

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL BROTHERHOOD OF)	
ELECTRICAL WORKERS, LOCAL 53,)	
)	
Petitioner,)	
)	
v.)	Public Case No. UC 2014-003
)	
CITY OF INDEPENDENCE, MISSOURI,)	
)	
Respondent.)	

DECISION

In its unit clarification petition, Local 53 of the International Brotherhood of Electrical Workers (Local 53) seeks to add the employment classification of Administrative Specialist III to the bargaining unit of employees of the Power and Light Department of the City of Independence (City) that it currently represents. The City objects, arguing that (1) the individuals in this classification are confidential employees; (2) there is insufficient evidence that the individuals in this classification have a community of interest with the other members of the unit; and (3) unit clarification is not an appropriate remedy because the classification has existed outside the bargaining unit for many years and without substantial changes in duties.

The Board concludes that the individuals in the Administrative Specialist III position are not confidential employees and that they do have a sufficient community of interest with other members of the unit to be included in a bargaining unit with them. The Board, however, also concludes that unit clarification is not an appropriate remedy in this case considering the long time exclusion of the classification from the bargaining unit and the absence of any substantial change in duties or responsibilities of the classification. The proper course here is for the parties to bargain with one another over adding the Administrative Specialist III position to the unit. Alternatively, Local 53 may file a representation petition to seek a vote among the individuals in this classification to determine whether a majority of them support joining the existing unit.

JURISDICTIONAL AND PROCEDURAL BACKGROUND

The question in this case concerns the proper makeup of a bargaining unit. This Board is authorized to hear and decide issues related to the appropriateness of bargaining units. § 105.525, RSMo.

The Board held a hearing in Jefferson City, Missouri, on April 15, 2014. Then Acting Board Chairman Michael Pritchett, Employer Member Emily Martin, and Employee Member Lewis Moye were present in person to hear the case. Representatives of Local 53 and the City attended the hearing and had a full opportunity to present evidence and make arguments. They also filed post-hearing briefs. Current Board Chairman Andrew C. (Butch) Albert, Jr., has reviewed the transcript of the hearing and the briefing and now joins Members Martin and Moye in deciding this case.

Based on its review of the whole record, including the evidence presented, arguments made, and briefing filed, the Board issues these Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Power and Light Department of the City of Independence operates the City's electric generation facilities and oversees the transmission of electricity to City residents. There are three Administrative Specialist III positions in the Department. Two of these positions are filled by Karen Coffman and Beverly Lee. The third position was held by Debra Spooner until her recent transfer to another position within the Department. Ms. Spooner, however, continues to perform many of the duties of an Administrative Specialist III and is likely to do so until that slot is filled. The Administrative Specialists III work in a two-story building with about 70 other Power and Light Department employees, including members of Local 53's bargaining unit. They are on the same floor as about 30 other employees. Only Power and Light Department personnel work in this building. The employees in the building are a close-knit group working in tight quarters.

Karen Coffman has worked as an Administrative Specialist III in the Power and Light Department for about fourteen years. The general nature of her duties has been fairly consistent throughout this time. Ms. Coffman's immediate supervisor is the Department's Director, Leon Daggett. Mr. Daggett is the highest ranking official in the Power and Light Department. When collective bargaining negotiations occur between the City and Local 53 with regard to the Power and Light bargaining unit, Mr. Daggett is significantly involved. He also has authority to adjust grievances filed by union members and to decide how to interpret the provisions of the agreement between the City and Local 53 on behalf of the City.

Ms. Coffman's duties include preparing time sheets for Department managers; printing quarterly reports; processing accident and injury reports; and attending and making a record of Public Advisory Board meetings. She also enters information into personnel action forms after personnel decisions such as promotions, demotions, and transfers are approved by the City's Human Resources Department. Ms. Coffman is notified of where and when random drug screenings of Department employees are to occur. She receives notice that such tests have been scheduled and notifies supervisors so that they can direct the selected employees to the testing site. Utility Support Specialists and Utility Data Specialists, classifications included within Local 53's bargaining unit, back up Ms. Coffman in the performance of some of her duties (including entering accident reports and preparation of time sheets). Ms. Coffman has also served as backup to Utility Data Specialists by doing payroll for them.

Ms. Coffman has nothing to do with the Department budget. The budget is the responsibility of Utility Support Specialists. The Utility Support Specialist classification is one that is included in the bargaining unit that is currently represented by Local 53.

Ms. Coffman has never attended or otherwise participated in labor negotiations between the City and Local 53. She will schedule meetings for Mr. Daggett at which he and others will prepare for union negotiations, but she does not attend these labor strategy discussions. She has never been asked to take notes at any management meeting at which labor relations were

discussed. Ms. Coffman will print documents requested by Mr. Daggett, including those he is gathering in preparation for labor negotiations, but she has never typed any proposals, statements, or notes that he intended to use during negotiations. During contract negotiations between the City and Local 53, Ms. Coffman has been asked to enter changes into the collective bargaining agreement at the direction of the City Attorney. These changes have included both new proposals the City planned to present to the union at the next opportunity (whether immediately after the City team caucused during a negotiating session or, if the session was over, at the next day's session) and items that had already been discussed with the union.

Ms. Coffman has no role in formulating or drafting responses to union grievances. She does type final grievance responses drafted by Mr. Daggett, which he signs immediately.

Ms. Coffman prepares and maintains the seniority list of the Department's employees that are in the bargaining unit represented by Local 53. She occasionally discusses the correct placement of union employees on the seniority list with Department managers and union officers and will fix errors on the list. She refers substantive seniority issues to Mr. Daggett along with relevant information on the issue she has put together for him. Ms. Coffman is also very familiar with the City's labor contracts. Department managers and supervisors will often ask for her interpretation of contract provisions. Mr. Daggett has only rarely needed to overrule Ms. Coffman's view of contract requirements.

Ms. Coffman has the only key to the locked cabinet in her office that contains copies of personnel files. (The originals are kept by the City's Human Resources Department.) She does not get into this cabinet often, but she does file documents in the personnel files when necessary.

Ms. Coffman estimates that one percent of her work time is spent on matters having any relation to the City's dealings with the union.

Beverly Lee has worked as an Administrative Specialist III in the Engineering Division of the Power and Light Department for about five years. Ms. Lee's day-to-day work responsibilities have not significantly changed in the five years she has served as an Administrative Specialist III. Her immediate supervisor is Power Engineer Manager Jim Franklin, with whom she works directly for approximately ninety percent of her work day. No evidence was presented showing that Mr. Franklin has any role regarding the City's labor relations policy.

Ms. Lee's primary duties include ordering and distributing supplies; formatting letters and other documents prepared by Mr. Franklin and others in his unit; preparing time sheets for Mr. Franklin and four or five engineering supervisors; processing bills; making travel arrangements; and putting together bid and contract books. Mr. Franklin occasionally authorizes Ms. Lee to use the City credit card assigned to him for work-related purchases. Ms. Lee occasionally serves as the backup for Karen Coffman when she is absent. In this role, Ms. Lee puts items on the bulletin board when Ms. Coffman is not around. Ms. Lee will also get things Mr. Daggett requests. When Ms. Lee is absent, a member of the bargaining unit represented by Local 53 (a Utility Data Specialist or another class of Utility specialist) will fill in for her.

Ms. Lee does not perform any work in connection with management labor strategy discussions, labor negotiations, or labor contracts. She also has no role in processing or deciding grievances. In particular, she neither prepares nor transmits management responses to grievances. Ms. Lee has assisted Mr. Franklin with his budgeting duties by putting information into budget documents. As noted above, work on the Department's budget is largely done by Utility Support Specialists, who are a part of the bargaining unit represented by Local 53. Ms. Lee has access to Mr. Franklin's e-mail and electronic calendar.

Recently, Ms. Lee was granted access to a drive (the P drive) in the City's word processing system that includes information that regulatory authorities require the Power and Light Department to maintain. Some of the information in the P drive is not available to the public. Ms. Lee previously had access to the P drive from the time she started work in the

Power and Light Department until the City hired a document management specialist a few years ago. When she was first granted access to the drive, Ms. Lee first had to pass a background check. During her initial access to the drive, Ms. Lee assisted with file structure within the drive, but did not look at sensitive data. Ms. Lee's recent renewed access to the P drive came about because she needed to assist a supervisor in finding an electronic copy of a document. After finishing that assignment, she believed that the access to the drive was terminated, but learned the week before the hearing in this case, when asked to check, that she could still access the drive. Ms. Lee does not know whether the P drive contains any information pertaining to the City's relationship with Local 53.

Debra Spooner transferred into an Administrative Specialist III position at the City's Power and Light Department in November 2012. Her supervisor was Martin Barker, a Production Manager. There was no evidence presented indicating that Mr. Barker has anything to do with City labor relations policy.

In December 2013, Ms. Spooner transferred into a Utility Data Specialist position in the same Department. The Utility Data Specialist classification is included in the bargaining unit represented by Local 53. Even though she has taken this new position, Ms. Spooner continues to perform duties she had as an Administrative Specialist III in addition to the duties of her new position. Martin Barker continues to be her supervisor when she is performing the duties of an Administrative Specialist III.

While performing duties as an Administrative Specialist III, Ms. Spooner has never had any involvement with labor bargaining strategy, union negotiations, or typing bargaining proposals or responses to the union's proposals. Neither has she ever had any role in the grievance process.

The City and Local 53 have a longstanding bargaining relationship dating back nearly thirty years. During several past contract negotiations, the City and Local 53 have agreed to the addition of several employment classifications into the bargaining unit.

CONCLUSIONS OF LAW

As set out above, Local 53 petitions to have the classification of Administrative Specialist III added to the unit of City Power and Light employees that it represents and the City objects to this addition on the grounds that (1) the individuals in the Administrative Specialist III classification within the Power and Light Department are confidential employees; (2) there is insufficient evidence that the individuals in this classification have a community of interest with the other members of the unit; and (3) unit clarification is not an appropriate remedy because the classification has existed outside the bargaining unit for many years and without substantial changes in duties.

I. Confidential Employee Status of Administrative Specialists III

The Public Sector Labor Law, §§ 105.500 to 105.530, RSMo, does not expressly exclude confidential employees from inclusion in public sector bargaining units, but, under Board precedent, confidential employees are excluded from such units. *Missouri NEA v. Missouri State Bd. of Mediation*, 695 S.W. 2d 894, 898 (Mo. banc 1985). Exclusion of confidential employees from the bargaining unit safeguards the “employer’s right to conduct its labor relations through employees whose interests are aligned with those of management, rather than risk having confidential information handled by people with conflicting loyalties who may be subjected to pressure from fellow bargaining unit members.” *Int’l Ass’n of Fire Fighters, Local 3133 v. City of Harrisonville*, Case No. R 2002-011, at 35 (SBM 2002).

The Board uses the labor-nexus test to determine whether particular employees are confidential employees. *Id.* In applying this test, as the Missouri Supreme Court has explained:

it is not sufficient to show that an employee has responsibility for protecting the confidences of management, or has access to confidential information. The test applies only to employees having access to advance information about management’s strategy and tactics in labor matters which might be used to the detriment of management.

Parkway Sch. Dist. v. Parkway Ass’n of Educ., Support Personnel, PA-ESP, Local 902/MNEA, 807 S.W.2d 63, 67 (Mo. banc 1991). See also *Springfield Office Prof’ls/MSTA v. Sch. Dist. of*

Springfield R-12, Case No. R 2008-021, at 8 (SBM 2011). If a close relationship between an employee and any officer exercising a substantive role in the employer's labor relations policies would result in the employer being prejudiced by the employee's inclusion in the bargaining unit, then that employee should be excluded from the unit. *Parkway Sch. Dist.*, 807 S.W. 2d at 68. "But an employee is not a confidential employee merely because he or she has some ability to access or may occasionally file confidential labor relations material; the employee must have actual access to such confidential material as part of his or her ordinary employment responsibilities." *Springfield Office Prof'ls*, Case No. R 2008-021, at 8.

Thus, the labor-nexus test calls for two determinations to be made about an employee asserted to be a confidential employee:

- (1) Does the employee work for a person that formulates, determines, and effectuates labor relations policy for the employer?
- (2) Does the employee assist this person that formulates, determines, and effectuates labor relations policy by serving in a confidential capacity to the person in connection with the performance of these duties?

City of Harrisonville, Case No. R 2002-011, at 35. Only if both of these questions are answered affirmatively will the employee be determined to be a confidential employee that will be excluded from the bargaining unit. *Id.*

Upon application of this analysis, the Board concludes that none of the three Administrative Specialist IIIs employed in the City's Power and Light Department are confidential employees.

- (1) *Administrative Specialist III assigned to Power and Light Department Director – Karen Coffman*

Karen Coffman does work for a person, Power and Light Department Director Leon Daggett, who takes part in the negotiation of labor agreements with Local 53, engages in interpretations of such agreements, and responds to union grievances, so the first question of the labor-nexus test is answered affirmatively. But Ms. Coffman does not assist Mr. Daggett in any significant way in his labor relations activities. She does not attend labor strategy

discussions or type any notes Mr. Daggett prepares for negotiations or any statements he plans to make. She will print documents as requested by Mr. Daggett for his use in preparing for labor negotiations, but no evidence indicates that the City's labor strategy could in any way be gleaned from an awareness of what these documents are. Clerical employees who gather material for their supervisors' use in labor negotiations are not confidential employees when they have no way of determining how that material will be used in the negotiations. *Am. Radiator & Standard Sanitary Corp.*, 119 N.L.R.B. 1715, 1720-21 (1958).¹

Ms. Coffman does type union grievance responses prepared by Mr. Daggett, but only after they are final and to be immediately delivered. Thus, even if she cared to, Ms. Coffman could provide no significant foreknowledge to the union of the contents of these grievance responses. Besides, having a minimal role in the grievance process, such as that performed by Ms. Coffman, does not give confidential employee status. *See Kansas City Sch. Dist. v. Kansas City Fed'n of Teachers, Local 691*, Case No. UC 2001-030, at 37-38 (SBM 2001).

Ms. Coffman prepares and maintains the seniority list of the Power and Light Department employees represented by Local 53. She occasionally discusses the correct placement of union employees on the seniority list with both Department managers and union officers and will fix errors on the list, but she refers substantive seniority issues to Mr. Daggett for his decision. Department managers and supervisors will also often ask for Ms. Coffman for interpretation of the labor contract provisions because of her familiarity with them. In doing so, however, she is providing historical context and not giving away management confidences. The Board finds that Ms. Coffman's role in dealing with contract issues is not significant enough to render her a confidential employee. She neither decides disputed contractual issues nor is she

¹ Although decisions of the National Labor Relations Board are not binding on this Board, it often looks to them for guidance and may follow them when it finds them persuasive. *Baer v. Civilian Personnel Div., St. Louis Police Officers Ass'n*, 747 S.W.2d 159, 162 (Mo. App. W.D. 1988); *SEIU, Local 1 v. City of St. Joseph*, Public Case No. AC 2011-005, at 5 (SBM 2011).

involved in management's decision-making process on such issues beyond her ability to provide non-confidential background information.

Although Ms. Coffman has access to the locked cabinet in her office that contains copies of personnel files, her only involvement with these files is infrequent filing of additional documents. Regardless, access to personnel files alone does not make the individual with such access a confidential employee. *Belton NEA/Educ. Support Personnel v. Belton 124 Sch. Dist.*, Case No. R 94-002, at 17 (SBM 1994). Neither does Ms. Coffman's responsibility for entering information into personnel action forms after personnel decisions such as promotions, demotions, and transfers are approved by the City's Human Relations Department make her a confidential employee. *See Springfield Office Prof'ls*, Case No. R 2008-021, at 13 n.5. Ms. Coffman is also notified when and where drug screenings of Department employees are to occur. Even though the imposition of employee drug screenings may be a matter of labor relations policy, the scheduling of particular screenings is not.

During contract negotiations between the City and Local 53, Ms. Coffman has been asked to enter changes into the collective bargaining agreement at the direction of the City Attorney. These changes have included both new proposals the City planned to present to the union at the next opportunity (whether immediately after the City team caucused during a negotiating session or, if the session was over, at the next day's session) and items that had already been discussed with the union. An employee that types bargaining proposals to be used in the negotiations process can often be a confidential employee. *Belton 124 Sch. Dist.*, Case No. R 94-002, at 14-15 (secretary who occasionally typed public body bargaining proposals was determined to be a confidential employee). But having some foreknowledge of bargaining proposals does not always render the person with such knowledge a confidential employee. *Kansas City Sch. Dist.*, Case No. UC 2001-030, at 33 (Food Service Financial Analyst who was occasionally asked to compare bargaining proposals to projected budgets to determine if they were financially feasible determined not to be a confidential employee). The

Board concludes that Ms. Coffman's minimal role here with regard to bargaining proposals does not make her a confidential employee. Although she does enter changes into the collective bargaining agreement at the direction of the City Attorney, the proposals are either ones already agreed to with Local 53 or are to be presented to Local 53 at the next bargaining session. These are not contingent or backup proposals that would give the union knowledge of how much the City is willing to give, but rather known and accepted proposals or ones that the union will be informed of immediately anyway. Ms. Coffman's ability to learn and share management confidences is less than that of the Food Service Financial Analyst in the *Kansas City Sch. Dist.* case determined not to be a confidential employee.

(2) Administrative Specialist assigned to Engineering Division – Beverly Lee

Beverly Lee is an Administrative Specialist III in the Engineering Division, where her supervisor is Power Engineer Manager Jim Franklin. No evidence indicates that Mr. Franklin is involved in any way in the formulation, determination, and effectuation of the City's labor relations policy. For this reason alone, the Board could determine that Ms. Lee is not a confidential employee because the first factor of the labor-nexus test is not met. But we will address her occasional work for Leon Daggett as the backup for Karen Coffman when she is absent. In this role, Ms. Lee will get things for Mr. Daggett at his request and put items on the bulletin board. These tasks are not evidently related to the labor relations policy functions that Daggett does engage in. Thus, even if the small amount of work Ms. Lee does for Mr. Daggett might be considered sufficient to meet the first step of the labor-nexus test, the second step of that test – assisting a person involved in labor relation policy in tasks related to such policies – is not.

Relying on *Springfield Office Prof'ls*, Case No. R 2008-021, at 9-14, the City argues that Ms. Lee must be considered as involved in labor relations matters through her work relating to the Power and Light Department's budget. Ms. Lee has assisted Mr. Franklin with his budgeting duties. Her role consists of putting information into budget documents. But, unlike the secretary

at issue in the *Springfield Office Prof'ls* case, there is no evidence that Ms. Lee sees and proofreads confidential memoranda and e-mail messages containing administrative proposals to be considered by upper-level management, including those concerning funding for staff, staff reassignments, addition or elimination of staff positions, and the restructuring of existing positions. Having access to this level of detailed strategic planning by management was crucial to the Board's determination that the secretary in the *Springfield Office Prof'ls* case was a confidential employee. Ms. Lee's access to information regarding the City's budgeting plans does not rise to the level that would permit her, even if she were so inclined, to share confidential budget details with the union. In any event, the budgeting process is not confidential anyway. Work on the Department's budget is largely done by Utility Support Specialists, who are currently members of the bargaining unit represented by Local 53.

The City also contends that Ms. Lee's access to the P drive in the City's word processing system requires that she be considered a confidential employee. The P drive includes information that regulatory authorities require the Power and Light Department to maintain, some of which is not available to the public. When Ms. Lee first had access to the P drive for a time, up until the City hired a document management specialist a few years ago, she had to pass a background check. Ms. Lee was recently given renewed access to the P drive so she could help a supervisor find an electronic copy of a document. When she finished that assignment, Ms. Lee believed that her access to the P drive was terminated. She learned the week before the hearing in this case, when asked to check, that she could still access the drive. Even if the information in the P drive could be said to involve labor relations policy, which the Board finds not to be proven, Ms. Lee's receipt of access to the drive for one specific assignment is too incidental to result in her being deemed a confidential employee. See *Springfield Office Prof'ls*, Case No. R 2008-021, at 13 n.5 (mere access to personnel information does not give confidential employee status); *Belton 124 Sch. Dist.*, Case No. R 94-002, at 17 (same); *Kansas City Sch. Dist.*, Case No. UC 2001-030, at 37-38 (minimal role in the

grievance process does not give confidential employee status). Although Ms. Lee continued to be able access to the P drive through the time of the hearing, there is no indication that her work duties required such access. The Board will not conclude that an employee has confidential status simply because the employer allows the employee unneeded access to information that may relate to labor relations policy.

The Board concludes that Ms. Lee is not a confidential employee.

(3) Administrative Specialist III assigned to Production Manager – Debra Spooner

Debra Spooner became an Administrative Specialist III with the City's Power and Light Department in 2012. A little more than a year later, Ms. Spooner transferred into a Utility Data Specialist position in same Department. Ms. Spooner's new position is included in the bargaining unit represented by Local 53. Despite having taken this new position, Ms. Spooner continues to perform duties she had as an Administrative Specialist III in addition to the duties of her new position. Martin Barker is her supervisor when she is performing the duties of an Administrative Specialist III. No evidence indicating that Mr. Barker has anything to do with City labor relations policy was presented at the hearing. Ms. Spooner has never had any involvement with labor bargaining strategy, union negotiations, the typing of bargaining proposals or responses to the union's proposals, or the grievance process. The Board finds that Ms. Spooner meets neither prong of the labor-nexus test and concludes that she is not a confidential employee.

II. Community of Interest between Administrative Specialists III and Existing Unit Members

It is the Board's responsibility to decide whether a bargaining unit is appropriate. § 105.525. "Appropriate unit" is defined as "a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned[.]" § 105.500(1), RSMo. In deciding whether

employees have a sufficient community of interest to be included in a single unit, the Board traditionally examines a series of factors:

- (1) Similarity in scale or manner of determining earnings;
- (2) Similarity in employment benefits, hours of work, and other terms and conditions of employment;
- (3) Similarity in the kind of work performed;
- (4) Similarity in the qualifications, skills, and training of the employees;
- (5) Frequency of contact or interchange among the employees;
- (6) Geographic proximity;
- (7) Continuity or integration of production processes;
- (8) Common supervision and determination of labor-relations policy;
- (9) Relationship to the administrative organization of the employer;
- (10) History of collective bargaining;
- (11) Extent of union organization.

E.g., Int'l Union of Operating Eng'rs, Local 2 v. City of St. Louis, Case No. R 2003-12, at 8-9 (SBM 2003).

The specific question here is whether there is sufficient evidence that the three Administrative Specialists III have a sufficient community of interest with the other members of the unit represented by Local 53 to be included in a bargaining unit with them. It is true that the evidence regarding community of interest in this case is sparse. And some of the evidence shows dissimilarities between the Administrative Specialists III and existing members of Local 53's unit (factors 10 and 11 for example). But the record does reflect that Administrative Specialists III work in the same building as many bargaining unit members, and on the same floor with some; that unit members fill in for at least some tasks performed by the Administrative Specialists III (Ms. Coffman and Ms. Lee are backed up in some of their duties by Utility Support Specialists and Utility Data Specialists; Ms. Spooner is actually filling a position currently in the

unit while also continuing her previous duties); that the Administrative Specialists III fill in for some tasks performed by unit members (Ms. Coffman serves as backup for Utility Data Specialists); that there are some related duties (Ms. Lee and Utility Support Specialists both perform some work in the budget process), and that they all work within the same organizational structure that is headed by the Power and Light Department Director.

Even when there are more differences between different employment classifications than similarities, the Board can still find, and has found, that there is enough of a community of interest between them to justify including them in the same unit. *AFSCME, Local 410 v. City of St. Louis Dep't of Corr. Med. Sec. Inst.*, Case No. 94-043, at 10-13 (SBM 1995). Just as in *AFSCME, Local 410*, the job classification at issue here is entitled to representation. That representation can be either through the existing unit or a new unit. It is important to the Board that bargaining units not become overly fragmented because that can hinder effective bargaining for both workers and their employers. The Board recognizes “that there is strength in size and that a unit may be too small to be effective, so that employees should be excluded from bargaining units only for substantial reasons.” *Int'l Union of Operating Eng'rs, Local 2*, Case No. R 2003-12, at 9 (quoting *Parkway Sch. Dist. v. Parkway Ass'n of Educ.*, 807 S.W.2d 63, 68 (Mo. banc 1991)). In the interest of avoiding the proliferation of bargaining units within the City's workforce, the Board concludes that there is a sufficient community of interest between the Administrative Specialists III and the other members of Local 53's unit to allow them to be in the same bargaining unit. See *AFSCME, Local 410*, Case No. 94-043, at 12.

III. UNIT CLARIFICATION NOT AN APPROPRIATE REMEDY IN THIS CASE

Even though the Administrative Specialists III are not confidential employees and they do share a sufficient community of interest with the current members of Local 53's bargaining unit, the Board concludes that unit clarification is not an appropriate remedy in this case.

The City and Local 53 have a longstanding bargaining relationship dating back nearly 30 years, with the City voluntarily recognizing Local 53 as the bargaining representative for certain

of its Power and Light Department employees in 1985. The Administrative Specialist III position has existed in the Power and Light Department for many years. The duties and responsibilities of this position have not substantially changed for at least the last fourteen years (Ms. Coffman's length of service in the position). Although the City and Local 53 have bargained over the course of time to add other positions to the bargaining unit, that has not been the case with Administrative Specialists III.

The Board declines to interfere with this bargaining history by mandating the addition of a historically excluded position to the unit through the unit clarification process when there has been no substantial change to that position.² We agree in this matter with the National Labor Relations Board, which has explained:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category – excluded or included – that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

Union Elec. Co., 217 NLRB 666, 667 (1975), *quoted with approval in Bethlehem Steel Corp.*, 329 NLRB 243, 243-44 (1999). *See also City of Poplar Bluff v. Int'l Union of Operating Eng'rs*, Case No. UC 90-030, at 7 (SBM 1990) (Board declined to redraw bargaining unit lines in light of 22 year bargaining history of parties).

² The Board disagrees with our dissenting colleague's position that the City has waived its arguments concerning the historic exclusion of the Administrative Specialist III position from the bargaining unit and lack of substantial change in the duties and responsibilities of that position. The historic exclusion of a position from a bargaining unit and the need to establish a substantial change in the duties and responsibilities of a position are inherently at issue in a unit clarification proceeding. *See, e.g., CHS, Inc.*, 355 NLRB 914, 914 (2010) (unit clarification petition seeking to add a historically excluded classification into a unit will not be entertained unless the classification has undergone recent, substantial changes).

Unless ambiguities arise concerning the proper placement of a job classification into or out of an existing bargaining unit, the Board is unwilling to undo the work of public employers and unions relating to the makeup of voluntarily recognized units through a proceeding on a unit clarification petition (unless the unit is a patently inappropriate unit, such as one in which supervisors are included in the same unit as the employees they supervise). See *City of Poplar Bluff*, Case No. 90-030, at 7. If the Board were to act otherwise, it would unduly interfere with the bargaining relationship of the parties.³ Given the historic exclusion of the Administrative Specialist III position from Local 53's unit and the lack of any substantial change in the duties or responsibilities of that position, there is no ambiguity in this case providing justification for the Board to consider whether or not to issue an order that the existing unit must be clarified to include the Administrative Specialist III position.

The parties, of course, are free to do as they have done in the past and negotiate with each other concerning the addition of the Administrative Specialist III position to the unit. Alternatively, Local 53 may, with the proper showing of support, file a representation petition seeking to add this classification to the unit through the election process. See *Union Elec. Co.*, 217 NLRB at 667.

³ The Board recognizes that it did add employment classifications to an existing bargaining unit in a unit clarification proceeding in *AFSCME, Local 410*, Case No. 94-043, despite the absence of any evidence regarding the length of time that the classifications had been in existence, whether the parties had a longstanding practice of excluding the classifications from the unit, or whether the duties and responsibilities of the classifications had undergone any recent and substantial changes. That decision is not contrary to the Board's holding in this case because no party in that case brought those issues to the Board's attention.

ORDER

The petition filed in this case is dismissed because unit clarification is not an appropriate remedy in this case.

Signed this _____ day of September 2014.

STATE BOARD OF MEDIATION

Butch Albert
Chairman

A handwritten signature in black ink that reads "Emily Martin". The signature is written in a cursive style with a large, looped initial "E".

Emily Martin
Employer Member

DISSENTING OPINION

Lewis Moye
Employee Member