STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner,	)	
	)	Case No. L-UC-15-004
and	)	
Sheriff of Cook County and Cook County,	)	
Employers.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

On October 14, 2015, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) dismissing the above-captioned case. On September 24, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to clarify the unit, certified by the Board in Case No. L-RC-06-099, to include the Lieutenants in the Electronic Monitoring Unit, employed by the Sheriff of Cook County and Cook County (jointly, Employer). The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act, 5 ILCS 315 (2014), as amended (Act), pursuant to the exemption for supervisory and managerial employees.[1] The Employer also asserted that the unit clarification petition is a procedurally improper means by which to add the Lieutenants to the unit.

[1] The Employer subsequently withdrew its argument that the Lieutenants are managerial employees under Section 3(j) of the Act.

The ALJ determined that the Union's petition was inappropriately filed and concluded that it, therefore, was unnecessary to address the alleged supervisory status of the petitioned-for employees.

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1300, Charging Party, AFSCME, filed timely exceptions to the ALJ's RDO, to which the Respondent filed a timely response. After reviewing the RDO, exceptions and responses, we hereby affirm the Recommended Decision and Order as written for the reasons set forth by the Administrative Law Judge.

BY THE LOCAL PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ Robert Gierut
Robert Gierut, Chairman

/s/ Charles Anderson
Charles Anderson

s/ Richard Lewis
Richard Lewis

Decision made at the Local Panel's public meeting in Chicago, Illinois on February 9, 2016, written decision issued in Chicago, Illinois on March 10, 2016

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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Petitioner,	)	Case No. L-UC-15-004
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 24, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to clarify the unit, certified by the Board in Case No. L-RC-06-099, to include the Lieutenants in the Electronic Monitoring Unit, employed by the Sheriff of Cook County and Cook County (jointly, Employer). The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory and managerial employees. The Employer also asserted that the unit clarification petition is a procedurally improper means by which to add the Lieutenants to the unit. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on June 2 and 3, 2015. Both parties elected to file post-hearing briefs.

I. Preliminary Findings

The parties stipulate and I find:

1. The Cook County Sheriff and County of Cook are public employers within the meaning of Section 3(o) of the Act.

2. The Union is a labor organization within the meaning of Section 3(i) of the Act.
3. The Union is an exclusive representative within the meaning of Section 3(f) of the Act.

II. Issues and Contentions

The issues are (1) whether the unit clarification petition is appropriate and (2) whether the Lieutenants in the Electronic Monitoring Unit (EM Lieutenants) are supervisors within the meaning of Section 3(r) of the Act.[1]

The Employer contends that that the unit clarification petition is a procedurally improper means by which to add the Lieutenants to the unit. The Employer also argues that the EM Lieutenants are supervisors within the meaning of the Act because they perform work that is substantially different from that of their subordinates and exercise the following indicia of supervisory authority with independent judgement: direction, reward, discipline, and adjustment of grievances. The Employer also observes that there are other indicia of authority that add weight to the conclusion that the EM Lieutenants are supervisors. They function as shift commanders, receive greater pay than investigators with equivalent seniority, and take charge of the Electronic Monitoring Unit's (EMU's) operations when the Director is absent.

The Union argues that the unit clarification petition is appropriate under National Labor Relations Board (NLRB) case law because the Employer reorganized and the petitioned-for employees share a community of interest with employees in the existing unit. Further, the Union asserts that the petitioned-for employees are not supervisors within the meaning of the Act because they do not exercise independent judgment when they direct, assign work, discipline, or adjust grievances. Rather, they follow procedures of the Department of Corrections, balance workload, do not determine disciplinary penalties, and may be required to consult with superiors in adjusting grievances. The Union also notes that the EM Lieutenants' purported authority to reward is not supervisory because all employees may recommend that another employee receive commendations. Finally, the Union argues that the Employer has failed to demonstrate that the EM Lieutenants perform supervisory functions for a preponderance of their work time.

[1] The Employer withdrew its argument that the Lieutenants are managerial employees under Section 3(j) of the Act.

III. Facts

Prior to 2011, the Cook County Sheriff's Department included the following divisions, Court Services, Department of Corrections, the Sheriff's Police, and the Department of Community Supervision and Intervention (DCSI). Executive Director David Devane headed the DCSI. Devane oversaw Deputy Director Thomas Tansey, who was responsible for the following five units: Detainee Horticulture Program, Pre-Release Center, Day Reporting Center, Sheriff's Work Alternative Program, and the Electronic Monitoring Unit (EMU). Director Gregory Shields headed the EMU and oversaw four sections: Technical Services, Administration, Patrol, and Fugitive. A Chief headed each section and oversaw Deputy Chiefs who, in turn, oversaw Patrol Investigators.

The EMU supervises male pretrial detainees ("participants") and allows them to resume their normal lives pending the outcome of their criminal case while they submit to electronic monitoring as a condition of their bond.[2] It provides transportation to detainees from the Cook County Jail compound to their designated residence, relocates individuals who are evicted from their designated residence, conducts home checks of high priority participants, processes individuals under warrant who do not show up for court, and participates in initiatives with local law enforcement.

The Department of Corrections also includes a unit responsible for the electronic monitoring of participants, the Female Furlough unit. That unit is included in the Women's Justice Program and serves female participants exclusively.

On February 16, 2011, the Sheriff's Department reorganized and decommissioned the DCSI. On that date, the Sheriff's Office transferred the EMU and other remaining DCSI units to the Department of Corrections.[3]

The organizational structure of the DOC from the top down became the following: John Murphy is the Acting Executive Director. Daniel Moreci is the First Assistant Executive Director. Moreci oversees six Assistant Executive Directors. Each Assistant Executive Director is responsible for a number of the following DOC divisions or units: Pre-release Center; External Operations; Records; Emergency Response Team; Housing Divisions 1, 2, 3, 6, 8, 9, 10;

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[2] The EMU also places electronic monitoring equipment on convicted individuals assigned to Vocational Rehabilitation, an alternative program to incarceration.

[3] According to the organizational chart, the DOC does not appear to have retained the Detainee Horticulture Program.

Receiving Trust Classification (RTC); Administration; Central Kitchen; Day Reporting Center, Technology Unit; Laundry; Transportation; Training at Moraine Valley Community College (MCVV); Vocational Impact; Correctional Information and Investigation Division; Women's Justice; and the Electronic Monitoring Unit.[4] The reorganization placed Women Justice and the Electronic Monitoring Unit under the direction of different Assistant Executive Directors. Each Division is headed by a Director or Superintendent.

The command structure within the EMU did not substantially change following the reorganization. Shields remained head of EMU as its Director and continued to oversee three levels of lower-ranked employees. However, on August 8, 2012, the Sheriff's Department modified their titles. The Chiefs became Electronic Monitoring Lieutenants (EM Lieutenants); the Deputy Chiefs became Electronic Monitoring Sergeants (EM Sergeants); and the Patrol Investigators became Electronic Monitoring Patrol Investigators (EM Patrol Investigators). The Sheriff's Department emphasized that the change was only one of operational title used in the Electronic Monitoring Unit. The Employer currently employs five EM Lieutenants, five EM Sergeants, and 110 EM Patrol Investigators. The EM Lieutenants oversee the EM Sergeants who, in turn, oversee the EM Investigators.

The command structure of the remaining divisions likewise remained unchanged. It includes the following ranks, in descending order of hierarchy: Superintendent, Correctional Commander, Correctional Lieutenant, Correctional Sergeant, and Correctional Officer. The following divisions do not currently have Correctional Commanders assigned to them: Transportation, Administration, Technology Unit, Emergency Response Team, Vocational Impact, and Pre-Release. The Employer has never assigned a Correctional Commander to the Transportation Division, the Administration Division, the Technology Unit, or the Emergency Response Team; however, it has historically assigned Correctional Commanders to the Vocational Impact Division and the Pre-Release Division.

Following the reorganization, the EM Lieutenants wear uniforms similar to those worn by Correctional Lieutenants and use the same administrative forms used by Correctional Lieutenants. They are covered by the same General Orders. The day-to-day duties of the

[4] The organizational chart submitted into evidence includes a number of other sections which are not listed here because they were not discussed at hearing. In addition, the division names on the organizational chart do not perfectly match the names used at hearing. Where there is a discrepancy, this RDO uses the division titles offered at hearing.

Lieutenants in different divisions differ based on their assignments. However, as a general matter, all Lieutenants perform roll call, serve as shift commander, and review their subordinates' reports.

1. Duties and Functions of the EM Lieutenants' Subordinates.

The EM Investigators are the frontline employees of the EMU. The International Brotherhood of Teamsters, Local 700, represents the EM Investigators. According to the Teamsters collective bargaining agreement, the EM Investigator assignment is a specialty assignment, which requires special or specific licenses, education, skills, knowledge, criteria, and/or training.

EM Investigators report to a building on 23rd and Rockwell, which is also the location of the DOC Transportation Unit. They fit individuals with electronic monitoring at this site, but also install electronic monitoring equipment at the DOC's main campus. Though some investigators receive office assignments, on the whole, EM Investigators perform a substantial amount of fieldwork. They perform onsite installation of monitoring equipment, monitor participants in the field, respond to participant violations, apprehend violators, and conduct other non-patrol related assignments as required by their supervisors. They write daily activity reports and case reports that document their assignments and they also complete vehicle inspection sheets. EM Investigators in the field ask the EM Lieutenants for decision-making guidance.

EM Sergeants[5] are responsible for daily operations of the EMU including roll call, assignments, general order standards, processing of participants, oversight of the patrol section, assignments to the dispatch job, and oversight of daily activities. They testify in court, issue subpoenas to investigators, provide leadership and decision-making to the investigators on the street and in the office, and give their input on EMU decision-making and proposed changes.

[5] The EM Sergeants are currently represented, but the identity of their exclusive representative is a matter of dispute in Case No. L-UC-15-003, pending before ALJ Kelly Coyle.

1. Duties and Function of the EM Lieutenants

a. Direction

The Director designates an EM Lieutenant as responsible for the EMU if the Director is unable to be physically present. The designated lieutenant makes decisions concerning the unit's operations in the Director's absence.

EM Lieutenants function as shift commanders and in that capacity make command decisions for the shift.[6] The Director relies on the Lieutenants' communications to remain apprised of the unit's operations because the Lieutenants are the Director's closest contact to the entire unit. The Lieutenants are responsible for the productivity of employees on their shift and for achieving the goals of the assigned section.

The Employer provided two examples in which EM Lieutenants made operational decisions in the field. In one case, an EM Lieutenant decided that the Sheriff's Department should not initiate criminal charges against a homeless man who had charged an EMU van that was delivering detainees to a safe haven. The EM Lieutenant received word of the incident after an investigator on site contacted the radio room for help. Following an investigation, the EM Lieutenant determined that the homeless man was actually a resident of the safe haven. The Director agreed with the EM Lieutenant's decision not to press charges.

In another case, an EM Lieutenant ordered a detainee out of a designated house for incarceration or rehousing because the detainee was a former sex-offender and his residence also housed two children. The EM Lieutenant became aware of the incident after an investigator contacted the dispatch desk to inform the command that the conditions of the detainee's bond had not been met.

The EM Lieutenants direct the roll call. They prepare the lineups, determine who works with whom, and distribute equipment. Roll call lasts approximately 25 minutes.

EM Lieutenants review investigators' reports that document their work, including visits to houses where EM services are required. The EM Lieutenant reads the report, discusses it with the investigator, and makes minor corrections, where necessary. For example, the EM Lieutenant corrects the date if it is wrong, corrects the name of the location at which the event occurred, if it is wrong, or instructs the investigator to add more information if it is lacking, such

[6] A sergeant may also serve as shift commander if no lieutenant is available.

as the name of a witness. Director Shields described the review as cursory. The EM Lieutenant then determines whether the matter requires a follow up. If the matter does require a follow up, the EM Lieutenant assigns an investigator from the next watch to perform the follow up. The EM Lieutenant also signs off on the investigators' vehicle inspection sheet, which indicates that the Lieutenant has reviewed an investigators' tour of duty.

EM Lieutenants provide instruction to EM Investigators. Lieutenants enforce grooming standards and instruct investigators to remove jewelry, to shave, or to wear their uniforms. They instruct investigators to inform them of their lunch break, if they have not done so. EM Lieutenants also give investigators direction concerning tactical decisions in the field, which may impact officer safety. For example, EM Lieutenants may instruct investigators not to park the squad car in front of a house if they are looking for a suspect in that house because parking in front alerts the suspect to their arrival. They may also tell investigators not the block the street when they park and to drive more carefully at times when schools are closing. EM Lieutenants issue these directions based on their superior skill and knowledge.

EM Lieutenants respond to requests for backup from investigators in the field. An EM Lieutenant comes to the scene and determines whether to contact the Sheriff's Police or the Canine Unit. Alternatively, the EM Lieutenant may conduct a roll call on the street to give EM Investigators additional information concerning the individuals under investigation. In one case an EM Investigator called an EM Lieutenant after he uncovered a large quantity of narcotics; the EM Lieutenant came and confiscated the drugs. In another case, an EM Investigator called an EM Lieutenant after an individual kicked out a squad car window; the EM Lieutenant helped initiate criminal charges against that individual.

EM Lieutenants assign overtime to investigators and sergeants based on staffing needs. The EM Lieutenant initially asks for volunteers, but assigns individuals to overtime if there are none.

EM Lieutenants approve time off based on the number of personnel scheduled for a shift, staffing need, and the terms of the collective bargaining agreement covering their subordinates. The collective bargaining agreement permits only 10% of the workforce to take time off at once. An EM Lieutenant will automatically deny a time off request if more than 10% of the workforce is scheduled to be off from work on a particular day.

EM Lieutenants assign daily work to investigators and have authority to direct workflow. An EM Lieutenant may take employees out of their regular units or assignments and assign them to different tasks. In one case, an EM Lieutenant decided to "short the processing unit" by four investigators so that he could use them on an assignment at the hospital. He judged that the four borrowed investigators could return to the processing unit in time to begin processing detainees.

EM Lieutenants do not evaluate patrol investigators.

EM Lieutenants spend approximately 60 percent of their day giving direction and making command staff decisions.

b. Adjustment of Grievances

EM Lieutenants serve as the first step of the grievance process for grievances filed by EM Investigators. In one case, an EM Lieutenant offered an EM Investigator the option to reduce the two day suspension to a written reprimand to resolve the grievance. The EM Investigator rejected that offer and the grievance proceeded to the second step. If an EM Lieutenant successfully resolves a grievance, Shields does not review the EM Lieutenant's determination and has no authority to impact the EM Lieutenant's decision. Shields testified that EM Lieutenants participate in the grievance process on a weekly basis. However, the Employer's grievance log contained only nine grievances filed over an 18 month period.

c. Reward

EM Lieutenants can recommend that the Director issue commendations or awards to EM Investigators when they perform work that is above and beyond the call of duty. If the Director approves the recommendation for an award, he types a narrative describing the EM Investigator's actions, signs it, and then sends it to the Sheriff and the Executive Director for signature. The Employer distributes it to the employee and tells the employee, "great job." Lieutenants spend very little time recommending the issuance of awards.

d. Discipline

Lieutenants have authority to initiate discipline against their subordinates when they observe violations of General Orders. They also sign off on disciplinary forms initiated by their subordinate sergeants. When an EM Lieutenant initiates the disciplinary process, he fills out the

narrative section of a Summary Punishment Action Request (SPAR) then submits the form to Shields so that he may approve or disapprove of the discipline. Shields rarely modifies or reverses decisions made by the EM Lieutenants. He testified that he reverses the EM Lieutenants' decisions less than one percent of the time.

After the initiating officer, the EM Lieutenant, and the Director sign the form approving the discipline, Shields sends the document to the employee discipline department, also known as the Office of Professional Review (OPR).

Section V of the Sheriff's Employment Action Manual sets forth the OPR's process with respect to summary discipline. It provides that the OPR reviews the SPAR form prior to the initiation of discipline to determine whether the department's investigation into the discipline was adequate. If OPR determines that the investigation was inadequate, the OPR directs the department to perform further investigation or OPR may initiate its own investigation into the matter. It further provides that "all OPR summary reports of investigation and all sustained Department Head investigations will go through Command Channel Review." Command Channel Review occurs after OPR approves a summary report or after a Department Head sustains a report. Where the recommended discipline is 30 days or less, the Command Channel Review "may consist of the accused employees' Department Head, the Executive Director of OPR and the Undersheriff…a minimum of two levels of review are required." The Undersheriff makes the final decision regarding the completeness of the investigation, the finding and any disciplinary action." The Employer institutes discipline after the completion of Command Channel Review.

Shields testified that in his experience, once he sends the SPAR form to OPR, the OPR simply issues the document a SPAR number and fills out the portion of the form indicating the level of punishment. Shields did not identify any cases in which the OPR, or higher-level command, did not issue some level punishment after receiving a recommendation for discipline.

Between 2012 and 2013, the EM Lieutenants participated in approximately 10 instances of discipline. EM Lieutenants spend approximately 15 percent of their time engaged in discipline of their subordinates.

2. Additional Duties

The EM Lieutenants assist the Director in setting the goals and objectives of the EMU. They also collaborate with the Director in drafting and revising general orders and policies applicable to the EMU.

EM Lieutenants John Webb and John O'Malley, Director Shields, Assistant Executive Director Mike Miller, Assistant to the Sheriff Mike Boyce, and the Sheriff's attorney attended a series of approximately 20 meetings aimed at revising and drafting general order and policies. One EM Sergeant, Chris Rohloff, also attended. No EM Investigators were present.

3. Promotions Within the EMU as Compared to Promotions of Other Employees Within the Department of Corrections[7]

The Sheriff promotes employees to the position of EM Lieutenant and EM Sergeant at his pleasure because appointments to those positions fall outside the Sheriff's Employment Action Manual (SEAM) and are exempt from its requirements pursuant to the Shakman Consent Decree. There are no minimum qualifications required to hold those positions and even civilian employee may be hired into those ranks. These positions are therefore deemed non-merit ranked.

By contrast, the Sheriff cannot promote employees to the position of Correctional Sergeant and Correction Lieutenant at his pleasure because those positions are governed by the SEAM's requirements. Accordingly, the individuals promoted to the position of Correction Sergeant and Correctional Lieutenant must hold specified minimum qualifications. These positions are therefore deemed merit-ranked.

An employee who holds a non-merit rank is not eligible to be designated as a Correctional Lieutenant or Correctional Sergeant.

IV. Discussion and Analysis

1. Appropriateness of the Unit Clarification Petition

The unit clarification petition is not appropriate in this case. The petition does not fit within the specified circumstances identified as appropriate for unit clarification under the

[7] Evidence concerning the EM Lieutenants' appointment was excluded at hearing, but the Employer was permitted to make an offer of proof. This offer of proof is hereby admitted into the record as evidence and the ruling to exclude it is reversed.

Board's rules and case law. Further, I decline to adopt a new rule for unit clarification in this instance and instead leave that matter to the Board.

The Illinois Public Labor Relations Act specifically provides that "[a] labor organization or an employer may file a unit clarification petition seeking to clarify an existing bargaining unit." 5 ILCS 315/9(a-6) (2012). There are six circumstances under which a unit clarification petition is appropriately filed.

Three of those are articulated in Section 1210.170(a) of the Board's rules:

> An exclusive representative or an employer may file a unit clarification petition to clarify or amend an existing bargaining unit when:
>
> 1) substantial changes occur in the duties and functions of an existing title, raising an issue as to the title's unit placement;
>
> 2) an existing job title that is logically encompassed within the existing unit was inadvertently excluded by the parties at the time the unit was established; and
>
> 3) a significant change takes place in statutory or case law that affects the bargaining rights of employees.
>
> 80 Ill. Admin Code 1210.170(a).

In addition, the Board has historically allowed parties to use a unit clarification petition to include newly created job classifications entailing job functions already covered in the unit. City of Evanston v. Ill. State Labor Rel. Bd., 227 Ill. App. 3d 955, 969-70 (1st Dist. 1992) citing State of Ill. (Dep'ts of Cent. Mgmt. Serv. & Public Aid), 2 PERI ¶ 2019 (IL SLRB 1986).

More recently, the Board has also permitted a union to file a unit clarification petition to include titles that the Board excluded as objected-to when certifying a majority interest petition that had majority support without consideration of the objected-to titles. 80 Ill. Admin. Code 1210.100(b)(7)(B); City of Washington v. Ill. Labor Rel. Bd., 383 Ill. App. 3d 1112 (3d Dist. 2008); Treasurer of the State of Ill., 30 PERI ¶ 53 (IL LRB-SP 2013) rev'd on other grounds by Am. Fed'n of State, County & Mun. Employees, Council 31 v. Ill. Labor Rel. Bd., 2014 IL App (1st) 132455.

Finally, the Court has allowed an employer to file a unit clarification to exclude allegedly statutorily excluded employees who were improperly included in the bargaining unit. Dep't of Cent. Mgmt. Servs. (Dep't of Corrections) v. Ill. Labor Rel. Bd., 364 Ill. App. 3d 1028 (4th Dist. 2006); Treasurer of the State of Ill., 30 PERI ¶ 53 (IL LRB-SP 2013) rev'd on other grounds by

Am. Fed'n of State, Cnty. & Mun. Empl., Council 31 v. Ill. Labor Rel. Bd., 2014 IL App (1st) 132455.

The first three circumstances for unit clarification set forth in Section 1210.170(a) of the Board's Rules are not presented here. First, the Union did not argue or present evidence that the duties of the EM Lieutenants substantially changed. Indeed, their duties remained consistent over time, even though the Employer reorganized and changed the position's title from Chief to EM Lieutenant. Second, the Union did not argue or present evidence that the parties' inadvertently excluded the EM Lieutenant title when the unit was established on August 29, 2006 in Case No. L-RC-06-099. Third, the Union has identified no significant change in statutory or case law that affects the bargaining rights of the EM Lieutenants that would warrant their inclusion into the unit through a unit clarification petition.

Likewise, the last two listed circumstances for a unit clarification petition are inapplicable. The Union did not file this petition to include a position that the Board previously excluded when it certified a majority interest petition that otherwise had sufficient majority support. Nor is this a petition filed by an employer seeking to exclude an allegedly statutorily excluded employee who was improperly included in the unit.

Finally, this is not a case in which the Union seeks to include a newly created job classification entailing job functions already covered in the unit because the EM Lieutenant position is not newly created. In fact, it had existed for over two years by the time the Union filed its petition. The Employer renamed the EM Chiefs as EM Lieutenants on August 8, 2012,[8] but the Union did not file its petition until September 24, 2014. Thus, the Union filed its petition too late to include the EM Lieutenant position under this theory, even assuming *arguendo* that the EM Lieutenants perform job functions already covered in the unit. Water Pipe Extension, Bureau of Engineering v. Ill. Local Labor Rel. Bd., 252 Ill. App. 3d 932, 941 (5th Dist. 1993)(affirming Board's finding that unit clarification petition seeking to add position to unit was untimely where it was filed two years after the position's creation).

I decline to add to the listed circumstances deemed appropriate for unit clarification, as urged by the Union, for the following three reasons. First and foremost, this agency's approach

[8] Arguably, the position at issue reasonably existed long before August 8, 2012, because the change to EM Lieutenant from Chief was one in name only and did not involve the creation of any new duties or functions.

to unit clarification is a delicate piecemeal of rules, practice, and precedent, whose modification is properly left to the Board.

Second, the intentionally narrow holding in Southwestern Bell, cited by the Union, does not stretch to cover the instant case. In Southwestern Bell, the NLRB permitted accretion of unrepresented employees to an existing unit following an employer's reorganization, where the petitioned-for employees were "indistinguishable" from those in the unit after the employer consolidated its departments. Southwestern Bell Telephone Co.. 254 NLRB 451, 452 (1981). The NLRB observed that the petitioned-for employees' job functions, supervision, work objective, and work location were the same as those of unit employees, following the change, and that the only distinction between the two employee groups was their job title.[9] Southwestern Bell Telephone Co.. 254 NLRB at 451-2. Under these expressly "narrow circumstances," the NLRB added the petitioned-for employees to the unit without an election because the organizational structure that initially served as the sole basis for their exclusion no longer existed. Id. The facts of this case do not fit those narrow circumstances.

Unlike the petitioned-for employees in Southwestern Bell, the petitioned-for employees in this case are distinguishable from employees in the proposed unit in two material respects. First, the petitioned-for employees are merit ranked while the employees within the unit are not. Cf. Southwestern Bell Telephone Company 254 NLRB at 452 (engineering clerks were "indistinguishable" from unit employees based on "anything other than the continued existence of a separate job title"). Second, the petitioned-for employees and those in the unit do not share common supervision at lower levels. EM Lieutenants never share direct, first-level supervision with Correctional Lieutenants because they report to different Directors/Superintendents. They rarely share even second-level supervision with Correctional Lieutenants because the correctional hierarchy includes the Commander rank, which adds a level of supervision between the Correctional Lieutenants and their Director/Superintendent. While a few DOC divisions lack Commanders, most do not.[10] Accordingly, the EM Lieutenants and Correctional Lieutenants have common supervision only at the third level, when they share the same Assistant

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[9] Indeed, the parties in Southwestern Bell stipulated that the petitioned-for employees shared a community of interest with unit employees. Southwestern Bell Telephone Co., 254 NLRB at 451. The parties in this case made no such stipulation.

[10] All but four DOC Divisions regularly function with Commanders, and although two additional divisions are without Commanders at the moment, there is no indication that those Commander positions will remain vacant where they have been filled in the past.

Executive Director. Notably, the supervisory overlap occurs at an even higher level in the organizational structure when considering only those Correctional Lieutenants who perform electronic monitoring functions because they report to a different Assistant Executive Director than the EM Lieutenants. Cf. Southwestern Bell Telephone Company, 254 NLRB at 452 (all petitioned-for employees shared first-level or second-level supervision with bargaining unit employees who performed the same functions).

Furthermore, the reorganization here did not effect the sweeping structural changes that justified accretion in Southwestern Bell. Rather, the reorganization left undisturbed the EMU's compressed hierarchical structure, which omits the rank of Commander and, in turn, preserves the inevitable differences between the duties of Correctional Lieutenants and EM Lieutenants. For example, EM Lieutenants serve as the primary conduit of information to their division head and act in his stead when he is absent, whereas most Correctional Lieutenants do not serve that function. The reorganization also perpetuated the distinction between petitioned-for employees and unit employees who perform similar work by placing their respective units under different Assistant Executive Directors, thereby maintaining their separate supervision even at higher levels. Cf. Southwestern Bell, 254 NLRB at 452 (elimination of separate engineering department removed the organization feature that distinguished petitioned-for employees from those in the unit). Finally, the reorganization failed to change the work locations of either Correctional or EM Lieutenants such that they have any closer or more sustained contact than they had prior to the reorganization. Cf. Southwestern Bell Telephone Company, 254 NLRB at 452 (petitioned for employees' work location changed so that they worked alongside unit employees and unit employees' work location changed so that they worked alongside petitioned-for employees).

In light of these distinctions, the commonalities that exist between EM Lieutenants and Correctional Lieutenants (e.g., similar uniforms, adherence to same General Orders, similar duties in some respects) do not render the unit clarification petition appropriate under the narrow holding of Southwestern Bell. Cf. Southwestern Bell, 254 NLRB at 452 (finding accretion appropriate following an employer's reorganization where the two employee groups were indistinguishable).

Third, even if NLRB case law warranted a finding that the Employer's reorganization justified the petition, the Union's petition would be properly dismissed as untimely under Board precedent. The Board's case law strongly suggests that it is unreasonable to delay filing a unit

clarification petition for more than two years after the event that serves as its purported justification. Water Pipe Extension, Bureau of Engineering, 252 Ill. App. 3d at 941 (affirming Board's finding that unit clarification petition seeking to add position to unit was untimely where it was filed two years after the position's creation); City of North Chicago, 25 PERI ¶ 162 (noting that Board has generally insisted that the unit clarification petitions must be filed within two years of the triggering event); Ill. Depts of Central Mgmt. Servs. & Public Health, 2 PERI ¶ 2005 (IL SLRB 1985) (finding two year delay in filing unit clarification petition after triggering change rendered it untimely). Here, the Employer reorganized on February 16, 2011 by incorporating the EMU into the DOC. It made that transition even clearer on August 8, 2012 when it changed the titles of EMU employees to match the titles of DOC employees. Both dates precede the Union's petition by more than two years and the Union's petition is therefore untimely filed. Notably, the Union has not argued that it lacked knowledge of the reorganization at the time it occurred.

Thus, the unit clarification petition is inappropriately filed. For this reason, it is unnecessary to address the EM Lieutenants' alleged supervisory status.

V. Conclusions of Law

1. The unit clarification petition is inappropriate.

VI. Recommended Order

The petition is dismissed.

VII. Exceptions

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the 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 the Board's General

Counsel, Kathryn Zeledon Nelson, at 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 14th day of October, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge