

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

American Federation of State, County)	
and Municipal Employees, Council 31,)	
)	
Petitioner)	
)	Case No. L-RC-15-007
and)	
)	
City of Chicago,)	
)	
Employer)	

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

On January 8, 2016, ALJ Deena Sanceda issued a Recommended Decision and Order (“RDO”) in which she determined that the title Supervisor of Auditing (“SOA”) employed by the City of Chicago (“Employer” or “City”) in its Department of Finance (“Department”) is supervisory within the meaning of Section 3(r) of the Illinois Public Labor Relations Act, 5 ILCS 315/3(r) (2014), as amended (“Act”). We adopt the ALJ's findings of fact as modified in this Opinion and Order. To assist the reader, we summarize some of the relevant facts below.

SOAs work in the Department’s Tax and Policy and Administration Division (“Tax Division”), which administers and enforces the City’s municipal tax code by collecting City revenue and auditing business tax returns. SOAs work in one of two sections within the Tax Division, Tax Enforcement, which performs audits, or Tax Administration, which primarily ensures that business taxpayers file their returns and remit payments. The SOAs report to one of three managers. The managers in turn report to the Deputy Director of the Tax Division.

There are seven employees in the SOA title, six are assigned to Tax Enforcement and one

is assigned to Tax Administration. Each SOA oversees a team (“silo”) of five to six auditors, who are classified as Auditor Is, IIs, IIIs, or IVs, depending on their experience.

1. ALJ’s Analysis

The ALJ initially noted that under Section 3(r) of the Act, employees are supervisors if they (1) perform principal work substantially different from that of their subordinates; (2) have the authority, in the interest of the employer, to perform any of the enumerated supervisory functions; (3) consistently use independent judgment in performing those functions; and (4) spend a preponderance of their time exercising that authority. Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed’n of State, Cnty. and Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 515 (1992).

The ALJ then found that the principal work of the SOAs is substantially different from that of their subordinate auditors. She next found that all SOAs exercise supervisory authority to direct and reward their subordinates through evaluations, but that only the Tax Enforcement SOAs have authority to effectively recommend their subordinates’ discipline. She rejected the Employer’s assertion that the SOAs adjust grievances with independent judgment. She further found that all SOAs perform supervisory functions for a preponderance of their work time under a qualitative analysis and that Tax Enforcement SOAs additionally satisfy the preponderance prong under a quantitative analysis. We set forth a more detailed summary of the ALJ’s analysis of the second and third prong below, organized by indicia, and of the fourth prong, and we address the functions of the Tax Enforcement and Tax Administration SOAs separately where they differ.

a. Direction

The ALJ found that the Tax Enforcement SOAs direct their subordinates with independent judgment when they oversee their subordinates, distribute assignments, and evaluate their subordinates, or make effective recommendations on those matters, but not when they approve time off. She reasoned that the Tax Enforcement SOAs oversee their subordinates' work with independent judgment because they monitor productivity, determine whether they need to meet with the subordinate to improve productivity, and have discretion to determine the manner in which they will attempt to increase productivity. Next, she found that Tax Enforcement SOAs assign cases to Auditor Is and IIs using independent judgment because they consider their auditors' skills and the difficulty of the work. She further found that they effectively recommend the assignment of cases to Auditor IIIs and IVs using independent judgment because they make the recommendations to their managers based on the same criteria, discussed above, and the managers typically approve those assignments. Further, the ALJ found that the Tax Enforcement SOAs exercise independent judgment in evaluating subordinates because they use subjective measures to assess teamwork and whether their subordinates have met their audit goals. However, the ALJ reasoned that the Tax Enforcement SOAs do not approve time off with independent judgment because that function is mostly routine. She additionally reasoned that SOAs have no authority to unilaterally grant time-off requests that fall outside the routine because an SOA testified that he believed he needed a supervisor's permission to grant a last minute request for a two-week vacation.

The ALJ found that the Tax Administration SOA directs his subordinates with independent judgment when he oversees his subordinates' work and evaluates his subordinates, but not when he makes assignments or approves requests for time off. She reasoned that the Tax

Administration SOA oversees his subordinates' work with independent judgment because he monitors productivity, determines whether he needs to meet with the subordinate to improve productivity, and has discretion to determine the manner in which he will attempt to increase productivity. The ALJ noted that the Tax Administration SOA exercises independent judgment in evaluating his subordinates because he makes a subjective assessment of his subordinates' work and must interpret the Employer's guidelines in awarding a rating. However, the ALJ found that the Tax Administration SOA does not direct his subordinates with independent judgment when he assigns his subordinates work because his decisions are made to balance workload. Likewise, she determined that the Tax Administration SOA does not exercise independent judgment in approving time off where that function is routine and where at least one SOA believed that he did not have authority to unilaterally grant a last minute request for a two-week vacation.

The ALJ concluded that SOAs in both divisions impacted their subordinates' terms and conditions of employment through supervisory direction because the evaluations they complete help determine whether the subordinate receives a step increase.¹

b. Discipline

The ALJ found that the Tax Enforcement SOAs have the supervisory authority to effectively recommend discipline for their subordinates' poor performance, but not for Personnel Code violations. However, she found that the Tax Administration SOA does not have the supervisory authority to effectively recommend discipline at all.

Specifically, she found that Tax Enforcement SOAs exercise independent judgment in recommending discipline of their subordinates for poor performance because they can decline to

¹ The ALJ further found that the SOAs have authority to effectively recommend the reward of their subordinates through their evaluations. We do not address this indicium or make a finding on the Union's exceptions to this part of the ALJ's analysis for reasons explained more fully below.

recommend discipline when a subordinate has failed to successfully complete a performance improvement plan (“PIP”). Additionally, they base their recommendations on their assessment of their subordinates’ work, which is not circumscribed by City guidelines. Further, the ALJ found that their recommendations are effective because the managers rely on the SOAs’ first-hand knowledge of their subordinates’ performance and generally accept the SOAs’ recommendations on discipline for poor performance. However, the ALJ found that the Tax Enforcement SOAs do not exercise independent judgment in recommending discipline for Personnel Code violations. They have no discretion to overlook an infraction and are instead required to report all observed code violations. Likewise, the ALJ reasoned that the Tax Enforcement SOAs’ recommendations on discipline for Personnel Code violations are not effective where there was no evidence that the Employer had imposed discipline as a result of their recommendations.

However, the ALJ found that the Tax Administration SOA does not possess the supervisory authority to effectively recommend discipline for either poor performance or Personnel Code violations. First, she determined that she could not find that the Tax Administration SOA makes effective recommendations for discipline for poor performance where he had never made any such recommendations.² Next, she found that the Tax Administration SOA does not exercise independent judgment or make effective recommendations with respect to discipline for Personnel Code violations. The Tax Administration SOA must report all observed Code violations and has no discretion to overlook an infraction. She also found that the Employer failed to prove that the Tax Administration

² The ALJ relied on the decision-making process of Tax Enforcement SOAs to find that the Tax Administration SOA would likely also exercise independent judgment if called to make recommendations on discipline for poor performance.

SOA's recommendations are effective because the Employer did not introduce evidence concerning the overall frequency with which the manager accepts his recommendations.

c. Adjustment of Grievances

The ALJ next determined that SOAs do not adjust their subordinates' grievances with the requisite independent judgment because they lack the authority and training to make such adjustments on their own and instead rely heavily on their manager's involvement.

d. Preponderance

The ALJ concluded that the Tax Enforcement SOAs spend a preponderance of time on supervisory functions under both a quantitative and a qualitative analysis. Applying the quantitative analysis, the ALJ reasoned that the Tax Enforcement SOAs spend more than half of their work time engaged in supervisory direction of their subordinates. Applying the qualitative analysis, she reasoned that the most important functions of the Tax Enforcement SOAs are supervisory: they ensure the quality and timeliness of their subordinates' work by overseeing their duties, completing their subordinates' evaluations, and effectively recommending discipline for poor performance.

The ALJ likewise found that the Tax Administration SOA spends a preponderance of time on supervisory functions, but only under the qualitative analysis. She found that his most important functions are to ensure the quality and timeliness of his subordinates' work by overseeing his subordinates and evaluating them. However, addressing the quantitative analysis, the ALJ reasoned that she could not conclude that the Tax Administration SOA spends more time on supervisory functions than on any one non-supervisory task because the record did not reflect the amount of time he spends on each of his supervisory tasks.

2. The Parties' Exceptions

Pursuant to Section 1200.135(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b), the Union filed timely exceptions to the RDO. The Employer filed a response and cross-exceptions.

The Union excepts to the ALJ's ultimate conclusion to exclude the SOAs as supervisory. In support, the Union asserts that the ALJ erred in finding that the SOAs direct their subordinates with independent judgment when they monitor and review their subordinates' work, make assignments, and evaluate their subordinates. The Union further rejects the ALJ's claim that SOAs reward their subordinates through their evaluations, reasoning that those evaluations lack the requisite independent judgment. The Union next argues that the ALJ erred in finding that the Tax Enforcement SOAs have authority to effectively recommend discipline for their subordinates' poor performance. In addition, the Union rejects the ALJ's analysis of the preponderance prong of the test with respect to the quantitative approach, as applied to the Tax Enforcement SOAs, and to the qualitative approach, as applied to SOAs in both divisions.

The Employer pointedly responds to the Union's exceptions on the indicia of direction, reward, and discipline, and also to the Union's exceptions on the preponderance prong. In addition, the Employer excepts to two of the ALJ's legal conclusions and the factual findings on which they are based: (1) the ALJ's finding that the SOAs do not make effective disciplinary recommendations regarding Personnel Code violations; (2) the ALJ's finding that the Tax Administration SOA does not meet the quantitative test of the preponderance prong of the supervisory analysis.

3. Discussion and Analysis

For the reasons that follow, we affirm the ALJ's ultimate conclusion that all the SOAs are supervisors within the meaning of Section 3(r) of the Act, but we modify her analysis. To that end, we reject the Union's exceptions³ and likewise reject the Employer's exception to the ALJ's analysis of the preponderance prong of the test. Although we find merit to the Employer's exception that the ALJ erred in analyzing the effectiveness of the Tax Administration SOA's disciplinary recommendations for Personnel Code violations, we note that it does not impact the ALJ's finding on that indicium or the outcome of the case. Finally, we expand upon the ALJ's analysis as set forth below and modify her reasoning with respect to the SOAs' authority to grant requests for time off, although neither party excepted to that part of the ALJ's analysis.

1. Direction

We affirm the ALJ's conclusion that SOAs of both divisions direct with independent judgment when they review and monitor their subordinates' work and evaluate their subordinates. We likewise agree with the ALJ's assessment that the SOAs' evaluations of their subordinates impact the subordinates' terms and conditions of employment. We also affirm the ALJ's conclusion that Tax Enforcement SOAs additionally direct their subordinates with independent judgment when they assign work. Although we modify the ALJ's analysis of the SOAs' authority to grant requests for time off, we agree with her conclusion that they lack the

³ We decline to address the Union's exception to the ALJ's finding that the SOAs' authority to effectively recommend the evaluation of their subordinates also constitutes the authority to reward, but we also decline to adopt the ALJ's analysis on this point. We note that a determination on this indicium does not impact the outcome of the case. It does not change the preponderance of time analysis because the time spent completing evaluations is the same regardless of whether we characterize it as authority to reward. Furthermore, we find the evaluations' impact on employees' terms and conditions of employment is already evident where, as the ALJ correctly observed, the Employer deems evaluations important in determining whether to grant or deny step increases. Serv. Employees Int'l Union, Local 73 v. Illinois Labor Relations Bd., 2013 IL App (1st) 120279, ¶ 22.

requisite independent judgment in granting such requests.

a. Review

First, the ALJ correctly held that the SOAs direct their subordinates with independent judgment when they review and monitor their subordinates' work. The Union concedes that the SOAs review audit files for quality and to ensure that their subordinates meet target goals. However, it asserts that they merely exercise their superior knowledge of the tax code and experience in auditing to enforce the law, which does not require independent judgment and does not further the Employer's own policies.

The Union's argument is unconvincing. The relevant question is not whether the purported supervisor exercises superior skill and knowledge in direction. Rather, it is whether he does so simply to ensure compliance with industry standards, in a non-supervisory capacity, or whether he instead exercises that superior knowledge and skill in the interests of the employer such that he qualifies as a statutory supervisor. Compare City of Freeport v. Ill. Labor Rel. Bd., 135 Ill. 2d 499, 518-519 (1990)(fire lieutenants' exercise of superior skill, experience and technical expertise to ensure compliance with industry standards deemed non-supervisory) to distinguish cases such as Nat'l Union of Hosp. & Health Care Employers, Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. County of Cook, 295 Ill. App. 3d 1012, 1026 n. 10 (1st Dist. 1998)(attending physicians); City of Chicago, Department of Buildings, 32 PERI ¶ 155 (IL LRB-LP 2016)(assistant chief engineers); City of Chicago, Office of Emergency Management and Communications, 32 PERI ¶ 72 (IL LRB-SP 2015)(police dispatch managers); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Empl. Security), 11 PERI ¶ 2021 (IL LRB-LP 1995)(tax audit supervisors).

Here, the SOAs act in the interests of the employer when they exercise their superior

knowledge and experience in auditing because they function in large part to facilitate proper workflow and thereby ensure that the Department functions efficiently to recover City revenue. For example, SOAs meet with their staff regularly to monitor their staff's activities and their progression in meeting annual or monthly goals. They evaluate their staff on productivity and modify performance expectations in light of an audit's actual (as opposed to projected) difficulty—some audits initially appear simple but are actually more complex. To that end, auditors report back to SOAs with a timesheet that documents the number of hours they have allocated to a file, and the SOAs in turn review the timesheet to determine whether the numbers allocated to a file by the subordinate are reasonable. Certainly, SOAs provide their subordinates with assistance in interpreting tax law and provide guidance and answer questions on how to address uncooperative taxpayers, but they do so to further the efficient collection of revenue on behalf of the City and therefore in the interest of the Employer. See State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Empl. Security), 11 PERI ¶ 2021 (excluding Tax Audit Supervisors from bargaining unit even where their predominant concern in reviewing subordinates' work was ensuring that their subordinates obtained the necessary information and that they assessed it according to departmental regulations).

The Union cites case law addressing the managerial exclusion for the proposition that SOAs are public employees because they merely enforce the tax code, which the Union describes as simply the law rather than a policy of the Employer. However, unlike the employees at issue in the managerial cases, the SOAs do not apply the law directly to their own work. Rather, they ensure their subordinates apply it in a correct and efficient manner. Furthermore, the direction they provide to their subordinates is not an abstract application of law, even where it resolves tax code issues, but is instead the means by which the Employer satisfies

its statutory obligation to timely collect revenue. See Nat'l Union of Hosp. & Health Care Employers, Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. County of Cook, 295 Ill. App. 3d 1012, 1029 (1st Dist. 1998)(rejecting union's contention that attending physicians did not act in the employer's interests when they directed residents in caring for patients; finding that proper patient care achieved employer's statutory mission).

In addition, the Employer's selection of SOAs for their superior knowledge and expertise does not, as the Union claims, undermine the ALJ's finding that SOAs direct with independent judgment. As the First District Appellate Court noted, "virtually all supervisors have authority over their portion of an operation because of their [e]mployer's conclusion that they have greater skill and experience. That is why an [e]mployer gives them such authority." Nat'l Union of Hosp. & Health Care Employers, Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. County of Cook, 295 Ill. App. 3d 1012, 1026 n. 10 (1st Dist. 1998) (affirming Board decision to exclude attending physicians as supervisors). Relying in part on this reasoning, the court rejected the union's claim that the petitioned-for employees' exercise of superior skill in directing their subordinates rendered them public employees. We reject a nearly identical argument advanced by the Union in this case.

Finally, we find no merit to the Union's claim that the SOAs lack responsibility for the work that they monitor and review. The Union reasons that SOAs are not penalized for their subordinates' failure to perform, provided that the SOAs themselves have taken all steps necessary to ensure the sufficiency of their subordinates' work. However, the Union has cited no case law for the proposition that the putative supervisor must suffer penalty where his corrective action fails to produce the expected improvements in his subordinate's work. In fact, the putative supervisors must simply possess the authority to take necessary steps or corrective

action to ensure satisfactory performance and must expect adverse consequences if they do not take those steps. Croft Metals, Inc., 348 NLRB 717, 721 (2006). Thus, SOAs satisfy the standard for responsible direction pursuant to the Union's own description of the SOAs' authority because the Employer holds SOAs responsible for the poor performance of their subordinates when they fail to take necessary corrective action.

b. Evaluation

Second, we find that the ALJ correctly held that the SOAs direct through their effective recommendations on their subordinates' evaluation. We likewise affirm her conclusion that those evaluations impact employees' terms and conditions of employment.⁴

Contrary to the Union's contention, both the Tax Administration SOA and the Tax Enforcement SOAs exercise independent judgment in completing their subordinates' performance evaluations, although they determine the ratings differently for two of the three evaluated categories.⁵

The Tax Administration SOA exercises independent judgment in rating his subordinates' productivity and work quality because these ratings require a subjective judgment, as the ALJ correctly noted. With respect to productivity, the SOA compares actually completed work against projected-annual goals to determine whether the number of payments reviewed by the subordinate are "considerably greater" than, "closely meet," are "significantly less" than, or are "unacceptably less" than the projected semi-annual goals. These categories necessarily require a case-by-case analysis of the amount of work performed in light of work received. Even the Employer's evaluation guidelines state that an SOA may consider "mitigating circumstances" in deciding whether the subordinate met the productivity standards. For example, Manager Reed

⁴ We expand upon the ALJ's analysis as outlined below.

⁵ The categories include productivity, quality, and teamwork/leadership.

testified that in a case where the goal for processing tax returns exceeds the number of tax returns actually received, the SOA must “make a judgment to determine how to rate that employee...for productivity based on those facts.”

With respect to quality, it is undisputed that the Tax Administration SOA reviews a sample of the subordinate’s completed work, which does not require rote application of a mathematical formula and instead requires the SOA to determine, for example, whether the number of mistakes constitutes an “unacceptable number,” sufficient to warrant the lowest rating.⁶

Likewise, we find that the Tax Enforcement SOAs exercise independent judgment in evaluating their subordinates on productivity and work quality, even though they rely in part on mathematical formulas to obtain ratings for the auditors’ semi-annual evaluations. The Union’s focus on the mathematical nature of the formulas is misplaced because it overlooks the fact that the SOAs exercise discretion in determining the numbers plugged into them. As the Union correctly observes, the SOA’s calculation of the final numbers for quality and productivity is rote. The semi-annual productivity score is an average of the ratings awarded by the SOA for productivity evaluating each completed audit and the semi-annual quality score is an average of the ratings awarded by the SOA for quality in evaluating each completed audit. However, the SOAs consistently exercise independent judgment in determining the scores that comprise the average for both productivity and quality. They have discretion to rate a subordinate as satisfactory in productivity on an audit evaluation even if the subordinate has exceeded the target number of hours allotted to that audit. In making that determination, the SOA considers whether the audit included gray legal areas, a poorly organized record, or an uncooperative taxpayer.

⁶ The Employer pairs each of the three remaining ratings with a similarly subjective standard.

Likewise, the SOAs' award of each underlying quality score requires the exercise of discretion because the scores are based on subjective factors. To cite just one example, an SOA must determine whether a subordinate "guided [an] interview dynamically" to determine whether to award the highest score (4) for quality. We therefore find it appropriate to consider this independent judgment exercised by the SOAs in the earlier stages of evaluation.

Finally, SOAs of both sections exercise independent judgment in evaluating their subordinates in the teamwork/leadership category, even though they must explain any deviation from a rating of three (3) to the manager. Indeed, the SOAs' proffer of an explanation for a score that departs from the standard underscores a finding that they exercise independent judgment because the reason they give is necessarily based on their explanation of how the auditor qualifies for any rating other than the standard, including "very good" (4), "requires improvement" (2), "unsatisfactory" (1). Although the Standards of Performance guidelines describe behavior that falls into the different ratings, the SOA must nevertheless determine whether his subordinate's behavior matches the description. For example, the SOA must determine whether his subordinate has "propose[d] new initiatives and [has] effectively see[n] them through."

We reject the Union's claim that the SOAs perform evaluations as a group or that they reach agreement on the ratings before awarding them. The pages in the record cited by the Union do not contain testimony to that effect. Rather, the testimony illustrates that the SOAs each input their ratings into a spreadsheet—after assigning them independently—so that the manager can easily review the ratings for consistency across the subordinate group.⁷

⁷ SOA Timothy Yung testified as follows: "All the supervisors meet and we compile all the numbers and then we submit that to the manager so he can review all the numbers to make sure that everything is being consistent." Yung further explained, "everybody tells the score that they give for each of the auditors and I put it into a report for the manager."

Next, it is clear that SOAs' recommendations on evaluations are effective, despite the managers' authority to change ratings, because the preponderance of the evidence suggests that the managers rely upon and largely accept the SOAs' recommendations. The proper focus in the context of effective recommendation is the influence of the recommendation and whether the superior almost always follows it. State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n), 406 Ill. App. 3d 766, 777 (4th Dist. 2010). Here, Manager Pitchan testified that he has never changed an SOA's rating, though he has occasionally given input on the narrative portion of the evaluation to correct its tone. The Union accurately observes that SOA Yung testified that a manager has questioned his ratings and that, at some point during his tenure, a manager told Yung to change an assigned rating. However, the ALJ correctly weighted Pitchan's testimony as more probative of the recommendations' overall influence where Yung did not testify as to the frequency with which his manager changed his rating.

We note that the managers' authority to make changes to evaluations and the managers' review of evaluations before distribution to the employees does not undermine the effectiveness of the recommendation. It simply underscores the undisputed fact that the evaluations themselves are recommendations rather than final decisions.

Finally, we adopt the ALJ's finding that the SOAs' evaluations impact their subordinates terms and conditions of employment where the Employer considers the evaluations as an important factor in deciding whether to grant a wage increase. Serv. Employees Int' l Union, Local 73 v. Illinois Labor Relations Bd., 2013 IL App (1st) 120279, ¶ 22 (employees had supervisory authority to direct through their evaluations where the subordinates' collective bargaining agreement required the evaluation to be considered when a subordinate applied for a promotion).

c. Requests for Time Off

We additionally note that the ALJ properly concluded that SOAs lack the authority to grant requests for time off with the requisite independent judgment, but modify her rationale. The ALJ reasoned that SOAs have no authority to unilaterally grant non-routine requests for time off because SOA Yung testified that he believed he needed a supervisor's permission to grant a last minute request for a two-week vacation. We find that SOA Yung's belief as to his actual authority is not dispositive of his actual authority, and that the ALJ should have instead relied on the Employer's failure to offer specific examples in which SOAs have unilaterally granted requests for time off in non-routine cases. Vill. of Broadview v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

2. Discipline

Next, we affirm the ALJ's conclusion that only the Tax Enforcement SOAs possess disciplinary authority to effectively recommend discipline and that their authority extends only to discipline for poor performance. To that end, we reject the Union's exceptions and find the Employer's exceptions insufficient to overturn the ALJ's ultimate conclusion.

The Union first claims that the Tax Enforcement SOAs' disciplinary recommendations lack the requisite independent judgment because it is the manager who identifies the performance deficiency and raises the issue with the SOA, not the other way around. However, we find that the preponderance of the evidence indicates that SOAs can and do raise issues of performance deficiency with their manager to initiate discipline. Manager Herman testified, "[SOAs] bring the [disciplinary] recommendation to the manager." SOA Yung admitted that the

SOAs “monitor the employees’ monthly goals” for that purpose, though he tries to work with the employee first. The fact that a manager may also sometimes point out deficiencies in an auditor’s performance to the SOA on a monthly basis, when reviewing the SOAs’ reports, merely demonstrates the SOAs’ responsibility for their subordinates’ performance. It does not diminish the SOAs’ authority to raise the issue with the manager first.

Next, the Union asserts that SOAs’ recommendations lack independent judgment because the manager and the SOA discuss the personnel matter before the SOA makes any recommendation regarding discipline. However, we find that the preponderance of the evidence indicates that any discussion between the manager and the SOA follows the SOA’s recommendation for discipline. Moreover, it relates primarily to the particular level of discipline warranted rather than the threshold decision to impose it. Managers Pitchan and Herman both testified that the SOAs initiate the disciplinary process and bring their recommendations for the imposition of discipline to the manager. Although Pitchan admitted that he discusses the recommendation of discipline with the SOA, he offered his testimony in response to counsel’s inquiry regarding his involvement “once discipline is initiated against an auditor [by the SOA].” In addition, he noted that his role in discussion is limited: “I’m there in the discussion to ensure that we are applying any penalties, any discipline[,] consistently” and to provide the SOA with information concerning “pas[t] discipline imposed on that [subordinate] auditor” to which the SOA “may not be privy.”⁸ Indeed, the record contains no examples of cases in which a manager declined to apply discipline for poor performance once the SOA raised the matter for disciplinary

⁸ We acknowledge that Pitchan also stated, “we will agree on a recommendation for discipline or not, depending on the situation.” However, we read this statement to mean that Pitchan and the SOA discuss the SOA’s recommendation to withhold discipline when the SOA advances such a recommendation and that, conversely, they discuss the level of penalty warranted when the SOA recommends discipline. Pitchan’s later description of his limited function in the disciplinary discussions weighs in favor of our interpretation.

attention. Accordingly, we find that references to a “collaborative” disciplinary process reasonably relate to collaboration on the recommendation of a *particular* penalty rather than on the SOA’s threshold recommendation for *a* penalty, more broadly.

We observe that the SOA’s collaboration with the manager on the level of discipline to impose does not eliminate the exercise of independent judgment where the SOA has authority to decline to recommend discipline and to use other means to correct poor performance instead. Indeed, SOA Yung illustrated his exercise of independent judgment when he stated, “I rarely try to discipline...I try to work with them before it gets to that point.” See Metro. Alliance of Police Bellwood Command Chapter No. 339., 354 Ill. App. 3d 672, 681-83 (4th Dist. 2004) (decision to impose discipline in the first instance demonstrates the exercise of independent judgment when the purported supervisor has the discretion to determine whether to impose it or to grant leniency); County of Cook (Health and Hospital System), 32 PERI ¶ 55 (IL LRB-LP 2015) (finding supervisory authority to effectively recommend discipline even if the employer does not adopt the particular method of discipline recommended by the subordinate).

Finally, the Union argues that the manager conducts a substantial review of the attendant circumstances before accepting the Tax Enforcement SOAs’ disciplinary recommendation and that such review eliminates the recommendation’s effectiveness. However, we do not consider this review to be substantial where the managers do not challenge or even investigate the SOAs’ determination that the identified infraction warrants discipline, and where they simply ensure that the Employer applies particular penalties in a consistent manner.⁹

Even if we did find such review to be substantial in nature, it would not eliminate the

⁹ There is some evidence to suggest that the managers identify poor performance of an auditor, as documented in the SOA’s monthly report and sometimes decide discipline is warranted. However, there is insufficient evidence in the record to indicate that managers ever reject SOAs’ recommendations for discipline once the SOAs have identified a need for it.

effectiveness of the Tax Enforcement SOAs' disciplinary recommendation because it is the recommendations' influence that is the litmus test for effective recommendation, not necessarily the extent of the review. State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n), 406 Ill. App. 3d at 777. The Union cites to Chief Judge for the contrary proposition, but the court there simply applied the definition of independent judgment as it "ha[d] been defined generally by the Board," to date. Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 516 (1992). We note that our definition of the term independent judgment has reasonably changed over the past 24 years in response to decisions by the appellate court addressing effective recommendation. See State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n), 406 Ill. App. 3d at 777. Applying more recent Board and court interpretations, the SOAs' recommendations to impose discipline do evidence independent judgment, as discussed above. Moreover, they are effective because the managers routinely accept the SOAs' threshold recommendation that the Employer should impose some kind of discipline.

We likewise affirm the ALJ's conclusion that neither the Tax Enforcement SOAs nor the Tax Administration SOA have the supervisory authority to effectively recommend discipline for Code violations with the requisite independent judgment. The Employer's cross-exceptions do not warrant reversal on this finding because they take issue with only one portion of the ALJ's analysis and leave the rest undisturbed. Here, the ALJ determined both that (1) the Tax Enforcement SOAs lack independent judgment in recommending discipline for Personnel Code violations because they must report all Code violations and that (2) their recommendations on discipline for Code violations are not effective. Yet, the Employer disputes only the effectiveness of SOAs' recommendation for discipline and not the ALJ's related finding that

their recommendations lack independent judgment. The Employer's failure to except to the other part of the ALJ's analysis renders the Employer's exception insufficient to reverse the ALJ's conclusion that the Tax Enforcement SOAs do not exercise supervisory authority when they make disciplinary recommendations for Code violations.¹⁰

Thus, we affirm the ALJ's finding that Tax Enforcement SOAs possess disciplinary authority to effectively recommend discipline only for poor performance, not Code violations, and that Tax Administration SOAs do not possess disciplinary authority at all.

3. Preponderance of Time

We affirm the ALJ's conclusion that the SOAs of both divisions satisfy the preponderance prong of the test and reject the Union's exceptions to her analysis of these issues. We likewise reject the Employer's cross-exceptions to the ALJ's reasoning that the Tax Administration SOA satisfies the preponderance prong of the test only under the qualitative, and not the quantitative, approach.

We adopt the ALJ's statement of law addressing the preponderance prong of the supervisory test. As the ALJ noted, under this prong, the employee must spend the most significant allotment of his or her time exercising supervisory functions. City of Freeport, 135 Ill. 2d at 532; State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corr.) v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996). Preponderance of time can be measured

¹⁰ However, we do modify the ALJ's analysis with respect to the effectiveness of the SOAs' recommendations in cases of Personnel Code violations, though we emphasize that this aspect of our ruling has no bearing on the ALJ's conclusion on this indicium where the Employer failed to challenge the ALJ's finding that the SOAs do not exercise independent judgment. The Employer correctly observes that the Tax Administration SOA's recommendations on discipline for Code violations are effective because he made only one such recommendation and the manager accepted it. The Employer also correctly observes that the testimony concerning the managers' reliance on the SOAs' disciplinary recommendations is broad enough to cover recommendations concerning both Personnel Code violations and performance-related discipline, discussed above.

quantitatively or qualitatively. State of Ill., Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm.), 30 PERI ¶ 205 (IL LRB-SP 2014). Measured quantitatively, an employee spends a preponderance of his or her time on supervisory functions when he or she spends more time on supervisory functions than on any one non-supervisory function. State of Ill., Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85-86 citing City of Freeport, 135 Ill. 2d at 532. Measured qualitatively, an employee spends a preponderance of his or her time on supervisory functions when these functions are more significant than his or her non-supervisory functions, regardless of the amount of time spent on these supervisory functions. Am. Fed. of State, Cnty., and Mun. Empl. Council 31 v. Ill. Labor Rel. Bd., 2014 IL App (1st) 130655; Cnty. of Vermilion v. Ill. Labor Rel. Bd., 344 Ill. App. 3d 1126, 1136 (4th Dist. 2003).

Contrary to the Union's contention, there is sufficient support for the proposition that the most important function of an SOA is supervisory in nature and that the SOAs therefore satisfy the preponderance prong under a qualitative analysis. As the Employer correctly observes, the managers have delegated the day-to-day operations to the SOAs and have very little day-to-day contact with the auditors themselves. The fact that the managers evaluate the SOAs on the performance of their silos further underscores the importance of their supervisory functions. With respect to Tax Enforcement SOAs in particular, Manager Herman specifically stated that their most important function is to "monitor the performance of their auditors and [to] select a caseload" for their subordinates. Herman additionally listed the SOAs' selection of audit targets as one of their most important functions. Although the selection of targets is not supervisory in and of itself, it is a prerequisite to the performance of supervisory functions because there can be no assignment without the initial selection of work. We find it reasonable to conclude that the preponderance of the SOAs' work time is spent on supervisory functions if two out of three of

their most important functions are supervisory in nature and where SOAs must perform that third most important function before they are able to perform the supervisory ones.

The Union's exceptions likewise fail to identify any error in the ALJ's conclusion that the Tax Enforcement SOAs satisfy the preponderance prong under the quantitative analysis. The ALJ correctly relied on Herman's testimony that Tax Enforcement SOAs spend more than half their time monitoring their auditors' work from beginning to end. The Union reasons that such monitoring is not supervisory and therefore cannot be included in the calculus because it does not require the exercise of independent judgment, but there is no merit to this argument, as we noted above. The Union also claims that Manager Pitchan testified that he spent only about an hour a month discussing cases with subordinate auditors when he worked as an SOA. However, the record more fairly reflects the fact that Pitchan spent at least one hour per month on each auditor, and that one auditor came to see him as frequently as once a day.¹¹ Moreover, the Union's reliance on the one-hour figure disregards the fact that SOAs direct or monitor their subordinates through additional means, which include reviewing their files, monitoring their time sheets,¹² and evaluating their subordinates' audits. Thus, we find that the ALJ's analysis of Tax Enforcement SOAs work time under the quantitative approach is sound.

We similarly reject the Employer's exceptions to the ALJ's conclusion that Tax Administration SOA satisfies the preponderance prong only under a qualitative analysis and not a quantitative analysis. There is merit to the ALJ's observation that Manager Reed's testimony did not sufficiently describe the amount of time spent by the Tax Administration SOA on purely

¹¹ Q: How often would you say you've met with them?

A: On a regular basis. I have one auditor who comes to my office almost every day. I have one auditor that seldomly [sic] comes to my office and then another auditor that'll come whenever there's tax issues so it varies. But I would say on average, on a regular basis, at least a one-hour meeting each month if not more.

¹² These documents prepared by auditors that estimate the amount of time required for an audit; they are not attendance time sheets.

supervisory functions. Reed testified to a percentage figure (50%), but the question he answered was broad and included reference to non-supervisory tasks, including discipline and unspecified “issues that relate to staff.” The ALJ reasonably found that she could not make an accurate quantitative analysis in the absence of information concerning the percentage of time spent on each of the listed functions, where at least some functions listed were non-supervisory. The Employer argues that Manager Reed offered a more particular breakdown of that stated percentage, but his testimony is ambiguous and does not address solely the SOA’s oversight of subordinates, as the Employer claims. Indeed, Reed’s explanation included reference to “various issues...brought to [the Tax Administration SOA’s] attention that [the SOA] will help resolve,” which could well cover non-supervisory and routine matters.

In sum, we find that the SOAs are supervisors within the meaning of Section 3(r) of the Act and therefore dismiss the Union’s petition to represent them.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert M. Gierut

Robert M. Gierut, Chairman

/s/ Charles E. Anderson

Charles E. Anderson, Member

/s/ Richard A. Lewis

Richard A. Lewis, Member

Decision made at the Local Panel’s public meeting in Chicago, Illinois on May 10, 2016, written decision issued in Chicago, Illinois on June 16, 2016.

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

American Federation of State, County and)	
Municipal Employees, Council, 31,)	
)	
Petitioner)	
)	
and)	Case No. L-RC-15-007
)	
City of Chicago,)	
)	
Employer)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 16, 2014, the American Federation of State, County and Municipal Employees, Council, 31, (“Petitioner” or “AFSCME”) filed a majority interest/representation petition in Case No. L-RC-15-007 with the Local Panel of the Illinois Labor Relations Board (“Board”) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (“Act”), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1300 (“Rules”). AFSCME seeks to add the title of “Supervisor of Auditing” (“SOA”) to an existing bargaining unit of City of Chicago (“Employer” or “City”) employees that AFSCME represents. The City objects to the unit’s inclusion of the petitioned-for employees, asserting that the position is supervisory and thus excluded from the Act’s coverage.

A hearing was held on March 26 and 27, 2015, in Chicago, Illinois. At that time, the parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both parties timely filed post-hearing briefs. After full consideration of the stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate, and I find, that:

1. The City is a public employer within the meaning of Section 3(o) of the Act.
2. The City is a unit of local government subject the jurisdiction of the Board’s Local Panel pursuant to Section 5(b) of the Act.
3. The City is a unit of local government subject the jurisdiction of the Board’s Local Panel pursuant to Section 20(b) of the Act.

4. AFSCME is a labor organization within the meaning of Section 3(i) of the Act.
5. At all relevant times, the City and AFSCME have been parties to a collective bargaining agreement.
6. On or about December 16, 2014, AFSCME filed a representation petition seeking to add the title of Supervisor of Auditing to the existing bargaining unit #4.
7. There are currently seven employees in the SOA title, all of whom are employed in the City of Chicago's Department of Finance ("Department").
8. The Department is organized into the following four bureaus: (1) Bureau of Accounting and Financial Reporting; (2) Bureau of Financial Strategies; (3) Bureau of Revenue Services and Operations; and (4) Bureau of Specialty Areas.
9. SOAs are assigned to the Tax and Policy and Administration Division ("Tax Division") of the Bureau of Revenue Services and Operations.
10. Within the Tax Division, exists the two sections: (1) Tax Administration; and (2) Tax Enforcement.
11. SOAs are assigned to both the Tax Administration Section and the Tax Enforcement Section.
12. SOAs report to Section managers, the Deputy Director of the Tax Division, the Managing Deputy Comptroller, and ultimately, the First Deputy Director and the Comptroller.
13. AFSCME represents auditors and accounting technicians in collective bargaining matters.

II. ISSUES AND CONTENTIONS

The issue to be resolved is whether the seven employees who hold the SOA title are supervisory employees within the meaning of Section 3(r) of the Act. The City contends that these employees are supervisors because they perform the supervisory functions of disciplining, suspending, directing, rewarding, and adjusting their subordinates' grievances. AFSCME argues that the petitioned-for employees do not have the authority to perform, or recommend such

supervisory functions with the requisite independent judgment, nor do they spend a preponderance of time exercising such authority.

III. FINDINGS OF FACT

The Tax Division is responsible for administering and enforcing the City's municipal tax code by collecting City revenue related to municipal taxes and by auditing business tax returns. The Deputy Director heads the Tax Division. The Division consists of the Deputy Director, three managers, seven SOAs, 37 auditors, six Accounting Technician IIs, a Staff Assistant, and the Deputy Director's Administrative Assistant. The overall goal of the Tax Division is to collect the most applicable tax revenue. To achieve that end, the Tax Division's Tax Enforcement Section and Tax Administration Section each perform different functions. In each Section, for each of their subordinates, SOAs distribute work, oversee the subordinates' work, perform semi-annual evaluations, approve requests for time off, issue discipline, and are involved in their subordinates' grievance proceedings. The function of each Section provides the manner in which the SOAs distribute work, and perform their subordinates' semi-annual evaluations.

1. Tax Enforcement Section

The Tax Enforcement Section enforces the City's municipal tax code by auditing business taxpayers, discovering unregistered taxpayers, and monitoring compliance with the City's municipal tax code. Enforcement employees consist of two managers, six SOAs, and 34 auditors. The auditors range from I through IV, with Is having the least experience, and IVs having the most experience. Auditors report to an assigned SOA. SOAs report to either Manager of Tax Policy Elaine Herman, or Manager of Auditing Rommel Pitchan. Managers Herman and Pitchan report to the Deputy Director of the Tax Division. SOAs Brian Carlson, Rob Rachowicz, and Tim Yung report to Herman. SOAs Jamesine Braxton, Brian Devereaux, and Mark Pekic report to Pitchan. Each SOA is responsible for a team, or silo, of five to six auditors. Carlson's silo is comprised of one Auditor I, three Auditor IIs, one Auditor III, and one Auditor IV. Rachowicz's silo consists of four Auditor Is, and one Auditor II. Yung's silo is composed of three Auditor IIs, one Auditor III, and one Auditor IV. Braxton's silo consists of two Auditor Is and two Auditor IIs. Devereaux's silo is composed of three Auditor IIs, one Auditor III, and one Auditor IV. Pekic's silo is comprised of three Auditor IIs, one Auditor III,

and one Auditor IV. Each silo is responsible for specific sections of the municipal tax code. For example, Rachowicz's silo is responsible for the tax codes associated with ground transportation, airport departures, cigarettes, and tire fees.

A. Assignments and Oversight

Tax Enforcement SOAs spend their time conducting research and analysis for new tax audits, compiling data from tax codes and their silo's top taxpayers, and generating reports on their silo's tax type, including revenue projections for the silo's tax types. They also assign audits, review audit progress reports, review audit files, conduct semi-annual evaluations, approve auditors' time-off requests, and issue discipline when necessary. Finally, SOAs perform special projects as assigned by the deputy, their manager, the City's budget office, or the City's law department. SOAs research registered businesses within their respective tax codes to find potential audits or discovery investigation audits. Discovery audits are investigations into nonregistered taxpayers but are not as comprehensive as full audits.

i. Audits

Herman testified that Tax Enforcement SOAs spend between 50 to 60% of their time monitoring their auditor's work from the beginning of each audit to the end of each audit. At the beginning of every year, the Enforcement SOAs create annual targets for their auditors, distribute most of the assignments then, and project the new cases they will assign throughout the year. As part of assigning the audits, SOAs assign a completion date for each audit and calculate the projected amount of hours each audit will take. In determining the completion date, SOAs consider the assigned auditor's existing caseload, available sick and vacation time, and the projected audit hours. Managers require SOAs to assign audits based upon the auditor's workload, experience, and the assignment's difficulty. SOAs and managers determine whether an audit is difficult by calculating the projected tax revenue. The larger the projected tax revenue, the more difficult the audit. SOAs are required to assign Auditors III and IV cases that they project to result in more tax revenue, and the silo manager approves SOAs' assignment recommendations prior to issuing them to the auditor. In contrast, managers do not review SOAs' assignments to Auditors I and II. SOA Yung testified that managers typically approve SOA assignment recommendations. Yung also identified that a manager has on at least one

occasion, rejected an SOA's recommendation, and instructed the SOA which auditor would perform the audit.

At the beginning of the year, each SOA conducts a pre-planning meeting with each of the silo's auditors. Each SOA distributes the auditor his or her caseload, informs the auditor of the hours projected to complete each audit, and explains how the SOA calculated those projected hours. This includes the use of the Department's time metrics guidelines attributed to the particular tax code the auditor is auditing. Once the SOA assigns a particular audit, the auditor conducts an introductory meeting with the taxpayer, after which the auditor will design the audit within the SOA's projected hours.

The Department's method for determining that an ongoing audit's quality and productivity is progressing appropriately is through the time metrics system. Each tax code section has a time metrics score. The Department developed the time metrics score by averaging the number of audit hours used for each tax type from 2003 through 2011. This score is a guideline for the audit of that particular tax code section, but SOAs can modify the allotted hours at their discretion. For example, the tax code for Personal Property Lease Transaction tax has a time metrics number of 59 hours, but the target hours for two different audits of that tax code performed by the same auditor, in the same year, had one allotment for 92 hours and another allotment of 104.5 target hours.

SOAs are ultimately responsible for the auditors within their silo to complete each audit accurately in the allotted timeframe. Regarding an audit's accuracy, auditors are expected to contact the silo SOA with any questions or issues that arise during the course of the audit. If the auditor does not contact the SOA, the SOA should also be alerted to potential quality issues within the audit through reviewing the auditor's biweekly timesheets, and subsequent reports. If the audit is not progressing in a timely manner, the SOA would investigate whether this was related to the auditor's ability to complete the audit accurately. Once the SOA is aware of potential issues with an audit, he meets with the auditor to address the issue and otherwise discuss the progress of the case. To ensure that auditors complete their audits within the allotted time, they submit bi-weekly timesheets where they account for their work time spent on each audit. SOAs then use the timesheets to create the monthly and quarterly audit reports where they report to their silo manager on the progress of each audit in the silo. Upon review of the audit

reports, if an SOA is concerned as to why the audit is not progressing according to the time metrics system, the SOA can meet with the auditor to discuss ways to increase performance.

ii. Post-Audit

At the conclusion of each audit, the assigned SOA prepares a “Completed Audit Evaluation Form” where the SOA rates the auditor’s “Productivity” and “Quality” for that particular audit.

The “Productivity” rating is comprised of two separate scores: Duration and Timeliness. The sole basis for the Duration or Time Metrics score is the amount of hours the audit took compared with the projected hours. For example, the SOA must give an auditor a “4” if the audit took at least 6% less time than projected, “3” if the audit took within +/- 5% of the projected hours, etc. The SOA determines the audit’s Timeliness score by reviewing when the auditor completed the audit in relation to the projected completion date. SOAs can only score Timeliness as a “3” or “2.” If the auditor completed the audit on time or early, then the SOA must score Timeliness as a “3.” Otherwise, the SOA must score the audit’s timeliness as a “2.” The SOA then weights the Duration/Time Metrics score by doubling it to result in the Duration/Time Metrics raw score. The “Timeliness” raw score is not weighted. These two raw scores translate to an equivalent rating between 1 and 4 for the “Productivity” rating. To illustrate, a raw score of 10-11 are equivalent of “4 - Very Good” rating for “Productivity.” A raw score of 8-9 results in equivalent rating of “3 - Good,” etc.

The “Quality” rating is comprised of individual scores in the following five areas: Preparation, Audit Design and Execution, Application of Ordinance, Communication, and File Clarity and Contents. SOAs are provided guidelines for how to rate each “Quality” portion, but unlike the “Productivity” rating, the individual “Quality” scores are not strict mathematical formulations. In scoring the auditor’s Preparation, SOAs consider whether the auditor compiled the required data and properly understood the taxpayer’s business and tax preparation methods prior to initiating the audit. Regarding the audit Design and Execution, SOAs consider whether the auditor designed and implemented the appropriate testing method that resulted in a reasonable determination of the taxpayer’s compliance. This portion specifically evaluates the auditor’s analysis and calculation of mathematical formulas. In reviewing the audit’s Application of Ordinance, the SOA scores the auditor’s ability to recognize and apply the appropriate municipal tax codes. The Communication section rates whether the auditor kept the SOA and taxpayer apprised of the audit and any issues the auditor encountered during the course

of the audit. Finally, SOAs rate the audit file's Clarity and Contents to determine whether as a whole the audit's contents constitute a completed and clear assessment of the audit without requiring explanation from the auditor, and whether the audit complied with the audit manual and any guidance the SOA provided. In this section, the SOA reviews whether the auditor's rationales support the auditor's conclusions, any grammatical errors, factual errors, and whether the auditor provided sufficient details to support these conclusions. The "Quality" overall raw scores translate to an equivalent rating between 1 and 4, which constitutes the "Quality" rating.

B. Semi-Annual Evaluations

SOAs conduct semi-annual performance evaluations for each auditor in their silo. The evaluations rate the auditor's "Teamwork/Leadership," "Quality," and "Productivity," on their work as a whole for the applicable six-month period. SOAs consult the standards of performance guidelines to determine the "Teamwork/Leadership" score, which ranges between 1 and 4. "Quality" is simply the average "Quality" score from every one of the auditor's Completed Audit Evaluations in the evaluation period. Thus, the SOA does not have any discretion when rating the auditor's "Quality."

"Productivity" is comprised of the average Duration/Time Metrics rating from every one of the auditor's Completed Audit Evaluations in the evaluation period, and a rating based on whether the auditor completed the required number of audits that the SOA assigned to the auditor. Because the average "Duration/Time Metrics" score come directly from every completed audit evaluation, the SOA does not have any discretion when rating this portion of "Productivity." However, the SOA has discretion when rating the auditor's ability to complete the requisite number of audits because there are no guidelines. For example, the record indicates that an auditor fell short of her projected number of audits, but received a rating of "3" because she had to spend additional time handling uncooperative taxpayers. For another evaluation period, the same auditor received a rating of "1" when she only completed less than half of the projected number of audits and neither she nor the SOA could account for the lower completion.

Once the SOA rates each section, the SOA weights each rating according to importance as established in the Section's Performance Evaluation Form. SOAs weigh "Productivity" and "Quality" scores as "2," and do not weigh "Teamwork/Leadership." The result is a final decimal rating ranging from 1.0 to 4.0. An overall rating ranging from 3.5 to 4.0 is "Very Good." A

rating between 2.8 to 3.4 is “Good.” A rating ranging from 2.0 to 2.7 translates to “Requires Improvement.” A rating below 2.0 is “Unsatisfactory.”

2. Tax Administration Section

Tax Administration is responsible for ensuring that businesses tax returns and the taxpayers account accurately reflect any payments. In accordance with this overall responsibility, the Section manages the database, processes tax returns and payments, assists walk-in taxpayers, processes any returned mail, and processes any overpayments. The Section is comprised of Manager of Auditing Darryl Reed, SOA Dan Reichart, three Auditor Is, six Accounting Technician IIs, and one Staff Assistant. Two technicians review payments that taxpayers mailed to the Department’s designated mailbox. One auditor reviews taxpayer applications for refunds of overpayments by logging receipt of the application into the Department database and forwarding it to the Tax Enforcement Section. The assistant logs payments that taxpayers mail directly to the office, and forwards the payments to City Hall for processing. The remaining technicians and auditors process taxpayer returns and assist walk-in taxpayers. Reed testified that Reichart spends more than 50% of his time reviewing and monitoring his subordinates’ work, approving time off, and disciplining his subordinates.

A. Assignments and Oversight

SOA Reichart distributes tax returns for processing based upon the technicians’ and auditors’ workloads, and meets with staff members to resolve issues that staff members have brought to his attention. At the beginning of the year, Reichart creates monthly goals of the projected work for all Section staff to perform. The numbers of filings from the same month the previous year are the bases for these goals. Upon review of the Section’s monthly productivity reports, if Reichart determines that an employee is underperforming he is expected to meet with the employee in order to find out why the employee is underperforming.

B. Semi-Annual Evaluations

Like Tax Enforcement SOAs, the Tax Administration SOA conducts semi-annual performance evaluations of his subordinates. The evaluations rate each subordinate’s “Productivity,” “Quality,” and “Teamwork/Leadership” with each category rated between 1 and 4. To rate “Productivity,” SOA Reichart compares the subordinates’ actual completed tasks with the monthly projections. Unlike the mathematical formulations for rating the auditors in

Enforcement, Reichart bases this rating upon whether the number of payment reviewed are “considerably greater” “closely meet” “significantly less” or “unacceptably less” than the projected semi-annual goal. The rating accounts fewer tax filings. Reichart bases the “Quality” rating on a sample of the subordinate’s completed work. He rates “Teamwork/Leadership” between a “1” and “4” by consulting the standards of performance guidelines.

3. Division-Wide Duties and Responsibilities

Managers evaluate their subordinate SOAs every six months. The evaluation is divided into two equally weighted parts: “General Performance” and “Supervisory Performance.” “General Performance” is comprised of the following nine factors: accountability, communication, customer/public service focus, integrity, job knowledge, problem solving, quality of work, quantity of work, time, and task management. In rating the SOA’s “General Performance,” managers’ base their rating on the SOA’s subordinates’ performance in areas of quality, quantity, time and task management, and job knowledge. With regard to SOA’s supervisory performance, managers rate the SOA’s delegation, enforcement of work standards and timeliness, personal leadership, and staff development.

A. Adjust Grievances

Pursuant to the collective bargaining agreement between the Union and the City, auditors and technicians submit their grievances to their supervising SOA. SOA Yung testified that he has received no training on adjusting grievances. Yung further testified that in his eight years as an SOA, a subordinate filed a grievance only once. In that instance, Yung completed the required paperwork, a memo regarding the incident that gave rise to the grievance, and participated in a grievance meeting between himself, his manager, and the grievant. After the meeting, Yung’s manager advanced the grievance to step two.

B. Performance Improvement Plans

If an employee receives a below a “Good” on his or her semi-annual performance evaluation, the SOA is required to put the employee on a Performance Improvement Plan (“PIP”) where the employee’s performance is monitored for three months in between evaluation periods. Manager Reed testified that since becoming an SOA in 2012, Reichart has never placed one of his subordinates on a PIP. The record reflects that SOA Yung has placed one employee on at least one PIP, but does not specify the total number of times Yung has placed an auditor in his silo on

a PIP. The record does not reflect whether any other Tax Enforcement SOAs have placed any of their subordinates on a PIP.

The PIP includes goals for the employee to reach in that three-month period. If the employee fails to reach those goals, the supervising SOA may discipline him in accordance with the City's progressive discipline procedures. SOAs can also place an employee on a PIP at any time during the year if the SOA and the manager believe the employee's work is unacceptable. Yung testified that this occurs when the manager instructs the SOA to issue a PIP after reviewing the silo's monthly performance reports. Once the SOA determines, or is instructed that a subordinate needs to be placed on a PIP, the SOA designs the PIP. Because Reichart has never placed one of his subordinates on a PIP, and because his subordinates perform different functions than the other SOAs' subordinates, I presume he would design and implement a PIP differently than a Tax Enforcement SOA would design and implement a PIP. Accordingly, the following only applies to PIP issued to auditors in Tax Enforcement.

Designing the PIP involves the SOA reviewing the employee's work that precipitated the PIP, reviewing the work projected to be completed in the next three months, discussing with the auditor the auditor's ability to complete the work, and designing goals for the auditor to satisfy in order to improve his or her performance. In instances of an auditor being placed on a PIP because of a low number of completed audits, during the PIP period, the SOA sets hard deadlines for specific cases and suggests to the auditor the order in which to complete audits so that the auditor can meet those deadlines. In instances of an auditor being placed on a PIP because of inadequate quality, the SOA will oversee the employee's work on a more regular basis in order to assist the employee in improving his or her work performance. When a PIP is issued based on a low rating on a performance evaluation, the SOA submits the PIP to the manager for review when the manager approves the performance evaluation.

In both Sections, at the conclusion of the PIP, the SOA is authorized to recommend that the employee receive discipline, including suspension, in accordance with the City's progressive discipline procedures; the SOA also has the discretion to recommend that the employee not receive discipline even though the employee is still underperforming. Manager Herman testified that she generally accepts an SOA's recommendations for discipline regarding performance, in part, because the SOA is the most familiar with the auditor's caseload. Unsuccessful completion of a PIP is a prerequisite for an employee receiving discipline for poor performance.

C. Discipline

An employee can receive discipline for poor performance after the employee unsuccessfully completes a PIP, or can receive discipline for violating the City's personnel code. SOAs in both Sections have the authority to implement discipline in accordance with the City's progressive discipline procedures.¹ An SOA can discipline and suspend a subordinate for poor performance only after the employee unsuccessfully completes a PIP, but can discipline, including suspend, an employee for violating the City's personnel code at any time. Upon an SOA determining that a subordinate has violated the personnel code, or determining that the employee's poor performance warrants discipline, the SOA reports the incident and surrounding circumstances to the manager and recommends that the employee receive a particular level of discipline. SOAs utilize the City's established progressive discipline procedures as a guideline, but can recommend discipline less severe than the level the procedures articulate. In cases of discipline following a PIP, the SOA reports the employee's workload and complexity of cases to justify the disciplinary recommendation. In cases of alleged personnel code violations, the SOA reports the incident in question and makes a disciplinary recommendation. In both circumstances, the manager reviews the SOA's presentation of the incident and severity recommendation, then approves or disapproves the discipline including the level of discipline.

Once approved, if the discipline level is more severe than an oral warning, the SOA writes a pre-disciplinary meeting memo and sends it to the manager for formal approval, and then to the Personnel Section within the Department. While an oral warning does not require a pre-disciplinary meeting, the manager must approve of the warning prior to the SOA issuing it to the employee. The Personnel Section then issues the pre-disciplinary meeting notice to the employee. The employee, the SOA, the manager, the Department's personnel representative, and the employee's union representative attend the pre-disciplinary meeting. The SOA identifies the alleged infractions, and the employee has an opportunity to respond to the allegations.

After the meeting, the SOA either modifies or reasserts the recommended discipline based upon the employee's response to the allegations. SOA Yung testified that while his disciplinary level recommendations typically align with the City's progressive discipline procedures, he has not recommended discipline greater than discipline as identified in the procedures, but he has

¹ The record does not contain a copy of the City's progressive discipline procedures, and neither party provided testimony detailing those procedures.

recommended that a subordinate receive discipline less severe than identified in the progressive discipline procedures. He also testified that when he recommends that an auditor receive discipline that is less severe than identified in the procedures, his manager typically, but not always accepts those recommendation levels. If the manager disagrees with an SOA's recommendation, the manager will direct the SOA to document the recommendation in accordance with the manager's assessment. The manager approves the documented recommendation, then submits the recommendation for further approval by the Deputy, the Personnel representative, and the Director. The SOA issues the discipline as approved by the Director. The Personnel Section records and retains all discipline in the employee's personnel file.

SOAs do not have the discretion not to report employee violations to the personnel code. Rather, SOAs are required to initiate discipline by reporting such infractions to the manager so they can confer over whether discipline is necessary. When a manager performs an SOA's semi-annual performance review, the manager will negatively evaluate and possibly discipline an SOA for not issuing discipline to subordinates for violating personnel policies such as tardiness, long lunch breaks, dress code violations, etc.

SOAs in both Sections have issued discipline for personnel code violations, but only Yung has disciplined a subordinate for poor performance. Yung testified that in his eight years as an SOA, he has disciplined auditors in his silo, six or seven times for both poor performance and personnel code violations. Since Reichart has never placed a subordinate on a PIP, and a PIP is a prerequisite for issuing poor performance discipline, I conclude that Reichart has never disciplined a subordinate for poor performance.

Regarding discipline for personnel code violations, the record does not identify the number of times SOA Reichart has disciplined subordinates in his section, but the record does identify that beginning in 2014, he disciplined an accounting technician for repeatedly violating the same section of the City's personnel code. The discipline included an oral warning, a written warning, and two suspensions. The record identifies that Reichart suspended the same accounting technician for "discourteous communication to management" when the technician sent an e-mail, that, according to the recipient and Reichart, was written in an inappropriately insubordinate tone to a Department manager, and copied Reichart, Reed, the Tax Division's Deputy Director, and the Deputy Director of the Finance and Administration Division. In the suspension, Reichart

detailed his assessment of the employee's history of discourteous and insubordinate behavior towards himself, Reed, and other City employees.

D. Step Increases

Pursuant the collective bargaining agreement, accounting technicians and auditors are eligible for step increase in salary based upon length of service. When an employee is eligible for a step increase, the Personnel Department submits a salary increment form to employee's SOA to approve or deny the increase. It is the Department's policy to grant step increases only when the employee is performing more than adequately. Upon receiving the form, the employee's SOA and manager review the employee's most recent performance evaluation, any post-audit evaluations, and subsequent monthly productivity targets in order to aid their discussion of the employee's performance. If the employee has performed at a "Good" or higher level and his or her most recent productivity are consistent with that rating, the SOA and the manager will typically agree to grant the salary increase. If the employee's performance does not strictly meet those requirements, the SOA and manager will have a more in-depth discussion over whether to approve the salary increase. If the manager does not agree with the SOA's recommendation, the manager is authorized reject the SOA's recommendation and order the SOA to either grant or deny the increase. Upon approving or denying the increase, the SOA signs the form and forwards it to the Deputy for his signature. While the SOA's signature is on the form, the manager's decision is controlling. Yung testified to an incident where his manager rejected his recommendation to grant one of his subordinate auditors a salary increase. There was no testimony regarding how often managers accept SOA's recommendations.

E. Approving Time Off

SOAs approve, schedule, and when assigning work, account for their subordinates' sick time and vacations, but employees can submit time off requests to their manager if the SOA is unavailable. SOA Yung testified that at one time, Department superiors instructed SOAs that they could not approve vacation requests if their subordinates were not meeting their required quota. He also testified that when an auditor requested a two-week vacation to begin the next day, Yung contacted his manager because he did not think he was authorized to approve the request under those circumstances.

IV. DISCUSSION AND ANALYSIS

To protect against the possibility that pro-union bias might impair a supervisor's ability to apply the employer's policies to subordinates in accordance with the employer's best interests, the Act provides that a bargaining unit may not include both supervisors and non-supervisors. 5 ILCS 315/3(s)(1); Chief Judge of the Cir. Ct. of Cook Cnty. v. AFSCME, Council 31, 153 Ill. 2d 508, 516 (1992) ("Chief Judge"); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 505-506 (1990) ("City of Freeport"); Nat'l Union of Hosp. & Health Care Emps. v. Cnty. of Cook, 295 Ill. App. 3d 1012, 1015 (1st Dist. 1998). The existing bargaining unit in which the Union seeks to add the at-issue position does not contain supervisors. Thus, if the SOA position is supervisory, the Act prohibits adding it to the existing unit. State of Ill., Dep't of Cent. Mgmt. Serv., 5 PERI ¶2012 (IL SLRB 1989).

Section 3(r) of the Act provides:

"Supervisor" is an employee whose principal work is substantially different from that of his subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust their grievances, or to effectively recommend such actions, if the exercise of such authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment.

The Board has interpreted this section of the Act as requiring that an employee satisfy four separate criteria in order to be a statutory supervisor. Under the Act, a supervisor is an employee who: 1) engages in principal work that is substantially different from that of his subordinates; 2) has the authority, in the interest of the employer, to perform or effectively recommend, at least one of 11 enumerated indicia of supervisory authority; 3) consistently uses independent judgment in the exercise of that supervisory authority; and 4) devotes a preponderance of his employment time to the exercise of that authority. City of Freeport, 135 Ill. 2d at 512.

The party asserting a statutory exclusion has the burden of providing sufficient evidence in support of that exclusion. 80 Admin Code. 1210.107(a). Since it is asserting the supervisory exclusion, the City has the burden of demonstrating by a preponderance of the evidence that the SOA position satisfies all four prongs of the statutory definition. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Cir. Ct. of Cook Cnty., 18 PERI ¶2016 (IL LRB-SP 2002).

1. Principal Work

To satisfy the first prong the SOAs' principal work must be substantially different from that of their subordinates. This requirement is easily satisfied where that work is "obviously and visibly" different from their subordinates' work. City of Freeport, 135 Ill. 2d at 514. However, even when an alleged supervisor performs functions that are facially similar to those of his or her subordinates, the first statutory requirement is still satisfied where the employee's functions render the "nature and essence" of the alleged supervisor's work substantially different. Id.; Vill. of Lombard, 31 PERI ¶123 (IL LRB-SP 2013).

Here, SOAs assign their subordinates' work, establish productivity goals for their subordinates, and monitor their subordinates' productivity by creating monthly and quarterly reports. While SOA Reichart on occasion processes tax returns and assists taxpayers that come into the office, his primary responsibility is assigning those duties to the section's auditors and tax administrators, and then overseeing the completion of those duties. Tax Enforcement SOAs conduct research to determine audit targets, assign targets to the auditors, and evaluate the auditors' work after each audit and through semi-annual evaluations. The auditors are responsible for investigations and audits, but the SOAs do not perform these functions. Thus, I find that the SOAs' principal work substantially differs from that of their subordinates, because their work is obviously and visibly different from their subordinate auditors and accounting technicians.

2. Supervisory Indicia Exercised With Independent Judgment

Regarding the second and third prongs of the Act's supervisory definition, the Employer must establish that SOAs exercise authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or to adjust their grievances, or to effectively recommend such action; and consistently use independent judgment in exercising that authority. City of Freeport, 135 Ill. 2d at 506; City of Chicago (Dep't of Sewers), 17 PERI ¶3017 (IL LRB-LP 2001). An alleged supervisor consistently uses independent judgment when exercising any of the 11 indicia of supervisory authority when he makes "choices between two or more significant courses of action without substantial review by superiors." Chief Judge, 153 Ill. 2d at 516; City of Chicago (Dep't of Sewers), 17 PERI ¶3017. Independent judgment requires that those choices neither be routine nor clerical in nature, nor be based upon the alleged supervisor's superior skill, experience, or knowledge. City of Freeport,

135 Ill. 2d at 506; City of Chicago (Dep't of Sewers), 17 PERI ¶¶3017. The frequency with which independent judgment *might* be required, rather than the number of times supervisory authority requiring independent judgment is actually used, controls the analysis under the third prong. City of Freeport, 135 Ill. 2d at 520-21.

A. Discipline and Suspend

The City contends that SOAs have the authority to initiate and effectively recommend discipline against their subordinates for poor performance and for misconduct in violation of the City's personnel code. AFSCME argues that SOAs role in discipline is not supervisory because SOAs do not exercise independent judgment, nor are their disciplinary recommendations effective.

SOAs are responsible for implementing discipline by conducting the pre-disciplinary meeting, and completing the disciplinary paperwork. However, SOAs are not authorized to issue discipline without first obtaining their manager's approval, and are only authorized to recommend that a subordinate receive discipline. These disciplinary recommendations constitute supervisory authority if they are effective. A recommendation is effective within the meaning of Section 3(r) of the Act when the decision maker adopts it as a matter of course with very little, if any, independent review. City of Peru v. Ill. State Labor Rel. Bd., 167 Ill. App. 3d 284, 290 (3d Dist. 1988); Peoria Housing Auth., 10 PERI ¶¶2020 (IL SLRB 1994); Vill. of Justice, 17 PERI ¶¶2007 (IL LRB-SP 2000); Cnty. of Cook, 16 PERI ¶¶3009 (IL LLRB 1999). The Appellate Court has explained that because all recommendations necessarily involve some sort of a review by superiors, a superior's review of the purportedly excluded employee's recommendation "is not the litmus test for effective recommendation. Rather, the litmus test is the influence of the recommendations, i.e., whether they almost always persuade the superiors." State of Ill., Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 777 (4th Dist. 2010); Vill. of Plainfield, 29 PERI ¶¶123 (IL LRB-SP 2013). Thus, instances where the superior has accepted disciplinary recommendations alone are insufficient. The record must include information regarding to how often the superior accept these recommendations in order to determine whether the recommendations are generally effective. Furthermore, simply "because the particular method and extent of discipline recommended was not carried out does not defeat a finding that the recommendation was effective." City of Chicago (Dep't of Pub. Health), 17 PERI ¶¶3016 (IL LRB-LP 2001) citing Eastern Greyhound

Lines v. NLRB, 337 F. 2d 84 (6th Cir. 1964). Thus, in order for a specific disciplinary recommendation to be effective, discipline must occur, though implementation at the recommended severity level is not required.

Here, SOAs are required to discipline their subordinates in accordance with the City's progressive discipline procedures if the employee's performance remains inadequate after completing a PIP, or if the subordinate violates a provision of the City's personnel code. Inherent in the supervisory authority to recommend discipline is the supervisory authority to recommend to not discipline. Because SOAs evaluate performance so differently depending on the Section, I will analyze discipline related to performance separately from discipline related to violations of the City's personnel code.

i. Poor Performance

Regarding an employee's inadequate performance, at the conclusion of the PIP, the SOA has the discretion to recommend that the employee not receive discipline, including suspension, even if the employee has not satisfied the terms of the PIP.² Reichart has never placed an employee on a PIP, so he has never disciplined a subordinate for failing to complete a PIP. However, this is a duty Reichart is authorized to perform, if the situation arises. There is no evidence in the record as to the steps Reichart would take in issuing discipline following a PIP. However, there is evidence regarding how SOAs in Tax Enforcement determine whether discipline is warranted after the completion of a PIP. Yung testified that he is authorized to recommend that an auditor in his silo not receive discipline even if the auditor is still underperforming, that this recommendation is based upon his personal assessment, and did not indicate that the City has issued guidelines that SOAs must follow for in making such a recommendation. This suggests that Tax Enforcement SOAs consider factors beyond rote application of the PIP requirements. Thus, I conclude that SOAs in Tax Enforcement use independent judgment when making these recommendations.

While each Section determined the necessity of a PIP by considering different information, because employees in both Sections are subject to discipline following the unsuccessful completion of a PIP, I infer that if Reichart were presented with an opportunity to recommend

² It appears that an employee can only receive performance-related discipline after the unsuccessful completion of a PIP; an argument could be made that a PIP is part of the City's progressive discipline procedures. However, because the City did not raise such argument, nor provide the discipline procedures for analysis, I make no such finding.

discipline following a PIP, he would also be required to use independent judgement. However, because Reichart has yet to make a recommendation regarding discipline following a PIP. Because effectiveness considers how often the recommendations *actually* persuade the decision-maker I cannot find that his recommendations are effective. Accordingly, Reichart does not exercise supervisory authority when recommending discipline and suspension regarding a subordinate's poor performance.

In contrast, the record reflects that Tax Enforcement managers rely on their SOAs' first-hand knowledge of the circumstances surrounding the employees' poor performance, and generally accept their recommendations to issue or not issue discipline. Thus, only Tax Enforcement SOAs exercise supervisory authority with independent judgment when recommending discipline and suspension regarding a subordinate's poor performance.

ii. *Violations to the City's Personnel Code*

Unlike performance-related discipline, the criteria for issuing discipline for violating the personnel code is applied uniformly between the Sections because it is not specific to the particular Section's work. Upon determining that an employee has engaged in misconduct, the SOA is required to inform the manager of the incident and recommend a particular discipline level. The record demonstrates that the managers rely on SOAs' factual accounts of the events, but not that they rely upon SOAs' recommendation that the alleged misconduct requires discipline. Although, the documentary evidence demonstrates that Reed approved SOA Reichart's recommendations to discipline his subordinate accounting technician, demonstrating that some recommendations are followed is insufficient to find that recommendations are effective in that they almost always persuade the decision-maker. Without an indication of whether Reichart has or has not made other disciplinary recommendations, I cannot infer that Reed almost always approves Reichart's disciplinary recommendations. Thus, I cannot conclude that Reichart's recommendations are effective as a whole.

In contrast, Herman did testify that she generally accepts SOA recommendations regarding poor performance. However, she did not address discipline related to personnel code violations. Yung testified that he has disciplined subordinates for violating the personnel code, but did not explain whether discipline regularly resulted from any recommendations. Accordingly, the record does not support a finding that SOA's disciplinary recommendations regarding personnel code violations are effective. Thus, SOAs do not exercise supervisory authority when

recommending discipline or suspension regarding alleged misconduct in violation of a City personnel rule.

In sum, Tax Enforcement SOAs exercise the supervisory authority to discipline and suspend with independent judgment when recommending whether or not to discipline or suspend in relation to a subordinate's poor performance, and the Tax Administration SOA does not exercise supervisory authority when recommending discipline because I cannot conclude that his recommendations would be effective.

B. Direct

The Employer argues that the SOAs in both sections exercise supervisory authority to direct their subordinates. The term "direct" encompasses several distinct but related functions. These functions include, but are not limited to, giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving overtime, approving time off such as vacation or leave requests, and formally evaluating job performance when the employer uses the evaluation to affect the employees' pay or employment status. Chief Judge, 153 Ill. 2d at 524; City of Freeport, 135 Ill. 2d at 518; Cnty. of Cook (Health and Hosp. Syst.), 32 PERI ¶55 (IL LRB-LP 2015). In order to constitute supervisory direction these functions must be coupled with the purported supervisors' significant discretion to affect their subordinates employment in areas likely to fall within the scope of union representation, such as wages, discipline, transfer, promotion, hiring, or other working conditions. Serv. Emp. Int'l Union, Local 73 v. Ill. Labor Rel. Bd. Local Panel, 2013 IL App 2013 IL App (1st) 120279 ¶51; Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110209 ¶28; City of Chicago (Dep't of Pub. Health), 17 PERI ¶3016. The reasoning is that without such discretionary authority, the responsibility to direct subordinates in the performance of job duties does not conflict with membership in a bargaining unit. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110209 ¶28; City of Bloomington, 13 PERI ¶2041 (IL SLRB 1997); City of Sparta, 9 PERI ¶2029 (IL SLRB 1993).

As discussed below, Tax Enforcement SOAs direct their subordinates with independent judgment when they distribute assignments, oversee their subordinates, and conduct their subordinates' semi-annual performance evaluations. Tax Administration SOA Reichart directs his subordinates with independent judgement when he oversees his subordinates work production and conducts his subordinates' semi-annual performance evaluations.

i. Oversight and Review

For the SOAs' oversight and review of their subordinates to constitute the statutory authority to direct, they must be responsible for their subordinates' work, and actively involved in checking, correcting, and giving instructions to subordinates, and the employer must hold them accountable for their subordinates' work performance. Cnty. of Cook and Sheriff of Cook Cnty. (Dep't of Corr.), 15 PERI ¶3022 (IL LLRB 1999); City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); Vill. of Germantown Hills, 29 PERI ¶130 (IL LRB-SP 2013); Vill. of Glen Carbon, 8 PERI ¶2026 (IL SLRB 1992). Merely observing and monitoring subordinates is insufficient. Cnty. of Cook and Sheriff of Cook Cnty. (Dep't of Corr.), 15 PERI ¶3022; City of Chicago, 10 PERI ¶3017; Ill. Secretary of State, 20 PERI ¶11 (IL LRB-SP 2003).

Here, SOAs oversee their subordinates' conduct on a daily basis; review their work productivity biweekly. Tax Enforcement SOAs also provide instruction when assigning the audits at the pre-planning meeting, as needed during the course of an audit, and more regularly during the course of a PIP. When reviewing their subordinates' work, all SOAs are predominately concerned with ensuring that the employees are performing according to the the Department's guidelines, and are expected to contact employees to discuss performance that is not meeting expectations. SOAs in both Sections exercise independent judgment when monitoring their subordinates' productivity because they decide if they need to meet with the employee to discuss ways to increase performance. SOAs determination of the best way to increase performance also requires independent judgment. SOAs are held accountable for their subordinates' work through the manager's semi-annual performance evaluations of the SOA. See Cnty. of Cook (Health & Hospital Syst.), 31 PERI ¶154 (IL LRB-LP 2015) (finding that with neither the purported supervisors' evaluations nor testimony on the issue, the record was unclear as to whether the purported supervisors were held accountable for their subordinates' work performance).

SOAs do not exercise independent judgment when placing a subordinate on a PIP. SOAs in both sections are required to place an auditor on a PIP if the auditor receives an inadequate performance evaluation. As discussed below, I do find that SOAs exercise independent judgment when conducting their subordinates' semi-annual performance evaluations, and an inadequate performance evaluations automatically results in the employee being placed on a PIP, I find the independent judgment exercised in conducting the semi-annual performance evaluation

too tenuous to extend independent judgment in placing a subordinate on a PIP. SOAs also possess the discretion to place an auditor on a PIP if the auditor is underperforming in any capacity at any other time during the year. However, the record indicates that PIPs unrelated to semi-annual performance evaluations are implemented at the manager's direction. Thus, an SOA does not exercise supervisory authority when placing a subordinate on a PIP because they lack the authority to consistently use independent judgment.

Finally, SOAs act in the interest of the City when they oversee and review their subordinates work because their role is to effectuate the employer's policies by enforcing compliance with the City's municipal tax code. See State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Emp't Sec.), 11 PERI ¶2021 (IL SLRB 1995) (holding that Tax Audit Supervisors exercised supervisory authority to direct).

ii. Assignment of work

Tax Enforcement SOAs direct their subordinate Auditors I and II with independent judgment when they distribute audits and approve the auditor's projected time at the beginning of each audit. Tax Enforcement SOAs distribute assignments to auditors in their silos by first reviewing the auditor's workload, considering the auditor's skills, and by contemplating the difficulty of the audit. This demonstrates independent judgment. See State of Ill., Dep't of Cent. Mgmt. Serv., 26 PERI ¶131 (IL LRB-SP 2010) (adopting the ALJ's finding that an SPSA in the Department of Public Health exercised independent judgment when approving overtime because he considered various factors, the employer did not have established guidelines for approving overtime and the SPSA was not required to obtain his supervisor's approval). SOAs assign the audit to Auditor I and IIs without their manager's review or approval, but are required to get their manager's approval of assignments given to Auditors III and IV prior to the SOA issuing the audit. SOAs make recommendations for assignments to Auditors III and IV, and exercise independent judgment when making such recommendations. Managers can, and have, rejected SOA's recommendations for distributing higher valued audits. Overall, the record indicates that the managers rely heavily on the SOA's assessment, and that the managers typically approve assignments, thus I find that SOA's effectively recommend issuing assignment to Auditor IIIs and IVs. Therefore, Tax Enforcement SOAs exercise supervisory authority to direct when issuing assignments to Auditors I and II, and when effectively recommending which assignments to issue to Auditors III and IV.

The Tax Administration SOA does not direct his subordinates with independent judgment when he distributes assignments because he bases his distribution of work upon his subordinates' pre-determined duties, and distributes work to balance the workload amongst employees. See Serv. Emp. Int'l Union, Local 73 v. Ill. Labor Rel. Bd., Local Panel, 2013 IL App (1st) 120279 (assignments that simply balance workload do not require independent judgment); Chief Judge, 153 Ill. 2d at 518; Cnty. of Cook (Health and Hosp. Syst.), 32 PERI ¶55. Given that the record contains no information regarding whether the SOA is involved in choosing the pre-determined duties, I find that his role in assigning work is routine and clerical, not supervisory.

iii. Performance Evaluations

Responsibility for formally evaluating or rating work performance is evidence of the authority to direct when the employer uses the evaluation to have a direct effect the employees' pay or employment status. Serv. Emp. Int'l Union, Local 73 v. Ill. Labor Rel. Bd., Local Panel, 2013 IL App (1st) 120279 (affirming the Board's finding that City police investigators rewarded their subordinates when they conducted performance evaluations because the evaluations impacted step pay increases and the employer considered the evaluations when making promotions); City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992) (supervisory authority to direct found where evaluations affected merit raises); State of Ill., Dep't. of Cent. Mgmt. Serv. (Div. of Police), 4 PERI ¶2013 (IL SLRB 1988). Evaluations are not evidence of the authority to direct when the parties' collective bargaining agreement solely determines the evaluated employees' salaries, because the evaluations do not directly affect pay. City of Carbondale, 27 PERI ¶68. However, evaluations are evidence of authority to direct when the employer can deny employees a scheduled pay raise because of a negative rating. Vill. of Hinsdale, 22 PERI ¶176 (IL SLRB 2006). Subjective categories in evaluations demonstrate the evaluator exercises independent judgment. Id.

SOAs in Tax Administration and Tax Enforcement direct their subordinates with independent judgment when they conduct their subordinates' semi-annual performance evaluations. The Tax Enforcement's SOAs base the auditors' performance evaluations upon the score reached at the end of each audit. Previously completed audit evaluations control certain aspects of the semi-annual evaluation, but SOAs still exercise independent judgement when evaluating auditors' teamwork, and when evaluating whether auditors reached their completed audits goals. The Tax Administration SOA also exercises independent judgement when

conducting his subordinates' performance evaluation because his interpretation of the guidelines is his only limitation. Since SOAs evaluations are in part, based upon their subjective interpretations, SOAs exercise independent judgment when evaluating their subordinates. Therefore, SOAs exercise supervisory authority to direct when they conduct their subordinates' semi-annual performance evaluations.

The record demonstrates that satisfactory performance evaluations are important considerations when deciding to grant employees their salary step increase. It is Departmental policy to grant salary increases only if the employee is performing adequately. This requires reviewing the employee's most recent performance evaluations, any subsequent post-audit evaluations, and the employee's most recent monthly productivity targets to determine whether the employee's performance merits a salary increase.

iv. Approving time off

The City argues that SOAs exercise supervisory authority to direct because they approve subordinates' requests for time off. The ability to approve requests for time off or to approve overtime constitutes supervisory authority so long as the exercise of this authority involves the consistent use of independent judgment and is not of a mere routine or clerical nature. Nat'l Union of Hosp. & Health Care Emps. v. Cnty. of Cook, 295 Ill. App. 3d at 1024; Vill. of Morton Grove, 23 PERI ¶72 (IL LRB-SP 2010). When purported supervisors base their decisions to approve time off on criteria over which they have no control, this approval does not constitute supervisory direction because they are not required to choose between two or more significant courses of action. Vill. of Itasca, 24 PERI ¶86 (IL LRB-SP 2008) (accepting the ALJ's recommendation that sergeants did not direct their subordinates with independent judgement, in part because the department chief imposed minimum manpower requirements that dictated the sergeants' ability to approve time off).

SOAs approve, schedule, and account for their subordinates' sick time and vacations, but the record does not sufficiently indicate that such scheduling requires the consistent use of independent judgment. Rather, the record suggests that such scheduling is merely a matter of routine. Specifically, there was testimony that there was a period that the SOAs could not approve such requests if their subordinates were not meeting their required quota. Furthermore, when an SOA received a request for a two-week vacation to begin the next day, he contacted his manager because he did not think he had the authority to approve the request. Thus, I must infer

that SOAs' authority to approve time off requests is routine and clerical, and when independent judgement is required, they lack authority to make such approvals.

Thus, all SOAs perform the supervisory function of directing when they oversee their subordinates and conduct their subordinates' semi-annual performance evaluations, because these duties are coupled with their authority to affect whether their subordinates receive wage increases. Furthermore, the Tax Enforcement SOAs duties assigning work and recommend assignments also constitute supervisory direction.

C. Reward

SOAs reward their subordinates with supervisory authority when they complete their subordinates' performance evaluations, but not when they recommend whether to grant step increases. The authority to evaluate subordinates can also be indicative of the authority to reward under the Act. State of Ill., Dep't of Cent. Mgmt. Serv., 4 PERI ¶2013 (IL SLRB 1988). Here, semi-annual performance evaluations affect the evaluated employee's ability to receive his or her scheduled step increase, because the SOA and the manager determine whether to grant the increase upon review the employee's most recent performance evaluation, most current productivity statistics, and applicable audit reports. While the SOA signs the increase form, the manager must concur, and has on at least one occasion, instructed the SOA to deny the increase when the SOA recommended the increase. This indicates that while the SOA formally approves or denies the increase, the manager has the final discretion, and without an indication that the SOA makes a formal recommendation that the manager almost always follows, the recommendation for a step increase is not rewarding the employees as defined in the Act. However, because the SOA's evaluation is the basis for the manager's decision, the SOA's authority to conduct semi-annual performance evaluations does constitute the authority to reward.

D. Adjust Grievances

SOAs do not consistently exercise independent judgment when adjusting their subordinates' grievances. Independent judgement requires purported supervisors to "make choices between two or more significant courses of action without substantial review." Chief Judge, 153 Ill. 2d at 516. In the case of adjusting grievances, in order to constitute independent judgement an SOA must choose between adjusting the grievance at step one, or denying the grievance and

advancing it to step two without significant review by his or her manager. The record indicates that while SOAs are involved in the grievance procedure, they lack the authority and training to decide to do anything other than advance the grievance, or at the very least makes the decision with the manager's heavy involvement. Thus, SOAs' involvement does not rise to the level of supervisory authority.

3. Preponderance

In order to satisfy the fourth prong, the City must demonstrate that the alleged supervisor spends a preponderance of his or her time on those supervisory functions. This requires that the employee must spend the most significant allotment of his or her time exercising supervisory functions. City of Freeport, 135 Ill. 2d at 532; State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corr.) v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996). Preponderance of time can be measured quantitatively or qualitatively. State of Ill., Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm.), 30 PERI ¶205 (IL LRB-SP 2014). Measured quantitatively, an employee spends a preponderance of his or her time on supervisory functions when he or she spends more time on supervisory functions than on any one nonsupervisory function. State of Ill., Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85-86; citing City of Freeport, 135 Ill. 2d at 532. Measured qualitatively, an employee spends a preponderance of his or her time on supervisory functions when these functions are more significant than his or her non-supervisory functions, regardless of the amount of time spent on these supervisory functions. AFSCME Council 31 v. Ill. Labor Rel. Bd., 2014 IL App (1st) 130655; Cnty. of Vermilion v. Ill. Labor Rel. Bd., 344 Ill. App. 3d 1126, 1136 (4th Dist. 2003).

A. Measured Quantitatively

Measured quantitatively, a supervisor spends more time performing supervisory duties with independent judgment than on any one nonsupervisory function. State of Ill., Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85. Manager Reed testified that SOA Reichart spends a majority of his time reviewing and monitoring his subordinates' work, approving time off, and disciplining his subordinates. I have found Reichart exercises supervisory authority when he oversees his subordinates, and conducts their semi-annual performance evaluations, but does not when he recommends discipline, implements discipline, or approves time off. I further find that because Reed's broadly listed functions that I have found to

be supervisory and are non-supervisory when he assessed how Reichart spent his time, the record contains insufficient information to conclude that Reichart spends more time directing his subordinates with supervisory authority than he spends performing functions that do not constitute supervisory authority. Manager Herman testified that Tax Enforcement SOAs spend more than half their time monitoring their auditor's work from the beginning of each audit to the end of each audit. I have found that SOAs monitoring constitutes supervisory authority to direct, thus I conclude that Tax Enforcement SOAs spend more time directing auditors in their silos with supervisory authority than they do performing any other duty.³

B. Measured Qualitatively

SOA in both Sections spend a preponderance of their time performing supervisory functions when measured qualitatively. Measured qualitatively, the significance of what that employee does for the employer, regardless of the time spent on particular types of functions, can define a supervisor. State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Corr.) v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d at 86. Employees can satisfy the qualitative preponderance standard when they are ultimately responsible for all work in their section. State of Ill., Dep't of Cent Mgmt. Serv. (Dep't of Rev.), 29 PERI ¶62 (IL LRB-SP 2012). As evidenced in the SOA's performance evaluations, the primary purpose of the SOA position is to ensure that the auditors and accounting technicians are adequately performing their duties. SOAs in both Sections achieve this end largely by directing their subordinates and recommending whether or not to reward their subordinates through step increases. In addition, Tax Enforcement SOAs effectively recommend discipline related to poor performance. Accordingly, SOAs satisfy the qualitative standard because their most important function is to ensure the quality and timeliness of their subordinates' work through exercising supervisory direction, the ability to affect their subordinate's terms and conditions of employment when they conduct their subordinates' semi-annual performance evaluations, and Tax Enforcement SOAs' authority to effectively recommend discipline their auditors receive discipline for poor performance.

³ I also found that SOAs evaluate and reward their subordinates with supervisory authority, and that Tax Enforcement SOAs effectively recommend performance-related discipline. However, because the record does not reflect the amount of time SOAs spend on these supervisory duties, I cannot consider this in my quantitative analysis.

Therefore, SOAs spend a preponderance of their work time, in the interest of the City, consistently exercising independent judgment when they direct and reward their subordinates, and when Tax Enforcement SOAs effectively recommend disciplining their subordinates.

V. CONCLUSIONS OF LAW

Supervisors of Auditing are supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

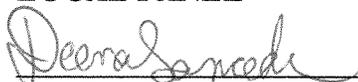
IT IS HEREBY ORDERED that the petition be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relation Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. 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. 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 8th day of January, 2016

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



**Deena Sanceda
Administrative Law Judge**