deviations from the plan.

Mayhew suggests the best management practices (BMPs) to contractors. Kammler expects Mayhew to check with him when thousands of dollars are added to the cost of a project because of changes possibly based on BMPs. Kammler expects Mayhew to confer with him when Mayhew determines that a change requires the expenditure of a substantial amount of money. Kammler himself would consult his superiors when he makes such a determination.

When Kammler appointed Mayhew senior engineer, no bargaining unit member was performing the duties of that position. Also, according to Kammler, Mayhew now performs inspections at a higher level than he did before Kammler was hired.

According to Kammler, the work of the Senior Engineer is not routine. There are continually varying issues and conditions on a construction site. Issues and conditions that arise or change include the condition of the soil, whether the site can be paved now or whether it is necessary to wait, what rock to use, how to get around an obstacle or bed rock, how to provide water service and how to meet code requirements when there are two or three different options in running pipe.

Engineering Technician II vs. GIS Coordinator and Assistant Director of Engineering: Duties and Responsibilities

In its case in chief, the Union submitted a job description for an Engineering Technician II, a position Milburn had when he worked for the Department of Engineering and was a member of the bargaining unit. That job description provided as follows.

The duties and responsibilities of the Technician included developing project plans and inspections; performing traditional and computer aided drafting; reviewing and preparing preliminary estimates for public works projects; maintaining field notes and details of the size, locations and elevations of public works facilities; reducing field notes, computing capacity grades and quantities, drawing preliminary and construction plans for major public works projects; preparing contracts and specifications; maintaining accurate records of drawings, keeping an adequate supply of drafting materials, maintaining drafting equipment; testing, inspecting and checking the quality and quantity of paving mixtures and other construction materials; operating a city-owned vehicle; inspecting water, sewer, street, bridge and other construction contractors for conformance with specifications and compliance with ordinances, laws, regulations and standards; performing survey work using survey equipment; investigating problems with streets, drainage and utilities for residents and City departments.

In contrast, the primary duties of the GIS/CADD Coordinator as described in the job description include the following: developing and maintaining the City's GIS; coordinating application development and user access, supervising data acquisition and conversion to necessary formats; gathering material, interpreting information and converting it to digital form, inputting it into the GIS, updating digital files as changes occur; developing procedures for updating of information; coordinating access to the City's digital information database, retrieving data requested, writing data, calculating costs of providing information and ensuring proper billing; collecting and downloading field data relating to infrastructure; providing training and technical assistance relating to GIS, answering questions and troubleshooting GIS problems, coordinating activities with

Information Technology staff; maintaining data integrity; investigating new technology and applications; performing computer aided drafting and design (CADD) for the production of engineering plans, drawings, plats, technical exhibits and updating electronic mapping.

Secondarily, it is the GIS/CADD Coordinator's responsibility to perform inspections, maintain construction reports, inspection records, drawings, quantities and costs, and other records of public works facilities and private developments; to handle issues in the investigation of matters related to public works and to operate a city-owned vehicle.

The duties and responsibilities of the Assistant Director of Engineering as described in the job description include assisting the Director of Engineering with his responsibilities including the planning of short term and long term goals of the Engineering Department; coordinating initial investigations and information gathering, preparing preliminary budget estimates for public works projects; developing construction plans, specifications, bidding and contract documents for public works projects; performing computer drafting and design of public improvement projects; construction administration and oversight of public works projects; compiling and preparing records; maintaining status reports of public works projects; ensuring that engineering activities and operations comply with local, state and federal regulations and laws and conform to acceptable standards and practice; overseeing City projects; developing and maintaining City standards for design and construction of public and private improvements; interpreting city policy; conferring with consultants and others on engineering, construction and design problems; performing inspections; investigating

problems; coordinating testing and inspections for public works projects; operating GIS; assisting the Director in maintaining the budget; providing responses to requests for services and information; and operating city owned vehicles.

Engineering Technician II vs. GIS Coordinator and Assistant Director of Engineering: Knowledge, Skills and Qualifications

The knowledge, skills and other characteristics required for the former position of Engineering Technician II included knowledge of Illinois Department of Transportations specifications for road and bridge construction, knowledge of standard specifications for water and sewer construction, knowledge of city codes and ordinances, knowledge of terminology, methods, practices and techniques of civil engineering, drafting, surveying and construction; knowledge of algebra, geometry and trigonometry, knowledge of principles and practices of engineering with respect to public work projects; knowledge of construction material and approved standards of safety; ability to use computer; ability to utilize various equipment, to interpret and apply survey notes to perform drafting duties and to interpret engineering plans, ability to use hand tools, to adapt approved engineering methods and standards. The minimum qualifications for the position were an associate degree in civil engineering or a related field, three years experience in civil engineering, land surveying, drafting and construction inspection work or any equivalent combination of training and experience.

The knowledge, skills and other characteristics required for the present position of GIS Coordinator include knowledge of cartographic principles and procedures, GIS and analytical techniques including computerized mapping; principles and practices of data integrity, conversion, manipulation and analysis; ability to utilize personal computers and

related hardware and software particularly AutoCAD, ArcMap, ArcReader and other applications, ability to identify, analyze and resolve technical problems applicable to GIS or CADD hardware and software; ability to read and interpret maps, survey notes, diagrams, specifications, legal descriptions, deeds and other legal documents; ability to interpret and apply survey notes in drafting and to interpret engineering plans and specifications in carrying out inspection work; ability to adapt approved engineering methods and standards in order to design and prepare plans for the construction of municipal public works projects; knowledge of terminology, methods, practices and techniques of civil engineering, design, drafting, surveying and construction; knowledge of Illinois Department of Transportation standards, specifications and procedures; knowledge of Standard Specifications for Water and Sewer Construction in Illinois; and knowledge of city codes and ordinances. The minimum qualifications for the position include a bachelor's degree in GIS or an engineering-related field; four years of experience in data development and management in an ArcMAP/ArcInfo GIS; and experience in engineering design and plan preparation using AutoCAD software.

The knowledge, skills and other characteristics of the present position of Assistant Director of Engineering include knowledge of the principles and practices of civil engineering related to public works projects; knowledge of Illinois Department of Transportation Standard Specifications for Road and Bridge Construction and Standard Specifications for Water and Sewer Main Construction in Illinois; knowledge of federal, state and local laws regarding public works; knowledge of land surveying methods and techniques; knowledge of CAD and GIS software products; knowledge of city ordinances; knowledge of terminology, methods, practices and techniques of civil

engineering, design, drafting, surveying and construction; ability to adapt approved engineering methods and standards to the design and construction of public works projects; ability to prepare, review and approve plans and specifications for construction contracts, grant and permit applications, intersections studies, design reports, environmental assessments, subdivision plats and mitigation plans; ability to use organizational skills to make schedules and meet deadlines; ability to use computers and software; ability to assist in instructing and supervising subordinates in engineering methods; and skill in writing professional and technical reports.

AFSCME's Witness, Chris Larrison

In support of its position that the duties and responsibilities performed by employees in the newly created positions are similar to those performed by the Engineering Technician II who had been in the bargaining unit, AFSCME called Chris Larrison as a witness. Larrison, a laboratory technician in the East Moline Waste Water Treatment Plant for nine years, has worked for the City for 22 years. He has been the president of AFSCME Local 1234 for 4½ years and has held various positions in the unit for 15 years including chief steward and steward. Larrison has a bachelor's degree in biology, is a Class I waste water operator and has a certificate from the Illinois EPA. He had to have seven years of experience before taking the test for EPA certification. He has been asked to teach Introductory Waste Water Treatment at Blackhawk College. As a laboratory technician, Larrison collects samples, compiles and logs data, and provides information to other operators and to his supervisor.

#### IV. DISCUSSION AND ANALYSIS

At issue in this case is whether employees in the three newly created positions of Assistant Director of Engineering, GIS/CADD Coordinator and Senior Engineer are professional employees such that they can only be included in the existing historical unit by a poll of the alleged professional employees.

The Act defines a professional employee at Section 3(m) as follows:

"Professional employee" means any employee engaged in work predominantly intellectual and varied in character rather than routine mental, manual, mechanical or physical work; involving the consistent exercise of discretion and adjustment in its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from apprenticeship or from training in the performance of routine mental, manual, or physical processes; or any employee who has completed the courses of specialized intellectual instruction and study prescribed in this subsection (m) and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in this subsection (m).

The definition of a professional employee in Section 2(12) of the National Labor Relations Act (NLRA), 29 U.S.C. 151 et seq. is nearly identical to that in Section 3(m). Thus the principles utilized under the NLRA for determining professional status are applicable to such determinations under the Act. County of Peoria, 2 PERI ¶12022 (IL SLRB 1986). Decisions under the NLRA have consistently held that it is the nature of the work, rather than the individual's distinct qualifications, which determines whether the work being performed is "professional." Ohio State Legal Services, 239 NLRB 594 (1978); General Dynamics Corp., 213 NLRB 851 (1974). While an individual employee's education and experience may be relevant in deciding if the Act's advanced knowledge requirement has been met, Catholic Bishop of Chicago, 235 NLRB 776

(1978), the National Labor Relations Board (NLRB) also considers if the work in question requires an advanced degree or the equivalent knowledge and experience. St. Barnabas Hospital, 283 NLRB 472 (1987); Express-News Corp., 223 NLR 627 (1976).

Work Predominantly Intellectual and Varied in Character. Requiring Discretion

AFSCME argues that the work of the Assistant Director of Engineering is not predominantly intellectual and varied because cost estimates are not intellectual and budget decisions are made by the Director, because the selection of materials is based on experience and is not intellectual, and also, because much of inspection and classification work is done pursuant to code and plans and for those inspection and classification duties, the predominant time is spent on activity which is not intellectual or independently made.

The record evidence establishes that the Assistant Director of Engineering's work is varied and intellectual. McDaniel has substituted for Kammler and reviewed his plans. McDaniel has assisted in planning for a five-million dollar capital improvement plan and he has been consulted as to whether there should be changes in plans. He ensures that development plans meet codes, standards and good engineering practice requirements, and are in the best public interest and the best project for the City in terms of longevity and aesthetics. Even in deciding what materials to use on a project, McDaniel may rely on his discretion because such decisions are not necessarily dictated by codes or standards. The knowledge required to make such determinations require years of experience. Inspection of a site for a public works project can involve the exercise of discretion concerning the condition of storm sewer inlets, whether there is a history of problems, drainage calculations, and types of materials to use. There are numerous possibilities as to design, material used, and installations.

For these reasons, I conclude that the work of the Assistant Director of Engineering is varied and intellectual. I acknowledge that his tasks may not always require an exercise of judgment or discretion, but that does not mean that preparation of such estimates would never require intellectual work. For example, a paralegal might perform some of the same tasks as a lawyer in preparing papers, contacting clients or researching legal issues. However, the mere fact that the paralegal might perform those tasks does not elevate the paralegal to the status of a lawyer. Neither would the fact that a lawyer performs certain mundane tasks relegate the lawyer to the status of a non-professional.

AFSCME argues that the work of the Senior Engineer is not intellectual because his position's purpose is to ensure that construction projects proceed in accordance with approved plans; but that the decisions he makes are based on experience. According to AFSCME, Mayhew checks with Kammler regarding major issues, and Mayhew's work was formerly performed by the Engineering Technician II. AFSCME argues that the Senior Engineer does not exercise independent judgment because the decisions he makes are based on his experience and he consults with Kammler when major issues arise.

The record evidence establishes that the Senior Engineer is the City's on-site manager in charge of construction projects. In that position, the Senior Engineer performs inspections, maintains reports and records, ensures that quantities and costs meet approved specifications, coordinates outside construction services by consultants to ensure projects meet specifications, and ensures compliance with regulations to conform to acceptable standards. Although Mayhew ensures compliance, he can allow deviations from pre-approved plans to address problems. He decides matters that are not specified

and that are a matter of discretion; he is responsible for reviewing erosion control and storm water pollution prevention plans to meet federal, state and local codes. He reviews permit and site plans and may allow deviations from such plans. He suggests best management practices to contractors. In my opinion, the work of the Senior Engineer is varied as well as intellectual in that he uses discretion and judgment in performing his duties.

AFSCME argues that the position of GIS/CADD Coordinator is not predominantly intellectual and does not require independent judgment because he spends a significant amount of time either collecting or acquiring data to input into the GIS system and extracts data to provide information to public and private entities.

The record evidence establishes that the GIS/CADD Coordinator Miller performs inspections, gathers data and converts it into a format to load into the GIS system. In using GIS to create maps, Miller does not merely show lines and text but creates links revealing other data such that the GIS can be queried and used to manage code enforcement. In inputting information into the GIS system, Miller creates documents in a format accessible to other employees. In my opinion, the GIS/CADD Coordinator is no mere technician inputting information into the GIS system but a person who uses his intellect and discretion to modify and adjust the system to address the City's needs. For this reason, I find that the GIS/CADD Coordinator's work is varied and intellectual and requires discretion and judgment.

### Output Cannot Be Standardized

The Assistant Director of Engineering's responsibilities vary. For example, he substitutes for Kammler at city council meetings. He reviews plans and in doing so exercises discretion in deciding whether a project is in the City's best interest. Although he considers standards and best practices, he makes decisions that are based on his discretion rather than on codes, standards and best practices. For this reason, I conclude that the output of the Assistant Director of Engineering cannot be standardized.

The GIS/CADD coordinator has duties such that his output cannot be standardized. Miller converts data into the proper format to load into the GIS; and uses his judgment to do so. He designed a pressure sewer to provide service to residents and solve health problems. He created a map tracking the effect of a flood that provided assistance to the City and to FEMA for repairs and the processing of flood claims. In my opinion, the various tasks and responsibilities that Miller has indicates that his output cannot be standardized.

Donald Mayhew, the Senior Engineer Construction/Storm Water has varied duties such as inspections to ensure that projects conform to codes and specifications, he decides discretionary matters such as how to handle obstructions, how much pavement to remove; reviews permits and plans; and he suggests best management practices to contractors. Thus, I find that the Senior Engineer's output cannot be standardized.

### Advanced Knowledge

For the position of Assistant Director, the City requires graduation from an accredited four year institution in civil engineering, a professional engineering license, seven years experience or any equivalent combination of training and experience.

Although McDaniel has a two year degree, he does have a civil engineering license and 19 years of experience.

AFSCME contends that the knowledge required for the position of Assistant Director is similar to that required for the Engineering Technician II position and that, in fact, McDaniel has only a two year degree. However, AFSCME ignores the fact that McDaniel has a civil engineering license and 19 years of engineering experience. AFSCME also claims that the major difference between the Engineering Technician II and the Assistant Director is that the Technician was not responsible for mapping and that those responsibilities are now performed by the GIS/CADD Coordinator.

In my opinion, AFSCME understates the differences between the job duties of the Assistant Director and the Engineering Technician II. The Assistant Director assists the Director with the responsibilities for the Department whereas the Technician II performed his duties under supervision. A comparison of the 22 duties listed in the job description of the Assistant Director compared to the 12 duties listed in the job description for the Technician II suggest that the Assistant Director performs his duties at a higher level and with more discretion than the Technician II. For example, the Assistant Director assists the Director in planning for short and long term goals of the Engineering Department, develops construction plans, performs construction administration and oversight and develops and maintains City standards for construction. I conclude that McDaniel has the advanced knowledge required of a professional employee.

AFSCME argues that the GIS/CADD coordinator merely had more experience and training in a software computer program, rather than advanced education. However,

the position of GIS/CADD Coordinator requires a bachelor's degree in GIS or an engineering-related field and advanced training and proficiency in software such as ArcMap, ArcInfor and GIS. There is record evidence that Miller is not merely a technician. He is a certified instructor for the Environmental Systems Research Institute (ESRI), a GIS software company, he helped in designing and drafting AutoCAD and he is well known as an expert in the field. I conclude that the GIS/CADD Coordinator Miller has the advanced knowledge required for a professional employee.

The position of Senior Engineer requires a degree in civil engineering, a professional license and seven years experience. Mayhew is a licensed engineer and has experience. I conclude that he has the advanced knowledge required for a professional employee.

For all the above stated reasons, I find that the Assistant Director of Engineering, the Senior Engineer and the GIS/CADD Coordinator are professional employees within the meaning of the Act. I conclude that the employees in the positions of Assistant Director of Engineering, Senior Engineer and GIS/CADD coordinator are professional employees within the meaning of Section 3(m) of the Act.

#### Polling of Professional Employees

Section 9(b) provides as follows:

The Board shall not decide that any unit is appropriate if such unit includes both professional and nonprofessional employees, unless a majority of each group votes for inclusion in such unit.

Thus, in order for the professional employees to be included in the existing unit, there must be a poll of the professional employees as to whether or not they wish to be included in a unit with nonprofessional employees.

**V. CONCLUSIONS OF LAW**

The Assistant Director of Engineering is a professional employee within the meaning of the Act.

The Senior Engineer Construction/Storm Water is a professional employee within the meaning of the Act.

The GIS/CADD Coordinator is a professional employee within the meaning of the Act.

**VI. RECOMMENDED ORDER**

Unless this Recommended Decision and Order is rejected or modified by the Board, a secret ballot poll shall be conducted separately among employees in the positions of Assistant Director of Engineering, Senior Engineer Construction/Storm Water and GIS CADD Coordinator at a time and place set forth in the Board issued Notice of a Poll. In accordance with the Act and the Rules and Regulations of the Illinois Labor Relations Board, the Assistant Director of Engineering, the Senior Engineer Construction/Storm Worker and GIS/CADD Coordinator shall decide whether they wish to be in a bargaining unit with nonprofessional employees or not.

Included: all employees of the City of East Moline including Park Board Employee

Excluded: Police, Firemen, City Administrator and his Assistant, Director of Maintenance Services and his Assistant, Director of Water Filtration, Superintendent of Sewer Plant, City Chemists, Director of Engineering, Inspectors, Director of Development Services, Assistant Director of Planning and Development, Deputy City Clerk, City Attorney, Maintenance Services Supervisor, Seasonal Employees, Elected Officials, Administrative, Supervisory and Confidential employees as defined under the Illinois Public Labor Relations 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 Recommended Decision and

Order. Parties may file responses to exceptions, and briefs in support of the responses, no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the Board's General Counsel, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois, this 27<sup>th</sup> day of July 2011**

**ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

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