

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

American Federation of State, County,)	
And Municipal Employees, Council 31,)	
)	
Petitioner,)	
)	Case No. L-RC-18-033
and)	
)	
County of Cook, (Department of Revenue),)	
)	
Employer.)	

ORDER

On August 30, 2019 Administrative Law Judge Donald W. Anderson, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge’s Recommendation during the time allotted, and at its November 14, 2019 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 14th day of November 2019.

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

/s/ Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 26, 2018, the American Federation of State, County and Municipal Employees, Council 31 (“AFSCME” or the “Union” or “Petitioner”) filed a majority interest representation/certification petition with the Local Panel of the Illinois Labor Relations Board (the “Board”) seeking to include one Business Manager III position and one Administrative Analyst V position in the Cook County Department of Revenue (the “DOR”, the “Department”, or the “Employer”) in the existing L-RC-18-017 bargaining unit represented by AFSCME.

On July 30, 2018, the Employer filed an Objection to the Petition on the asserted grounds that (1) the incumbent of the Business Manager III position at issue is a managerial employee within the meaning of Section 3(j) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2016), as amended (“the Act”); (2) in addition or in the alternative, the Business Manager III position is supervisory within the meaning of Section 3(r) of the Act; and (3) based upon the duties and responsibilities of the last incumbent of the Administrative Analyst V position, that position also is managerial.

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 August 16, 2018, and a hearing was held pursuant to the scheduling order on November 15 and 16, 2018, December 10, 2018, and January 11, 2019, 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, and written briefs were timely filed by both parties. The undersigned was administratively assigned to draft and 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 Cook County (Department of Revenue) has been a public employer within the meaning of Section 3(o) of the Act.
- B. At all times material, the Petitioner has been a labor organization within the meaning of Section 3(i) of the Act.
- C. The Local Panel of the Board has jurisdiction to hear and decide this matter and issue a decision on the merits.

II. ISSUES AND CONTENTIONS

The issues in this case are whether the Business Manager III position is managerial within the meaning of Section 3(j) of the Act and/or supervisory within the meaning of Section 3(r) of the Act, and whether the Administrative Analyst V position (with the secondary title of Operations Manager) is managerial within the meaning of Section 3(j) of the Act.

The Employer contends that Brandi Watson (“Watson”), the employee occupying the Business Manager III position, is a managerial employee because of her role as manager of the Debt and Vehicle Compliance (“DVC”) Unit of the Department of Revenue and the duties she performs in overseeing projects to ensure compliance with the Cook County Wheel Tax on Motor Vehicles (“Wheel Tax”) and Individual Use Tax (“IUT”). The Employer further contends that Watson is a supervisor because (a) she performs work that is substantially different from that of her subordinates; (b) she has authority in the interest of the Employer to perform some or all of the 11 functions enumerated in Section 3(r), including the authority to direct and the authority to discipline; (c) she consistently uses independent judgment to perform these functions; and (d) she spends a preponderance of her time in exercising the authority to handle these functions. The Employer notes that the Business Manager III position is a *Shakman*-exempt position.

The Union contends that the Business Manager III position is not managerial under the Act because Watson does not engage in executive or managerial functions or direct the effectuation of policies but instead functions in a subordinate and advisory role in policymaking and the implementation of policy changes. Additionally, the Union asserts, Watson’s work with respect to the Wheel Tax and the IUT is collaborative and similar to work performed by bargaining unit employees. Finally, the Union asserts that Watson has a limited role with respect to the budget and that the Employer has not shown that Watson uses discretion in regard to the budget or the buying plan.

With respect to the Employer’s contention that Watson is a supervisor, the Union asserts that her work is not substantially different from that of her subordinates, that the record does not establish that Watson has the authority to issue discipline or recommend discipline with

independent judgment, that she has the discretionary authority to direct, or that she spends a preponderance of her time exercising supervisory authority.

With respect to the Administrative Analyst V/Operations Manager position, the Employer contends that the last incumbent of the position, Joyce Steele (“Steele”), was a managerial employee because she was a member of the Senior Leadership Team for a County Department of approximately 80 employees, because she was responsible for administering all non-personnel expenses for the Department, and because she was the primary liaison between the Department and other County departments and between the Department and 12 to 15 vendors who did hundreds of thousands of dollars of work annually with the Department. As is the case with the Business Manager III position, the Administrative Analyst V/Operations Manager position is a *Shakman*-exempt position.

The Union contends that the Administrative Analyst V/Operations Manager position is not managerial because, although it is important, the importance of the position does not make it managerial. After characterizing Steele’s role as a conduit for information flowing from the managers to the Director, the Union asserts that: (1) the record is devoid of evidence that Steele made effective recommendations on budgetary or procurement matters; (2) her role in these matters was primarily functional and devoid of significant discretion; (3) her role in procurement was merely to ensure that managers followed pre-existing procurement policies; (4) the record does not establish that Steele had a significant or consistent role in crafting Department policies and that, rather, her role was to summarize policies from other departments; (5) Steele’s role in researching and suggesting grant opportunities is not an executive or managerial function; (6) the Employer did not establish how often Steele recommends training or how effective her recommendations have been; (7) the Employer failed to establish that Steele’s minimal

involvement in submitting business cases and suggesting new taxes is anything more than incidental to Steele' duties or that it differs from the prerogatives of any employee in the Department; and (8) Steele's liaison to various committees was not managerial because it involved no discretion but instead involved only the relaying of information.

III. FINDINGS OF FACT

The Cook County Department of Revenue is responsible for the administration, processing and collection of the wide variety of taxes and fees that provide revenue for the ongoing governmental operations of Cook County. The DOR is headed by Director Zahra Ali and Deputy Directors Kenneth Harris and Gary Michels. As of December 2017, there were six units within the Department, consisting of the following: Administration; Investigations; Debt and Vehicle Compliance; Collections; Compliance; and Strategic Initiative/Revenue Enhancement. In 2018, the Department employed 75 people and had a departmental budget of \$9 million, including personnel costs.

The positions at issue are the Business Manager III position held by Brandi Watson since December of 2013 and the Administrative Analyst V/Operations Manager position held by Joyce Steele from 2011 until July of 2018. At the time of the hearing, the latter position was vacant, although Joyce Steele testified for the Petitioner at the hearing.

Business Manager III

Brandi Watson oversees the operations of the DVC unit, which is responsible for the administration of the Wheel Tax and the IUT. The Wheel Tax is a Cook County tax imposed on vehicles in unincorporated areas of the county based on the weights of the vehicles. The IUT is a tax imposed on vehicles purchased from nonregistered Cook County dealers but registered to

Cook County addresses. At all relevant times, Watson reported to Deputy Director Harris or, on occasion, directly to Director Ali.

The Sticker-less Wheel Tax Project

In 2016, the idea of implementing a sticker-less wheel tax process grew out of a discussion between Watson and Ali.¹ Ali directed Watson to research the issue for presentation to Cook County President Toni Preckwinkle. Working with the Revenue Assessment Analysts assigned to the DVC unit, Watson and her team came up with recommendations as to the steps that would need to be taken in order to implement such a process for the County, including recommendations as to the changes that would have to be made in the Cook County Wheel Tax on Motor Vehicles Ordinance. The new sticker-less process came to be implemented and developed using an automated system called the Integrated Tax Processing System (ITPS). As of the dates of the hearing, the amended Wheel Tax on Motor Vehicles Ordinance, to include the sticker-less process, was slated to become effective June 1, 2019.

The ITPS project emerged from what Director Ali called “a huge initiative to automate our whole department.” Director Ali testified:

[T]here was an initiative to search for a tax processing system that could be our comprehensive one-umbrella solution for the department that can bring us to the 21st century. That was the president’s goal. So along with all the managers, it was my goal to work with our procurement department, our finance department, and the Bureau of Technology department to embrace that, to come down through a roadmap to get there for the County.

To implement the ITPS, the County contracted with a vendor, RSI Solutions, Inc. A schedule of three releases was established, the first of which “went live” in February 2017. As Director Ali described it, “it was one of the most unsuccessful first release implementations both

¹ Ali testified that Watson brought up the idea of a sticker-less process; Watson testified that Ali brought up the concept and asked Watson to research it by contacting a former DOR employee then working for the City of Evanston, which had received an award for its transition to a sticker-less process.

on [the part of] the vendor, which is RSI, and the County.” In order to complete the second release in a more successful fashion, the DOR needed more time commitment from its managers, especially Brandi Watson.

As part of the effort to achieve this end insofar as it related to the DVC unit, the Call Center was transferred from the DVC unit to the Collections unit in February of 2017. Then, in December of 2017, the DVC unit was relieved of the responsibilities of handling General Business License and Vehicle Code Administration functions; those responsibilities were assumed by Director Ali and Deputy Director Harris.

Prior to the transfers of Call Center, General Business License and Vehicle Code Administration functions, Watson was responsible for overseeing a unit of nine members. Following those transfers, the unit consisted of Watson and Revenue Assistant Analysts Mark Phillips, Rashawn Kelly, and Yessica Hartline. According to Director Ali, the changes were made to ensure that Watson had the time to manage the day-to-day operations of the DVC unit, as well as time to devote to design requirements, policies, and the actual implementation of the sticker-less wheel tax process.

According to Watson, she was a “decision-maker” prior to December of 2017, but was then realigned as a “Subject Matter Expert” in order to oversee, as her resume states, “a \$13M Taxation System Implementation for the Department with a go live implementation date of May 2018.” Watson’s resume goes on to state that “[i]f DOR doesn’t meet the mandates, it would cost the County \$600,000 per month. I am dedicated to the project to ensure we meet all required deadlines.”

In early 2018, Watson worked with vendor and DOR groups to make sure the system would work. Her responsibilities included logging, documenting, and monitoring issues brought

to the attention of the vendor and serving as the first level of approval before forwarding implementation matters to Deputy Director Harris and Director Ali for final approval. By early 2018, she had created over 150 test scenarios for each of the two tax types (Wheel Tax and IUT) as part of the process of testing the system prior to implementation. In March of 2018, she presented her research and test findings regarding the application of the ITPS process to the administration of the Wheel Tax and IUT to the Director, Deputy Director Harris, and Special Assistant for Legal Affairs Allison Davidson. Upon their agreement, the application was presented to Cook County President Preckwinkle, the County's Chief Financial Officer and Legal Counsel, the Intergovernmental Affairs Director, and the Communications Director for the County's Bureau of Finance. Following a follow-up with the Cook County State's Attorney regarding legal issues, the proposal was sent to the Cook County Board of Commissioners in May of 2018 and was approved in ordinance form in September of 2018, with an effective date of June 1, 2019.

Meanwhile, the DOR took administrative steps to overcome the deficiencies of an antiquated and inefficient tax collection system. During the spring and summer of 2018, Watson was assigned to head up an administrative process for the collection of unpaid or delinquent taxes owed by owners of the over 24,000 vehicles that were not in compliance with the Wheel Tax. Letters to taxpayers were sent out in May and administrative court dates were set for June at the rate of three court dates per week for four weeks. Watson was charged with oversight over the court dates, with the responsibility of making sure that all payments were entered, that all paperwork was received, and that follow-up questions and correspondence were handled.

The result was a larger volume of cases than had been anticipated. The handling of those cases required more manpower than that provided by just Watson and her team. The result was

an “all hands on deck” approach that included weekends and evenings and help from other employees of the Department, including Director Ali and Deputy Director Harris. Watson was responsible for handing out the various task assignments that were required to meet the court dates. In order to meet the manpower requirements, compensatory time was approved by Director Ali to be offered on a discretionary basis by Watson to Department employees -- approximately 15 on any given night -- who agreed to work overtime to handle the required task assignments.

During the administrative process, tax cases were settled. Potential costs to taxpayers included the tax, a late fee equal to the tax, and a citation penalty. Under the settlement standard, citation penalties could be waived, but anything further, such as a late fee waiver or any zero tax liability finding, could be approved only by Director Ali, Deputy Director Harris, Special Assistant for Legal Affairs Davidson, or Brandi Watson. According to Director Ali, Watson had the discretion to settle tax cases during the adjudicative process without coming to the Director each time. As a result of the 2018 tax collection effort, Director Ali testified, the County collected over \$1.5 million in taxes “due to Brandi’s overseeing and effort that the County would never have realized and never did realize in the past year....”

The record establishes that the realignment of Watson’s duties to enable her to serve as a Subject Matter expert was a special duty assignment and was not intended to be permanent. A tentative organizational chart for 2019 shows Watson as the head of the Debt and Vehicle Compliance unit. Three employees are listed under her, and the 2019 budget provides for the hiring of two additional Revenue Assessment Analysts (a Revenue Assessment Analyst I and a Revenue Assessment Analyst II) for the unit. According to Director Ali, Watson has undergone

Human Resources training to hire new people and will be on the interview panel for the hiring of both new employees.

Duties and Responsibilities of the Business Manager III Position

Prior to being assigned to the ITPS special project, Watson was a decision maker with a number of oversight responsibilities with respect to members of her team. Among these responsibilities were the following:

- Approval of requests from team members for sick and vacation time;
- Establishment of Smart Goals for herself and team members;
- Submission of a buying plan based on the requirements of her unit;
- Assignment of work to team members;
- Discipline of team members;
- Conducting performance evaluations of team members.
- Oversight over and receiving reports from traffic compliance administrators, whose duties involved notifying persons who did not remit payments after having received traffic citations.

Watson's resume also lists the following duties and responsibilities, among others:

- "Leads and enforces Cook County's Annual Wheel Tax which encumbers 80,000 unincorporated Cook County residents that are responsible for purchasing an annual vehicle license that results in 3.7M;"
- "Assist 24 Township[s] with providing and tracking sent and returned license inventory; conducts daily application, payment and remittance audits as well as balances revenue that is processe[d] through the bank while working with vendor[s] on account management;"

- “Provides training to townships as needed to ensure they are enforcing the Wheel Tax ordinance correctly;”
- “Create and provide townships with newsletters as an additional source of communication;”
- “Develop and implement business rules and policy for new proposed processes;”
- “Conducts annual audits and provides details to each township to continue to improve enforcement of the Cook County Ordinance;”
- “Develop payment processing procedures, business rules and reconciliation procedures for ELS” (Electronic License Service).

Upon being assigned to the ITPS special project, Watson was relieved of the responsibility of approving requests for sick and vacation time, and this responsibility was shifted to Deputy Director Harris. This was done to enable Watson to concentrate on her work with the ITPS project. Also following the special project assignment, no discipline was issued to team members because none was required, although Director Ali testified that Watson would have had the responsibility for issuing discipline had it been required.

Following assignment to the ITPS project, Watson’s resume lists the following duties and responsibilities, among others, connected with the project:

- “Create and design all new taxpayer correspondence that will be used within the new system;”
- “Create and design reports that will be needed for auditing, monitoring, compliance and revenue purposes within the database;”
- “Develop payment processing procedures, business rules and reconciliation procedures for ELS that will be accepting IUT and Wheel Tax payments for 2018/2019 as a new

initiative. This will provide the taxpayers of Cook County multiple payment locations for their convenience.”

A Desk Audit regarding the Business Manager III position was performed by the City of Chicago Bureau of Human Resources pursuant to *Shakman v. Democratic Organization of Cook County*, 481 F. Supp. 1315 (N.D.Ill.1979).² The Desk Audit Report, signed on April 25, 2018 by the author of the Report and by Velisha Haddox, Bureau Chief of Human Resources, states that, once the special project assignment is completed, Watson will perform the following job functions, among others:

- “Supervision of three (3) staff members and additional staff once full implementation of Taxation System;”
- “Create policies and procedures as well as business rules and workflows for new and current tax types;”
- “Create and submit RFPs, RFIs and Scope of Work documents to Procurement Department for projects and services;”
- “Develops business cases for potentially new revenue ideas, additional job positions or changes to current taxes, fines or fees.”

It should be noted that, in citing certain findings from the *Shakman* desk audits, I do not rely on the conclusions of the desk audit reports that the Business Manager III and Administrative Analyst V positions are *Shakman*-exempt, since those conclusions are derived

² The *Shakman* decree establishes controls over the use of political patronage in the City of Chicago’s employment practices. Under *Shakman*, a determination is made as to whether a particular position is exempt from politically-based employment decisions. The touchstone under *Shakman* is “whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the office involved.” *Branti v. Finkel*, 445 U.S. 507, 518 (1980).

from different theoretical bases: political in the case of a *Shakman* exemption and labor-management relations in the case of a statutory exemption from collective bargaining. Therefore, the *fact* that a position is *Shakman*-exempt is irrelevant to the determination as to whether the position is exempt from collective bargaining. See *County of Cook*, 24 PERI ¶ 36 (IL LRB-LP 2008). That being said, a desk audit report such as was produced in the case of each of the employees involved in the petition is a useful source of data, including information derived from interviews of the incumbents of the positions and information derived from resumes and other documents supplied to the classification and compensation analysts in aid of their analyses.

Administrative Analyst V/Operations Manager

This position is currently vacant. From 2011 to July of 2018, the position was occupied by Joyce Steele. The testimony and other evidence regarding her duties and responsibilities is conflicting. Information obtained from DOR Director Zahra Ali and from a *Shakman* desk audit performed by the Bureau of Human Resources, as well as Steele's resume and information supplied by Steele in connection with the desk audit, suggests that the position was characterized by high levels of accountability and responsibility during Steele's tenure in the position. The testimony of Steele herself discounted her level of responsibility and suggested that her duties were routine, subordinate and advisory in nature.

Duties and Responsibilities of the Administrative Analyst V/ Operations Manager

Director Ali testified that Steele was a member of the Department's Senior Leadership Team that included the Director, Deputy Directors Harris and Michals, Manager of Field Investigations Michael Hoff, Brandi Watson, Director of Financial Control Tjuana Porter, and Special Assistant for Legal Affairs Allison Davidson. According to Director Ali, Steele was

responsible for overseeing all budget procurement, contracts and expenses, and was responsible for ensuring that all divisions had the resources needed to complete their goals and objectives. Steele, Director Ali said, worked hand-in-hand with the DOR unit managers to fulfill procurement requests, and in budgeting, the annual budget plan, transfers, cost amalgamation, cost reductions and cost savings.

There were two versions of a Bureau of Human Resources Desk Audit Report concerning Steele's position. The first was signed on April 25, 2018 by the author of the Report and by Velisha Haddox, Bureau Chief of Human Resources. The second version was signed by the author and Ms. Haddox on May 17, 2018, following the receipt of a Memorandum from Director Ali, dated May 11, 2018, that provided further information concerning the position.

Both versions of the Desk Audit Report state that "Ms. Steele indicated she is responsible for four (4) major functions within the Department of Revenue." These functions were categorized as "operational", "financial", "procurement", and "miscellaneous", with operational functions accounting for 40% of her responsibilities, financial functions accounting for another 40%, procurement accounting for 15% and the remaining 5% of her responsibilities falling in the miscellaneous category.

In the operational category, both versions of the Desk Audit Report state, among other things, that "[Steele] meets annually with senior management to discuss upcoming departmental projects ... and the projected budget amount which is needed to fund them and attends budget meetings to ensure the proper resources will be available during the upcoming fiscal year." In the financial category, both versions of the Audit Report state that:

During the annual budget season [Steele] creates/updates/justifies Revenue's operating budget utilizing financial data to improve efficiencies. Ms. Steele prepares the annual budget plan; enters the amounts into Oracle/ERP; oversees/evaluates cash flow and expenditures; and recommends strategies for expenditures and budget shortfalls. With

regard to Capital Expenditures she is solely responsible for creating reports to monitor/track workflow in iNovah and serves as the departmental liaison with Oracle/EBS as the system budget representative.

With respect to procurement, the Desk Audit Report states that “[Steele] works with senior management to monitor and review compliance with departmental policies and procuring procedures....”

In the Conclusion and Recommendation section of the first version of the Audit Report, the Report states: “Upon reviewing the Shakman Exempt job description for the Administrative Analyst V (Job Code 0295), Ms. Steele’s responsibilities mirror those described in the job description with the exception of creating policies.” Based on Director Ali’s May 11 Memorandum, this conclusion was then altered in the second version of the Audit Report

In her May 11 Memorandum, DOR Director Ali said that “Ms. Steele is a member of the Department’s senior leadership team and participates in the Department’s annual budget brainstorming meetings to provide ideas regarding new taxes, fees and ordinance amendments.”

In addition, Director Ali stated that:

- As a member of the Department’s senior leadership, Ms. Steele participates in, and leads discussions in the Department’s Leadership and Accountability meetings. In these meetings, Revenue leadership discuss topics that include the Budget, overall major initiatives, progress on major projects, any new tax or amended tax implementations, ordinance rewrites or reviews in process and/or pending, technology initiatives, special operations or tasks occurring in our Investigations Division, high profile audit and tax discovery cases in our Compliance Division, tracking budget to actual revenue tax collection, and many other topics.
- Annually, Ms. Steele leads the preparation of our Departments’ non-personnel expense budget, including providing recommendations and expenditure strategies. This includes leading the recommendation for Board approval of transfer of funds during the fiscal year, the annual preliminary budget information, the Department recommendation and providing recommendations for reductions and hold back requests based on the President’s recommendations. Performing this role takes into consideration the impact reductions will have on the Department and she is responsible for weighing these impacts and making recommendations for reductions and efficiencies. Included with these are

recommendations for a long term strategy for our annual capital equipment and capital improvement programs for the Department.

- Ms. Steele engages in policy development. Ms. Steele co-authored the Department of Revenue's Cash Buy Policy, which is the policy formulated to address how our Investigators conduct covert purchases of tobacco products in an attempt to identify retailers that are evading our County Tobacco Tax. She also provides input into the development of the Department's Personnel Guidelines. Also, develops the CCDOR [Cook County Department of Revenue]'s Budget & Procurement Policy and Procedure Document. Moreover, her input and attendance in the brainstorming meeting for the budget as well as the Leadership and Accountability meetings lead to policy and strategy development.

Upon consideration of the May 11 Memorandum, the Conclusion and Recommendation section of the Desk Audit Report was revised. The revised Report states that "Ms. Ali considers Ms. Steele's role as that of an informal Deputy Bureau Chief in that she participates in the DOR's annual budget brainstorming meetings to provide ideas regarding new taxes as well as provide information/insight on fees and ordinance or amendments such as preparing business cases for revenue initiatives which are confidential in nature." It goes on to state that "[t]he job description for the Department of Revenue's Administrative Analyst V indicates Ms. Steele assists in setting policy and automation efforts regarding enforcement of taxes and collection procedures, supports with the planning, organization and implementation of all operational and strategic initiatives; assists the Deputy Director of Revenue regarding researching, evaluating and estimating the fiscal impact of new taxes fees and fines; and assists the Director with planning, organization and implementation of all operational and strategic initiatives." The revised Report then concludes by saying that "[u]pon reviewing the Shakman exempt job description for the Administrative Analyst V (Job Code 0295), [it is concluded that] Ms. Steele is performing the operational and policymaking responsibilities described in the job description."

A specific example of Steele's policy and budget responsibilities was given by Director Ali with respect to the 2016 adoption by the Cook County Board of Commissioners of a hotel accommodation tax ordinance. Director Ali testified:

So in projecting the County to be receiving over 15 million for a 1 percent hotel tax, there's also a factor of an implementation cost and a budget that would accompany a revenue stream to the County. So that required Joyce Steele with the manager of compliance ... and other team members who were associated with implementing the new tax to work on what the budget would be. For example, the newspaper publication, the mailings, envelopes, supplies, outreach, timing of it [according] to the effective date of the ordinance what that cost would be in order for the County to yield the projected revenue.

In her testimony at the hearing, Steele characterized her role as being more of an information gatherer and conduit than as a policy-maker or executive level decision-maker. She denied that she was a member of the Department senior leadership team, because, she said, she did not attend a lot of the leadership meetings and, when she did, she did not lead discussions and had no authority or input. She testified that, while she participated in annual budget brainstorming meetings, she did not offer ideas regarding new taxes and did not provide ideas regarding ordinance amendments. Her testimony was that she did not assume the role of informal Deputy Director (although she did testify that her other job title was "Operations Manager"), that she never interacted with taxpayers, that she was never involved in creating new policies, that she never researched the impact of new taxes, and that she never worked on revenue hearing cases. With respect to procurement, she testified that she did not offer advice as to what to request and how to request it.

Steele testified that her primary activities were the budget, invoicing, asset management and space management. While she led the preparation of the Department's non-personnel expense budget every year, she said, she operated on the basis of information provided by the managers in the Department. With respect to annual preliminary budget recommendations, she

testified that she worked with the managers, but did not make suggestions as to budget cuts; rather, she took recommendations from the managers and put them in the working document. Recommendations as to long-term strategy for annual equipment and capital improvement allowances were based on managers' recommendations and input from the Director.

Steele's testimonial viewpoint as to her duties and responsibilities was disputed by Director Ali, who testified that her responsibilities were more than just getting information from managers and putting that information on a spreadsheet. "Taking it further," she said, "is it reasonable, is it justifiable, does it make sense?"

Moreover, the information that Steele supplied (using the title "Operations Manager") to the Bureau of Human Resources Classification and Compensation Analyst in preparation for her Desk Audit interview contains statements at odds with the responsibility limitations Steele placed on her position in her testimony. Among the many duties and responsibilities Steele listed in her information document were the following:

- Oversee capital resources for existing, new and amended taxes and revenue initiatives;
- Update policies and procedures within the department for key areas and ensure that they are adequate, effective and current;
- Improve financial and operational processes and policies in support of the departmental revenue goals;
- Ensure that DOR's operations are in compliance with external and internal reporting requirement and/or regulations;
- Create departmental and program budgets in collaboration with the Director, Manager and Budget Analyst;
- Create/Update/Justify and control zero-based operating budget (excludes Personnel);

- Prepare Annual Budget Buying Plan;
- Recommend effective strategies for expenditures and budget shortfalls;
- Submit mid-year Budget Projections;
- Develop/change/update budget quarterly;
- Complete/submit/edit/update annual Procurement Buying Plan;
- Work hand-in-hand with managers of each operating/business unit to ensure that targets and goals are fulfilled;
- Evaluate and communicate financial and internal control best practices in use throughout DOR operations;
- Formulate and implement departmental policies and procedures to maximize revenue collection;
- Develop the layout and design of the work space to accommodate human resources.

In addition, Steele’s resume, submitted along with the information document to the Bureau of Human Resources, states that she is “[r]esponsible for functions including the layout and design, monitoring, and the purchase of cigarette stamps, which generates over 150M annually and vehicle stickers, \$2M annual revenues.” The resume also states that Steele is “responsible for the department’s fiscal controls, financial operations, and developing the annual budget.”

IV. DISCUSSION AND ANALYSIS

Findings and Recommendations: The Business Manager III and Administrative Analyst V positions at issue are managerial under Section 3(j) of the Act. The incumbent of the Business

Manager III position, Brandi Watson, also is a supervisor within the meaning of Section 3(r) of the Act.

Legal Standards – Managerial Employees

The DOR asserts that the incumbents of the Business Manager III and Administrative Analyst V/Operations Manager positions 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 Business Manager III and Administrative Analyst V/Operations Manager from collective bargaining, the DOR 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). Such evidence must come from an evidentiary foundation sufficient in the record to support the exclusion, *Village of North Riverside*, 19 PERI ¶ 59 at 274-276 (IL LRB SP—ALJ 2003); however, the evidentiary foundation is not sufficient if the party seeking the exclusion relies “on vague, generalized testimony or contentions as to an employee’s job function.” *County of Cook*, 28 PERI ¶ 85 (IL LRB-LP 2011).

The Board has adopted two tests to determine whether an individual is a managerial employee: the traditional test, which is applicable here and which is used to determine whether the individual is a managerial employee as a matter of fact, and the alternative test, which determines whether the individual is a managerial employee as a matter of law³. *Department of*

³ The “alternative test” usually applies only when there is a “detailed statutory apparatus” that confers managerial status on the employee or if the employee acts as a “surrogate” for an elected official. *State of Illinois, Department of Central Management Services (Illinois Commerce Commission)*, 30 PERI ¶ 206 (IL LRB-SP 2013). Neither party contends, and the record does not demonstrate, that any of the employees at issue here are managerial as a product of a “detailed statutory apparatus” or because any employee is a “surrogate” for an elected official.

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

The first part of the statutory definition requires that the individual be engaged predominantly in executive and management functions and relates to the type and kind of work to which the individual devotes most of the time. *State of Illinois, Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board*, 406 Ill.App.3d 766, 774 (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, State Panel*, 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 (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, such that the responsibilities of those who perform those functions encompass a major component of the agency’s mission. *See id.*; *City of Freeport*, 2 PERI ¶ 2052 (IL SLRB 1986). “In other words, executives or managers run the organization. Formulating policies and procedures and preparing the budget are among the types of things that executives and managers typically would have the authority to do.” *ICC*, 406 Ill. App. 3d at 774. Creation of new policies, however, is not required to satisfy the first prong so long as the employee’s functions help run the agency. *Id.*, at 778. Moreover, as our Supreme Court has noted, “managerial status is not limited to those at the very highest level of the governmental agency.” *Office of the Cook County State’s Attorney v. Illinois Local Labor Relations Board*, 166 Ill.2d 296, 301 (1995).

With respect to the first part of the test, the determination as to whether an individual exercises “executive and management” functions requires more than the simple exercise of discretion or specialized expertise; rather, the employee must possess sufficient authority and autonomy to establish organizational goals or the means of achieving those goals “on a broad scale.” *Village of Elk Grove Village v. Illinois State Labor Relations Board*, 245 Ill.App.3d 109, 122 (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.

Legal Standards – Supervisors

The Act establishes a four-part test to determine whether a non-peace officer employee is a supervisor within the meaning of Section 3(r) of the Act and therefore is excluded from the definition of “public employee” contained in Section 3(n) of the Act. *City of Freeport v. Illinois State Labor Relations Board*, 135 Ill. 2d 499, 512 (1990); *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31*, 153 Ill.2d 508, 515 (1992). Under that test, an individual is a supervisor if he or she (1) performs principal work substantially different from that of his or her subordinates; (2) possesses authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in Section 3(r); (3) consistently uses independent judgment in exercising supervisory authority; and (4) devotes a preponderance of his or her employment time to exercising that authority. *City of Freeport*, 135 Ill.2d at 512.

As in the case of a managerial exclusion, the party claiming a supervisory exclusion has the burden of proving the exclusion by a preponderance of the evidence. *Secretary of State v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4th) 111075, ¶ 55; *Village of Homewood*, 25 PERI ¶ 137 (IL LRB-SP 2009). All four parts of the statutory test must be met in order for the party claiming the exclusion to establish supervisory status.

Managerial Employee Status: Business Manager III (Brandi Watson)

Exercise of Executive and Management Functions

The Employer contends that Watson’s duties and responsibilities meet the first part of the test for managerial employee status because the Business Manager III is responsible for ensuring that the Debt and Vehicle Compliance unit of the Cook County Department of Revenue operates efficiently and effectively. The Employer notes that the goal of the Debt and Vehicle

Compliance unit is to collect the taxes for which it has responsibility and that that is a major component of the DOR's mission. The Employer asserts that the Business Manager III position, as personified by Brandi Watson, plays a significant role in the accomplishment of the Department's mission by "overseeing the automation of the tax collection process, researching and implementing the stickerless tax, revising the wheel tax ordinance as necessary, and overseeing the administrative process used to collect outstanding sums owed, and at each stage assigning tasks to subordinates so they can help with these tasks."

The predominant weight of the evidence in the record bears out the Employer's contention. The record establishes that, at least prior to December, 2017, Watson performed such managerial functions as administration and enforcement of the Wheel Tax and IUT; provision of training to and conducting annual audits of townships in the enforcement of the Wheel Tax; developing and implementing business rules for new proposed processes; developing payment processing procedures, business rules and reconciliation procedures for the Electronic License Service; preparation of annual budget requests for the Debit and Vehicle Compliance unit and, once approved, assuming the responsibility for operating within the limits of that budget; and engaging in oversight over the functions performed by traffic compliance administrators. The record thus establishes that she was primarily responsible for the operations of one of the six major units within the Cook County Department of Revenue, with essentially the same or equivalent duties and responsibilities as other unit managers. As the Board has stated, "the boards and the courts have held that responsibility for the overall effective and efficient operation of a department *or a major unit thereof* is indicative of managerial status under the Act." *Illinois Department of Central Management Services (Department of Conservation)*, 10 PERI ¶ 2037 (IL LRB 1994) (emphasis in original), citing *Salaried Employees*

of North America (SENA) v. Illinois Local Labor Relations Board, 202 Ill.App.3d 1013, 1020 (1st Dist., 1990).

The Union contends that Watson is not a managerial employee under the Act because she “serves a subordinate advisory role on policymaking and implementation of policy changes. Additionally, her work on ITPS and the wheel tax amendments has been collaborative and is similar to work done by employees represented by the Union.” In this regard, the Union’s argument centers on the composition and functions of the Debt and Vehicle Compliance unit following the reorganization of the unit in December of 2017. The record establishes, however, and I find, that the reorganization did not deprive the Business Manager III position, as epitomized by the duties of Brandi Watson, of managerial status.

With the December, 2017, reorganization, Watson was relieved of some duties in order to enable her to concentrate on the sticker-less Wheel Tax project. Director Ali testified that, even after the special project assignment, Watson continued to supervise three Revenue Assessment Analysts and that, as lead of the Wheel Tax project, Watson worked with Director Ali and Deputy Director Harris on business cases advocating additional staffing. Significantly, she took the lead in establishing and directing the Wheel Tax administrative process, working on solutions and recommendations on settlements, serving as the Department’s point of contact with the Cook County State’s Attorney’s office on court days, and working on approval of the Wheel Tax through the office of the County’s Chief Financial Officer to the office of the County Board President and ultimately to the Cook County Board of Commissioners. And she was one of four individuals in the Department, along with Director Ali, Deputy Director Harris, and attorney Davidson, who were authorized to settle tax cases by means of a zero liability finding or a late fee waiver.

The testimony of both Watson and Director Ali establishes that the special project assignment to shepherd the Wheel Tax through initial passage to administration of an established program was never intended to be permanent. Rather, it was a temporary assignment that testimony established was due to end in May or June of 2019. Even had the special project assignment resulted in a loss of certain indicia of managerial status during the time it was in effect, however, it would not change the conclusion that the position itself is managerial. To hold otherwise would subject the position to varying interpretations of managerial status based upon the duties performed by an individual in the position at any given time.

With respect to the time during which Watson performed executive and management functions, the record shows that, prior to December of 2017, Watson's time was spent, approximately in the following proportions: 30% Wheel Tax; 30% IUT; 20% projects and tasks associated with the ITPS project; and 20% miscellaneous. By 2018, she was spending 80% of her time on the Wheel Tax and ITPS. While these time estimates do not distinguish between the time spent on executive and managerial functions and the time spent on auxiliary functions, the law does not require that the term "predominantly", as used in the first part of the managerial employees' test, refer solely to a quantitative analysis. Rather, the term 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. The record shows that, given Watson's role in the accomplishment of the Department's mission, the time she spends on executive and managerial functions is certainly predominant in terms of importance.

Because the record shows that, at all relevant times, Watson was primarily engaged in executive and management functions, I find that the first part of the test for managerial employee status has been met. I now turn to the second part of the test.

Substantial Discretion as to Implementation of Policy

The second part of the test for managerial status deals with the practical applications of the employee's authority. The Employer contends in this regard that the Business Manager III is responsible for the effectuation of management policies and functions by developing the methods and means of achieving policy objectives and by determining the extent to which the objectives will be achieved, citing *City of Evanston*, 227 Ill. App. 3d at 975.

The Union's primary argument regarding the second part of the test is that Watson's duties and responsibilities were executed, to a significant extent, in collaboration with members of her team, citing *County of Will*, 34 PERI ¶ 91 (IL LRB-SP 2017). *County of Will*, however, dealt with what was described as a "collaborative process" whereby none of the alleged managerial employees could make a decision on his or her own. In this case, the fact that Watson worked with and through her team members did not deprive her of the authority to assign to her team members tasks and projects within the scope of her responsibilities, nor did it compromise her leadership function or decision-making authority. As the Appellate Court has observed, it is "unimportant" whether an employee functions as a manager independently or in collaboration with others, as "the [Labor Relations] Act does not require...independence in management functions." *Department of Central Management Services v. Illinois Labor Relations Board, State Panel*, 2011 IL App (4th) 090966, ¶ 187.

Watson certainly viewed herself as a manager, at least prior to the December 2017 reorganization. Characterizing her pre-December 2017 role, she termed herself a "decision-maker" and record exhibits show that she referred to herself as "your Manager" in correspondence with employees in her unit.

The intent of the December 2017 reorganization, according to Director Ali, was “to ensure that she [Watson] had the resources – the man hours, the time available during a workweek to ensure day-to-day operations for individual use tax and wheel tax with her team, as well as dedicate time on the design requirements, the policies, the actual implementation of now you have not just the current wheel tax process, you have the engineered process that needed to be incorporated.” With respect to the IUT and the Wheel Tax, Deputy Director Harris testified that “they’re her [Watson’s] taxes; they’re her processes to build as long as the software is capable of building it.”

Thus, the record establishes that Watson oversees and coordinates policy implementation with respect to the taxes that are the responsibility of the Debt and Vehicle Compliance unit, and that she exercises significant discretion in doing so. Watson’s role in the administrative tax collection process is particularly instructive. The fact that she was one of four individuals in the Department who were authorized, without requiring higher-level authorization, to compromise administrative process tax cases indicates very strongly that Watson was vested by the Employer with managerial-level decision-making authority with respect to matters that relate to the DOR’s central tax-administration function.

Supervisory Status: Business Manager III (Brandi Watson)

Principal Work Test

The Employer asserts that, in addition to being a managerial employee under Section 3(j) of the Act, Brandi Watson is also a supervisor under Section 3(r) of the Act. These two roles are not mutually exclusive: an individual can be a supervisor in addition to, or without, being a manager. *See Cook County Hospital Doctoral Staff*, 3 PERI ¶ 3032 (IL LRB 1987).

The record establishes, and I find, that Watson’s principal work is “obviously and visibly different” from her subordinates, thus satisfying the first prong of the supervisory definition.

The Board has described the “principal work” test as follows:

For an employee to be a supervisor, the employee's main undertaking must differ from the main undertakings of his subordinates. He may, at times, engage in similar work as his subordinates and still be determined a supervisor. However, his foremost activity must not be similar. This is not necessarily a quantitative test. An employee may engage in the same work as his subordinates the majority of his time, but if the essence of his work differs from that of his subordinates, a supervisory determination may result if other indicia are present.

City of Freeport, 135 Ill.2d at 513-14, quoting *Secretary of State*, 1 PERI ¶ 2009 (IL SLRB 1985).

While Watson does work as a team with her subordinates, her “main undertaking” is to serve as the head of the Debt and Vehicle Compliance unit of the DOR and, in that capacity, to assign work to her subordinates, discipline them when necessary, establish annual SMART goals for them and evaluate their work, devise and submit a unit buying plan, and interact with Department management, vendors, the Cook County Sheriff’s Office, and the Cook County State’s Attorney’s office in order to carry out her responsibilities for the administration of the Wheel Tax. The “essence” of her work differs from that of her subordinates.

Supervisory Authority with Independent Judgment

The second prong of the supervisory definition requires that the individual must have authority, in the interest of the employer, to perform one or more of the 11 functions enumerated in the definition or effectively to recommend the action involved in such function or functions. The 11 functions are the authority to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust their grievances. The third prong of the definition, which must be read in conjunction with the second prong, requires that the exercise of

authority to perform one or more of the enumerated functions must not be of “a routine or clerical nature” but that it “requires the consistent use of independent judgment.” 5 ILCS 315/3(r).

“Independent judgment” is exercised when an individual must choose between two or more significant courses of action without substantial review by a superior. *City of Freeport*, 135 Ill.2d at 532. In the case of the exercise of a supervisory function, “[i]t is the authority to use independent judgment in imposing discipline, rather than how often such discipline is imposed, which is important.” *Id.*, 135 Ill.2d at 521.

The Employer asserts that Watson’s responsibilities satisfy the second prong because she has the authority to discipline and direct employees. In support of the assertion that Watson has disciplinary authority, the Employer introduced evidence of disciplinary actions taken by Watson with respect to her subordinates.

In the DOR, all disciplinary actions initiated by managers, including Watson, must be issued in accordance with Cook County’s progressive disciplinary process, set forth in the Cook County Personnel Rules. To ensure that a manager has complied with the Personnel Rules, disciplinary write-ups are reviewed and approved by Director Ali and by the legal officer, Allison Davidson. The final write-ups, therefore, are the product of recommended actions by the initiating manager, rather than the exercise of unbridled discretion by the manager. There is no evidence, however, that a proposed disciplinary action by Watson was ever rejected in the review process.

Most of the disciplinary actions initiated by Watson were documented verbal and written reprimands for attendance violations, concerning which, the Union contends, “the record did not establish whether Watson exercises independent judgment in deciding whether or not to issue the

discipline for violating these straightforward rules.” Notwithstanding this observation, the record does establish that, in early 2017, Watson issued a documented verbal reprimand for poor work performance. A review of the that document, the substance of which she testified was hers, evidences the exercise of considerable independent judgment in terms of the indicia of poor performance cited and the corrective action required. In addition, the record shows that Watson recommended the termination of two probationary employees, both of which were terminated on the basis of Watson’s recommendations.

The Supreme Court has held that verbal reprimands are “discipline” within the meaning of Section 3(r) if they are documented. *City of Freeport*, 135 Ill.2d at 518-19. Moreover, “it is the authority to use independent judgment in imposing discipline, rather than how often such discipline is imposed, [that] is important.” *Id.*, at 521. Deputy Director Harris testified that Watson had the authority to do anything in the way of managing her unit, other than granting time off, without prior approval, including the assignment of work and the imposition of discipline. I conclude, therefore, that Watson had the authority to discipline employees and that that authority entailed the use of independent judgment.

The Union, however, argues that Watson’s testimony indicated that she believed she did not have the authority to issue discipline after the December 2017 reorganization, citing *State of Illinois, Department of Central Management Services*, 21 PERI ¶ 46 (IL LRB-SP 2005) for the proposition that an employer’s failure to inform employees that “[a]n employer’s failure to inform employees that they have certain supervisory authority and its failure to instruct them on how to exercise it demonstrates that they lack that authority.” Here, however, it is clear that Watson had that authority prior to December 2017, and that it was the expectation that she would

have that authority following completion of the special Wheel Tax project.⁴ Moreover, Director Ali testified that, during 2018, no discipline was needed for the employees Watson supervised, but that had there been a need for discipline, it would have been Watson's responsibility to issue such discipline.

While it is clear that certain responsibilities, such as approval of overtime and time off, were taken off Watson's plate to give her more time to devote to her special project duties, it is not clear whether Watson's belief that the authority to discipline was one of those responsibilities was the product of a failure to instruct on the part of DOR management or a misunderstanding on Watson's part. In any event, it is clear from the evidence that the authority to discipline is a function of the position, irrespective of whether it was removed, or Watson thought it was removed, during the period of the special project. Accordingly, I conclude that the realignment of duties during the special project period did not result in the loss of supervisory status.

The authority to issue discipline, by itself, would meet the second prong of the supervisory definition, since any one of the listed powers will qualify an individual as a supervisor. But the record also establishes that Watson has the authority to direct. The authority to direct includes such activities as "reviewing and monitoring work activities, instructing as to how work is to be performed, scheduling work hours, approving time off and overtime requests, assigning duties, and formally evaluating job performance." *The Secretary of State v. Illinois Labor Relations Board, State Panel*, 2012 IL App (4th) 111075 ¶ 69 (quoting *City of Freeport*, 135 Ill.2d at 506). The record reflects that Watson had the authority to do all of these things,

⁴ The Employer suggests that the "reasonable expectations test" applies here, citing *One Equal Voice v. Illinois Educational Labor Relations Board*, 333 Ill.App.3d 1036, 1042 (1st Dist. 2002). However, this test applies only to confidential employees and then only when a collective bargaining unit is not in place and employees are expected to assume confidential duties once the bargaining unit is established. *Health and Hospital System of the County of Cook v. Illinois Labor Relations Board, Local Panel*, 2015 IL App (1st) 150794 ¶ 56.

with the exception of approving time off and overtime requests during the period of her special project assignment after December of 2017.

The Union contends that the performance evaluations Watson conducted with respect to her subordinates are not an indicator of supervisory status, asserting that the evidence does not show that any evaluation performed by Watson affected the employment status of the employee that was evaluated. As noted above, however, the record contains documented reprimands for attendance violations and a documented reprimand for poor performance. As the Appellate Court has said:

It is axiomatic that [the] documentation of personnel issues has the potential to be used in future disciplinary proceedings and promotional considerations involving that employee.

The authority to deny leave, issue written reprimands, and conduct performance evaluations indicates an authority to influence the terms and conditions of employment, as well as the use of independent judgment in determining when and how to exercise these functions.

Village of Maryville v. Illinois Labor Relations Board, 402 Ill.App.3d 369, 376 (5th Dist. 2010).

The Union also contends that Watson's assignment of work does not involve independent judgment, citing Watson's testimony that "her subordinates generally know what to do on a day-to-day basis and that as new tasks arise, she assigns them to whoever is available and can complete the tasks quickly." In making this contention, the Union correctly observes that "assignment of work is not considered supervisory direction exercised with independent judgment where the assignment of work merely balances the workload among employees," citing *Service Employees International Union, Local 73 v. Illinois Labor Relations Board*, 2013 IL App (1st) 120279, ¶ 52.

But the record reflects that Watson's assignment responsibilities go well beyond "balancing the work load". She testified, for example, that she assigned responsibility for the

IUT to Yessica Hartline, that she assigned responsibility for refunds to Rashawn Kelly, and that she assigned Mark Phillips his day-to-day responsibilities. When new things come up, she testified, she assigns the work involved. Deputy Director Harris testified that:

Brandi basically assigns them the areas that they're going to work in, informs them of what their day-to-day duties are, follows up to make sure that those duties are being completed. So she basically has responsibility for wheel tax and individual use tax and divides up the tasks that need to be done among the staff.

During the "all hands on deck" period, there was a "tremendous work load", according to Deputy Director Harris. As noted in the Findings of Fact, Director Ali approved compensatory time during this period to be offered at Watson's discretion to the Department employees – approximately 15 per night -- who agreed to work overtime to meet this increased workload. As Deputy Director Harris testified, "Brandi was taking all of the staff members, hers, and compliance staff members, dividing them up, assigning them what their tasks were going to be for the comp time they worked and would follow up on ... getting that work back from them."

Then, during the administrative process, some compliance employees from other units were assigned to assist during regular work hours. According to Deputy Director Harris, these employees were assigned by Watson to work with legal officer Allison Davidson in court proceedings, where "they would go one on one with taxpayers as they were waiting for their hearings, and they would collect paperwork, come back, bring research back to Brandi."

Prior to December 2017, Watson had authority on behalf of the Employer to approve time off, a discretionary function as exemplified by Watson's testimony that she denied a vacation time off request on at least one occasion. As with all other managers, Watson had the authority to grant compensatory time off within the overall compensatory time off limits set by Director Ali. While the authority and responsibility to grant time off were removed from her during the time that she was assigned to the special Wheel Tax project period, that reduction in

responsibility was balanced by the increased responsibility, as noted above, for the administration of the Wheel Tax during that period.

Given Watson's responsibility to administer discipline and assign work using independent discretion and judgment, I find that the second and third prongs of the supervisory definition are met. I find, moreover, that these supervisory indicia are functions of the position and are not affected by any diminution of supervisory responsibility that may have taken place as a result of the special project assignment.

The Preponderance Test

The fourth prong of the supervisory status definition is the preponderance test, which involves the determination as to whether the alleged supervisor spends a preponderance of her time engaged in supervisory functions. This test has quantitative and qualitative aspects. As to the latter, the Appellate Court has said:

“ ‘Preponderance’ can mean superiority in numbers or superiority in importance. (Webster's Third New International Dictionary 1791 (1986).) If an employee spends 51% of employment time doing administrative functions and 49% in supervisory functions, the most significant part of the job may not be the administrative matters because of the importance of employee relations. Whether a person is a ‘supervisor’ should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions. No one can expect mathematical certainty in these types of cases.”

Chicago Joint Board, Local 200, RWDSU v. Illinois Labor Relations Board, 2016 IL App (1st) 152770-U ¶ 52, quoting *Department of Central Management Services v. Illinois State Labor Relations Board*, 278 Ill.App.3d 79, 86 (4th Dist. 1996).

While, as noted in the Findings of Fact, there is a quantitative estimate as to how much time Watson spends, or has spent, on various functions, this estimate is not very helpful, as it does not distinguish between managerial or supervisory functions and functions that are non-managerial or non-supervisory. Nevertheless, it is clear from the entire record that the most

important functions that Watson performs are the leadership functions that are classified for labor relations purposes as either managerial or supervisory, or both. I therefore find that the preponderance test is met by the evidence.

Inasmuch as the Business Manager III position, as exemplified by the duties and responsibilities of Brandi Watson, meets all four prongs of the supervisory definition, I find that that position is supervisory as well as managerial. I therefore recommend that this position be excluded from collective bargaining on these grounds.

Managerial Employee Status: Administrative Analyst V/ Operations Manager

At the time of the hearing, this position was vacant. Under the Board's policy change first announced in *State of Illinois, Department of Central Management Services (Department of Children and Family Services, Department of Employment Security)*, 33 PERI ¶ 55 (IL LRB-SP 2016) (*SOI/CMS 2016*), and later upheld in relevant part by the Appellate Court in *American Federation of State, County and Municipal Employees, Council 31 v. Illinois Labor Relations Board, State Panel*, 2018 IL App (1st) 172476 (2018), the fact that the position is vacant no longer prevents the Board from considering whether the position should be included in or excluded from a bargaining unit by means of a unit clarification petition.

Prior to the policy change, the Board was concerned about "making erroneous unit clarification decisions, due to a lack of evidence concerning the actual duties of an employee holding a specific title..." *Illinois Department of Central Management Services*, 2 PERI ¶ 2027 (IL SLRB 1986). In this case, that concern is irrelevant, inasmuch as there is substantial evidence concerning the duties and responsibilities of the position, not only from the testimony of the Director and Deputy Director of the Department and documents produced during a *Shakman* desk audit, but from the testimony of the prior incumbent of the position.

The problem in dealing with the claimed managerial status of the Administrative Analyst V/Operations Manager position in this case is not that the evidence is lacking but that it is conflicting. According to the prior holder of the position, Joyce Steele, the position is little more than an information-gathering conduit for the transmission of the data necessary to make policy and budget decisions from unit managers to the Director and Deputy Directors of the DOR. According to Director Ali, the position, as personified by Steele, has a major responsibility for the leadership of the Department, including “leading the recommendation for Board approval of transfer of funds during the fiscal year, the annual preliminary budget information, the Department recommendation and providing recommendations for reductions and hold back requests based on the President’s recommendations.” Furthermore, according to Director Ali, “[p]erforming this role takes into consideration the impact reductions will have on the Department and she is responsible for weighing these impacts and making recommendations for reductions and efficiencies.”

In resolving the conflict, I pay particular attention to the weight of the evidence supplied by the Employer, including the Desk Audit Report, together with the fact that the resume submitted by Steele in response to the Desk Audit inquiry casts a different light on her duties and responsibilities than did her testimony. Nevertheless, resolution of the evidentiary conflict alone will not establish managerial status.

The Union contends that the Administrative Analyst V/Operations Manager position is not managerial because, although it is important, the importance of the position does not make it managerial. After characterizing Steele’s role as a conduit for information flowing from the managers to the Director, the Union asserts: that the record is devoid of evidence that Steele made effective recommendations on budgetary or procurement matters; that her role in these

matters was primarily functional and devoid of significant discretion; that her role in procurement was merely to ensure that managers followed pre-existing procurement policies; and that the record does not establish that Steele had a significant or consistent role in crafting Department policies and that, rather, her role was to summarize policies from other departments.

The Employer contends, however, that Steele was responsible for administering all non-personnel expenses in the Department, including contracts for temporary employees and procurement of all supplies and vending services, a cost item that eventually grew to \$2.5 million per year. The Employer further contends that Steele was a member of the Senior Leadership Team in the Department, and that she was the primary liaison with other departments in the County and the 12 to 15 vendors who did business annually with the Department. In addition, the Employer contends that Steele assisted Director Ali with the development of internal policies and controls, having co-authored the Department's Cash Buy Policy, and having developed the Budget and Procurement Policy and Procedure document.

The facts of this case, and the conflict between Steele's testimony and the other evidence, makes the decision as to the managerial status of the Administrative Analyst V/Operations Manager a difficult one. On the one hand, there is merit to the Union's contention that Steele's role was, to an extent, administrative and ministerial. On the other hand, there is also compelling evidence in the record that Steele performed functions that the Board and the courts have characterized as managerial in nature, such as "[f]ormulating policies and procedures and preparing the budget...." *ICC*, 406 Ill. App. 3d at 774. The resolution of the question as to Steele's managerial status thus comes down a determination as to whether Steele was *predominantly* engaged in managerial functions, 5 ILCS/3(j) (2018), and whether she had 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 at 122; *City of Evanston*, 227 Ill. App. 3d at 975.

Exercise of Executive and Managerial Functions

Turning to the first part the test for managerial status, “the Appellate Court has noted that executive and managerial functions generally, but not solely, consist of ensuring that the agency operates efficiently.” *State of Illinois, Department of Central Management Services*, 30 PERI ¶ 85 (IL LRB-SP 2013), citing *Department of Central Management Services (Pollution Control Board) v. Illinois Labor Relations Board, State Panel*, 2013 IL App. (4th) 1110877 ¶ 25 and *ICC*, 406 Ill.App.3d at 774. Here, the record shows, and I find, that the Administrative Analyst V position is managerial because of its policy-making and budgetary responsibilities and because of Steele’s role in helping to ensure that the DOR runs efficiently and effectively. Indeed, the overall scope of the responsibilities of the position tend to justify the “Operations Manager” title that Steele testified was the other title for her job and one that she used in supplying information to the Bureau of Human Resources in connection with the *Shakman* Desk Audit.

In regard to the Desk Audit, Bureau Chief Velisha Haddox testified that, in performing a desk audit to determine if a position is *Shakman*-exempt, “you necessarily have to analyze whether or not the person’s day-to-day job duties actually comply with the job description, which necessarily entails policy-making duties.” While Joyce Steele testified that she did not make policy, but simply imported policies from other departments for use in the DOR, she was the co-author of the Department’s Cash Buy policy, developed the DOR’s Budget & Procurement policy document, and assisted in the setting of policy and automation efforts regarding enforcement of tax collection procedures.

With respect to her budgetary responsibilities, Steele's role in the preparation of the non-personnel budget for the Department and in planning, tracking, and working with other managers to make sure that the Department met budget was significant. Director Ali testified, in fact, that the non-personnel budget was "her full responsibility." The record also reflects a significant role in the implementation of budgetary policy, as discussed below in relation to the second part of the managerial status test.

The evidence in the record does not establish, in quantitative terms, the amount of time that Steele spent in performing these managerial functions versus the amount of time that she spent performing other functions that appear to be more along the line of non-managerial administrative functions. The Audit Report's division of time spent in various broad categories of activities – operational, financial, procurement, and miscellaneous – is not particularly helpful in this regard. As is the case in the determination of supervisory status, however, the qualitative meaning of the word "preponderance" applies to the determination of managerial status. As the Appellate Court said in *AFSCME, Council 31 v. Illinois Labor Relations Board*, 2014 IL App (1st) 130655 ¶ 29, "we do not believe whether a person is a 'managerial employee' should be defined solely by the time spent on managerial duties, but rather the significance of those duties."

As noted in the Findings of Fact, the Bureau of Human Resources Desk Audit determined that the job description for the Administrative Analyst V position "indicates Ms. Steele assists in setting policy and automation efforts regarding enforcement of taxes and collection procedures, supports with the planning, organization and implementation of all operational and strategic initiatives; assists the Deputy Director of Revenue regarding researching, evaluating and estimating the fiscal impact of new taxes fees and fines; and assists the Director with planning,

organization and implementation of all operational and strategic initiatives.” Qualitatively, therefore, Ms. Steele’s duties were predominantly managerial.

Substantial Discretion as to Implementation of Policy

The second part of the test for managerial status requires that the employee alleged to be managerial in fact must exercise responsibility for the effectuation of the executive and management policies and procedures that he or she establishes. “An employee directs the effectuation of management policy when he/she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved.” *Department of Central Management Services*, 30 PERI ¶ 85, citing *County of Cook (Oak Forest Hospital) v. Illinois Labor Relations Board*, 351 Ill. App. 3d 379, 386 (1st Dist. 2004).

Steele met this part of the test in several ways. First, she was the gatekeeper for the flow of tax administration information from the managers to the Director of the DOR. Second, she was “fully responsible” for the DOR’s non-personnel budget, including its implementation. Third, she assisted the Director with the implementation of internal policies and controls. Fourth, she was the primary liaison with other County departments and with the 12-15 vendors who performed contract work for the County each year. Fifth, she played a significant role in the administration of the budget by helping to develop the implementation budget for the Cook County hotel accommodation tax ordinance and by facilitating internal fund transfers. Finally, the record shows that Steele played a significant role in managing the budget when the Cook County President’s Office communicated to all departments the need to make mid-year budget cuts, including making recommendations for cuts in specific areas. For example, she suggested a \$170,000 budget reduction for the Sheriff’s Office and a total reduction in the DOR’s budget of

\$240,000, accomplished primarily by identifying unused surpluses or overfunded line items. Director Ali testified that she relied on Steele's recommendations in those instances.

The Union contends that an employee in Steele's position does not exercise executive and managerial functions because she simply ensures that managers follow pre-existing budgetary and procurement policies, citing *Chief Judge of the Eighteenth Judicial Circuit*, 14 PERI ¶ 2032 (IL SLRB 1998) ("where an individual's decisions are significantly circumscribed by predetermined requirements and procedures, the employee's activities are not managerial under the Act.") The Appellate Court has held, however, that employees who use technical expertise to make recommendations that effectuate policy can be managerial employees under the Act. *ICC*, 406 Ill.App.3d at 777. In this case, I find that, on balance, Steele used judgment and independent discretion in making effective recommendations to the Director concerning the administration of Department policy and procedures, including budgetary policy and administration. Accordingly, the Administrative Analyst V position is a managerial position within the meaning of the Act.

V. CONCLUSIONS OF LAW

1. The employee in the position of Business Manager III in the Cook County Department of Revenue is a "managerial employee" as a matter of fact within the meaning of Section 3(j) of the Act.
2. The employee in the Business Manager III position in the Cook County Department of Revenue also is a "supervisor" within the meaning of Section 3(r) of the Act.

3. The position of Administrative Analyst V/Operations Manager in the Cook County Department of Revenue is “managerial” as a matter of fact within the meaning of Section 3(j) of the Act.

VI. RECOMMENDED ORDER

Unless this Recommended Decision and Order is rejected or modified by the Board, the majority interest petition filed by the Petitioner is dismissed.

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 August 30, 2019.

Donald W Anderson

Donald W. Anderson
Administrative Law Judge

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