

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

American Federaion of State, County and )  
Municipal Employees, Council 31, )  
 )  
Charging Party )  
 )  
and )  
 )  
City of Chicago, )  
 )  
Respondent )

Case No. L-RC-16-008

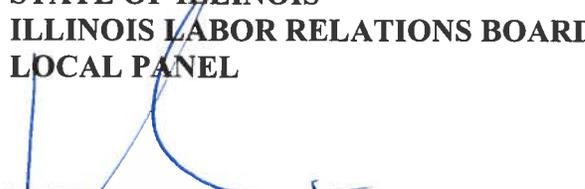
**ORDER**

On February 10, 2017, Administrative Law Judge Deena Sanceda, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its June 8, 2017 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

**Issued in Chicago, Illinois, this 8th day of June 2017.**

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

  
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**Helen J. Kim  
General Counsel**

**ILLINOIS LABOR RELATIONS BOARD  
LOCAL PANEL**

American Federation of State, County and	)	
Municipal Employees, Council, 31,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. L-RC-16-008
	)	
City of Chicago,	)	
	)	
Employer	)	

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

On August 11, 2015, the Petitioner, American Federation of State, County and Municipal Employees, Council, 31, (“AFSCME”) filed a majority interest/representation petition in Case No. L-RC-16-008 with the Local Panel of the Illinois Labor Relations Board (“Board”) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (“Act”), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, §§ 1200 through 1300 (“Board’s Rules”). Through the petition, AFSCME seeks to add the title of “Emergency Management Coordinator” to an existing bargaining unit of City of Chicago (“City”) employees that AFSCME represents. The City subsequently filed objections to AFSCME’s petition.

A hearing was held on November 10, 2015, before the undersigned Administrative Law Judge in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both parties were also provided the opportunity to file post-hearing briefs. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

**I. PRELIMINARY FINDINGS**

The parties stipulate, and I find, that:

1. The City is a public employer within the meaning of Section 3(o) of the Act.
2. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Section 5(b) of the Act.
3. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Section 20(b) of the Act.
4. AFSCME is a labor organization within the meaning of Section 3(i) of the Act.
5. At all relevant times, the City and AFSCME have been parties to a collective bargaining agreement.
6. On or about August 11, 2015, AFSCME filed a representation petition seeking to add the title of Emergency Management Coordinator ("EMC") [to AFSCME-represented bargaining unit #4].
7. There is currently one employee in the EMC title, and that individual, Adriana Sanabria, is employed in the City of Chicago's Office of Emergency Management and Communications ("OEMC").

**II. ISSUES AND CONTENTIONS**

The issue before the Board is whether the EMC is a confidential employee within the meaning of Section 3(c) of the Act. The City argues that the petition should be dismissed because the EMC is a confidential employee within the meaning of Section 3(c) of the Act. AFSCME argues that the EMC is not a confidential employee and should be certified into the existing bargaining unit.

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

The job description for Class Title of EMC provides that the EMC “performs professional functions in all areas of emergency management including preparedness, mitigation, response and recovery, and performs related duties as required.” The EMC’s essential duties are as follows:

Participates in the on-going development of city wide emergency management plans in preparation for and response to homeland security incidents, emergencies and disaster situations; participates in updating emergency plans to ensure compliance with federal Department of Homeland Security and state requirements and guidelines; collaborates with other city departments and outside agencies to develop and implement operating procedures and action plans to effectively utilize emergency personnel and equipment during emergency or disaster situations; assists in recovery efforts, working with city departments and outside agencies to restore services and operations; participates in the planning and coordination of multi-agency emergency training exercises and drills; responds to major emergencies, natural disasters and homeland security incidents by providing logistical support and coordination of resources at the scene of an incident; staffs the Joint Operations Center (JOC) to assist in coordinating multi-agency response during an emergency, incident or special events and during recovery efforts to restore services and normal operations; conducts research regarding emergency management programs and best practices for inclusion in the city’s emergency plans; gathers and tracks data relating to personnel and resource costs associated with emergency management programs.

The EMC’s related duties are “[a]ssist[ing] in conducting emergency preparedness public education campaigns and coordinating volunteer programs.” The job description also provides, while “the list of essential duties is intended to be as inclusive as possible, there may be other duties which are essential to particular positions within the class.”

Sanabria has been an EMC in the OEMC since 2005. She reports to OEMC’s Deputy Director Thomas Sivak. Since 2008, Sanabria has been the project coordinator for a pole marking project. The pole marking project entails identifying the areas in the City in which there is an open area without street addresses that hold large concentrations of citizens, such highly trafficked park trails, lakefront beach areas trails, and festival areas such as Grant Park

then installing geocoded signs on light poles in those areas so that first responders have an exact location when they receive a call for emergency assistance. The project requires Sanabria to work with various City public safety agencies such as the police department and the fire department in order to coordinate the program.

Aside from the pole marking project, Sanabria writes and disseminates General Messages, puts together safety plans for events, attends regular meetings, and attends special meetings upon request. General Messages are essentially an interdepartmental memo between City agencies regarding various safety related topics, such as planned events, weather events, or other situations that may affect public safety. When she develops safety plans for events, Sanabria explains the safety logistics of a particular event such as which department is responsible, who is on staff, etc., and what action to take in the case of an emergency. Sanabria is also currently working with OEMC's Managing Deputy Director Richard Guidice, Sivak and two Senior Emergency Management Coordinators ("SEMC"), on the winter weather workshop presentation, which is a presentation to other City agencies, sister agencies, and private agencies, regarding winter weather safety and best practices. Sanabria regularly attends the meeting of the sidewalk snow removal task force where they discuss which City department is responsible for snow removal at various parts of the City sidewalk, such as the sidewalk next to the CTA, the sidewalk on bridges, etc. At the Illinois Medical District meetings, Sanabria is involved in discussions regarding the monthly happenings around the Medical District.

On July 28, 2015, Guidice asked Sanabria to attend a meeting with him at police headquarters and to take notes during this meeting. In attendance were Guidice, Sanabria, Superintendent of Special Traffic Services for Traffic Management Authority Naureen Cooney, Deputy Director for Traffic Management Authority John Botica, OEMC's Director of Finance

Michael Ambolo, Tenaya Williams, two coordinators for the Chicago Police Department, and Police Sergeant Frank Iglinski. The purpose of the meeting was to discuss the City's Office of Budget and Management's recommendation that the City's crossing guards be transferred from the City's Police Department budget to OEMC's budget.

The crossing guards are in a bargaining unit represented by Service Employees International Union, ("SEIU"). At the hearing, Guidice testified that the meeting was held to learn about the crossing guard program, the crossing guards' duties, how they were supervised, how their sick and vacation time were administered, what type of equipment they used, whether they receive uniform allowances, possible questions and issues they anticipated that SEIU would have with the transition, and how the OEMC would address those issues. At the hearing, Guidice testified that at the meeting they "were trying to figure out how many people we would need to administer the program" and that this would involve hiring, and could potentially involve reorganization. Guidice did not testify that they actually discussed reorganization at the meeting, but he did testify that they did not discuss reducing the budget for the crossing guard program, that OEMC was "simply taking the budget that the police department had currently and moving it to our books." When asked whether they discussed strategy, Guidice testified, that they "discussed [...] some of the administrative functions of taking over the program, some of the supervisory functions of taking over the program, and it was kind of a discovery meeting just to figure out really what it all entailed." After the meeting, Sanabria took notes and emailed those notes to herself, Cooney, Botica, Ambolo, and Williams.

On August 5, 2016, Guidice asked Sanabria to attend another meeting with him regarding the crossing guard transition. This meeting took place at OEMC's office. Sgt. Iglinski did not attend that meeting, and the record does not reflect other attendees at that meeting. At the

August 5, 2016 meeting, OEMC decided how they would move forward with the crossing guard transition. Guidice testified that, the meeting was a “path forward to meet with the budget office. In other words, there were going to be requests we made to the budget office that identified what was going to be needed to take the program over.” Sanabria took notes, “complied their ideas,” and drafted a “Crossing Guard Transition Document Draft.” On August 6, 2016, Sanabria emailed that document to Guidice, OEMC Chief of Staff Ted Berger, OEMC’s Managing Deputy Director of Administration Frank Lindbloom, Williams, Botica, Ambolo, and Cooney. As of August 6, 2015, SEIU had not been informed that the crossing guards that it represents would be transferred to the OEMC Department. As of the date of the hearing, the City had not informed SEIU of the specific plan that OEMC developed for the crossing guard transition.

At the hearing, Guidice explained that while he was not Sanabria’s direct supervisor, as OEMC’s Managing Deputy Director he is able to “pick and choose certain people for certain special activities.” When he needs notes taken at a meeting he has the authority to ask any of the employees below him to take notes in a meeting. He testified, “[s]o if I went to a meeting, I’m hosting a meeting and there was somebody in the room who works for me in operations, they would be responsible for collecting any information during the meeting.” Guidice has a Staff Assistant, Tamisha McClendon who reports directly to him. Guidice testified that McClendon is stationed outside his office, and her duties include answering calls, scheduling meetings, etc., but that he does not bring McClendon to meetings with him. Guidice testified that Sanabria often attends meetings with him because she issues General Messages based upon the contents of those meetings. He also testified that Sanabria did not issue a General Message regarding the crossing guard transition meetings. When asked why he chose Sanabria to attend the crossing guard transition meetings, Guidice testified that “[s]he’s worked closely with me for some meetings in

the past, and I thought she was capable of getting what we need.” Prior to the hearing, the OEMC had a third meeting regarding the crossing guard transition that Sanabria did not attend.

Williams testified that notes Sanabria took during the July and August crossing guard transition meetings were not included in the record of this case because they “are sensitive documents that we don’t want out to the public. We don’t want the unions to be aware what our strategies are, what we’re thinking about, what we believe their issues are.”

Several of OEMC positions are included in AFSCME represented bargaining units, two of those positions are the Staff Assistant and SEMC. Chicago Police Department Sergeants are also represented by a bargaining unit.

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

The EMC is not a confidential employee as defined by Section 3(c) of the Act. Section 3(c) of the Act provides the following:

[a “c]onfidential employee” is 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.

“The purpose of the confidential exclusion is to prevent employees from having their loyalties divided between the employer, who expects confidentiality in labor relations matters, and the union, which may seek disclosure of management’s labor relations material to gain an advantage in the bargaining process.” Health and Hosp. Syst. of Cook Cnty. v. Ill. Labor Rel. Bd., 2015 IL App (1st) 150794; quoting Chief Judge of the Cir. Ct. of Cook Cnty. and Am. Fed’n of State, Cnty., and Mun. Emp., Council 31, 218 Il. App. 3d 682, 698 (1st Dist. 1991) aff’d 153 Ill. 2d 508 (1992). The Act sets forth two tests to determine whether an employee is subject to the confidential exclusion, (1) the labor nexus test and (2) the authorized access test.

The Board has also adopted the reasonable expectations test, which applies when no collective bargaining unit is in place. City of Burbank, 2 PERI ¶2036 (IL SLRB 1985); see Chief Judge of the Cir. Ct. of Cook Cnty. v. Am. Fed'n of State, Cnty., and Mun. Emp., Council 31, 153 Ill. 2d at 524. As the party asserting a statutory exclusion has the burden of proving that the positions satisfies at least one of the three confidential tests. Cnty. of Cook v. Ill. Labor Rel. Bd., Local Panel, 369 Ill. App. 3d 112, 123 (1st Dist. 2006). Here, the City argues that the EMC position should be excluded as confidential under the authorized access test.

Under the authorized access test, an employee is a confidential employee if, in the regular course of his or her duties, the employee has authorized access to information concerning matters specifically related to the collective bargaining process between labor and management. Chief Judge of the Cir. Ct. of Cook Cnty. and Am. Fed'n of State, Cnty., and Mun. Emp., Council 31, 153 Ill. 2d at 523. The purpose of the test is to guard against the premature disclosure of an employer's ongoing or future labor relations positions, which would undermine an employer's ability to negotiate on an equal basis with a union. Vill. of Homewood, 8 PERI ¶ 2010 (IL SLRB 1992). In determining the meaning of the phrase, "in the regular course of duties" the Board has found that the Act distinguishes "between infrequent but normal tasks and mere *ad hoc* assignments." City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010). An employee that only infrequently, but consistently, has authorized access to confidential information may be considered confidential, but an employee who has access to confidential information, when such access is not part of their regular duties is not confidential, because that access is based upon *ad hoc* assignments. State of Ill., Dep't of Cent. Mgmt. Serv., 29 PERI ¶12; (IL LRB-SP 2012); City of Chicago, 26 PERI ¶114; see Chief Judge of the Circuit Court of Cook County v. AFSCME, Council 31, 218 Ill. App. 3d at 703 (an employee's occasional substitution for a

confidential employee is insufficient to render that employee a confidential employee because this substitution is not performed on a regular basis).

Information concerning matters specifically related to the collective bargaining process includes the employer's strategy for dealing with an organizational campaign, the actual collective bargaining proposals, and matters relating to contract administration. Cnty. of DeKalb, 4 PERI ¶2029 (IL SLRB 1988); City of Burbank, 1 PERI ¶2008 (IL SLRB 1985). Confidential information does not include that which a union already possesses or confidential information unrelated to the collective bargaining process such as personnel files and information concerning the general workings of a department, general personnel matters, or statistical information. State of Ill., Dep't of Cent. Mgmt. Serv., 30 PERI ¶38 (IL LRB-SP 2013); City of Evanston v. State Labor Rel. Bd., 227 Ill. App. 3d 955, 978 (1st Dist. 1992); State of Ill., Dep't of Cent. Mgmt. Serv., 25 PERI ¶161 (IL LRB-SP 2009); City of Wood Dale, 2 PERI ¶2043 (IL SLRB 1986).

In this case, the City has failed to show that Sanabria's position satisfies the authorized access test for Sanabria's regular duties do not provide her with access to confidential collective bargaining information. According to the record evidence, Sanabria's regular duties involve facilitating safety programs and disseminating safety information throughout the City. Pursuant to the job description, the purpose of the EMC classification is to perform "professional functions in all areas of emergency management including preparedness, mitigation, response and recovery, and performs related duties as required."

The City argues that Sanabria has "regular access to the City's strategy for dealing with union issues," specifically the crossing guard transition, and that her "duties required her to attend meetings at which the City held preliminary discussions and formulated the plans" for implementing the transition. The City, however, the failed to establish through testimony or

other evidence that Sanabria's regular and normal tasks included attending meetings regarding collective bargaining matters. Although the evidence indicates that Sanabria regularly takes notes at meetings related to emergency management so that she can write and disseminate a General Message to other City agencies regarding safety procedures, Sanabria's regular duties as identified in the job description do not include attending and taking notes at any other type of meeting much less ones that involve collective bargaining matters.

Furthermore, several OEMC positions are in AFSCME represented bargaining units, and the record contains no evidence of Sanabria attending and taking notes on any OEMC meeting regarding its bargaining process with AFSCME. The City's entire basis for arguing that the EMC is confidential is based upon Sanabria attending two allegedly confidential labor meetings in the entire tenure of her 10-year work history at the City. Two meetings in the course of ten years together with the lack of evidence that attending such meetings was part of Sanabria's regular job duties is not a normal but infrequent task, rather it is an *ad hoc* assignment that Guidice had the authority to give to anyone that works under him. Thus, Sanabria does not have access to labor relations information in the regular course of her duties.

AFSCME also argues that there is insufficient information to find that the content of the meetings involved confidential collective bargaining information because the City refused to divulge the documents Sanabria produced based upon the information discussed at the crossing guard transition meetings. Since I have already found that Sanabria's attendance at the crossing guard transition meetings are not within the regular course of her duties, it is unnecessary for me to decide whether the meetings contained confidential bargaining information.

**V. CONCLUSIONS OF LAW**

The Emergency Management Coordinator is not a confidential employee within the meaning of Section 3(c) the Act.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the position of Emergency Management Coordinator be included in the AFSCME-represented bargaining Unit #4.

**VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order in briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with Helen Kim, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at [ILRB.Filing@Illinois.gov](mailto:ILRB.Filing@Illinois.gov). All filing must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. 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, this 10th day of February, 2017**

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

*/s/ Deena Sanceda* \_\_\_\_\_  
**Deena Sanceda**  
**Administrative Law Judge**