

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

International Brotherhood of Teamsters,)	
Local 700,)	
)	
Petitioner,)	
)	
and)	Case No. L-RC-18-021
)	
Chicago Transit Authority,)	
)	
Respondents.)	

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

On May 14, 2019, Administrative Law Judge (ALJ) Donald Anderson issued a Recommended Decision and Order (RDO) in the above-referenced case, granting a majority interest petition filed by the International Brotherhood of Teamsters, Local 700 (Petitioner or Local 700). Local 700 seeks to represent employees working in the classification of Project Manager-Construction (Project Manager) at the Chicago Transit Authority (Respondent or CTA). The CTA objected to the petition asserting that these employees are managerial employees excluded from coverage of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), as amended (Act). The CTA timely filed exceptions to which Local 700 filed responses along with cross-exceptions. The CTA in turn responded to those cross-exceptions.

After reviewing the RDO, the record, exceptions, cross-exception, and responses thereto, we reject the CTA’s exceptions and accept the ALJ’s recommendations contained in the RDO for the following reasons:

ALJ's Findings

The employees at issue—Charles Freeman, Mario Battle, Katrina Denny, Abdin Carrillo, Mike Ivanovic, and Nicolas Tuleja—are Project Managers working in the CTA's Capital Construction Division within the Department of Infrastructure. The Capital Construction Division is responsible for the oversight of CTA construction projects and is headed by the Vice President of Construction. Reporting to the Vice President of Construction are three General Managers of Construction. Each Project Manager reports to one of the three General Managers.

ALJ Anderson concluded the CTA failed to establish that the Project Managers fell within the managerial employee exclusion pursuant to Section 3(j) of the Act. Applying the traditional two-part managerial test, he found there was insufficient evidence demonstrating that the Program Managers are (1) predominantly engaged in executive and management functions and (2) responsible for directing the effectuation of management policies and practices.

Regarding the first part of the test, the ALJ found the Project Managers did not engage in executive and management functions because they served as part of a team, playing a subordinate and advisory role, and thus lacked the requisite authority and discretion in carrying out their duties. Although noting the Project Manager exercise discretion in some instances, the ALJ determined there was insufficient evidence demonstrating such instances, quantitatively or qualitatively, predominated the Project Managers' functions. The ALJ determined the Project Managers did not satisfy the second part of the test because the evidence showed that their recommendations on major policy issues were not generally accepted.

CTA's Exceptions

The CTA filed twenty-two exceptions in support of its claim that ALJ erred in concluding the Project Managers failed to meet the two-part managerial test. Regarding the ALJ's findings as

to the first part of the test, the CTA claims the ALJ: (1) disregarded CTA's evidence demonstrating the Project Managers are predominantly engaged in executive and management functions; (2) improperly relied on the testimony of Nicholas Tuleja; (3) improperly relied on Board precedent in State of Illinois, Dep't of Central Mgmt Servs., 20 PERI ¶ 18 (IL LRB-SP 2004); (4) improperly distinguished City of Chicago, 35 PERI ¶ 12 (ILLRB-LP 2018); and (5) incorrectly determined Project Managers are public employees because they collaborate and work as part of a team. For the ALJ's determinations on the second part, the CTA claims the ALJ improperly downplayed the significance of the acceptance of the Project Managers' recommendations on the day-to-day operations.

The CTA's exceptions, however, fail to demonstrate error in the ALJ's material findings analysis, or conclusions, warranting rejection of the RDO. The portions of the record the CTA identifies in support of its contentions do not outweigh the evidence relied on by the ALJ and as such, do not compel rejection of his recommendations regarding both parts of the managerial test. Likewise, the CTA's contention that the ALJ incorrectly relied on State of Illinois, Dep't of Central Mgmt Servs., 20 PERI ¶ 18 (IL LRB-SP 2004) and improperly distinguished City of Chicago, 35 PERI ¶ 12 (ILLRB-LP 2018) is unavailing for we find each case confirms the ALJ was correct in his application of them to the facts in this case.

The CTA's exceptions concerning the weight given to Tuleja's testimony and the ALJ's findings on the Project Managers' collaboration do not compel rejection of the ALJ's recommendations in that regard. Local 700 filed cross-exceptions regarding the ALJ's reluctance in finding Tuleja's findings controlling, contending that the ALJ should not have so wavered. The Board need not consider this cross-exceptions for the ALJ did in effect give his testimony

controlling weight. Even if these exceptions had merit, they have no bearing on the ALJ's determinations on the second part of the managerial test.

Regarding the second part of the managerial test, the CTA contends the ALJ erred in discounting the Project Managers' recommendations in day-to-day operational issues such as allocation of cashflows, contract modifications, avoidance of project delays, personnel decisions, and evaluation of third-party contractors. The CTA asserts such recommendations are almost always accepted by the General Managers. These contentions, however, fail to demonstrate any flaw in the ALJ's analysis. The ALJ considered the effectiveness of Project Manager's recommendations on day-to-day operational issues but found their recommendations on major policy issues affecting the mission of the CTA Construction Division were not as readily accepted. Thus, the ALJ concluded the CTA failed to establish that the Project Managers satisfy the second part of the managerial test.

The CTA's exception regarding footnote 5 of the RDO, however, does have merit. The footnote could be misconstrued as an opinion on the managerial status of the Senior Project Manager classification because it is unclear whether the "they" in the last sentence of footnote 5 refers to Senior Project Managers or the Project Managers at issue in this case. Because the appearance of the footnote has the potential to create confusion due to this reference, and the findings contained in the footnote are immaterial to the ALJ's determinations with respect to the Project Managers at issue, we decline to adopt footnote 5 on page 27 of the RDO.

For the above reasons, we accept the ALJ's recommendations and adopt the RDO without footnote 5 on page 27, as a decision of the Board. Accordingly, we direct the Executive Director to issue a certification consistent with the description included in the RDO.

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 July 9, 2019; written decision approved at the Local Panel's public meeting in Chicago, Illinois on August 13, 2019, and issued on August 13, 2019.

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Employer.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On or about March 9, 2018, International Brotherhood of Teamsters, Local 700 (“Local 700”, “the Union”, or the “Petitioner”) filed a majority interest representation/certification petition in Case No. L-RC-18-021 (the “Petition”) with the Local Panel of the Illinois Labor Relations Board (the “Board”) seeking certification as the exclusive representative for collective bargaining of “[a]ll full-time employees in the classification of Project Manager-Construction at the Chicago Transit Authority.” On or about April 4, 2018, the Chicago Transit Authority (“the CTA” or “the Employer”) filed an Objection to the Petition on the asserted ground that the employees covered by the classification of Project Manager-Construction (“project managers”) in the CTA’s Capital Construction Division are managerial employees within the meaning of Section 3(j) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), as amended (“the Act”).

The requisite showing of interest having been found in accordance with Section 1210.80 of the Board’s rules, an Order Scheduling Hearing on the issues raised by the Employer’s Objection was issued on May 3, 2018, and a hearing was held pursuant to the scheduling order on July 25 and 26, 2018, before Administrative Law Judge (“ALJ”) Anna Hamburg-Gal. Both

parties appeared at the hearing and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Written briefs were timely filed by both parties. Inasmuch as Section 1210.107(a) of the Board's rules provide that a representation hearing is non-adversarial, the undersigned was assigned to issue the Recommended Decision and Order ("RDDO") in this case. Accordingly, based on the testimony, evidence, and arguments proffered 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. At all times material, the CTA has been a public employer within the meaning of Section 3(o) of the Act.
- B. At all times material, the CTA has been subject to the jurisdiction of the Board and its Local Panel pursuant to Section 5(b) of the Act.
- C. International Brotherhood of Teamsters Local 700 is a labor organization within the meaning of Section 3(i) of the Act and an exclusive representative within the meaning of Section 3(f) of the Act.
- D. The Local Panel of the Board has jurisdiction to hear and decide this matter and issue a decision on the merits.
- E. As of July 26, 2018, the following individuals were actively employed by the CTA in the petitioned-for classification of Project Manager-Construction:
Charles Freeman; Mario Battle; Katrina Denny; Abdin Carrillo; Mike Ivanovic;
and Nicholas Tuleja.

II. ISSUES AND CONTENTIONS

The issue in this case is whether CTA project managers are managerial employees within the meaning of Section 3(j) of the Act. The Employer contends that the project managers meet the legal tests for exclusion from collective bargaining as managerial employees because “[t]he project manager is generally responsible for the successful implementation and management of all capital construction projects from planning through closeout.” Among the responsibilities of the project manager during the various phases of a CTA construction project, the Employer asserts, are 1) active involvement with the design phase of the project; 2) involvement with the bid phase, wherein the project is submitted for construction bids by private contractors; 3) management of the construction phase, during which actual construction work is performed in accordance with the construction contract between the CTA and the general contractor; 4) responsibility for resolving issues that arise during daily operations; 5) approval of contractor invoices; 6) evaluation of third party contractors; and 7) otherwise playing a pivotal role in the accomplishment of the CTA’s construction projects.

The Petitioner contends that the project managers are not managerial employees because they are not engaged predominantly in executive and management functions, including those functions involved in 1) the selection of construction managers and designers of record; 2) reviewing and compiling bid documents; 3) “managing” project personnel; 4) initiating contract changes; 5) evaluating contractors; 6) approving invoices; or 7) reporting to upper level CTA management. In addition, the Petitioner contends, CTA project managers do not direct the implementation of management policies and procedures.

III. FINDINGS OF FACT

The CTA Capital Construction Process

The Chicago Transit Authority is responsible for providing public transportation, by bus and rail service, for the City of Chicago and certain surrounding areas. The Infrastructure Department of the CTA is responsible for the capital development program and the projects (other than vehicle projects) associated with that program. The Infrastructure Department also is responsible for maintenance and in-house construction projects involving track structure, signal systems, and traction power. The Capital Construction Division of the Infrastructure Department is responsible for oversight of the CTA's construction projects, including large-scale facilities and right-of-way construction projects. The projects range from painting to lighting or signal system upgrades to the \$280 million reconstruction of the 95th Street terminal that was underway at the time of the hearing.

Within the CTA, oversight of the capital process, including construction programs, is the responsibility of the Vice President of Infrastructure. The Capital Construction Division is headed by the Vice President of Construction, who reports to the Vice President of Infrastructure. Under the Vice President of Construction are three general managers of Construction. Each of the project managers whose work is the subject of this case reports to one of the general managers.

Other internal organizations or functions that are relevant to the construction process are the Purchasing Department, the Engineering Department headed by the CTA's Chief Engineer, the Safety Department, the Quality Department, the Law Department, and the Disadvantaged Business Enterprise (DBE) Department. All have roles to play in the process of the budgeting, design, bidding, and management of CTA construction projects.

Once it has been determined that a construction project will be undertaken by the CTA, a general manager is assigned to the project. From this point forward, there are three phases to a construction project: the planning phase, the design phase, and the construction phase.

The planning phase involves determinations as to the scope of the work to be performed, the budget for the project, and the impact of the project on the public. The project manager¹ is typically assigned during this phase, but not usually until a budget has been developed. After the general manager and project manager have been assigned, a designer of record will be selected to design the project. The designer is selected with input from an evaluation team consisting of the vice president of construction, the general manager, and the project manager. The project manager, in addition to giving his evaluation, is responsible for putting together the evaluations of the team members, along with questions and a weighting system for the evaluations, and then forwarding the evaluations to the Purchasing Department, which will make the decision concerning the selection of the designer of record.

Once the designer of record has been selected, and the design process has begun, the bidding process begins. The construction work involved in most construction projects is performed by qualified private sector contractors who bid for the work. Two types of bids were discussed at the hearing – “IFB” (“issued for bid”) and “RFP” (“request for proposal”). IFB bids are utilized when the major consideration is price; an RFP process is used when there are considerations other than price. Most CTA construction projects are IFB projects.

In aid of the bidding process, project managers prepare a bid package for bidders, including Attachment H, a template-based document that specifies the types of work to be

¹ The CTA also has a classification called “Senior Project Manager,” a classification that is outside the scope of the petition. The senior project managers identified at the hearing were Pedro Hurtado, Bill Policyk, Grace Ohs, and Teresa Lorente, who was no longer employed by the CTA as of the time of the hearing. There was also reference to an employee named Katie Bell, but it is unclear as to what her job title is.

completed, with associated costs, Attachment O, which deals with allowances, and Attachment I, which is a summary of the scope of the work to be performed. Project managers also assist with obtaining, reviewing, and producing bid documents to the Purchasing Department.

Once bids have been received, the proposals are evaluated by the Vice President of Construction, the general manager, and the project manager, and these evaluations are then sent to the Purchasing Department, which determines the winning bidder. Each of these evaluations is given equal weight. Once the winning bidder has been notified and a contract governing the performance of the work has been drawn up and signed, the Purchasing Department issues a notice to proceed letter to notify the winning contractor of its right to proceed with the performance of the work called for by the contract.

Upon issuance of a notice to proceed letter, the project manager schedules a “kick-off meeting” to introduce the winning bid contractor to the CTA team that will be part of the project and also to introduce the contractor to other CTA departments that may be involved in the project at some point and to some extent. The project manager determines, based on the complexity of the project, who will be at the meeting. After the meeting, the contractor begins submitting required contract commitments.

In addition to the general contractor, a construction manager is selected by the Purchasing Department by means of the bid process. The construction manager is an outside entity that functions on behalf of the CTA as on-site manager and to provide project control; for safety reasons, there must always be a CTA representative on site, and the CTA does not have sufficient personnel to provide a continuing on-site presence at every construction site, so an outside contractor is selected to provide this presence.

Also involved in the construction process is the program manager. The program manager is an in-house personnel group² that helps in putting together estimates, packaging bids, and scheduling. The program manager also assists the project manager in putting together the various components of the construction project.

During the construction phase, the project manager serves as the gateway for information flow between the general contractor and CTA upper management. The construction manager, being on-scene, provides the project manager with information regarding the work being done on a daily basis and identifies issues that may arise on the job. Design issues may be referred to the designer of record, while construction or budget issues may be resolved by the project manager or referred to upper management, including the responsible general manager, the Vice President of Construction, and the Chief Engineer.

The construction manager, the project manager, and the general contractor generally have weekly meetings to review progress, upcoming projects or stages of the construction process, and possible issues that could arise. In between meetings, problems or issues on the job generally are communicated first to the construction manager, then to the project manager, and thereafter, if needed, to upper management, other CTA departments, or the designer of record.

As work is done on the project, draft invoices are prepared by the general contractor, who sends the draft invoice to the construction manager. The construction manager reviews the draft invoice with the project manager. If the work reflected on the draft invoice matches the budget, the contractor is told to submit a formal invoice. The formal invoice then goes to the project manager again; if it continues to be within budget, the project manager then forwards the invoice to the general manager. The general manager will not approve any invoice that is not initialed by

² The program manager is a group; an individual member of the program manager group is called the “oversight manager”.

the project manager; however, the general manager can overrule the project manager's recommendation concerning payment of the invoice.

During the course of construction, changes may be requested by the general contractor. The project manager has the authority to approve changes that are within the budget, but anything that is outside the scope of the budget requires a change order. A change order is requested by the general contractor because of some unanticipated cost or development that is outside the scope of the budget. The change order is forwarded to the construction manager, who reviews it with the project manager. The project manager will then forward the proposed change order to the general manager along with his or her recommendation as to whether it should be approved or rejected. The project manager does not have the authority to approve change orders on his or her own.

Also during the course of construction, errors may be made. Construction errors may be self-reported by the general contractor or caught by field engineers (or field inspectors³) employed by the CTA. Construction errors are reported to the construction manager, who reviews them with the project manager. The project manager will then report the errors, along with a recommendation as to whether the contractor should be required to take corrective action. The project manager does not have the authority to order the general contractor to take corrective action. Rather, the decision as to whether corrective action must be taken by the general contractor is made at the general manager level or above.

Evaluations of project contractors – the general contractor, the construction manager, and the designer of record -- are conducted approximately every six months. The project manager prepares the initial draft of the evaluation and then meets with the general manager to review the

³ Both terms were used by witnesses at the hearing to refer to individuals who apparently perform the same construction inspection function.

draft. The evaluation is a collaborative effort, with the general manager relying on, but not bound by, the project manager's input.

If an evaluation is negative, the general contractor may be required to submit a proposed corrective action plan, which the project manager will review. The project manager also reviews the proposed corrective action plan with other departments, as appropriate. Following review, the project manager may require the general contractor to revise the proposed corrective action plan prior to submission of the plan to upper management for approval. In an extreme case, a negative evaluation can affect the contractor's right to continue on the project and/or to bid on future projects.

Upon conclusion of a project, project managers are responsible for making sure that all steps are taken in the close-out process. After the primary work is completed, the construction manager will prepare a punch list of items that need to be finished or repaired. The project manager is then responsible for insuring that work is completed on all punch list items.

Position Description for the Position of Project Manager – Construction

The position description for the position of Project Manager – Construction was introduced into evidence at the hearing as Respondent's Exhibit 4. General Manager Kevin Loughnane testified that the position description fairly and accurately states the job of the project manager.

According to the position description, a project manager has the following primary responsibilities, allocated by the following percentages of time spent on the job by the project manager:

- 1) Manages and directs large scale construction projects providing oversight in terms of budget, operations, and/or staffing from conception through completion – 30%;
- 2) Manages project administration, monitoring, and reporting – 15%;
- 3) Reviews management proposals or plan to determine time and funding limitations, procedures for accomplishing projects, staffing requirements, and allotment of available resources during each project phase – 10%;
- 4) Administers decision-making process in determining allowable changes to construction contracts – 10%;
- 5) Reviews and analyzes contractor produced baseline and updated progress Critical Path Method construction schedules to ensure that construction contracts are completed according to contract requirements. Coordinates all aspects of construction closeout procedures – 10%;
- 6) Serves as project liaison with other divisions, departments, and outside agencies to negotiate and resolve project – 10%;
- 7) Consults with federal, state, and city government departments on requirements and procedures to include in project work plan – 10%;
- 8) Performs related duties as assigned – 5%.

A major heading on the position description is “Management Responsibilities.” Under this heading, the position description says that no other jobs report to the position of project manager.

Types of Construction Projects and the Project Managers Assigned to Them

Evidence was produced at the hearing concerning a wide variety of construction projects. This variety contributed to contextual differences in the responsibilities of the project managers assigned to these projects.

The largest project referenced at the hearing was the \$280 million 95th Street Terminal Improvement project. Called a “trade-work package,” this project is a different model than typically used for CTA construction projects. Rather than having separate design and construction packages, which is the usual model, the responsibility for the project is assumed by a joint venture comprised of the general contractor and the designer of record. In this type of project, everything is outsourced except the functions of the general manager and project manager. At the time of the hearing, Katrina Denny (“Denny”) was the project manager assigned to the project, reporting to General Manager Kevin Loughnane (“Loughnane”). Because of its size and complexity, the 95th Street Terminal project was the only project to which Denny was assigned.

Another construction project – or, rather, a program of construction projects – referred to at the hearing is a program called Midcon, a term for mid-level construction. A “JOC” (job order contracting) program, Midcon performs construction projects ranging from \$20 to \$30 thousand to \$10 million. At the time of the hearing, Charles Freeman (“Freeman”) was the project manager assigned to the Midcon program, also reporting to General Manager Loughnane. At first, Freeman was the only project manager assigned to the Midcon program, but he was joined a year later by Ryan Bonk (“Bonk”). The two project managers then shared responsibility for the program until Bonk left the employ of the CTA. At the highest point, there were 15 small-to-medium sized projects in the Midcon program.

Project Manager Nicholas Tuleja (“Tuleja”), who testified at the hearing, was involved at the time of the hearing in three projects: the “Your New Blue Signals” project, described as the O’Hare to Jefferson Park signal replacement project; the Broadway substation rehabilitation project; and the East Lake, Milwaukee, and Illinois substation upgrades project, also referred to as the “ELMI” project. Tuleja was assigned to the EMLI and Broadway projects at the design phase, but was taken off the Broadway project during the design phase and was reassigned to Broadway at the construction phase. The design phase of the “New Blue” project was 30% completed when he was assigned to that project. Tuleja reports to General Manager Barney Gray (“Gray”), who testified at the hearing.

Project Manager Mike Ivanovic (“Ivanovic”) reports to General Manager Loughnane on a project basis. At the time of the hearing, Ivanovic was involved with three projects, three in construction and one in design. He reported to Loughnane in regard to one of these projects, an RFP project. No evidence was introduced at the hearing concerning the work or project assignments of Project Managers Abdin Carrilo or Mario Battle.

The Problem-Solving Role of Project Managers

As might be expected with any major construction project, problems and issues arise that require solutions if the project is to be completed successfully. While the ultimate authority of the project managers to deal with these problems is the subject of argument, several noteworthy examples were cited at the hearing, including the following:

- 1) When unforeseen problems were encountered in the demolition and excavation of the yard at the 95th Street Terminal, Katrina Denny recommended a change order modification. She put together a package listing all problems, the dollar amounts involved, and how each affected the CTA. Approval of the recommendation that was initiated by the project manager

was obtained following review by multiple chains and levels, including the general manager, the designer of record, Purchasing, Law, Disadvantaged Business Enterprises, Engineering, and the President's Office.

2) When the CTA needed a plan to complete the 95th Street Terminal project on schedule, Katrina Denny came up with a solution. In order to allow more time and room for construction, Denny recommended "alternative service" for the trains that ordinarily would stop at 95th Street. The plan involved diverting the train to the Green Line to 63rd Street and Ashland Avenue, thus allowing the contractor to work 24 hours a day, 7 days a week to complete the project on schedule. Denny's recommendation was approved by upper management.

3) When Project Manager Charles Freeman observed or was informed that a quality manager appointed by the general contractor for a Midcon project was not doing his job well and demonstrated a lack of skills for the job, Freeman and the Quality Department of the CTA recommended to the general manager that the general contractor remove the quality manager from the job. After discussion, this was accomplished by means of a letter to the general contractor from the general manager requiring that this action be taken.

4) When there were contract compliance and performance issues with the general contractor on the 95th Street Terminal project, Katrina Denny withheld payment for a number of months by refusing to sign off on the invoice. The general manager will not approve an invoice unless the project manager has signed off on it.

5) Katrina Denny has made recommendations concerning the handling of cash flows on the 95th Street Terminal project, including a recommendation, approved by General Manager Loughnane, to reject the option of reallocating funds on the project.

6) When a contractor hit a steam tunnel while doing excavation work in the bus washer area at the 77th Street bus garage, Project Manager Mike Ivanovic stopped the work until a decision could be made as to how to handle the problem. Ivanovic consulted with Engineering, with Safety, and with the Architecture Department and came up with a solution. He then pushed through an amendment to the contract to facilitate the redesign of the project in order to accommodate the problem.

7) When a contractor was removing a concrete floor at a substation, pieces of pipe under the floor were broken, and it was discovered that the pipe contained asbestos. The construction manager told the contractor to stop work, but the contractor did not stop. The matter was then called to the attention of the project manager, Nicholas Tuleja. Tuleja called the contractor, who asked if something could be worked out so that the contractor could keep working. According to Tuleja, he told the contractor that he could not make that decision himself but had to ask permission. After talking with the testing engineer and the resident engineer, Tuleja called the contractor's superintendent again and told him to stop work. But the contractor did not stop.

At that point, the project manager, the resident engineer, the testing engineer, and the field inspector, apparently acting in concert, required the contractor to stop working. It was not until after the work was stopped that the project manager told the general manager of the incident and the chain of events involved. The project manager then notified everyone on the general contractor's side of the operation to advise them of the CTA's expectations in these circumstances: if there is a safety concern, all work must be stopped as soon as the field inspector tells the contractor to stop work.

8) When a torch set roofing materials on fire during a construction project at the Milwaukee substation, Project Manager Tuleja, who was off work that day, received a phone call from the Vice President for Construction and the Chief Engineer asking if Tuleja knew anything about it. When Tuleja said he did not, an investigation was launched, producing an unusual occurrence report that was sent to Tuleja and then forwarded to the general manager, the Vice President for Construction, and the Chief Engineer.

The investigation revealed that the contractor had told the field inspector that it was cleaning up and leaving for the day. The field inspector and the construction manager then left, but discovered several hours later that the contractor was still working, installing the roof. When the after-hours fire started, smoke came into the CTA building at the substation. The power control center then turned off all electrical equipment and the Chicago Fire Department came to the scene, where they were told by the contractor that there was no fire. But the substation was shut down.

Project Manager Tuleja came to the site the next morning to look at the fire damage. He met with the resident engineer and the contractor's superintendent. The project manager wanted to know who authorized the contractor to work after hours and why there was a break from CTA procedures. In this report, Tuleja made several recommendations, including:

- a) Removal of the contractor's safety manager from the worksite for failure to follow emergency response notification procedures;
- b) Removal of the contractor's general superintendent from the worksite, because "he is not trustworthy and will try to cut corners";
- c) Requirement that the contractor have a full-time, qualified superintendent at the site;

- d) Removal of the contractor's locks from two sites (Milwaukee and Illinois);
- e) Full-time supervision on site by the construction manager;
- f) Backcharge to the contractor of expenses incurred by CTA personnel as a result of the incident; and
- g) Increase the presence of the contractor's safety manager from half-time to full-time when the contractor is working on the roof.

Project Manager Tuleja testified that recommendations c), d), and e) were accepted, that recommendations a), b), and g) were denied, and that recommendation f) was deferred, and thus neither accepted nor denied.

Descriptions, Characterizations, and Examples of Project Managers' Work

General Manager Kevin Loughnane testified that the project manager exercises significant discretion on the job and that the work of the project manager is a critical component in the timely and on budget completion of CTA infrastructure and construction projects. He testified that he accepts a very high percentage (upwards of 90%) of the recommendations of the project managers reporting to him.

Chief Infrastructure Officer Carole Morey ("Morey") testified that "the project manager is responsible for overall management of the project and adherence to budget and schedule. They manage the construction manager, the contractor, as well as the designer of record, if there's an outside designer for the project." Testifying further, Morey said that "they really are the primary managers of the project. They're closest to the projects. They – they're closest to what's going on with the contractor and the construction manager, and they're really key to making sure that we can deliver a project safely, on schedule, and on budget."

Project Manager Tuleja described his function as that of a “conduit” for the gathering and relaying of information among the various CTA departments and contractors involved in a construction project. He testified that the scope of work on the project is established by the engineers and the program manager and that, while he has input into the scope of work, he does not develop it.

Tuleja testified that he provided input into the scope of work for the ELMI project by recommending that the number of field inspectors be limited to three for four locations. General Manager Barney Gray rejected the recommendation, however, and decided that the project should have four field inspectors, one at each location.

At the design stage, Tuleja testified, the designer of record takes the scope of work and prepares drawings and gives them to the project manager, who then drops the drawings on the desks of others involved in the project, such as the Chief Engineer, the structural engineer, the general manager, and the Vice President of Construction. When the designer of record develops a cost estimate, Tuleja distributes it but comments on it less than half of the time. At the initial meeting with the general manager, Chief Engineer and Vice President of Construction, he simply takes comments and puts them on a list, then participates in a group decision-making process regarding the costs estimates. Tuleja then documents the comments and sends them back to the designer. Once final changes are approved, the designer makes those changes and gives them back to Tuleja, who, after getting input from other CTA departments, passes them along to Purchasing.

Tuleja testified that he has no role in selecting the successful bidder or in awarding the bid. Once the bid is awarded, he conducts the kick-off meeting by using a template that is

populated with project information and sent to attendees. He testified that he adds nothing to the template other than to change the titles of attendees.

Following the kick-off meeting, the contractor's submittals are due to be uploaded on the project manager's website within 60 days after the start of construction. The submittals are forwarded to the construction manager and then sent to all appropriate parties. According to Tuleja, he has input into certain submittals, such as schedules and pay applications, but 90% of them are not for his review. After line-by-line feedback from the construction manager, the construction manager and the resident engineer sit down with the project manager to review the submittals before providing input and then forwarding the submittals to Finance.

After work begins, Tuleja testified, he monitors the work being done. If an issue develops, he relays the information to the general manager and the Vice President for Construction. Every month, he develops a report to the Chicago Transit Board, the governing body of the CTA. But, Tuleja said, he does not create the report; rather, he populates the existing report, adds pictures, and updates the current status of the project. He then sends the draft report to the Vice President for Construction, who makes suggestions and corrections before the report is finalized and sent back to the Vice President for presentation to the Chicago Transit Board.

With respect to the ongoing construction work, Tuleja testified that he provides updates to his general manager, Barney Gray. If an issue arises, and it is resolved between the construction manager and the contractor, then he is required to do nothing. If it is not resolved, he advises the general manager. If the issue involves an obstruction, he advises the general manager as to whether there is a cost impact. Tuleja testified that he cannot sign off on any cost item if it involves a change to the contract. However, he has discretion to authorize changes that

do not rise to the level of change orders but simply involve cash flow and cost allocation matters that do not affect the overall budget.

When a contractor needs to fix something that is not part of the contract, and the contractor requires that the CTA open the door to the facility to allow entry, Tuleja testified, the contractor submits its request to the construction manager or, in 10% of cases, to the project manager. If the request goes to the project manager, he simply phones a CTA employee on site and tells him to open the door for the contractor. No higher-level authorization is required.

The project manager's oversight over the contractor's work is limited, according to Mr. Tuleja. The project manager cannot tell the contractor how to do his work. If he is doing something unsafe, the project manager can stop it. But, he testified, any CTA employee, as well as the construction manager, the field inspector and the program manager, can stop unsafe work.

According to Project Manager Tuleja, the project manager has a role to play in the evaluation of the general contractor, the construction manager, and the designer of record. Such evaluations take place every six months. With three projects over three years, that meant he participated in 18 such evaluations. For the evaluations, Tuleja testified that there is a template in a program called e-Builder containing questions and criteria. He testified that he did not create the template and has no input into the criteria. He said that preparing the evaluation using the template takes two to four hours and that the evaluation is then submitted to General Manager Gray for his comments. Another hour is spent reviewing the general manager's comments and making corrections, and then a meeting is scheduled with the party that is the subject of the evaluation. Tuleja testified that he and Gray run through the items on the evaluation, the contractor puts together a response, together with a proposal for corrective action,

if required. The response goes to the project manager, who takes it to the general manager. The two then review the response and sign off on acceptance of the proposed corrective action.

Tuleja testified that he spends approximately 25% of his time visiting sites, 25% of his time reviewing documents, and 50% of his time processing paperwork. And he disputed the characterizations of his duties and responsibilities contained in the job description admitted into evidence as Respondent's Exhibit 4.

Box 1 of the position description (Respondent's Exhibit 4) provides that, during approximately 30% of his time, a project manager "[m]anages and directs large scale construction projects providing oversight in terms of budget, operations and/or staffing from conception through completion." Tuleja testified that he spends approximately 25% of his time in such activities, but disputed the characterizations of the work he performs. He testified that he has no involvement in administering and overseeing the project budget and that he does not administer the contract with the contractor. He testified that he reviews and verifies, but does not approve, contractor and consulting invoices. He testified that he does not authorize project changes and that he does not plan, direct, or coordinate the activities of the project. Rather, he said, the contractor plans construction activities and the majority of coordination is done through the construction manager.

Tuleja testified that he monitors time and funding parameters but does not establish work plans and staffing. He said that he simply provides staff with a prepared work plan but does not tell staff what duties they have to perform. With respect to the management of contract documents, he testified that he simply passes them along, and that he monitors and analyzes the construction program through a CTA project website.

Tuleja testified that the maintenance and presentation of contract budgets spent, committed, and obligated is the province of the program manager, not the project manager. He testified that he simply provides information to be fed into the program manager's database and that he keeps track of potential construction budget issues by means of a log that the construction manager creates, along with current and projected completion times.

Project Manager Tuleja testified that he does not put schedules together for contractors but that he asks for schedules and the contractors prepare them. He said that he does prepare project reports for management review and creates presentations to management on the status of contracts. In that regard, he updates templates for several reports that go out every month. He reviews but does not approve consultant changes, he said.

Tuleja testified that he does supervise the work done by consultants in that he sets up meetings to coordinate design work and he reviews design work and passes it along to CTA engineers. He provides, but does not create, the scope of work for designers.

Box 2 of the project manager position description states that the project manager spends approximately 15% of his time in “[m]anag[ing] project administration, monitoring, and reporting.” Tuleja testified that this activity group takes approximately 30 to 40% of his time.

Box 3 of the position description states that the project manager “[r]eviews project proposals or plan to determine time and funding limitations, procedures for accomplishing projects, staffing requirements, and allotment of available resources during each project phase.” He testified that he does review these things. He was not asked whether he reviewed the items *for the purpose of* “determining” such limitations, procedures, requirements, and allotment, although the fair inference from his other testimony is that he reviews, but does not determine, these things. With respect to the 10% of his time allocated to this category by the position

description, Tuleja testified that, on an RFP project, this category of work can occupy 90% of his time for several months, but less than 5% once bids are awarded.

Box 4 of the position description says that the project manager “[a]dministers decision-making process in determining allowable changes to construction contracts.” Tuleja testified that he spends 2-5 hours per week “meet[ing] with contractors, design consultants, and construction management firms to discuss proposed changes,” but that he “doesn’t usually” perform “time impact analysis reports for time change requests from contractors” and does not produce “contract change documentation for in-house construction projects.”

Box 5 of the position description says:

Reviews and analyzes contractor produced baseline and updated progress Critical Path production schedules to ensure that construction contracts are completed according to contract requirements. Coordinates all aspects of construction closeout procedures.

Project Manager Tuleja estimates that approximately 10-15% of his time is spent on these responsibilities.

Box 6 is the category of responsibilities that, according to Tuleja, occupies the largest single portion of his time. Box 6 says that a project manager “[s]erves as project liaison with other divisions, departments, and outside agencies to negotiate and resolve project.”

Box 7 provides that the project manager “[c]onsults with federal, state, and city governments on requirements and procedures to include in project work plan.” The job description estimates that these responsibilities will occupy 10% of a project manager’s time, while Tuleja estimates that no more than 2% of his time is occupied by these responsibilities.

IV. DISCUSSION AND ANALYSIS

Finding and Recommendation: The CTA has failed to establish that Project Managers employed in its Capital Construction Division are “managerial employees” within the meaning of Section 3(j) of the Act.

Legal Standards

The CTA asserts that the project managers should be excluded from collective bargaining because they are managerial employees under Section 3(j) of the Act. As the party seeking to exclude the project managers from collective bargaining, the CTA 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 (4th) 111075, ¶ 55; *Chief Judge of the Circuit Court of Cook County*, 18 PERI ¶ 2016 (IL LRB-SP 2002). While, as in this case, some evidence necessarily must be somewhat generalized, the evidence must come from an evidentiary foundation sufficient in the record to support the exclusion. *See Village of North Riverside*, 19 PERI ¶ 59 at 274-276 (IL LRB SP—ALJ 2003).

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 law⁴. *Department of Central Management Services/The Illinois Human Rights Commission v. Illinois Labor Relations*

⁴ 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. *Id.*; *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.

Board State Panel, 406 Ill.App.3d 310, 315 (4th Dist. 2010) (quoting *Department of Central Management Services/Department of Healthcare & Family Services v. Illinois Labor Relations Board, State Panel*, 388 Ill.App.3d 319, 330 (4th Dist. 2009) (“CMS/DHFS”)).

Under the traditional test, an individual must satisfy both prongs 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 16th Judicial Circuit v. Illinois State Labor Relations Board*, 178 Ill.2d 333, 339 (1997).

The first prong 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 (4th 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*, 2014 IL App (1st) 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 (4th Dist. 2010) (citing Merriam-Webster’s Collegiate Dictionary 437, 754 (11th ed. 2003)). Courts and the Board have ruled that “executive and management functions” are tantamount to those required to run an agency and if their responsibilities 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.

With respect to the first prong, 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*, 245 Ill.App.3d 109, 122 (2nd Dist. 1993); *City of Evanston v. Illinois State Labor Relations Board*, 227 Ill.App.3d 955, 975 (1st Dist. 1992). 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.

In this regard, an employee is not managerial if his or her primary functions are those of a “gatekeeper”. While the Board has determined that an employee who performs “gatekeeping” functions may be classified as managerial, *see State of Illinois, Department of Central Management Services (Illinois Commerce Commission)*, 30 PERI ¶ 206 (2014), the courts have

ruled that “gatekeeping” alone is not sufficient to establish managerial employee status.

American Federation of State, County & Municipal Employees (AFSMCE) Council 31 v. State of Illinois (Illinois Commerce Commission), 2014 IL App (1st) 130655 ¶¶ 42-43; *American Federation of State, County & Municipal Employees (AFSCME) Council 31 v. State of Illinois (Illinois Commerce Commission)*, 2018 IL App (1st) 140656 ¶ 31.

Whereas the first prong of the test to determine whether an employee is a “managerial employee” deals with the nature of the work to which the employee devotes the majority of his or her time, the second prong of the test is designed to determine whether the individual’s authority “extends beyond the realm of theorizing and into the realm of practice.” *ICC*, 406 Ill. App. 3d at 774. An employee effectuates management policies if he or she “oversees or coordinates 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.” *Id.*, quoting *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill.App.3d 79, 87 (4th Dist., 1996).

To meet the second prong of the managerial test, the employee must be shown to have “substantial discretion to determine how and to what extent policies will be implemented and [also] have the authority to oversee and direct that implementation.” *Elk Grove Village*, 245 Ill.App.3d at 122 (quoting *City of Evanston*, 227 Ill.App.3d at 975). A determination that an employee is managerial does not necessarily depend on a finding that the employee has final authority over the implementation of policy directives; rather, “the relevant consideration is effective recommendation or control rather than final authority over employer policy.” *Chief Judge*, 178 Ill.2d at 339-40 (citation omitted). The test of effectiveness relates to the “power or

influence of the recommendations.” *ICC*, 406 Ill.App.3d at 777. Thus, an advisory employee who makes effective recommendations on “major policy issues” may be managerial. *Id.*, at 779.

Application of the Law to the Facts

The CTA has failed to meet its burden of satisfying both prongs of the traditional test for managerial employees. The record lacks sufficient evidence that the essential functions of the project managers are such that each employee who performs those functions “is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.” 5 ILCS 315/3(j) (2018).

A significant deficiency in the Employer’s case is that, of the six project managers with respect to whom the employer seeks exclusion based on managerial status, evidence was introduced only as to four of them (Denny, Tuleja, Freeman, and Ivanovic), with a significant concentration of evidence on just Denny and Tuleja without evidence that their duties and responsibilities are substantially similar to or representative of all project manager positions at issue.⁵

Exercise of Executive and Management Functions

The CTA has failed to demonstrate that the project managers meet the first prong of the managerial test, *i.e.*, that the project managers are predominantly engaged in “executive and management functions.” Both the qualitative and quantitative allocations of the project manager’s role depend upon the nature of the construction project and the stage that the project is

⁵ I also note that no evidence was introduced concerning the classification of Senior Project Manager, other than Tuleja’s testimony that the senior project managers work in the same office as the project managers and that he reports to Grace Ohs for the Broadway substation project. There is no evidence as to how the duties and responsibilities of this classification differ, if at all, from the duties and responsibilities of project managers. The Petitioner does not seek to represent this classification – at least in the context of this petition – but there is nothing in the record to explain why this is so. If senior project managers represent an additional layer of responsibility and are thus further removed from the decision-making responsibility exercised by upper management, that fact would detract from Respondent’s claim that they are managerial employees.

in when the project manager is assigned to the project, as well as the level and scope of the project manager's experience and his relationship with his or her general manager. Nevertheless, as in the *Capital Development Board* case (*State of Illinois, Department of Central Management Services (Capital Development Board)*, 20 PERI ¶ 18 (IL SLRB-SP, 2004)), it can be said in general terms that the project manager acts as part of a project team, including the construction manager, the field inspectors, and the general manager, to provide oversight on behalf of the CTA's Capital Construction Division with respect to the planning, design, and construction phases of CTA construction projects. The project manager is not, however, primarily engaged in executive and management functions, as the first prong of the test for managerial employee status requires. Rather, the project manager serves primarily in a subordinate and advisory role.

The Employer asserts that “[t]he [Capital Construction] division’s overall goal is to ensure the safe, on-time, and on-budget completion of CTA construction projects.... The Construction Division accomplishes its goals through the Project Managers who are assigned to manage each project’s day-to-day operations.” Certainly, this is an accurate statement of the Construction Division’s mission. But the mission, as stated, is also the mission of the other members of the project team, including the general contractor and its subcontractors, the construction manager, the field inspectors, the general manager, and the various departments and members of upper management who are involved in the construction process. Therefore, the Construction Division accomplishes its goals not only through its project managers but through all other members of the team who contribute to the accomplishment of the agency’s mission.

Although the Employer attempts to distinguish the Board’s decision in the *Capital Development Board* case, I find that case to be very much on point and therefore highly persuasive, if not controlling. There the job classification at issue was that of state construction

project managers employed by the State's Capital Development Board in its Construction Division. In finding that the state construction project managers were not managerial employees, the Board described their functions as follows:

The project manager's role is to essentially oversee the design and construction process of the projects to which he is assigned. He acts as part of a project team, which also includes a representative of the user agency and a representative of the architect or engineer. During the design and construction phases of the project, the project manager's fundamental duty is to monitor the work of the architect or engineer, the contractors, and the user agency. He checks their work against the requirements of their contracts, the building codes and the CBD's rules and policies for all such projects.

20 PERI ¶18.

The Employer asserts that the project managers in this case have greater responsibility and authority than the project managers in *Capital Development Board*. Thus, the Employer says:

By contrast, the Project Managers at issue here do not merely monitor the third party contractors' compliance with their contractual obligations. Rather, the Project Managers have and exercise the authority to determine ways of achieving the Capital Construction division's goals on a project, including handling unexpected issues that arise and proposing recommendations that are adopted so that the projects can be completed in a safe, timely, and cost effective manner.... The Project Managers assist with the selection of the Construction Manager and the Designer of Record and make recommendations on later personnel matters.... The Project Managers' duties are not strictly circumscribed by a handbook or other rules and instead involve the exercise of discretion, which are followed by upper management. Also, they can reallocate funds, if necessary, and are primarily responsible for conducting performance reviews of the third party contractors on a project. They exercise discretion and have a direct involvement with determining the means of achieving the Construction division's goals, unlike the Project Managers in [*Capital Development Board*].

(Transcript references omitted).

I agree with the Employer that the issuance of a handbook establishing policies and procedures and providing guidance to the project managers in *Capital Development Board* probably resulted in greater constraints on the exercise of discretion than is the case with CTA project managers, but I do not find that this difference, standing alone, compels a different

conclusion as to the managerial status of CTA project managers. The other duties and responsibilities cited by the Employer appear to be differences in degree, rather than kind. Because I do not find the factual distinctions to be sufficiently compelling to warrant a different analytical result, therefore, I find the Board's conclusion in *Capital Development Board* as to the first prong of the test for managerial employee status to be equally applicable here.

As the Board said in *Capital Development Board*:

The record plainly establishes that the project managers are not predominantly engaged in executive and management functions. These functions must specifically relate to the running of an agency or department, such as the establishment of policies and procedures, budget preparation, and the responsibility for assuring that the agency or department operates efficiently. See, e.g., *Village of Elk Grove Village v. Illinois State Labor Relations Board*, 245 Ill.App. 3d 109, 613 N.E.2d 311, 9 PERI ¶4009 (1993); *State of Illinois, Department of Central Management Services*, 5 PERI ¶2004 (IL SLRB 1988); *State of Illinois, Department of Central Management Services*, 1 PERI ¶2014 (IL SLRB 1985). We fail to see how the project managers can be said to be predominantly engaged in such activities when their sole responsibility is to monitor compliance with contractual applications and schedules in accordance with detailed contractual provisions. Executive functions require that an individual possess and exercise sufficient authority and autonomy to establish department goals or the means of achieving those goals on a broad scale. *Chief Judge of the 18th Judicial Circuit*, 14 PERI ¶2032 (IL SLRB 1998), *aff'd sub nom, Chief Judge of the 18th Judicial Circuit v. Illinois State Labor Relations Board*, 311 Ill.App. 3d 808, 726 N.E.2d 147, 16 PERI ¶4001 (2000); *Village of Elk Grove Village v. Illinois State Labor Relations Board*, 245 Ill.App. 3d 109, 613 N.E.2d 311, 9 PERI ¶4009 (1993). Here, although the project managers' duties are inextricably linked to the achieving of CDB's goals of evaluating, selecting, designing and constructing State improvement projects in an efficient manner, they do not possess and exercise the authority to broadly affect these goals or the ways in which to achieve them.

In addition to distinguishing the *Capital Development Board* case, the Employer points to the Board's decision in *City of Chicago*, 35 PERI ¶12 (2018) as authority for the proposition that the project managers are managerial employees. That case involved the managerial status of the classification of Senior Procurement Specialist for the City of Chicago. While there are some parallels between that case and the instant case, there is a major difference with respect to the scope and scale of the responsibilities involved. Thus, in *City of Chicago*, the Board found, in

agreement with the ALJ, that “SPSs are responsible for the procurement process from start to finish and, as such, are responsible for managing the competitive bidding process by which, most of the City’s contracts are awarded.” This City-wide scope of responsibility differs significantly from the project-wide scope of responsibility exercised by the CTA project managers and thereby fulfills the requirement of the *Elk Grove Village* case that, in order to be classified as a managerial employee, the employee in question 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*, 245 Ill.App.3d 109, 122.

The Petitioner, on the other hand, cites and relies upon the Board’s decision in *County of Will*, 34 PERI ¶91 (2017), dealing with the alleged managerial status of three program managers, wherein the Board adopted the ALJ’s findings that the program managers “lacked sufficient authority and discretion to establish the goals of the programs they manage, the means of achieving those goals on a broad scale, or the specific methods or means of how the Grants section will administer each program.” The Petitioner says:

In the instant case, the Project Managers – like the Program Managers in the [*County of Will*] case, are involved in a collaborative process that does not require independent discretion in reviewing and compiling Bid Packets, conducting Kick-Off Meetings, initiating contract changes, and approving invoices.

While project managers do exercise discretion in some instances – for example, with respect to signing off on contractor invoices or approving changes within the scope of the budget – these instances do not predominate, either quantitatively or qualitatively, in the allocation of the project manager’s work time. If one were to take the position description for the project manager classification literally, one would have to conclude that a project manager spends more than 50% of his time performing duties requiring “managing, directing, or administering.” But it is evident from the record that the term “manage” as used in the position description does not

equate to the term “manage” as it relates to the definition of “managerial employee” in the Act. Indeed, in his testimony, Project Manager Tuleja disputed the term “manage” and said that his primary responsibility was to “oversee.” In testimony unrelated to the position description, Tuleja estimated that he spent about 25% of his time visiting sites, 25% of his time reviewing documents, and 25-50% of his time processing paperwork.⁶

I am reluctant to give controlling effect to Tuleja’s testimony because (a) it may not be typical, given Tuleja’s relatively low level of experience compared with other project managers; and (b) other, anecdotal, testimony suggests that the role of the project manager may trend more toward the managerial level in other projects with different general manager – project manager relationships. Nevertheless, because the Employer bears the burden of proof to demonstrate managerial employee status and because the testimony given by Employer’s witnesses is not sufficient to carry that burden in light of the countervailing testimony adduced by the Petitioner, I find that the evidence, taken as a whole, does not demonstrate that the project managers are engaged predominantly in executive and management functions.

Substantial Discretion as to Implementation of Policy

The second prong of the test for managerial status deals with the practical applications of the employee’s authority. The Employer does not contend, and the record does not reflect, that the project managers have final or ultimate authority to make decisions concerning the implementation of the Employer’s Construction Division policies. Rather, the Employer contends that the project managers “are assigned to manage each project’s day-to-day

⁶ The allocation deviated somewhat from this estimates Tuleja gave when asked to allocate percentages of time worked among the various categories in the position description, but I cannot conclude that this was the product of inconsistency or uncertainty because of the differing terminology used to categorize the work involved.

operations” and, in that capacity, make effective recommendations concerning the implementation of policy “from planning to closeout.”

The Petitioner disputes this argument, contending that project managers “are simply tasked with reporting on the progress [of construction] as it relates back to the CTA’s contract and scope of work.” As in *County of Will*, the Petitioner asserts, “the Project Managers’ role in drafting any documents, change orders, Bid Packets, selection and/or post-construction evaluations, are ultimately subject to several other levels of review including at least the General Manager and the Vice President.”

The existence of multiple levels of review is neither surprising, given the size, scope, and public accountability of the CTA’s construction operations, nor is it controlling. An employee may give effective recommendations, despite the fact that they are reviewed by multiple individuals in higher level positions, if those recommendations are influential, in that they “almost always persuade the superiors”, *ICC*, 406 Ill.App.3d, at 777, and deal with “major policy issues”, *Id.*, at 779. In this case, the variation in project size and scope, the variation in relative experience of the project managers, and the variation in the general manager-project manager relationship produces analytical variations among project managers as to the importance and effectiveness of the recommendations.

For example, it appears from the evidence that General Manager Loughnane relied more heavily on the recommendations of Project Manager Denny than General Manager Gray did in considering the recommendations of Project Manager Tuleja. If I were to focus solely on the recommendations attributed to Denny, which, according to General Manager Loughnane, were accepted by him over 90% of the time, that would lead the analysis in the direction of finding the requirements of the second prong to have been met by the Employer’s evidence. On the other

hand, a focus on the recommendations of Nicholas Tuleja, who testified that his recommendations were accepted less than 50% of the time, leads in the opposite direction. It appears from the evidence that Tuleja, concerning whom the most evidence was presented, was relatively inexperienced, both in terms of number of years on the job and the phases of the construction process with which he was involved, in comparison to the other project managers about whom less evidence was presented.

But a mere tally of recommendations accepted and rejected does not do justice to the analysis, because the record establishes that some recommendations deal with more important issues than other recommendations. To take Katrina Denny's recommendations for example, it is quite evident that her recommendation to establish "alternative service" for the trains that ordinarily would stop at 95th Street in order to allow more time for the completion of construction at the 95th Street Terminal is an effective major policy recommendation. On the other hand, the disagreement between Denny and General Manager Loughnane as to whether a contractor should be evaluated with a "1" or "2" score seems, at first blush, to involve issues of less importance to the mission of the CTA.

This is not a black or white determination, however. Indeed, it reveals a difference in focus between the general manager and project manager levels that illustratively demonstrates their different roles within the organization. Denny recommended a rating of "1" (lowest rating) for the contractor because she felt the contractor was not performing well on the job. While Loughnane did not disagree with the poor performance observation, his concern was with the continuing relationship with the contractor, and he therefore determined that a "2" rating (less than satisfactory) would send the message without discouraging the contractor from bidding on future jobs. This same difference is shown in the rejection of certain contractor personnel

recommendations by Nicholas Tuleja, whose concern for the project was overridden by General Manager Gray's desire to arrive at a solution to the immediate problem that would not damage the relationship between the CTA and the contractor.

When the relative importance of the recommendations accepted or rejected is taken into consideration, the record establishes, and I find, that project manager recommendations dealing with day-to-day operational issues are more likely to be accepted by the general manager, while those dealing with issues that affect not only the project but the continuing mission of the CTA Construction Division are more likely to receive independent scrutiny by upper level management. Since I do not find that project managers' recommendations on major policy issues "almost always persuade the superiors," I find that the Employer has not carried its burden of proof as to the second prong of the test for managerial status.

In summary, the CTA has not shown that the employees in the classification of Project Manager-Construction in the CTA's Capital Construction Division are managerial employees within the meaning of Section 3(j) of the Act. Accordingly, the employees in that classification are "public employees" within the meaning of Section 3(n) of the Act and are therefore entitled to the organizational and collective bargaining rights afforded to them by the Act.

V. CONCLUSIONS OF LAW

1. Employees in the classification of Project Manager-Construction in the Capital Construction Division of the Chicago Transit Authority are not "managerial employees" as a matter of fact within the meaning of Section 3(j) of the Act.

2. The employees in the classification of Project Manager-Construction in the Capital Construction Division of the Chicago Transit Authority are “public employees” within the meaning of Section 3(n) of the Act.

VI. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the International Brotherhood of Teamsters, Local 700, shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to wages, hours, and terms and conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: All full-time employees of the Chicago Transit Authority, Capital Construction Division, in the following classification: Project Manager-Construction.

EXCLUDED: All managerial, supervisory and confidential employees within the meaning of the Act, and all other employees of the Chicago Transit Authority.

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 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 May 14, 2019

Donald W Anderson

Donald W. Anderson
Administrative Law Judge

Illinois Labor Relations Board
160 N. LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400