STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD

In the Matter of:	)	
	)	
Board of Education of Community Consolidated School District #15,	)	
	)	
Employer/Petitioner,	)	
	)	
and	)	Case No. 2005-UC-0001-C
	)	
Educational Support Personnel Association, IEA-NEA,	)	
	)	
Exclusive Representative/Respondent.	)	

OPINION AND ORDER

On July 1, 2004, the Board of Education of Community Consolidated School District #15 ("District") filed a unit clarification petition seeking to exclude three secretaries from a bargaining unit on the ground that they were confidential employees. On October 25, 2004, the Executive Director issued a Recommended Decision and Order. The Executive Director excluded the Class IV Secretary in the Personnel Department as a confidential employee, but found that the two Class IV Secretaries in the Business Department were not confidential employees, and, therefore, ordered that they remain in the bargaining unit.

The District filed timely exceptions to the Executive Director's Recommended Decision and Order insofar as he recommended not excluding the Class IV Secretaries in the Business Department from the bargaining unit, together with a brief supporting its exceptions. The union, Educational Support Personnel Association, IEA-NEA ("Association"), did not file a response to the exceptions.

We have considered the Executive Director's Recommended Decision and Order, the District's exceptions, and the District's brief. We have also considered the investigative record and applicable precedents. For the reasons in this Opinion and Order, we affirm the Executive Director's Recommended Decision and Order.[1]

[1] No exceptions were filed to the Executive Director's determination that the Class IV Secretary in the Personnel Department was a confidential employee. Accordingly, with respect to that issue, the Executive Director's non-precedential recommendation is final and binding on the parties.

I.

The District is an educational employer within the meaning of Section 2(a) of the Illinois Educational Labor Relations Act ("Act"). The Association is an employee organization within the meaning of Section 2(c) of the Act and an exclusive representative within the meaning of Section 2(d) of the Act. The Association represents a bargaining unit including District secretarial and clerical personnel and aides. (Certification of Representative, Case No. 86-RC-0035-C, September 19, 1986).

Pam Seick and Barb Dawson are Class IV Secretaries in the District's Business Department. Prior to July 1, 2004, Seick was involved only with the Transportation Department payroll. Effective July 1, 2004, Seick was cross-trained to run the entire District payroll. Seick is included in the processing and balancing of payroll from beginning to end. Dawson has also been cross-trained in payroll. Seick and Dawson both assist and act in a confidential capacity to the Business Manager, who formulates collective bargaining positions. The Executive Director found that Seick and Dawson assist management in costing out collective bargaining proposals.

In its exceptions, the District asserts that Seick and Dawson are responsible for costing out proposals, not merely assisting a management employee who does so. During the investigation, the District stated both that "both Ms. Seick and Ms. Dawson will be costing out proposals for negotiations" and that "both will now assist management in costing out collective bargaining proposals." Given this conflict, we adopt the Executive Director's statement of the facts.

II.

We note initially that the unit clarification procedure is appropriate to resolve ambiguities regarding the unit placement of individuals in a job classification that has undergone recent, substantial changes. *SEDOL Teachers Union v. IELRB*, 276 Ill.App.3d 872, 658 N.E.2d 1364 (1st Dist. 1995). Seick's and Dawson's positions have undergone recent, substantial changes. Therefore, it is appropriate to consider their unit placement via the unit clarification procedure.

Section 2(b) of the Act excludes confidential employees from the definition of "educational employee." The exclusion of confidential employees goes toward maintaining the status quo in negotiations by removing from the bargaining unit individuals who have the potential for obtaining advance knowledge of confidential labor relations information, thus upsetting the normal balance of

negotiations. *Board of Education of Community Consolidated High School District No. 230 v. IELRB*, 165 Ill.App.3d 41, 518 N.E.2d 713 (4th Dist. 1987) (*District No. 230*). Because confidential employees are precluded from exercising the panoply of rights set forth in the Act, the exclusion is narrowly interpreted. *One Equal Voice v. IELRB*, 333 Ill.App.3d 1036, 777 N.E.2d 648 (1st Dist. 2002), *appeal denied*, 202 Ill.2d 674, 787 N.E.2d 174 (2003); *Winchester Community Unit School District 1*, 13 PERI 1026, Case No. 96-RC-0019-S (IELRB, January 7, 1997). The party asserting that a position is excluded under the Act has the burden of proving that the position falls into that exclusion. *Southern Illinois University Board of Trustees*, 5 PERI 1197, Case Nos. 85-RC-0022-S et al. (IELRB, September 30, 1988).

Section 2(n) of the Act defines "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.

The test in Section 2(n)(i) is known as the "labor nexus" test. *District No. 230*. In order for an individual to be a confidential employee under Section 2(n)(i), the allegedly supervisory or managerial employee must formulate, determine and effectuate management policies with regard to labor relations—all three responsibilities must be present. *Id.* In addition, the allegedly confidential individual must, in the regular course of his/her duties, "assist and act in a confidential capacity" to the allegedly supervisory or managerial employee. *Id.* The confidentiality aspect must specifically relate to labor relations. *Id.*

The test in Section 2(n)(ii) is known as the "access" test. *Id*. Under Section 2(n)(ii), "inquiry is limited to whether the employee in question has unfettered access ahead of time to information pertinent to the review or effectuation of pending collective-bargaining policies," *id.* at 62, 518 N.E.2d at 726. Mere access to personnel or statistical information on which the employer's labor relations policy is based is insufficient to render an employee confidential. *Chief Judge v. AFSCME, Council 31*, 218 Ill.App.3d 682, 578 N.E.2d 1020 (1st Dist. 1991), *aff'd and remanded*, 153 Ill.2d 508, 607 N.E.2d 182 (1992); *The Washington Post Co.*, 254 NLRB 168, 190 (1981).

It has not been established that the Class IV Secretaries in the District's Business Department are confidential employees within the meaning of Section 2(n)(i) of the Act. The Executive Director determined that the Class IV Secretaries in the District's Business Department are not confidential

employees under that test because the Business Manager formulates collective bargaining positions but does not determine or effectuate them. The District asserts that it is illogical to decide that the Business Manager could formulate collective bargaining positions while denying that he determines labor policies. However, there is a difference between "formulating" and "determining." "Determining" implies a decision-making role that is not implied as to those who merely "formulate" policies. During the investigation, the District asserted only that the Business Manager formulated collective bargaining positions, and did not assert that he determined or effectuated them. This is inadequate to establish confidential status under Section 2(n)(i) of the Act.

It has also not been established that the Class IV Secretaries in the District's Business Department are confidential employees within the meaning of Section 2(n)(ii) of the Act. The District contends that, in the regular course of their duties, they have authorized access to information relating to the effectuation or review of the District's collective bargaining policies. However, this has not been shown.

In *Community Consolidated School District No. 59*, 2 PERI 1088, Case No. 85-UC-0009-C (IELRB, June 24, 1986), the Board determined that an employee benefits secretary who compiled employee benefit information for a Director of Personnel, who used that information to cost out the employer's bargaining proposals, was not a confidential employee under Section 2(n)(ii) of the Act The Board stated that the secretary was not "privy to the manner in which the information is used or the bargaining proposals eventually formulated," 2 PERI 1088 at VII-251. Similarly, in *City of Bloomington*, 12 PERI 2011 (ISLRB 1996), *affirmed*, 13 PERI 4007 (Ill. App. 4th Dist. 1996) (unpublished order), the Illinois State Labor Relations Board ("ISLRB") determined that a clerk who had been asked during collective bargaining negotiations to take current data and combine it with certain variables in order to evaluate a particular proposal was not a confidential employee under the authorized access test. The clerk was not told why the information was requested.[2]

Here, it has not been established that the Class IV Secretaries in the District's Business Department have access to confidential labor relations information beyond that of the employees at issue in *Community Consolidated School District No. 59* and *City of Bloomington*. The fact that they assist

[2] *Pleasure Driveway & Park District of Peoria*, 6 PERI 2042 (ISLRB 1990), cited by the District, was a non-precedential decision.

management in costing out collective bargaining proposals does not necessarily mean that they have a role beyond that of compiling information or that they are informed of how the information is used.

The District argues that the responsibility of the Class IV Secretaries in the District's Business Department to cost out collective bargaining proposals makes them confidential employees. The District contends that the process of costing out proposals makes employees privy to management's bargaining strategies, including proposals not yet presented to the union, its consideration of "what-if" proposals, and its bottom line. However, we have adopted the Executive Director's statement that the Class IV Secretaries in the District's Business Department assist management in costing out collective bargaining proposals, rather than that they themselves cost out proposals. Accordingly, the District's arguments based on the assumption that those Secretaries cost out proposals are not relevant.

The District also argues that employees who assist in costing out collective bargaining proposals may or may not be confidential, depending on whether they know why they are compiling the information requested of them. However, it has not been established that the Class IV Secretaries in the District's Business Department know why they are compiling the information. Therefore, it has not been established that those Secretaries are confidential employees.

It has not been established that the Class IV Secretaries in the District's Business Department are confidential employees under either Section 2(n)(i) or Section 2(n)(ii) of the Act. Accordingly, they may not be excluded from the bargaining unit on that basis.

III.

Insofar as they concern the Class IV Secretaries in the District's Business Department, the Executive Director's Recommended Decision and Order is affirmed and the unit clarification petition is dismissed. The Class IV Secretaries in the District's Business Department shall remain within the bargaining unit.

IV. 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 Board maintains an office (Chicago or Springfield). "Any direct appeal

to the Appellate Court shall be filed within 35 days from the date that a copy of the decision sought to be reviewed was served upon the party affected by the decision," 115 ILCS 5/16(a).

Decided: October 11, 2005
Issued: October 13, 2005
Chicago, Illinois

/s/ Lynne O. Sered
Lynne O. Sered, Chairman

/s/ Ronald F. Ettinger
Ronald F. Ettinger, Member

/s/ Bridget L. Lamont
Bridget L. Lamont, Member

/s/ Michael H. Prueter
Michael H. Prueter, Member

/s/ Jimmie E. Robinson
Jimmie E. Robinson, Member

Illinois Educational Labor Relations Board
160 North LaSalle Street, Suite N-400
Chicago, Illinois 60601
Telephone: (312) 793-3170