

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

Laborers' International Union of North America,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-UC-11-152
	)	
County of Crawford and County Clerk, Treasurer, Supervisor of Assessments, and Sheriff of Crawford County,	)	
	)	
Employer	)	

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

On May 31, 2011, the Laborers' International Union of North America (Petitioner) filed a unit clarification petition in Case No. S-UC-11-152 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). This petition seeks to include the newly created Office Manager position employed by the County of Crawford and County Clerk, Treasurer, Supervisor of Assessments, and Sheriff of Crawford County (Employer) in the bargaining unit originally certified in Case No. S-RC-08-078.

A hearing was held on October 11, 2011, before the undersigned Administrative Law Judge in Springfield, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. The parties stipulate, and I find, that the Employer is a public employer within the meaning of the Act.
2. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of the Act.
3. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to the Act.

**II. ISSUES AND CONTENTIONS**

The issue to be resolved is whether Office Manager Grace Massey-Purdy is a confidential employee within the meaning of the Act. The Employer contends that this employee is a confidential employee within the meaning of the Act. The Petitioner contends that this employee is not a confidential employee within the meaning of the Act.

**III. FINDINGS OF FACT<sup>1</sup>**

Since February 5, 2010, the employee at issue, Grace Massey-Purdy, has served as Office Manager for the office of Patricia Lycan, the Crawford County Clerk/Recorder. Lycan's office employs five full-time employees and one part-time employee. While each employee performs a separate role within the office, all of these employees are "cross-trained" and may share duties to some degree. However, at the time of the hearing, Massey-Purdy was exclusively authorized to assist Lycan with Crawford County Board meetings.

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<sup>1</sup> The following facts are based, in part, on the testimony of Alvin Hill, Patricia Lycan, and Grace Massey-Purdy.

The Crawford County Board conducts regular open meetings which may be attended by the public. However, at times, the Crawford County Board also conducts private closed meetings. During these closed meetings, labor relations and collective bargaining issues may be discussed. Accordingly, union members are not permitted to attend certain closed meetings. Currently, Lycan and Massey-Purdy attend open meetings and closed meetings.<sup>2</sup>

While functioning as clerk of the Crawford County Board, Lycan is responsible for recording the minutes of all Crawford County Board meetings and for calling the roll. However, as part of her support function, Massey-Purdy can record the meeting minutes instead of Lycan. After Crawford County Board meetings, Massey-Purdy also records and distributes agreements to the appropriate parties and “uploads them to a computer.”

Although Lycan is expected to attend as many Crawford County Board meetings as possible, she does not attend every meeting. Accordingly, Massey-Purdy has attended meetings without Lycan.<sup>3</sup> However, most Crawford County Board meetings are attended by both Lycan and Massey-Purdy.

Massey-Purdy is also uniquely entrusted with a key to Lycan’s office and has access to Lycan’s records. These records include all records of the Crawford County Board, “employee files,” vehicle titles, and other documents. Further, Massey-Purdy can be instructed to go through Lycan’s e-mail. In contrast, the other employees of Lycan’s office may only access certain files within Lycan’s office if Lycan gives them permission to do so.

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<sup>2</sup> At the time of the hearing, Massey-Purdy had been attending Crawford County Board meetings for about six to eight months. Between May of 2008 and February of 2010, the office’s part-time employee, Linda Staley, performed some of the duties that Massey-Purdy is currently performing. Staley, a union member, was asked to leave closed meetings when members of the Crawford County Board and others “were discussing union.”

<sup>3</sup> When Lycan cannot attend a closed meeting, Lycan is expected to appoint a staff member to serve as her “deputy” and attend the meeting in her place.

A collective bargaining agreement (CBA) between the Employer and the Petitioner covers a number of the employees in Lycan's office. This CBA went into effect on December 1, 2009 and expired on November 30, 2010. At the time of the hearing, additional negotiations were ongoing. However, Massey-Purdy was not present during these formal negotiation sessions.

#### IV. DISCUSSION AND ANALYSIS

The Employer asserts that Grace Massey-Purdy is a confidential employee within the meaning of Section 3(c) of the Act and thus must be excluded from the bargaining unit.<sup>4</sup> Based upon Section 3(c) of the Act, the Board has formulated three tests to be applied when determining whether an employee possesses confidential status. The three tests are the labor nexus test, the authorized access test, and the reasonable expectation test. Should an employee meet the requirements established in any one of these tests, the employee is found to be confidential within the meaning of the Act. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 523, 607 N.E.2d 182, 189 (1992).<sup>5</sup> An employer who wishes to exclude an employee from a bargaining unit because the employee is a confidential employee bears the burden of proving that fact. County of Cook v. Illinois Labor Relations Board, Local Panel, 369 Ill. App.

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<sup>4</sup> Section 3(c) of the Act defines a confidential employee as:

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

<sup>5</sup> The purpose of excluding confidential employees is to keep from having their loyalties divided between the employer, who expects confidentiality in labor relations matters, and the union, which may seek access to the confidential material to gain a bargaining advantage. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 523, 607 N.E.2d at 189; City of Wood Dale, 2 PERI ¶2043 (IL SLRB 1986).

3d 112, 123, 859 N.E.2d 80, 89 (1st Dist. 2006). Applying these standards to the facts of this case, I find that Massey-Purdy is a confidential employee under the authorized access test.

#### Labor Nexus Test

Under the labor nexus test, if an employee assists in a confidential capacity in the regular course of his or her duties a person or persons who formulate, determine, or effectuate labor relations policies, then the employee holds confidential status within the meaning of the Act. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 523, 607 N.E.2d at 189. The person assisted by the employee must perform all three functions (formulating, determining, and effectuating) before a finding of confidentiality can be made. Performance of these three functions is evidenced by whether the individual has primary responsibility for labor relations matters, makes recommendations with respect to collective bargaining policy and strategy, drafts management proposals and counterproposals, evaluates proposals, and participates in collective bargaining negotiations. Id., Village of Homewood, 8 PERI ¶2010 (IL SLRB 1992); City of Wood Dale, 2 PERI ¶2043 (IL SLRB 1986). While the frequency in which an employee assists in a confidential capacity is relevant, the fact that a task is performed only occasionally does not necessarily mean it is not performed in the regular course of his or her duties. See City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010); City of Sycamore, 10 PERI ¶2002 (IL SLRB 1993).

During negotiation sessions, the Employer has most clearly been represented by a state's attorney and some members of the Crawford County Board. In addition, while a (nameless) representative of the employer has presented a salary proposal to the Petitioner, Lycan did not personally draft or present this proposal. Framed in this way, Lycan, the person most clearly assisted by Massey-Purdy, does not appear to have the primary responsibility for labor relations

matters. Moreover, the record does not clearly indicate that Lycan makes any recommendations with respect to the Employer's collective bargaining strategy or policy.

In order to find that the petitioned-for individual is a confidential employee within the meaning of the Act, the Employer must demonstrate by clear and specific evidence that the individual at issue meets all the elements necessary to prove the statutory exclusion. See Union County State's Attorney, 25 PERI ¶1 (IL LRB-SP 2009); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003). To the extent testimony indicates that Lycan has been present during some negotiation sessions, it could be argued that Lycan "participates" in collective bargaining negotiations to some degree. However, the nature of this participation is far from clear. Likewise, while testimony suggests that Lycan could review a proposal before it was presented to the Petitioner, the record does not indicate the extent to which Lycan "evaluated" that proposal in the traditional sense or whether such a review has any bearing on the Employer's labor relations or collective bargaining policies. Similarly, due to the limited record, the responsibilities of other representatives of the Employer (i.e., the state's attorney or the members of the Crawford County Board) cannot be analyzed in any meaningful way. Accordingly, the labor nexus test has not been satisfied in this instance.

#### Authorized Access Test

Under the authorized access test, an employee will be deemed a confidential employee if, in the regular course of his or her duties, the employee has authorized access to information concerning sensitive matters arising from the collective bargaining process, such as information concerning the employer's strategy in dealing with an organizational campaign, collective bargaining proposals, and information relating to matters concerning contract administration.

Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 523, 607 N.E.2d at 189; see also City of Chicago, 26 PERI ¶114; State of Illinois, Department of Central Management Services, 26 PERI ¶34 (IL LRB-SP 2010); County of DeKalb, 4 PERI ¶2029 (IL SLRB 1988); City of Wood Dale, 2 PERI ¶2043. Access to confidential information unrelated to the collective bargaining process is insufficient to confer confidential status within the meaning of the Act. City of Evanston v. State Labor Relations Board, 227 Ill. App. 3d 955, 978, 592 N.E.2d 415, 430 (1st Dist. 1992); City of Wood Dale, 2 PERI ¶2043.<sup>6</sup> In this context, an individual will be found a confidential employee if that person regularly handles or has access to information which, if divulged, would give bargaining unit members advance notice of the employer's policies in regard to labor relations. See City of Sycamore, 10 PERI ¶2002; Village of Homewood, 8 PERI ¶2010.<sup>7</sup>

The record consistently indicates that Massey-Purdy, in the regular course of her duties, attends closed meetings of the Crawford County Board. During these closed meetings, members of the Crawford County Board can freely discuss, in Massey-Purdy's unscreened presence, sensitive labor relations and collective bargaining issues such as negotiations, proposals the Employer is going to present to a union, and "labor union contracts" in general. Indeed, according to testimony, Massey-Purdy has attended a closed meeting during which the Crawford County Board discussed "labor issues" related to "another Laborers' contract." Under comparable circumstances, it has been held that this type of access to closed meetings qualifies

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<sup>6</sup> Mere access to otherwise "confidential information" concerning the general workings of the department, statistical data upon which an employer's labor relations policy is based, or personnel information unrelated to the collective bargaining process (such as home addresses, background checks, or disciplinary files) is insufficient to establish confidential status within the meaning of the Act. See State of Illinois, Department of Central Management Services, 25 PERI ¶161 (IL LRB-SP 2009); Union County State's Attorney, 25 PERI ¶1; City of Sycamore, 10 PERI ¶2002; City of Wood Dale, 2 PERI ¶2043.

<sup>7</sup> Like the confidential exclusion in general, the purpose of the authorized access test is to guard against the premature disclosure of an employer's ongoing or future collective bargaining positions, which would undermine an employer's ability to negotiate on equal footing with the union. See Union County State's Attorney, 25 PERI ¶1.

the position as confidential in nature. See City of Chicago, 23 PERI ¶145 (IL LRB-LP 2007); County of Jackson (Jackson County Nursing Home), 8 PERI ¶2041 (IL SLRB 1992); Village of Burr Ridge, 7 PERI ¶2048 (IL SLRB 1991). More generally, Lycan's testimony also suggests that Massey-Purdy has considerable access to Crawford County Board records and is expected to act as a "sounding board" for Lycan and "go over" labor relations issues with her. In addition, Massey-Purdy is generally expected to "fill in" for Lycan when Lycan is absent. In this way, the record largely indicates that Massey-Purdy regularly has authorized access to information specifically pertinent to the collective bargaining process between labor and management. Accordingly, Massey-Purdy must be deemed a confidential employee within the meaning of the Act.

#### Reasonable Expectation Test

The Board has also adopted a third confidential test called the reasonable expectation test. The reasonable expectation test is to be applied where no collective bargaining unit was previously in place, but it is expected that the establishment of the unit will require that confidential responsibilities be assumed by the employee. This test was designed to determine, in the absence of a collective bargaining relationship, whether the onset of collective bargaining would reasonably bring the individual confidential duties. Chief Judge of Circuit Court of Cook County, 153 Ill. 2d at 524, 607 N.E.2d at 190; City of Burbank, 2 PERI ¶2036 (IL SLRB 1986).

In its post-hearing brief, the Employer argues that the reasonable expectation test would apply because, according to the Employer, there is no history of collective bargaining between the parties or with respect to the petitioned-for bargaining unit. However, other than Massey-Purdy, the employees of Lycan's office are already in a bargaining unit and are covered by a collective bargaining agreement. In addition, as noted above, further negotiations are underway.

As the Petitioner notes, the reasonable expectation test does not apply where collective bargaining is actually taking place. Pike County Housing Authority, 28 PERI ¶13 (IL LRB-SP 2011); City of Burbank, 2 PERI ¶2036. Furthermore, the reasonable expectation test should only be applied where the responsibilities may be reasonably expected but have not yet been assumed. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 528, 607 N.E.2d at 191. Because the record indicates that Massey-Purdy has already assumed responsibilities connected to the collective bargaining process, the reasonable expectation test need not be applied.

#### V. CONCLUSIONS OF LAW

I find that the petitioned-for employee employed by the County of Crawford and County Clerk, Treasurer, Supervisor of Assessments, and Sheriff of Crawford County in the position of Office Manager, currently occupied by Grace Massey-Purdy, is a confidential employee as defined by Section 3(c) of the Act.

#### VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the instant petition be dismissed.

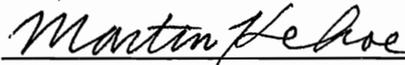
#### VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may

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

**Issued at Springfield, Illinois, this 24th day of February, 2012.**

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**Martin Kehoe  
Administrative Law Judge**