

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

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| Service Employees International Union, |) | |
| Local 73, CLC-CTW, |) | |
| |) | |
| Petitioner |) | |
| |) | |
| and |) | Case No. L-RC-11-006 |
| |) | |
| City of Chicago, |) | |
| |) | |
| Employer |) | |

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL**

On September 27, 2011, Administrative Law Judge (ALJ) John L. Clifford issued a Recommended Decision and Order (RDO) finding: (1) that approximately 11 employees of the Independent Police Review Authority of the City of Chicago (Employer) called “supervising investigators” were neither supervisors or managers within the meaning of Sections 3(r) and 3(j) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act); (2) that a majority interest representation petition filed by the Service Employees International Union, Local 73, CLC-CTW (Petitioner) should be granted; and (3) that Petitioner should be certified as the labor representative of a newly created bargaining unit containing solely those employees.

The Employer filed timely exceptions and a supporting brief pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240. The Petitioner filed a timely response to the exceptions, cross-exceptions and a brief in support of the cross exceptions, and the Employer filed a response to the cross-exceptions. After reviewing the record, exceptions, cross-exceptions, and supporting and responding briefs, we reject the RDO, reverse the ALJ, find that the employees at issue are,

indeed, supervisory employees within the meaning of the Act and dismiss the petition for representation. Our reasoning follows.

The function of the Independent Police Review Authority is to receive and investigate allegations of misconduct by officers of the Chicago Police Department. It employs 90 people in total, most in teams of investigators, each with a "supervising investigator," the title at issue in this case.¹ Above the supervising investigators are a single coordinator of investigations, two deputy chief administrators, and a chief administrator of the agency.

We fully agree with the ALJ's determinations that the supervising investigators meet the first three elements of supervisory status set out in Section 3(r) of the Act in that their principal work is substantially different from that of their subordinates and they discipline, resolve grievances, and reward subordinates, and exercise independent judgment in doing so. We reject Petitioner's cross-exceptions which challenge these findings. However, we disagree with the ALJ's finding that the supervising investigators do not "direct" within the meaning of the Act, and consequently disagree with his conclusion that they fail to meet the final element of supervisory status and instead find that they spend a preponderance of their employment time in exercising supervisory tasks. Our finding regarding direction controls our finding regarding the preponderance of time (and, consequently, our ultimate determination that the BCIs are not supervisors), because the evidence clearly establishes that the supervising investigators spend most of their time instructing investigators and reviewing their reports and investigative cases. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 278 Ill. App. 3d 79, 86 (4th Dist. 1996). If that activity is direction within the meaning of the Act, the supervising investigators are supervisors within the meaning of Section 3(r); if it is not direction, they are not supervisors.

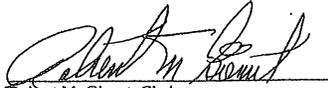
¹ In addition to those assigned to investigative teams, there is one supervising investigator assigned to oversee office support staff.

The ALJ reasoned that the ability of subordinate investigators to take to the coordinator of investigations or a deputy chief (both superiors of the supervising investigators) any disagreements they may have with the instructions provided by the supervising investigators or with their opinions regarding whether an investigation is complete rendered the instructions provided by the supervising investigators more in the nature of advice rather than direction. We are struck, however, with the rarity of these instances of seeking direction from superiors. The record demonstrates that 95 percent of the time investigative files are either closed with an “unfounded” determination without the matter ever proceeding above the level of the supervising investigators, or are submitted to superiors with full agreement between the investigators and the supervising investigators that the allegations of police misconduct have merit. Where the supervising investigators spend most of their time giving instructions and reviewing reports and investigations they clearly have input into the steps taken in the investigative process, and where the vast majority of the time their subordinates do not challenge their instructions or opinions regarding whether an investigation is complete, then it seems clear to us that the supervising investigators’ input is, in fact, the provision of direction and not merely the giving of suggestions or advice.

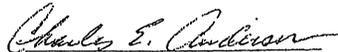
We believe the record as a whole supports the conclusion that the supervising investigators provide direction to their subordinates, and that they spend a preponderance of their employment time doing so. Consequently we conclude the supervising investigators are supervisors within the meaning of the Act, and dismiss the petition to represent them.²

² Because we are able to resolve this case based on our finding that the supervising investigators are supervisors, we need not, and do not, address the Employer’s exceptions to the ALJ’s recommended determination that the supervising investigators are not managerial employees within the meaning of Section 3(j) of the Act. For this same reason, we need not, and do not, address the Employer’s exception that certifying a unit of supervising investigators separate from the unit of investigators would create excessive fragmentation rendering the proposed unit inappropriate.

BY THE ILLINOIS LABOR RELATIONS BOARD, LOCAL PANEL



Robert M. Gierut, Chairman



Charles E. Anderson, Member

Member Sadlowski, dissenting:

I respectfully dissent from the conclusion of my colleagues and for the reasons articulated by the ALJ would find that the supervising investigators do not provide direction within the meaning of the Act, do not spend a preponderance of their employment time exercising supervisory authority, and thus are not supervisors within the meaning of Section 3(r). For the reasons articulated by the ALJ, I would also affirm his findings that the supervising investigators are not managerial employees within the meaning of Section 3(j), and that recognition of the proposed unit would not cause inappropriate fragmentation.



Edward E. Sadlowski, Member

Decision made at the Local Panel's public meeting in Chicago, Illinois, on December 6, 2011; written decision issued at Chicago, Illinois, December 23, 2011.

