

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Petitioner)	
)	
and)	Case No. S-RC-19-058
)	
Village of Wauconda,)	
)	
Employer)	

ORDER

On January 2, 2020 Administrative Law Judge Anna Hamburg-Gal, 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 March 12, 2020 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the parties have waived their exceptions to the Administrative Law Judge’s Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 12th day of March 2020.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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/s/ Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On April 22, 2019, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to add employees in the titles Executive Administrative Assistant and Deputy Village Clerk/Administrative Assistant, employed by the Village of Wauconda (Employer or Village), to the AFSCME-represented unit most recently clarified in Case No. S-UC-10-021. The Employer objected to the petition on the grounds that the petition was inappropriately filed and that the petitioned-for positions were confidential within the meaning of Section 3(c) of the Act.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on August 13, 2019. Both parties elected to file post-hearing briefs.

I. STIPULATIONS

The parties stipulate, and I find that:

1. The Employer, Village of Wauconda, is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act
2. The Employer is subject to the jurisdiction of the Board’s State Panel pursuant to Section 5(a) of the Act.

3. The Union, American Federation of State, County and Municipal Employees, Council 31, is a labor organization within the meaning of Section 3(i) of the Act.
4. The Union is the exclusive representative of certain employees of the Village of Wauconda. The initial Certification for the unit was issued on June 4, 1999, in Case No. S-RC-99-71. The most recent UC Certification was issued on July 3, 2019, in Case No. S-UC-(S)-19-175.

II. ISSUES AND CONTENTIONS

The issue is whether the Executive Administrative Assistant and Deputy Village Clerk are confidential employees within the meaning of Section 3(c) of the Act. More specifically, the issues are (1) whether the Executive Administrative Assistant is confidential under the authorized access test and/or the labor nexus test and (2) whether the Deputy Village Clerk is confidential under the authorized access test.

The Employer initially raises a procedural argument that the petition is inappropriate because it is a unit clarification petition that does not meet any of the circumstances appropriate for unit clarification.

On the merits, the Employer argues that the Deputy Village Clerk has authorized access to confidential collective bargaining-related information because she substitutes for the Village Clerk, a confidential employee. In addition, the Employer notes that the Deputy Village Clerk could be tasked with compiling board packets and agendas, which could contain confidential information regarding negotiations.

The Union argues that the Deputy Village Clerk is not confidential under the authorized access test because she substitutes for the Village Clerk only occasionally. The Union further notes that the Deputy Village Clerk's remaining duties have not given her access to documents related to labor relations or collective bargaining.

The Employer next argues that the Executive Administrative Assistant has authorized access to confidential collective bargaining-related information because she organizes correspondence for members of management, has typed minutes for executive sessions of the village board, and sits close to the village administrator's office, where she may overhear confidential collective bargaining-related conversations.

The Employer further argues that the Executive Administrative Assistant regularly provides confidential assistance to the village administrator, who has primary responsibility for the village's labor relations matters. In support, the Employer notes that the Executive Administrative Assistant organizes the village administrator's mail, makes copies of documents, attends village board meetings and executive sessions, and prepares board agendas.

The Union argues that the Executive Administrative Assistant is not confidential under either test. The Union asserts that she does not have authorized access to confidential collective bargaining-related information in the regular course of her duties because her access is infrequent and irregular. The Union similarly argues that she does not provide confidential assistance in the regular course of her duties. The Union emphasizes that there was only one occasion on which provided such assistance and that she did not view the materials because the village administrator informed her they were confidential. The Union denies that any of the Executive Administrative Assistant's remaining duties qualify as confidential assistance.

III. FACTS

The Village of Wauconda (Village or Employer) has a population of 14,125. The Village government is comprised of an elected mayor, six elected Village trustees, and an elected Village Clerk, who all serve in a part-time capacity. Kevin Timony is the village administrator and serves as the chief administrative officer for the Village. The Village has the following five departments: Administration; Police; Public Works; Building Planning and Zoning; and Finance. Timony oversees the day-to-day operations of the organization by supervising the department heads and ensuring the delivery of Village services. The Village has a part-time human resources generalist, Joan Rinaldi, who works two days a week for a total of approximately 16 hours. There is no assistant village administrator, no deputy administrator, and no full-time human resources director.

Timony, the Village Clerk, the finance director, and their respective support staff work in the village hall. The support staff includes Executive Administrative Assistant Alise Homola, Deputy Clerk Sherry Davies, and administrative assistant to the finance director, Candy O'Connor. Homola reports to Timony. Davies and O'Connor report to the finance director.

The Village employs approximately 55 full-time employees and 10 to 20 part-time employees. There are three bargaining units within the Village. The Fraternal Order of Police

represents a unit comprised of patrol officers. The Illinois Council of Police represents the unit comprised of police sergeants. AFSCME represents the unit comprised of the public works employees, a utility building clerk, and the administrative assistant to the finance director.

Timony is the lead negotiator for the Village during contract negotiations. He performs this function in conjunction with respective department heads. He helps establish the Employer's bargaining policies and objectives. He coordinates research and background information and presents it to the Board to develop the Employer's bargaining policies and goals. Timony reports to the Village Board on the status of negotiations. He either provides verbal updates during a closed, executive session of the Board or he provides written updates via email or through a paper memo. Timony also serves as the third step in the FOP grievance process and the AFSCME grievance process, which is the last step before arbitration.

The Employer is currently in negotiations with the FOP. The Employer and the FOP have engaged in approximately five to six bargaining sessions. Timony attended every session on behalf of the Village. The Chief of Police and the Deputy Chief of Police also attended negotiation sessions, but have not attended all of them. The most recent bargaining session included solely Timony and the FOP's union representative.

The Employer will begin negotiations with ICOP when it concludes negotiations with the FOP. Timony has not yet engaged in bargaining with AFSCME over a contract because the AFSCME agreement is still in force and will expire on April 30, 2020.

In early April 2019, Union representative Colin Theis called Timony and informed him that the Union was seeking to add the executive administrative assistant, the deputy village clerk, and the administrative assistant for finance to the Union's bargaining unit. Theis followed up with Timony on this conversation via email on April 4, 2019. Timony subsequently negotiated with AFSCME over the unit placement of administrative assistant O'Connor. The parties ultimately agreed to include her position in the bargaining unit.

1. Executive Administrative Assistant - Alice Homola

Alise Homola is Executive Administrative Assistant to the village administrator and the mayor. She started her full-time, permanent work in this position in January 2015.

Timony's office opens into an area with cubicles and a window that is open to the public. Homola sits at a workstation located outside Timony's office. Homola sits approximately

halfway between the public window and the door of Timony's office.¹ She assists people at the public window. Individuals who do not work in the office, including contracted employees and department heads, walk through Homola's work area to access the mailbox and the copier. Administrative Assistant O'Connor also sits in the area outside Timony's office. She is a member of the bargaining unit and sits farthest from the public window.

Homola testified that, while at her desk, she has never overheard Timony discussing labor relations or collective bargaining matters. Timony has held closed-door meetings with HR generalist Rinaldi and with the departments' directors. Homola does not overhear the discussions conducted in closed-door meetings. Homola has never overheard discussions regarding labor relations matters when Timony has held open-door meetings. In spring 2018, Timony held a number of closed-door meetings in his office preceding the resignation of two building zoning employees. Around this time, he told Homola that he had to hold closed-door meetings because he was handling a confidential matter and could not tell her the details, and he apologized.

On May 17, 2018, Timony and Human Resources Specialist Joan Rinaldi met with Homola. The witnesses give different accounts of the impetus for the meeting. Timony testified that he called the meeting because the director of public works informed him that Homola had shared confidential information with her then-boyfriend, now-fiancé, who is a member of the AFSCME unit. According to Timony, the information pertained to matters discussed by the village board pertaining to the privatization of a village service, street sweeping. By contrast, Homola testified that Timony called the meeting to address the manner in which she had handled a conflict arising from her request to the superintendent that he empty the ashtray behind the building and zoning building.

It is undisputed that Timony discussed the incident involving the ashtray and that he also discussed with Homola the need for discretion in her position as an executive administrative assistant. However, preponderance of the evidence also shows that he did not make reference to the potential privatization of the Village's street sweeping during the meeting. Homola testified that there was no discussion during that meeting of any issue involving the privatization of public works. The documentary evidence supports her assertion. Rinaldi typed a summary of

¹ Homola testified that she sits closer to the public window than she does to Timony's door. The resolution of this factual dispute is not critical to the outcome of the case.

the meeting which references the ashtray incident and also noted that Timony discussed the need for Homola's discretion in her position. However, the memo does not specifically mention issues of privatization. Indeed, Homola confirmed that when Timony told her about the need for her to remain discreet, he did not reference any particular types of information that she should treat with discretion.

Homola types the agendas for village board meetings, which are posted for the public. No member of management has asked Homola to put together any documents for closed sessions of the village board. She also types emails notifying the board of strategic planning meetings, but they are not confidential.

On April 6, 2019, Homola helped Timony transmit documents to the Village Board pertaining to the status of FOP negotiations. Timony typed a memorandum to the Village Board describing the status of negotiations with the FOP. He attached documents to the memo, which included a current version of proposals that the Employer would offer the FOP, including a proposal on wages and health insurance. He then printed nine collated copies of the packet. Timony informed Homola that he had made copies of materials for distribution to the board members. He asked Homola to take the copies from the printer, separate them, put them in envelopes, stamp the envelopes as confidential, and put them into the board members' and the mayor's mailboxes.² Timony informed Homola that the materials were confidential. The Village Board subsequently reviewed the matters referenced in the memo during an executive session.

Homola testified that she did not feel it was her business to look at the documents because Timony had told her the materials were confidential. She further testified that she did not look at the materials. She simply separated the packets, which the printer had already collated into separate stacks, placed the materials into the envelopes, marked them confidential, and distributed them as directed into each board member's mailbox.

This is the only occasion on which Timony had ever asked her to perform a task of this nature. Neither Timony nor any other village administrator had ever previously asked her to copy or print documents they had identified to be confidential. No member of management had

² Timony initially testified that he asked Homola to make copies of the documents. However, he later stated that he might not have asked her to make copies and that he might have instead printed numerous copies of the packet himself and left them on the printer. This latter description is consistent with Homola's testimony.

ever before asked her to copy or print any documents related to collective bargaining or labor relations. Since April 6, 2019, Timony has not asked Homola to copy or print any documents for him related to labor relations or collective bargaining.

Timony testified that it is not unusual for him to write a memo to the board, but he has only once asked Homola to place such memos in envelopes for the village board members. He provided a written memo to the board regarding the status of negotiations on one prior occasion. However, he distributed that memo to the board members himself because it was after hours.

Homola's job description states that she processes and publishes board of trustee agenda packets for all public meetings. However, Homola testified that she creates agenda packets for open meetings, but not for the closed meetings.

Homola does not have access to Timony's email, to his calendar, or to his electronic files. She does not have Timony's passwords.

Homola has access to Timony's office. However, no member of management has told Homola that she may access paper files maintained by Timony apart from three files that Timony has asked her to upload to the Village's cloud archive system. One document was an ordinance, another was an IT services agreement, the third was a public notice regarding community development, which is a published document. None of the documents related to labor relations or collective bargaining. Timony stated that if he were out of the office and needed to retrieve documentation relative to a labor matter, he would authorize Homola to retrieve that document for him, but he has never asked her to do so. Timony has never told Homola that she is prohibited from accessing the files in his file cabinets or the credenza in his desk. However, he has never told Homola where he keeps different files.

Homola previously reported to former Village Administrator Doug Maxeiner. She did not have access to his electronic or paper files, his email, or his calendars. She did not perform typing or filing for him. He never informed her that she had access to labor relations or collective bargaining materials.

On two occasions, May 19, 2015, and June 20, 2016, Homola took minutes for village board meetings. Both meetings included executive sessions, but Homola was present only for the executive session of May 19 meeting. During that executive session, the village board discussed its collective bargaining strategy and the proposals the Employer intended to present to

the FOP in contract negotiations. Since June 2016, Homola has not attended any village board meetings for the purpose of taking minutes.

Homola organizes correspondence for the mayor and village administrators. She has written letters on the mayor's behalf to thank donors who helped support the Village's fireworks. She has created the agenda for the marketing committee. However, Homola does not open mail that is not addressed to her. She does not maintain correspondence files for the mayor, elected officials, or the Village administrator. Homola denied that she supervises mail functions for the village hall.

Homola does not have access to the mayor's calendar or to Timony's calendar. She simply sends outlook invites to members of management regarding classes, seminars, and conferences.

Homola performs a number of other clerical and administrative functions. She answers phones, works at the front desk, routes inquiries from residents, and publishes quarterly Village information newsletters for residents. However, she does not provide clerical support for the director of finance and the assistant treasurer.

2. Deputy Village Clerk - Sherry Davies

Sherry Davies is the Deputy Village Clerk. The position of Deputy Village Clerk is an appointed position. The Wauconda Village Code authorizes the Village Clerk to appoint a Deputy Village Clerk who "shall have the power and duty to execute all documents required by any law to be executed by the Village Clerk." It further asserts that such powers may be exercised by the Village Clerk only when the Village Clerk has given written direction to the deputy to exercise such power or if the Village Board has determined by resolution that the Village Clerk is temporarily or permanently incapacitated to perform such functions. The Village Clerk appointed Davies to the position of Deputy Village Clerk. Davies has held that position since 2012.

Davies sits at a desk that is three to four feet from a public window, which is kitty corner to Homola's desk. Her job description states that she handles front desk duties and performs the following essential functions: posts and distributes all Board/Committee agendas; puts together weekly board meeting agenda packets; handles all FOIA requests and invoices, and issues all licenses; maintains ordinance file and keeps the Village code updated in accordance with

ordinances; processes and verifies election and nominating petitions and forms every two years at election time; processes bank deposits and solicitor permits; acts as Lake County Deputy Registrar for voter registration; acts as notary public for notarizing documents; provides cash receipts for water bills, building permits, police violations, board inspections and real estate taxes; proof reads all published documents and communications; maintains leases for office equipment and office/house rentals; sorts and distributes daily mail; orders all supplies; and performs other functions within the scope of the position as directed by the Director of Finance.

The village board meets twice a month for regular meetings. The Village Clerk usually takes the minutes at village board meetings. If the Village Clerk cannot attend the meeting, Davies attends in her stead. One of Davies' job duties is to attend board meetings when the Village Clerk is absent. Davies performs all the duties of the Village Clerk when she attends the meetings and functions as the Village Clerk.

When Davies attends a village board meeting instead of the Village Clerk, she also attends the executive session, which generally takes place in conjunction with regular village board meetings. Executive session, also referred to as closed session, is an opportunity for the board and staff leadership to discuss confidential matters such as discipline and collective bargaining-related matters. The board has gone into closed session to discuss disciplinary action against unionized employees, to discuss proposals that it intends to present to unions during negotiations, and to receive updates from staff on grievances. Timony has reviewed the status of collective bargaining matters with the village board in executive session on at least four or five occasions.

When Davies attends the board meeting, she turns on the tape recorder and records the meeting. She types two sets of minutes, one for the executive session and one for the open session. When she types up executive session meetings, she relies on both the recordings and the notes that she took at the meeting.

Under the Open Meetings Act, the Board must keep separate minutes for executive session. When Davies attends the executive session, she types the minutes for that session. Davies has attended executive session meetings where the board has reviewed closed session minutes from a prior meeting and voted to approve them.

Davies has attended village board meetings instead of the Village Clerk and has taken the minutes of those meetings on nine occasions between 2014 and the present.³ Since the election of the current Village Clerk, Davies has attended only two board meetings instead of the Village Clerk, one on July 2, 2018, and one on July 2, 2019. Timony asked Davies not to attend the executive session of the second meeting because the board would be discussing the pending representation petition. Timony, the mayor, and the Village's attorney determined that it would be inappropriate for Davies to take the minutes for this executive session. Timony prepared the minutes for the executive session instead.

The Village Clerk is the custodian of the executive session minutes. Davies is the custodian, responsible for the executive session minutes, in the Village Clerk's absence.⁴ Davies has attended executive sessions at which the village board reviewed and approved the minutes of prior executive sessions.

Davies distributes mail to employees in Village Hall. She does not open the mail unless she cannot identify its intended recipient. Davies testified that she has not had access to any mail or any other documents related to labor relations or collective bargaining.

Davies also compiles information for the open session board meetings, along with Homola. No member of management has given her any information for closed session meetings.

IV. DISCUSSION AND ANALYSIS

1. The Representation Petition is Appropriately Filed

The Union's majority interest representation petition is the appropriate vehicle by which to add the petitioned-for positions to the bargaining unit. The Employer's argument to the

³ These include meetings on the following dates: March 18, 2014, November 4, 2014, December 16, 2014, July 18, 2016, October 4, 2016, January 17, 2017, February 21, 2017, July 2, 2018, and July 2, 2019.

⁴ Q [Employer's attorney]: Okay. Who is the custodian of the executive-session minutes?

A [Village Administrator Timony]: The village clerk.

Q: And in the absence of the village clerk, who would be responsible for those?

A: The deputy village clerk.

Tr. P. 43.

contrary rests upon a misidentification of type of petition at issue in this case and a misunderstanding of the law.

The Board's rules regarding unit clarification petitions are inapplicable to this petition because the Union filed a majority interest representation petition, not a unit clarification petition, as the Employer contends. Accordingly, the Union may file a majority interest petition irrespective of whether the circumstances would allow the union to file a unit clarification petition.

None of the cases cited by the Employer warrant a different result because they all concern unit clarification petitions and not majority interest petitions, the type at issue in this case. Cf. Am. Fed'n of State, County & Mun. Employees, Council 31 v. Illinois State Labor Relations Bd., 333 Ill. App. 3d 177, 181-2 (5th Dist. 2002) aff'ing, State of Illinois, Office of the State Appellate Defender, 16 PERI ¶ 2027 (IL SLRB 2000) (involving case number S-UC-98-016); cf. City of Washington, Ill. v. Illinois Labor Relations Bd., 383 Ill. App. 3d 1112, 1119 (3d Dist. 2008) aff'ing City of Washington, 23 PERI ¶ 101 (IL LRB-SP 2007) (involving case numbers S-UC-06-082 and S-UC-06-084); cf. State of Illinois Department of Central Management Services ("Dep't of Revenue"), 35 PERI 53 (IL LRB-SP ALJ 2018) (involving case number S-UC-18-013).

The Employer has offered no support for the proposition that a majority interest petition is inappropriate simply because it seeks to add unrepresented employees to an existing unit. To the contrary, there is nothing inappropriate in adding employees to an existing unit through a representation petition. Ill. Dep't of Cent. Mgmt. Servs. (Dep't of Children and Family Services), 8 PERI ¶ 2037 (IL SLRB 1992) (Board affirmed ALJ's determination to this effect and directed election, though it modified the ALJ's analysis in other respects; see ALJ n. 2); see also Cnty. of Madison (9-1-1 Department), 26 PERI ¶ 65 (IL LRB-SP ALJ 2010) ("neither the Act, nor the Rules or the Board case law require the use of a unit clarification petition in any of the...circumstances [enumerated in the unit clarification rules] to the exclusion of a representation petition."). Accordingly, the Board has repeatedly permitted unions to file majority interest petitions to add positions to an existing unit.⁵

⁵ The following is a selection from among the many cases in which the Board has done so: City of Chicago, 33 PERI ¶ 45 (IL LRB-LP 2016); County of Cook (Health & Hospital System), 31 PERI 154 (IL LRB-LP 2015) aff'd by Health & Hosp. Sys. of County of Cook v. Illinois Labor Relations Bd., Local

Finally, the public policy that limits the use of unit clarification petitions is not implicated when a union seeks to add positions to a unit through the majority interest process, as the Union has done in this case. The Board limits unit clarification petitions because “unit clarification bypasses certain integral facets of the regular representation procedure.” City of Chicago, 2 PERI ¶ 3014 (IL LLRB 1986); Treasurer of the State of Illinois, 30 PERI ¶ 53 (IL LRB-SP 2013) (listing the circumstances appropriate for a unit clarification petition). It need not be supported by a showing of interest, it provides no opportunity for employees and other labor organizations to intervene, and it provides no opportunity for the employees to participate in a representation campaign and election. City of Chicago, 2 PERI ¶ 3014 (IL LLRB 1986). By contrast, in a majority interest petition, at issue here, a majority of the petitioned-for employees voiced their support for the union by signing cards.

In sum, the majority interest petition is appropriately filed.

2. Alleged Confidential Status

Deputy Village Clerk Davies is a confidential employee. However, Executive Administrative Assistant Homola is not a confidential employee.

The purpose of the confidential exclusion is to prevent employees from having their loyalties divided between the employer, who expects confidentiality in labor relations matters, and the union, which may seek disclosure of management’s labor relations material to gain an advantage in the bargaining process. City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App. 3d 955, 977 (1st Dist. 1992).

The Act sets forth two tests to determine whether an employee is subject to the confidential exclusion, (1) the labor nexus test and (2) the authorized access test. 5 ILCS 315/3(c). The Board has also adopted the reasonable expectation test, which applies in the absence of a preexisting collective bargaining relationship where the workplace is therefore new

Panel, 2015 IL App (1st) 150794, ¶ 1; State of Illinois, Department of Central Management Services (Department of Revenue), 29 PERI ¶ 62 (IL LRB-SP 2012); State of Illinois, Department of Central Management Services (Department of Agriculture, et al.), 29 PERI ¶ 63 (IL LRB-SP 2012); Illinois Secretary of State, 28 PERI ¶ 68 (IL LRB-SP 2011) aff’d by Sec’y of State v. Illinois Labor Relations Bd., State Panel, 2012 IL App (4th) 111075, ¶ 137.

to collective bargaining. Chief Judge of the Cir. Court of Cook Cnty. v. Am. Fed of State Cnty. and Mun. Empl., Council 31, 153 Ill. 2d 508, 524 (1992).

a. Authorized Access Test – Executive Administrative Assistant Homola and Deputy Village Clerk Davies

Deputy Village Clerk Davies is confidential under the authorized access test, but Executive Administrative Assistant Homola is not.

An employee is confidential under the authorized access test if, in the regular course of his duties, he “ha[s] authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management.” Chief Judge of the Cir. Court of Cook Cnty., 153 Ill. 2d at 523. Information related to the collective-bargaining process includes (1) the employer's strategy in dealing with an organizational campaign, (2) actual collective-bargaining proposals, and (3) information relating to matters dealing with contract administration. Dep’t of Cent. Mgmt. Serv. (Dep’t of State Police) v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110356 ¶ 27; City of Evanston v. State Labor Relations Bd., 227 Ill. App. 3d 955, 978 (1st Dist. 1992). An employee’s “access to ‘confidential’ information concerning the general workings of the department or to personnel or statistical information upon which an employer’s labor relations policy is based is insufficient to confer confidential status.” Dep’t of Cent. Mgmt. Serv. (Dep’t of State Police), 2012 IL App (4th) 110356 ¶ 27; City of Evanston, 227 Ill. App. 3d at 978. Likewise, merely supplying raw financial data for use in negotiations is insufficient to warrant exclusion under this test. Chief Judge of Circuit Court of Cook County v. Am. Fed’n of State, County, & Mun. Employees, Council 31, AFL-CIO, 218 Ill. App. 3d 682, 705 (1st Dist. 1992); but see Dep’t of Cent. Mgmt. Services v. Illinois Labor Relations Bd., State Panel, 2011 IL App (4th) 090966 ¶ 181. Finally, the employee’s access to confidential labor relations materials must occur in the regular course of the employee’s duties. Health & Hosp. Sys. of County of Cook v. Illinois Labor Relations Bd., Local Panel, 2015 IL App (1st) 150794, ¶ 67.

i. Deputy Village Clerk Sherry Davies

Deputy Village Clerk Davies has authorized access to confidential labor relations materials in the regular course of her duties because she regularly substitutes for the Village

Clerk, a confidential employee. The Village Clerk is the individual primarily responsible for attending village board meetings and executive sessions, taking the minutes of those meetings, and serving as the custodian of meeting minutes. Davies is the primary back-up for the Village Clerk and is responsible for performing all these duties in the Village Clerk's absence.

Davies's responsibility to substitute for the Village Clerk gives her authorized access to confidential labor relations materials. Executive sessions of the village board and the minutes of those executive sessions include information about the Employer's collective bargaining strategy. During executive session, the village board discusses bargaining proposals that it intends to present to the Union and bargaining strategy.

Moreover, Davies has real and more than incidental access to the Employer's collective bargaining strategies in the regular course of her duties. Although Davies has not yet attended an executive session at which the village board discussed confidential collective bargaining matters, the obligation to do so is within the scope of her regular duties, and she regularly serves as the custodian of all executive session minutes. "Where a position has existed for a substantial amount of time, the Board will weigh heavily the employee's actual access to collective bargaining material." Am. Fed'n of State, County & Mun. Employees, Council 31 v. Illinois Labor Relations Bd. ("Treasurer"), 2014 IL App (1st) 132455, ¶ 42 (internal quotes omitted). However, in cases where an employee has not yet been exposed to confidential collective bargaining strategy, the Board and the courts also consider the employees' job duties and the reasons why the employee has not yet seen such confidential materials. Dep't of Cent. Mgmt. Services/Dept. of State Police, 2012 IL App (4th) 110356, ¶ 32. Employers need not establish that the employee has actually seen such information, they must simply demonstrate that "real and more than incidental access will occur in the regular course of her duties." Treasurer, 2014 IL App (1st) 132455, ¶ 42 (citing Glenview, 374 Ill. App. 3d at 902).

Here, Davies' job duties and the circumstances surrounding the Village Clerk's past absences demonstrate that Davies has real access to confidential collective bargaining-related information in the regular course of her duties. First, Davies's substitution for the Village Clerk occurs on a recurring and regular basis. In determining whether an employee performs confidential functions in the regular course of their duties, the Board has drawn a distinction between "infrequent but normal tasks and mere ad hoc assignments." City of Chicago, 26 PERI ¶ 114 (IL LRB-SP 2010). A person who performs confidential duties on a sporadic basis may still

qualify as confidential as long as it is part of their normal duties. Bd. of Educ. of Plainfield Cmty. Consol. Sch. Dist. No. 202, Will & Kendall Ctys. v. Illinois Educ. Labor Relations Bd. (“Plainfield”), 143 Ill. App. 3d 898, 911 (4th Dist. 1986); City of Chicago, 26 PERI ¶ 114; State of Illinois, Department of Central Management Services, 27 PERI ¶ 31 (IL LRB-SP 2011) rev’d in part Department of Cent. Mgmt. Servs./Dep’t of State Police, 2012 IL App (4th) 110356. This is consistent with the court’s holding that an employee’s occasional substitution for a confidential employee is insufficient to render her confidential if such “substitution is not performed on a regular basis.” City of Chicago, 26 PERI ¶ 114 (citing Chief Judge of the Circuit Court of Cook County, 218 Ill. App. 3d at 703 (quoted text) and County of Cook v. Illinois Labor Relations Board, 369 Ill. App. 3d 112, 125 (1st Dist. 2006)).

Here, in the past five years, Davies has taken minutes at village board meetings in lieu of the Village Clerk on nine occasions, and she performed this function in each of those years, except 2015. Three of those meetings included executive sessions (March 18, 2014, February 21, 2017, July 2, 2019), and Davies took the minutes of all but the last one, which pertained to the representation petition in this case. In addition, Davies’s authorized access to executive session minutes is not limited to the minutes of the executive sessions she actually attends. Davies serves as the custodian of the minutes whenever the Village Clerk is absent, and this occurs on a weekly basis because the Village Clerk works only part-time. Although Davies testified that she does not have access to documents related to collective bargaining, she did not deny that she was the custodian of all the minutes in the Village Clerk’s absence, including those related to collective bargaining, as Timony testified. Indeed, Davies effectively admitted that her access to executive session minutes includes access to minutes from executive sessions she did not attend. She has attended executive sessions where the village board reviews the minutes from prior executive sessions, yet her attendance history demonstrates that she would not have attended the sessions at which the Employer produced those minutes.⁶

Second, Davies’ obligation to substitute for the Village Clerk includes the obligation to substitute during meetings where the village board discusses confidential collective bargaining matters, and Davies’s absence from those executive sessions—with one exception—was not by design. There have been three occasions on which the Village Clerk was absent from executive

⁶ Davies has not attended two consecutive executive sessions or even two executive sessions that occurred in a single year. Accordingly, the executive sessions at which the board approved prior executive session minutes were not executive sessions Davies attended herself.

sessions at which the village board discussed confidential collective bargaining-related matters. On each occasion, the Employer required a substitute for the Village Clerk. On two of those occasions, the sole reason Davies did not serve as the Village Clerk's substitute was that she herself was absent. Homola stepped in to perform those duties instead as a secondary back up, although it was not part of her regular duties to do so. On the third occasion, which arose after the Union filed its petition, the Employer asked Davies not to attend the executive session because the Employer intended to discuss its strategy in this case. Accordingly, the Employer expected Davies to attend all executive sessions in the Village Clerk's absence, as her primary backup, until the Union filed its petition in this case.

In sum, Davies has actual authorized access to the minutes of the executive sessions as the custodian of the minutes in the Village Clerk's absence and has the obligation to attend executive sessions in the Village Clerk's absence, even when those sessions concern confidential labor relations matters. While there may be some dispute over whether Davies has actually seen confidential collective bargaining materials in her seven-year tenure, her authorized access to such materials is both real and part of her ordinary duties as the regular substitute for the Village Clerk. Plainfield, 143 Ill. App. 3d at 911 (finding confidential status where petitioned-for employee Simmons regularly performed overflow duties for a confidential employee) reversing in part Plainfield Comm. Consolidated School Dist. No. 202, 1 PERI ¶ 1157 (IELRB 1985); cf. Treasurer, 2014 IL App (1st) 132455, ¶ 44 (access to confidential labor relations materials was incidental to petitioned-for employee's primary, IT/computer-related functions, where employee had not seen such material in 13 years); cf. Niles Twp. High Sch. Dist. 219, Cook County v. Illinois Educ. Labor Relations Bd. ("Niles"), 387 Ill. App. 3d 58, 76 (1st Dist. 2008) (applying similar analysis to employee who performed IT work; "If a computer person testifies that she has not read collective bargaining documents, then any access would be the result of mere chance").

However, Davies' other duties are insufficient to confer confidential status, standing alone. Davies' obligation to complete the board packets does not grant her authorized access to confidential collective bargaining information. Davies testified that no member of management had ever given her any information to compile for the closed sessions, and that to date she has only compiled information for open sessions. Her obligation to draft the agendas for village board meetings likewise does not grant her authorized access to confidential bargaining-related materials because agendas are posted for the public. 5 ILCS 120/2.02.

Finally, Davies' alleged authority to execute all documents by law that the clerk executes does not on its face confer authorized access to confidential collective bargaining-related information. As a preliminary matter, the municipal code qualifies Davies's authority, stating that she may only execute such documents if the Village Clerk is absent and has given written authorization for her to do so, or if the village board has issued a resolution that the Village Clerk is incapacitated to perform such functions. See Wauconda Village Code Section 31.050 and 65 ILCS 5/3.1-35-95(b). More importantly, it is not clear from the record how Davies's authority to execute documents would grant her access to confidential collective bargaining-related materials.

In sum, Davies is confidential under the authorized access test, but not all her duties are confidential.

ii. Executive Administrative Assistant Alise Homola

Homola is not confidential under the authorized access test. Although she had authorized access to confidential collective bargaining-related information on two occasions, she does not have such access in the regular course of her duties.

Homola had authorized access to confidential collective bargaining-related information on April 6, 2019, when she packaged and distributed executive session packets for the village board at Timony's direction. On this occasion, she had access to the Employer's collective bargaining proposals in advance of the Union. She collected pre-printed, collated packets of the Employer's bargaining proposals, which included a confidential, descriptive cover letter, and placed them into envelopes for the board members and other attendees of the village board's executive session.

Moreover, her access on this occasion was authorized. An employee's mere ability to access confidential materials is insufficient to confer confidential status absent evidence that she was authorized to access them. Treasurer, 2014 IL App (1st) 132455, ¶ 57; Niles, 387 Ill. App. 3d at 75; County of Cook, 369 Ill. App. 3d at 125. However, it is clear that Timony intended to grant Homola authority to view the employer's bargaining proposals because he required her to take nine packets, each with confidential collective-bargaining material visible on the cover page, and place them in nine separate envelopes. Cf. Niles, 387 Ill. App. 3d at 75 (considering the "access the employer intends for the employee to exercise."). The repeated exposure to such

materials in the course of packaging them contemplates authorization to access their contexts. City of Rolling Meadows, 34 PERI 116 (IL LRB-SP 2017) (secretarial duties of photocopying bargaining proposals, and maintaining binders of collective bargaining material contemplated access to the information and authority to view the documents). Indeed, the act of filling an envelope with confidential collective bargaining information is analogous to the act of opening an envelope with confidential collective bargaining materials, sufficient to qualify as authorized access. Vill. of Homewood, 8 PERI ¶ 2010 (IL SLRB 1992) (addressing duty to open mail).

Moreover, Timony did not restrict Homola's authorization to view the materials in the packets she prepared. Although Timony told Homola that the materials were confidential, he did not thereby convey that she was prohibited from viewing the materials. Instead, the preponderance of the evidence demonstrates that he made this statement to ensure that she should not share the materials she viewed with others. In cases where Timony sought to restrict Homola's access to confidential information, he not only informed her that the information was confidential, he also told her she could not be made privy to it, took steps to maintain such confidentiality, and apologized for the restrictions on her access. Here, by contrast, Timony told Homola where to find the confidential materials and told her to handle them. Thus, Homola may have believed that she lacked authority to view the confidential documents Timony placed in her possession for distribution to village board members, but that belief was not reasonable.

However, there is insufficient evidence that Homola has authorized access to confidential executive session packets in the regular course of her duties. As noted above, in determining whether an employee performs confidential functions in the regular course of their duties, the Board has drawn a distinction between "infrequent but normal tasks and mere ad hoc assignments." City of Chicago, 26 PERI ¶ 114. Here, Homola's responsibility to process and distribute executive session materials on April 6, 2019, was an ad hoc assignment. Homola testified that she never had responsibility for executive session packets until April 6, 2019, and has not performed that function since then. Homola's job description supports the conclusion that processing executive session materials is not a regular part of her duties because it demonstrates that she is responsible solely for agenda packets that pertain to open sessions. The job description explains that Homola "processes...trustee agenda packets," but those packets are for "public meetings." While the term "public meeting" may be ambiguous, Homola's

concurrent responsibility to “publish” those packets demonstrates that her responsibility to process agenda packets extends only to materials presented in open session.

There is insufficient support for the Employer’s assertion that this task falls within Homola’s responsibility to “organize correspondence for the elected officials and the village administrator.” Homola testified that her obligations to organize correspondence is limited to drafting thank you letters for the mayor, and she noted that she does not maintain correspondence files or open anyone else’s mail. Accordingly, her task of April 6 is more accurately characterized as processing agenda packets than as organizing correspondence, and it is clear that her responsibility to process agenda packets does not extend to processing executive session materials.

Moreover, the infrequent basis on which Homola processes executive session packets is distinguishable from “sporadic” performance of collective bargaining-related functions that the board has sometimes found sufficient to confer confidential status. In such cases, the infrequent performance of confidential duties was attributable to the fact that collective bargaining usually occurs only every three to four years. City of Chicago, 26 PERI ¶ 114. Here, however, Homola did not process executive session materials for the last cycle of collective bargaining, which concluded between May 2015 and March 2016, though she occupied the same position during that time. Indeed, she never processed or packaged any executive session packets, prior to April 6, though executive sessions occur more frequently than collective bargaining, which occurs only every three or four years.⁷ Thus, Homola’s infrequent performance of this task demonstrates that it is not a normal part of her duties.

Similarly, Homola had authorized access to executive session minutes on one occasion, but such access does not occur in the regular course of her duties. On May 19, 2015, Homola had authorized access to an executive session of a village board meeting, when she substituted for the Village Clerk, and she took the minutes at the meeting where the village board discussed confidential collective bargaining proposals. However, Homola’s substitution for the Village Clerk is infrequent, irregular, and not expressly referenced in her job description. Homola attends village board meetings to take minutes only as a secondary back up, when neither the

⁷ Timony claimed that he would have had Homola process executive session packets in advance of the January 2019 executive session, except that he had left the task until after hours. However, Timony did not explain why he failed to ask Homola to process executive session packets in advance of any other village board meetings.

Village Clerk, the primary notetaker, nor the Deputy Village Clerk, her back-up, is able to attend. During the course of her employment with the village, Homola has only ever attended two village board meetings in lieu of the Village Clerk (May 19, 2015 and June 20, 2016), and has taken the minutes of an executive session on only one occasion. Furthermore, she has not performed such substitution with any regularity and, indeed, has not substituted for the Village Clerk at all in the past three years. There is also nothing explicit in her job description to suggest that she would do so in the future. Thus, Homola's substitution for the Village Clerk is precisely the type of occasional substitution for a confidential employee that the court has found insufficient to confer confidential status. Chief Judge of Circuit Court of Cook County, 153 Ill. 2d at 525.

Moreover, the rarity with which Homola attends executive sessions is not attributable to the cyclical nature of collective bargaining or the standard length of a union contract. Rather, it reflects the fact that this duty regularly falls to two other people and does not ordinarily fall to her, even in a backup capacity. Cf. Plainfield, 143 Ill. App. 3d at 911; cf. City of Chicago, 26 PERI ¶ 114.

Homola's remaining functions likewise do not confer confidential status under the authorized access test. Homola does not have authorized access to confidential collective bargaining-related information when she "maintains the calendar" for the mayor and the village administrator. Her duties do not expose her to confidential information concerning bargaining or contract administration because she does not in fact have access to their calendars. Rather, she simply sends them email invites to classes, seminars, and conferences.

Similarly, Homola does not have authorized access to confidential bargaining-related information when she organizes correspondence for the mayor and the village administrator. She does not open mail for either the mayor and village administrator. She does not type mail for the village administrator, who types his own documents. Although she has written letters on the mayor's behalf, they have been thank-you letters, not letters related to collective bargaining or contract administration.

Homola does not have authorized access to the confidential collective bargaining-related files that Timony maintains in his office. Although Homola has access to Timony's office, she does not know where Timony keeps his confidential collective bargaining files, and Timony has never asked her to retrieve such files. County of Cook, 369 Ill. App. 3d at 125 (no authorized

access to bargaining files kept in supervisor's office based on employees' access to supervisor's office where they did not know where he kept them).

Even if the Board determines that Homola has authorized access to Timony's files, such access does not occur in the regular course of her duties. "Where a position has existed for a substantial amount of time, the Board will weigh heavily the employee's actual access to collective bargaining material." Here, in the five years that Homola has held her position, no village administrator has ever asked her to retrieve collective bargaining-related files from his office. Homola's authorized access to such files is merely theoretical. Treasurer, 2014 IL App (1st) 132455, ¶ 42.

The Employer correctly notes that the Board must also consider the employee's job responsibilities, and not what the current employee has done so far in the position, but this principle does not warrant a different conclusion under the facts of this case. If an employer seeks to exclude an employee from the bargaining unit based on duty that the employee has not yet performed, it must show that the duty is within the employee's job description and also explain why the petitioned-for employee has not yet performed it. Cf. Department of Cent. Mgmt. Servs./ Dep't of State Police, 2012 IL App (4th) 110356 ¶ 29-33. Otherwise, there is an "inherent risk" that the employer could rely on speculative future job duties "as a method to exclude employees from a bargaining unit." One Equal Voice v. Illinois Educ. Labor Relations Bd., 333 Ill. App. 3d 1036, 1043 (1st Dist. 2002) (remanding for consideration of the reasonable expectation test after employer had restructured the department); cf. Department of Cent. Mgmt. Servs./Dep't of State Police, 2012 IL App (4th) 110356 ¶ 29-33. Here, the Employer has not explained why its village administrators had never asked Homola to retrieve a confidential collective bargaining-related document from the village administrator's office. Although collective bargaining is cyclical, Homola was employed by the village during the prior negotiation cycle and still had no occasion to retrieve confidential bargaining-related files.⁸ Indeed, the Employer negotiated and executed three collective bargaining agreements during Homola's employment, and it also negotiated two memorandums of understanding with

⁸ I take notice of collective bargaining agreements maintained by the Board. The 2015-2019 FOP contract had an effective date of May 1, 2015 and the parties executed it over a year later, in August 2016. The 2015 to 2019 ICOP contract had an effective date of May 1, 2015, and the parties executed it sometime in 2016. The 2015-2020 AFSCME contract had an effective date of May 1, 2015, and the parties executed it around that time. In addition, the Employer executed memorandums of understanding with AFSCME in March and September 2016, pertaining to overtime and health insurance, respectively.

AFSCME during that time. The Employer contends that Timony could, at some point, ask Homola to retrieve a confidential file, but exclusion from the bargaining unit should not rest on such speculative possibilities.

Finally, the proximity of Homola's work station to Timony's office does not demonstrate that Homola has authorized access to confidential collective bargaining-related information. She may overhear Timony's conversations when he leaves the door open, but those conversations are not confidential because they are accessible to the public and to at least one bargaining unit member. Timony's door opens into a workspace that is accessible to village employees, who pass through that public work space, and to members of the public who seek assistance at the public window. Bargaining unit member Candy O'Connor likewise sits in the area. Timony recognizes that open door meetings are not confidential because he has held closed-door meetings to keep matters confidential from administrative staff. Thus, even if Homola had overheard Timony's open-door discussions regarding labor relations, such discussions lost their confidential character when Timony left his door open. Village of Bloomingdale, 23 PERI ¶ 40 (IL LRB-SP 2007) (open door conversations that could be heard by all employees in the area were not deemed confidential for purposes of the exclusion) aff'd by unpub. ord. no. 2-07-0439, 24 PERI ¶ 93.

b. Labor Nexus Test – Executive Administrative Assistant Homola

Homola is not confidential under the labor nexus test.

An employee is confidential under the labor nexus test if the employee, “in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations.” 5 ILCS 315/3(c) (2012). The person assisted by the employee must perform all three functions before a finding of confidentiality may be made. Chief Judge of the Cir. Court of Cook Cnty., 153 Ill. 2d at 523. “The assistance must be in a ‘confidential capacity,’ and the confidential capacity must relate specifically to ‘labor relations.’” Health & Hosp. Sys. of County of Cook, 2015 IL App (1st) 150794, ¶ 59. In this context, the term “labor relations” does not include hiring, performance, or promotion, or “mere access to personnel or statistical information,” even if that information is confidential. Id. at ¶ 59. Rather, the assistance must provide the employee with advance information about collective bargaining positions. Id.

There is little dispute that Village Administrator Timony formulates, determines, and effectuates management policies with respect to labor relations. The facts support this conclusion, and the Union does not argue otherwise on brief. A person who is actively involved in collective bargaining negotiations and the development of contract proposals and negotiations strategy formulates, determines, and effectuates management policies with respect to labor relations. Vill. of Homewood, 8 PERI 2010. The individual must play a key role in the process by which the subordinates' wages, hours, and working conditions are established. City of Naperville, 20 PERI 184 (citing Vill. of Homewood, 8 PERI 2010). Merely attending negotiations is insufficient to demonstrate that an individual formulates, determines, and effectuates management's labor policies. Health and Hosp. Sys. of Cook County, 2015 IL App (1st) 150794, 62. Although an individual who is not the ultimate decisionmaker and implementer of labor relations policy may still qualify as one who formulates, determines, and effectuates management's labor policies, an individual who merely offers opinions on proposals does not perform all three functions. Plainfield, 143 Ill. App. 3d at 911.

Here, Timony formulates, determines, and effectuates management's policies with respect to labor relations because he is the lead negotiator for the Employer, and is sometimes the Employer's sole negotiator in collective bargaining. In addition, Timony offered unrebutted testimony that he helps establish the Employer's bargaining objectives and helps the village board develop the Employer's proposals. While ultimate decision-making authority regarding negotiations may rest with the village board, Timony nevertheless plays a key role in the process by which employees' wages, hours and working conditions are established. City of Chicago, 26 PERI ¶ 114; Vill. of Homewood, 8 PERI 2010. Finally, Timony additionally effectuates management policies with respect to labor relations by serving as the third step of the grievance process under both the FOP and the AFSCME contracts. Plainfield, 143 Ill. App. 3d at 908-10 (handling steps of the grievance procedure constitutes effectuation of management's labor relations policies but not formulation or determination).

However, Executive Administrative Assistant Homola does not assist Timony in a confidential capacity in the regular course of her duties. "The Board has generally found that employees act and assist in a confidential capacity where they are regularly and routinely exposed to sensitive information such as employer collective bargaining strategies, proposals and counterproposals, and documents relating to details of contract administration and grievance

resolution, by virtue of their everyday administrative duties.” Pleasantview Fire Prevention District, 17 PERI ¶ 2006 (IL SLRB 2000).

Homola has assisted Timony in a confidential capacity on only one occasion, when she helped package and distribute board packets for executive session. However, as noted above, the performance of this task is not a normal part of her duties.

Contrary to the Respondent’s contention, Homola’s attendance at village board executive sessions for the purpose of taking minutes does not satisfy the labor nexus test. First, to the extent that it qualifies as confidential assistance it is not confidential assistance to Timony, but to the Village Clerk, for whom she substitutes. However, as a general matter, the petitioned-for employee must report directly to the individual she assists in a confidential capacity. And in this case, Homola does not report to the Village Clerk. Health and Hosp. Sys. of Cook County, 2015 IL App (1st) 150794, ¶ 65 (employer did not show that petitioned-for employees assisted individuals in a confidential capacity where they did not report directly to those individuals); City of Chicago, 2 PERI ¶ 3017 n. 2 (IL SLRB 1986) (requiring direct assistance, but finding none where petitioned-for employees were separated from the individual assisted by three layers of supervisory hierarchy); but see State of Illinois, Department of Central Management Services, 25 PERI ¶ 184 (IL LRB-SP 2009) (applying labor nexus test to an indirect report, but finding no issues of fact for hearing).

Even if Homola’s attendance at executive session village board meetings qualified as confidential assistance to Timony, Homola does not perform this function in the regular course of her duties. As described above, Homola’s performance of this task is best characterized as “occasional substitution” for a confidential employee, which is insufficient to support exclusion. On two occasions, the customary substitute for the Village Clerk was absent, and Homola acted as the secondary backup at the village board meetings to take minutes, but she only attended one of the executive sessions. The last occasion on which she performed such a function was over three years ago, and her sporadic performance of this work is not attributable to the cyclical nature of collective bargaining.

Homola’s remaining duties do not qualify as confidential assistance. The “labor nexus test is designed to protect against premature disclosure of bargaining positions.” Bd. of Educ. of Cmty. Consol. High Sch. Dist. No. 230, Cook County v. Illinois Educ. Labor Relations Bd., 165 Ill. App. 3d 41, 61 (4th Dist. 1987). However, none of Homola’s remaining tasks referenced by

the employer, organizing mail, copying documents, and preparing board agendas, expose Homola to the Employer's confidential bargaining positions.

Finally, if the Board determines that both petitioned-for employees are properly included in the unit, I recommend that the Board reject the Employer's claim that every employer must have at least one confidential employee. The Employer failed to offer any legal support for this theory, and the Act does not support that position. Akin Comm. Consolidated School Dist. 91, 10 PERI ¶ 1064 n. 4 (IL ELRB 1994) (rejecting employer's argument to this effect, but remanding to ALJ to resolve conflict in testimony).

In sum, Homola is not confidential under the labor nexus test.

V. CONCLUSIONS OF LAW

1. Deputy Village Clerk Sherry Davies is a confidential employee under the authorized access test.
2. Executive Administrative Assistant Alise Homola is a public employee.

VI. RECOMMENDED ORDER

The instant petition is dismissed as to the Deputy Village Clerk position, held by Sherry Davies. However, it is granted with respect to the Executive Administrative Assistant position, held by Alise Homola.

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the American Federation of State, County and Municipal Employees, Council 31 shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: The title Executive Administrative Assistant is to be added to the AFSCME-represented unit most recently clarified in Case No. S-UC-10-021.

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

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross responses must be filed with the General Counsel of the Illinois Labor Relations Board, to either the Board's Chicago Office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103 or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 2nd day of January, 2020

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**