STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County, And Municipal Employees, Council 31,	)	
Petitioner/Labor Organization,	)	Case No. L-RC-21-012
and	)	
City of Chicago,	)	
Employer.	)	

ORDER

On August 10, 2021, Administrative Law Judge Anna Hamburg-Gal, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its October 21, 2021 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, on October 21, 2021.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

*/s/ Helen J. Kim*__________________________
Helen J. Kim
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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American Federation of State, County and Municipal Employees, Council 31, Petitioner/Labor Organization, and City of Chicago, Employer.	)	Case No. L-RC-21-012

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On October 19, 2020, the American Federation of State, County and Municipal Employees, Council 31, (Petitioner or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to represent the title Director of Administration I employed by the City of Chicago (City or Employer) and add it to the historical Union-represented Unit #1. The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage under the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemptions for supervisory, confidential, and managerial employees.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on April 21 & 22, 2021. Both parties elected to file post-hearing briefs.

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. The City of Chicago (City or Employer) is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act (Act).
2. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Section 5(b) of the Act.
3. American Federation of State, County and Municipal Employees, Council 31 (Union), is a

labor organization within the meaning of Section 3(i) of the Act.

4. On October 19, 2020, Petitioner filed a representation petition seeking to represent all City employees holding the job title of Director of Administration I for the purpose of collective bargaining.
5. On November 16, 2020, the City filed its objections to the Petitioner's representation petition, objecting as follows: (1) Geraldine Bates, Monique Clay-Glanton, and Dewanna Hendricks, of the Chicago Department of Transportation (CDOT), and Kathleen Baggett, of the Chicago Department of Public Health (CDPH), are confidential employees under Section 3(c) of the Act; (2) Geraldine Bates, Monique Clay-Glanton, and Dewanna Hendricks, of CDOT, are supervisory employees under Section 3(r) of the Act; and (3) Kathleen Baggett, of CDPH, is a managerial employee under Section 3(j) of the Act.
6. The City and Union agree that Geraldine Bates and Dewanna Hendricks of CDOT are exempt as statutory supervisors under Section 3(r) of the Act and should be excluded from the bargaining unit.
7. The City does not object to the representation of the Director of Administration I title held by Ware King in the City of Chicago, Department of Buildings.

II. ISSUES AND CONTENTIONS

The issues are (1) whether Monique Clay-Glanton is a supervisor within the meaning of Section 3(r) of the Act; (2) whether Kathleen Baggett and Clay-Glanton are confidential within the meaning of Section 3(c) of the Act; and whether Baggett is managerial within the meaning of Section 3(j) of the Act.

The Employer contends that Clay-Glanton is a supervisor because her principal work is substantially different from that of her subordinates, she performs a number of indicia of supervisory authority, and satisfies the preponderance requirement. The Employer reasons that Clay-Glanton directs her subordinates, disciplines them, helps to hire them, and adjusts their grievances with the requisite independent judgment. The Employer further asserts that Clay-Glanton also makes effective recommendations on merit increases and disciplinary matters department-wide. The Employer concludes that Clay-Glanton's main role is to oversee the work of her direct reports, and that she spends more time performing oversight responsibilities than she

does performing her non-oversight responsibilities.

The Union contends that Clay-Glanton is not a supervisor because she lacks discretionary authority to impact her subordinates in areas most likely to fall within the scope of union representation. The Union concludes that there is no record evidence that Clay-Glanton spends a preponderance of her work time exercising supervisory authority.

The Employer next argues that Clay-Glanton and Baggett are confidential under the authorized access test. Regarding Clay-Glanton, the Employer argues that she has advance notice of disciplinary decisions against employees before the discipline issues, is responsible for conducting EEO-related investigations, and advises the employer in the grievance resolution process. The Employer notes that Clay-Glanton also enters merit increases for the entire department, advises management when merit increases cannot be denied, and provides vacancy justifications. Regarding Baggett, the Employer reasons that she is aware of the department's ability to fund positions before employees or their unions receive notice.

The Union counters that neither Clay-Glanton nor Baggett are confidential employees within the meaning of the Act. Regarding Clay-Glanton, the Union generally argues that advance notice of contemplated discipline should not justify Clay-Glanton's exclusion from the unit because such an approach would construe the exclusion too broadly and create a new, "supervisor-lite" exclusion. The Union also argues that Clay-Glanton's participation in the EEO-investigation process should not warrant exclusion absent evidence that Clay-Glanton would have advance knowledge of the disciplinary outcome. The Union also argues that there is no evidence that Baggett is a confidential employee.

Finally, the Employer argues that Baggett is managerial within the meaning of Section 3(j) of the Act because she is engaged predominantly in executive and management functions when she serves as the final reviewer of delegate agency budgets and oversees the funds allocated to delegate agencies. The Employer further contends that Baggett is also responsible for directing the effectuation of management policies and practices because she makes effective recommendations on her division's standard operating procedures (SOPs).

The Union counters that Baggett is not managerial because she is not predominantly engaged in executive and management functions. The Union reasons that the bulk of her work requires her to review and approve forms submitted by sub-grantees of federal funds to ensure that they meet pre-existing requirements. The Union acknowledges that Baggett has drafted standard

operating procedures but notes that the procedures outline highly mechanical functions which do not evidence the necessary exercise of discretion in formulating policy. The Union also observes that her efforts on the SOPs represent only a small fraction of her work.

III. FACTS

1. Monique Clay-Glanton – Chicago Department of Transportation

Deputy Commissioner Cheiko High heads the Chicago Department of Transportation's Division of Administration. She oversees five units, including the human resources unit. Catherine Jones is the Director of Administration for the Chicago Department of Transportation. She oversees the human resources unit and reports directly to Deputy Commissioner High. Jones oversees three subordinates. Two of those subordinates, Monique Clay-Glanton and Geraldine Bates, hold the title Director of Administration I.[1]

Clay-Glanton oversees the personnel unit. She has held her position for 20 years. She oversees the maintenance of timekeeping records and payroll. She also serves as the Department's Equal Employment Opportunity (EEO) liaison and acting up liaison.

Clay-Glanton has three direct reports, Administrative Services Officer I (ASO I), Lourdes Lim, Staff Assistant Michelle Trevino, and Staff Assistant Margaret Weincek. The ASO I acts as a personnel officer. She works with managers to coordinate hiring, maintains timekeeping, processes payroll, responds to employee inquiries about pay benefits and other personnel matters, provides new employees orientation, explains personnel policies and procedures to managers and supervisors, helps process grievances and disciplinary cases, prepares various reports, and provides/maintains information relevant to establishing the budget. The Staff Assistants review and analyze department policies and procedures such as record keeping methods, personnel requirements and performance standards. They develop, implement, and monitor department policies and procedures, and they coordinate and provide administrative support in departmental operations.

[1] The Union stipulates that Bates should be excluded as supervisory, but the parties disagree on the unit placement of Clay-Glanton.

a. Alleged Supervisory Authority

i. Direction

Jones testified that Clay-Glanton oversees her subordinates' daily activities, reviews their work, and gives them assignments. Jones specifically noted that Clay-Glanton oversees the process by which her subordinate, Staff Assistant Margaret Weincek, handles department-wide leaves of absence.

Clay-Glanton approves employees' schedules and approves her subordinates' requests for time off. The collective bargaining agreement between the Union and the Employer states that requests for time off shall not be unreasonably denied. It further notes that vacation requests are granted in order of "continuous service" (i.e., seniority). In addition, it provides that the Department Head has the "discretion to determine the number and scheduling of employees who can be on vacation at any one time without hindering the operation of the Department or to meet the emergency needs of the department's operations.

Clay-Glanton signs the time edits for her unit.[2] However, she does not have authority to authorize overtime before it is worked.

She trains her subordinates on new HR policies and on procedures related to hiring.

ii. Reward

Clay-Glanton signs merit increase forms for her subordinates. Jones testified that she bases her decision on her observations of their work throughout the evaluation period. Clay-Glanton has never denied a merit increase to any subordinate who reports to her. The Division Head and the Managing Deputy also sign the merit increase notification forms.

iii. Hiring

Director Jones testified that if there were a vacancy within Clay-Glanton's unit, Clay-Glanton would participate in the hiring process as an interviewer and would provide recommendations on who should fill the position. However, Clay-Glanton testified that Jones expressly informed her that she would not be involved in the interview process for hiring

[2] When Geraldine Bates is out of the office, Clay-Glanton signs time edits for Bates's direct reports. And when Clay-Glanton is out of the office, Bates signs time edits for Clay-Glanton's direct reports.

individuals into her unit.

iv. Discipline

Jones testified that Clay-Glanton has authority to initiate pre-disciplinary meetings and subsequently issue discipline. Clay-Glanton has issued discipline to a subordinate on only one occasion. Jones brought the disciplinary matter to Clay-Glanton's attention, informed her that the employee had failed to provide information to a seasonal staff member concerning their start date, and instructed her to issue the subordinate a written reprimand. Clay-Glanton drafted the document at Jones's direction, even though she expressed her disagreement with the need for discipline in that instance. She has issued no other disciplinary actions to any subordinate and has not recommended any disciplinary action.

b. Alleged Confidential Status

Clay-Glanton does not have any involvement in the negotiation of collective bargaining agreements between the City and the unions that represent City employees.

Clay-Glanton participates in the grievance process for CDOT employees who are not her direct reports when the grievance is related to filling vacancies or acting up. Clay-Glanton has attended third step grievance meetings along with her supervisor to provide information related to hiring. The city might ask her about the amount of time it might take to fill a position and she would provide that information to the labor relations specialist. Clay-Glanton is aware of the response or resolution of such grievances before the employee is aware. However, she does not have any input into whether the Employer will grant a grievance.

When a position is audited, Clay-Glanton asks the union to waive the posting and bidding for the position that is audited. When the Union agrees to waive the posting and bidding process, and individual can obtain a position, without challenge from other bidders.

Clay-Glanton maintains and oversees the personnel files of all CDOT employees. She also has access to various computer systems, including CHIPPS, which is the city's HR processing system, and CATA, the City's timekeeping system. Both these systems are secured such that different individuals within the department have different levels of access. Clay-Glanton assigns the different levels of access to different levels of managers and supervisors.

Clay-Glanton has access to the Chicago Budget System, which the department uses to track

positions for the upcoming budget year. Clay-Glanton assists in completing vacancy justifications for vacant positions in the various budgets. The justification is the explanation as to why a vacancy must remain in the budget. Jones testified that Clay-Glanton assists in determining the language for vacancy justifications within the personnel unit. However, the documentary evidence shows that Director Jones has told her to copy and paste the justifications from a prior year's budget.

Clay-Glanton is the Department's acting-up liaison. Acting up occurs when a bargaining unit employee performs the duties of their supervisor or manager, duties that are outside their job title. Clay-Glanton collects information from the department's divisions about which employees are eligible to act up, and she provides monthly acting-up activity reports to the department of human resources. Jones testified that Clay-Glanton has knowledge of acting up that will occur before employees in the affected titles have such knowledge. However, the collective bargaining agreement sets forth the process by which the Employer must select employees for acting-up assignment. It requires the Employer to rotate acting up assignments on the basis of seniority at the work location among those who have the present ability to do the job.

Clay-Glanton serves as the department's EEO liaison. Employees contact her if they want to file a complaint involving sexual harassment, discrimination, or violence in the workplace. Clay-Glanton investigates the allegations and determines whether to sustain the case. She drafts an investigatory report and provides it to the immediate supervisor of the accused employee. If the allegation is sustained, the investigatory report also includes a disciplinary recommendation. In making the disciplinary recommendation, she must consider the affected employee's disciplinary record and the severity of the infraction. At this time, Clay-Glanton also provides a letter to the complainant, the accused, and the department of human resources informing them of the outcome of the investigation. Once the immediate supervisor of the accused receives the disciplinary recommendation, the Commissioner and the division deputy make a joint decision about whether to accept the recommendation. Director Jones testified that the direct supervisors regularly accept Clay-Glanton's disciplinary recommendations. However, Clay-Glanton has never made a finding that the allegations were sustained and therefore has never provided any recommendation for discipline.

Clay-Glanton submits all approved merit increases for union employees into the CDOT's computer system. She also ensures that all proposed denials of merit increases are supported by

the appropriate documentation. The applicable collective bargaining agreement between the Union and the Employer states the following: "It is the policy of the Employer to provide notice to employees reasonably in advance of a scheduled merit step increase if the employee's performance has been unsatisfactory and that the employee may not receive the step increase if his/her performance does not improve." See CBA Section 14.3. In applying this policy, the Employer will not deny a merit increase unless the affected employee's supervisor has provided documentation in the preceding six months explaining that the employee will not receive a merit increase due to poor performance if his performance does not improve. If a supervisor within the department attempts to deny a subordinate a merit increase without providing such documentation, Clay-Glanton has the authority to recommend that the department approve the increase over the supervisor's objections. Clay-Glanton makes such recommendations infrequently, but when she does, the department regularly accepts them. Jones testified that in cases where a supervisor attempts to deny a merit increase but lacks authority to do so, Clay-Glanton is aware, before the affected employee, that the Employer will process the merit increase over the supervisor's objections.

However, if the supervisor notifies an employee during the evaluation period that his merit increase could be affected by his poor performance, subsequently denies the merit increase, and provides documentation showing that the employee had been warned about the possible denial of an increase, Clay-Glanton must process the denial.

2. Kathleen Baggett - Chicago Department of Public Health

Allison Arwady is the Commissioner of the Chicago Department of Public Health.[3] Deputy Commissioner David Kern oversees the HIV/STI Bureau within the Chicago Department of Public Health. Jorge Cestou is the Director of Program Operations for the Community Health Services Division and reports to Deputy Commissioner Kern. Cestou oversees Sandra Candelaria Cortes, Director of Administration II. Candelaria Cortes heads the contracts compliance unit. She oversees four employees, including two contract compliance coordinators, a PHA II, and Director of Administration I Kathleen Baggett, who is one of the petitioned-for employees in this case.

One function of the Department of Public Health is to distribute federally-provided grant money to organizations, known as "delegate agencies." These are organizations separate from the

[3] I take notice of this fact.

City of Chicago that provide public health-related services within the City and the Chicago suburbs. One example of a delegate agency is Legal Aid Chicago.[4] The delegate agencies are sub-grantees of funds provided initially to the City of Chicago, Department of Public Health, which serves as the primary grantee. The Department receives funds for distribution from the Health Resources and Services Administration (HRSA), an agency within the U.S. Department of Health and Human Services (HHS), and the Centers for Disease Control and Prevention (CDC).[5] The Department's most significant grant source is the Ryan White HIV/AIDS Program, administered by the HRSA. The grant from the Ryan White Program funds 74% of the contracts overseen by the Department's contract unit.

The Department selects organizations to serve as delegate agencies through an RFP process. Once the Department has selected an organization to serve as a delegate agency, the contract compliance unit mails out an award letter that informs the organization that the City has awarded the organization funding for their program. It also provides the delegate agency a standard budget form, which the delegate agency uses as a guide to submit its comprehensive budget submission.

The contract compliance unit reviews and approves the budgets submitted by delegate agencies. The contract compliance coordinators receive relevant documentation from the delegate agencies and ensure that the agencies' submissions are complete. They perform a first-pass review of the budgets. Baggett then reviews the submitted budgets to ensure that they are accurate and match the requirements of the grant. Specifically, she ensures that the calculations are correct and that the allowable costs indicated in the budgets are in accordance with the guidance provided by the federal government. For programs funded by the Ryan White grant, the city has a list of allowable costs that largely matches the list established by the HRSA. Baggett receives a spreadsheet of funding allocation from the program director which sets forth how much money the agencies are receiving from the total granted by the federal government. She checks the submitted budget against the money the agencies are slated to receive to ensure they match. She reviews all the line items to ensure that there are no rounding errors. If the budgets are more or less than the award amount, Baggett informs the delegate agencies of the discrepancy. If there are parts of the

[4] See ER Exh. 14.
[5] It also distributes "corporate grant funds," but the record does not identify the specific funding entity for this money.

budget that do not meet the funder's requirements, she advises the delegate agencies of the issue. After Baggett checks the budgets, she signs the contracts and submits them to the contract division for processing and final approval. Once the City approves the contracts, the agencies can begin submitting vouchers to the city on the services that they are required to provide under the terms of the grant.

Recently, Candelaria Cortes asked Baggett to prepare a checklist and standard operating procedures for the review of budgets submitted by delegate agencies, to assist the contract compliance coordinators when Baggett is unavailable or out of the office. Baggett has prepared one checklist that includes a list of the line items and entries to check for completion and accuracy on the various forms submitted for review. It directs the compliance coordinators to refer to an attachment, drafted by another employee, that outlines appropriate allowable costs. Baggett is currently in the process of preparing standard operating procedures that will provide more detail on the matters addressed in the checklist.

In 2016, Baggett created SOPs for the "Program Income Policies and Procedures." The Deputy Commissioner Kern and the Deputy Commissioner of finance and administration both reviewed and approved it.

Baggett drafts summary reports that show the budget approval amount for certain grants and the expenditures to date. She modifies existing reports to update the information to track the amount of money spent by delegate agencies, and to track payment reports of the funders.

Baggett spends a substantial amount of her time reviewing budgets. She also spends some time preparing spreadsheets and reports that reflect delegate agency spending through the course of the grant period. These two groups of tasks comprise 90-95% of Baggett's work time.

Baggett does not perform any work that impacts the administration of the collective bargaining agreement between the City and AFSCME. Baggett does not have any role in the selection of delegate agencies or the allocation of funds to the various delegate agencies.

IV. DISCUSSION AND ANALYSIS

1. Supervisory Status - Monique Clay-Glanton

Monique Clay-Glanton is not a supervisor within the meaning of Section 3(r) of the Act.

Section 2 of the Act grants public employees full freedom of association, self-organization,

and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. 5 ILCS 315/2. Section 3(n) of the Act defines the term public employee and excludes "supervisors [from that definition] except as provided in [the] Act." 5 ILCS 315/3(n).

The first paragraph of Section 3(r) defines the term supervisor and sets forth a four-part test for establishing supervisory status in non-peace officer employment. Under that test, individuals are supervisors if they (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently use independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. 5 ILCS 315/3(r); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 505-6 (1990).

In a representation case, the party that seeks to exclude an individual or job classification from a proposed bargaining unit via a statutory exclusion has the burden of proving that exclusion by a preponderance of the evidence. Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). It "cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function." Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-LP 2011). The employer must present specific evidence as to each petitioned-for employee and connect that evidence to the controlling law. Sec'y of State v. Illinois Labor Relations Bd., State Panel, 2012 IL App (4th) 111075, ¶ 55. In other words, the employer needs to develop arguments as to each specific employee that synthesize, analyze, and explain to the finder of fact how the facts show the petitioned-for employees are supervisory. Sec'y of State, 2012 IL App (4th) 111075 ¶ 57.

In addition, the Board generally requires parties to present specific examples of alleged supervisory, managerial, or confidential authority to prove the exclusion. State of Ill., Dep ' t of Cent. Mgmt. Servs. (PSA Option 1), 25 PERI ¶ 184 (IL LRB-SP 2009); State of Ill., Dep ' t of Cent. Mgmt. Servs. (Dep't of Public Health), 24 PERI ¶ 112 (IL LRB-SP-2008); Cnty. of Union, 20 PERI ¶ 9 n. 2 (IL LRB-SP 2003).

However, there is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has

performed that duty in a manner that impacts employees' terms and conditions of employment. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 374-5 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB. State Panel, 2011 IL App 4th 090966 (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB. State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that rules and regulations or job descriptions, while important, are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508-9 (1st Dist. 2010); cf. City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

1) Principal Work

Monique Clay-Glanton's principal work is obviously and visibly different from that of her subordinates, the ASO I and the staff assistants.

In determining whether the principal work requirement has been met, the initial question is whether the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different. City of Freeport, 135 Ill. 2d at 514. If the answer is yes, the principal work requirement is satisfied. Id. If the answer is no, the determinative factor is 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. This requires the Board to consider the petitioned-for employees' supervisory authority and the ability to exercise it at any time, and to identify the point at which the employee's supervisory obligation conflicts with his or her participation in union activity with the employees he or she supervises. Id. at 518. However, the "mere possession of any indicia of supervisory authority" is insufficient to change the nature and essence of substantially similar principal work. Chief Judge of the Circuit Court of Cook County, 6 PERI ¶ 2047 (IL SLRB 1990). The Board has found the performance of certain administrative tasks can render a petitioned-for employee's work substantially different from that of his subordinates in nature and essence. State of Ill., Dep't of Cent. Mgmt. Servs.

(Dep't of Public Health), 27 PERI ¶ 10 (IL LRB-SP 2011) aff'd by State of Ill., Dep't of Cent. Mgmt. Servs. v. Illinois Labor Relations Bd., 2012 IL App (4th) 110209; County of Cook, 15 PERI ¶3022 (IL LLRB 1999); Village of Bolingbrook, 11 PERI ¶2020 (IL SLRB 1995).

Here, Clay-Glanton's principal work is obviously and visibly different from that of her subordinate ASO I. Clay-Glanton's principal work is to oversee the maintenance of time keeping and payroll records for the entire department and to serve as the department's liaison for EEO and acting-up matters. By contrast, the ASO performs none of these tasks and instead performs the direct work of submitting payroll and time keeping data.

Clay-Glanton's principal work is also obviously and visibly different from that of her subordinate staff assistants. As noted above, Clay-Glanton's principal work is to oversee the maintenance of time keeping and payroll records for the entire department and to serve as the department's liaison for EEO and acting-up matters. By contrast, the principal work of Clay-Glanton subordinate staff assistants includes work that Clay-Glanton does not appear to perform, such as reviewing and analyzing department policies and procedures. While both Clay-Glanton and her subordinate staff assistants perform work that may be characterized as "administrative support" for the Department, the support they provide is different. The staff assistants provide generalized support, whereas Clay-Glanton is more specifically responsible for serving in a liaison role.

Thus, Clay-Glanton's work is obviously and visibly different from that of her subordinates.

2) Supervisory Indicia and Independent Judgment

Clay-Glanton does not perform any indicia of supervisory authority with the requisite independent judgment.

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature. City of Freeport, 135 Ill. 2d at 521 & 532. Moreover, the alleged supervisor must exercise his independent judgment in the "interest of the

employer." 5 ILCS 315/3(r).

i. Direction

Clay-Glanton does not direct her subordinates with the requisite independent judgment.

The term "direct" encompasses several distinct but related functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. County of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022; City of Naperville, 8 PERI ¶2016.

However, employees cannot be found to be statutory supervisors based solely on their authority to direct unless they also possess significant discretionary authority to affect their subordinates' employment in areas likely to fall within the scope of union representation, such as discipline, transfer, promotion, or hire. County of Cook v. Illinois Labor Relations Bd.-Local Panel, Serv. Employees Int'l Union, Local 74-HC, 351 Ill. App. 3d 379, 396-7 (1st Dist. 2004) (citing City of Freeport, 135 Ill. 2d 499); Illinois Dept. of Cent. Mgmt. Services (State Police) v. Illinois Labor Relations Bd., State Panel, 382 Ill. App. 3d at 224 aff'ing State of Illinois, Departments of Central Management Services and State Police, 23 PERI 38 (IL LRB-SP 2007); County of Lake, 16 PERI ¶ 2036; County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022 (IL LLRB 1999).

There is insufficient evidence that Clay-Glanton oversees her subordinates and reviews their work with the requisite independent judgment. Petitioned-for employees' oversight/review of their subordinates' work is performed "in the interests of the employer" when they require their subordinates to perform the work in the manner prescribed by the standards and regulations established by the employer. County of Cook, 15 PERI ¶3022; State of Illinois (Department of Central Management Services), 11 PERI ¶2021 (IL SLRB 1995); cf. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123 (IL LRB-SP 2003). In addition, the petitioned-for employees must oversee and review their subordinates' work with the consistent exercise of independent judgment, which requires actively checking, correcting, and giving instructions to subordinates, without guidelines or review by others. County of Lake, 16 PERI ¶ 2036; City of Lincoln, 4 PERI ¶ 2041 (IL SLRB 1988); City of Chicago, 10 PERI ¶ 3017 (IL LLRB 1994).

Furthermore, the petitioned-for employees' oversight and review activities must not be routine and clerical. City of Freeport, 135 Ill. 2d at 520.

Here, the record pertaining to Clay-Glanton's review and oversight responsibilities is exceedingly sparse. A party claiming the statutory exclusion does not satisfy its burden of proof by producing vague, generalized testimony regarding the disputed individual's job functions. State of Illinois, Department of Central Management Services, 24 PERI 112 (IL LRB SP 2008), citing County of Union, 20 PERI ¶ 9 n. 2. In this case, however, the evidence pertaining to oversight and review is limited to a conclusory statement by Director Jones that Clay-Glanton directs her subordinates' daily activities and, more specifically, oversees the process by which her subordinate, Staff Assistant Weincek, handles department-wide leaves of absence. Jones's testimony does not reveal the manner in which Clay-Glanton oversees her subordinates' work. It does not reveal whether Clay-Glanton actively checks, corrects, and gives instructions to her subordinates. Nor does it show that Clay-Glanton's review of her subordinates' work is anything more than a routine task.

Next, there is insufficient evidence that Clay-Glanton assigns work with the requisite independent judgment. A purported supervisor exercises independent judgment in making assignments when she considers discretionary factors such as her knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the employer's operational needs. Cnty. of Cook and Sheriff of Cook County, 15 PERI ¶ 3022. However, assignment of work that merely balances the workload among employees does not require the use of independent judgment. Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 518 and 522; Serv. Employees Int'l Union, Local 73 v. Illinois Labor Relations Bd., 2013 IL App (1st) 120279, ¶ 52. Likewise, an assignment of tasks that is determined by standard operating procedures or a rotation system does not require independent judgment. City of Freeport, 135 Ill. 2d at 524 & 531. In this case, there is no evidence that Clay-Glanton considers the tasks to be performed and the employees' skills or experience in the context of the Employer's operational needs when assigning work. Indeed, the record contains no evidence at all as to the basis for her decision-making.

Finally, there is insufficient evidence that Clay-Glanton completes performance evaluations for her subordinates. Neither Clay-Glanton nor her superior, Jones, claimed that Clay-Glanton is responsible for completing her subordinate's performance evaluations. And the

Employer on brief does not argue that Clay-Glanton performs this duty.

Assuming, arguendo that Clay-Glanton evaluates her subordinates, there is insufficient evidence that she does so with the requisite independent judgment. Evaluating a subordinate in subjective categories requires the consistent use of independent judgment, whereas evaluating a subordinate based on quantitative measures does not. See Illinois Department of Central Management Services, 382 Ill. App. 3d at 227. Here, however, the record does not contain any examples of evaluations Clay-Glanton has completed, nor does it include a description of the evaluation categories. Thus, it is impossible to determine that Clay-Glanton exercises independent judgment by evaluating her subordinates in categories that are "more subjective than quantitative."[6] Id.

ii. Reward

Clay-Glanton does not reward her subordinates with the requisite independent judgment.

She does not exercise independent judgment when deciding whether to sign her approval on her subordinates' merit increase forms because her decisions are routine. The applicable collective bargaining agreement states that employees are entitled to wage increases unless the superior has warned them that their wage increase might be withheld if their performance does not improve. However, to date, Clay-Glanton has never issued a subordinate such a warning. Thus, Clay-Glanton does not choose between two or more significant courses of action when signing her approval on merit increase forms because the terms of the collective bargaining agreement mandate that she sign her approval. City of Naperville, 20 PERI ¶ 184 (IL LRB-SP 2004) (decision routine where controlled by terms of CBA; addressing time off and overtime).

Contrary to the Employer's anticipated contention, there is also insufficient evidence that Clay-Glanton exercises independent judgment in determining whether to issue her subordinates a warning about poor performance, which might preserve her opportunity to exercise independent judgment later, when recommending approval of a merit increase. The record contains no description of how Clay-Glanton oversees and monitors her subordinates work and no indication that she makes assessments of her subordinates' work that are anything more than routine and

[6] The Employer does not expressly argue that Clay-Glanton exercises independent judgment when conducting training, when approving her subordinate's requests for time off, or when signing her subordinates time edits. Accordingly, these issues are not addressed further in this decision.

objective. See discussion supra. While Jones testified that Clay-Glanton bases her merit-increase-related decisions on her observations of her subordinates' work throughout the evaluation period, such generalized testimony is insufficient to show supervisory authority. Cnty. of Cook, 28 PERI ¶ 85 (an employer "cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function"); Secretary of State, Employer, 28 PERI ¶ 68 (IL LRB-SP 2011) (use of conclusory testimony does not support the claimed exclusion) aff'd by Sec'y of State, 2012 IL App (4th) 111075.

Even if the Board determines that Clay-Glanton would exercise independent judgment when called upon to make non-routine recommendations regarding merit increases, there is insufficient evidence that such recommendations would be effective. Recommendations are effective if they are accepted as a matter of course with little, if any, independent review. Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993) (collecting cases). However, a recommendation need not be rubber-stamped to be effective because the term "recommendation" implies some form of review by the person to whom the recommendation is made. City of Peru, 167 Ill. App. 3d at 290.

Here, the record does not permit a finding that the employer would accept Clay-Glanton's non-routine recommendations as a matter of course with little if any independent review because she has never made such recommendations. In addition, the record does not reveal the nature or extent of the review process for such non-routine recommendations. The existence of two additional layers of review, performed by the division head and the managing deputy in all cases, weighs against a finding that Clay-Glanton's non-routine recommendations would be accepted as a matter of course. Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209 ¶¶ 29 & 31; Village of Bolingbrook, 19 PERI ¶ 125 n. 6 (IL LRB-SP 2003) (addressing discipline).

iii. Discipline

There is insufficient evidence that Clay-Glanton exercises authority to discipline her subordinates with the requisite independent judgment.

To constitute discipline within the meaning of the Act, reprimands must have an impact on an employee's job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶ 125. Documented verbal reprimands constitute supervisory authority to discipline if 1) the individual has the discretion or judgment to decide whether to issue such a reprimand, 2) the

reprimand is documented, and 3) the reprimand can serve as the basis for future disciplinary action, that is, it functions as part of a progressive disciplinary system. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 478 (2nd Dist. 2005); Village of Hinsdale, 22 PERI ¶ 176 (IL LRB-SP 2006); see also Northern Illinois University (Department of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000) (verbal reprimands that are not recorded are not discipline within the meaning of the Act). In other words, verbal or written warnings are not supervisory in nature unless they are included in the employee's personnel file or somehow impact the employee's job status. County of Lake, 16 PERI ¶ 2036.

In this case, there is insufficient evidence that Clay-Glanton exercises independent judgment in disciplining her subordinates because she has never issued discipline on her own accord and has never recommended the imposition of discipline against any direct report. The only instance in which Clay-Glanton issued discipline was at the direction of her superior, Jones, and Jones's directive eliminated Clay-Glanton's exercise of independent judgment. Indeed, Clay-Glanton testified that she disagreed with the disciplinary decision, but that Jones instructed her to impose discipline over her objections. This process is not indicative of supervisory authority. See State of Illinois, Department of Central Management Services, 25 PERI ¶ 5 (IL SLRB-SP 2009) (no disciplinary authority found where petitioned-for employee's superiors reviewed and approved all discipline, and, as noted by the ALJ, in one case told petitioned-for employee what action she should take); City of Naperville, 20 PERI ¶ 184 (no authority to discipline through written reprimand where record was devoid of evidence that sergeant had ever issued a written reprimand absent involvement of a superior); Village of Frankfort, 20 PERI ¶ 83 (IL LRB-SP 2004) (no authority to issue written reprimands where petitioned-for employee disagreed with superior's decision to issue such discipline to his subordinate, but where discipline issued anyway; petitioned-for employee also never disciplined his subordinates on his own accord).

There is likewise insufficient evidence that Clay-Glanton makes effective recommendations on discipline in her capacity as EEO officer because, to date, Clay-Glanton has never made recommendations for discipline. And while Director Jones stated that the investigated employees' superiors regularly accept Clay-Glanton's disciplinary recommendations, this testimony is granted little weight where the record shows that Clay-Glanton has not in fact made any recommendations for discipline. Even assuming that the investigated employees' superiors accept Clay-Glanton's recommendations when she finds that the allegations are not sustained, it

does not follow that those superiors would accept her recommendations, as a matter of course, if she were to reach the more weighty conclusion that the accused employee had engaged in the alleged misconduct.

iv. Hiring

Clay-Glanton does not exercise authority to hire with the requisite independent judgment or effectively recommend the same. Indeed, there is no evidence that she exercises independent judgment in hiring or in making hiring recommendations because she has never participated in the hiring process.

The Employer suggests that Clay-Glanton will participate in hiring in the future and exercise independent judgment in doing so, but the Employer's claim is speculative, and the available evidence on that point is also conflicting. While Jones testified that Clay-Glanton would be participating in the hiring process, Clay-Glanton testified that Jones told her the opposite by informing her that she would have no role in interviewing candidates. County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015) (ambiguities in representation petition are construed against the employer).

3) Preponderance

Clay-Glanton does not exercise supervisory authority for a preponderance of her work time.

To satisfy the fourth prong of the supervisor test, the Employer must demonstrate that the petitioned-for employees spend a preponderance of their employment time exercising supervisory authority. 5 ILCS 315/(r)(1). Preponderance of time can be measured quantitatively or qualitatively. Dep't of Cent. Mgmt. Services v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 85-6 ("'Preponderance' can mean superiority in numbers or superiority in importance"). Measured quantitatively, an employee spends a preponderance of his time on supervisory functions when he spends more time on supervisory functions than on any one nonsupervisory function. City of Freeport, 135 Ill. 2d at 533. Measured qualitatively, an employee spends a preponderance of his time on supervisory functions when these functions are more significant than his nonsupervisory functions, regardless of the amount of time spent on those supervisory functions. State of Ill. Dep't of Cent. Mgmt. Serv., 278 Ill. App. 3d at 86. The employer must provide details

with respect to the amount of time the purported supervisor spends engaged in supervisory functions or the significance of these functions. Sec'y of State, 2012 IL App (4th) 111075, ¶ 114.

Here, Clay-Glanton does not spend a preponderance of her work time exercising supervisory authority because she does not possess any indicia of supervisory authority alleged by the Employer. State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 aff'd by Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 34 & 35.

Even if the Board finds that Clay-Glanton possesses some supervisory authority, there is insufficient evidence that she spends the preponderance of her work time exercising it. It is impossible to determine whether Clay-Glanton spends a preponderance of her work time exercising supervisory authority under the quantitative test because the record contains no description of the amount of time Clay-Glanton spends on any of her work activities. It is similarly difficult to determine whether Clay-Glanton spends a preponderance of her work time exercising supervisory authority under the qualitative test because the record does not rank her various work obligations in terms of their importance.

The Employer argues that Clay-Glanton's oversight of her subordinates is her "main" duty, and by implication, her most important duty. However, as discussed above, there is insufficient evidence that Clay-Glanton's oversight functions are in fact supervisory. Thus, even if the Board finds that Clay-Glanton spends a preponderance of her worktime overseeing her subordinates, such a finding would not warrant the conclusion that Clay-Glanton is a statutory supervisor.

Thus, Clay-Glanton is not a supervisor within the meaning of Section 3(r) of the Act.

2. Confidential Exclusion

Neither Clay-Glanton nor Baggett are confidential under the authorized access test.

The purpose of the confidential exclusion is to prevent employees from having their loyalties divided between the employer, who expects confidentiality in labor relations matters, and the union, which may seek disclosure of management's labor relations material to gain an advantage in the bargaining process. City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App. 3d 955, 977 (1st Dist. 1992). In other words, the exclusion is intended to "avoid…a potential situation in which [the Employer's] negotiations strategies in collective bargaining would be prematurely exposed to the employees with whom it will bargain." City of Evanston, 227 Ill. App.

3d at 977-8.

The Act sets forth two tests to determine whether an employee is subject to the confidential exclusion, (1) the authorized access test and (2) the labor nexus test. 5 ILCS 315/3(c). The Board has also adopted the reasonable expectation test, which applies in the absence of a preexisting collective bargaining relationship where the workplace is therefore new to collective bargaining. Chief Judge of the Cir. Court of Cook Cnty., 153 Ill. 2d at 524. Only the authorized access test is at issue here.

An employee is confidential under the authorized access test if, in the regular course of his duties, he "ha[s] authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management." Chief Judge of the Cir. Court of Cook Cnty., 153 Ill. 2d at 523. Information related to the collective-bargaining process includes (1) the employer's strategy in dealing with an organizational campaign, (2) actual collective-bargaining proposals, and (3) information relating to matters dealing with contract administration. Dep't of Cent. Mgmt. Serv. (Dep't of State Police) v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110356 ¶ 27; City of Evanston, 227 Ill. App. 3d at 978; City of Burbank, 1 PERI ¶ 2008 (IL SLRB 1985). An employee's "access to 'confidential' information concerning the general workings of the department or to personnel or statistical information upon which an employer's labor relations policy is based is insufficient to confer confidential status." Dep't of Cent. Mgmt. Serv. (Dep't of State Police), 2012 IL App (4th) 110356 ¶ 27; City of Evanston, 227 Ill. App. 3d at 978. Likewise, merely supplying raw financial data for use in negotiations is insufficient to warrant exclusion under this test. Am. Fed'n of State, County & Mun. Employees, Council 31 v. Illinois Labor Relations Bd. ("Treasurer"), 2014 IL App (1st) 132455, ¶ 48; Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County, & Mun. Employees, Council 31, AFL-CIO ("Chief Judge"), 218 Ill. App. 3d 682, 705 (1st Dist. 1992); cf. Dep't of Cent. Mgmt. Services, 2011 IL App (4th) 090966 ¶ 181. Finally, the employee's authorized access to confidential labor relations materials must occur in the regular course of the employee's duties. Health & Hosp. Sys. of County of Cook v. Illinois Labor Relations Bd., Local Panel, 2015 IL App (1st) 150794, ¶ 67.

While courts have noted that confidential information includes matters dealing with contract administration, two appellate court decisions suggest that confidential information does not necessarily encompass information about contemplated discipline. In addressing the authorized access test, the court in Chief Judge stated that "labor relations encompasses ongoing

or future collective-bargaining negotiations and strategy, not general, though undoubtedly otherwise confidential department administration matters." Chief Judge, 218 Ill. App. 3d at 699. Moreover, the court in that case found that the Board appropriately included employees in the bargaining unit even though they typed their superiors' disciplinary recommendations and disciplinary actions. Id. at 701, 707 & 714. While the court's analysis focused on the labor nexus test, the court's conclusion demonstrates that it did not view the employees' present duties as creating the risk of divided loyalty. Id.[7]

Similarly, in City of Evanston, the Court affirmed the Board's decision to include the Assistant Fire Chiefs and the Division Chief of Emergency Medical Services (EMS) in the bargaining unit. There, the Assistant Fire Chiefs discussed pending disciplinary actions with the Chief on a daily basis and participated as management's representative in department disciplinary proceedings where they presented evidence and made recommendations regarding discipline. City of Evanston, 227 Ill. App. 3d at 962. The Division Chief of EMS performed a similar role. Id. at 964. Nevertheless, the court reasoned that while the Assistant Fire Chiefs and the Division Chief had authorized access to "certain confidential information…no evidence exist[ed] from which [it could] conclude that [they would] have authorized access to confidential, collective bargaining information." Id. at 979. Indeed, had these employees' advance notice of contemplated discipline qualified as confidential collective bargaining information, the Court simply could have avoided the categorical statement that "no evidence exist[ed]" to show that they satisfied the authorized access test.

The court in Health & Hosp. Sys. of County of Cook County, although addressing grievance-related matters, also emphasized that information relevant under the authorized access test must be closely connected to the employer's collective bargaining strategy. Health & Hosp. Sys. of County of Cook, 2015 IL App (1st) 150794, ¶ 73. Relying on this rationale, the court noted

[7] The Illinois Supreme Court declined to consider the confidential issue and remanded the case to the Board to address the employer's claims that the petitioned-for employees had assumed new confidential duties since the initial petition was filed. Notably, the court also declined to disturb the hearing officer's findings that employee O'Halleran did not currently have authorized access to confidential collective bargaining matters, though as the appellate court noted, she typed grievance and disciplinary memos for her superior. Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 525 & 528 (1992); Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County, & Mun. Employees, Council 31, AFL-CIO, 218 Ill. App. 3d 682, 702 (1st Dist. 1991), aff'd, 153 Ill. 2d 508, 607 (1992).

that the grievance-related materials to which the petitioned-for employees had access was "not as closely connected with their employer's collective bargaining strategy" as proposals and costing data sufficient to confer confidential status in other cases. Id. It concluded that the petitioned-for employees were not confidential under the authorized access test despite having authorized access to some grievance-related materials. Id.

The Board in a number of recent decisions has considered discipline to be a confidential "matter dealing with contract administration" and has held that employees who have advance notice of contemplated or actual discipline are confidential employees under that test. Chief Judge of the Circuit Court of Cook County, 36 PERI ¶ 42 (IL LRB-SP 2019) (Investigator IIIs; contemplated discipline); City of Chicago, 36 PERI ¶ 12 (IL LRB-LP 2019) (Supervisors of Personnel Services; contemplated discipline); City of Rolling Meadows, 34 PERI ¶ 116 (IL LRB-SP 2017) (Logistics Coordinator and Secretary to Chief of Police; actual discipline); State of Illinois, Department of Central Management Services (Department of Corrections), 33 PERI ¶ 121 (IL LRB-SP 2017) (Internal Security Investigators; contemplated discipline); City of Chicago, Office of the Inspector General, 31 PERI ¶ 6 (IL LRB-LP 2014) (Office of the Inspector General investigators; contemplated and actual discipline); State of Ill., Dep't of Central Mgmt. Servs., 30 PERI ¶ 38 (IL LRB-SP 2013) (Senior Public Service Administrator, Option 3; contemplated discipline).

The Board, in other cases, has found employees' advanced knowledge of contemplated discipline insufficient to confer confidential employee status, and these cases appear to remain good law.[8] See City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010) (adopting ALJ's conclusion that staff assistants who had advance knowledge of ongoing and completed OIG investigations, including information about whether the employer would take disciplinary action, were not confidential); State of Illinois, Department of Central Management Services, 25 PERI ¶ 139 (IL LRB-SP 2009) (noting generally that employees excluded under the authorized access test must have "authorized access to confidential information concerning anticipated changes which may result from collective bargaining negotiations"); City of Naperville, 20 PERI 184 (IL LRB-SP 2004) (internal affairs sergeant who investigated employee misconduct and drafted reports was

[8] While the Board in at least one recent case declined to follow the analysis set forth State of Illinois, Departments of Central Management Services and Corrections, 24 PERI ¶ 33 (IL LRB-SP 2008), it has not specifically overruled the cases below.

not confidential despite having access to internal affairs files); City of Burbank, 1 PERI ¶ 2008 (secretary Holt who typed letters notifying employees of discharge or written reprimand was not confidential under authorized access test).

Two broad trends emerge from the Board's recent decisions to exclude individuals from the unit as confidential under the authorized access test based on their advance notice of contemplated discipline. First, the Board has consistently excluded internal investigators from the bargaining unit.[9] Second, the Board has focused on the character of the petitioned-for employee's involvement in the discipline-related decision-making process.[10] E.g., City of Chicago, 36 PERI ¶ 12 (employees provided advice and direction to managers about how to proceed with progressive discipline and the appropriate level of discipline that should result, and job description noted these were essential duties of the job); State of Ill., Dep't of Central Mgmt. Servs., 30 PERI ¶ 38 (petitioned-for employee discussed whether disciplinary charges should be changed due to an employee's rebuttal). The Board recently emphasized that in cases involving the confidential exclusion based on advance notice of contemplated discipline, the Board usually requires that the petitioned-for employee have some further connection to the disciplinary process apart from supplying information on which the disciplinary decision is based. Chief Judge of the Circuit Court of Cook County, 36 PERI ¶ 42.

1. Monique Clay-Glanton – Department of Transportation
    a. Responsibility for Overseeing Acting-up Policy

Clay-Glanton does not have authorized access to confidential labor relations materials by virtue of serving as the department's acting-up liaison because the information to which she has access is equally available to the Union. Clay-Glanton knows which employees are eligible to

[9] Chief Judge of the Circuit Court of Cook County, 36 PERI ¶ 42; State of Illinois, Department of Central Management Services (Department of Corrections), 33 PERI ¶ 121; City of Chicago, Office of the Inspector General, 31 PERI ¶ 6.

[10] Not every case fits within these stated trends, but the remaining two cases are not particularly helpful on the issue presented because the petitioned-for employees would have been excluded even if they had lacked specific access to disciplinary matters. In one case, the petitioned for employees had authorized access to confidential bargaining proposals, which would have supported their exclusion from the unit, standing alone. Rolling Meadows, 34 PERI ¶ 116. In another case, the petitioned-for employee was an IT professional within OIG who had broad access to materials on the Employer's IT servers and never denied having read confidential collective bargaining-related documents. City of Chicago, 34 PERI ¶ 90 (IL LRB-LP 2017).

perform acting-up duties because she completes acting up reports. However, such eligibility is set by the collective bargaining agreement, which specifies that the Employer must rotate acting up assignments on the basis of seniority at the work location among employees who have the present ability to do the job. The Union has knowledge of its members' seniority and qualifications and therefore has equal access to the key information included in the acting up reports.

b. Responsibility for Overseeing Merit Increase Submissions

Clay-Glanton does not have authorized access to confidential labor relations materials by virtue of her participation in the merit increase process. Clay-Glanton processes merit increases by submitting them into the system and ensuring that any proposed denial of a merit increase is supported by documentation showing the supervisor gave the affected employee warning that his merit increase might be denied if his performance did not improve. However, authorized access to materials such as completed evaluations and a supervisor's communications to a subordinate about poor performance does not render an individual confidential under the authorized access test. Bd. of Educ. of Cmty. Consol. High Sch. Dist. No. 230, Cook County v. Illinois Educ. Labor Relations Bd., 165 Ill. App. 3d 41, 63 (4th Dist. 1987) (evaluations); Department of Central Management Services, 25 PERI ¶ 184 (personnel information).

The mere fact that Clay-Glanton has familiarity with the manner in which the Employer interprets the collective bargaining agreement with respect to merit increases is insufficient to confer confidential status. City of Chicago, 25 PERI ¶ 2 (IL LRB-LP 2009) (citing 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 (1992)). Indeed, it is not clear why Clay-Glanton's advance knowledge that the Employer will grant a merit increase, pursuant to the contract's terms, is a matter that must be kept confidential from the Union.

c. Responsibility to Consult on Grievances

Clay-Glanton does not have authorized access to confidential labor relations materials by virtue of her participation in the grievance process. Her role in the grievance process is similar to that of the Recruitment and Selection Analysts (RSAs) discussed in Health & Hosp. Sys. of County of Cook, who did not satisfy the authorized access test. Health & Hosp. Sys. of County of Cook, 2015 IL App (1st) 150794. There, the RSAs helped their employer resolve grievances by

researching the grievance, providing that information to the labor team, and discussing it with them. Id. at ¶ 21. The RSAs also had knowledge of the disposition of the grievances by working with the labor team to resolve them. Id. at ¶¶ 71. However, the court rejected the employer's claim that authorized access to such information rendered the RSAs confidential, reasoning that while such information may be relevant to collective bargaining, it did not reveal bargaining strategies. Id. at 75.

Here, Clay-Glanton, like the RSAs, provides the Employer with information relevant to the resolution of grievances when the grievances concern matters within her specialized knowledge, including the filling of vacancies and acting up. And, in the course of providing such information Clay-Glanton may become aware of the disposition of the grievance, before the Employer conveys its decision to the Union. However, as the court found in Health & Hosp. Sys. of County of Cook, supra, access to such information does not demonstrate that a petitioned-for employee satisfies the authorized access test.

d. Knowledge of Vacancies

There is insufficient evidence that Clay-Glanton's obligation to provide justifications for vacancies gives her authorized access to confidential labor relations materials. While she may thereby have advance knowledge of future vacancies, authorized access to such information does not render a petitioned-for employee confidential. Health & Hosp. Sys. of County of Cook, 2015 IL App (1st) 150794, ¶ 71 & 75. Indeed, the Employer has not cited to any case to support its proposition that such information is "'relat[ed] to the effectuation or review of the employer's collective bargaining policies' as required by the Act." Treasurer, 2014 IL App (1st) 132455, ¶ 48.

e. Advance Notice of Discipline /Responsibility to Serve as EEO Liaison

Clay-Glanton does not have authorized access to confidential collective bargaining related information when she drafts disciplinary documents for issuance to her subordinates. A key inquiry in the authorized access analysis is whether the disclosure of the information in question would give the union advance notice of the employer's private information regarding labor relations activity and thereby interfere with the employer's ability to negotiate with the union. Treasurer, 2014 IL App (1st) 132455 at ¶32 & 35. Here, however, the purpose of drafting a disciplinary document is to immediately present it to the employee, and the record does not reveal

any benefit to the employer of releasing it at a strategic point in time. Indeed, the absence of strategic benefit to withholding a completed disciplinary decision from an employee distinguishes disciplinary actions from collective bargaining proposals, which parties customarily release on a rolling basis to obtain a negotiating advantage.

The Employer may note that Clay-Glanton has information concerning the rationale for the disciplinary decision, initially conveyed to her by her superior. However, the Court in City of Evanston rejected a claim of confidential status and approved the inclusion of individuals in the bargaining unit even though they formulated disciplinary recommendations and discussed pending disciplinary actions with their superiors. City of Evanston, 227 Ill. App. 3d at 962, 964, 977. Accordingly, Clay-Glanton's foreknowledge of discipline that will be imposed against her own subordinates does not warrant her exclusion from the bargaining unit, standing alone.

Notably, Clay-Glanton does not have the type of expertise in disciplinary matters, possessed by the Supervisors of Personnel Services, who were responsible for "advis[ing] departmental managers on initiating, responding to, and resolving issues relating to disciplinary action procedures." And no such responsibility appears in Clay-Glanton's job description. Cf. City of Chicago, 36 PERI ¶ 12 (IL LRB-SP 2019).

Next, Clay-Glanton's responsibility to serve as EEO liaison likewise fails to justify her exclusion from the bargaining unit under at least one court case, discussed above. As part of her regular duties, Clay-Glanton is responsible for investigating alleged misconduct and providing disciplinary recommendations, when necessary. However, the court in City of Evanston declined to exclude employees under the authorized access test despite their involvement in the disciplinary process and their responsibility to make disciplinary recommendations. See supra. Indeed, this was true even where the petitioned-for employees became involved in the disciplinary process when the contemplated discipline was severe, exceeding a one-day suspension. City of Evanston, 227 Ill. App. 3d at 962 & 977.

This case presents a closer question under the Board's more specific case law pertaining to internal investigators, but the evidence here is still insufficient to warrant exclusion under that line of cases. As the department's EEO Officer, Clay-Glanton performs some functions that are similar to those of the internal investigators that the Board has previously excluded as confidential. She investigates complaints department-wide involving serious allegations,[11] determines whether they

[11] These include allegations concerning sexual harassment, discrimination, and violence in the workplace.

are sustained or not sustained, and provides her investigative findings to the Employer. If she determines that the findings are sustained, she is also responsible for providing a disciplinary recommendation.

However, there are significant differences in the substance and quality of the evidence here that warrants a different result from that obtained by the Board in the internal investigator cases. First and most notably, Clay-Glanton's responsibilities regarding the investigated allegations are far narrower than those of the investigators in the key cases. For example, unlike the investigators at issue in Office of Inspector Gen., Clay-Glanton does not receive and review employee responses to charges, does not help management strategize about cases, and does not testify in support of the employer's case at grievance hearings, criminal trials, or before grand juries. Cf. Office of Inspector Gen., 31 PERI ¶ 6. Clay-Glanton submits a report that contains her investigative findings, but there is insufficient evidence that she has any continuing responsibilities with respect to the case or even that the Employer apprises her of the final disciplinary outcome.

There is also insufficient evidence that Clay-Glanton's investigatory reports form the basis of the Employer's decision to issue discipline, as did the reports issued by the internal investigators previously considered by the Board. See e.g. State of Illinois Department of Central Management Services (Department of Corrections), 33 PERI ¶ 121 aff'd by unpub. order 2018 IL App (1st) 171322-U ("Department of Corrections"). Generally speaking, the purpose of an investigation into employee misconduct is to provide the foundation for discipline, should the investigation substantiate the allegations. However, Clay-Glanton has never issued a finding that the allegations were sustained, and she has never made any disciplinary recommendations in her role as EEO liaison. There is accordingly insufficient evidence concerning the extent to which the employer would ultimately rely on Clay-Glanton's sustained findings or any related disciplinary recommendations.

Finally, there is insufficient evidence that Clay-Glanton's investigatory reports provide her with information concerning the Employer's grievance litigation strategies, as did the reports completed by the investigators in Department of Corrections. State of Illinois Department of Central Management Services (Department of Corrections), 33 PERI ¶ 121 aff'd by unpub. order 2018 IL App (1st) 171322-U (Department of Corrections). Unlike those investigators, Clay-Glanton has never issued a finding that the allegations were sustained. And the Employer failed to introduce any of Clay-Glanton's investigative reports into evidence, to illustrate how her

analysis might impact the Employer's grievance litigation strategy, if she were to issue a sustained finding coupled with a recommendation for discipline.

Under these circumstances, there is insufficient basis on which to exclude Clay-Glanton as confidential within the meaning of the Act. [12]

2. Kathleen Baggett – Department of Public Health

Kathleen Baggett is not a confidential employee under the authorized access test.

She does not have authorized access to the Employer's strategy in dealing with an organizational campaign or actual collective-bargaining proposals. She also does not have authorized access to confidential information pertaining to contract administration, and indeed testified that she does not perform any work that impacts the administration of the collective bargaining agreement between the City and the Union.

Baggett's responsibility to review and approve draft budgets of delegate agencies does not render her confidential under the authorized access test because those budgets have no discernable impact on the City's relationship with its unions. The delegate agencies are independent organizations that receive grant money from the City to operate. They are not part of the City and, based on the example provided in the record, appear to be private, non-profit organizations such as Legal Aid Chicago. While Baggett may have advance notice of a budget shortfall that will result in a reduction in force for a delegate agency, such staffing issues have zero impact on the City's public employees or the City's labor relations.

3. Managerial Exclusion - Kathleen Baggett, Department of Public Health

Kathleen Baggett is not a managerial employee within the meaning of Section 3(j) of the Act.

The Act excludes managerial employees from engaging in collective bargaining to

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[12] In the alternative, if the Board finds that these duties give Clay-Glanton authorized access to confidential collective bargaining related information, I recommend that the Board likewise find that she has such access in the regular course of her duties. The Union has not argued otherwise. Indeed, Clay-Clanton has performed EEO investigations consistently for years, completes approximately four such investigations each year, and will likely continue such work going forward. State of Ill., Dep't of Central Mgmt. Servs., 29 PERI ¶ 12 (IL LRB-SP 2012) (employee's access to information was not ad hoc where her position and current duties indicated that she would maintain such authorized access and perform confidential assistance again).

"maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management." Chief Judge of 16th Judicial Cir. v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339 (1997). Section 3(j) of the Act defines a managerial employee as "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." 5 ILCS 315/3(j). A two-part "traditional test" is used to determine managerial status under Section 3(j): first, the employee at issue "must be engaged predominately in the executive and management functions which specifically relate to running a department and include such activities as formulating department policy, preparing the budget, and assuring efficient and effective operations of the department," and second, "the employee must direct the effectuation of management policies and procedures." Vill. of Elk Grove Vill. v. Illinois State Labor Relations Bd., 245 Ill. App. 3d 109, 121-22 (quoted text); City of Evanston, 227 Ill. App. 3d at 974-975.

With respect to the first prong of the test, "executive and management" functions require more than the simple exercise of discretion or specialized expertise; rather, an employee must possess and exercise sufficient authority and autonomy to establish department goals or the means of achieving such goals on a broad scale. Vill. of Elk Grove Vill., 245 Ill. App. 3d at 122 (citing City of Evanston, 227 Ill. App. 3d at 975); Cnty. of Cook, 351 Ill. App. 3d at 386; Dep't of Cent. Mgmt. Servs / Dep't of Healthcare & Family Servs. v. Illinois Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 331 (4th Dist. 2009). "The fact that employees make independent decisions with regard to carrying out their duties does not mean that their actions transcend to the level of executive or management function." County of Cook, 351 Ill. App. 3d at 387. Additionally, where an individual's decisions are significantly circumscribed by predetermined requirements and procedures, the employee's activities are not managerial under the Act. Chief Judge of the Eighteenth Judicial Circuit v. Ill. State Labor Relations Bd., 311 Ill. App. 3d 808, 815 (2nd Dist. 2000); see also City of Chicago (Mayor's Office of Information and Inquiry), 10 PERI ¶ 3003 n. 7 (IL LLRB 1993).

With respect to the second prong of the test, the employee must have "substantial discretion to determine how and to what extent policies will be implemented and [also] have the authority to oversee and direct that implementation." Village of Elk Grove Village, 245 Ill. App. 3d at 122. It is not enough that an employee performs duties that are essential to an employer's ability to accomplish its mission; rather, he "must possess the authority or responsibility to determine the

specific methods or means of how the employer's services will be provided." Dep't of Cent. Mgmt. Servs. (Health & Family Servs.), 388 Ill. App. 3d at 331.

"An element to be considered in determining an employee's managerial status is whether his policymaking role is advisory or subordinate since 'it is the final responsibility and independent authority to establish and effectuate policy that determines managerial status under the Act.'" Cnty. of Cook, 351 Ill. App. 3d at 387-8 (quoting Village of Elk Grove Village, 245 Ill. App. 3d at 122 and City of Evanston, 227 Ill. App. 3d at 975); Dep't of Cent. Mgmt. Servs / Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 330-31. Nevertheless, under certain circumstances, an advisory employee who makes "effective recommendations" may also be managerial. Dep't of Cent. Mgmt. Services/Illinois Commerce Comm'n v. Illinois Labor Relations Bd. ("ICC"), 406 Ill. App. 3d 766, 775 (4th Dist. 2010) (citing Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 339-40).

1) Executive and Management Functions

Baggett is not engaged predominantly in executive and management functions.

As a preliminary matter, Baggett does not prepare, review, or approve the budget for the Chicago Department of Public Health. While she does review draft budgets, they are the proposed budgets of entities unaffiliated with the City, known as "delegate agencies," which receive grant money from the City to provide public health services.

Furthermore, Baggett's work with delegate agency budgets does not qualify as executive or managerial budget preparation because it does not allocate the City's resources and has no demonstrable impact on the City's operations. Budget preparation constitutes an executive and management function when the individual's duties involve the "authority to allocate resources in a manner which significantly affects the nature and direction of the employer's operations." State of Illinois, Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2012 (IL SLRB 1989). Here, Baggett does not allocate any City resources because such allocation occurs earlier through the RFP process, without Baggett's involvement. Even if Baggett were somehow involved in the allocation of resources to delegate agencies in a manner that impacts their operations, there is insufficient evidence that such allocation of resources to third parties impacts the City's operations.

Furthermore, Baggett's review and approval of delegate agency budgets does not qualify as an executive and management function on any other grounds. As noted above, an employee

performs executive and management functions when she possesses and exercises sufficient authority and autonomy to establish department goals or the means of achieving such goals on a broad scale. Vill. of Elk Grove Vill., 245 Ill. App. 3d at 122 (citing City of Evanston, 227 Ill. App. 3d at 975); Cnty. of Cook, 351 Ill. App. 3d at 386; Dep't of Cent. Mgmt. Servs / Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 331. Here, however, Baggett's work is purely an exercise of professional discretion and technical expertise, which is also significantly constrained by the terms of the City's contractual award of funds and governmental regulations. Baggett proofreads the budgets to ensure that they are internally consistent, that they have no rounding errors or omissions, and that they match the pre-established amounts the City has awarded the delegate agencies. Baggett also ensures that the budgets conform to the requirements of the grants' terms and that the stated expenditures cover solely allowable costs, as dictated by the lists established by the City and the HRSA, an agency within the U.S. Department of Health and Human Services. There is no indication from the record that Baggett exercises any significant discretion in making such determinations. Nor is there any indication that Baggett can waive the established requirements or deviate from them. Overall, the record lacks any evidence concerning the manner in which Baggett exercises any alleged discretion in applying the applicable requirements.

The City correctly observes that Baggett's obligation to review delegate agency budgets furthers the department's goals of ensuring the delivery of health services to communities in surrounding areas, but such a claim is not sufficient to demonstrate managerial authority. Indeed, as the courts have noted, a managerial employee must do more than merely perform duties essential to the employer's ability to accomplish its mission and must instead possess and exercise considerably broader authority. Baggett lacks such authority, as discussed herein. Sec'y of State, 2012 IL App (4th) 111075, ¶ 123.

Next, Baggett does not engage in executive and management functions when she drafts standard operating procedures (SOPs). The advisory nature of an employee's role is a factor to be considered when assessing managerial status because at least some courts have held that a purely advisory role precludes exclusion as a manager. Cnty. of Cook, 351 Ill. App. 3d at 387-8 (citing Village of Elk Grove Village, 245 Ill. App. 3d at 122 and City of Evanston, 227 Ill. App. 3d at 975); Dep't of Cent. Mgmt. Servs / Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 330-31. Here, the preponderance of the evidence demonstrates that Baggett's authority to create SOPs is purely advisory and subject to at least two levels of review. To date, Baggett has completed one

set of SOPs, and two different deputy commissioners reviewed it before the Employer adopted it. While Baggett is currently drafting another set of SOPs to cover the process for review of delegate agency budgets, a task performed first by contract compliance coordinators and then again by Baggett, there is no indication that it will be subject to any lesser scrutiny, or indeed, that the Employer will adopt it as drafted.

While advisory employees may sometimes still qualify as managerial, there is insufficient evidence that Baggett, through her recommendations, has authority to establish department goals or the means of achieving such goals on a "broad scale," as is required to prove managerial status. See Vill. of Elk Grove Vill., 245 Ill. App. 3d at 122 (citing City of Evanston, 227 Ill. App. 3d at 975); Cnty. of Cook, 351 Ill. App. 3d at 388; Dep't of Cent. Mgmt. Servs / Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 331. Here, the Employer has accepted one set of SOPs drafted by Baggett. However, the breadth and impact of this set of SOPs on the department's goals is difficult to discern from the limited information in the record because the record contains nothing more than its title, "program income policies and procedures."

The Employer notes that Baggett is working on a second set of SOPs, however, this set is unlikely to demonstrate Baggett's authority to establish the means of achieving the department's goals on a broad scale, even if the Employer summarily adopts them. The record indicates that the SOPs will be based on a checklist that Baggett drafted earlier, but the checklist demonstrates only narrow authority, at best. It outlines primarily routine and clerical tasks that contract compliance coordinators should undertake when performing the first-pass review of delegate agency budgets, to ensure the budgets are correct and complete.[13] Furthermore, the document's most substantive guidance regarding allowable costs was drafted by another department employee, not Baggett.

There is also no evidence that Baggett's recommendations represent the primary if not the exclusive means by which the department fulfills its statutory mandate because Baggett's policy-related recommendations are exceedingly rare. Cf. Am. Fed'n of State, County, & Mun. Employees, Council 31 v. Ill. Labor Relations Bd., State Panel, 2018 IL App (1st) 172476 ¶ 40 (DCFS attorneys play a prominent role in fulfilling agency's mission where their primary duties included making recommendations to DCFS on child placement issues and allegations of abuse or neglect); Am. Fed'n of State, County & Mun. Employees (AFSCME), Council 31 v. Illinois Labor

[13] See ER Exh. 13.

Relations Bd., State Panel, 2014 IL App (1st) 123426, ¶ 43 & 46 (ICC ALJs were the "whole game" with regard to agency's mission).

Even if the Board determines that Baggett engages in executive and management functions when she drafts SOPs, it is clear that she is not engaged predominantly in such functions. The bulk of Baggett's work is focused on the technical tasks of reviewing and approving the budgets of delegate agencies and completing reports to track how they spend the grant money, which do not qualify as executive and management functions.[14] In addition, there is insufficient evidence that her obligation to draft SOPs once every five years is more important than her obligation to directly review the myriad of delegate agency budgets to ensure that they conform to federal and City requirements.

2) Directing the Effectuation of Management Policies and Practices

Baggett is not responsible for directing the effectuation of management policies and practices. As noted above, an employee satisfies the second part of the test when he has substantial discretion to determine *how* and to *what extent* policies will be implemented, as well as the authority to oversee and direct their implementation. Village of Elk Grove Village, 245 Ill. App. 3d at 122; City of Chicago (Mayor's Office of Information and Inquiry), 10 PERI ¶ 3003 n. 7.

There is insufficient evidence that Baggett directs the effectuation of management policies and practices through her allegedly effective recommendations on policies and procedures. As a threshold matter, an employer must provide some detail concerning a petitioned-for employee's allegedly effective recommendations on matters of policy to demonstrate how that employee thereby directs the effectuation of management policies and practices. Here, however, the record contains only one example of policies/procedures recommended by Baggett and ultimately adopted by the Employer—the "program income policies and procedures." Yet, there is no evidence to reveal how Baggett created these SOPs, how the department used them, and how they fit within the department's overall mission. Indeed, these SOPs do not appear in the record and the witnesses offered no explanations regarding their substance.

The Employer notes that Baggett is in the process of drafting another set of SOPs, but Baggett's recommendations pertaining to these cannot be deemed effective because the Employer

[14] The Employer has not claimed that Baggett's obligation to compile reports is an executive or management function, and there is no record evidence to support a finding to that effect.

has neither reviewed nor adopted them.

The cases cited by the Employer in support of its position do not justify a different result. In each cited case, the employer provided detailed evidence concerning both the substance of the petitioned-for employees' recommendations and an explanation of how the employees' recommendations on those matters help run the department and/or achieve the department's mission. Such evidence is notably absent here with respect to the one set of SOP-related recommendations Baggett completed. Cf. State of Illinois, Department of Central Management Services, 34 PERI ¶ 146 (IL LRB-SP 2018) aff'd by Am. Fed'n of State, County, & Mun. Employees, Council 31 v. Ill. Labor Relations Bd., State Panel, 2018 IL App (1st) 172476 ¶ 40 (DCFS attorneys made effective recommendations on child placement, abuse and neglect); cf. State of Illinois, Department of Central Management Services, 33 PERI ¶ 111 (IL LRB-SP 2017) (telecommunications manager made effective recommendations on billing systems, telecommunications projects, and administrative directives); cf. Am. Fed'n of State, County, & Mun. Employees, Council 31 and State of Ill., Dep't of Cent. Mgmt. Servs., 32 PERI ¶ 163 (IL LRB-SP 2016) (ALJs at IDFPR made effective recommendations on regulation of professionals, banking institutions and financial institutions).

Finally, Baggett's location in the City's organizational structure likewise weighs against finding managerial status when viewed in the context of her limited authority. Courts have considered the overall organizational structure when analyzing managerial status. See City of Evanston, 227 Ill. App. 3d at 975. And while managerial status is not limited to only the highest levels of a governmental entity, it does require sufficient independent authority and discretion to broadly affect a department's goals or means of achieving its goals. Cnty. of Cook, 351 Ill. App. 3d at 388. Here, there are four levels of management above Baggett's position, Director of Administration II Candelaria Cortes, Director of Program Operations Cestau, Deputy Commissioner Kern, and the Commissioner. Furthermore, Baggett's exercise of discretion derives from her professional and technical expertise in the area of reviewing delegate agency budgets and does not represent any independent authority to broadly impact the department's goals. These

factors, taken together, weigh against a finding of managerial authority.

In sum, Baggett is not managerial within the meaning of Section 3(j) of the Act.

V. CONCLUSIONS OF LAW

1. Monique Clay-Glanton is not supervisory within the meaning of Section 3(r) of the Act.
2. Monique Clay-Glanton is not confidential within the meaning of Section 3(c) of the Act.
3. Kathleen Baggett is not confidential within the meaning of Section 3(c) of the Act.
4. Kathleen Baggett is not managerial within the meaning of Section 3(j) of the Act.

VI. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the American Federation of State, County and Municipal Employees, Council 31, 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: The Director of Administration I position in the Chicago Department of Public Health held by Kathleen Baggett, the Director of Administration I position in the Chicago Department of Transportation held by Monique Clay-Glanton, and the Director of Administration I position in the Department of Buildings formerly held by Ware King are to be added to AFSCME-represented Unit #1.

EXCLUDED: The Director of Administration I positions in the Chicago Department of Transportation held by Geraldine Bates and Dewanna Hendricks, and all supervisory, managerial, and confidential employees within the meaning of the Act.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file

responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five 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 General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. 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. 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 10th day of August, 2021

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge