

STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

Bethel Grade School District No. 82)	
)	
Employer/Petitioner)	
)	
and)	Case No. 2025-UC-0041-C
)	
Bethel Education Support Personnel)	
Association, IEA-NEA,)	
)	
Respondent)	

OPINION AND ORDER

I. Statement of the Case

On June 17, 2025, Bethel Grade School District No. 82 (Petitioner or District or Employer) filed a unit clarification petition with the Illinois Educational Labor Relations Board (IELRB or Board) seeking to exclude the title or position of Bookkeeper/Treasurer from a recently certified¹ bargaining unit of its employees represented by Bethel Education Support Personnel Association, IEA-NEA (Respondent or Union) as confidential within the meaning of Section 2(n) of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*² At all times relevant to this matter, Sydney McGovern (McGovern) and Charley Cass (Cass) were employed by the District as Bookkeeper/Treasurer and Superintendent, respectively. Both McGovern and Cass

¹ The existing unit description certified in Case No. 2025-RC-0016-C is as follows:

Included: All regularly employed full and part-time education support personnel in the following titles: Bookkeeper/Treasurer, Receptionist, Secretary, Nurse, Custodian, Bus Driver, Head Cook, Assistant Cook, and Paraprofessional.

Excluded: All supervisory, managerial, confidential, and short-term employees as defined by the Illinois Educational Labor Relations Act.

² The Board’s Rules and Regulations provide that if there are unit appropriateness or exclusion issues in a majority interest petition, “but the number of contested positions or employees is not sufficient to affect the determination of majority status, a party may invoke the Board’s unit clarification procedures with respect to the contested positions or employees.” 80 Ill. Admin. Code 1110.105(j).

testified at the hearing in this matter before Administrative Law Judge Steven S. Shonder, Jr. (ALJ). Following the hearing, the ALJ issued a Recommended Decision and Order (ALJRDO) finding that the District failed to establish that the Bookkeeper/Treasurer should be excluded from the bargaining unit as confidential and, as a result, dismissed the petition. The District filed timely exceptions to the ALJRDO and the Union filed a timely response to exceptions.

II. Factual Background

We adopt the facts as set forth in the underlying ALJRDO. Because the ALJRDO comprehensively sets forth the factual background of the case, we will not repeat the facts herein except where necessary to assist the reader.

III. Discussion

Section 3 of the Act gives educational employees the right to organize for purposes of collective bargaining with educational employers. Section 2(b) of the Act excludes confidential employees from the definition of educational employee. The District argues that the Bookkeeper/Treasurer is confidential within the meaning of Section 2(n) of the Act, and therefore must be excluded from collective bargaining.

Statutory exclusions are narrowly interpreted because the result of a finding of confidential status prevents employees from “exercising the full panoply of rights otherwise guaranteed to them by the Act.” *Board of Educ. of Community Consol. High Sch. Dist. No. 230 v. IELRB*, 165 Ill. App. 3d 41, 60, 518 N.E.2d 713, 725 (4th Dist. 1987). As the party seeking to exclude the Bookkeeper/Treasurer from exercising the right to collectively bargain pursuant to the Act, the District has the burden of proving that the title is confidential within the meaning of the Act. *Southern Illinois University Board of Trustees*, 5 PERI 1197, Case Nos. 85-RC-0022-S et. al. (IELRB Opinion and Order, September 30, 1988); *City of Washington v. Illinois Labor Relations Board*, 383 Ill. App. 3d 1112, 1120, 891 N.E.2d 980, 986 (3rd Dist. 2008); *County of Cook v. Illinois Labor Relations*

Board, 369 Ill. App. 3d 112, 123, 859 N.E.2d 80, 90 (1st Dist. 2006). A party asserting a statutory exclusion cannot satisfy its burden of proof by relying on vague, generalized testimony or contentions as to an employee's job function. *Village of Bolingbrook*, 19 PERI ¶125 (IL SLRB 2003). Instead, the Board requires that to support its argument of a statutory exclusion, the petitioner must present specific examples of the alleged confidential authority. *County of Union*, 20 PERI ¶9 (IL SLRB 2003); *Quadcom Public Safety Communications System*, 12 PERI ¶2017 (IL SLRB 1996), *aff'd by unpub. order*, 13 PERI ¶4011 (Ill. App. Ct., 2nd Dist., 1997).

The Board has set forth three tests to determine whether an employee is confidential based on the language in Section 2(n) of the Act: the labor nexus test, the labor access or authorized access test, and the reasonable expectation test.³ The District maintains that the Bookkeeper/Treasurer is confidential under both the labor nexus test and the authorized access test.

The District's first exception is that the ALJ incorrectly relied solely on the fact that the Bookkeeper/Treasurer never drafted a collective bargaining proposal when he determined that the position is not confidential under the labor nexus test. The record shows that the Bookkeeper/Treasurer drafted an insurance benefit expense report so that the Superintendent could calculate a bargaining proposal in Spring 2025. The District offers that this is evidence that the report concerned a component of bargaining, proposed benefits, so the Bookkeeper/Treasurer had knowledge of information related to bargaining, satisfying the labor nexus test. The District's second exception also concerns the labor nexus test. It argues that the ALJ should not have relied upon the amount the Bookkeeper/Treasurer's workday was spent on labor relations matters when

³ The reasonable expectation test does not apply here because there is an established history of collective bargaining for the certified staff. *Niles Township High School*, 387 Ill. App. 3d 58, 900 N.E.2d 336 (1st Dist. 2008).

he determined that she did not regularly assist the Superintendent in a confidential capacity so as to render her a confidential employee.

Under Section 2(n)(i) of the Act, an employee will be excluded as confidential where he or she “assists in a confidential capacity in the regular course of his or her duties a person or persons who formulate, determine or effectuate labor relations policies.” This is commonly referred to as the “labor nexus” test. *District 230*, 165 Ill. App. 3d 56, 518 N.E.2d 722; *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31*, 153 Ill. 2d 508, 523, 607 N.E.2d 182, 189 (1992) (quoted in *County of Cook (Provident Hospital) v. Illinois Labor Relations Board, Local Panel*, 369 Ill. App. 3d 112, 124, 859 N.E.2d 80, 90 (1st Dist. 2006)). The labor nexus test focuses on the duties of the supervisor of the employee or employees sought to be excluded, who must be found to formulate, determine, and effectuate management policies regarding labor relations. *District 230*, 165 Ill. App. 3d at 57, 518 N.E.2d at 723; *Chief Judge*, 153 Ill. 2d at 523, 607 N.E.2d at 189; *Provident Hosp.*, 369 Ill. App. 3d at 124-125, 859 N.E.2d at 90-91. Thus, all three functions are equally pertinent and are read in the conjunctive, not the disjunctive. *District 230*, 165 Ill. App. 3d at 57, 518 N.E.2d at 723. Performance of these three functions is evidenced by whether the individual has primary responsibility for labor relations matters, makes recommendations with respect to collective bargaining policy and strategy, drafts management proposals and counterproposals, evaluates proposals, and participates in collective bargaining negotiations. *Chief Judge*.

The Superintendent provides information to and advises/makes recommendations to the District’s board of education on labor and collective bargaining matters, including wages, hours, and terms and conditions of employment. The Superintendent has been part of the District’s bargaining team during negotiations involving its certified staff unit and would be a member of the District’s bargaining team for negotiations leading to an initial contract and successor contracts for the unit at issue in this matter. As a member

of the District's bargaining team for negotiations with the certified staff unit, the Superintendent prepared bargaining proposals and reviewed counterproposals. Undoubtedly, the Superintendent formulates, determines and effectuates management policies regarding labor relations. But in order to satisfy the labor nexus test, the Bookkeeper/Treasurer, in the normal course of her duties, must assist the Superintendent in a confidential capacity with regard to labor relations. "Labor relations encompasses ongoing or future collective bargaining negotiations and strategy, not general, though undoubtedly otherwise confidential, district administration matters." *District 230*, 165 Ill.App.3d at 61, 518 N.E.2d at 725. In *Glen Ellyn SD #41/AFSCME, Council 31*, ___ PERI ___, Case No. 2017-UC-0019-C (IELRB ALJRDO, January 11, 2018), the payroll manager was found to be confidential under the labor nexus test because she assisted the assistant superintendent in a confidential capacity.⁴ The payroll manager in *Glen Ellyn* collected information needed to develop collective bargaining proposals, as the Bookkeeper/Treasurer drafted an insurance benefit expense report that the Superintendent used to calculate a bargaining proposal. The assistant superintendent in *Glen Ellyn* shared bargaining information with the payroll manager because she needed the payroll manager's expertise in preparing the proposal and getting information, gathering data, and making estimates. In contrast, the Bookkeeper/Treasurer in the instant case simply provided the Superintendent with the information he requested. However, it was the Superintendent who calculated the proposal, not the Bookkeeper/Treasurer. The assistant superintendent in *Glen Ellyn* even shared the employer's bargaining proposal with the payroll manager, what the employer was thinking, and the employer's bottom line. The assistant superintendent in *Glen Ellyn* asked the payroll manager to produce documents she needed for bargaining and then

⁴ Although the unappealed ALJRDO in *Glen Ellyn* is non-precedential and binding only on the parties to that case, it provided a useful comparison in analyzing this case.

discussed the documents with the payroll manager and possible ways to address a counter proposal. The record in this case does not indicate that the Superintendent ever shared similar information with the Bookkeeper/Treasurer or discussed bargaining strategy. Like the Superintendent, the assistant superintendent in *Glen Ellyn* costed out proposals himself. But in doing so, he asked the payroll manager to conduct some analysis for him and explained some of the bargaining team's ideas. There is nothing in the record to indicate that the Superintendent asked the Bookkeeper/Treasurer to conduct any analysis of data he requested to cost out proposals or shared with her any of the bargaining team's ideas for the information. Also, unlike the payroll manager in *Glen Ellyn*, when the Superintendent asked the Bookkeeper/Treasurer to retrieve information he would use during bargaining, he did not tell her it was related to bargaining, that it was confidential and should not be shared. It is not clear that the Bookkeeper/Treasurer assists the Superintendent in a matter that satisfies the labor nexus test. Consequently, we find that the ALJ correctly determined that the District failed to satisfy the labor nexus test. Because the Bookkeeper/Treasurer does not assist the Superintendent in a confidential capacity with regard to labor relations at all, there is no need for us to determine whether the amount of time she spent doing so, none in this case, constituted the regular course of her duties.

The District's third exception is to the ALJ's determination that the Bookkeeper/Treasurer is not confidential under Section 2(n)(ii) of the Act because she does not have access to collective bargaining proposals. On the contrary, says the District, she has unfettered, advance access to information directly related to bargaining because she drafted a report outlining the District's insurance expenses so the Superintendent could draft a proposal regarding insurance benefits and because she has access to bargaining proposals contained in the packets sent to the District's school board members. The key inquiry in determining whether a title or position is confidential under Section 2(n)(ii) of the Act, known as the authorized access test, is whether the

employee or employees at issue “in the regular course of his or her duties has access to information relating to the effectuation or review of the employer’s collective bargaining policies.” 115 ILCS 5/2(n)(ii); *District 230*, 165 Ill. App. 3d at 57, 518 N.E.2d at 723. Access to personnel files, “confidential information” concerning the general workings of the department, or to personnel or statistical information upon which the Employer’s labor relations policy is based, are insufficient to confer confidential status. *District 230*, 165 Ill. App. 3d 41, 518 N.E.2d 713; *Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31*, 218 Ill. App. 3d 682, 699, 578 N.E.2d 1020, 1033 (1st Dist. 1991), *aff’d*, 153 Ill. 2d 508, 607 N.E.2d 182 (1992). The mere handling of or access to confidential business or labor relations material, including personnel and financial records, is insufficient by itself to render an employee confidential. *District 230*, 165 Ill. App. 3d 41, 518 N.E.2d 713; *Lincoln Park Nursing & Convalescent Home*, 318 NLRB 1160 (1995); *Ernst & Ernst National Warehouse*, 228 NLRB 590 (1997); *Curt Gowdy Broadcasting*, 222 NLRB 530 (1976).

The District argues that because the Bookkeeper/Treasurer provided information used by the District for bargaining, she is confidential under the authorized access test. The Superintendent asked the Bookkeeper/Treasurer for insurance rates and numbers during recent negotiations with the certified staff unit so that he could fill that information into a cost proposal. But the Superintendent admitted that he did not tell her what he was using the information for and the Bookkeeper/Treasurer testified that she was not aware that the Superintendent had asked her to do any work related to bargaining. Mere access to personnel or statistical information is insufficient to render an employee confidential. *Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed’n of State, Cnty., & Mun. Employees, Council 31, AFL-CIO*, 218 Ill. App. 3d 682, 578 N.E.2d 1020 (1st Dist. 1991), *aff’d*, 153 Ill. 2d 508, 607 N.E.2d 182 (1992); *Bd. of Educ. of Cmty. Consol. High Sch. Dist. No. 230, Cook Cnty. v. Illinois Educ. Labor Relations Bd.*, 165 Ill. App. 3d 41, 518 N.E.2d 713 (4th Dist. 1987). While the Bookkeeper/Treasurer has access to

information the District uses to craft bargaining proposals, there is no evidence that she has or will have access to information concerning the precise rates to which the District is willing to agree during negotiation or any other information that would tend to disclose its bargaining position. Simply supplying raw data to the Superintendent during bargaining does not render the Bookkeeper/Treasurer a confidential employee under the labor access test.

When the District is engaged in collective bargaining, information related to negotiations, such as tentative agreements, is placed in a packet for District board of education members to review before and during meetings. During the school year, the receptionist prepares the packets. In the summer, the Bookkeeper/Treasurer assists with preparing the packets. This Board and the National Labor Relations Board have rejected claims that employees are confidential because they had occasional, irregular, or potential access to collective-bargaining material. *Bd. of Educ. of Glenview Cmty. Consol. Sch. Dist. No. 34 v. Illinois Educ. Labor Relations Bd.*, 374 Ill. App. 3d 892, 874 N.E.2d 158 (4th Dist. 2007) (citing *In re Bethlehem-Sparrows Point Shipyard, Inc.*, 65 N.L.R.B. 284, 287 (1946) and *District 230*, 165 Ill. App. 3d 41, 518 N.E.2d 713). The secretaries at issue in *District 230* were not confidential, even though they helped organize packets sent to the employer's board of education that could contain labor proposals. In *Bethlehem-Sparrows*, the NLRB rejected an employer's assertion that photostat operators were confidential because they occasionally photostat material from the general manager's office pertaining to confidential labor relations.⁵ Like the secretaries in *District 230* and the photostat operators in *Bethlehem-Sparrows*, the Bookkeeper/Treasurer's occasional assistance

⁵ A photostat is a "device used for making a photographic copy of graphic matter." Merriam Webster Dictionary, <https://www.merriam-webster.com/dictionary/photostat> (last visited October 30, 2025).

preparing packets that may contain confidential labor relations material does not render her confidential under the labor access test.

IV. Order

For the reasons discussed above, we find that the title or position of Bookkeeper/Treasurer is not excluded from the unit as a confidential employee within the meaning of Section 2(n) of the Act under either the labor nexus or authorized access tests and affirm the ALJRDO dismissing the petition.

V. Right to Appeal

This is a final order of the Illinois Educational Labor Relations Board. Aggrieved parties may seek judicial review of this Order in accordance with the provisions of the Administrative Review Law, except that, pursuant to Section 16(a) of the Act, such review must be taken directly to the Appellate Court of the judicial district in which the IELRB maintains an office (Chicago or Springfield). Petitions for review of this Order must be filed within 35 days from the date that the Order issued, which is set forth below. 115 ILCS 5/16(a). The IELRB does not have a rule requiring any motion or request for reconsideration.

Decided: **December 17, 2025**

Issued: **December 17, 2025**

/s/ Lara D. Shayne

Lara D. Shayne, Chairman

/s/ Steve Grossman

Steve Grossman, Member

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/s/ Chad D. Hays

Chad D. Hays, Member

/s/ Michelle Ishmael

Michelle Ishmael, Member

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

Bethel Grade School District No. 82,)	
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Petitioner,)	
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and)	Case No. 2025-UC-0041-C
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Bethel Education Support Personnel Association,)	
IEA-NEA,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 17, 2025, Bethel Grade School District No. 82 (District or Petitioner) filed a unit clarification petition (petition) with the Illinois Educational Labor Relations Board (IELRB or Board) pursuant to Section 7 of the Illinois Educational Labor Relations Act (IELRA or Act), 115 ILCS 5/1, *et seq.*, and Section 1110.160 of the IELRB’s Rules and Regulations (Rules), 80 Ill. Admin. Code § 1110.160. The petition sought to exclude the position of Bookkeeper/Treasurer from a bargaining unit represented by Bethel Education Support Personnel Association, IEA-NEA (Union or Respondent). The Board certified that bargaining unit in Case No. 2025-RC-0016-C on July 21, 2025. The Union timely objected to the petition. A hearing was conducted on August 14, 2025, via Webex videoconferencing. During the hearing, both parties had the opportunity to call, examine, and cross-examine witnesses, introduce documentary evidence, and present arguments. Both parties filed post-hearing briefs on September 12, 2025.

I. ISSUES AND CONTENTIONS

The District seeks to exclude the position of Bookkeeper/Treasurer from the existing bargaining unit, because the position is confidential within the meaning of Section 2(n) of the Act. 115 ILCS 5/2(n). The Union argues that because the District fails to show that the position satisfies the confidentiality tests set forth in the Act, it should not be excluded from the bargaining unit and the petition should be dismissed.

II. FACTS

Prior to the hearing, the parties agreed to the following facts:

- (1) The District is an educational employer within the meaning of Section 2(a) of the Act. 115 ILCS 5/2(a).
- (2) The Union is a labor organization within the meaning of Section 2(c) of the Act and an exclusive representative under Section 2(d) of the Act. 115 ILCS 5/2(c), (d).
- (3) On July 21, 2025, the Union was certified as the exclusive bargaining representative of:

Included: All regularly employed full and part-time education support personnel in the following titles: Bookkeeper/Treasurer, Receptionist, Secretary, Nurse, Custodian, Bus Driver, Head Cook, Assistant Cook, and Paraprofessional.

Excluded: All supervisory, managerial, confidential, and short-term employees as defined by the Illinois Educational Labor Relations Act.

- (4) The District is a small, rural school district with an approximate student enrollment of 170 pre-kindergarten through eighth grade students.
- (5) The District employs 17 non-certified education support personnel and 13 teachers.
- (6) The District employs one bookkeeper/treasurer, who works under the supervision of the Superintendent.
- (7) The Superintendent provides information the Board of Education and advises/makes recommendations to the Board of Education with regard to labor and collective bargaining matters, including wages, hours, and terms and conditions of employment.
- (8) The Superintendent has been part of the District's bargaining team during negotiations involving certified staff and would be a member of the District's bargaining team for negotiations leading to an initial collective bargaining agreement (as well as successor contracts) with non-certified staff.

At hearing, the District supported its case with testimony from Superintendent Charley Cass (Cass). The Union supported its case with testimony from Sydney McGovern (McGovern), the bookkeeper/treasurer for the District.

Based on the testimony of the witnesses and the documentary evidence in the record, I make the additional findings of fact:

The District is made up of one school building and enrolls around 150 students in kindergarten through eighth grade. Tr. 17. The 13 teachers employed by the District are in a bargaining unit represented by the Bethel Education Association (certified staff unit). Tr. 18. The certified staff unit bargained a new collective bargaining agreement with the District in or around early 2025. *See* Tr. 43. Prior to the certification of the non-certified staff bargaining unit by the Board on July 21, 2025, the non-certified staff had not been members of a bargaining unit. Tr. 18.

The District employs Cass as the Superintendent and Principal. Tr. 15.¹ The District hired Cass in or around July 2021. Tr. 16. Cass is the sole administrative employee at the District. *Id.* In his role as Principal, he supervises the day-to-day operations of the school, and in his role as Superintendent, he acts on behalf of the Board of Education. Tr. 17. As a member of the District's bargaining team for negotiations with the bargaining unit for certified staff, Cass prepared bargaining proposals and reviewed counterproposals. Tr. 29

Cass' office is one of two closed-door offices in the District's main office. Tr. 18. In addition to himself, a nurse, a receptionist, and McGovern work in the main office. *Id.* McGovern works in the other closed-door office opposite Cass' office, whereas the nurse and the receptionist work in the open office. *Id.* Cass and McGovern are the only employees working year-round in the District's main office. Tr. 19. While McGovern can access Cass' office, she only entered it once without his presence when he called to ask her to retrieve a signature sheet from his office. Tr. 46-47. She remained on the phone with him for the entire occurrence. *Id.*

¹ References to exhibits in this matter will be as follows: Petitioner's exhibits, "P. Ex.,"; Respondent's exhibits, "R. Ex.,". References to the transcript of proceeding will be "Tr."

McGovern replaced Cheryl Jones (Jones) as the District's bookkeeper/treasurer after Jones' retirement in June 2023. Tr. 20. McGovern applied after viewing the District's Facebook post advertising the job. Tr. 37, R. Ex. 1. The posting sought applicants with a knowledge of school finances, payroll and computer applications and possessing "excellent" communication skills. R. Ex. 1. Cass and Jones conducted the interview process that resulted in McGovern's hiring. *Id.* She reports directly to Cass. Tr. 43. McGovern never received an official job description, instead she received a binder, prepared by Jones, that describes the position's daily duties and other responsibilities. Tr. 39, 41. Since her hire, McGovern revised and updated her duties based on her experience in the position. Tr. 41-42; R. Ex. 2. The most recent update occurred during the 2024 Christmas break. Tr. 42. As bookkeeper/treasurer, McGovern handles payroll, manages the balance sheets, pays bills, generates quarterly reports and raise reports, set up new employee information, and several other duties. Tr. 39-40, R. Ex. 2. This duties list does not include any reference to assistance with collective bargaining. R. Ex. 2. She also inputs financial data into the District's management software, TeacherEase. Tr. 40. She implements raises based on the pay schedule from the collective bargaining agreements. Tr. 45.

The District maintains a formal evaluation process for non-certified staff, including the bookkeeper/treasurer. Tr. 21; P. Ex. A. The evaluation form evaluates the position's performance based on the employee's ability to manage and perform certain tasks such as maintaining records of "all financial transactions," preparing monthly and annual reports, preparing payroll, and accounting for funds in advance of Board of Education meetings. P. Ex. A. Cass did not provide McGovern with an evaluation form at the time of hiring. Tr. 24. McGovern has not yet been formally evaluated, because Cass provides her with informal, regular feedback. Tr. 25, 48.

McGovern prepares a Treasurer's report for the District's Board of Trustees in advance of meetings. Tr. 28, 47. The report contains the Treasurers Report itself, describes the District's assets, expenses, revenues, and other payroll matters, and accounts for all revenues and expenses for the previous month. Tr. 47; R. Ex. 2. This information is placed in a packet along with other materials to be reviewed by the Board of Trustees before and during meetings. Tr. 47. When engaged in collective bargaining, Cass includes information related to negotiations, such as tentative agreements. Tr. 29. During the school year, these packets are prepared by the receptionist, but during the summer, McGovern assists with preparing the packets. Tr. 28.

Cass asked McGovern to prepare and provide financial information to the District bargaining team, which used that information to develop cost proposals. Tr. 30. McGovern did not develop the cost proposal, nor has she ever developed any proposals during bargaining. Tr. 30-31, 43-44. In the most recent bargaining with the certified staff unit, Cass asked McGovern to provide two reports but did not disclose the purpose of those reports to her. Tr. 31, 52. Because Cass and McGovern are the only employees with access to both Human Resources information and TeacherEase, they are the only employees able to generate the reports needed for cost proposals. Tr. 32. McGovern was not aware of any bargaining information until the agreement had been reached and a copy of the agreement had been provided to her to input the raise schedule into TeacherEase. Tr. 45

Cass anticipates that he would be on the District's bargaining team when the non-certified staff unit begins bargaining its contract. Tr. 32-33. He expects McGovern to provide information to him during those negotiations

but does not expect her to prepare any reports or proposals for the bargaining team. Tr. 33. The District’s bargaining team and Cass himself prefers that he prepare all proposals. *Id.* Cass testified that losing McGovern’s assistance during bargaining would require the District to retain a consultant. Tr. 34. Alternatively, he could learn and take on certain duties. *Id.*

III. DISCUSSION

Section 2(n) of the Act defines a “confidential employee” as an “employee, who (i) in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies with regard to labor relations or who (ii) in the regular course of his or her duties has access to information relating to the effectuation or review of the employer's collective bargaining policies.” 115 ILCS 5/2(n); 80 Ill. Admin. Code § 1110.180(a). Section 2(n)(i) refers to the “labor nexus” test, and Section 2(n)(ii) refers to the “access” test.² *Bd. of Educ. of Cmty. Consol. High Sch. Dist. No. 230. v. IELRB*, 165 Ill. App. 3d 41, 56 (4th Dist. 1987). Exclusion of an employee as confidential must be “narrowly” interpreted. *Bd. of Educ. of Glenview Cmty. Consol. Sch. Dist. No. 34 v. IELRB*, 374 Ill. App. 3d 892, 898-99 (4th Dist. 2007); *Niles Twp. High Sch. Dist. 219 v. IELRB*, 387 Ill. App. 3d 58, 68 (1st Dist. 2008). The party asserting the exclusion bears the burden of producing sufficient evidence to support the exclusion. *Id.*

a. **The Labor Nexus Test**

Under the “labor nexus” text, the employee must assist in a “confidential capacity” as that capacity specifically relates to “labor relations.” *Niles Twp.*, 387 Ill. App. 3d at 71 The assistance must provide the employee with advanced information of bargaining positions. *Id.* The employee’s supervisor must formulate, determine, and effectuate management policies in labor relations. *Farmington Cent. Cmty. Unit Sch. Dist. No. 265*, 19 PERI 84 (EDRDO, June 2, 2023) (citing *District No. 230*, 165 Ill. App. 3d at 57); *Laborers Int’l Union of N. Am., Local 508*, 19 PERI 141 (ALJRDO Aug. 1, 2003). Previous Board orders have found that employees who assist in preparing labor proposals are confidential under this test. *See Riverside-Brookfield Twp. Dist. 208*, 12 PERI 1011 (EDRDO, Jan. 4, 1996).

Cass, as the sole administrative employee, formulates, determines, and effectuates management policies in labor relations. Because her supervisor performs these duties, the District must establish that McGovern assists with labor relations in a confidential capacity. In the prior bargaining period between the District and the certified staff unit, McGovern prepared two reports for use in the development of a bargaining proposal. However, he did not disclose the purpose for the request. He testified that he deliberately kept the purposes to himself. McGovern testified that she was unaware of the reports’ purposes. Her only exposure to the details of the bargaining session occurred after the contract had been executed. Moreover, Cass testified that even if McGovern were excluded from

² Courts and the Board have applied a third test, the “reasonable expectation” test, for those situations with an absence of collective bargaining history. *Niles Twp. High Sch. Dist. 219 v. IELRB*, 387 Ill. App. 3d 58, 68 (1st Dist. 2008); *see also One Equal Voice v. IELRB*, 333 Ill. App. 3d 1036, 1044 (4th Dist. 2002). Because the parties do not raise this issue and the testimony established a history of collective bargaining for the certified staff unit during McGovern’s time as bookkeeper/treasurer, this test is not at issue here.

the new bargaining unit, she would not prepare any proposals. Neither he nor the Board of Trustees would be comfortable if anyone other than himself would prepare the proposals.

While the District argues that this situation compares to the *Riverside-Brookfield* order in which three clerks were deemed confidential employees, the work processes here lack the definitive evidence present in that case. *Riverside-Brookfield*, 12 PERI 1011. Those clerks assisted “with the preparation of financial proposals for use in collective bargaining negotiations.” *Id.* McGovern does not assist with preparing proposals, nor does it appear she ever will. No testimony indicated that Jones, the previous bookkeeper/treasurer, ever assisted with bargaining. No documentary evidence indicated that the bookkeeper/treasurer was expected to assist with bargaining. The facts suggest that bargaining duties remained solely with Cass.

As the District notes, this matter aligns with the background facts of the *Farmington* order, but that order noted that that bookkeeper assisted with “costing out alternate potential salary and benefit proposals.” *Farmington*, 19 PERI 84. Only Cass cost out the proposals. McGovern generated two reports at his request for an unknown purpose. Her lack of knowledge as to the purpose of these reports prevented her from learning the District’s bargaining positions as confidential capacity would require. *Niles Twp.*, 387 Ill. App. 3d at 71. The goal of the confidential employee exception is to avoid “advance knowledge” of the employer’s bargaining strategies. *Cnty. Consol.*, 165 Ill. App. 3d at 61. The established work practices shield McGovern from such “advance knowledge.”

Based on the testimony and evidence in the record, McGovern does not assist Cass in a confidential capacity related to labor relations. Under the “labor nexus” test, she is not a confidential employee.

b. The Access Test

Under the “access” test, the inquiry is “whether the employee in question has unfettered access ahead of time to information pertinent to the review or effectuation of pending collective-bargaining policies.” *District No. 230*, 165 Ill. App. 3d at 62. Such information must be confidential, and access must be authorized. *Id.* Confidential information refers to an employer’s strategy for “dealing with an organizational campaign, actual collective bargaining proposals and information relating to matters dealing with contract administration.” *Id.* at 63 (quoting *City of Burbank*, 1 PERI 2008, No. S-RC-45, at 44 (ISLRB, June 6, 1985)).

The District must establish that McGovern maintains unfettered access to confidential information relating to its strategy in labor relations. McGovern maintains regular access to the entirety of the District’s financial information, but no testimony or other evidence connects that access to the District’s bargaining activities. Employees with “unlimited access to drafts of the Employer’s bargaining proposals and counterproposals prior to the presentation of those documents to the Union” and “unfettered access to the financial data underlying those proposals” would be confidential under the “access” test. *Riverside-Brookfield*, 12 PERI 1011. Here, McGovern lacks this access. Testimony established one occasion where she physically accessed a bargaining document; however, this document was only a signature sheet, not drafts of bargaining proposals or counterproposals. *Id.* While she has unfettered access to the financial data underlying a proposal, Cass keeps all proposals confidential. Unlike those clerks, McGovern is siloed off from bargaining and any strategies developed by the District. Moreover, the testimony did not ascribe any percentage of time spent on labor relations to compare to other employees found

confidential in Board decisions. *See Laborers Int'l*, 19 PERI 141 (5 to 10 percent of workday spent on labor relations satisfies both tests). Even setting aside McGovern's lack of knowledge, the record disclosed just three occasions over an entire bargaining period when she was tangentially involved. These occasions fall short of any comparable percentage of a workday.

While the District maintains that the proximity of McGovern's office to Cass' office would allow her to overhear and learn of bargaining strategies, no testimony suggests that such instance occurred or could occur. Proximity can be considered when evaluating the "access" test. *Riverdale Cmty Unit Sch. Dist. 100*, 11 PERI 1026 (EDRDO, Feb. 24, 1995); *Akin Cmty. Consol. Sch. Dist. 91*, 10 PERI 1064 (IELRB, March 31, 1994). However, proximity alone is insufficient when no evidence shows that an employee regularly overhears such information. *Akin Sch. Dist.*, 10 PERI 1064. Unlike the bookkeeper in *Riverdale* who regularly accessed the superintendent's office and worked in close proximity, McGovern entered Cass' office once without his presence. *See Riverdale*, 11 PERI 1026. There is no regular access to his office without his presence. There was no testimony of regular authorized access to his office to review files or other potentially pertinent information. Cass and McGovern do frequently interact on other matters, but as discussed above, Cass keeps bargaining information to himself. And while McGovern shares access to the same data management programs as Cass, her non-involvement in bargaining matters, such as draft proposals and counterproposals, prevents her from connecting that information to the District's strategies at the bargaining table in advance.

Based on the testimony and evidence in the record, McGovern does not possess unfettered authorized access to information pertinent to pending collective bargaining matters. Under the "access" test, she is not a confidential employee.

IV. RECOMMENDED ORDER

In light of the above findings and conclusion, the petition filed in the above-captioned case is hereby dismissed in its entirety.

V. EXCEPTIONS

In accordance with Section 1110.160(c)(3) of the Board's Rules, parties may file written exceptions to this Recommended Decision and Order together with briefs in support of those exceptions, not later than 14 days after receipt hereof. Parties may file responses to exceptions and briefs in support of the responses not later than 14 days after receipt of the exceptions and briefs in support thereof. Exceptions and responses must be filed, if at all, at ELRB.mail@illinois.gov and with the Board's General Counsel, 160 North LaSalle Street, Suite N-400, Chicago, Illinois 60601-3103. Pursuant to Section 1100.20(e) of the Rules, the exceptions sent to the Board must contain a certificate of service, that is, "**a written statement, signed by the party effecting service, detailing the name of the party served and the date and manner of service.**" If any party fails to send a copy of its exceptions to the other party or parties to the case, or fails to include a certificate of service, that party's appeal will not be considered, and that party's appeal rights with the Board will immediately end. *See* Sections 1100.20 and 1120.50 of the Rules, concerning service of exceptions. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois, this 26th day of September 2025.

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

Steven S. Shonder, Jr.
Steven S. Shonder, Jr.
Administrative Law Judge