

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

American Federation of State, County,)	
and Municipal Employees, Council 31,)	
)	
Petitioner,)	
)	
and)	Case No. L-RC-16-035
)	
City of Chicago,)	
)	
Respondent.)	

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

On November 29, 2018, Administrative Law Judge (“ALJ”) Michelle Owen issued a Recommended Decision and Order (“RDO”) in the above-referenced case, denying a majority interest petition filed by Petitioner American Federation of State, County and Municipal Employees, Council 31 (“AFSCME”).¹ Through that petition, AFSCME seeks to represent six (6) individuals employed by Respondent City of Chicago (“City”) in the title Supervisor of Personnel Services (“SPS”) in six City departments and to include them in AFSCME’s existing historical bargaining unit #1. The City objected to the petition asserting that the employees should be excluded from coverage under the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (“Act”), because they fall within one or more of the Act’s exemptions. AFSCME timely filed exceptions to the RDO, and the City timely filed its response.

¹ The RDO in this case was previously before us at our February 5, 2019 meeting as an RDO without exceptions. We declined to review the RDO and, consequently, a General Counsel Order was issued memorializing its effect as a non-precedential decision binding on the parties. AFSCME then filed an unopposed motion to vacate the General Counsel Order based on failure to serve AFSCME’s designated representative. Finding service was improper, AFSCME’s motion was granted, and AFSCME was given 14 days to file exceptions.

After reviewing the RDO, the record, exceptions and responses thereto, we reject AFSCME's exceptions and accept the ALJ's recommendations contained in her RDO for the following reasons:

The ALJ recommended dismissing the petition because she found the five SPS employees² at issue satisfied the authorized access test and thus, should be excluded from collective bargaining as confidential employees within the meaning of Section 3(c) of the Act. Because she found all five employees should be excluded as confidential employees the ALJ determined it unnecessary to consider the other exclusions asserted by the Employer for certain employees.³

Relying on Board precedent in City of Chicago, Office of the Inspector General, 31 PERI ¶ 6 (IL LRB-LP 2014); City of Rolling Meadows, 34 PERI ¶ 116 (IL LRB-SP 2017), aff'd by unpub. order 2018 IL App (1st) 180096-U; and State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38 (IL LRB-SP 2013) ("SOI 2013"), the ALJ found the SPSs satisfied the authorized access test because they regularly have advance knowledge of contemplated disciplinary action. The ALJ also determined the SPSs had authorized access in the regular course of their duties because their job description includes as an essential duty "advis[ing] departmental managers on initiating, responding to, and resolving issues relating to disciplinary action procedures." Because the ALJ found the SPSs satisfied the authorized access test, she determined it was unnecessary to apply the labor-nexus test.

AFSCME takes exception to the RDO, contending (1) having advance knowledge of contemplated discipline does not confer confidential employee status and (2) even if it does, the

² Although the AFSCME initially sought six positions, it withdrew its petition as to SPS Marcell Kinsey in the City's Chicago Public Library.

³ The Employer asserted Tamara Harding in the City's Department of Procurement Services should also be excluded under the supervisory and managerial exclusions.

record lacks sufficient evidence that the SPSs possessed such knowledge. In support of its exceptions, AFSCME urges the Board to abandon relatively recent Board decisions holding that employees who have advance knowledge of contemplated disciplinary action against other employees are confidential employees under the Act, in favor of the holding in State of Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶ 184 (IL LRB-SP 2009) ("SOI 2009"), in which AFSCME claims the State Panel declined to confer confidential employee status based on an employee's advance knowledge of discipline. AFSCME contends that under the authorized access test, the information accessed must be related to collective bargaining strategies rather than contemplated discipline of an employee. AFSCME asserts that following the precedent in SOI 2009 would also be consistent with NLRB precedent.

In addition to its exceptions regarding the ALJ's legal analysis, AFSCME contends the evidence was too vague and generalized to support the ALJ's findings that the SPSs had advance knowledge of contemplated discipline in the regular course of their duties.

We accept the ALJ's recommendations for AFSCME's exceptions lack merit as they fail to identify any flaw or error in the ALJ's analysis or reasoning. We decline to abandon, as AFSCME urges, recent Board precedent in favor of what it claims is the holding in SOI 2009, a State Panel case decided ten years ago. In that case, AFSCME claims the State Panel held that employees who have advance knowledge of contemplated discipline do not meet the authorized access test. AFSCME's reliance on SOI 2009, however, is misplaced. The sentence AFSCME relies on appears in the underlying recommended decision and order in that case: "...the Employer asserts that Broady is a confidential employee because he provides advice . . . on disciplinary and administrative issues." This sentence, however, is merely a recitation of the employer's contention and not the administrative law judge's finding. Indeed, the administrative law judge's finding was

that the evidence the employer cited only related to administrative issues rather than labor relations. See State of Ill., Dep't of Cent. Mgmt. Servs., 25 PERI ¶ 184 (IL LRB-SP 2009) (“[t]he information that the Employer cites is not confidential information as defined by the Act, as it relates to the general workings of the department and not labor relations.”).

The crux of AFSMCE's contentions appears to be that discipline is not related to collective bargaining strategies or contract administration so having advanced knowledge of contemplated discipline does not provide the same advantage as having knowledge of the former that would trigger confidential status. But this flies in the face of established Board precedent, and AFSCME provides no compelling reason to depart from it. See City of Chicago, Office of the Inspector General, 31 PERI ¶ 6 (IL LRB-LP 2014) (finding investigators who gained advance knowledge of contemplated discipline against employees through their receipt and review of charges before they were issued to employees); City of Chicago, 26 PERI ¶ 114 (IL LRB-SP 2010) (finding employees who had access to information regarding contract administration matters such as layoffs and discipline satisfied authorized access test); State of Ill. Dep't of Central Mgmt. Servs. (Dep't of Corrections), 33 PERI ¶ 121 (IL LRB-SP 2017), aff'd by unpub. order 2018 IL App (1st) 171322-U (finding investigators who substantiate charges of misconduct had advance knowledge of discipline satisfied the authorized access test); and State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38 (IL LRB-SP 2013) (finding employee's advance knowledge of contemplated discipline in the future conferred confidential status).

For the above reasons, we reject AFSCME's exceptions and accept the ALJ's recommendations and adopt the RDO as a decision of the Board.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut

Robert M. Gierut, Chairman

/s/ Charles E. Anderson

Charles E. Anderson, Member

/s/ Angela C. Thomas

Angela C. Thomas, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois on June 11, 2019; written decision approved at the Local Panel's public meeting in Chicago, Illinois on July 9, 2019, and issued on July 10, 2019.

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Petitioner,)	
)	Case No. L-RC-16-035
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City of Chicago,)	
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Employer.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 23, 2016, American Federation of State, County and Municipal Employees, Council 31 (Union) filed a majority interest representation/certification petition in the above-captioned case 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). The Union sought to represent six individuals in the title of Supervisor of Personnel Services employed by the City of Chicago (City or Employer) in the City’s Department of Innovation and Technology, Office of Inspector General, Chicago Fire Department, Department of Business Affairs and Consumer Protection, Department of Procurement Services, and the Chicago Public Library. On July 29, 2016, the Employer filed its response and objection to the petition asserting that the positions sought to be represented are confidential, supervisory, and/or managerial within the meaning of the Act.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on December 15, 2016, by Administrative Law Judge (ALJ) Anna Hamburg-Gal.¹ Both parties elected to file post-hearing briefs. Subsequently, the case was administratively transferred to the undersigned ALJ. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire

¹ At hearing, the Union withdrew its petition for Marcell Kinsey, the Supervisor of Personnel Services at the Chicago Public Library. As such, I will not address this position.

record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act.
2. The Union is a labor organization within the meaning of Section 3(i) of the Act.
3. The Board has jurisdiction over this matter pursuant to Section 5(a) and 10(b) of the Act.

II. ISSUES AND CONTENTIONS

There are three issues in this case. The first issue is whether the petitioned-for employees in the title of Supervisor of Personnel Services are confidential employees within the meaning of Section 3(c) of the Act. The second issue is whether the Supervisor of Personnel Services in the Department of Business Affairs and Consumer Protection is a supervisor within the meaning of Section 3(r) of the Act. The third issue is whether the Supervisor of Personnel Services in the Department of Business Affairs and Consumer Protection is a managerial employee within the meaning of Section 3(j) of the Act.

The City contends that all petitioned-for employees are confidential employees under the authorized access test. The City also contends that all petitioned-for employees except for the Supervisor of Personnel Services in the Chicago Fire Department are confidential employees under the labor-nexus test. The City further asserts that the Supervisor of Personnel Services in the Department of Business Affairs and Consumer Protection is a supervisor and a manager within the meaning of the Act. The Union disputes these contentions.

III. FINDINGS OF FACT

A. Job Description

According to the job description, the title of Supervisor of Personnel Services functions as the personnel administrator for a small to moderate sized City department, administers personnel programs, and oversees and directs staff who perform personnel processing and pay roll activities; acts as the department's personnel administrator and supervises a staff of professional and clerical personnel engaged in performing personnel and payroll functions; develops the department's hiring plan and coordinates the interviewing and hiring of employees; oversees staff engaged in preparing and processing paperwork to effect the hiring of employees; assesses the department's staffing and personnel needs and directs the preparation and processing of personnel forms to

implement personnel actions; directs staff responsible for timekeeping and payroll functions, monitoring payroll costs, and ensuring compliance with payroll policies and procedures; provides guidance to managers in the conduct of performance evaluations and oversees the maintenance of performance management records; participates in developing and implementing departmental work rules and procedures; coordinates employee orientation and staff training and development activities; directs staff engaged in providing information and responding to employee inquiries regarding benefits, pay, and personnel rules; oversees the maintenance of computerized employee records on the City's centralized personnel database; acts as liaison with other City departments regarding the processing of personnel and payroll actions and the administration of personnel programs; coordinates work efforts with the City's department of human resources on matters relating to classification, recruitment, employee selection, and hiring procedures, and other areas of personnel administration; advises departmental managers on initiating, responding to, and resolving issues relating to disciplinary action procedures, equal employment opportunity complaints, employee grievances, and discrimination charges; prepares staffing and payroll cost reports and directs or assists in the preparation of the department's personnel budget; and prepares or directs the preparation of various reports on personnel and payroll activities for use by management.²

B. Department of Innovation and Technology

The City's Department of Innovation and Technology ("DOIT") is responsible for the City's technology and telecommunications services. DOIT is divided into seven divisions: (1) finance and administration, which manages budget, payroll, human resources, and contracting; (2) technology planning and policy management, which performs policy and project management; (3) software development, which develops applications for departments, manages the web, and deals with software architecture issues; (4) technical operations and enterprise architecture management, which handles the City's servers, network, phone systems, and network architecture support; (5) analytics and performance management, which handles business analytics and data management; (6) managed operations, which handles the City's critical enterprise operations including the procurement system, the human resources' system, financial management, and the procurement system; and (7) department transitions, which handles the consolidation of other departments into

² Yolanda Gardner, Karen Randolph, Loretta Flores, Barbara Gressel, Richard Butler, and Jennifer Ross testified on behalf of the Employer. The Union did not present any witnesses.

DOIT. DOIT employs approximately 96 employees, some of whom are represented by the Union including employees in the titles of staff assistant and accountant III.

Barbara Araszewski is the Supervisor of Personnel Services for DOIT. She has held this position for approximately 10 years. Araszewski reports to Yolanda Gardner, who has held the position of director of finance and administration for DOIT for 16 years. Gardner has responsibility for administrative duties including information technology, finance, human resources, contracts, and facilities management. Gardner reports to the chief information officer and the first deputy in the office of the commissioner.

According to Gardner, Araszewski acts as the “personnel liaison” for DOIT. In that role, she oversees all hiring, timekeeping, and payroll for DOIT. She is responsible for posting job vacancies, ensuring that budget and personnel have given the approval to hire, coordinating interviews, ensuring that the selected candidate’s hiring packet is sent to human resources, and ensuring that the entire process is conducted in accordance with the City’s policies and procedures. Once an employee is hired, Araszewski reviews the City’s human resources, payroll, and disciplinary policies with the employee. In addition, Araszewski familiarizes the employee with the collective bargaining agreement between the City and the Union. Araszewski also ensures that employees are adhering to the City’s time and attendance policy and that payroll is correctly submitted. Araszewski edits payroll if there are errors.

Araszewski also acts as the labor liaison for the City’s department of human resources. As the labor liaison, Araszewski assists managers in understanding the provisions of the collective bargaining agreement.

In addition, Araszewski is responsible for responding to inquiries from managers who have inquiries regarding employee discipline. Although managers are responsible for issuing discipline, Araszewski is responsible for ensuring that discipline is conducted in accordance with the collective bargaining agreement and the City’s personnel rules and policies. Araszewski is also responsible for scheduling pre-disciplinary hearings.

Araszewski is aware of discipline before discipline is issued to an employee and before the Union is notified of the discipline. Araszewski has been contacted by managers with questions regarding time and attendance of both bargaining unit and non-bargaining unit employees. In one instance concerning a bargaining unit employee, the manager contacted Araszewski to discuss the employee’s time and attendance. Araszewski helped the manager to navigate the collective

bargaining agreement and the City's personnel rules and policies to determine which rule had been violated and the appropriate discipline. For time and attendance issues, the levels of discipline in order of severity are oral warning, written warning, suspension, and termination. Araszewski has also helped another manager to determine the correct level of discipline for an employee.

Araszewski also receives grievances at the first step of the grievance procedure. However, Gardner could not recall if Araszewski had ever granted a grievance. Gardner receives grievances at the second step.

For collective bargaining negotiations, the City sends representatives from various departments to attend negotiation sessions. Araszewski served as a representative of DOIT at the last round of collective bargaining negotiations in 2012 or 2013 and attended some of the negotiation sessions.

C. Office of Inspector General

The City's Office of Inspector General ("OIG") provides independent oversight for the City. OIG is responsible for conducting criminal and administrative investigations, reviewing hiring practices, and reviewing and auditing City programs, practices, and procedures. The mission of OIG is to promote economy, efficiency, and effectiveness in City services and programs. The goal of OIG is to detect fraud and eliminate and prevent waste and abuse of authority in City services and programs.

OIG is divided into five sections: investigations, audit and program review, general counsel, chief of staff/operations, and public safety. The investigations section conducts administrative and criminal investigations, determines whether a case is sustained, and recommends appropriate discipline. The audit and program review section is responsible for conducting the audit and program reviews of various City programs and operations and for providing recommendations to City departments on ways to improve their programs. The general counsel section provides legal guidance to the other sections and provides hiring oversight for the City. The chief of staff/operations section manages day-to-day administrative functions for OIG, including budgeting, financial management, human resources, communications, technology, and data analytics. The public safety section is a new section that currently no has employees. The operations/chief of staff section has one bargaining unit employee.

Keyla Vazquez is the Supervisor of Personnel Services for OIG. She has held this position since 2009. Prior to her current position, Vazquez was employed as a staff assistant for OIG. The

title of staff assistant was reclassified to Supervisor of Personnel Services in 2009. As staff assistant, Vazquez's duties were the same as her current duties.

Vasquez reports to Karen Randolph, who is the deputy inspector general and chief of staff for OIG. She has held this position since January 2015. As deputy inspector general, Randolph is the head of the operations section of OIG and oversees the day-to-day administrative functions for the section. As chief of staff, she handles the operational components of the office and projects assigned to her directly by the inspector general.

Vasquez is responsible for personnel matters and ensuring that OIG adheres to the City's hiring plan. Vasquez is responsible for scheduling applicant interviews. She is also responsible for "onboarding" new employees: reviewing employee benefits with new hires and ensuring that new hires are added to and adhering to the City's timekeeping system. Vasquez is also responsible for resolving any employee issues regarding pay, leave, or timekeeping. In addition, Vasquez conducts exit interviews for employees.

Vasquez is also responsible for answering questions from managers regarding employee performance evaluations. She informs managers when performance evaluations are due, collects the completed evaluations, and places them in the appropriate files. If a manager wants to place an employee on a performance improvement plan, the manager notifies Vasquez. Vasquez then gives the manager the appropriate form and explains the performance improvement process to the manager. Discipline can result from noncompliance with a performance improvement plan.

Vasquez is also responsible for monitoring the City's indebtedness database which tracks employees' debt owed to the City. The City maintains an indebtedness program which requires that employees owe no debt to the City, for example, unpaid parking tickets or water bills. If an employee owes debt, Vasquez notifies the employee. The employee is then given a certain amount of time to resolve the debt or enter into a repayment plan with the City. Debts owed by employees are posted to the City's publicly accessible website.

Vasquez also serves as the Equal Employment Opportunity (EEO) liaison for OIG. As the EEO liaison, Vasquez is responsible for reviewing with new employees the City's procedures for filing EEO grievances and complaints. Vasquez is also the point of contact for the City's department of human resources for any EEO complaints. Managers contact Vasquez if they have EEO issues. In the case of an EEO complaint or issue, Vasquez works with the individuals charged with investigating the complaint or issue. If the department of human resources determines that

they are not going to pursue an EEO complaint or issue, they notify Vasquez. Vasquez is also responsible for notifying managers of the results of an investigation. Since Vasquez has been employed in her position, no discipline has resulted from an EEO complaint.

Vasquez also serves as the workplace violence liaison for OIG. Vasquez ensures that OIG maintains a workplace violence policy. If employees have any workplace violence issues or complaints, they report those to Vasquez. Vasquez coordinates and investigates workplace violence claims. If the City's department of human resources determines that they are not going to pursue a workplace violence complaint, they notify Vasquez. Vasquez is also responsible for notifying managers of the results of an investigation. Since Vasquez has been employed in her position, no discipline has resulted from a workplace violence complaint.

For employee discipline, Vasquez is responsible for processing the appropriate paperwork. Approximately one year ago, Randolph asked Vasquez what steps Randolph should take to discipline a non-bargaining unit employee for misuse of City resources. Vasquez advised Randolph of the appropriate level of discipline. The employee was then issued a three-day suspension without pay. Vasquez was responsible for processing the suspension. Vasquez was aware that the employee would be disciplined before the employee was issued the suspension.

If a bargaining unit employee in OIG files a union grievance, it goes to Vasquez. However, no grievances have been filed since Vasquez began her position.

D. Chicago Fire Department

The Chicago Fire Department is divided into several divisions including the bureau of administration, bureau of operations, bureau of logistics, equipment support, and bureau of fire prevention. The division of human resources is within the bureau of administration. All personnel records for fire department employees are maintained in the human resources division including disciplinary records.

The Fire Department has approximately 100 civilian employees. Approximately 50% of those employees are represented by the Union. The fire department also has sworn employees who are represented by another union.

JoAnn McNeil is the Supervisor of Personnel Services for the Chicago Fire Department's division of human resources. She has held this position since January 2013. Four employees report to McNeil: two administrative services officers, a staff assistant, and an administrative

assistant. McNeil oversaw the hiring process for one of the administrative services officers.

McNeil reports directly to Adrienne Bryant, the deputy commissioner for the division of human resources. Bryant reports to Anthony Vasquez, the deputy fire commissioner for the division of human resources. Loretta Flores, the assistant director of personnel for the division of human resources, assumes McNeil's duties when McNeil is absent. Flores has held the position of assistant director of personnel since September 2013. Prior to that, Flores was an administrative services officer II in the City Clerk's office.

McNeil is responsible for overseeing the Fire Department's hiring process. McNeil identifies vacancies, ensures that job descriptions are updated, and arranges applicant interviews. She also schedules background checks, drug and alcohol testing, and fingerprinting for applicants who have received conditional offers of employment. If an applicant passes the background check and drug and alcohol testing, McNeil is notified. Since McNeil has been employed, all applicants have passed the background check and drug and alcohol testing.

McNeil also oversees the City's indebtedness program for the fire department. McNeil receives reports from the City's finance department, which include a list of employees that owe debt to the City. Once McNeil receives the report, she notifies employees if they have debts. Employees who do not satisfy their debts are subject to discipline. If an employee does not satisfy their debt, McNeil forwards the information to the fire department's labor division which is responsible for reviewing the matter and issuing discipline.

McNeil is also responsible for providing advice and direction to managers from all divisions on how to proceed with progressive discipline. In 2016, McNeil received an inquiry from a chief in the fire investigation division concerning the potential discipline of an administrative assistant represented by the Union. McNeil explained to the chief that the appropriate level of progressive discipline would be a verbal consultation.

E. Department of Business Affairs and Consumer Protection

The City's Department of Business Affairs and Consumer Protection ("BACP") performs several functions: business licensing, regulation, and discipline; managing three cable television public access stations; encouraging and developing entrepreneurs and businesses; licensing and inspection of public vehicles; investigating businesses for compliance with the City code; investigating consumer complaints; and compliance and enforcement. BACP is divided into several divisions: administration and finance, public vehicle licensing and permits, cable, business

licensing, local liquor control commission, compliance enforcement, prosecution and investigations, chief small business officer, communications, and intergovernmental affairs. BACP was created in 2009 by the merger of various City departments.

BACP has approximately 190 employees, 90 to 100 of which are bargaining unit employees. The majority of the bargaining unit employees are represented by the Union.

Tamara Harding is the Supervisor of Personnel Services for BACP. She has held the position since February or March 2016. Prior to holding this position, Harding was an administrative services officer. Harding has one subordinate, Ruth Perez.

Harding reports directly to Ken Meyer, the first deputy commissioner of BACP. Meyer oversees all BACP divisions and manages BACP's day-to-day operations. Meyer reports directly to the commissioner of BACP, Maria Lapacek.

Barbara Gressel is the deputy commissioner for the prosecution and investigations division of BACP and has held the position for three years. Prior to becoming deputy commissioner, Gressel served as acting deputy commissioner and assistant commissioner. She was hired by the City's Department of Consumer Services in 1999. The Department of Consumer Services was one of the departments that merged with several others to create BACP in 2009. Gressel supervises a team of attorneys, law clerks, and administrative staff who oversee license discipline. Gressel is currently the labor relations liaison for BACP.

1. Confidential

Harding handles payroll for BACP. For example, if an employee is owed back pay, Harding works with the finance department to ensure that the employee is paid.

Harding is the liaison with the City's department of human resources for workplace violence, sexual harassment, EEO, and FMLA issues. For workplace violence or sexual harassment complaints, human resources contacts Harding and instructs her to ensure that all records are maintained. Human resources also directs Harding to interview the supervisor or manager and the employees involved in the incident. Harding is responsible for filling out forms provided by human resources and then forwarding the completed forms to Gressel.

Gressel and the assistant commissioner are currently training Harding to handle pre-disciplinary meetings with BACP employees. Harding will be responsible for drafting and sending the notice of the pre-disciplinary meeting to the employee. She will also be responsible for drafting the notice of discipline, meeting with the commissioner to discuss any findings, and issuing the

notice of discipline to the employee. Currently, Harding has been participating in the disciplinary process. When Gressel receives information related to a request for discipline from a manager, Gressel forwards that information with Harding. Recently, a supervisor was found sleeping in his office. Gressel forwarded the information to Harding. Harding then recommended that the supervisor be disciplined. Gressel conducted the disciplinary meeting. Harding did not attend the meeting because she was out of the office that day. The commissioner ultimately issued a verbal warning to the supervisor, which was documented in the supervisor's personnel file.

Harding also attends labor-management meetings, where issues between labor and management are discussed. At a recent labor-management meeting, Harding brought up the issue of flex time because managers had been contacting Harding regarding the use of flex time.

The City maintains a citywide internal grievance tracking system. Gressel, the assistant commissioner, and Harding have access to the system. They are all responsible for updating the database and keeping the department of law's labor division aware of grievances.

During the last round of contract negotiations with AFSCME, Gressel attended an internal City meeting along with labor liaisons from other City departments. The City had requested that each department provide suggestions and information for use in the negotiation process to the labor negotiator and the labor division. Gressel also attended a couple bargaining sessions. In addition, she provided input on proposals. For example, Gressel recommended changes to grievance forms. Gressel's recommendation was not adopted. For the next round of negotiations, Harding will be the labor liaison for BACP and will assume Gressel's duties.

2. Supervisor

Harding's subordinate Perez is a timekeeper for BACP. Perez is responsible for ensuring that employees within BACP are paid accurately. Harding assigns duties to Perez. Harding is also responsible for ensuring that Perez is completing her duties appropriately. For example, Harding approves timekeeper edits that Perez completes. Harding also approves Perez's time off requests. In addition, Harding approves Perez's requests to work early or late.

Harding participates in the hiring process for BACP. The City's department of human resources determines which applicants are selected for interviews. Harding is then responsible for contacting the selected applicants, scheduling the interviews, and attending the interviews. After the interviews, Harding along with representatives from human resources and two to four

employees from BACP meet to determine which candidate will be offered the position.

Harding completes twice-yearly performance evaluations for Perez. Performance evaluations are kept in employees' personnel files. A negative performance evaluation can be used to justify withholding a scheduled wage increase to an employee. Scheduled wage increases must be approved by the employee's supervisor. In addition, Harding has the authority to issue discipline to Perez.

Gressel did not testify to the amount of time that Harding spends on each of the alleged supervisory functions.

3. Manager

Harding works with the first deputy commissioner to develop BACP's hiring plan. The City maintains a program called "Salvage." When an employee leaves BACP, the department does not attempt to fill the position immediately. Rather, BACP is expected to "salvage" a certain number of positions and salaries each year. Harding is responsible for reviewing vacancies and determining which vacancies are the most critical positions. Harding also works directly with the first deputy of BACP and the finance director on developing BACP's budget.

Harding developed BACP's supervisor training with recommendations from Gressel. Harding has also been communicating with the commissioner regarding changes to BACP's workplace rules. Harding will be responsible for drafting and submitting the workplace rules to the commissioner for approval.

F. Department of Procurement Services

The Department of Procurement Services is responsible for handling contracting opportunities, receiving bids, and processing and awarding contracts for 33 City departments. The Department of Procurement Services is divided into several units, including certification, compliance, construction, aviation, finance/IT/salvage, shared services, human resources, public information, and legal. The Department of Procurement Services is headed by a chief procurement officer. The public information and legal units report directly to the chief procurement officer. The other units, including human resources, report directly to Richard Butler, the first deputy procurement officer. Butler has held this position for eight years. Butler is responsible for overseeing the various units and ensuring that work is completed by those units.

The Department of Procurement Services has approximately 80 employees.

Approximately, 20 percent of the employees are represented by the Union.

Maureen Volini is the Supervisor of Personnel Services for the City's Department of Procurement Services and has held this position for approximately four years. Volini's position is within the human resources unit. Volini reports directly to Butler. Volini is responsible for maintaining personnel files for employees in the Department of Procurement Services. In some cases, the personnel files contain disciplinary records. Volini is also responsible for handling payroll and managing the timekeeping system.

Volini is also involved in the hiring process for the department. Volini is responsible for posting positions, testing employees, and scheduling interviews. However, Volini does not conduct interviews. Volini meets with new employees to review the City's benefits, policies, and procedures.

Volini is the labor liaison with the City's legal department. In addition, she coordinates with the City's department of human resources. Volini is also responsible for receiving workplace violence complaints.

The Department of Procurement Services follows a progressive discipline system. Volini receives inquiries from managers with respect to the disciplinary process. Butler also receives inquiries from managers regarding discipline. However, if Butler receives an inquiry, he directs the individual to speak with Volini. Volini is responsible for informing the managers of the disciplinary process and the procedure for disciplining an employee. For example, a non-bargaining unit employee had a speeding and tollway violation. The violations were sent to Butler. Butler then asked the employee's manager for more information regarding the incident. The manager informed Butler that the manager was going to work with Volini on writing up the employee, and the employee was written up.

If a deputy or manager chooses to discipline an employee, the matter is brought to Volini. Volini is responsible for issuing the notice of the pre-disciplinary meeting to the affected employee, scheduling the meeting, and attending the meeting. In addition, if an employee is going to be disciplined, Volini sends the affected employee the notice of discipline. Further, if an employee is terminated, Volini is present for the meeting where the employee is terminated.

Volini is aware of discipline before an employee is made aware of it. For example, an employee represented by the Union received progressive discipline for tardiness. Volini scheduled the pre-disciplinary meeting, attended the meeting, and informed the employee why she was being

disciplined.

In late 2014, the chief procurement officer had a meeting with Butler and Volini in which the chief procurement officer informed Butler and Volini that they should not contact the union directly for union-related issues. The chief procurement officer also informed Butler and Volini that for any union-related issues, Butler and Volini should contact the Department of Procurement's legal unit instead of the City's labor relations department. Previously, when an employee came to Butler or Volini, they would contact labor relations directly.

Butler is not aware of any union grievances that have been filed since he began his position. However, according to Butler, if union grievances were filed in the future, Volini would be "integrally involved" in those.

IV. DISCUSSION AND ANALYSIS

The first issue is whether the petitioned-for employees are confidential employees within the meaning of Section 3(c) of the Act, and therefore excluded from the Act's coverage.

Section 3(c) of the Act defines confidential employee as follows:

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.

5 ILCS 315/3(c). Confidential employees are not considered "public employees" or "employees" for purposes of the Act, and therefore they are excluded from the Act's coverage. "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 of the Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, 153 Ill. 2d 508, 523 (1992).

The Board has formulated three tests to determine whether an employee is confidential: the authorized access test, the labor-nexus test, and the reasonable expectations test.³ Id. If an employee meets any of the tests, the employee is deemed confidential. Id. The employer bears the burden of proving that the petitioned-for employees are excluded from the Act's coverage.

³ Here, the reasonable expectations test does not apply because there is an existing collective bargaining unit. See Chief Judge, 153 Ill. 2d at 528.

Health & Hosp. Sys. of Cnty. of Cook v. Ill. Labor Relations Bd., Local Panel, 2015 IL App (1st) 150794, ¶ 51; Cnty. of Cook v. Ill. Labor Relations Bd., Local Panel, 369 Ill. App. 3d 112, 123 (1st Dist. 2006).

The City contends that all petitioned-for employees are confidential employees under the authorized access test.

The petitioned-for employees satisfy the authorized access test because, in the regular course of their duties, they have advanced knowledge of contemplated disciplinary action.

Under the authorized access test, an employee is confidential if, in the regular course of his or her duties, he or she has authorized access to information concerning matters specifically related to the collective bargaining process between labor and management. Chief Judge, 153 Ill. 2d at 523. The access must be authorized, and the information must specifically relate to collective bargaining. Health & Hosp. Sys. of Cnty. of Cook, 2015 IL App (1st) 150794, ¶ 67. Such information includes the employer's strategy in dealing with an organizational campaign, actual collective bargaining proposals, and information relating to matters concerning contract administration. Id.; Dep't of Central Mgmt. Servs. (Dep't of State Police) v. Ill. Labor Relations Bd., State Panel, 2012 IL App (4th) 110356, ¶ 27; City of Evanston v. State Labor Relations Bd., 227 Ill. App. 3d 955, 978 (1st Dist. 1992). Mere access to personnel files and information concerning the general workings of a department, general personnel matters, or statistical information upon which an employer's labor relations policy is based, even if that information is confidential, is insufficient to establish confidential status. Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31, 218 Ill. App. 3d 682, 699 (1991); City of Chicago, 25 PERI ¶ 2 (IL LRB-LP 2009); Dep't of Cent. Mgmt. Servs., 25 PERI ¶ 5 (IL LRB-SP 2009). Although this information may be relevant to the collective bargaining process, it does not reveal bargaining strategies and is therefore not confidential within the meaning of the Act. Health & Hosp. Sys. of Cnty. of Cook, 2015 IL App (1st) 150794, ¶ 75; Chief Judge, 218 Ill. App. 3d at 702 (employees' access to confidential information "which may be used in but is not related to labor relations does not indicate that they are confidential employees"); Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 v. Ill. Labor Relations Bd., 2014 IL App (1st) 132455, ¶ 48.

However, individuals who have advanced notice or prior knowledge of contemplated disciplinary action against an employee are confidential employees. City of Chicago Office of

Inspector Gen., 31 PERI ¶ 6 (IL LRB-LP 2014) (investigators who received and reviewed draft charges from the employer's legal department before the employer issued discipline had advance knowledge of contemplated discipline); City of Rolling Meadows, 34 PERI ¶ 116 (IL LRB-SP 2017) (employee who had access to disciplinary documents prior to issuance was confidential under the authorized access test); State of Ill., Dep't of Central Mgmt. Servs., 30 PERI ¶ 38 (IL LRB-SP 2013) (employee with prior knowledge of contemplated discipline was a confidential employee).

Here, the petitioned-for employees satisfy the authorized access test because they regularly have advanced knowledge of contemplated disciplinary action. Araszewski has advanced knowledge of contemplated disciplinary action because she is responsible for responding to inquiries from managers who have questions regarding employee discipline, and she has helped a manager to determine the appropriate level of discipline for an employee. Vasquez has advanced knowledge of contemplated discipline because she processes the appropriate paperwork for employee discipline, advised her superior on the appropriate level of discipline, and was made aware that an employee would be disciplined before the employee was issued a suspension. McNeil has advanced knowledge of contemplated discipline because she is responsible for providing advice and direction to managers on how to proceed with progressive discipline, and she has received an inquiry from a fire chief concerning potential discipline, wherein she explained to the fire chief that the appropriate level of progressive discipline would be a verbal consultation. Harding has advanced knowledge of contemplated discipline because when Gressel receives a request for discipline from a manager, Gressel sends that information to Harding. Volini has advanced knowledge of contemplated discipline because she is responsible for informing managers of the disciplinary process, issuing the notice of the pre-disciplinary meeting, and attending the meeting. Furthermore, it is immaterial if the employees who may receive discipline are not bargaining unit members because there is no evidence that the petitioned-for employees would be walled off from information regarding one group of employees. See State of Ill., Dep't of Central Mgmt. Servs., 30 PERI ¶ 38 ("It hardly matters whether the particular employee already disciplined was a member of the bargaining unit where there is no evidence that in the normal course of his duties [the petitioned-for employee] would be walled off from information regarding

one particular group of employees and not other groups.”)

The petitioned-for employees authorized access to discipline is also in the regular course of their duties because the Employer is likely to grant them the same access to discipline in the future. The Supervisor of Personnel Services’ job description includes as an essential duty: “advis[ing] departmental managers on initiating, responding to, and resolving issues relating to disciplinary action procedures.” State of Ill., Dep’t of Central Mgmt. Servs., 29 PERI ¶ 12 (IL LRB-SP 2012) (employee's access to information was not ad hoc where her position and current duties indicated that she would maintain such authorized access and perform confidential assistance again); State of Ill., Dep’t of Central Mgmt. Servs., (Dep’t of Human Servs.), 28 PERI ¶ 16 (IL LRB-LP 2011) (drawing a distinction between infrequent but normal tasks and ad hoc assignments); City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010) (although a task is performed only occasionally does not mean that it is not performed in the regular course of duties). As such, the petitioned-for employees are confidential employees under the authorized access test.

In sum, the Employer established that the petitioned-for employees are confidential employees within the meaning of the Act.

Since I have determined that the petitioned-for employees are confidential employees under the authorized access test and therefore excluded from the Act’s coverage, it is unnecessary to determine whether the petitioned-for employees are also confidential employees under the labor-nexus test. Likewise, it is unnecessary to determine whether the Supervisor of Personnel Services in BACP is also a supervisor or managerial employee within the meaning of the Act.

V. CONCLUSIONS OF LAW

The petitioned-for employees are confidential employees within the meaning of Section 3(c) of the Act.

VI. RECOMMENDED ORDER

The petition is dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include

cross-exceptions to any portion of the recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 29th day of November, 2018

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

/s/ Michelle N. Owen

**Michelle N. Owen
Administrative Law Judge**