

**STATE OF ILLINOIS
EDUCATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
Glenview Professional Association, IEA-NEA,)	
)	
Petitioner,)	
)	
and)	Case No. 2006-RS-0002-C
)	
Glenview Community Consolidated School)	
District No. 34,)	
)	
Employer.)	

OPINION AND ORDER

The Glenview Professional Association, IEA-NEA (“Association”) has filed a representation petition. The petition seeks to include one individual, the Administrative Assistant to the Director of Technology, in a bargaining unit of non-certificated employees that the Association represents at Glenview Community Consolidated School District No. 34 (“District”).¹

On November 16, 2005, an Administrative Law Judge (“ALJ”) issued a Recommended Decision and Order. She determined that the Administrative Assistant to the Director of Technology was a confidential employee and, therefore, excluded from the bargaining unit. Accordingly, she dismissed the petition.

The Association filed timely exceptions to the ALJ’s Recommended Decision and Order. The District filed a response to the Association’s Recommended Decision and Order.

We have considered the ALJ’s Recommended Decision and Order, the Association’s exceptions, and the District’s response. We have also considered the record and applicable precedents. For the reasons in this Opinion and Order, we reverse the ALJ’s Recommended Decision and Order.

I.

We adopt the ALJ’s findings of fact, as supplemented in this Opinion and Order. In order to assist the reader, we restate the facts to the extent necessary to decide the issues presented.

¹ The petition describes the position held by that individual as “Administrative Assistant to the Assistant Superintendent for Academic Achievement.” However, that individual testified that her position was “Administrative Assistant to the Director of Technology,” and that another individual was the Assistant Superintendent’s Administrative Assistant and was already in the bargaining unit. (Tr. 10, 11). Given that testimony, we refer to the position as “Administrative Assistant to the Director of Technology.”

The District is an educational employer within the meaning of Section 2(a) of the Illinois Educational Labor Relations Act, 115 ILCS 5/1 et seq. (“Act”). The Association is an employee organization within the meaning of Section 2(c) of the Act. The existing unit consists of the following employees:

Included: All regularly employed full and part-time non-certificated employees of Glenview Community Consolidated School District No. 34.

Excluded: All certificated employees as defined in Article 21 of the School Code, the Administrative Assistants to the Superintendent, Executive Director of Human Resources and Executive Director of Operational Services, the Board of Education Secretary, the Printing/Graphic Specialist, the Maintenance Supervisor, the Custodial Supervisor, the Network Manager, the Network Technicians, the Network Engineer, the Network Data Engineer, the interns and any other confidential, managerial, supervisory, short-term or student employee as defined by the Illinois Educational Labor Relations Act.

(Jt. Ex. 1).² Other than the Administrative Assistants to the Superintendent, the Executive Director of Human Resources and the Executive Director of Operational Services, all other Administrative Assistants are in the bargaining unit covered by the parties’ collective bargaining agreement. (Jt. Exs. 1, 2).

Margaret Coons is the Administrative Assistant to the Director of Technology. The position was created after the 2003-2004 school year when the District restructured the Technology Department. The District previously employed a full-time Network Technician, who, among other things, engaged in technology troubleshooting. The District eliminated that position and combined it with a part-time administrative assistant position already in the Department to create the full-time position of Administrative Assistant to the Director of Technology. The Technology Department currently consists of the Director of Educational Technology, Brian Engle; Network Manager Kelly Conwell; four Network Engineers; and Coons. All individuals in the Technology Department have the same benefits and working conditions. (Tr. 105). The position of Administrative Assistant to the Director of Technology is housed in the administration building, with the Superintendent, the Assistant Superintendent, the Director of Student Services, the Business Manager, the Director of Public Relations, the Director of Technology, the Director of Transportation, the Director of Buildings and Grounds, and the Administrative Assistants for those positions. Like other central office Administrative Assistant positions, the position of Administrative Assistant to the Director of Technology is a 12-month position. (Tr. 20; Jt. Ex. 2).

The job description for Coons’ position states that the purpose of the position “is to provide administrative and secretarial support to ensure the smooth operation of school related and business functions of the central

² We refer to the joint exhibits as “Jt. ___” and the hearing transcript as “Tr. ____.”

administration” of the District. The job description lists the following job responsibilities: provide support to the Director of Educational Technology, Network Manager and Network Engineers; coordinate technology purchases; coordinate inventory of software and hardware; maintain District voicemail, email and phone systems; coordinate phone system service activities; coordinate new staff access to the network and PowerSchool³; maintain group email lists; provide support with computer software applications; develop/download data sets for assessment systems; assist in the budgeting process; and perform other duties as assigned by the Assistant Superintendent. The job description states that the position requires the “ability to handle confidential information,” but does not elaborate as to the nature of the confidential information.

A large portion of Coons’ duties are administrative. Coons communicates with outside vendors concerning pricing for computer equipment and software, problems with computer equipment or software, obtaining computer replacements for damaged equipment or getting the correct access. She orders necessary parts. When ordering equipment and software, Coons creates and places a purchase order and assigns the purchase to the account that is to pay for it. Coons keeps records of the purchase orders that she creates. Coons has access to the technology budget and the Technology Department accounts, but must be given access to other accounts by the business office. Coons keeps an inventory of purchases of new technology, including computers, video cameras and cell phones. Coons’ position is expected to coordinate special projects, develop and download data sets, assist in the budgeting process, and complete other duties as assigned.

Coons also provides day-to-day technology support for the District administrative office and provides daily support to technology facilitators and associates. Coons acts as technical support for the administrative building staff when Engle and Conwell are at another District location, which typically is the case. (However, Engle and Conwell can be reached by cell phone, by email or via the District’s help desk.) Coons performs the duties of a level one technician, which consist of providing first level assistance for quick troubleshooting. She troubleshoots computer problems when asked. She provides on-site operation and maintenance of computers in the administration building. For example, she adds network users when necessary and assigns them computer passwords, helps employees gain access to their folders when necessary, and assists employees in finding lost files, whether they are on the server, desktop or hard drive. She is not responsible for system tape back-ups. When a former Human Relations Director left the District, Coons copied her personal folder to a CD. (Tr. 34). With respect to her

³ PowerSchool is a program that teachers use for taking student attendance and reporting grades.

technical support duties, Coons' position is different from that of Assistant Superintendent for Student Achievement Phil Collins' other Administrative Assistant.

Coons sets up computer access and provides support for user accounts through Workgroup Manager.⁴ She adds new users to the District's network, assigning computer passwords to the employees. She gives District employees, including administrative employees, access to the network by assigning them email "tabs" through which they can access their email and staff email. She creates user accounts for employees in the administrative office, giving them access to the appropriate shared administrative folders. When setting up access for a teacher, Coons gives the teacher a username and password. The teacher is instructed that, after accessing the system, he/she should change his/her password. After the password is changed, only that teacher can access his/her email. However, Coons can access another employee's email by changing the employee's password. It is not possible to change an employee's password without the employee knowing that the password was changed.

Through Workgroup Manager, Coons also gives employees access to shared folders for their particular site. There is a shared folder for the business office, a shared folder for the Superintendent and his assistant, and a shared folder for the Human Resources Director and her three assistants. The shared folders are only accessible to that specific group of employees and the Technology Department employees, including Coons. Coons testified that, if she needs to access a folder to create give another employee access, she can see the names of the files and subfolders within that folder. (Tr. 34).

Coons sets up the PowerSchool program for staff members, and assigns each teacher a PowerSchool identification number. Coons has used PowerSchool to obtain information concerning the number of students at particular grade levels and to obtain student identification numbers so that students can access the network.

Coons helps other employees who ask for her assistance in operating their software. For instance, she has helped other employees make charts using Excel. She has helped Executive Director of Human Resources Jill Engel, employees in the Human Resources Department, and other administrators with computer problems. Coons testified that she could be asked to troubleshoot a labor relations document, and would have access to the document, which may be opened "right in front of" her. (Tr. 38-39). However, she also testified that she does not pay attention to documents when she is troubleshooting, and that she would not necessarily know what the documents mean. The District did not provide evidence that Coons' duties require her to read the documents that she is troubleshooting.

⁴ Workgroup Manager is the program that allows access to the District's network and monitors all the District's servers.

Coons can access an email or document when troubleshooting at a workstation. Director of Educational Technology Engle testified that Coons has access to any information on the District's network. According to Engle, Coons has access to all programs and data in the administrative office. Engle testified that Coons could be required to retrieve or repair files in a database in which collective bargaining information is kept. Coons could also encounter collective bargaining information if she was reestablishing a user's permissions in Workgroup Manager. Coons could also pull up a document if she was troubleshooting on a particular computer.

Coons, the six other Technology Department employees and Assistant Superintendent for Student Achievement Collins have a master password that allows them to login to any workstation to fix problems concerning files or software. As a holder of the master password, Coons has access to all of the folders on the server, and she can see the names of any of the files or subfolders they contain. She can also view any documents within the folder. Coons does not need to ask permission to go into any database or to view any files or emails. However, Workgroup Manager does not see anything on a local computer that is not on the server. An employee can keep files on his/her local computer without also putting it on the network server. However, employees are encouraged to keep files and documents on the network server.

All the Technology Department employees, including Coons, can log in from a remote desktop computer and look at documents or files on any of the other District computers. Through remote access, they can control the files and hard drives on computers at other workstations. In other words, by using remote desktop, an employee can use another employee's computer as if it is his/her own computer without being physically present at that computer. Coons has remote desktop that allows her to access any Macintosh computer on the network. Sixty percent of the District's computers and that majority of the computers in the administrative building are Macintosh. Three of the four computers in the Human Resources Department are Macintosh, as are all of those in the Superintendent's office and Collins' office. The District's Business Manager and Director of Special Student Services also use Macintosh computers. Grounds Manager Jon O'Connor does not use a Macintosh computer, and, therefore, Coons cannot remotely access his computer. Coons, however, testified that she has never remotely accessed another computer, and does not know how to do so. Coons has used remote desktop to input names into the telephone system, but has not used it to look at files or drafts. (Tr. 25).

At the beginning of the school year, the District experienced problems with the directory logins. Therefore, when creating the user accounts, Coons needed to log in as the particular user to test whether the folders could be

accessed. However, Network Manager Conwell has corrected most of these problems, and Coons no longer necessarily logs into the account with the user's password to test access.

Coons also maintains the District email system. She sets and maintains group email lists, such as the group email list through which District administrators communicate with each other. Coons recently assisted Executive Director of Human Resources Engel in obtaining access to the primary grade staff email group. This did not require Coons to look at Engel's email. However, Coons could be asked to assist with an email problem such that she could view a descriptive list of every email in the employee's inbox. Coons admitted that it was possible that she could view an email regarding confidential information, such as discussions about upcoming negotiations, but stated that this had never occurred. Director of Educational Technology Engle testified that, when troubleshooting an email problem, Coons could be required to remotely access files or email. Coons is able to open the email of employees asking for assistance, and, in doing so, can view every email in the employee's inbox. Coons testified that, although she can change passwords, she would not venture to assist with an email problem, but would take the problem to Network Manager Conwell. Coons testified that the only thing she does with email as part of her duties is giving access. (Tr. 24). Coons has never been asked to read any other employee's email, and she has never done so. According to Executive Director of Human Resources Engel, staff members commonly have problems with their Word program and with the email program.

According to Marilyn Miller, who was the District's Executive Director of Human Resources from 1993 through June 2004, documents relating to grievances, arbitrations and discussions to settle grievances were kept in the Human Resources Department's shared files. It was also her practice to email drafts of policies, including salary proposals, to the other administrators for review. Salary proposals were created on the District's computers, and were emailed to and stored in shared files. The District, through the network technicians, restricted the access of other employees to Miller's computer files. When access to a computer needed to be restricted, Miller requested that it be done through Network Manager Conwell, who then assigned the task to another employee. Miller did not recall ever showing Coons or the employee in the eliminated Network Technician position any labor relations documents.

Jill Engel has been the Executive Director of Human Resources since July 1, 2005. Engel anticipated that she would use her computer in formulating policies and proposals for the negotiations that were to begin in February 2006. Engel anticipated that she would email such documents to the Administrative Assistants, who would store

them in a subfolder in the Human Resources Department folder on the server. She predicted that the names of the folders would depend on the nature of the documents within them, but could have titles such as “salary” and “negotiations.” She testified that the three Human Resources Department Administrative Assistants and the technology staff would have access to the documents.

When working as a negotiating team member in another district, Engel exchanged proposals and communicated with other negotiating team members and attorneys for the district via email. Engel testified that, if she had difficulty accessing such documents in her email, she would ask for Coons’ assistance. Engel has already asked Coons for assistance when she was having difficulty receiving her group email. At that time, the list of emails in Engel’s inbox was pulled up, and Coons was able to view the subject matter titles of the email. Engel testified that she did not know, but could “almost guarantee,” that some of those emails related to labor relations issues. Coons also assisted Engel with an online application related to posting jobs on a website and set up a printer for her. Engel also testified that, because Coons is usually in the building, she seeks technical assistance from Coons, but, if Coons is not available, she asks Director of Educational Technology Engle or a Network Engineer for assistance. Engel prefers not to ask Engle or Network Manager Conwell for assistance because it takes them away from their duties in the schools, which she considers should be their focus.

Engel has worked with Business Manager Vicente concerning salary projections. Engel and Vicente have viewed documents on their computers and have emailed documents to each other. Engel and Assistant Superintendent of Student Achievement Collins have also emailed such documents to each other.

During negotiations for the first collective bargaining agreement between the District and the Association, certain members of the District’s bargaining team used laptop computers to take notes. They sent the notes back and forth to each other.

Coons coordinates and maintains the District telephone system. She deletes and adds users to the system, including setting up voice mailboxes. She set up the telephone extension and voicemail for Executive Director of Human Resources Engel. At the end of the school year, she deleted old voicemail messages from the mailboxes of teachers who were changing classrooms, and changed the names on the extensions for those teachers. Coons testified that she determined whether to delete voicemail messages based on the length of time the message had been in the voice mailbox, rather than by listening to the messages. However, Director of Educational Technology Engle testified that he had heard Coons go through some voicemail messages as she was clearing out the system. Coons

has also changed the names assigned to the extensions for principals. She has done this by going into the system and dialing in the individual's name. She does not listen to the voicemail messages, but, instead, informs the principals that the voicemail is set and gives them their passwords so that they can access their messages. Coons assists employees who have difficulty in accessing their voicemail by determining whether their accounts are properly set.

Coons is expected to maintain confidential information concerning network security and information that she accesses troubleshooting computer or email problems. However, Coons could not recall ever having seen any collective bargaining documents or information as a result of her duties, and Engle had no knowledge that she had. Engel has never directly shared confidential information with Coons. Coons had not been informed that she would be assisting when the District and the Association began negotiating their next contract in February 2006. Coons had not been told that she would be typing management proposals or that she would have any other additional duties related to the negotiations.

II.

The ALJ concluded that the Administrative Assistant to the Director of Technology was a confidential employee and, therefore, excluded from the bargaining unit. The ALJ determined that the District's administrators had stored and would store labor relations materials on the network, and that the District's administrators had used and would use email to communicate with each other during bargaining. The ALJ stated that, even if an employee's access to confidential bargaining information is sporadic, the employee is confidential if the access occurs as part of his/her regular duties. The ALJ stated that Coons was able to view the subject-matter titles in Executive Director for Human Resources Engel's inbox, was a holder of the master password that allowed access to all of the files on the District's network server, and was responsible for giving the administrators access to their shared folders, which could contain collective bargaining materials. The ALJ stated that Coons was expected to troubleshoot computer problems on a regular basis, and that this troubleshooting required accessing files and documents regardless of the nature of the information they contained. The ALJ determined that it was reasonable that the ability to handle confidential information specified in Coons' job description would encompass collective bargaining information. The ALJ noted Coons' testimony that she could access collective bargaining related information. She noted that the Illinois Educational Labor Relations Board does not have the authority to tell the District where and how it must store confidential information. She stated that the fact that there were a number of employees who performed some

or all of the same duties as Coons was not enough to support a finding that Coons was not a confidential employee under the Act.

III.

The Association argues that the ALJ's Recommended Decision and Order did not hold the District to the proper burden of proof. The Association contends that, where a decision to exclude an employee relies on sporadic or isolated access, there must be very strong evidence concerning the type of labor relations evidence that is accessible, and that there is not such evidence here. The Association asserts that a position cannot be excluded where the record does not contain any evidence that the position brings the employee into regular contact with confidential information concerning anticipated changes that may result from collective bargaining, the job description does not refer to access to collective bargaining information, and the employer has a sufficient number of other excluded employees capable of handling the maintenance and operation of the employer's computer system. The Association contends that the Recommended Decision and Order based the exclusion on speculation rather than proof concerning Coons' regular duties. The Association argues that the Recommended Decision and Order did not properly apply Illinois Educational Labor Relations Board ("Board") precedent to the facts.

The Association also argues that Coons has significant restrictions on her access to information. The Association asserts that Coons had never seen any confidential collective bargaining information, and that there is no evidence of such access by her predecessor in the position or by the two individuals who held the separate positions that were combined to create the disputed position. The Association contends that the convenience of using Coons for troubleshooting should not destroy her right to be protected under the Act as an educational employee. The Association contends that, given the large number of individuals who can troubleshoot, the predominantly administrative responsibilities of an Administrative Assistant, and the low-level technology skills, scrutiny here should lead to the denial of Coons' exclusion from the unit. The Association asserts that the information that Coons did see was not only not confidential, but Coons only saw it incidental to her primary duties. The Association asserts that Coons' primary duties are administrative, unrelated to collective bargaining or labor relations or even human resources.

The District argues that it sustained its burden of proving that the Administrative Assistant to the Director of Technology is a confidential employee by a preponderance of the evidence. The District argues that it has shown that Coons has unfettered access ahead of time to confidential labor relations information, and that a reasonable

expectation existed that she would be placed in close proximity to and would have access to confidential collective bargaining information when negotiations began in February 2006. The District argues that the evidence establishes that the collective bargaining information kept by the District's administrators in their shared folders, email accounts and personal folders is of a type that would threaten the balance of labor negotiations if prematurely disclosed to the Association. The District contends that Coons' regular duties—specifically, troubleshooting and giving administrators access to restricted shared folders—entail access to confidential collective bargaining information. The District asserts that these regular duties leading to access to confidential information are “squarely within” Coons' job description and are supported by the position's daily activities.

The District also argues that to require it to establish that Coons has actually seen confidential information would hold the District to a different standard than that set forth in Board precedent and would not be a workable option. The District argues that Coons has the unfettered ability to access information on the District's computer network at will, and that she can access files saved locally on a computer's hard drive. The District contends that there is no need to impose a greater burden of proof than the preponderance of the evidence. The District asserts that the Association's request that the Board apply greater scrutiny to this case on the basis that there are multiple technicians is improper. The District argues that the Board should not invade upon the District's discretion to assign duties to its employees in a manner that best serves its mission.

The District also contends that the ALJ's Recommended Decision and Order was not based on speculation, but on voluminous evidence that the position's regular job duties involve access or proximity to confidential labor relations information. The District asserts that the facts as found by the ALJ are sufficient under relevant precedent to establish that Coons is a confidential employee under the “access test” as applied to technology employees. The District contends that it has established that Coons' access to confidential labor relations information is authorized and that it results from the functions of her position rather than chance. The District asserts that the fact that Coons' access to confidential information may occur sporadically is of no consequence to her status as a confidential employee.

In the alternative, the District argues that the proposed unit is inappropriate because it arbitrarily excludes other technology employees.

IV.

The District argues that the Administrative Assistant to the Director of Technology is a confidential employee. We conclude that the Administrative Assistant to the Director of Technology is not a confidential employee.

Section 2(n) of the Act, 115 ILCS 5/2(n), 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.

Here, the issue is whether the Administrative Assistant to the Director is a confidential employee under Section 2(n)(ii).

Section 2(n)(ii) is known as the “access” test. Under the “access” test, “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,” *Board of Education of Community Consolidated High School District No. 230 v. IELRB*, 165 Ill.App.3d 41, 62, 518 N.E.2d 713, 726 (4th Dist. 1997). In addition, the information must be confidential, and the employee’s access to the information must be authorized. *Chief Judge v. AFSCME, Council 31*, 153 Ill.2d 508, 607 N.E.2d 182 (1992); *see District No. 230*.⁵ Because it precludes the confidential employee from exercising the panoply of rights guaranteed by the Act, this statutory 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). The party asserting an exclusion has the burden of producing sufficient evidence to support its position. *Akin Community Consolidated School District 91*, 10 PERI 1064, Case No. 94-RS-0001-S (IELRB, March 31, 1994).

⁵ On the issue of whether the employee’s access to the information must be authorized, *Chief Judge* and *District No. 230* can be distinguished on the basis that the definition of “confidential employee” in the Illinois Educational Labor Relations Act, unlike the definition of “confidential employee” in the Illinois Public Labor Relations Act, does not contain the word “authorized.” However, a requirement that the access must be authorized is implicit in the requirement that it must be “in the regular course” of the employee’s duties. As in the case of the definition of “supervisor,” if the legislature had truly intended any difference between the definition of “confidential employee” in the Illinois Educational Labor Relations Act and the Illinois Public Labor Relations Act, it would not have indicated its preference by merely failing to include language in one that appears in the other, and the difference in language can be attributed to mere inadvertence. *See Board of Trustees of the University of Illinois v. IELRB*, 235 Ill.App.3d 709, 600 N.E.2d 1292 (4th Dist. 1992). In addition, the District states in its brief that, in order to qualify an individual as a confidential employee, the access to confidential labor relations information must be authorized.

In *Woodland Community Unit School District 5*, 16 PERI 1026, Case No. 99-UC-0005-S (IELRB, February 1, 2000), *aff'd sub nom. Woodland Education Association v. IELRB*, No. 4-00-0226 (Ill. App. 4th Dist. Feb. 9, 2001) (unpublished order) and in *Board of Control of the Lake County Area Vocational System*, 20 PERI 5, Case No. 2003-UC-0003-C (IELRB, January 20, 2004), the IELRB considered whether employees who were responsible for the operation and maintenance of an employer's computer system were confidential employees. In *Woodland*, the IELRB determined that a Technology Coordinator was a confidential employee within the meaning of Section 2(n)(ii) of the Act. The Technology Coordinator in that case was responsible for the security, maintenance and repair of the employer's computers. She had access to all the employer's files and back-up system and had the authority to open any and all computer files in order to make sure that they had not been corrupted and to perform repairs. In order to perform maintenance and repair functions, the Technology Coordinator often had to access a file. When a file was accessed, it was displayed on a computer screen. The evidence demonstrated that, once a file was displayed on a screen, it would be virtually impossible not to read the document displayed on the screen in order to maintain the system and perform repairs. The Technology Coordinator regularly accessed files in order to maintain the computer system and to ensure that it was operating properly. The IELRB stated that the Technology Coordinator "can and does" access all files with or without the Superintendent's direction. The Technology Coordinator's access to the Superintendent's files could not be detected.

The Superintendent's hard drive, floppy disks and back-up tapes contained confidential collective bargaining information prepared for use in future bargaining sessions. The Superintendent labeled his files with topic words that would assist him in locating a particular file.

The Technology Coordinator in *Woodland* also was the only employee of the employer who assigned and maintained all network user names and passwords. Although the Superintendent could change his password, the Technology Coordinator could override his change and access his files. The Technology Coordinator was able to access any of the employer's computers either at the computer she was trying to access or at a remote location. She was able to copy or print any file either at the accessed computer or at a remote location. She was the only employee of the employer who capable of reading the back-up tapes from the employer's computer system. The Technology Coordinator's job description provided that one of her "essential duties and responsibilities" was to maintain strict confidentiality with respect to "information relating to...the effectuation or review of the District's collective bargaining policies."

The Superintendent in *Woodland* gave the Technology Coordinator several of his floppy disks containing confidential collective bargaining information and asked her to open those files. However, she was ultimately unable to open those files. In addition, the Technology Coordinator removed the Superintendent's computer from his office and took it to her office on at least one occasion in order to replace the battery.

The IELRB determined in *Woodland* that the Technology Coordinator had access to confidential collective bargaining information "in the regular course" of her duties. The IELRB noted that an employer was under no legal duty to purchase a computer program or devise a system that would limit access or detect attempts at access. The IELRB stated that discipline for premature disclosure of collective bargaining information was an inadequate remedy.

In *Lake County*, the IELRB clarified its ruling in *Woodland*. The IELRB stated that, when deciding unit clarification petitions involving employees who are responsible for the operation and maintenance of an employer's computer system, it would consider, but was not limited to considering, the following factors: "1) whether there is evidence of actual access to confidential collective bargaining information in the regular course of duties; 2) job description, and 3) the employee's day-to-day activities." The IELRB stated that, where a position had existed for an amount of time, it would weigh heavily evidence of actual access to confidential labor relations material as part of that individual's job. The IELRB stated that, where access to confidential information was merely incidental to an employee's primary duties, as in the case of a custodian who emptied a superintendent's wastebasket, it would not consider that employee to be confidential. The IELRB stated that there were only two employees at issue in *Lake County*, which was not "such a far cry" from the one employee excluded in *Woodland*, but that it would scrutinize cases involving multiple technicians. The IELRB reaffirmed that it did not have the authority to tell an employer where and how it must store confidential information. With regard to the Technology Coordinator in *Woodland* who was asked to open files on floppy disks containing confidential collective bargaining information, the IELRB noted that she did not have actual access to the information because she was unable to open the confidential files.

Analyzing the position of Administrative Assistant to the Director of Technology in light of *Woodland* and *Lake County*, it is apparent that the position is not confidential. The Board stated in *Lake County* that it would scrutinize cases involving multiple technicians. Here, there are seven employees in the District's Technology Department, and an additional employee has the master password. The District argues that to apply greater scrutiny

to this case would be improper. The District asserts that the four Network Engineers are stationed in school buildings, and that no evidence suggests that they perform any troubleshooting in the administrative building. The District also asserts that it assigned level one troubleshooting duties to the Administrative Assistant to the Director of Technology to allow the Network Manager and the Director of Educational Technology to spend more time out in the schools. However, Executive Director of Human Resources Engel testified that, if Coons is not available, she asks the Director of Educational Technology or a Network Engineer for technical assistance. Thus, troubleshooting in the administrative building may be performed by employees other than Coons, and applying greater scrutiny to this case is warranted.

Under the three-step test in *Lake County*, the Administrative Assistant to the Director of Technology is not a confidential employee. First, the facts do not establish Coons' actual access to confidential collective bargaining information in the regular course of her duties. Unlike the Technology Coordinator in *Woodland*, it has not been demonstrated that Coons accesses all files to maintain the computer system and ensure that it is operating properly. The evidence establishes only that Coons gives other employees access to the District's computer system, and that documents that Coons might encounter while troubleshooting, retrieving or repairing them could include labor relations documents. The District has not demonstrated that giving access to a computer system involves review of the documents contained in that system. The fact that, when a former Human Relations Director left the District, Coons copied her personal file to a CD does not demonstrate that Coons had access to confidential labor relations information ahead of time. Miller, who was the District's Executive Director of Human Resources for 11 years, admitted that she had not shown Coons or the employee in the eliminated Network Technician's position, who also engaged in technology troubleshooting and whose position was incorporated into Coons' position, any labor relations documents.

Moreover, the IELRB stated in *Lake County* that an employee will not be considered confidential when his/her access to confidential information is incidental to his/her primary duties, like that of a custodian emptying a superintendent's wastebasket. Here, Coons testified that she does not pay attention to documents when she is troubleshooting. This demonstrates that reading the documents is not an inherent part of her troubleshooting duty, but is no more required than a custodian is required to read the documents in the wastebasket that he/she is emptying. Unlike in *Woodland*, the District did not provide evidence that Coons' duties require her to read the documents that she is troubleshooting. Thus, contrary to the District's argument, any access of Coons to

confidential labor relations information would result from chance, rather than being inherent in the functions of her position.

The District argues that it should not be required to establish that Coons has actually seen confidential information. In requiring that the District establish Coons' actual access to confidential collective bargaining information in the regular course of her duties, we do not require the District to establish that Coons has actually seen such information, but only that real and more than incidental access will occur in the regular course of her duties.

The District argues that Coons has the unfettered ability to access information on the District's computer network at will, and that she can access files saved locally on a computer's hard drive. The District asserts that this access includes unfettered access ahead of time to confidential labor relations information. However, unlike the Technology Coordinator in *Woodland*, there is no evidence that Coons has been given the responsibility of accessing all files in order to maintain the computer system. The District has not demonstrated that for Coons to explore files she has not been specifically asked to work on would be authorized or in the regular course of her duties. Coons' ability to see the descriptive titles of subfolders, files and emails does not establish authorization to view the documents themselves.

The District also argues that a reasonable expectation existed that Coons would be placed in close proximity to and would have access to confidential collective bargaining information when negotiations began in February 2006. However, Coons' duties would involve such access only in that documents that she might encounter while troubleshooting, retrieving or repairing them could include labor relations documents. The District did not provide evidence that Coons' duties would require her to read the documents that she would be troubleshooting. Thus, even during the February 2006 negotiations, Coons would not have authorized access to confidential collective bargaining information in the regular course of her duties.

In addition, the District argues that the fact that Coons' access to confidential information may occur sporadically is of no consequence to her status as a confidential employee. We recognize that, when it occurs in the regular course of an individual's duties, sporadic access to confidential collective bargaining information may be sufficient to establish confidential status. *See Board of Education of Plainfield Community Consolidated School District No. 202 v. IELRB*, 143 Ill.App.3d 898, 493 N.E.2d 1130 (4th Dist. 1986). However, we do not find here that sporadic access to confidential collective bargaining information would be insufficient to establish confidential

status. Rather, we require that access to confidential collective bargaining information be actual and in the regular course of the disputed individual's duties. In sum, we conclude that the facts in this case do not establish that the Administrative Assistant to the Director of Technology has actual access to confidential collective bargaining information in the regular course of her duties.

Second, Coons' job description does not indicate that she is to have access to confidential labor relations information. While her job description states that her position requires the "ability to handle confidential information," it does not elaborate as to the nature of the confidential information. This is unlike the Technology Coordinator's job description in *Woodland*, which specified that the information that the Technology Coordinator was expected to keep confidential related to "the effectuation or review of the District's collective bargaining policies." The District argues that regular duties leading to access to confidential information are "squarely within" Coons' job description. However, because the facts do not establish Coons' actual access to confidential collective bargaining information in the regular course of her duties, the fact that duties may be within her job description does not show that the job description reflects access to confidential labor relations information.

Third, an analysis of Coons' day-to-day activities does not demonstrate that she is a confidential employee. Coons' day-to-day activities consist of performing various administrative duties and providing technology support for the District administrative office. Within the realm of providing technology support, her day-to-day activities include setting up and helping with computer access, providing support for user accounts, troubleshooting, helping other employees who ask for assistance in operating their software, maintaining the email system, and coordinating and maintaining the District telephone system. Unlike the Technology Coordinator in *Woodland*, Coons is not responsible for system tape back-ups. The District has not made a sufficient showing that these duties entail authorized access to confidential labor relations information.

The District argues that the Board should not invade upon the District's discretion to assign duties to its employees in a manner that best serves its mission. However, in determining that the Administrative Assistant to the Director of Technology is not a confidential employee, we do not invade upon the District's discretion in assigning duties, but, rather, find that the duties that the District in fact has assigned to that position are not sufficient to make it a confidential position.

For the above reasons, we conclude that the Administrative Assistant to the Director of Technology is not a confidential employee.

V.

The District also argues that the proposed unit is inappropriate. We find that it is appropriate to include the Administrative Assistant to the Director of Technology in the existing unit.

The existing unit consists of “all regularly employed full and part-time non-certificated employees of [the District],” subject to specified exclusions, which do not include the Administrative Assistant to the Director of Technology. The position of Administrative Assistant to the Director of Technology is a non-certificated position. *See* 105 ILCS 5/Art. 21; 23 Ill. Adm. Code Part 25. Therefore, if the position is not excluded as confidential, it comes within the scope of the unit.

Apart from the disputed position, the existing unit includes all Administrative Assistants other than the Administrative Assistants to the Superintendent, the Executive Director of Human Resources and the Executive Director of Operational Services. While the Administrative Assistant to the Director of Technology has certain technological duties, a large portion of the position’s duties are administrative. Certain other Administrative Assistants who are in the bargaining unit are housed in the administration building, like the Administrative Assistant to the Director of Technology. Like other central office Administrative Assistant positions, the position of Administrative Assistant to the Director of Technology is a 12-month position. In addition, the desires of the Administrative Assistant to the Director of Technology, as reflected in the showing of interest supporting the petition, are an important factor favoring the proposed unit. *See SEDOL Teachers Union v. IELRB*, 276 Ill.App.3d 872, 658 N.E.2d 1364 (1st Dist. 1995); *Black Hawk College Professional Technical Unit v. IELRB*, 275 Ill.App.3d 189, 655 N.E.2d 1054 (1st Dist. 1995).

The District argues that the proposed unit is inappropriate because it arbitrarily excludes other technology employees. It is correct that the Administrative Assistant to the Director of Technology has some technological duties, and that all individuals in the Technology Department have the same benefits and working conditions. However, as noted above, a large portion of the duties of the Administrative Assistant to the Director of Technology are administrative, rather than technological. This fact justifies treating the Administrative Assistant to the Director of Technology differently from other individuals in the Technology Department. The Act does not require that a proposed unit be the most appropriate unit, but only that it be appropriate. *Black Hawk; Sandburg Faculty Association v. IELRB*, 248 Ill.App.3d 1028, 618 N.E.2d 989 (1st Dist. 1993). The inclusion of a non-certificated

position in a unit of all non-certificated employees is proper on its face regardless of the fact that not all non-certificated positions that have been excluded are sought by the petition.

For the above reasons, we conclude that the Administrative Assistant to the Director of Technology is appropriately included in the existing bargaining unit.

VI.

The Administrative Assistant to the Director of Technology is not a confidential employee, and is appropriately included in the existing bargaining unit. Accordingly, unless the Association chooses to convert its petition into a majority interest petition, the Executive Director shall conduct a self-determination election at a time and place set forth in the Notice of Election to be issued by the Board, subject to its Rules. Pursuant to 80 Ill. Adm. Code 1110.130(a), the Administrative Assistant to the Director of Technology shall be eligible to vote if she was employed in that position during the payroll period immediately prior to the date of this Opinion and Order and remains employed in that position on the date of the election. Pursuant to Section 8 of the Act and 80 Ill. Adm. Code 1110.140(e), the eligible employee shall have the opportunity to vote on whether she desires to be represented for the purpose of collective bargaining by “Glenview Professional Association, IEA-NEA” or “No Representative.”

In accordance with Section 8 of the Act, the Board, upon request, will provide the parties with a list of names and addresses of employees eligible to vote in the election at least 15 days before the election. The District is, therefore, directed to file with the Board an election eligibility list containing the name and address of the eligible employee within five days after the date of issuance of the Notice of Election.

VII.

This Opinion and Order is not a final order of the Illinois Educational Labor Relations Board subject to appeal. Under Section 7(d) of the Act, “[a]n order of the Board dismissing a representation petition, determining and certifying that a labor organization has been fairly and freely chosen by a majority of employees in an appropriate bargaining unit, determining and certifying that a labor organization has not been fairly and freely chosen by a majority of employees in the bargaining unit or certifying a labor organization as the exclusive representative of employees in an appropriate bargaining unit because of a determination by the Board that the labor organization is the historical bargaining representative of employees in the bargaining unit, is a final order.” Pursuant Section 7(d) of the Act, aggrieved parties may seek judicial review of this Opinion and Order in accordance with the provisions of the Administrative Review Law upon the issuance of the Board’s certification

order through the Executive Director. Section 7(d) also provides that such review must be taken directly to the Appellate Court of a judicial district in which the Board maintains an office (Chicago or Springfield), and that “[a]ny 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.”

Decided: March 13, 2006
Issued: March 23, 2006
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

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