STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

County, Municipal Employees', Supervisors', And Foremens' Union, Local 1001; Water Pipe Extension, Bureau of Engineering Laborers Local 1092; Cement Workers Local 76; Laborers Int'l Union of North America,	)	
Petitioner,	)	Case No. L-RC-15-003
and	)	
City of Chicago,	)	
Respondent.	)	

ORDER

On August 9, 2016, Administrative Law Judge Patrick Heery, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its August 9, 2016 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 9th day of August, 2016.

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/s/Kathryn Zeledon Nelson
Kathryn Zeledon Nelson
General Counsel

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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 19, 2014, the County, Municipal Employees', Supervisors', and Foremens' Union, Local 1001 (Local 1001 or Union) filed a majority interest petition with the Illinois Labor Relations Board (Board) seeking to represent the title Chief Airport Operation Supervisor (Chief AOS) employed with the City of Chicago, Department of Aviation (Employer or City). The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage under the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (Act), pursuant to the exemption for supervisory employees and therefore not public employees entitled to collective bargaining. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined there was reasonable cause to believe that a question concerning representation existed.

At the time the petition was filed, there were three Chief AOSs working at O'Hare International Airport (O'Hare) and one working at Midway International Airport (Midway). On April 6, 2015, counsel for the City emailed Administrative Law Judge Katherine Vanek (ALJ Vanek), stating that the Chief AOS position at Midway had become vacant. Accordingly, the City requested that the Union's representation petition be limited to the Chief AOSs at O'Hare. On April 7, 2015, ALJ Vanek held a conference call and allowed the parties to argue their positions regarding whether the matter should proceed to hearing on Midway's vacant Chief

AOS position. On April 8, 2015, ALJ Vanek issued an Order stating that the hearing would be limited to the question of whether the Chief AOSs at O'Hare are supervisors under the Act.

This matter was subsequently reassigned to Administrative Law Judge Thomas Allen (ALJ Allen), who held a hearing on May 25, 2015, at the Board's office in Chicago, Illinois.[1] At that time, all parties appeared and were given a full opportunity to participate, introduce relevant evidence, examine witnesses, and argue on behalf of their respective clients. Both parties timely filed briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record in this case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. At all times material, the City of Chicago is a public employer within the meaning of Section 3(o) of the Act;
2. Local 1001 is a labor organization within the meaning of Section 3(i) of the Act;
3. The Illinois Labor Relations Board's Local Panel has jurisdiction to hear this matter pursuant to Sections 5(b) and 20(b) of the Act;
4. The petitioned-for employees are not confidential employees within the meaning of Section 3(c) of the Act;
5. The petitioned-for employees are not managerial employees within the meaning of Section 3(j) of the Act; and
6. If found that the petitioned-for employees are public employees under the Act, the parties stipulate that the petitioned-for unit is inappropriate.

II. ISSUES AND CONTENTIONS

The issue to be resolved is whether the Chief AOS position is supervisory within the meaning of Section 3(r) of the Act.

The Employer argues that the position is excluded from the Act's coverage because all three current employees occupying the Chief AOS title direct, reward, and hire subordinates

[1] Following ALJ Allen's resigning his position with the Board, this case was reassigned to the undersigned Administrative Law Judge for purposes of drafting a Recommended Decision and Order based on the then-existing closed record in this matter.

using independent judgment, and they spend the preponderance of their time exercising supervisory authority.

The Union asserts that the petitioned-for employees' work is not substantially different from that of the other Operation Supervisors at O'Hare. Further, the Union argues that the petitioned-for employees do not exercise supervisory authority. Instead the Chief AOSs spend the preponderance of their time following Federal Aviation Administration (FAA) regulations which, the Union claims, does not require independent judgment.

III. FINDINGS OF FACT

A. Organization of Airport Operations Division

The City of Chicago's Department of Aviation administers all aspects of the City's two major airports. Among the responsibilities of the Department of Aviation is ensuring that airfield operations are in compliance with 14 Code of Federal Regulations, Part 139 (Part 139). Part 139 sets forth the FAA's requirements to operate a commercial airport with scheduled service. The Airport Operations Division (Operations) is responsible for ensuring compliance with the FAA's requirements.

Operations is led by Managing Deputy Commissioner George Lyman (Mr. Lyman), who testified on behalf of the Employer. As Managing Deputy Commissioner, Mr. Lyman oversees as many as 40 employees that work in Operations. Directly under the Managing Deputy Commissioner is the General Manager, followed by the three at-issue Chief AOSs; at the time of hearing, Ray Hoffelt, Jeff Czarkowski, and Marco Avila occupied these positions. The Chief AOS position oversees approximately 30 subordinates in Operations, with the titles of Assistant Chief Airport Operations Supervisor (Assistant Chief AOS), Airport Operations Supervisor I (AOS I), and Airport Operations Supervisor II (AOS II).

All Operations employees work out of the City Atrium, which is located in Terminal 2 at O'Hare. Mr. Lyman testified that Operations is then divided into two parts: day-to-day operations and administration. The day-to-day operations team, which includes the Assistant Chief AOS, the Duty Supervisor, and the AOS I's and II's, works out of the upper levels of the City Atrium. The administration's offices, which include the offices of the Managing Deputy Commissioner, General Manager, and Chief AOS, are located in the basement of the City Atrium.

The work schedule is divided into three, eight-hour shifts: the day shift, from 8:00 am to 4:00 pm, the afternoon shift, from 4:00 pm until midnight, and the midnight shift, from midnight until 8:00 am. Each shift is assigned one Chief AOS, determined by seniority. The Chief AOS assigned to the day shift is Mr. Hoffelt, the afternoon shift is assigned to Mr. Czarkowski, and the midnight shift is assigned to Mr. Avila. In addition to a Chief AOS, each shift is assigned one Duty Supervisor and an Assistant Chief AOS. The Duty Supervisor is the title given to the employee who oversees some of the operational aspects of the shift. Generally, the Duty Supervisor assigns specific duties, ensures paperwork is submitted, and maintains communication with the FAA tower. The Assistant Chief AOS and AOS IIs assigned to a particular shift decide who will serve as that shift's Duty Supervisor, and only the Assistant Chief AOS or AOS II can serve as Duty Supervisor.

The day-to-day operations team, which includes the Assistant Chief AOS, the Duty Supervisor, and the AOS Is and IIs, is generally responsible for performing physical inspections of external facilities and filing reports. The Assistant Chief AOS oversees his subordinate employees to ensure compliance with FAA regulations, and is also responsible for inspecting the airfield and reporting deficiencies. The AOS I position is entry level, and is responsible for inspecting the airfield and reporting deficiencies. The AOS II position has similar responsibilities to that of the AOS I, but can also serve as Duty Supervisor.

B. Duties of Chief AOS

The Chief AOS position is broadly responsible for coordinating and overseeing the Operations staff that carry out the day-to-day inspections of the airfield and related facilities. Specifically, the Chief AOS's job description enumerates the following duties:

1. Coordinates and directs airfield operations activities, including the inspection of airfield facilities, issuance and cancellation of Notices to Airmen (NOTAMs) on airfield status, and the receiving and relaying of airfield maintenance request;
2. Develops and implements new and revised operating procedures to improve operating efficiency;
3. Ensures the timely and accurate maintenance of records and operations logs concerning airfield activities and service requests;
4. Directs and monitors inspection of airfield facilities (e.g., runways, taxiways, ramps, aeronautical lighting) to ensure compliance with FAA regulations;

5. Monitors airfield activities to ensure minimal disruptions in airfield traffic;
6. Orders runway closings and openings and initiates corrective measures in response to irregularities found during inspections;
7. Responds to atypical and emergency airfield situations and directs the provision of airfield access to municipal and federal agencies;
8. Assists in the investigation of airfield accidents and incidents;
9. Reviews operations logs and directs the preparation of related reports;
10. Determines priorities, prepares paperwork schedules and oversees staff and private contractors in maintenance activities (e.g., snow removal, grass cutting);
11. Establishes operating procedures and work standards for airport operations staff and evaluates staff performance;
12. Coordinates and directs staff training activities and maintains records in accordance with FAA regulations and departmental requirements;
13. Responds to inquiries regarding the status of airfield facilities and maintenance issues; and
14. Attends meetings with FAA, construction contractors, and airport design engineers, as required.

The scope of this non-exhaustive list of duties provides the Chief AOS with the breadth of authority to oversee a dynamic environment. Mr. Avila testified that after he briefs the Duty Supervisor and reviews inspection reports, the remainder of his shift is "fluid." That fluidity applies to when the Chief AOS starts work. Authorized to use flex time, a Chief AOS can arrive at work an hour before or after his shift is scheduled to start. Although each Chief AOS is responsible for ensuring compliance with his duties, the resources and effort allocated to each particular duty fluctuates by necessity, and also by shift. For example, Mr. Czarkowski and Mr. Avila, who are assigned to the afternoon and midnight shifts, are responsible for reviewing inspection reports. Mr. Avila testified that approximately 50% of his day was spent going through inspection reports and conducting related administrative work. Mr. Lyman testified that a Chief AOS spends approximately 50% to 70% of his day reviewing inspection reports, along with other Chief AOS-specific administrative work to ensure Part 139 compliance.

An inspection report documents problems with the lighting, signage, marking, or pavement conditions of the airfield. Although anybody in Operations can identify a problem,

only the Assistant Chief AOS and AOS Is and IIs can create an inspection report. These employees, who sign the inspection report as "Inspector," are specifically assigned to inspect the airfield. When a problem is identified, that "Inspector" will create an inspection report which documents, among other things, the location and description of the problem, the field conditions, and the time when the problem was identified. Once an inspection report is complete, the "Inspector" and Duty Supervisor sign and certify that the documented inspection is completed in its entirety. The inspection report is then submitted into an electronic logging system for Chief AOS review.

After the "Inspector" and Duty Supervisor electronically submit the inspection report, the Chief AOS conducts "Management Review" to ensure FAA compliance. Mr. Avila testified that when reviewing inspection reports, he tries to "put myself in the eyes of the FAA Inspector." When the report does not meet FAA requirements or something raises a red flag, the Chief AOS will remediate any identified deficiency. Mr. Avila then testified about what constitutes something that does not meet FAA requirements, or "raises a red flag." He testified that "everything we do comes directly from FAA regulations," from identifying the problem, to reporting the problem, to ensuring remediation of the problem. The FAA controls every facet of the job, from start to finish, as it relates to inspections and inspection reports. The Chief AOS has final review authority of the inspection reports, and will only sign off for "Management Review" if he is confident the report complies with FAA standards. The Chief AOS is the last person at Operations to sign an inspection report.

In addition to finalizing inspection reports, Mr. Czarkowski, as afternoon Chief AOS, is responsible for overseeing the employee schedule. Although Mr. Czarkowski did not testify, Mr. Hoffelt's testimony shed some light on the Chief AOS's involvement in the scheduling process and the Department's minimum staffing level requirements. Minimum staffing levels are the minimum number of people who must be scheduled for a specific shift, and that number is seasonally dependent. While Mr. Czarkowski has the responsibility and authority to approve personal days for employees, any approval must be in accordance with maintaining the minimum staffing levels. If an employee desires to take time off, and that absence will cause staffing to fall below the predetermined minimum, either the Managing Deputy Commissioner or the General Manager must approve the time-off request.

The Chief AOS is responsible for completing an annual performance evaluation for every subordinate on his shift. The performance evaluation's overall rating summary has three-parts: annual objectives, general performance factors, and supervisory performance factors. Each of these parts analyzes specific criteria of assessment, based upon the employee's level of responsibility. The Chief AOS determines the appropriate rating in each category, on a scale from one to four, based upon his observations and interactions. After each specific metric is rated, the average rating becomes that evaluated employee's overall rating for the performance period after the Managing Deputy Commissioner gives approval. Mr. Lyman testified that the Chief AOS's evaluations are given strong deference.

An employee's overall rating is used during the annual performance appraisal review, which provides a means for planning and reviewing the performance of each employee. A performance appraisal can influence an employee's salary and promotion potential, if that employee's overall performance evaluation rating is below a 2.0. A sub-2.0 rating can subject an employee to the imposition of a Performance Improvement Plan (PIP). The PIP outlines what an employee needs to improve upon, and sets forth a time period to implement those improvements.

The witnesses disagree as to what impact a performance evaluation can have on an employee's salary. As background, Assistant Chief AOSs, and AOS Is and IIs, are part of the Local 1001's bargaining unit. Contractually, after three years these employees are eligible for a merit increase. William Irving, Organizing Director for Local 1001, testified that a performance evaluation cannot affect the salary of someone in the Local 1001's bargaining unit. Citing his knowledge of grievances that were won against the Department of Transportation, Mr. Irving testified that employees could not have their salary or wage changed on the basis of performance evaluations. On cross examination, Mr. Irving conceded that if an employee is subject to a PIP, there can be a delay in an employee's salary increase. On rebuttal, the City called Robert May, Director of Administration for the Chicago, Department of Aviation, to testify. Mr. May, who oversees the Human Resources Section, testified that a PIP can impact an employee's salary. Mr. May testified that an employee subject to a PIP can have his merit increase delayed until he completes the improvement objectives of the PIP. Mr. May based his testimony on the City of Chicago's salary resolution guidelines for every City of Chicago graded employee, which covers every employee the Chief AOS evaluates.

Hiring in Operations is done by an interview panel made up of a rotation of Operations' employees. Mr. Lyman testified about the hiring process and interview panel's composition, from the perspective of both the Managing Deputy Commissioner and the Hiring Manager. As a matter of practice, Mr. Lyman attempts to ensure a Chief AOS sits on the interview panel. In addition to the Chief AOS, the interview panel can include the General Manager, Assistant Chief AOSs, and as of recently, AOS IIs. Present during the hiring process, in addition to the interview panel and Mr. Lyman, is a person from Human Resources, who runs the meeting, and a disinterested third-party, who acts as an observer to prevent the appearance of any undue influence on the hiring decision. After a qualified candidate applies for a position, he or she sits before the interview panel. Following the interview, the panel will then either recommend or not recommend the candidate for hire. If a consensus among those on the interview panel is reached, the panel's recommendation is followed. Every effort is made to avoid a tie decision, so the interview panel normally has an odd number of people. If a consensus cannot be reached, Mr. Lyman, as Hiring Manager, acts as the tie-breaker.

IV. DISCUSSION AND ANALYSIS

The Chief AOSs are supervisors within the meaning of Section 3(r) of the Act because they direct their subordinates with independent judgement and spend a preponderance of their work time engaged in supervisory functions.

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. Supervisors as defined by Section 3(r) of the Act are not public employees and are therefore excluded from the Act's coverage. City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512 (1990).

Under Section 3(r) of the Act, employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently exercise independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. Id. The Employer has the burden of proving by a preponderance of the evidence that the petitioned-for employees satisfy those four elements. County of Boone and Sheriff of Boone County, 19 PERI

¶ 74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶ 2016 (IL LRB-SP 2002).

A. Principal Work

In determining whether the principal work requirement has been met, the initial consideration is whether the work of the alleged supervisor is obviously and visibly different from the work of his subordinates. City of Freeport, 135 Ill. 2d at 514. However, where the work of the supervisor and his subordinates is not obviously and visibly different, the Board will look at what the supervisor actually does to determine whether the "nature and essence" of his work is substantially different from that of his subordinates. City of Freeport, 135 Ill. 2d at 514. The "nature and essence" test is satisfied by showing that the alleged supervisor has the "authority to influence or control personnel decisions in areas most likely to affect the employment of the subordinates and, thus, most likely to fall within the scope of union representation. Id. at 518.

The principal work of the Chief AOS is substantially different from that of their subordinates. In Operations, every employee, from Managing Deputy Commissioner to AOS I, is responsible for ensuring that airfield operations are in compliance with FAA guidelines. Having such a broad mission statement, there is accordingly considerable overlap in the responsibilities between the employees. Despite this overlap, and that the Chief AOSs can and do perform some of the same job duties as Assistant Chiefs AOSs, Duty Supervisors, and AOS Is and IIs, their essential functions are substantially different from that of their subordinates. The Chief AOS is ultimately responsible for ensuring his shift employees are operating in compliance with FAA regulations. The mantle of responsibility is most clearly demonstrated by the construct of the work schedule. As discussed, the work day has three, eight-hour shifts. By virtue of there being only one Managing Deputy Commissioner and one General Manager, the Chief AOS is the most supervisory employee present for upwards of 16 hours a day.

Beyond being solely responsible for subordinates for those 16 hours, the Chief AOS's specific responsibilities can be distinguished from those of his subordinates. The Chief AOS's work is substantially different from subordinate work because the Chief AOS position is given discretion. Although Mr. Avila characterized the responsibilities of the Chief AOS position as the same as the Assistant Chief AOS position, with the exception of flex time, the record does not support this characterization. Subordinate employees spend the majority of their day

performing physical inspections of external facilities and filing reports for prescribed areas on the airfield and surrounding area. Unlike the Assistant Chief AOS, or any of the other subordinate positions, the Chief AOS is given the discretion to handle the dynamic and "fluid" workplace environment. The Chief AOS's discretionary ability is first demonstrated at the time the he arrives to work, utilizing flex time. Flex time allows the Chief AOS, unlike his subordinates, to arrive at work an hour before or after his shift is scheduled to start. Then, during the shift, the Chief AOS has the discretion to shift the prioritization of duties based on situational dependency, without any rigid or assigned schedule.

The duties of the Chief AOS further demonstrate differentiation from subordinate duties. The Chief AOS, working out of separate administrative offices in the basement of the City Atrium, conducts final review of all inspection reports, schedules personal days, and conducts performance evaluations. Because of these unique oversight, administrative, and personnel duties, I find that the Employer has met the first prong of the supervisory test in that the Chief AOS's principal work is substantially different from that of his subordinates.

B. Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000). An effective recommendation satisfying the Act's supervisor requirements is one that is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Illinois State Labor Relations Board, 167 Ill. App. 3d 284, 289, 521 N.E.2d 108, 112 (3rd Dist. 1988); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[2] See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); County of Union, 20 PERI ¶9 (IL LRB-SP 2003); Northern Illinois University (Department of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Illinois, Department of Central Management Services (Department of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); County of Union, 20 PERI ¶9. Notwithstanding these considerations, a single indicium of supervisory authority (of eleven possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 529, 607 N.E.2d at 192.

i. Direction

Chief AOSs direct their subordinates with independent judgment when they review their subordinates' day-to-day activities and evaluate their work. The indicium of "direction" includes a variety of job functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL SLRB 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB

[2] There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Village of Maryville v. ILRB, 402 Ill. App. 3d 342, 369 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB, State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

1992). In order to constitute "direction" within the meaning of the Act, an employee's responsibility for his or her subordinates' work performance must also involve discretionary authority that affects the subordinates' terms and conditions of employment. County of Cook, 28 PERI ¶85 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 25 PERI ¶186 (IL LRB-SP 2009).

The Chief AOSs engage in supervisory direction when they review their subordinates' work to assess its quality. The record reflects that the Chief AOSs spend a large portion of their work time reviewing and correcting inspection reports of the airport facilities, which are generated by subordinates. If a discrepancy was identified, the Chief AOSs assist their subordinates with their work, instruct subordinates on how to properly complete work, and monitor their work to ensure proper performance. Only after the subordinate completes the inspection report to the Chief AOS's satisfaction will he sign for "Management Review."

The Union attempts to characterize these duties as lacking independent judgment because the inspection reports involve problems determined by predetermined policies and procedures imposed by federal regulation. However, the mere fact that the Chief AOS monitors the work performance of their subordinates as measured against policies and procedures of the FAA does not take away from the fact that they exercise discretion and independent judgment when they instruct their subordinates, assist them in performing their duties, and monitor their work. Chief AOSs are ultimately responsible for compliance with policy and procedure by signing an inspection report in order to ensure a safe airfield, and must take actions to ensure that their subordinates are properly performing their work. The fact that rules, procedures, and policies provide standards and guidelines does not render the Chief AOS's work devoid of independent judgment and discretion. Moreover, where a supervisor has an active role in "checking, correcting, and giving instructions to subordinates" and "assesses his subordinates' performance and behavior to ensure compliance with departmental norms," this is evidence of directing subordinates with independent judgment. County of Cook, 15 PERI ¶3022, citing City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). In addition, in the case of supervising sanitarians for the City of Chicago, the Board has found that reviewing subordinates' work and monitoring and instructing subordinates in the field are examples of directing the work of subordinates. City of Chicago (Department of Public Health),

17 PERI ¶3016 (IL LRB-LP 2001). The record reflects that this is precisely the type of activity that the Chief AOSs engage in.

Next, Chief AOSs direct their subordinates with independent judgment when they make effective recommendations concerning their subordinate evaluations. Each Chief AOS completes a performance evaluation for the subordinates he supervises during their shift. The overall rating summary has three-parts: annual objectives, general performance factors, and supervisory performance factors. Each of these parts has specific criteria of assessment, such as accountability, communication, integrity, problem solving, and time and task management. Each Chief AOS exercises independent judgment by providing a rating in these subjectively-judged categories with the ability to describe any outstanding or unsatisfactory job performance. Cf. State of Ill. Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227 (where there was no evidence concerning the categories of performance evaluations, the court was "unable to say that the categories [were] more subjective than quantitative," and therefore found that the petitioned-for employees did not exercise independent judgment). Notably, the fact that the Chief AOS's superior must approve the recommendation fails to diminish the fact that his initial determination is an exercise in judgment between the various rating choices. See Dep't of Cent. Mgmt. Serv./Dep't of Public Health v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110013 ¶ 77.

Chief AOSs evaluate subordinates based on their own observations and interactions. Mr. Lyman testified that those evaluations made by the Chief AOS are given strong deference. Although Mr. Lyman has the ultimate authority to change the evaluations, this alone does not diminish the Chief AOSs' supervisory authority. Department of Cent. Mgmt. Servs./Pollution Control Bd. v. Ill. Labor Rel. Bd., State Panel, 2013 Ill App (4th) 110877 ¶ 26; (effective recommendation are those that are almost always implemented or followed; addressing recommendations in the context of managerial authority); Service Employees Intern. Union, Local 73, 2013 Ill App (1st) 120279 ¶ 61 (finding evaluations to constitute effective recommendation on direction where reviewing superior had never rejected the evaluations completed by the purported supervisor).

Finally, the Chief AOSs' supervisory authority to direct through work performance evaluation is demonstrated by the potential implementation of a PIP after a sub-2.0 rating. The Union argues that performance evaluations only have a correlative connection to the imposition

of delay receiving a salary increase. Accordingly, the Union contends that a performance evaluation cannot impact an employee's salary. Instead, I find that the Chief AOS performance evaluations have a causal connection to a salary increase. While Mr. Irving was insistent that a performance evaluation cannot impact salary, he did eventually concede that a PIP, which is a causal product of a sub-2.0 performance evaluation, can have an impact of attaining a higher salary. The impact of a performance evaluation and subsequent PIP was further discussed by Mr. May, who testified that if a PIP is implemented, usually for 90 days, then that employee's merit pay increase can be delayed until successful completion of the items referenced in the PIP. Vill. of Elk Grove Village, 245 Ill. App. 3d 109 (2nd Dist. 1993); Serv. Empl. International Union, Local 73, 2013 IL App (1st) 120279 ¶ 61 (finding direction affected subordinates' terms and conditions of employment where petitioned-for employees evaluated their subordinates and where performance evaluations were considered for promotions). As such, I find that Chief AOSs, through performance evaluations, can direct the salary and employment status of their subordinate employees.

ii. Reward

The Chief AOSs do not have the supervisory authority to reward. The Employer argues that pursuant to their role in evaluating subordinates, the Chief AOSs have the authority to effectively deny or recommend merit increases for their subordinates. On its face, this argument effectively recites why evaluating subordinates supports a finding of directing subordinates, with the exception that the evaluation is used as a carrot versus a stick. Regardless, to be ineligible for the merit increase an employee must receive a poor evaluation, an evaluation under a 2.0 rating. Neither of the two Chief AOSs that testified during the hearing discussed his awareness of the 2.0 rating requirement, their knowledge that lower rating may warrant the denial of a merit increase, or their ability to reward subordinates for good work with better ratings, which would result in a merit increase. See City of Chicago (Department of Aviation), 29 PERI ¶ 120 (IL LRB-LP 2013) (noting lieutenants have the ability to affect whether subordinates receive merit increases to the extent they knew lower rating may mean denial of a merit increase).

Given their experience, there is little doubt that Mr. Avila and Mr. Hoffelt did possess this knowledge, but absent evidence on the record to the contrary, I am precluded from deciding whether performance evaluations were, in fact, used to reward subordinates.

iii. Hire

The Chief AOSs do not have the supervisory authority to hire or to make effective recommendations on hiring. There is little question that Chief AOSs do not have the ultimate authority to hire because the hiring process is conducted through an interview board. The Chief AOSs do not effectively recommend the hiring of employees because, at the most, they participate on the interview board with superiors, including the Managing Deputy Commissioner or the General Manager. Further, the record is devoid of any practice that demonstrates that the Chief AOS is always among those on the interview board. Mr. Lyman's testified only that a Chief AOS *could* be one of the people on the interview board. Regardless of whether the Chief AOS is always present during the hiring process, if an individual participates in a hiring committee that includes his or her supervisor and committee decision is reached by consensus, his or her recommendation is not "effective" within the meaning of the Act. State of Ill., Dep't of Cent. Mgmt. Serv., 30 PERI ¶ 38 (IL LRB-SP 2013); Cnty. of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); Peoria Hou. Auth., 10 PERI ¶ 2020 (IL SLRB 1994) (employee had no authority to transfer because that power was exercised in consensus with another employee) aff'd by unpub, order docket No. 3-94-0317 (3rd Dist. 1995).

Here, the record reflects that the interview board has at least three members, with the goal of having an odd number of interview board members to achieve a consensus decision. With an odd number of members, there is no potential for a tie in the decision to recommend hire or not hire for employment. Even in the circumstance where the interview board would have an even number of participants, and that even-numbered interview board could not reach a consensus, Mr. Lyman, not a Chief AOS, would make the hiring decision. Mr. Lyman would have the authority to act as tie-breaker in this scenario by acting in his capacity of Hiring Manager. Further, the goal of having an odd number of members on the interview board to avoid ties implies that each member's vote is afforded equal weight. Even if the Chief AOS were on the interview board, the process is designed so neither the Chief AOS, nor any other member of the interview board, superior or subordinate to the Chief AOS, could recommend the hiring of an individual and have his recommendation accepted as a matter of course, with little or no review. Rather, the process is designed to ensure that no single panel member has such influence. To accomplish this objective, an individual from Human Resources is present to ensure the process is done properly and an uninterested third party is brought in to prevent any appearance of undue influence during the hiring process.

C. Preponderance Requirement

The Chief AOSs spend a preponderance of their work time engaged in supervisory functions because their most important task is to ensure the quality of their subordinates' work, which is administratively done through reviewing inspection reports. Chief AOSs spend over 50% of their work time performing these functions.

The Illinois Supreme Court, in City of Freeport, interpreted the preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions. Stated differently, the employee must spend more time on supervisory functions than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 532. Since the City of Freeport decision, two panels of the Fourth District of Illinois Appellate Court have issued different interpretations of how preponderance may be analyzed. The first interpretation defines preponderance as requiring that the employee spend the majority, or more than 50% of his or her time, exercising supervisory authority. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 249 Ill. App. 3d 740, 746 (4th Dist. 1993). The second interpretation of preponderance relies on whether the supervisory functions are more "significant" than the non-supervisory functions. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996).

Applying the quantitative test, Chief AOSs spend at least 50% of their time in supervisory direction doing inspection report related activity. Specifically, Mr. Avila testified to spending around 50% of his time reviewing inspection reports. Mr. Lyman, who has spent approximately 24 years in the Department, (though never holding the position of Chief AOS) credibly testified that upwards of 70% of a Chief AOS's day is spent on document review, talking to subordinates, and by helping to come up with policies and procedures that keep everybody safe.

The testimony of Mr. Avila attempts to characterize time spent as a Chief AOS as another hand-on-deck, where all workers essential perform whatever is necessary to ensure compliance with FAA standards. However, the record reflects that the Chief AOSs are directly responsible for the performance of the Assistant Chief AOSs, Duty Supervisors, and AOS I's and II's, and that the Chief AOSs ensure this performance by monitoring and checking on employees' administrative work product as well as checking on employees in the field. As discussed in detail above, this demonstrates that they direct the work of subordinates. Moreover, as outlined

by both Mr. Avila and Mr. Hoffelt, the Chief AOSs engage in training, scheduling, and evaluating subordinates. Furthermore, even if the Chief AOS's time in the field is partially spent on routine inspections, the record still indicates that the main function of the Chief AOS is to supervise subordinates, and the Chief AOSs spend more time on this function than on any other one job function. Therefore, the Employer's estimate of time spent on supervisory duties is reasonable and borne out by the evidence

Applying the qualitative test, the most important components of the Chief AOSs' work are supervisory direction because the very purpose of the Chief AOS position is to maintain quality control of their subordinates' work. Moreover, the Chief AOSs achieve quality control in part by assessing their subordinates' mistakes, giving employees guidance on how to improve, and overseeing the implementation of that guidance.

V. CONCLUSIONS OF LAW

The petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

The petition is dismissed.

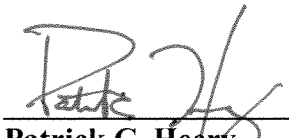
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with General Counsel Kathryn Zeledon Nelson of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's

Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 31st day of May, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Patrick C. Heery
Administrative Law Judge