

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

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

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On July 27, 2011, Administrative Law Judge (ALJ) Sharon B. Wells issued a Recommended Decision and Order (RDO) in the above-captioned case, finding that three employees of the City of East Moline (City or Employer) within newly created positions of Assistant Director of Engineering, Senior Engineer, and GIS/CADD Coordinator¹ are professional employees within the meaning of Section 3(m) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).² Because Section 9(b) allows combined units of professional and non-professional employees only where a majority of each category of

¹ "GIS" refers to geographic information system, while "CADD" refers to computer aided drafting and design.

² Pursuant to Section 3(m):

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

employees agrees to such a combined unit,³ these employees' status as professionals became an issue when the Employer filed a unit clarification petition seeking to expressly exclude them from an existing historical unit of City employees.⁴ The ALJ agreed with the Employer's position that the new positions were professional, and ordered a poll of the three professional employees to determine whether they wished to be included in the existing bargaining unit of City employees.

American Federation of State, County and Municipal Employees, Council 31, Local 1234 (AFSCME or Labor Organization), filed timely exceptions to the RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Adm. Code Parts 1200 through 1240 (Board Rules), and the Employer filed a timely response. AFSCME takes issue with the conclusion that the three employees are professional employees, and challenges some of the factual determinations that led to that conclusion, specifically: (1) that all three employees' work is predominantly intellectual, varied and requires consistent exercise of discretion; (2) that the output of work performed by the GIS/CADD Coordinator and the Senior Engineer is of such a character that it cannot be standardized in relation to a given period of time; and (3) that the positions of Assistant Director and GIS/CADD Coordinator require advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institute of higher learning. AFSCME further claims that the ALJ did not adequately address whether the new positions should nevertheless be

³ The specific statutory language states: "The Board shall not decide that any unit is appropriate if such unit includes both professional and nonprofessional employees, unless a majority of each group votes for inclusion in such unit."

⁴ The existing unit currently includes all City employees, including Park Board employees, but excludes: Police, Firemen, City administrator and his Assistant, Director of Maintenance Services and his Assistant, Director of Water Filtration, Superintendent of Sewer Plant, City Chemists, City Engineer, Inspectors, Director of Development Services, Assistant Director of Planning and Development, Deputy City Clerk, City Attorney, Maintenance Services Supervisor, Seasonal Employees, Elected Officials, Administrative, Supervisory and Confidential Employees as defined under the Illinois Public Labor Relations Act.

included in the historical bargaining unit because they perform work that had been performed by positions historically included in the unit.

After reviewing the RDO, exceptions, response, and the record, we accept the ALJ's conclusion that the three newly created positions are those of professionals. As did the ALJ, we find the work of the three positions is predominantly intellectual and varied in character, involving consistent exercise of discretion. We further agree that the character of the work of these positions is such that their output or results cannot be standardized in relation to a given period of time. And while we recognize that the ALJ erred in stating that the current occupant of the Assistant Director of Engineering position is a licensed engineer, we nevertheless find that all three positions require advanced knowledge that is *customarily* acquired through a prolonged course of specialized training. On the latter point, we have long recognized that the wording of our Act's Section 3(m) is similar to that of Section 2(12) of the National Labor Relations Act, 29 U.S.C. 152(12),⁵ and have applied National Labor Relations Board precedent on this topic, including the NLRB's holding that it is the nature of the work, rather than the distinct qualifications of the particular occupant of the position, that determines whether the work being performed is that of a "professional." County of Peoria, 2 PERI ¶2022 (IL SLRB 1986). More

⁵ Section 2(12) of the National Labor Relations Act provides:

The term "professional employee" means--

- (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

specifically, we note that our Act's language fits with NLRB precedent recognizing that work experience may be sufficient to render an engineer a professional despite lack of an engineering license. See Ryan Aeronautical Co., 132 NLRB 1160 (1961), and Westinghouse Elec. Co., 80 NLRB 591 (1948).

Finally, we reject the Labor Organization's claim that the new positions merely perform work previously performed within the bargaining unit. While the record indicates the work formerly performed in the previous Engineer Technician II position is being performed in the new positions, it also indicates the new positions include much work previously contracted out and, more significantly, that it includes sophisticated work never performed by the Engineer Technician II. It is this new work that is most clearly of a professional nature, making the new positions professional positions whereas the prior Engineer Technician II position likely never reached professional status or at least did not clearly reach professional status. Consequently, we cannot say the prior unit was already a mixed unit of professional and non-professional employees, but are compelled to find that including the new positions in the unit would clearly present such a mixed unit.

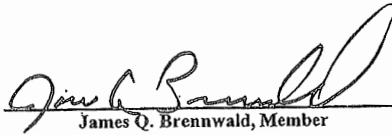
Because Section 9(b) of the Act provides that a mixed unit of professional and non-professional employees requires assent by each type of employee, we modify the ALJ's recommended order to require that a poll be taken not only among the three employees in the newly created professional positions, but also of the employees in the unit as it is currently composed. The question presented to the three employees in the titles of Assistant Director of Engineering, Senior Engineer, and GIS/CADD Coordinator shall be: "do you wish to be represented in a mixed unit containing both professional and non-professional employees, yes or no," and the question to be presented to the existing members of the unit shall be: "do you wish

to be represented in a mixed unit of professional and non-professional employees, yes or no.” If a majority of each group of employees wishes to be represented in a mixed unit, the Executive Director shall certify a clarification of the unit, adding to it the titles of Assistant Director of Engineering, Senior Engineer, and GIS/CADD Coordinator. If a majority of either group of employees expresses a desire to not be represented in a mixed unit of professional and non-professional employees, the Executive Director shall dismiss the unit clarification petition without adding the three new titles to the unit.

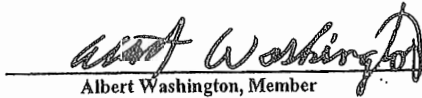
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Jacalyn J. Zimmerman, Chairman


Paul S. Besson, Member


James Q. Brennwald, Member


Michael G. Coli, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, December 6, 2011;
written decision issued in Chicago, Illinois, December 30, 2011.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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City of East Moline,

Employer/Petitioner

and

American federation of State, County
and Municipal Employees, Council 31,

Labor Organization

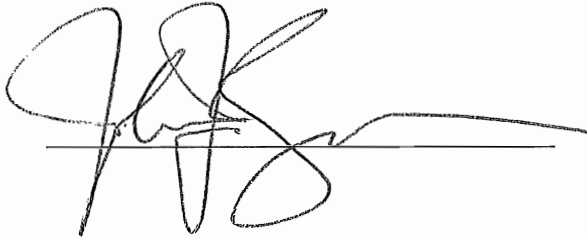
Case No. S-UC-08-398

AFFIDAVIT OF SERVICE

I, John F. Brosnan, on oath state that I have this 30th day of December, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Gail Mrozowski
Cornfield & Feldman
25 East Washington Street, Suite 1400
Chicago, IL 60602

James Powers
CLARK BAIRD SMITH
6133 N River Road, Suite 1120
Rosemont, IL 60018



SUBSCRIBED and SWORN to
before me this **30th day**
of **December 2011**.



NOTARY PUBLIC

