

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

American Federation of State, County and	)	
Municipal Employees, Council 31,	)	
	)	
Petitioner,	)	
	)	Case No. L-RC-19-028
and	)	
	)	
City of Chicago,	)	
	)	
Employer.	)	

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

On May 23, 2019, the American Federation of State, County and Municipal Employees, Council 31 (the “Petitioner” or “AFSCME”) filed a majority interest petition in in Case No. L-RC-19-028 with the Local Panel of the Illinois Labor Relations Board (the “Board”) seeking to include within City of Chicago-AFSCME Bargaining Unit 1 employees employed by the City of Chicago (“the City” or “the Employer”) and holding the title of Contracts Coordinator. As of the date of the filing of the petition, there were fourteen employees holding that title in eleven City departments.

Following the filing of the petition, the City filed objections to the inclusion in the bargaining unit of many, but not all, of the petitioned-for employees. The City did not object to the inclusion in the bargaining unit of the Contracts Coordinators in the Chicago Police Department, the Department of Planning and Development, and the Office of Emergency Management and Communications, but did object to the others on the basis of the City’s contention that the Contracts Coordinators in the other City departments had duties and responsibilities causing them to fall within one or more statutory exclusions. Thus, the City asserted, nine of the employees fall within the managerial exclusion under Section 3(j) of the Illinois Public Labor

Relations Act (“the Act”) and seven are confidential employees under Section 3 (c) of the Act. Initially, the City also asserted that four of the employees also fell within the supervisory exclusion under Section 3(r) of the Act, but withdrew that objection in its post-hearing brief.

Following the filing of the Employer’s objections, an Order Scheduling Hearing was issued on August 13, 2019. A Joint Pre-Hearing Memorandum was filed by the parties on October 10, 2019, and a hearing was held pursuant to the Scheduling Order and the subsequent agreement of the parties on October 16 and 17, November 19, and December 11, 2019. Both parties appeared at the hearing, with the Petitioner appearing by Michael S. Young, of Cornfield and Feldman, LLP, and the Employer appearing by City of Chicago Assistant Corporation Counsel Daniel R. Broadwell. The parties were given a full opportunity to participate, adduce relevant evidence, and examine witnesses. Written briefs were filed by both parties and received on March 13, 2020. Accordingly, based on the testimony, evidence and arguments submitted by the parties before, during, and after the hearing, and upon the entire record of this case, I recommend the following.

**I. PRELIMINARY FINDINGS**

A. The City is a public employer within the meaning of Section 3(o) of the Act.

B. The City operates the Department of Transportation, the Department of Aviation, the Department of Cultural Affairs and Special Events, the Department of Water Management, the Chicago Fire Department, the Department of Innovation and Technology, the Department of Finance, the Department of Streets and Sanitation, the Chicago Police Department, the Department of Planning and Development, and the Office of Emergency Management and Communications.

C. 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.

- D. AFSCME is a labor organization within the meaning of Section 3(i) of the Act.
- E. On May 23, 2019, Petitioner filed a representation petition seeking to represent the title of Contracts Coordinator for the purpose of collective bargaining.
- F. As of May 23, 2019, there were fourteen Contracts Coordinator positions the incumbents of which were employed by the City of Chicago.
- G. Jacqueline Madison, Thomas Wood, and Tiheta Hinton serve as the Contracts Coordinators in the Department of Transportation (“DOT”).
- H. Bradley O’Donnell serves as the Contracts Coordinator in the Department of Aviation (“Aviation”).
- I. Anne Davis and Joshua Schwimer serve as the Contracts Coordinators in the Department of Cultural Affairs and Special Events (“DCASE”).
- J. Renee Milton serves as the Contracts Coordinator in the Department of Water Management (“DWM”).
- K. Kevin Prater serves as the Contracts Coordinator in the Chicago Fire Department (“CFD”).
- L. Judith Mims serves as the Contracts Coordinator in the Department of Innovation and Technology (“DoIT”). She is directly supervised by the Director of Finance, Yolanda Gardner.
- M. Steven Sakai serves as the Contracts Coordinator in the Department of Finance (“Finance”).
- N. Michele Gamble serves as the Contracts Coordinator in the Department of Streets and Sanitation (“DSS”).

O. Valerie Hull serves as the Contracts Coordinator in the Chicago Police Department (“CPD”).

P. Sonia Garcia serves as the Contracts Coordinator in the Department of Planning and Development (“DPD”).

Q. Lylianis Gonzalez serves as the Contracts Coordinator in the Office of Emergency Management and Communications (“OEMC”).

R. On July 3, 2019, the City filed its objections to the Petitioner’s representation petition, objecting to the inclusion of eleven Contracts Coordinator (“CC”) positions within the bargaining unit.

S. The City’s objections are that nine of the CC’s are “managerial employees” under Section 3(r) of the Act and that seven of the CC’s are “confidential employees” under Section 3(c) of the Act.

T. The City did not object to the inclusion in the bargaining unit of the CC’s employed in the CPD, the DPD, or the OEMC.

**II. ISSUES AND CONTENTIONS**

**A. The Employees Affected By The Petition**

For ease of reference, the following is a chart prepared by the City showing the employees involved in the petition, the Departments in which they work, and the statutory exclusions claimed by the City:

<b>Employee</b>	<b>Department</b>	<b>Supervisor</b>	<b>Supervisor Title</b>	<b>Claimed Exclusion(s)</b>
Jacqueline Madison	CDOT	Cheryl Donegan	Assistant Commissioner	Managerial, Confidential

Thomas Wood	CDOT	Jacquelyn Charleston	Contracts Administrator	Managerial, Confidential
Tiheta Hinton	CDOT	Jacquelyn Charleston	Contracts Administrator	Managerial, Confidential
Anne Davis	DCASE	Michael Mikuta	Director of Purchase Contract Administration	Managerial
Joshua Schwimer	DCASE	Michael Mikuta	Director of Purchase Contract Administration	Managerial
Bradley O'Donnell	Aviation	Nafees Ahmed	Deputy Commissioner	Managerial, Confidential
Kevin Pater	CFD	Katreina York	Director of Finance	Managerial
Judith Mims	DoIT	Yolanda Gardner	Director of Finance	Managerial, Confidential
Michele Gamble	DSS	Jim Crocker	Deputy Commissioner	Confidential
Steven Sakai	Finance	Tina Consola	First Deputy Director	Confidential
Renee Milton	DWM	Felicia Rawlings	Deputy Commissioner	Managerial
Valarie Hull	CPD	Joel Brown	Contracts Administrator	None
Sonia Garcia	DPD	Allesandra Budnik	Contracts Administrator	None
Lylianis Gonzales	OEMC	Frank Lindbloom	Managing Deputy Director of Administration	None

Thus, there are fourteen employees employed by the City in the Contracts Coordinator classification in eleven City departments. The City raises objection as to eleven of these fourteen employees, in eight of the eleven City departments. Of the objections, five are based on the contention that the employees involved are both managerial and confidential employees, four are based on the contention that the employees involved are managerial (but not confidential), and two are based on the contention that the employees involved are confidential (but not managerial). As to the employees to which the City raises no objection to their inclusion in the bargaining unit, this

Recommended Decision and Order will recommend that the Petition be granted as to those employees.

**B. Issues And Contentions By Department**

**1. CDOT**

As to the CDOT employees, Jacqueline Madison (“Madison”), Thomas Wood (“Wood”), and Tiheta Hinton (“Hinton”), the City contends that they are managerial employees because they make effective recommendations that allow CDOT to contract with vendors to obtain the goods and services necessary to enable the City to continue to perform the public service functions falling within the purview of the Department of Transportation. The City also contends that, in addition to being managerial employees, Madison, Wood, and Hinton are confidential employees by virtue of having authorized access to confidential labor relations information as a result of their disciplinary and grievance resolution responsibilities.

The Petitioner contends, on the other hand, that Madison, Wood, and Hinton are skilled but not managerial employees. They play no role, Petitioner contends, in setting the dollar amount of contracts, they play only a minor role in the contract bid selection process, and they have no independent decision-making authority. As to their alleged confidential status, the Petitioner contends that the testimony adduced in support of the City’s contentions is conclusory and insufficient to meet the statutory requirements for confidential employee status.

**2. DCASE**

With respect to DCASE employees Anne Davis (“Davis”) and Joshua Schwimer (“Schwimer”), the City contends that they are managerial employees because they make effective recommendations that allow DCASE to contract for necessary goods and services from vendors,

thus enabling DCASE to plan and facilitate the events for which it is responsible on behalf of the City. The City does not contend that Davis and Schwimer are also confidential employees.

The Petitioner contends that Davis and Schwimer do not independently decide or effectuate Department policy, but simply respond to directives from management. The Petitioner further asserts that Davis and Schwimer do not negotiate the terms of goods and services contracts and do not participate in the Department's appropriations process.

### **3. Aviation**

With respect to Department of Aviation employee Bradley O'Donnell ("O'Donnell") the City contends that he is a managerial employee because he manages day-to-day operations at the Department's O'Hare Airport warehouse and makes budgetary recommendations for the goods that need to be purchased for the coming year. The City further contends that O'Donnell effectuates management policies and practices by means of purchasing and budgetary recommendations that are almost always approved. The City also contends that O'Donnell is a confidential employee by virtue of his role in the disciplinary process and the grievance resolution process.

The Petitioner contends that O'Donnell has no independent authority to develop or effectuate policy or to act in a managerial or executive capacity, either with respect to his contracting or warehouse duties. With respect to O'Donnell's recommendations, the Petitioner asserts that they are not discretionary but rather are based solely on experience.

With regard to the City's contention that O'Donnell is a confidential employee, the Petitioner asserts that no evidence of a disciplinary action attributable to O'Donnell was introduced into evidence, that there was no testimony was introduced as to his involvement in the grievance process beyond Step 1, and that even the testimony as to his Step 1 responsibilities is speculative.

#### **4. CFD**

The City contends that Chicago Fire Department Contracts Coordinator Kevin Pater (“Pater”) is a managerial employee because he makes effective recommendations that enable the CFD to contract for necessary goods and services from vendors, thus enabling the CFD to accomplish its mission. The City does not contend that Pater is also a confidential employee.

The Petitioner contends that Pater is not a managerial employee. It asserts that Pater supplies contracting decision-makers with information, direction, and necessary documentation, but that there is no evidence that he makes independent contracting decisions or recommendations.

#### **5. DoIt**

The City contends that Department of Innovation and Technology Contracts Coordinator Judith Mims (“Mims”) is a managerial employee because she makes effective recommendations that enable DoIt to contract for necessary services from vendors, thereby satisfying both judicially-established tests for managerial employee status.<sup>1</sup> The City also contends that Mims is a confidential employee because she has authorized access to confidential labor relations information before that information is available to bargaining unit members.

The Petitioner disputes the contention that Mims is a managerial employee. As to her alleged confidential employee status, the Petitioner asserts that all documents with which she works are available to the public under the Illinois Freedom of Information Act (FOIA). The Petitioner further asserts that her work involves duties that other employees of DoIt could not do, and therefore would not affect collective bargaining issues.

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<sup>1</sup> At the time of the hearing, there were two employees at DoIt who held the title of Contracts Coordinator – Mims and Diana Ballesteros (“Ballesteros”). Ballesteros, however, had not been hired as of the date of the filing of the Petition, and no evidence was introduced as to her duties and responsibilities.



## **6. DSS**

The City contends that Department of Streets and Sanitation Contracts Coordinator Michele Gamble (“Gamble”) is a confidential employee because of her interactions with the labor relations personnel in connection with disciplinary matters and responses to grievances. The Petitioner contends that no evidence was introduced as to what type of information, if any, that Gamble might receive from labor relations personnel, and further contends that such evidence as was introduced was speculative and of a summary nature.

## **7. Finance**

The City contends that Department of Finance Contracts Coordinator Steven Sakai (“Sakai”) is a confidential employee by virtue of authorized access to confidential labor relations information as a result of his disciplinary and grievance resolution responsibilities, particularly as they relate to his direct report, Terri Davis. The Petitioner contends that the City did not meet its burden of proof as to Sakai’s confidential status because the testimony offered in support of that status was conclusory and speculative.

## **8. DWM**

The City contends that Department of Water Management Contracts Coordinator Renee Milton (“Milton”) is a managerial employee because she makes effective recommendations during both the contract awarding process and the contract drafting process that enable the DWM to enter into contracts with outside vendors, thus enabling the DWM to fulfill its missions. Her recommendations in these areas, the City asserts, are always approved by higher level management. The City does not contend that Milton is also a confidential employee.

The Petitioner contends that Milton's role is to process contract specifications but not to make decisions. Milton has no role, the Petitioner contends, in the selection of contract bidders or in the decisions regarding the Department's contracting needs. There is no evidence, the Petitioner asserts, that Milton performs any executive or managerial functions.

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

#### **A. The Functions Of The Departments Affected By The Petition, As Contested**

##### **1. CDOT**

CDOT is responsible for planning, design, construction, maintenance, and management of the roadways, streets, and sidewalks of the City of Chicago. In order to fulfill its responsibilities, CDOT enters into construction, services, and supplies contracts with approximately 300 vendors and contractors annually.

##### **2. DCASE**

DCASE is responsible for the development of art and the business of the arts in the City, for guiding the City's future cultural growth, for the direction of global marketing of the City's cultural opportunities, and for offering artistic and cultural programming for the City's residents and for visitors to the City.

##### **3. Aviation**

The Department of Aviation is responsible for the administrative functions of the City's two major airports, O'Hare and Midway. Among those functions is the management of the warehouse facility at O'Hare Airport.

#### **4. CFD**

The Chicago Fire Department is responsible for performance of fire suppression, fire prevention, and emergency medical response functions for the City. The Finance Division of the CFD coordinates with vendors to obtain equipment, services and supplies for the performance of these functions, including vehicles, fire hoses, and maintenance of specialized firefighting or emergency medical response equipment.

#### **5. DoIT**

The Department of Innovation and Technology<sup>2</sup> performs information technology services for the City. DoIT delivers technological services and secure access to information to City departments and employees.

#### **6. DSS**

The Department of Streets and Sanitation provides a variety of services to the City and its residents, including garbage collection, street sweeping, rodent control, tree trimming and planting, graffiti removal, vehicle towing, snow removal and roadway clearing. DSS contracts with vendors for equipment and services to enable it to perform these essential functions.

#### **7. Finance**

The Department of Finance is responsible for the collection and distribution of funds in order to pay the City's bills, including payment of wages and benefits to the employees of the City. Finance also collects payments due to the City and oversees parking enforcement for the City. Finance contracts with vendors for services relating to billing, collections, and insurance.

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<sup>2</sup> DoIt has been combined with the Department of Fleet and Facility Management to form the Department of Assets, Information and Services ("DAIS"). Employees of DoIt are now employees of DAIS. However, at the time of the filing of the petition, the employee in question, Judith Mims, was an employee of DoIt, and her duties and responsibilities will be analyzed in that context.

## **8. DWM**

The Chicago Department of Water Management is responsible for coordinating the delivery of potable water to the residents of the City and approximately 125 suburban jurisdictions, for dealing with waste removal through the sanitary sewer system, and for protecting the water quality of Lake Michigan. DWM contracts with approximately 300 vendors to provide commodities and services necessary to complete the mission of the Department. These commodities and services include design and engineering services, construction and engineering work, such as work on water mains and sewers, and commodities such as treatment chemicals and water and sewer pipes.

### **B. The Work Of The Contracts Coordinators As A Classification**

In order to accomplish its governmental mission, the City contracts with outside entities and individuals for the purchase of goods and services needed but not produced by the City. Contracts Coordinators employed in the various departments facilitate the contracting process by obtaining the needs identified by the department and then preparing contract specifications, requests for proposal (“RFP’s”), and other contracting documentation for submission to the City’s Department of Procurement Services (“Procurement”) for the purposes of seeking authorization to make the requested purchases by means of one or more authorized purchasing methods. The Contracts Coordinators also monitor the status of contracts and contract requests, and facilitate the processing of contract modifications and requests for extensions of time for the approval or production of the requested goods or services.

According to the classification description, the Contracts Coordinator “coordinates and directs the preparation and processing of procurement contracts for a City department, and performs related duties as required.” The essential duties of the classification are the following:

- Directs and coordinates the preparation and processing of departmental contractual documents (e.g., contracts, suborders, direct vouchers) for the procurement of goods and services;
- Supervises and directs staff engaged in contract and payment processing activities;
- Reviews and approves purchase requisitions, ensuring accuracy, funding availability, and conformance with City procurement policies and procedures;
- Coordinates with the Department of Procurement Services to monitor minority/women-owned business enterprise (MBE/WBE) participation to ensure departmental contracts meet City goals;
- Reviews bids and proposals and makes award recommendations to the Department of Procurement Services;
- Prepares and processes contract revisions, amendments, and extensions;
- Oversees the preparation and processing of vendor payments;
- Serves as liaison to the Departments of Law, Finance, and Procurement Services to expedite and troubleshoot contract-related problems;
- Prepares various contract status and summary reports;
- Supervises the maintenance of contract records and related documents;
- Reviews and revises contract specifications for goods and services;
- Monitors vendor performance to ensure compliance with contract terms and conditions;
- Informs and instructs relevant parties (e.g., project managers, contractors, subcontractors, delegate agencies) on current contract availability and contracting process requirements.

The classification description establishes the core functions and duties of the employees in the Contracts Coordinator classification. The various departments in which Contracts

Coordinators are employed, however, have assigned auxiliary functions to these employees, with the result that the duties vary from department to department.

**C. Contracts Coordinators By Department**

**1. CDOT**

*Tiheta Hinton, Thomas Wood, and Jacqueline Madison*

Contracts Coordinators Hinton and Wood are responsible for handling services contracts entered into by CDOT. Hinton handles professional services contracts -- such as contracts for architectural, engineering, and construction management -- and work services contracts -- such as contracts for landscape maintenance, irrigation system work, and locating and marking services. Wood handles commodities and construction contracts, such as contracts for the purchase of the various commodities used by CDOT, such as electrical parts and plumbing supplies, and contract specifications for road construction projects that are subject to the bid process. Hinton and Wood each oversee the work of two Chief Contract Expeditors (“CCE’s”)<sup>3</sup>, and they report to Contracts Administrator Jacquelyn Charleston (“Charleston”).

CC Madison is in the Order Board section of the Department and is responsible for handling construction commodities contracts, such as contracts for the purchase of concrete, asphalt, and road barricades. She oversees the work of three individuals holding the titles of Warehouse Coordinator, Chief Voucher Expediter, and Administrative Assistant II, and reports to Assistant Commissioner<sup>4</sup> Cheryl Donegan (“Donegan”).

Hinton testified that she thought she was being hired for a supervisory position, but was told by a Department of Human Resources representative after she was hired that the position was

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<sup>3</sup> The Chief Contracts Expediter classification is a title within Bargaining Unit 1, the Administrative unit and Clerical represented by the Petitioner.

<sup>4</sup> Donegan was promoted from Director of Administration II to Assistant Commissioner in October, 2019,

not supervisory but was that of a team leader. When she was hired, Hinton testified, she was the only Contracts Coordinator for the DOT, with four CCE's reporting to her. Thereafter, Wood was promoted to hold the title of Contracts Coordinator, and Hinton and Wood then split up the teams so that two CCE's were reporting to each of the two CC positions. All of the work, she testified, would come into Charleston's inbox. Charleston would then assign the work to one of the two CC's, who would then assign it further to the members of the team, including herself.

Charleston testified that both Hinton and Wood perform bid and contract work in their respective areas of responsibility and prepare various reports. For example, Charleston testified, Hinton prepares reports for projects requiring approval from the Illinois Department of Transportation, while Wood prepares reports relating to ongoing construction contracts. Some of these reports are assigned by Charleston, while others are submitted at the initiative of the CC in question.

Hinton and Wood also make recommendations to submit projects for consideration for inclusion within special City programs such as the Small Business Initiative, the Minority Business Enterprise program, and the Women-Owned Business Enterprise program (collectively, "target market programs"). Hinton and Wood also can recommend vendor limit increases when the budgeted amount for a project has been spent or is about to be spent, and they prepare memoranda regarding the extension of existing contracts.

Charleston testified that the CC's play no role in setting the dollar amount of contracts, nor do they decide whether a contract should be designated for a target market program. According to Charleston, the CC's do not have a decision-making role in the contract bid selection process, other than by participating (often as a non-voting member) in a group evaluation committee that

makes decisions by consensus. Also according to Charleston, Hinton and Wood play no role in the Department's budgetary process.

Hinton testified that, as a team leader, she took on a role in developing policies and procedures, specifically a step-by-step procedure as to how to process a request for qualifications or a request for a proposal. However, she testified that it was never fully developed, so there is no evidence as to whether the procedure was the subject of a recommendation to Charleston or higher-level management.

Charleston and Hinton also testified as to a disciplinary action imposed on a subordinate. Charleston testified that both Hinton and Wood have the authority to issue verbal warnings and to recommend a higher level of discipline. As an example, Charleston testified that Hinton imposed a one-day disciplinary suspension on the subordinate, but Hinton testified that her recommendation was a verbal warning. According to Hinton, Charleston rejected her recommendation based upon Charleston's past experience with the employee and directed Hinton to impose the higher level of discipline.

With respect to grievance procedure responsibilities, Charleston testified that both Hinton and Wood respond to grievances dealing with issues other than discipline at Step 1 of the procedure. According to Charleston, the procedure in responding to disciplinary grievances requires that the person responding to the grievance to speak with Charleston and a CDOT labor relations representative before responding to the grievance. No evidence was produced concerning the content of any response to a grievance authored by Hinton or Wood, nor is there any evidence of any role that either Hinton or Wood would play in processing grievances beyond Step 1.

Wood testified that he considers himself to be a "team leader" for construction commodities and job order contracting. He testified that he spends "the vast majority" of his



working time performing work on projects that are allocated either to him or to one of the CCE's. According to Wood, Charleston's practice is to remove from her inbox any project that relates to construction, commodities, or job order contracting and place it in Wood's inbox. Wood then adds additional work that comes in relative to the project and assigns the project either to one of the CCE's or to himself. He testified that the CCE's "operate independently" and that there are "very few differences" between his duties and responsibilities as a Contracts Coordinator and the duties and responsibilities he had as a Chief Contracts Expediter prior to his promotion. "It has been a fairly irrelevant change in job title," he testified.

Madison's primary duties consist of overseeing the Order Board for CDOT, which processes about \$100 million per year in commodity purchase orders. Madison recommends moving money between line items and tracks purchases to make sure all budgeted items were ordered and received by CDOT. As part of her duties, Madison uses an all-purpose requisition form and works with the financial management procurement system to track purchases and management contract expenditures.

Madison testified that she was hired to maintain the commodities/work service logs "to make sure the contracts were up and in existence and make sure that there was funding on it so that the vendors could be paid...." She testified that she goes on the website of the Department of Procurement Services, and if a contract is about to expire, she creates a memorandum asking if a contract extension is needed, then sends it to the affected CDOT division asking if it wants the contract extended. If an extension is requested, then part of Madison's job is to facilitate that extension.

Madison testified that she serves as a "gatekeeper" between the CDOT division project manager for a particular project, including projects on the "Alderman's menu" for the performance

of services in the wards, and funding approval authorities. And she serves as “team leader” for the three employees reporting to her. Each of these employees, she testified, draws his or her assignments from the CDOT division that he or she serves.

Madison testified that she has not had occasion to discipline an employee reporting to her, but Donegan testified that, if the occasion were to arise, Madison would contact CDOT Labor Relations to “see what the issue is.” If the matter could not be resolved in this way, Donegan testified, she “probably would like to see what the issue is before actually going forward with it.” Donegan testified that, if a notice of discipline were issued to one of Madison’s subordinates, Madison would issue the notice and thus would see the notice before the employee being disciplined.

## **2. DCASE**

### *Anne Davis and Joshua Schwimer*

Davis and Schwimer administer contracts, monitor purchasing contracts, develop contract specifications, act as liaisons between DCASE and the Departments of Law (“Law”) and Procurement Services (“DPS” or “Procurement”), and develop contract modifications as needed. Davis is the more experienced employee, and hence the projects assigned to Davis are sometimes more complex than the projects assigned to Schwimer; otherwise, the two employees perform the same work. The two CC’s report to DCASE’s Director of Purchase Contract Administration Michael Mikuda (“Mikuda”), who in turn reports to Gabriel Godwin (“Godwin”), Deputy Commissioner of Finance and Administration for DCASE. No employees report to either Davis or Schwimer.

In developing contract specifications, Davis and Schwimer obtain contracting needs from subject matter experts, then perform the necessary research in order to develop the specifications

for submission to Mikuda for review. Mikuda has input on “all of them” and has the authority to add, modify, or delete specifications. Once a specification is approved by Law, the CC’s and Mikuda package the specification into a request for proposal document, coordinate advertising a solicitation for bids, and, once bids are received, distribute materials to an evaluation committee that is chaired by Davis or Schwimer as either a voting or non-voting member. Mikuda testified that it would be the exception rather than the rule that a CC would be a voting member of the evaluation committee. Once the evaluation committee makes a recommendation concerning the successful bidder, the report is sent to Godwin for approval.

Once the successful bidder is determined, Davis or Schwimer serves as a liaison with the bidder in developing the contract terms. A boilerplate contract form is used, but the schedule of compensation and other contract terms that make up the scope of services is developed with the subject matter experts and in accordance with the specifications developed by Mikuda and his team. Contract negotiations with the bidder do not include information that is neither boilerplate nor submitted by the prospective user of the goods and services in question. CC’s do not negotiate contract terms and do not participate in the Department’s budget or appropriations process.

Unlike most City contracts, a single-agency contract between a vendor and DCASE typically does not need to be approved by Procurement, but rather is subject to approval on the basis of the contracting authority of the Commissioner of DCASE. The City ordinance (“the Ordinance”) creating this exception to the normal contracting process was introduced at the hearing as an exhibit.

Among the types of contracts exempted from Procurement approval by the Ordinance are the following:

- a) contracts with theater groups, performers, artists, and art organizations;

- b) contracts for up to two years with various contractors, vendors, and consultants for goods and services in connection with the various events produced under the auspices of DCASE, including souvenir vendors, art vendors, providers of amusement games and rides, maintenance services, security services, and fireworks;
- c) contracts with food and beverage vendors and food service organizations;
- d) contracts for up to two years with firms to design, assemble, install, transport, mount, erect, dismantle, or manage the storage of temporary displays, booths, and other event-related structures; and
- e) contracts with sponsors of events.

Sometimes contracts, such as contracts for heavy equipment, are negotiated on a multiple agency basis, and DCASE may or may not be the lead agency in this regard. Such contracts are subject to approval by Procurement, and the CC's act as liaisons with Procurement in these situations. The work performed by the CC is the same as the work performed under the auspices of the Ordinance, except for the added layer of approval involved.

Another form of contracting with which the CC's would be involved in the regular course of their duties is the task order process. According to Mikuda, a task order is a "mini request for proposal" whereby firms that have expressed interest -- by means of a response to a request for qualifications -- in doing contract work for the City in a particular area, such as real estate appraisal services, would be asked to submit proposals to perform the work in question. The work performed by the CC in the task order process is also similar to the work they perform in connection with other contracts.

### **3. Aviation**

*Bradley O'Donnell*

CC Bradley O'Donnell reports to Nafees Ahmed ("Ahmed"), the Deputy Commissioner of Finance for the Department of Aviation and oversees the work of three employees. He is in charge of purchasing the goods used by the Department of Aviation and stored at the warehouse at O'Hare Airport<sup>5</sup>, including electrical supplies to be used on the runways, paint, furniture, HVAC supplies, and construction materials, such as nuts and bolts. In this regard, Ahmed testified that O'Donnell is the starting point for the purchasing process but does not have the authority to make purchases on his own. Rather, the purchasing decision has to "go through the process," including a sign-off by the Contracts section and a determination by Ahmed as to whether the Department has the funds to make the purchase. Ahmed testified, however, that he approves "almost everything" in the way of purchases initiated by O'Donnell.

As part of the purchasing process, O'Donnell regularly meets with project managers regarding their purchasing needs. In such a meeting, the project manager will give O'Donnell a list of requested purchases that O'Donnell takes to the vendors to see how much the purchases will cost. O'Donnell then takes the cost sheet to the project manager, who will determine whether to buy through the Department's contract or through the project contract, based in part on information as to cost and timing supplied by O'Donnell.

O'Donnell is involved in the writing of contract specifications, and makes recommendations to the contract section regarding specifications, but does not have final approval over the content of contract specifications. There is no evidence as to how often the contract section accepts his recommendations.

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<sup>5</sup> Other people have purchasing responsibilities for Midway Airport, which has a warehouse that is only about one-fourth the size of the warehouse at O'Hare.

With respect to budgetary matters, O'Donnell provides information to Ahmed concerning the expenses incurred during the previous year or the last several years and the projected needs for the coming year. Ahmed follows O'Donnell's budgetary recommendations "most of the time." Since the contract section doesn't decide which budget line the Department should use for entry of a purchase, O'Donnell makes recommendations as to the proper budget line, although Ahmed testified that, while O'Donnell chooses the right line "most of the time", the Deputy Commissioner "may change [the recommended line] ...because [O'Donnell] is not using the right one."

Although the City has withdrawn its contention that O'Donnell is a statutory supervisor, Ahmed testified that he considers O'Donnell to be the "supervisor"<sup>6</sup> of the three employees who report to him. In that capacity, Ahmed testified that O'Donnell has disciplinary authority and that if discipline were issued to one of O'Donnell's direct reports, O'Donnell would see the disciplinary notice before the employee would see it. The record does not establish that O'Donnell has ever exercised his disciplinary authority, nor does it establish what kinds of disciplinary actions O'Donnell has the authority to impose or effectively to recommend. Likewise, the record does not establish what kinds of grievances, if any, that would be brought to O'Donnell as the putative first-line supervisor of his direct reports. Indeed, Ahmed, when asked if there have been any instances when the grievance process has been utilized involving O'Donnell, testified: "Not that I know of."

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<sup>6</sup> Given the City's withdrawal of its claim that O'Donnell is a statutory supervisor, I interpret Deputy Commissioner Ahmed's use of the term "supervisor" to be colloquial in nature and not evidence of statutory supervisory status on O'Donnell's part.

#### 4. CFD

*Kevin Pater*

Pater testified that he is responsible on behalf of the Chicago Fire Department for “overseeing all the contracts, working with the department on new specifications, on modifications, on when the contract is up, time extensions, vendor limit increases, among other things, but that’s pretty much the gist of it.” The contracts in question are commodity contracts, for such items as fire hoses, appliances, and various other types of equipment, and work service contracts, such as contracts for maintenance. He works with the project manager or subject matter expert, usually a chief over a certain division, such as logistics or special operations, to develop specifications, with respect to which, Pater testified, the project manager has the final say. When the specifications are put together, he submits it to Director of Finance Katreina York (“York”) for oversight and then she will submit it to the Fire Department Commissioner for signature. Thereafter, it goes to the Department of Procurement Services for final approval.

In the Fire Department, specifications must conform to certain standards, such as National Fire Protection Association (“NFPA”) standards and Department guidelines that are in place because of public safety considerations. NFPA standards are national in scope and cover a variety of regulations, ranging from how fire hoses are made to the type of materials that are used in the equipment firefighters wear for fire protection. Pater testified that these standards are followed closely.

In the course of developing a specifications package, Pater works with the project manager in considering and making recommendations concerning Minority and Women-Owned Business Enterprise (MWBE) goals. In this regard, Pater performs research to determine how many City-approved vendors there are that qualify as MWBE contractors and that supply the goods or services

in question. Procurement makes the decision as to the vendor based on the research provided by Pater and the project manager and guidelines governing the selection process that depend on the type of goods or services involved and the number of MWBE target market vendors there are in the system that provide those goods or services.

Sometimes there are other departments that use the same kinds of goods or services. In those cases, Pater will work with the other departments in the development of specifications so that the other departments' recommendations are included before submitting the package to Procurement. Procurement will identify the bidders and determine if all required bid documents were submitted, then submit the package back to the affected departments.

When receiving a bid package from Procurement, CFD will have a departmental meeting that will include the primary users of the goods or services subject to bid. The CFD will then determine who should get the bid based upon a consensus "among the project manager and his colleagues", with the low bidder usually being the contractor chosen. Once there is a departmental recommendation, which may include a request that a certain vendor not be chosen based upon problems that the CFD has had with that vendor in the past, Pater will write a memo to Procurement based upon the departmental consensus for the CFD Commissioner's signature.

Once a contract has been awarded, a modification may be required because of a specific project need. The affected subunit will bring that need to Pater's attention, who will work with the vendor to get the additional quantity added to the contract. Pater then tells the project manager, who must approve the addition, and will then write a memo to Procurement for the Commissioner's signature.

Pater also is involved with a procedure called a request for proposal, or "RFP". In an RFP situation, pricing is not the only factor, and an evaluation committee is used to judge the



proposals generated by the request. Pater is usually a non-voting member of the committee, taking notes and trying to get as many voting members -- subject matter experts from the various departments that will be using the contracted-for products -- as possible to attend the meetings. The decision as to the winning contractor is based upon a weighted system that includes price among other factors. The project managers decide how the factors will be weighted.

Once the information is compiled and submitted to the Commissioner and then to Procurement for approval, Procurement submits the package to Law for review. If Law requires modifications, the CC will work with that department to achieve a final product that will then go to advertisement. Once bids are received from contractors pursuant to the advertisement, the evaluation committees would start to work to evaluate and score the bids. A final meeting produces a recommendation of the award to the Commissioner and approval of the award by Procurement.

York testified that Pater provides guidance to the CFD bureaus regarding the appropriate contract to be used for a request for goods and services. She testified that Pater notifies her of the guidance he has provided but that he is not required to obtain her approval before advising a bureau of the guidance he is providing. York testified that she “trust[s] [Pater] to do his job.” Therefore, she testified, the recommendations he makes concerning the correction of mistakes in contracts and “other recommendations” are followed “all the time.”

## **5. DoIT**

### *Judith Mims*

Judith Mims is the CC for DoIt, reporting to DoIt’s Director of Finance, Yolanda Gardner (“Gardner”) and, in her absence, Acting Chief Information Officer Carleton Nolan (“Nolan”). Mims testified at the hearing, but Gardner and Nolan did not. No employees currently report to

Mims, although one Contract Review Specialist, a position that is now vacant, previously worked with Mims

Mims testified that she administers all of the Department's contracts, of which there were approximately 50 at the time of the hearing. The majority of these contracts are information technology ("IT") consulting contracts, and there are some IT enterprise contracts, including mobile and desktop telecommunications contracts. She described her responsibilities as:

Initiating whether it's a bid or a non-bid in front of the sole source committee, amendments, whether it's vendor limit increase, scope changes, time extensions ... [and managing] a mini-bid program on our consulting agreement. There is about 30 or so of them and they're put into a qualified vendor poll and they're used on demand when the department has a requirement. So I manage that bid process.

She described her role in managing the mini-bid process as:

[W]orking with the project manager on the statement of work, putting out the – bid, we call them task orders, but it's a bid, it's a small bid, reviewing the evaluating committee's comments before I ... package it all up and try to get approval on it, sending the Notice to Proceed to the vendor, managing those pool of vendors to see if any of them were doing work without going through the process -- they're not supposed to – looking at releases that come through, mak[ing] sure that they had a task order approved for it. Otherwise, I won't approve it and the like.

Working with the project manager was described by Mims as "helping them develop and draft the bid document". If, during this process, something in the bid document is outside the scope provided by the vendor, she tells the project manager that that cannot be done and that the scope has to be rewritten. Her job in this regard, therefore, is "keeping things within the contract."

Once everything is packaged, it is sent to the Chief Information Officer. Upon his approval, it is then sent to Procurement. Once the Chief Procurement Officer signs off on it, the vendor is then able to perform the contracted-for work.

For competitive bids, there is an evaluation committee, consisting of IT directors, that makes recommendations as to which of the competing bidders should be awarded the contract.

Mims formerly was a member of the evaluation committee, but no longer serves in that capacity. She does make recommendations to the evaluation committee, for example, if she sees something that needs to be rewritten. The committee generally follows her recommendations even though “[t]hey don’t like to.”

If DoIt’s requirement is for a commodity or service that is available only from a single source, such as proprietary software, DoIt will contact the Non-Competitive Review Board (“NCRB”) to seek a determination that the product or service can be purchased from the sole source supplier. The NCRB will make that determination, but the justification for the sole source purchase will be provided by either Mims or the project manager.

All documents involved in Mims’ work, including contracts, task orders, evaluation committee and bid reports (except working drafts) are subject to public disclosure pursuant to the Illinois Freedom of Information Act (“FOIA”). Mims’ testimony as to a recommendation she made concerning an evaluation committee report included a recommendation that a comment she deemed to be “too subjective” be rewritten because the comment as originally written would not look good if the document were disclosed pursuant to a FOIA request.

The Employer’s evidence relating to the duties and responsibilities of Judith Mims was given by Derrick Brownlee (“Brownlee”), Managing Deputy Chief Information Officer for DoIt. Brownlee testified that he works with Mims in relation to the execution of contracts and task order requests, and testified that Mims’ “role is to function as the department liaison to the Procurement department pertaining to contracts and the processes associated with it.” With respect to RFP’s and task order requests (which he described as a “shortened version of the request for proposal process which allows us to generate scopes of services and deliverables to a pre-qualified pool of vendors in specialized areas”), Brownlee testified that “[s]he does not have any responsibilities to

drafting in regards to the content and scope. It's helping us with the package and making sure that we have all the required elements that would be related to that contract or that procedure.”

The goods and services that are the subjects of RFP's and task orders do not involve work that can be performed by DoIt employees, except for workers who are hired for the “help desk”, which is the operation that provides technical assistance to employees of other State agencies. Brownlee testified in this regard that “the skillset and development that's required to build servers, reboot servers, is a different type of skillset” than the skillsets possessed by DoIt bargaining employees. With respect to contracted-for help desk workers, however, the contracts are designed to cover for DoIt help desk employees during those employees' off-hours. No evidence was introduced as to whether contracted-for help desk workers are utilized to work alongside bargaining unit employees.

## **6. DSS**

### *Michele Gamble*

Michele Gamble is the CC for the Department of Streets and Sanitation. She reports to Deputy Commissioner Jim Crocker (“Crocker”), who is responsible for overseeing the administrative functions of the DSS, including personnel, contracts, labor relations, finance, and accounting.

Gamble is part of the Contracts section of the Department, although she works closely with members of the Finance section in placing orders and processing payments for goods and services used by DSS. Crocker described her job function as “a liaison between our finance team and the vendors who contract with our department” and serves to help “facilitate conversations between those two entities” and help “problem solve when there [are] issues or communication challenges.” In addition, Crocker testified, she is “responsible for directing the efforts of our contract review

specialist title.” At the time of the hearing, however, the Contract Review Specialist title was vacant.

Gamble described her role in administering contracts for the Department as follows: “I have to ensure that no contracts expire or reach the vendor limit increase. If we get near expiration, then I will automatically draft the letter for the extension or draft the documents for the vendor limit increases and send them in for signature.”

Gamble testified that the bid process has changed with the advent of the e-Procurement system used by Procurement, resulting in the use of paper documents except in the case of work services. With e-Procurement, there are levels of approval based upon the dollar value of the contracts. Gamble is Level 1 and can approve contracts at that level on her own authority. If the contract requires approval at Level 2, it would go to Crocker or the Commissioner of the Department.

If there is a dispute over a contract on the part of either the City or the vendor, the dispute goes to Gamble for resolution, and she attempts to resolve it by reading the terms and conditions of the contract. If the dispute remains unresolved at Gamble’s level, it goes to Crocker for resolution.

Although the Contract Review Specialist position is currently vacant, Gamble had some interactions with the incumbent of the position when it was filled during 2017 and 2018. Crocker testified that the employee had some difficulty with the requirements of the position, that Gamble put together a performance improvement plan for the employee and made the decision to issue a verbal warning to the employee. Gamble testified that she devised a “learning tool” for the employee in the form of written standards that the employee was expected to accomplish. She testified that “they [presumably Labor Relations] may have classified it as a Performance

Improvement Plan, but it was more so to give her guidelines.” Gamble also testified that the employee was never disciplined, although Crocker testified that Gamble “would” be a part of the pre-disciplinary meeting process and “would” have the power to recommend discipline.

With respect to the grievance resolution process, Crocker testified that “all grievances in our department go through our labor relations group. So I don’t know that [Gamble] would have an active role to play other than perhaps as a complainant or respondent, but I don’t know that she would be actively involved in resolving the grievance.”

## **7. Finance**

### *Steven Sakai*

Evidence relating to the duties and responsibilities of Department of Finance CC Steven Sakai was given by First Deputy Director Tina Consola (“Consola”). Consola oversees the various divisions in Finance, including operations and financial, the latter of which deals with budgeting, financial planning and forecasting. Sakai reports directly to Consola. Consola testified that Sakai performs the majority of the duties listed in the Contracts Coordinator job description, except that he does not review or approve purchase requisitions. Otherwise, Consola testified, Sakai is involved in all aspects of the contracting and procurement process. According to Consola, Sakai is the Department’s liaison with Procurement and coordinates with Law when necessary. Sakai, Consola testified, assists with having bids posted and with drafting contracts.

Although the Department buys supplies, the majority of the contracts entered into by Finance involve professional services, such as billing or collections. Because Finance administers benefits for the City of Chicago, the Department procures products like life insurance and products connected with the wellness program

According to Consola, Sakai “works closely with business owners of various programs ... to ensure that ... the scope of the contract or the scope of the RFP is thorough and all other components that are required to be in those documents are there.” Final approval for the issuance of the RFP rests with the business owner or Consola.

Sakai has one direct report, Terri Davis, whose title was not disclosed in testimony but who is a member of the bargaining unit represented by the Petitioner. According to Consola, Sakai has never recommended discipline for any subordinate but, if there were a disciplinary recommendation made, Sakai would make that recommendation “unless it was suspension and then those suspension recommendations would go through [the] approval process, through our Finance and Administration group division, up to either the managing deputy or in this case it would be the first deputy to approve.”

According to Consola, there is a procedure that the Department follows for disciplining employees. The procedure itself was not introduced into evidence, but Consola testified that, if discipline were issued to a subordinate, Sakai would issue the notice of discipline. Sakai, therefore, necessarily would have access to the notice before the subordinate would see it, although it is unclear from the record as to the type or level of disciplinary action involved or what a typical notice of discipline actually says.

With respect to grievance-handling, Consola testified that Sakai would have a role in the grievance process, in that he would be the first level for grievances. But she testified that Sakai has never actually been involved in the processing of any grievances, and, she also testified, she is “not completely” familiar with the procedures for processing grievances.

## **8. DWM**

*Renee Milton*

The Contracts Coordinator for the Department of Water Management is Renee Milton. She reports to Deputy Commissioner of Contract Administration Felicia Rawlings (“Rawlings”), who in turn reports to Managing Deputy Commissioner Marisol Santiago (“Santiago”). No employees report to Milton.

Milton’s role is to oversee and work with end users – project managers, such as engineers and construction managers, who are subject matter experts in determining what is needed for the Department -- in processing and developing contract specifications for the purchase of goods and services. In this regard, her duties are to process documents relating to the purchase of work services and commodities for the DWM and to keep the log for the main water division for water main construction. The DWM has about 300 contracts, and Milton assists in maintaining those contracts. Of the contracts that Milton assists in maintaining are construction and engineering contracts, such as contracts for water mains and sewer replacement; contracts for goods, such as water treatment chemicals, sewer and water pipe; and contracts for services, such as maintenance contracts and contracts for professional services, including engineering and design contracts. DWM receives bids from Procurement, which are forwarded to end users for review. From that point “we [apparently referring to the departmental sub-unit headed by Rawlings] collectively work together [with the end users] to make a recommendation of award.”

If an end user has a need for a contracted-for product or service, and there is an existing contract in place, Milton takes the detailed specifications from the existing contract and sends them to the end-user along with an inquiry as to whether any changes are needed. She then works with the procurement specialist at Procurement “to get it [the contract] the way they [the end users]



want it.” If there is no contract in place, Milton helps to prepare the detailed specifications by preparing a draft that includes boilerplate language provided by Procurement and details as to specifications that are produced as a result of a collaborative effort by DWM and the end users.

With respect to requests for proposal (“RFP’s”), Milton has some involvement, in that Rawlings may ask her to do some research and draft a specification. There is normally an evaluation committee consisting of subject matter experts that are selected to evaluate an RFP. Milton has no role in selecting those subject matter experts, nor does she have a role in making recommendations to the contracts group before the information is passed along to the subject matter experts. If a change is necessary before the bid is advertised, Milton may recommend a change that is submitted to Rawlings for approval.

Vendor limit increases are initiated by means of a letter from the contractor that is received by Rawlings, who determines if the increase appears to be warranted under the terms of the contract. The letter is then transmitted to Milton, who reviews the contract, assembles the necessary papers, and then prepares a package to go to Procurement using what Milton called a “DPS checklist”. Procurement then decides whether the increase will be allowed.

#### **IV. DISCUSSION AND ANALYSIS**

*Findings and Recommendations: Jacqueline Madison (CDOT), Thomas Wood (CDOT), Tiheta Hinton (CDOT), Anne Davis (DCASE), Joshua Schwimer (DCASE), Bradley O’Donnell (Aviation), Kevin Pater (CFD), Judith Mims (DoIt), and Renee Milton (DWM) are not managerial employees under Section 3(j) of the Act. Jacqueline Madison, Thomas Wood, Tiheta Hinton, Bradley O’Donnell, Judith Mims, Michele Gamble (DSS), and Steven Sakai (Finance) are not confidential employees under Section 3(c) of the Act.*

**A. THE MANAGERIAL EXCLUSION**

**1. Legal Standards – Managerial Employees**

The City asserts that the incumbents of the Contracts Coordinator positions at CDOT, DCASE, Aviation, CFD, DoIt, and DWM should be excluded from collective bargaining because they are managerial employees under Section 3(j) of the Act. As the party seeking to exclude these employees from collective bargaining, the City has the burden of producing evidence in support of the claimed exclusion and of proving by a preponderance of the evidence that the positions are excluded from the protections of the Act. *Secretary of State v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4<sup>th</sup>) 111075, ¶ 55; *Chief Judge of the Circuit Court of Cook County*, 18 PERI ¶ 2016 (IL LRB-SP 2002). Such evidence must come from an evidentiary foundation sufficient in the record to support the exclusion, *Village of North Riverside*, 19 PERI ¶ 59 (IL LRB SP 2003); however, the evidentiary foundation is not sufficient if the party seeking the exclusion relies “on vague, generalized testimony or contentions as to an employee’s job function.” *County of Cook*, 28 PERI ¶ 85 (IL LRB-LP 2011).

The Board has adopted two tests to determine whether an individual is a managerial employee: the traditional test, which is applicable here and which is used to determine whether the individual is a managerial employee as a matter of fact, and the alternative test, which determines whether the individual is a managerial employee as a matter of law.<sup>7</sup> *Department of Central Management Services/The Illinois Human Rights Commission v. Illinois Labor Relations Board State Panel*, 406 Ill.App.3d 310, 315 (4<sup>th</sup> Dist. 2010) (quoting *Department of Central*

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<sup>7</sup> The “alternative test” usually applies only when there is a “detailed statutory apparatus” that confers managerial status on the employee or if the employee acts as a “surrogate” for an elected official. *State of Illinois, Department of Central Management Services (Illinois Commerce Commission)*, 30 PERI ¶ 206 (IL LRB-SP 2013). Neither party contends, and the record does not demonstrate, that any of the employees at issue here are managerial as a product of a “detailed statutory apparatus” or because any employee is a “surrogate” for an elected official.

*Management Services/Department of Healthcare & Family Services v. Illinois Labor Relations Board, State Panel*, 388 Ill.App.3d 319, 330 (4<sup>th</sup> Dist. 2009) (“*CMS/DHFS*”).

Under the traditional test, an individual must satisfy both parts of the statutory definition in order to be considered to be a managerial employee. Section 3(j) of the Act provides that a managerial employee is “an individual who [1] is engaged predominantly in executive and management functions and [2] is charged with the responsibility of directing the effectuation of management policies and practices.” 5 ILCS 315/3(j) (2016). Managerial employees are not public employees within the meaning of the Act, 5 ILCS 315/3(n) (2016), and thus, are excluded from collective bargaining in order to “maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management.” *Chief Judge of 16<sup>th</sup> Judicial Circuit v. Illinois State Labor Relations Board*, 178 Ill.2d 333, 339 (1997) (“*Chief Judge*”).

The first part of the statutory definition requires that the individual be engaged predominantly in executive and management functions and relates to the type and kind of work to which the individual devotes most of the time. *State of Illinois, Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board*, 406 Ill.App.3d 766, 774 (4<sup>th</sup> Dist. 2010) (“*ICC*”). The term “predominantly” may refer to “superiority in importance or numbers.” *American Federal of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board, State Panel*, 2014 IL App (1<sup>st</sup>) 130655, ¶¶ 29-32. The term “executive and management functions,” while not defined specifically in the Act, has been interpreted by the courts in accordance with its plain and ordinary meaning.

An “executive” is one who “exercises administrative or managerial control” and “management” is “the collective body of those who manage or direct an enterprise.” *ICC*, 406

Ill.App.3d at 774 (citing Merriam-Webster's Collegiate Dictionary 437, 754 (11<sup>th</sup> ed. 2003)). Courts and the Board have ruled that "executive and management functions" are tantamount to those required to run an agency, such that the responsibilities of those who perform those functions encompass a major component of the agency's mission. *See id.*; *City of Freeport*, 2 PERI ¶ 2052 (IL SLRB 1986). "In other words, executives or managers run the organization. Formulating policies and procedures and preparing the budget are among the types of things that executives and managers typically would have the authority to do." *ICC*, 406 Ill. App. 3d at 774. Creation of new policies, however, is not required to satisfy the first prong so long as the employee's functions help run the agency. *Id.*, at 778. Moreover, as our Supreme Court has noted, "managerial status is not limited to those at the very highest level of the governmental agency." *Office of the Cook County State's Attorney v. Illinois Local Labor Relations Board*, 166 Ill.2d 296, 301 (1995).

With respect to the first part of the test, the determination as to whether an individual exercises "executive and management" functions requires more than the simple exercise of discretion or specialized expertise; rather, the employee must possess sufficient authority and autonomy to establish organizational goals or the means of achieving those goals "on a broad scale." *Village of Elk Grove Village v. Illinois State Labor Relations Board*, 245 Ill.App.3d 109, 122 (2<sup>nd</sup> Dist. 1993) ("*Elk Grove Village*"); *City of Evanston v. Illinois State Labor Relations Board*, 227 Ill.App.3d 955, 975 (1<sup>st</sup> Dist. 1992) ("*City of Evanston*"). Thus, an employee is not managerial if he or she functions in a subordinate or advisory role in the development of policy. *CMS/DHFS*, 388 Ill.App.3d at 330-331.

With respect to the second part of the test, the determination as to whether an individual is charged with the responsibility of directing the effectuation of management policies and practices is based upon an assessment as to whether the individual "oversees or coordinates policy

implementation through development of the means and methods of achieving policy objectives, determines the extent to which the objectives will be achieved, and is empowered with a substantial amount of discretion to determine how policies will be effected.” *County of Cook v. Illinois Labor Relations Board—Local Panel*, 351 Ill.App.3d 379, 386-387 (1<sup>st</sup> Dist. 2004) (“*County of Cook*”), citing *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill.App.3d 79, 87 (4<sup>th</sup> Dist. 1996). Significantly, “[t]he fact that employees make independent decisions with respect to carrying out their duties does not mean that their actions transcend to the level of executive or management functions.” *Id.*, citing *Chief Judge of the Eighteenth Judicial Circuit v. Illinois Labor Relations Board*, 311 Ill.App.3d 808, 815 (2d Dist. 2000).

**2. Analysis Of Claimed Managerial Exclusions**

**a. Contracts Coordinators as a Classification**

The Employer’s witnesses testified that, with one minor exception, the job description for the Contracts Coordinator classification accurately described the duties and responsibilities of the CC’s in question in this case. There is nothing in the job description, however, that supports the contention that the classification itself is a managerial classification. The listing of essential duties does not establish or suggest that the employees in this classification are engaged predominantly (either quantitatively or qualitatively) in executive and management functions or that they possess sufficient authority and autonomy to establish organizational goals or the means of achieving those goals on a broad scale. Rather, the essential duties of the classification are consistent with a position requiring administrative and technical skills, document preparation, handling and processing skills, and the ability to interact with others to complete required tasks.

The City contends that nine of the 14 CC’s are managerial employees and that five of those nine are also confidential employees. But it also contends that two employees are confidential but

not managerial employees, and it concedes that the remaining three CC's (Valerie Hull in the Chicago Police Department, Sonia Garcia in the Department of Planning and Development, and Lylianis Gonzales in the Office of Emergency Management and Communications) are neither managerial nor confidential employees. The City's concession that five of the 14 CC's are not managerial employees is consistent with a finding that Contract Coordinators are not managerial employees as a class. If any of the 11 positions in dispute is a position occupied by a managerial employee, therefore, that determination necessarily will have to be based on an analysis of individual duties and responsibilities of the incumbents of those positions.

**b. Claimed Managerial Exclusions by Department**

- i. CDOT – Tiheta Hinton, Thomas Wood, and Jacqueline Madison

*Hinton, Wood, and Madison are not managerial employees.*

The City asserts that Hinton, Wood, and Madison satisfy the test for managerial employee status by making “effective recommendations” that allow CDOT to contract with vendors to obtain the goods and services the Department needs to achieve its organizational functions. The question, however, is not whether Hinton, Wood, and Madison make recommendations, even effective recommendations, but whether those recommendations are managerial in nature. As noted earlier, the first part of the statutory definition requires that an individual claimed to be a managerial employee must be engaged *predominantly* in the exercise of executive and managerial functions. *AFSCME, Council 31*, ¶¶ 29-32. Moreover, the first part of the test requires, the functions that the individual exercises must involve more than the exercise of discretion or specialized expertise; rather, the individual must possess sufficient authority and autonomy to establish organizational goals or the means of achieving those goals “on a broad scale.” *Elk Grove Village*, 245 Ill.App.3d at 122.

With respect to Hinton and Wood, the City claims managerial status based upon recommendations concerning vendor limit increases and other contract modifications. But there is nothing about these types of recommendations that bespeaks of managerial authority, for they do not entail the establishment of organizational goals or the means of achieving those goals “on a broad scale.” Instead, such recommendations deal with the routine processing of procurement contracts and are the product of their experience and specialized expertise, rather than the product of job requirements that involve the establishment of organizational goals or the means of achieving those goals. Moreover, the evidence establishes that Hinton and Wood are not engaged predominantly, either in quantitative or qualitative terms, in the exercise of managerial functions.

In the case of the job functions performed by Madison, the evidence likewise establishes that her work primarily involves the routine processing of purchasing contracts. The City argues, however, that Madison can recommend shifting money between line items and can decide when to submit payments and make purchases, so as to assure the availability of funds. While these responsibilities undoubtedly involve discretion, there is no evidence that they involve the establishment of organizational goals or the broad-scale achievement of those goals.

With respect to the second part of the test for managerial employee status, there is no evidence that Hinton, Wood, or Madison “oversees policy implementation through the development of the means and methods of achieving policy objectives, determines the extent to which objectives will be achieved,” or “is empowered with a substantial amount of discretion to determine how policies will be effected.” *County of Cook*, at 386-387. Rather than being involved with policy implementation on behalf of CDOT, Hinton, Wood, and Madison are engaged predominantly in the performance of routine contract project functions, albeit functions that

require skill and experience, in much the same manner as is the case with their subordinate employees in the Chief Contracts Expediter classification.

The City argues, however, that Madison recommended altering standard operating procedures for community infrastructure projects and that she developed her own reporting structure to track contracts and commodities for the Department. But while development of a standard operating procedure can be evidence of the exercise of a managerial function, there is no evidence that, in this case, it was either typical of Madison's job functions or that it predominated in the exercise of those functions. With respect to the development of a reporting structure for her own use, there is nothing to indicate that that development was anything more than the exercise of the discretion that an experienced employee is likely to employ in order to make her job easier or more efficient. Madison is not a managerial employee.

ii. DCASE – Anne Davis and Joshua Schwimer

*Davis and Schwimer are not managerial employees*

The City contends that “DCASE’s CC’s satisfy the test for managerial employees via effective recommendations, which allow DCASE to contract for necessary goods and services from vendors to plan and facilitate its events.” The Petitioner contends that “the DCASE Contracts Coordinators do not independently decide or effectuate departmental policy but instead respond to the directives from their Deputy and Commissioner.”

The evidence shows that Davis and Schwimer are involved with a larger variety of contracts than is the case with CC’s in other departments, and it establishes that, because of the Ordinance, many contracts do not require the approval of Procurement, thus vesting more of the final authority than otherwise would be the case with the Commissioner of DCASE. However, the evidence also shows that the primary responsibilities of Davis and Schwimer are collaborative



and advisory in nature, serving as a liaison between the subject matter experts and the Department and between the Department and the bidder, and serving in an advisory capacity concerning the evaluation committee's recommendations as to the successful bidders. And the fact that Davis and Schwimer do not negotiate contract terms and do not participate in the Department's budget and appropriations processes militates against any conclusion that their duties include "the types of things that executives and managers typically would have the authority to do." *ICC*, 406 Ill.App.3d at 774.

In addition, while the City contends that Davis and Schwimer make "effective recommendations", the record does not support this contention. In this regard, the contention that an employee makes "effective recommendations" begs the question: "effective recommendations about what?" The case law is clear that "[a]lthough 'effective recommendation or control rather than final authority' over employer policy is the relevant consideration, the employee must still 'formulate and effectuate management policies by expressing and making operative the decisions of their employer'," *County of Cook*, 351 Ill.App. at 387, quoting *Chief Judge*, 178 Ill.2d at 339-40. While there is testimony from Godwin that the CC's, Mikuda, and Godwin make "many recommendations back and forth", there is no evidence that the formulation and effectuation of management policy, whether by outright decision or by effective recommendation, is something that the CC's do. Absent such evidence, it cannot be concluded that Davis and Schwimer are managerial employees.

iii. Aviation – Bradley O'Donnell

*O'Donnell is not a managerial employee*

The City contends that O'Donnell manages day-to-day operations at the warehouse, that he makes budgetary recommendations for goods that need to be purchased in the coming year, that

he administers the budget “as the person in charge of purchasing \$12 million in inventory stored in the warehouse at O’Hare Airport each year from over 100 available line items.” The City contends, further, that O’Donnell effectuates management policies and practices by means of effective recommendations.

The Petitioner contends, on the other hand, that O’Donnell’s input in the making of contracting decisions is limited to providing price and lead time to the project managers, who then decide which vendor to use and whether price or lead time should be prioritized in the purchasing decision. With respect to contract specifications, the Petitioner asserts that O’Donnell is merely a part of a “team of people” who draft the specifications and that he does not have final approval over contract specifications. With respect to the budget, Petitioner asserts that O’Donnell’s input is limited to providing information to Ahmed concerning the prior year’s expenses and the projections for the coming year. And Ahmed, according to Petitioner, both reserves and exercises the right to change recommended line items. Accordingly, therefore, the Petitioner asserts the O’Donnell has no independent authority to develop or effectuate policy or to act in a managerial or executive capacity.

As to the City’s contention that O’Donnell manages the day-to-day operations of the warehouse, the evidence establishes that he does so only when the warehouse manager, Kevin Faul (“Faul”), is not at work. Of 260 working days (the five days a week that the warehouse is open times 52 weeks), Ahmed estimated that Faul is absent approximately 23 days, or less than 10% of the time. Therefore, this is an auxiliary function that does not support a claim of managerial status, even if there were evidence -- which there is not -- as to exactly what managerial responsibilities O’Donnell assumes when he steps in for Faul in the latter’s absence.

With respect to the City's other assertions, Petitioner's contentions have merit. There is insufficient evidence in the record from which to conclude that O'Donnell's recommendations either relate to management policies and practices or that they are effective in "expressing and making operative" the decisions of departmental management. Bradley O'Donnell, therefore, is not a managerial employee within the meaning of the Act.

iv. Chicago Fire Department – Kevin Pater

*Pater is not a managerial employee*

The City asserts that Pater "satisfies the test for managerial employees via effective recommendations which allow CFD to contract for necessary good[s] and services from vendors which enable CFD to satisfy its mission." The Petitioner contends that "[n]o evidence was introduced that would indicate Mr. Pater makes any independent contracting decisions or recommendations but rather that he supplies the department's decision makers (project managers, chiefs, or battalion officers as may be involved) with contracting process details needed ... for them to base their decisions."

In contrast to the evidence relating to the duties and responsibilities of CC's in other departments, the evidence as to the job functions performed by Pater is relatively rich. It is clear from that evidence that Pater works with the project managers in developing contract specifications, but that the project managers have the final say. Prater's role in this regard is advisory in nature, based on experience and research. Then, once a bid package is received from Procurement, the CFD makes the decision as to which contractor will win the bid based upon a consensus of the affected project manager and his colleagues.

In an RFP situation, the decision as to which contractor will win the bid is decided in the first instance by an evaluation committee, of which Pater is a non-voting member. The decision

as to the winning contract is decided by a weighted system that includes price among other factors. The project managers decide the weight to be given to the various factors. Pater testified: “I take the information and tally it, but the weighting because it’s so specific to the contract it has to be done by subject matter expert, somebody that knows about the contract, knows what they wanted awarded.”

The City’s evidence establishes that Pater provides guidance to the CFD bureaus regarding the contracting process, but there is no evidence that any of the recommendations he may make are of such a kind or nature as to qualify as effective recommendations that formulate or effectuate management policy. Without denigrating the advisory and informational functions performed by Pater, it must be concluded that there is insufficient evidence that those functions are managerial in nature.

v. Department of Innovation and Technology –  
Judith Mims

*Mims is not a managerial employee.*

The City asserts that CC Judith Mims is a managerial employee because “she makes effective recommendations which enable DoIt to contract for necessary services from vendors, thereby satisfying both elements of the test for managerial employees.” The Petitioner denies that Mims’ functions qualify her as a managerial employee.

The evidence, as adduced by both the Petitioner, through the testimony of Mims, and the City, through the testimony of Derrick Brownlee, establishes that Mims’ role in the contracting process is to help the project managers develop and draft a bid document that is within the scope of services provided by the vendor, to serve as a liaison between DoIt and Procurement, to help DoIt by making sure that all of the elements necessary to the bid or contracting process are present, and to advise the evaluation committee if something needs to be rewritten in order to assure that a

successful bid conforms to DoIt or Purchasing contracting requirements. Her role is thus informational, technical, and advisory, and does not involve either the establishment or effectuation of policy or the formulation or effectuation of management decisions, either by means of actual decision-making or by means of effective recommendations.

Mims' job functions do not meet either part of the judicial test for managerial employee status. Mims, therefore, is not a managerial employee.

vi. Department of Water Management – Renee Milton

*Milton is not a managerial employee*

The City contends that Milton makes effective recommendations to her supervisor, Felicia Rawlings, thus enabling the DWM to fulfill its mission and satisfying both parts of the test for managerial employees. The Petitioner contends that Milton plays no role in the selection of contract bidders and does not have a role in deciding the contract needs for the Department. The Petitioner further contends that the City has introduced no evidence that Milton is engaged, much less predominantly engaged, in executive or management functions.

Even if it could be concluded that making effective recommendations during the contracting process is sufficient, in and of itself, to establish managerial employee status, the evidence does not support the City's contentions in this regard. Managing Deputy Director Marisol Santiago ("Santiago") when asked if Milton made recommendations on bids, testified: "That's kind of difficult because we, again, collectively – it depends on what type of contract it is. It's a little difficult to answer that yes or no." Then, when asked whether Milton had the opportunity to make a recommendation to the contracts group at DWM before the information is passed along to the project manager, Santiago testified: "No, normally not."

Santiago testified that, while Milton “at times” has drafted a specification, she does not draft contracts. “Procurement does the contract drafting,” she testified. And, if DWM initiates the process of amending a contract, Santiago testified, Milton does not have the authority on her own to make the changes. “It is usually submitted to me for approval,” she testified, although she also testified that she could not cite any instance in which Milton recommended a change or a proposal for a vendor limit increase that Santiago did not approve. And she testified that, with respect to oversight concerning ongoing contracts, Santiago testified Milton would “not directly” have such oversight.

Milton is not involved in the budgeting process. And she has no responsibility for selecting contract bidders or in deciding the contracting needs of the Department. As noted in the Findings of Fact, Milton’s role is to oversee and work with end users in processing and developing contracts for the purchase of goods and services. She processes documents for the purchase of work services and commodities and keeps the log for water main construction. The contract bid process and the procedure for amending contracts utilize a collaborative process between DWM and the end users, with the objective of producing a contract that is in line with the desires and expectations of the end users.

The record establishes that Milton’s authority and responsibility are limited to the functions listed in the job description and that are typical of Contracts Coordinators generally. While the performance of these functions requires skill and experience, the functions themselves are not executive or managerial. Accordingly, the City has not shown that Milton is a managerial employee.

## **B. THE CONFIDENTIAL EXCLUSION**

### **1. Legal Standards – Confidential Employees**

The term “confidential employee” is defined in Section 3(c) of the Act as follows:

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

Confidential employees are excluded from the definition of “public employee” under Section 3(n) of the Act and are thus excluded from collective bargaining. “The purpose of excluding confidential employees is to keep employees from ‘having their loyalties divided’ between their employer and the bargaining unit which represents them.” *Chief Judge*, at 523.

The City asserts that the incumbents of the Contracts Coordinator classification in the CDOT, Aviation, DoI, DSS, and Finance Departments are “confidential employees” within the meaning of the above definition. As the party seeking to exclude these CC positions from collective bargaining, the City has the burden of proving its contention. *Health and Hospital System of the County of Cook v. Illinois Labor Relations Board, Local Panel*, 2015 IL App (1<sup>st</sup>) 150794 ¶ 51 (“*Health & Hospital System*”); *County of Cook v. Illinois Labor Relations Board, Local Panel*, 369 Ill. App. 112, 123 (1<sup>st</sup> Dist. 2006). And since confidential employees are precluded from collective bargaining rights otherwise guaranteed by the Act, the exclusion must be interpreted narrowly. *Health and Hospital System*, 2015 IL App (1<sup>st</sup>) 150794 ¶ 51; *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board*, 2014 IL App 1<sup>st</sup> 132455 ¶ 31.

The Act's definition of "confidential employee" embodies two tests for determining whether the exclusion applies: (1) the labor nexus test and (2) the authorized access test.<sup>8</sup> Satisfying the elements of either test establishes confidential employee status. *Chief Judge*, 153 Ill.2d at 523. The City does not contend that the petitioned-for employees meet the labor nexus test, but does contend that the job functions of the petitioned-for employees satisfy the authorized access test. The Union contends that these employees do not meet either test and are therefore "public employees" under Section 3(n) of the Act. Because the City relies exclusively on the authorized access test for its claim that certain of the Contract Coordinators are confidential employees, and does not invoke the labor nexus test in support of that claim, only the legal standards governing the authorized access test will be discussed here.

#### *The Authorized Access Test*

Under the authorized access test, an employee is considered to be a confidential employee, and hence excluded from collective bargaining, if in the regular course of his or her duties he or she has authorized access to confidential information concerning matters specifically related to the collective bargaining process. Satisfaction of this test requires that the access occur in the regular course of his or her duties, that it be authorized, that the information so accessed be confidential, and that the information relate to collective bargaining. *Health & Hospital System*, ¶ 67. Information related to collective bargaining includes information relating to the employer's strategy in dealing with an organizational campaign, information relating to collective bargaining proposals, and information relating to matters dealing with contract administration. *Id.*;

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<sup>8</sup> The Board also has adopted the reasonable expectation test, which applies only when a collective bargaining unit is not in place and employees are expected to assume confidential duties once the bargaining unit is established. *Health and Hospital System of the County of Cook v. Illinois Labor Relations Board, Local Panel*, 2015 IL App (1<sup>st</sup>) 150794 ¶ 56. This test does not apply to the facts of this case.



*Department of Central Management Services (Department of State Police) v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4<sup>th</sup>) 110356, ¶ 27. Mere access to information contained in personnel files, to information related to general personnel matters, or to statistical information relating to the employer’s labor relations policies, however, does not establish confidential status, even if that information is confidential. *American Federation of State, County and Municipal Employees, Council 31 and City of Chicago*, 25 PERI ¶ 2 (IL LRB-LP 2009); *American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services*, 25 PERI ¶ 5 (IL LRB-LP 2009). Employees’ access to information “*which may be used in but is not related to labor relations* does not indicate that they are confidential employees.” *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board, State Panel*, 2014 IL App (1<sup>st</sup>) 132455, quoting *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31*, 218 Ill.App.3d 682, 702 (1<sup>st</sup> Dist.), *aff’d*, 153 Ill.2d 508 (1992) (*Chief Judge 1992*) (emphasis in original).

While courts and the Board have observed that confidential information under the authorized access test includes matters dealing with contract administration, confidential information in that sense does not necessarily encompass information about contemplated discipline. *Chief Judge 1992; Health & Hospital System; City of Evanston v. Illinois State Labor Relations Board*, 227 Ill.App. 3d 955 (1<sup>st</sup> Dist. 1992). Thus, the Appellate Court in *Chief Judge 1992* said that “labor relations encompasses ongoing or future collective-bargaining negotiations and strategy, not general, though undoubtedly otherwise confidential department administration matters.” *Id.*, at 699. In line with that observation, the *Chief Judge 1992* court affirmed the

inclusion of employees in the petitioned-for bargaining unit even though they typed disciplinary recommendations and disciplinary actions.

In this regard, while the Board in a number of cases 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, the kind and character of the job duties of the employees involved are highly significant, if not determinative. Thus, most, if not all, of the precedential Board decisions that resulted in the exclusion of individuals from bargaining units based on their having, in the regular course of their duties, advance notice of contemplated discipline concern internal investigators or individuals who in some manner were involved in the decision-making process. *See Chief Judge of the Circuit Court of Cook County*, (36 PERI ¶ 42 (IL LRB-SP 2019) (employees in the classification of Investigator III); *City of Chicago*, 36 PERI ¶ 12 (IL LRB-LP 2019) (Supervisor of Personnel Services); *State of Illinois, Department of Central Management Services (Department of Corrections)*, 33 PERI ¶ 121 (IL LRB-SP 2017) (Internal Security Investigators); *City of Chicago, Office of the Inspector General*, 31 PERI ¶ 6 (IL LRB-LP 2014) (OIG investigators); *State of Illinois, Department of Central Management Services*, 30 PERI ¶ 38 (IL LRB-SP 2013) (Senior Public Service Administrator, Option 3). Only one case addressed employees performing administrative/secretarial work, and there, the petitioned-for employees' advance knowledge of contemplated discipline was not integral to the outcome of the case because they also had authorized access to the employer's bargaining proposals and other documents outlining bargaining strategy. *City of Rolling Meadows*, 34 PERI ¶ 116 (IL LRB-SP 2017).

It necessarily follows from these cases and applicable appellate court decisions, as well as from the courts' admonition that the confidential employee exclusion is to be interpreted narrowly,

that advance notice of discipline, as well as other contract administration information that may come to the attention of an employee in an administrative or clerical classification, confers confidential employee status on that employee only in those circumstances in which the employee's possession of that information would present a "dual loyalty" situation or otherwise compromise the employer's position in dealing with the union in collective bargaining or contract administration matters. Thus, if an administrative employee has, in the regular course of his or her duties, advance knowledge of the employer's disciplinary or grievance administration strategy, such that the union acquires a tactical advantage in the disciplinary or grievance administration process by virtue of that advance knowledge, the employer could justifiably claim that that employee is a confidential employee. On the other hand, if the employee in question has a ministerial role in the disciplinary or grievance process, such as the responsibility to provide an employee with a notice of a disciplinary action based on a decision made by others, that employee is not a confidential employee merely by having acquired advance notice of discipline while acting as a conduit for the administration of discipline by the employer.

## **2. Analysis Of The Claimed Confidential Exclusions**

### **a. Contracts Coordinators as a Classification**

The job description for the Contracts Coordinator provides that an employee in this classification "[s]upervises and directs staff engaged in contract and payment processing activities." Because the City has withdrawn its claim of statutory supervisory status for incumbents of the classification, however, no inference is drawn concerning authorized access to confidential collective bargaining information that otherwise might apply, in a proper case, to statutory supervisors. Otherwise, there is nothing in the job description that supports the

contention that confidential employee status is a necessary or expected consequence of the job duties of the employees in the classification.

The City contends that five of the employees at issue are confidential, as well as managerial, employees. And it also contends that two employees are confidential but not managerial employees, conceding that the remaining three CC's are neither managerial nor confidential employees. As was the case with the claimed managerial exclusions, the City's concession that four of the 14 CC's are managerial but not confidential and that three CC's are neither managerial nor confidential is consistent with a finding that Contract Coordinators are not confidential employees as a class. If any of the 11 positions in dispute is a position occupied by a confidential employee, therefore, that determination necessarily will have to be based on an analysis of individual duties and responsibilities of the incumbents of those positions.

**b. Claimed Confidential Exclusions by Department**

- i. CDOT – Tiheta Hinton, Thomas Wood, and Jacqueline Madison

*Hinton, Wood, and Madison are not confidential employees.*

The City contends that Hinton, Wood, and Madison are confidential employees because, it is alleged, they have authorized access to confidential labor relations information by way of their disciplinary and grievance resolution responsibilities. The City asserts that:

[All three employees] can initiate disciplinary proceedings, participate in pre-disciplinary meetings, verbally counsel their subordinates, recommend a level of discipline, and issue discipline to their subordinates. They all issue Notices of Discipline to employees, and have access to those Notices of Discipline and disciplinary decisions before the affected employees. All three also provide the Step I responses to grievances filed by their subordinates. In responding to grievances or issuing discipline, all three CC's communicate with CDOT labor relations for guidance and to discuss the CBA and appropriate actions to take.

The Petitioner concedes that the authorized access test is satisfied when the employees in question are “privy to the employer’s litigation strategy in grievance arbitration cases and related litigation”, citing *City of Chicago Office of Inspector General*, 31 PERI ¶ 6 (IL LRB-LP 2014), but contends that it is an “inappropriate expansion” of the authorized access test if the only basis for alleged confidential status is advance knowledge of contemplated discipline. As discussed above, this contention has merit to the extent that the employees involved are not internal investigators or individuals otherwise involved in the decision-making process, that the alleged advance knowledge of contemplated discipline is the product of a ministerial role in the disciplinary or grievance process, and that the alleged advance knowledge does not compromise the employer’s position in dealing with the union in collective bargaining or contract administration matters.

In this case, the record establishes that Hinton, Wood, and Madison are authorized to issue verbal warnings, although verbal reprimands without documentation are not discipline within the meaning of the Act. *City of Freeport*, 135 Ill.2d at 518-519; *Metropolitan Alliance of Police v. Illinois Labor Relations Board, State Panel*, 362 Ill.App.3d 469, 478-79 (2<sup>nd</sup> Dist. 2005). The record further establishes that the three CC’s can recommend discipline, although the evidence is insufficient to establish that such recommendations are effective.

With respect to the role of the three CC’s in the grievance process, the testimony establishes that they are involved at Step 1 of the procedure, but the extent of their involvement, beyond seeking guidance from Labor Relations, is unclear. There is no evidence of their involvement at any other stage of the grievance procedure or in a grievance arbitration proceeding.

As to the issue of advance knowledge of disciplinary action, the evidence is speculative and inconclusive. For example, Jacqueline Madison’s supervisor, Cheryl Donegan, testified that

she would expect that Madison “would” have access to the disciplinary notice to be issued to an employee and that Donegan would “expect” that Madison would have access to the notice before it is given to the employee. There is no evidence in the record as to what such a notice contains, nor is there any evidence of the CC’s being privy to any communication between Management or Labor Relations that would reveal the Employer’s disciplinary or grievance resolution strategies or that otherwise would compromise the Employer’s position in dealing with the Union in regard to collective bargaining or the administration of grievances.

The evidence establishes that the role played by the CC’s on behalf of the employer in the disciplinary and grievance process is a ministerial one. The record does not establish, moreover, that the information obtained by the CC’s in the course of their involvement with these processes is confidential in a labor relations sense or that the advance possession of that information by a bargaining unit employee would compromise the employer’s contract administration position. Accordingly, Hinton, Wood, and Madison are not confidential employees within the meaning of the Act.

ii. Aviation – Bradley O’Donnell

*O’Donnell is not a confidential employee*

The City contends that O’Donnell is a confidential employee because, in the regular course of his duties, he has authorized access to confidential labor relations information. According to Ahmed, O’Donnell has disciplinary authority -- although the record does not establish that he has ever exercised it -- and he is responsible for carrying out the discipline that is imposed. The City contends that O’Donnell would be aware of the discipline before the employee becomes aware of it and that he would have access to the notice of discipline before the disciplined employee would be aware of it. The City also contends that O’Donnell would provide the Step 1 response in the

event of the filing of a grievance. Accordingly, the City asserts, O'Donnell's role in the disciplinary and grievance resolution processes is such that he qualifies for confidential employee status under the authorized access test. The Petitioner disagrees.

The evidence in support of the City's claim of confidential status for O'Donnell is largely conjectural, consisting of statements as to the authority that O'Donnell "would" have if the occasion for the exercise of that authority ever arose. And while the City contends that O'Donnell communicates with the Department's Labor Relations unit and can recommend a level of discipline, there is no evidence as to the content of those communications or as to the effectiveness of the recommendations allegedly communicated. As a result, it cannot be inferred from the evidence that the communications are such as to compromise the Employer's contract administration position if revealed in advance to the Union.

With respect to the grievance process, Ahmed testified that if a grievance were filed on an issue that did not involve O'Donnell, the CC would give the first step response on behalf of the Department. But there is no evidence as to the content of any such response. For example, there is no evidence that a first step response in such a situation would involve a detailed explication of the Employer's position or whether it would simply state "grievance denied", thus effectively moving the process to the next step without revealing either to the CC or to the Union any of the Employer's confidential contract administration information. Therefore, because the record does not contain sufficient evidence to carry the City's burden, it must be concluded that O'Donnell is not a confidential employee.

iii. Department of Innovation and Technology – Judith Mims

*Mims is not a confidential employee.*

The City contends that Mims has authorized access to confidential labor relations information during the course of performing her regular duties. Thus, the Employer asserts:

Contracts, such as those for help desk services, have components which impact staffing and labor relations issues. City employees, some of whom are in union-represented titles, are equipped to perform this work. However, DoIT must use vendors...to appropriately staff the help desk 24 hours a day, 365 days a year. How City employees will staff those roles as compared to employees of vendors is delineated in the contracts Ms. Mims manages and has authorized access to pursuant to her CC duties.

(Transcript references omitted.).

The Petitioner contends that the contracts that delineate staffing as between DoIT employees and employees of vendors are public documents, available to the public under the Illinois Freedom of Information Act. In addition, the Petitioner contends, some of the work involved in a services contract involves work, such as building or rebooting servers, that City employees cannot do. Therefore, while Mims may have access to this information, it is not confidential labor relations information.

The problem with the City's argument is that it is not supported by sufficient evidence to carry the City's burden. While it is possible that a vendor contract might contain information relating to work jurisdiction that a union might consider to be valuable, and it is likewise possible that Mims would be privy to that information in the course of her duties and before it is disclosed by the Employer to the union, there is simply not enough evidence to establish that this is more than just a possibility. No illustrative examples were introduced into evidence, and no evidence was introduced to establish that the vendor contracts for help desk staffing, for example, in fact called for vendor staffing to perform work that employees could do during hours that regular employees also work. Brownlee testified, for example, that some contracts were for work that



City employees could not do, and he also testified that help desk staffing contracts involved staffing by vendor employees during regular employees' off hours. Absent sufficient evidence that the contracts in fact contain confidential labor relations information, as opposed to information that *might* be confidential, it cannot be concluded that Mims has authorized access to confidential labor relations information that, if known in advance of public access, could jeopardize the Employer's contract administration strategies. Therefore, Mims is not a confidential employee.

iv. Department of Streets and Sanitation – Michele Gamble

*Gamble is not a confidential employee*

The City asserts that, in the regular course of her duties, Gamble has authorized access to confidential labor relations information by virtue of her role in disciplining subordinates and in regard to the grievance procedure. The Petitioner disputes this assertion.

The City's evidence regarding the disciplinary process is largely speculative, in part because of the vacancy, at the time of the hearing, in the position of Contract Review Specialist. Thus, Crocker testified that Gamble "would" be a part of the pre-disciplinary process and "would" have the power to recommend that her subordinate be disciplined. While the City contends that Gamble's action in placing the former incumbent of the Contract Review Specialist position on a performance improvement plan was an example of disciplinary authority, Gamble characterized her action as having devised a "learning tool" for the subordinate employee that would "give her guidelines." It is not clear what, if any, "confidential labor relations information" Gamble would acquire by virtue of this type of action, whether it be characterized as a performance improvement plan or a "learning tool," for, as the Appellate Court observed in *Health and Hospital System*, albeit with specific reference to the labor nexus test, "'labor relations' does not include hiring, performance, or promotion...." 2015 IL App (1<sup>st</sup>) 150794 at ¶ 59.

With respect to Gamble's role in the grievance procedure, Crocker's testimony contradicts the City's claim. As noted in the Findings of Fact, Crocker testified that "all grievances in our department go through our labor relations group. So I don't know that [Gamble] would have an active role to play other than perhaps as a complainant or respondent, but I don't know that she would be actively involved in resolving the grievance." Given this testimony and the absence of other evidence of information that Gamble would acquire in the regular course of her duties that, if known in advance by the Union, would prejudice the position of the Employer in carrying out its contract administration function, it must be concluded that Gamble is not a confidential employee.

v. Department of Finance – Steven Sakai

*Sakai is not a confidential employee*

The City contends that Sakai "has authorized access to confidential labor relations information via his disciplinary and grievance resolution responsibilities." The Petitioner disputes this contention.

With respect to discipline, the evidence is insufficient to establish confidential employee status on this basis. According to Employer witness Tina Consola, there is a procedure that the Department follows in disciplining employees, but that procedure was neither introduced into evidence nor was it explained in sufficient detail in testimony so as to permit a conclusion to be drawn concerning Sakai's role in the procedure. Sakai has never disciplined an employee, so the relevant testimony dealt with his authority, albeit never exercised, to impose discipline. Consola testified in this regard that, if discipline, short of a suspension, were issued, Sakai would issue the notice of discipline. According to the City, Sakai would see the notice before the employee would see it. However, there is no evidence in the record as to the confidentiality of the notice of

discipline before it is issued or as to the prejudice that the City would suffer by virtue of Sakai's advance knowledge.

With respect to grievance handling, Consola's testimony that Sakai would serve as the first level responder to grievances does not, by itself, establish confidential employee status because it is not clear from the record whether Sakai's role in the grievance procedure would be substantive or ministerial. Thus, it is not clear whether Sakai would be instructed to give a pro forma response or whether he would be privy to the Employer's grievance administration strategy in the course of giving his first step response. Given that Consola testified that she was "not completely" familiar with the grievance process, her testimony does not afford sufficient support for the City's position to produce a resolution favorable to the City on this issue. Because the City has not borne its burden of proof as to Sakai's confidential employee status, it must be concluded that he is not a confidential employee.

## **V. CONCLUSIONS OF LAW**

The following employees are public employees within the meaning of Section 3(n) of the Act:

Jacqueline Madison – Department of Transportation  
Thomas Wood – Department of Transportation  
Tiheta Hinton – Department of Transportation  
Anne Davis – Department of Cultural Affairs and Special Events  
Joshua Schwimer – Department of Cultural Affairs and Special Events  
Bradley O'Donnell – Department of Aviation  
Kevin Pater – Chicago Fire Department  
Judith Mims – Department of Innovation and Technology  
Michele Gamble – Department of Streets and Sanitation  
Steven Sakai – Department of Finance  
Renee Milton – Department of Water Management  
Valarie Hull – Chicago Police Department  
Sonia Garcia – Department of Planning and Development  
Lylianis Gonzales – Office of Emergency Management and Communications

**VI. RECOMMENDED ORDER**

The Petition is granted as to the Contracts Coordinator positions listed above.

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 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, and other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: The Contracts Coordinator positions held by the following employees are to be added to AFSCME-represented bargaining unit #1.

Jacqueline Madison – Department of Transportation  
Thomas Wood – Department of Transportation  
Tiheta Hinton – Department of Transportation  
Anne Davis – Department of Cultural Affairs and Special Events  
Joshua Schwimer – Department of Cultural Affairs and Special Events  
Bradley O’Donnell – Department of Aviation  
Kevin Pater – Chicago Fire Department  
Judith Mims – Department of Innovation and Technology  
Michele Gamble – Department of Streets and Sanitation  
Steven Sakai – Department of Finance  
Renee Milton – Department of Water Management  
Valarie Hull – Chicago Police Department  
Sonia Garcia – Department of Planning and Development  
Lylianis Gonzales – Office of Emergency Management and Communications

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

## **VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules and Regulations, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommended Decision and Order. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board, 160 N. LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated e-mail address for electronic filings, at [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov) in accordance with Section 1200.5 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300. All filings must be served on all other parties.

Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued in Chicago, Illinois on January 5, 2021**

*Donald W Anderson*

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Donald W. Anderson  
Administrative Law Judge

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