STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Village of Plainfield,	)	
	)	
Employer	)	
	)	
and	)	Case No. S-RC-09-111
	)	
Illinois Fraternal Order of Police Labor Council,	)	
	)	
Petitioner	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL

On July 27, 2012, Administrative Law Judge Eileen Bell issued a Recommended Decision and Order in the above-captioned case finding that the nine peace officers in the rank of Sergeant employed by the Village of Plainfield (Employer) are supervisors within the meaning of Section 3(r) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) (Act), and that the above-referenced petition filed by the Illinois Fraternal Order of Police Labor Council (Petitioner) should be dismissed. Thereafter, in accordance with Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240, the Petitioner filed timely exceptions to the Recommended Decision and Order. The Employer filed a timely response and cross-exceptions to which Petitioner filed a response. After reviewing the record, exceptions and responses, we adopt, as modified below, the Administrative Law Judge's findings of fact and law in support of her determination that the Sergeants at issue are supervisors within the meaning of Section 3(r) of the Act and that the instant petition should be dismissed.

The ALJ determined that the four Patrol Sergeants, the Detective Sergeant-Criminal Investigations and the Detective Sergeant-School Resources Officer/DARE have the authority to effectively recommend a promotion through the performance evaluations they complete for their subordinates. We disagree. While the record evidence shows that the Sergeants complete evaluations for their subordinates and that the evaluations comprise 25% of a subordinate officer's score for promotion to the rank of sergeant, the record does not indicate that any of the above-referenced Sergeants recommend a promotion as part of a subordinate's evaluation or have any other role in the promotion process.

Though not indicative of any authority to promote or recommend a promotion, the Sergeants' responsibility for evaluations does support the ALJ's conclusion that they have a supervisor's authority to direct. "The term 'direct' encompasses a number of distinct, yet related, functions when reviewing and monitoring work activities, scheduling work hours, approving time off and overtime, assigning duties, and formally evaluating job performances when the evaluation is used to affect employees' pay and employment status," but "[i]n order to qualify for 'supervisory authority to direct' within the meaning of the Act, a police employee's responsibilities must involve significant discretionary authority to affect his or her subordinates' terms and conditions of employment." Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 382 Ill. App. 3d 208, 224 (4th Dist. 2008). In this case, the above-referenced Sergeants have significant discretionary authority in evaluating their subordinates, the evaluations in turn are a significant factor in their subordinates' successful promotion to the rank of sergeant,[1] and

[1] Petitioner argues that evaluations only have a minimal impact on an officer's promotion to sergeant. This argument is unpersuasive. Evaluations comprise 25% of an officer's promotion examination score and the decision on which officers are promoted often rests on a razor thin difference between each of their scores.

consequently the Sergeant's authority with respect to evaluations constitutes the authority to direct.

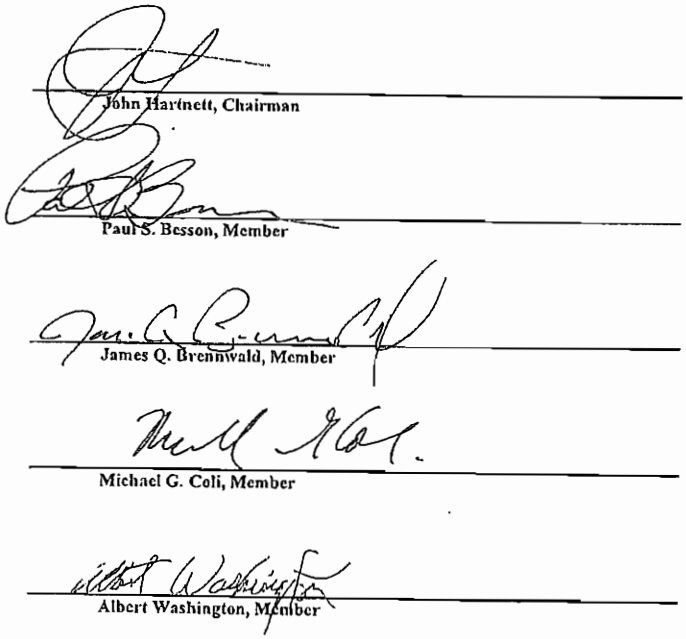
Contrary to the ALJ, we also find that the Traffic Sergeant does not possess or exercise the supervisory authority to discipline within the meaning of the Act. The ALJ's finding is primarily based on evidence of a counseling letter drafted by the Traffic Sergeant and issued by him to a subordinate after the filing of the instant petition. However, at the start of the hearing, the ALJ ruled that she would not admit into the record evidence of the Sergeants' status as supervisors arising from events that occurred after the filing of the petition. Subsequently, the ALJ refused to admit the counseling letter into evidence but allowed a witness to testify about the process for filing such a letter and whether that process changed after the petition was filed. Despite her ruling and limitations placed on testimony concerning the counseling letter, the ALJ cited the letter as the sole example of the Traffic Sergeant's authority to discipline. The ALJ explained that, because of the undisputed testimony of his commander that the Sergeant had the same authority to issue that letter prior to the date the petition was filed, it was irrelevant that the letter was in fact issued after the filing date.

Citing to State of Illinois, Department of Central Management Services, 29 PERI 12 (IL LRB-SP 2012), the Employer correctly notes that the Board has permitted the admission and consideration of post-petition evidence by an ALJ. However, in that case the post-petition document was admitted into the record thereby putting the parties on notice that it would be considered by the ALJ. In this case the ALJ did not admit the counseling letter into evidence thereby giving Petitioner the reasonable expectation that the ALJ would not consider it in her decision making. Consequently the ALJ, in relying on the post-petition counseling letter, in effect deprived Petitioner of the opportunity to refute that documentary evidence. Accordingly,

we find that the ALJ had little support for her conclusion that the Traffic Sergeant is a supervisor based on his authority to discipline his subordinates. Even so, we conclude that the Traffic Sergeant is a supervisor within the meaning of the Act in reliance on the ALJ's finding that the Traffic Sergeant has the authority to direct his subordinates.

Finding the petitioned-for Sergeants to be supervisors, we dismiss the petition for representation.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



Decision made at the State Panel's public meeting in Chicago, Illinois, on November 15, 2012; written decision issued at Chicago, Illinois, January 17, 2013.

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7/27/12

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Fraternal Order of Police, Labor Council,	)	
Petitioner	)	
and	)	**Case No. S-RC-09-111**
Village of Plainfield,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On February 27, 2009, the Illinois Fraternal Order of Police Labor Council (Petitioner) filed an election Representation/Certification Petition (Petition) with the Illinois Labor Relations Board, State Panel (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), in the above-captioned case. The Petitioner seeks to become the exclusive representative of nine Sergeants of police employed by the Village of Plainfield, Department of Police (Department or Employer): four Patrol Sergeants, one Traffic Sergeant, one Administrative Sergeant, one Detective Sergeant-Criminal Investigations, one Detective Sergeant-School Resource Officer (SRO)/DARE and one Sergeant-Accreditation/Code Enforcement.[1] Based upon the showing of interest cards filed by the Petitioner and the employee name and signature exemplars which the Employer provided, the Petitioner has satisfied the required 30 percent showing of interest for the petitioned-for unit. There is no allegation of fraud or coercion with respect to the showing of interest. The only issue is whether the employees are public employees or whether any are instead supervisory employees within the

[1] The acronym "DARE" stands for the Drug Abuse Resistance Education program.

meaning of the Act. A hearing was held before me on April 13, 14, and May 17, 2010.[2] My findings and recommendation are set forth below:

I. PRELIMINARY FINDINGS

The parties stipulated, and I find, that at all times material the Employer has been a public employer within the meaning of Section 3(o) of the Act.

The parties stipulated, and I find, that the Petitioner has been a labor organization within the meaning of Section 3(i) of the Act.

The parties stipulated, and I find, that the Board has jurisdiction to hear this case pursuant to Section 5(b) and 20(b) of the Act.

The parties stipulate, and I find, that the principal work of the Sergeants is substantially different from that of their subordinates.

The parties stipulated, and I find, that in the event I conclude that more than one of the petitioned-for Sergeants are public employees, a bargaining unit consisting of them is appropriate.

II. ISSUE AND CONTENTIONS

The issue presented is whether any of the petitioned-for Sergeants—Patrol Sergeant (Sgt.) Kevin McQuaid, Patrol Sgt. Ronald Mikos, Patrol Sgt. Jennifer Norton, Patrol Sgt. Michael Fisher, Traffic Sgt. Eric Munson, Administrative Sgt. Grant Anderson, Detectives (Det.) Sgt.-

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[2]This hearing took place *after* the following: in May 2009 the Board issued a decision directing an election among the petitioned-for Sergeants pursuant to the instant petition, Illinois Fraternal Order of Police Labor Council and Village of Plainfield, 25 PERI ¶62 (IL LRB-SP 2009), and subsequently issued a Certification of Representation in July 2009 naming the Petitioner as the exclusive representative of a bargaining unit consisting of the petitioned-for Sergeants. In August 2009, the Employer filed a petition for review of the Board's Certification of Representation and underlying decision with the Illinois Appellate Court for the Second District; in November 2009, the Appellate Court vacated the Board's May 2009 decision and remanded the matter to the Board for further proceedings. On April 6, 2010, the Board revoked the Certification of Representation.

Criminal Investigations Troy Kivisto, Det. Sgt.-SRO/DARE Anthony Novak and Sgt.-Accreditation/Code Enforcement Kevin Adams—is a supervisory employee within the meaning of Section 3(r) of the Act. The Employer maintains that each is a supervisory employee as defined by the Act while the FOP contends that none is a supervisory employee.

III. FACTS

A. Organization

As of February 27, 2009, the date the Petition was filed, the personnel in the Village of Plainfield Police Department consisted of one Chief of Police, three commanders below him to each head up a division, the nine petitioned-for Sergeants, and approximately 42 sworn Police Officers. There are no Deputy Chiefs, Captains or Lieutenants.

Six of the Sergeants are in the Patrol Division which Comm. Kenneth Ruggles heads.[3] Patrol Sgts. Kevin McQuaid, Ronald Mikos, Jennifer Norton and Michael Fisher are each in charge of a team of six or seven Police Officers. Another direct report of Comm. Ruggles in the Patrol Division is Traffic Sgt. Eric Munson. He is in charge of the Traffic Unit consisting of four sworn officers. Two of those officers are dedicated full-time to traffic enforcement while the other two split their time between traffic enforcement and patrolling the Park District. The sixth Sergeant in the Patrol Division who reports directly to Comm. Ruggles is Administrative Sgt. Grant Anderson.

The remaining three Sergeants—Det. Sgt.-Criminal Investigations Kivisto, Det. Sgt.–SRO/DARE Novak, and Sgt.-Accreditation/Code Enforcement Adams—are part of the

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[3] Comm. Ruggles was appointed to his present position as Commander of the Patrol Division in October 2007. Previously, he was the Administrative Sergeant for just under a year. Before becoming the Administrative Sergeant, Comm. Ruggles was a Patrol Sergeant from 2001 until the end of 2006.

Administrative Division which Comm. Kevin Greco heads.[4] As such, these Sergeants report directly to Comm. Greco. Det. Sgt.-Criminal Investigations Kivisto is the direct report of four detectives who investigate crimes, and an additional property/evidence control officer. He also serves as a liaison to another one or two sworn officers assigned to a task force in Will County that primarily addresses narcotics related crimes. Det Sgt.-SRO/DARE Novak is the direct report of four detectives, each one assigned to a particular high school, and two additional sworn officers assigned to the DARE program. Sgt. Kevin Adams, the Accreditation/Code Enforcement Sergeant, is the third Sergeant in the Administrative Division. He is in charge of the Department's effort to obtain accreditation from the Commission on Accreditation of Law Enforcement Agencies (CALEA). Sgt. Adams' staff includes one civilian CALEA Accreditation Manager. Sgt. Adams is also responsible for code enforcement which concerns non-criminal complaints such as grass that is too tall or broken windows. At the time the Petition was filed in February 2009, the one civilian who served as Code Enforcement Officer reported directly to Sgt. Adams.

The Department's Police Officers are represented by the Metropolitan Alliance of Police (MAP), Plainfield Chapter 23. The Department and MAP have entered into a collective bargaining agreement (Agreement) which was in effect at the time the petition was filed.

Upon promotion from Police Officer, almost all of the Department's Sergeants have been assigned as Patrol Sergeants. Det. Sgt. Kivisto is the one exception: when he was promoted to

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[4] Comm. Greco became the Commander of the Administrative Division in October 2007. He spent the preceding 13 years as a Sergeant: from 1994 to about 1999 he was a Patrol Sergeant; for the next eight years he was a Traffic Sergeant; then for about a half a year he was a Problem-Oriented Police (POP) Sergeant.

Sergeant, he was assigned to a Task Force outside the Department. When Sgt. Kivisto returned to the Department, he was assigned as the Detectives Sergeant-Criminal Investigations.

Each of the nine petitioned-for Sergeants is paid pursuant to the same salary schedule. They may not receive the same pay because their placement on it differs depending on when each became a Sergeant. During the fiscal year 2009-2010, the salary range for Police Sergeant was from $65,332 to $94,209. In comparison, the wage schedule for May 2009 for Police Officer ranged from $52,059 to $82,746.

Upon promotion from Police Officer to Sergeant, the "new" Sergeants go through a 10 week training program with the Northwestern University Center for Public Safety, School of Police Staff and Command.[5] The curriculum includes courses entitled "Fundamentals of Management," "Legal Aspects of Discipline," and "Selection and Promotion."

During certain hours of operation, the Sergeant of police is the highest ranking sworn officer on duty in the Department. This situation occurs when the Chief of Police and the Commanders of the Patrol and Administrative Divisions are off duty on Monday through Friday during the night shift as well as on the weekends.

B. Role of Sergeants in Promotion of Police Officers to Sergeants

Certain Sergeants in the Department are responsible for the annual performance evaluations of the Police Officers assigned to them. The petitioned-for Sergeants who perform this function are the following: Patrol Sgts. McQuaid, Mikos, Norton and Fisher, Traffic Sgt.

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[5] At the time of the hearing in April and May 2010, seven of the nine petitioned-for Sergeants had completed this training. The two who had not yet completed this training were the most junior Sergeants as they were promoted in October 2007, Patrol Sgts. McQuaid and Norton.

Munson, Det. Sgt.-Criminal Investigations Kivisto and Det. Sgt.-SRO Novak.[6] None of the Sergeants who occupied these assignments rebutted the testimony of Commanders Ruggles and Greco or documentary evidence that these Sergeants complete performance evaluations.

The performance evaluation format is divided into subject matter sections with factors listed below each section. In 2007, the sections were "Knowledge of Work," "Dependability and Adaptability," "Initiative and Leadership," "Safety Mindedness," and "Cooperation and Loyalty." Then the evaluation contains additional sections, such as "Patrol Officer," "Traffic Officer," and/or "Investigator," depending on the officer's assignment. For each of the multiple factors listed below a section, the Sergeant gives the Police Officer a rating of one to five. The Police Officer's total score is the sum of his/her points for each factor divided by the number of factors. Neither Commander Ruggles, Commander Greco, nor Chief Bennett instruct the Sergeants as to the number of points each can award to an officer in a performance evaluation. Similarly, these superior officers do not alter the performance evaluations that the Sergeants complete.

Most of the scores which the Sergeants award for each factor involve their subjective determination. For example, the section entitled "Knowledge of Work" requires the Sergeant to give the officer a score that reflects the extent to which he/she "[d]emonstrates [a]ppropriate knowledge and/or [a]pplication of [g]eneral [o]rders, [d]irectives, and [s]pecial orders." As an additional illustration, the section "Cooperation and Loyalty" includes a factor that calls on the Sergeant to measure the officer's ability to "[i]nteract well with others." By contrast, the

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[6] This list does not include Administrative Sgt. Anderson or Sgt.-Accreditation/Code Enforcement Adams. Neither of these Sergeants completes performance evaluations for sworn officers as neither has sworn officers assigned to them.

performance evaluation's factor on productivity standards is objective, based on the Department's productivity system.

The Plainfield Police Commission (Commission) uses the performance evaluations of Department members in determining the score of each applicant who applies for promotion to the rank of Sergeant. In particular, the Commission uses the average score of three successive years of performance evaluations in calculating 25 percent of each applicant's promotion score. In order to make the necessary calculations, the Commission obtains either the performance evaluation form or the performance evaluation scores for three successive years from the Department, averages the raw scores, converts them to a scale of one to 100, and then applies a 25 percent weight to the score for each candidate. [7]

Prior to the hearing, the most recent promotion to Sergeant occurred in 2007. The Notice of Sergeant Promotion that was posted in March 2007 listed the scoring and promotion criteria as follows:

Written Examination	40 points maximum
Oral Interview	30 points maximum
Performance Evaluation	25 points maximum
Seniority	5 points maximum
Veteran Points	3.5 points maximum

As the chart above indicates, the number of points which each candidate for Sergeant acquires primarily depends on his written examination, oral interview and performance evaluations.[8] The third line of the excerpt above means that three successive annual performance evaluations count

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[7] Michael Nott, a 16-year member of the Commission and its Chairman at the time of the 2007 promotion process, testified at the hearing that he did not recall if the Commission only receives the scores, or if it receives the entire performance evaluation.

[8] The total points for these three components and that for seniority add up to 100. Any points for veteran's preference are then added.

as 25 percent of the total score for promotion. For the 2007 promotion to Sergeant, the evaluations used for each candidate were those for 2004, 2005 and 2006.

In May 2007, the Commission posted a list of 16 candidates for Sergeant and their respective scores, starting with those who had received the most points to the least. The Commission's Rules and Regulations provide that it may promote the three ranked highest. The top three candidates on that list—Anthony Novak, Kevin McQuaid, and Jennifer Norton—were promoted to Sergeant in 2007. The difference between the score of the candidate listed third on the list—Jennifer Norton—and the fourth candidate listed who was not promoted is 1.7 points. The record includes the performance evaluations which Department Sergeants completed for several of the candidates on the list.

Promotions to Sergeant occur every three years. The record includes two grievances which different officers filed in 2009 challenging the performance evaluations which their respective Sergeants completed for them covering the 2007 rating period.[9] The performance evaluations being appealed in the grievances were done by Patrol Sgt. Fisher and Det. Sgt.-SRO/DARE Novak, respectively. The officer contesting the performance evaluation which Sgt. Fisher completed specifically contended that the latter was deliberately limiting his evaluation score in an effort to affect his promotion opportunities to Sergeant. Neither grievance resulted in a modification of the respective Sergeant's appraisal in the performance evaluation.

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[9] The Petitioner objected to the second of these grievances because the response was submitted April 1, 2009, *after* the petition at issue was filed on February 27, 2009. In general, a petition's date of filing is the significant date for purposes of resolving the issue of whether a public employee is covered by the Act. See e.g., State of Illinois, Dep't of Cent. Mgmt. Services and AFSCME, Council 31, 20 PERI ¶105 (IL LRB-SP 2004); County of Boone, and Sheriff of Boone County and Int'l Union, United Auto., Aerospace and Agric. Implement Workers, Local 1761, 19 PERI ¶74 (IL LRB-SP 2003). I admitted the document issued *after* February 27, 2009 because there was no allegation that Det. Sgt. SRO/DARE Novak's duties regarding completion of performance evaluations changed after the petition was filed. In addition, the objected-to performance evaluation was for the 2008 year, a period before the petition at issue was filed.

D. Sergeants' Disciplinary Authority

Department Directive 02-007 regarding Sergeant Conduct provides, in part, that any Department Sergeant must do the following: "investigate, or cause to be investigated, all complaints by citizens and reports by members of the department of misconduct, incompetency, neglect of duty." Pursuant to Section 5 of that document, a Sergeant is responsible for the efficiency and morale of all the members under his/her command. In addition, Directive 02-007 makes a Sergeant responsible for promptly taking "suitable action" when he/she observes a violation, error, misconduct or neglect of duty.

Department General Order 08-313 concerning Internal Affairs/Disciplinary Procedures provides for both informal and formal investigations of alleged misconduct by members. Section 313.1 of that General Order states that it "shall apply to all employees of the Police Department regardless of the employee's job." Section 313.10(A) provides that the investigator, upon completion of an informal investigation, will submit a report to the appropriate Division Commander that outlines the results of the investigation and any recommended disciplinary action. When a formal investigation is completed, Section 313.10(B) provides that "the appropriate Division Commander shall submit a report to the Chief of Police containing one of the following dispositions:" 1) unfounded (the allegation is false, not factual, or did not occur); 2) sustained (sufficient evidence supports the complainant's allegations); 3) exonerated (employee conduct was within guidelines of established policy and procedure; the employee's actions were proper, even if the allegations are true); 4) no conclusion/not sustained (the allegation is not substantiated; there is not sufficient evidence to prove or disprove the allegation); and 5) policy/procedure evaluation (employee conduct was within guidelines or

established policy and procedure, however, complaint has given cause to reevaluate policy and procedure for possible improvement).

In addition, Section 313.12 of that General Order authorizes "supervisory personnel" to impose and/or recommend the following disciplinary actions against any member when such action is warranted: 1) counseling/training for minor infractions (documentation of this action must be entered into the Department's Evaluation System); 2) oral reprimand (documentation of this action must be entered into the Department's Evaluation System); 3) counseling letter; 4) written reprimand; and 5) recommendation for more severe penalties.[10] Commander Ruggles confirmed that Sergeants have the disciplinary authority described in this Section. Documentation of a counseling letter is maintained in the Department's personnel files so that other Sergeants can review it in the event of future misconduct.

This disciplinary authority may be used in conjunction with a Sergeant's authority to conduct line inspections. In particular, a Sergeant is responsible for conducting a formal line inspection of personnel and equipment under his/her command twice a year. During such an inspection, the officers are lined up while their uniforms and equipment are inspected for serviceability and appearance. Although this General Order provides that formal inspections will be conducted semi-annually, Commander Ruggles chose to conduct them less frequently—on average, one a year—when he was a Patrol Sergeant. A Sergeant is also responsible for conducting informal inspections of personnel based on his/her observations of officers during operations. He/she may decide to discipline any of his officers as a result of a line inspection.

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[10] The reference to "Supervisor" in that document includes the Chief of Police, Commanders, and Sergeants.

E. Petitioned-for Sergeants

1. Patrol Sergeants McQuaid, Mikos, Norton and Fisher

Sgts. McQuaid, Mikos, Norton and Fisher are the four Patrol Sergeants in the Department. Each is in charge of a team of six to seven Patrol Officers, two on days and two on nights. The day shift begins at 6:00 a.m. and ends at 6:00 p.m.. The night shift starts then and lasts until the day shift resumes. The four teams patrol the Village of Plainfield, respond to calls for service, and handle criminal complaints. They work seven out of 14 days on a modified 12 hour shift—"modified" in that one of those days is an eight-hour day. The four hours every two weeks when a Patrol Officer is not on duty due to that eight-hour day is referred to as Kelly time. During this two-week period, each Patrol Officer thus works a total of 80 hours. Minimum manpower levels require that three Patrol Officers and one Sergeant be on duty per shift. Commander Ruggles, the Patrol Commander, does not observe the personnel in his division on a daily basis since his time as Commander is spent in his office and at meetings. The job description for Patrol Sergeant provides in relevant part:[11]

> [a]ssigns personnel to various work assignments on a daily basis, including problem areas; [m]onitors attendance; [c]alls in additional staff when understaffed; [g]ives continuous feedback to subordinates about positive and negative aspects of performance, including citizen contacts; [r]eviews subordinates' daily activity; [c]ompletes accurate performance appraisals based upon sufficient contact with subordinates.

Patrol Sgt. McQuaid acknowledged that this description was accurate.

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[11] That job description was made part of the record although it was dated April 20, 2009, a date after the petition was filed. The Petitioner did not object to its admission because the job description was similar to that in effect at the time the Petition was filed.

(a) Authority to Assign Zones

At the time the Petition was filed in February 2009, there were six zones. The Agreement does not have a provision that the officers bid for zones. Each Patrol Sergeant determines how zone assignments are made. Patrol Sgt. McQuaid asks the officers on his team which zone they want to cover. When Commander Ruggles was a Patrol Sergeant from 2001 through 2006, he determined which officer in his team to assign to which of the three to five zones in existence at that time. His decision took into account the following factors: the known condition of the zone; the officer's past work history; the officer's skills and abilities; and the officer's need to improve in a certain area. Comm. Ruggles explained that the zones can vary quite a bit in that one may be residential, another commercial, while still another may include a state or federal route with a higher volume of traffic. If, for example, he knew that one of his Patrol Officers had a target goal for a certain number of traffic violations, Comm. Ruggles could assign that officer to a zone with a higher volume of traffic. While he could consider the officers' preference for certain zones, he was not required to follow them.

(b) Monitoring and Reassigning Officers' Calls

While the zone assignment generally determines the initial officer responding to a call, the Patrol Sergeant may find it necessary to reassign the calls as he monitors them. During the hearing, Comm. Ruggles described this ongoing process in which he was engaged as a Patrol Sergeant:

> [t]he Sergeant monitoring that [initial call] and monitoring the workload that each of his officers has at any given time should make determinations [as] to whether or not to allow that normal officer of the zone to answer that call; whether or not that zone officer is busy, if they should allow those calls to be stacked upon them for later completion or whether or not they should reassign that call to an available officer or an officer who is better suited to handle that particular situation or whether or not more officers should be assigned based on its priority.

Comm. Ruggles added that these decisions about reassigning calls were no different for the Patrol Sergeants serving under him. Patrol Sgt. McQuaid explained that he can countermand an officer's decision to handle a call.

General Order 40.5 on the subject of vehicle pursuits, highlights the Patrol Sergeant's related function, that of monitoring vehicle pursuits. In particular, Section 40.5.4 of that General Order instructs that a pursuit shall be terminated "[i]f, in the opinion of the pursuing officer or shift supervisor [the Patrol Sergeant], the pursuit creates a clear and unreasonable danger to the officer, other motorists or pedestrians, and other users of the highway . . . that outweighs the necessity for immediate apprehension." Comm. Ruggles explained several of the options confronting a Patrol Sergeant who is monitoring a pursuit on the radio: 1) if the pursuit is coming from another jurisdiction, the Patrol Sergeant may direct the officers not to engage in the pursuit but rather to take up strategic positions in the Village to warn other motorists of the oncoming danger; 2) the Patrol Sergeant may override the pursuing officer's decision to engage in a pursuit and effectively terminate the pursuit; and 3) the Patrol Sergeant may determine the number of units to engage in a pursuit and the positions of the responding and back-up units. In his direct examination during the Petitioner's case-in chief, Patrol Sgt. McQuaid confirmed that he, as a Patrol Sergeant monitoring a pursuit via the radio, is responsible to terminate the pursuit if it becomes too dangerous.

(c) Assigning Overtime

Section 7.9 of the Agreement provides that "the Chief of Police or his designee(s) shall have the right to require overtime work and officers may not refuse overtime assignments." Section 7.5 of the Agreement addresses the assignment of overtime related to normal police functions. It

provides that "the employer agrees to post *scheduled overtime*" for certain situations known in advance so that officers can sign up for these opportunities. That provision addresses *non-scheduled overtime* as follows: "any last minute schedule changes, i.e., sick time, emergency days off, etc. will be handled by the shift supervisor and/or the patrol commander."[12] Additionally, this *non-scheduled overtime* includes overtime assignments when an officer is called in to work either before or after his/her shift as well as on a day which he/she is not scheduled to work. Further, *non-scheduled overtime* encompasses situations when the officer is held over his/her regular tour of duty.

This holdover overtime often occurs near the end of a shift. An arrest for driving under the influence (DUI) or a vehicle accident that takes place just before shift change are examples of events which might give rise to a Patrol Sergeant approving overtime for an officer. The record shows that in 2008 the Department's Patrol Sergeants each approved call-in and holdover overtime totaling $1,096.52 (McQuaid), $1,303.07 (Mikos), $6,963.11 (Norton) and $4,373.32 (Fisher), respectively. Patrol Sergeants take reasonable steps to minimize overtime costs for the Village of Plainfield. Comm. Ruggles acknowledged that the processing of a DUI arrestee is time consuming, and thus a Patrol Sergeant has limited discretion in a decision to approve overtime in that situation. The record includes an overtime slip which Patrol Sgt. Norton approved on January 31, 2008 for a "late crash." Comm. Ruggles explained that despite Patrol Sgt. Norton's approval of 1.5 hours of overtime for that crash, she might have still limited the amount of overtime by determining that once the scene was stabilized and the initial report

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[12] The term "shift supervisor" refers to the Sergeant of the unit or, in his absence, the designated Officer in-Charge (OIC).

written, the next shift would take over. Patrol Sgt. McQuaid explained that a traffic accident near the end of a shift would not require overtime "[a]s long as the parties are gone and the officers can be back the next day, no."

A Patrol Sergeant's authorization of holdover overtime might also be necessary so that a Patrol Officer can complete a report. While certain reports must be ready for the investigative unit the next day, others do not need to be finished so soon, and thus, do not require overtime. In describing the discretionary nature of overtime, Comm. Ruggles testified that as a Patrol Sergeant he denied overtime for report writing if the report did not need to be completed for a deadline. Similarly, Patrol Sgt. McQuaid testified that he can prevent an officer from working overtime if he deems it "needless overtime, if it [is] not serving a purpose for the department." Patrol Sgt. McQuaid also testified that he received a written reprimand for approving the payment of overtime without having conducted a sufficient investigation.

A Patrol Sergeant considers a number of factors in his decision to grant or deny overtime in a holdover or call-in situation. These factors include determining if a specialized officer is needed, such as an evidence technician or a traffic reconstructionist, the existence of a deadline for the work in question, such as a report that must be completed for investigation the following morning, the workload of the officer, such as an officer who has multiple reports to write, the wishes of the officer, and staffing levels. In a situation where a Patrol Team needs another Officer to meet staffing levels, a Patrol Sergeant may also choose to pull from the Traffic Unit rather than authorize overtime.[13]

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[13] The minimum manpower levels per shift in Patrol of three officers and one Sergeant do not apply to the Traffic Unit or elsewhere in the Department.

Overtime requires the approval of the Patrol Sergeant.[14] No approval from a superior of the Patrol Sergeant is needed or normally obtained. Accordingly, the overtime form already in use by the Department at the time the Petition was filed has a signature line that begins "Sergeant/Supervisor Approval." It does not include any additional signature lines.

(d) **Selecting the Officer-in-Charge**

An OIC has much of the authority of a Patrol Sergeant but not all. The OIC can conduct roll call at the beginning of a shift and disseminate information. He can assign zones, approve time off, as well as approve overtime. An OIC differs from a Patrol Sergeant in that he/she cannot review reports. That function—reviewing reports—is done by another Sergeant or Commander. Some officers view selection as an OIC as a "reward" acknowledging their time devoted to the Department. Others consider this designation as a negative which brings increased scrutiny and liability.

A Patrol Officer has the authority to designate an officer on his team as the OIC in his absence.[15] This absence occurs at least once every two weeks for four hours when a Patrol Sergeant is off duty for his Kelly time. In addition, a Patrol Sergeant may be sick or on vacation. Pursuant to Section 14.5 of the Agreement, the OIC must be compensated at the rate of $2.00 per hour in addition to his/her hourly wage rate.

Neither the Agreement nor any other directive govern how an OIC is selected. After the Patrol Sergeant chooses the officer to serve as OIC but in advance of disclosure to the rest of the shift, the Patrol Sergeant communicates the name of his/her selection for OIC to the Patrol

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[14] The OIC is the officer on a Patrol Team whom the Patrol Sergeant designates to be in charge in his/her absence.

[15] OICs are only in Patrol; there is no OIC in the Traffic Unit or elsewhere in the Department.

Commander. On occasion when Comm. Ruggles has learned of that selection, he has asked questions of the Patrol Sergeant about why he/she made that particular choice. The Petitioner presented no evidence that Comm. Ruggles has changed a selection for OIC. The Patrol Sergeant's selection for OIC remains in place until he/she selects another. The record shows that each of the petitioned-for Patrol Sergeants—McQuaid, Mikos, Norton and Fisher—made selections for OIC from the period beginning January 1, 2007 up until the Petition was filed February 27, 2009.

Patrol Sgt. McQuaid testified that there were many ways to become an OIC including seniority and demonstrated competence. He described selection of an OIC as a group decision by the Sergeants and the Patrol Commander.

Comm. Ruggles stated that he has never countermanded a Patrol Sergeant's recommendation for OIC. In addition, Comm. Ruggles pointed out that he has not told a Patrol Sergeant whom he/she should select.

(e) Approving/Denying Time Off Requests

Patrol Sergeants are responsible for approving/denying the time off requests which the officers in his/her unit submit. An officer submits a leave of absence request for vacation, sick, personal or emergency time to his/her Patrol Sergeant. The Sergeant must consider the minimum staffing requirement in order to determine whether to approve it. For example, the Patrol Sergeant has to be aware of what other officers will be off at the same time due to Kelly time. In addition, the Patrol Sergeant has to make sure that submission of the time off request complies with policy requirements about notice, i.e., that the request for time off is submitted sufficiently in advance of the date(s) to be taken off. The form which the Department uses to request such time off requires the Patrol Sergeant's authorizing signature. No further approval is

needed from his/her superiors. The record includes five leave request forms which various Patrol Sergeants approved. It does not include any denials of time off requests.

Related to a Patrol Sergeant's resolution of these time off requests is a Patrol Sergeant's role in determining Kelly time. The record shows that the Patrol Commander's Office issues a schedule at the beginning of each pay period which assigns Kelly time to each officer. The Patrol Sergeant can make changes to this schedule based on officers' requests to reassign their Kelly time. In making those reassignments, the Patrol Sergeant must maintain staffing levels. The Department does not issue any directive to Patrol Sergeants concerning the assignment of Kelly time.

The Patrol Sergeant commonly reassigns this Kelly time when a night shift Patrol Officer has to appear in court during the day. That is, the Patrol Sergeant instructs such an officer to take his/her Kelly time at the beginning of the night shift following that officer's appearance in court. When the Patrol Sergeant reassigns Kelly time in this manner, he/she extends the officer's time off for a court appearance.

(f) Reviewing Patrol Officers' Written Work

The record includes officers' incident reports, timesheets and daily activity reports which the Patrol Sergeant is responsible for reviewing. The Patrol Sergeant reviews the incident report for accuracy including spelling and grammatical errors. He/she also looks for completeness such as the elements of the crime, collection of evidence and interviewing of witnesses. In doing an officer's performance evaluation, the Patrol Sergeant considers the number of reports he has returned to that officer. Another form on which the Patrol Sergeant signs off is the officer's timesheet for the two week pay period. Additionally, the Patrol Sergeant looks over the daily

activity report that each officer in his team completes. He checks that document for accuracy because the information it contains is used to provide a productivity value for the officer.

(g) Conducting Performance Evaluations

Patrol Sergeants complete performance evaluations annually for the officers that are on his/her team. The record contains numerous examples of performance evaluations which Patrol Sergeants completed from 2004 to 2008.[16] Although the record does not include a copy of a performance evaluation which Patrol Sgt. McQuaid completed, he acknowledged recording officers' tardiness incidents in the Department's evaluation system. The record contains testimony about a performance evaluation which Patrol Sergeant Norton completed covering a period after the petition was filed. The record does not include any performance evaluations that Patrol Sgt. Mikos did. Regarding Patrol Sgt. Fisher, the record contains a performance evaluation which he completed covering the period January through December 2007.

(h) Disciplining Officers

Of the four Patrol Sergeants, the record shows that Patrol Sgt. McQuaid has made notes of officers' tardiness in the Department's evaluation system. Patrol Sgt. McQuaid explained that he has had to address officers who do not come to work on time. In that event, he will initially talk with the officer, informing him that he must start arriving by the beginning of the shift. If an officer does not become punctual after such a conversation, Patrol Sgt. McQuaid will start marking tardiness in the Department's evaluation system. The evaluation system deducts points based on the number of times an employee is tardy. Patrol Sgt. McQuaid maintained that making such notes in the evaluation system is not discipline.

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[16] Of the Patrol Sergeants at issue in this case, the record only includes the performance evaluation that Patrol Sgt Fisher completed.

He acknowledged that under Department Directive 02-007 he has the authority to investigate complaints against officers alleging misconduct, incompetency and/or neglect of duty. Further, Patrol Sgt. McQuaid acknowledged that General Order 08-313 gives him the authority to issue oral or written reprimands under Section 313.4 (B)(2), although he has not yet done so.

In addition, the record shows that Patrol Sgt. Norton issued a counseling letter in early February 2009 before the petition at issue was filed. Patrol Sgt. Norton issued the counseling letter in question after the Accident Review Board found the subject officer at fault for a collision.[17] The counseling letter states that "[a]ny situation of a similar nature could result in disciplinary action taken against you." Neither Patrol Sgt. Norton nor any of the other Sergeants have to obtain the approval of a superior before issuing a counseling letter. A counseling letter is maintained in the subject officer's personnel file and reviewed in the event that further discipline is considered.

The record does not contain any evidence that Sgt. Mikos and Fisher have issued any discipline.

2. Traffic Sergeant Munson

Traffic Sgt. Eric Munson was hired by the Employer in 1999 as a Patrol Officer. He was promoted to a Patrol Sergeant in August 2004. Sgt. Munson remained a Patrol Sergeant until January 2008 when he became the Traffic Sergeant. Traffic operations, as distinguished from Patrol operations, focuses on traffic enforcement. Sgt. Munson is in charge of the Traffic Unit consisting of four sworn officers, two of whom are dedicated solely to traffic, and two others

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[17] The Accident Review Board consists of one officer who is appointed, Administrative Sgt. Anderson, and another officer chosen by the officer whose collision is being reviewed. The Accident Review Board hears testimony, reviews the incident and crash reports, and then decides if the officer was at fault.

who split their time between park patrol and performing traffic duties. Sgt. Munson oversees both functions of the officers who divide their time between the park district and traffic duties. The Traffic Sergeant works Monday through Friday, generally 8:00 a.m. until 4:00 p.m. and 7:00 a.m. until 3:00 p.m., alternately. There is no minimum staffing level in the Traffic Unit. At times, officers assigned to the Traffic Unit may be used to supplement Patrol.

The four officers in the Traffic Unit are covered by the Agreement. Section 7.2 of that Agreement provides that "[t]he Village shall establish the work schedule for Police Officers." Section 7.3 authorizes 8-, 10- or 12-hour shifts. When the Traffic Unit was reorganized to its current status, Sgt. Munson and the officers in the unit agreed that the two officers dedicated to traffic full time would work 10-hour shifts, and those who split their time between park patrol and traffic duties would work 12-hour shifts. Sgt. Munson was not required to confer with the officers in the Traffic Unit regarding their hours of work. As Comm. Ruggles testified, "[h]e [Sgt. Munson] chose to confer with them [about their work hours] to see what would work best for them and maximize the Traffic Unit's coverage on the road."

Traffic Sgt. Munson can make schedule adjustments to those hours of work as long as he complies with the Agreement's 15 day notice requirement. In an email dated March 4, 2009, Sgt. Munson instructed the members of the Traffic Unit to make such a schedule adjustment for April 1, 2009. He may choose to vary their schedules based on a particular need or assignment. For example, if the Traffic Unit engages in a roadside safety check or addresses a particular traffic problem, Traffic Sgt. Munson can make adjustments to schedules as needed. He has changed the schedules of the officers in his unit so that they are working a specific day. Traffic Sgt. Munson has made schedule changes without first obtaining Commander Ruggles'

permission. Regarding some changes, Traffic Sgt. Munson has first discussed them with Comm. Ruggles.

The record includes several other emails which Sgt. Munson wrote in performing his role as Traffic Sergeant. In an email dated January 10, 2008 to "All Police Recipients," Traffic Sgt. Munson instructed any Department member who received a traffic complaint to notify him of the complaint's content so that he could track the complaint and the Department's response. On March 12, 2008, Sgt. Munson sent another email addressed to the same recipients on the subject of hit-and-run crashes. In it, Sgt. Munson made it known how he wanted such crashes documented, including what information was necessary in the initial report. Sgt. Munson also wrote an email dated January 5, 2009 to "All Police Recipients" informing them of a call-out list of traffic investigators that he had developed. It consists of the names of the four officers in the Traffic Unit rotated to correspond to the 12 months of the calendar year. In an additional email dated January 22, 2009 to the four officers in the Traffic Unit, Sgt. Munson notified them of a Traffic Unit meeting at which their attendance was mandatory. That email told one of the officers he was to come in to work on his day off for two hours the day of the meeting, and work two hours less on a specified day.

Comm. Ruggles testified that Traffic Sgt. Munson reviews all of the traffic complaints to determine where to assign his officers. He further stated that Traffic Sgt. Munson determines what times are best suited for enforcement. Comm. Ruggles explained Traffic Sgt. Munson also determines what enforcement action is taken by his team. For example, he may instruct members of his team to issue warnings initially, and then after a certain period of time to write citations. Traffic Sgt. Munson indicated that the officers "typically" decide which area they will cover on their own.

The record includes a leave of absence request form which Traffic Sgt. Munson approved for an officer in May 2008. The record does not contain any requests for a leave of absence which Traffic Sgt. Munson has denied. Comm. Ruggles testified that in deciding whether to grant or deny such a request, the Traffic or Patrol Sergeant must consider his/her staffing levels and whether the proposed absence will impact those staffing levels. Traffic Sgt. Munson testified that he approves all such requests as long as they are made in compliance with the Agreement's notice requirements.

Traffic Sgt. Munson approves overtime. The record contains a spreadsheet which shows that in 2008 Traffic Sgt. Munson approved overtime totaling $2385.68. There is rarely discretionary holdover overtime in the Traffic Unit. Traffic Sgt. Munson testified that he has no option but to approve overtime when a serious crash occurs toward the end of a shift. In making overtime decisions, including the number of officers needed and the length of overtime, Traffic Sgt. Munson testified to the number of factors he considers:

> [t]he crash itself, the scene at hand, what's involved, how many people I need, how many people I don't need, what roads I've got to shut down, what roads I have open, how many people are going to the hospital, do I have to go to the hospital for follow-up, is it a DUI crash, do we need to reconstruct. A lot of decisions have to go into that.

Traffic Sgt. Munson stated that he calls in officers for overtime based on their level of training, but clarified that he first uses the call-out list, and then proceeds to other options if he cannot reach the officer called.

There are certain situations for which Traffic Sgt. Munson is not authorized to approve overtime. For example, he cannot approve overtime for his subordinates to come in on their days off for some of his special campaigns. Instead, he has to adjust their schedules.

The performance evaluations which the Traffic Sergeant completes for each member of his team is the same as that for a Patrol Officer except that each includes an additional section which contains criteria specific to the functions of a Traffic Officer. The record contains a performance evaluation which Traffic Sgt. Munson completed and signed in June 2008 as a Traffic Sergeant for an officer who had been his subordinate when he was a Patrol Sergeant. The record includes two performance evaluations which Traffic Sgt. Munson completed and signed when he was a Patrol Sergeant for different officers in his Patrol Unit. The record contains four performance evaluations which Commander Greco completed and signed in his prior position as Traffic Sergeant evaluating the performances of officers in the Traffic Unit. The record does not include any performance evaluations which Sgt. Munson completed for Traffic Officers as their Traffic Sergeant.

In June 2009 Traffic Sgt. Munson issued a counseling letter to a member of the Traffic Unit.[18] This counseling letter was a part of the Department's formal disciplinary process. A copy of the letter went into the officer's personnel file and would be considered in the event of future discipline. Traffic Sgt. Munson has the same authority to impose discipline as other Department Sergeants. In addition to issuing the counseling letter, Traffic Sgt. Munson has the authority to impose an oral or written reprimand as part of the disciplinary process. Traffic Sgt. Munson is able to issue such discipline to his subordinates without conferring with Comm. Ruggles or obtaining his approval. At the time that Traffic Sgt. Munson issued the counseling letter in June 2009, the Department's policy concerning issuing a counseling letter as applied to

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[18] Pursuant to the Petitioner's objection, that document was not admitted into evidence. The Petitioner objected to admitting that document and testimony about it because the counseling letter was issued on June 16, 2009, a date after the Petition was filed on February 27, 2009. Comm. Ruggles was permitted to offer limited testimony about the document's issuance.

the Traffic Sergeant had not changed in any way from the period prior to filing the Petition on February 27, 2009.

Traffic Sgt. Munson has experienced instances when an officer arrives for his shift about 15 minutes late. In such a situation, Sgt. Munson does not issue discipline to the officer but instead makes him/her stay late that day or some other day in the same pay period.

Traffic Sgt. Munson was the Acting Patrol Commander for five days in November 2008 when Commander Ruggles was on vacation. Comm. Ruggles' memorandum making that assignment provided that Sgt. Munson's duties as Acting Patrol Commander included handling all calls requesting direction or approval from Patrol Sergeants, OICs and Officers.

3. Administrative Sergeant Anderson

Grant Anderson has been the Department's Administrative Sergeant since October 2007.[19] As such, his hours are Monday through Friday, 7:00 a.m. to 3:00 p.m. or 8:00 a.m. to 4:00 p.m.. Prior to this assignment, he worked for the Department as a Patrol Sergeant starting in February 2001 when he was promoted from Police Officer. He has not been told how long he will be the Administrative Sergeant, and understands that he could be returned to an assignment as Patrol Sergeant at any time. Administrative Sergeant Anderson does not have any direct reports, but he has contact with officers daily.

One of Sgt. Anderson's primary functions as Administrative Sergeant concerns training. Comm. Ruggles describes him as a training "supervisor" for the Department. In that capacity, he monitors the training that is offered through various organizations and determines which Department members are suitable for different training. Sgt. Anderson assigns officers to

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[19] The position of Administrative Sergeant had been filled by Ruggles before he became Patrol Commander in October 2007.

training classes and adjusts schedules in order to do so. He reserves slots in the training classes they offer. For example, if an officer were interested in becoming a certified breathalyzer operator, Sgt. Anderson may reserve the appropriate classes for him/her. Most training classes are scheduled during business hours to avoid overtime. Sgt. Anderson does not have the authority to approve overtime for the purpose of scheduling training classes.

Sgt. Anderson also operates the Department's firearms training and range instruction program as the range master. In this role, Sgt. Anderson evaluates the firearms skills of all sworn Department personnel, issues them ratings to correspond to those skills, and submits scores to the State of Illinois so that each officer maintains his/her weapon certification. Sgt. Anderson develops lesson plans when he instructs a class. The officers must pass the firearms training. Sgt. Anderson decides, based on state mandated requirements, whether the officer passes. Part of the test involves the officer's score in shooting, and another section deals with the officer's ability to properly handle a weapon. If Sgt. Anderson thinks that officers are not handling their weapons properly, he advises them of it and attempts to correct the problem. If he thinks they need remedial training, he would go to the commander.

Sgt. Anderson is physically present when employees are attempting to qualify in firearms. Comm. Ruggles pointed out that not every instance of mishandling a weapon is a violation of policy; oftentimes, it is more a matter of learning a new skill or improving an existing one. During open range night, either Sgt. Anderson or his assistant, Officer Peterson, the other certified firearms instructor, are present.[20]

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[20] Sgt. Anderson does not complete the performance evaluation for Officer Peterson, but he has the opportunity to enter his comments in Officer Peterson's performance evaluation.

Sgt. Anderson, as the Administrative Sergeant, does internal investigations when he receives a complaint of officer misconduct or when assigned to do such an investigation. These internal investigations arise from citizen complaints of misconduct by an officer, or on rare occasions, by another Sergeant. Because Comm. Ruggles wants the officer's supervisor involved in the investigation, some of these investigations initially received by Sgt. Anderson are reassigned. Comm. Ruggles testified that when internal investigations are assigned to Sgt. Anderson, he summarizes the investigation and recommends that the complaint be unfounded, sustained, exonerated, or not sustained. No one of higher authority within the Department has conducted any reinvestigation to check the facts of Sgt. Anderson's investigation. Higher authority within the Department "depends" upon the recommendations made by Sgt. Anderson. In addition, Comm. Ruggles testified that Sgt. Anderson has not imposed discipline more severe than a written reprimand pursuant to an internal investigation. The record contains no memorandum which Sgt. Anderson wrote, nor discipline that he issued, pursuant to an internal investigation.

Anderson conducted one such internal investigation as Acting Patrol Sergeant because the day of the investigation he had signed up for an overtime shift as Acting Patrol Sergeant. Since becoming the Department's Administrative Sergeant, Sgt. Anderson has occasionally—two or three times before 2009—signed up for overtime as an Acting Patrol Sergeant. After conducting the internal investigation of the complaint made against the officer, Sgt. Anderson concluded that the complaint was unfounded. He maintains that this investigation differs from the six or seven he has conducted as Administrative Sergeant in that, in investigating other complaints, he simply forwards facts without stating his opinion. Further, Sgt. Anderson denies that he has ever issued discipline since becoming the Administrative Sergeant.

Comm. Ruggles testified that, after becoming the Administrative Sergeant in October 2007, Sgt. Anderson has the same authority and responsibility to oversee, discipline and direct employees as he had as a Patrol Sergeant. Sgt. Anderson acknowledged the accuracy of the job description for Patrol Sergeant in describing the duties and responsibilities that he had as a Patrol Sergeant, as well as that of Department Directive 02-007 in describing his duties and responsibilities as a Patrol Sergeant to impose discipline. Further, Sgt. Anderson acknowledged that under General Order 08-313 his authority to discipline employees has not been reduced or changed once he became the Administrative Sergeant.

Comm. Ruggles has also designated Sgt. Anderson as Acting Patrol Commander when his absence for several days is known in advance. The record contains memoranda which Comm. Ruggles wrote to Sgt. Anderson making him Acting Patrol Commander on two occasions in 2008, instructing him to "[h]andle calls requesting direction or approval from Patrol Sergeants, Officers-in-Charge and Officers as needed." Administrative Sergeant Anderson testified that not all the functions he was told he would need to perform in these memoranda actually were required.

As the Administrative Sergeant, Sgt. Anderson serves on the Accident Review Board and the Pursuit Review Board. The remaining two people on the Accident Review Board are the officer whose crash is the subject of an Accident Review Board proceeding and an additional officer chosen by that same subject officer. It determines whether the subject officer was at fault in the crash. The Pursuit Review Board reviews all pursuits to determine if a policy violation occurred. Sgt. Anderson is a member of the Pursuit Review Board along with two commanders. The PRB makes a recommendation to the Chief of Police as to whether a pursuit violates Department policy.

Sgt. Anderson's assignment as Administrative Sergeant also includes the duty of report review when another Sergeant is absent. In addition, the record shows that in 2008 Administrative Sgt. Anderson approved overtime on one occasion in the amount of $24.00.

The record shows that when Sgt. Anderson was a Patrol Sergeant in 2007 before he became the Administrative Sergeant, he selected an officer on his team to be OIC. Further, the record includes performance evaluations that he completed in 2006 and 2008, respectively, as a Patrol Sergeant for officers on his team. The record also shows that Sgt. Anderson was disciplined when he was a Patrol Sergeant for authorization of overtime payment to an officer without conducting a sufficient investigation.

4. Detective Sergeant-Criminal Investigations Kivisto

Troy Kivisto has been the Detective Sergeant-Criminal Investigations since January 2005.[21] As such, he is one of three sergeants in the Administrative Division, and reports directly to Commander Kevin Greco. The Department hired Det. Sgt. Kivisto as a Police Officer in October 1993, and promoted him to Sergeant in August 2004. He started as the Detective Sergeant-Criminal Investigations after returning to the Department from a task force. Det. Sgt. Kivisto remained in that assignment at the time of the hearing.

Det. Sgt. Kivisto's workdays are Monday through Friday, 8:00 a.m. to 4:00 p.m. or 9:00 a.m. to 5:00 p.m.. He is in charge of four Detectives who investigate the cases which he assigns to them.[22] Their works hours are generally 8:00 a.m. to 4:00 p.m.. There is no minimum

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[21] Det. Sgt. Kivisto is the successor to Sgt. Sacco, an Investigative Sergeant whose status was addressed in a Recommended Decision and Order issued by ALJ Philip Kazanjian issued in 2006 in Case No. S-CA-03-099.

[22] The term "investigator" is synonymous with the term "detective" used to refer to each of these sworn officers. Detectives do not receive premium pay.

manpower requirement in the Investigations Unit. Det. Sgt. Kivisto is also the direct report of a sworn officer who is the Property/Evidence Custodian. That employee inventories the property/evidence which the patrol officers and/or detectives collect. At the time the Petition was filed in February 2009, Det. Sgt. Kivisto's reports included an undercover officer assigned to a drug task force. As a former member of that same task force, Det. Sgt. Kivisto is familiar with the duties and responsibilities of the officer's assignment. He completes that officer's annual performance evaluation although he does not observe his/her work performance on a daily basis.

The job description for Det. Sgt. Kivisto's current assignment, Detectives Sergeant-Criminal Investigations, includes the following duties and responsibilities:

> [a]ssigns personnel to various work assignments on a daily basis, including problem areas; [m]onitors attendance; [c]alls in additional staff when understaffed; [g]ives continuous feedback to subordinates about positive and negative aspects of performance, including citizen contacts; [r]eviews subordinates' daily activity; [c]ompletes accurate performance appraisals based upon sufficient contact with the subordinates.

In assigning cases to the four detectives who report directly to him, Det. Sgt. Kivisto's considerations include each of the detectives' relative caseload, knowledge, expertise, length of time as an investigator, and availability. Additionally, Det. Sgt. Kivisto may decide to assign the case to himself or may seek assistance from the Patrol Division. He can assign a case without first obtaining the permission of Comm. Greco. Det. Sgt. Kivisto estimates that he assigns 800 cases each year. In assigning cases, he takes into account a detective's experience, training and time as a detective.

When asked on direct examination if the four detectives in investigations each have an area of expertise, Det. Sgt. Kivisto responded as follows:

> [t]hey generally have all or pretty equal with the exception of one that they had started to do primarily financial crimes. But other than that, they all are—don't have the same level of experience or time in investigations, but everybody has a different—essentially, it's like a tool belt. Everybody has their strengths and weaknesses and brings different things to the table as investigators.

Det. Sgt. Kivisto also insures that the detectives are doing the proper follow-up on cases that are already assigned to them. He makes sure that they are completing their assignments. Det. Sgt. Kivisto's duties include making certain that they show up for duty and are dressed properly. If any complaints are made against these detectives, he is responsible for receiving and investigating them. Comm. Greco testified that Det. Sgt. Kivisto and a Patrol Sergeant are similar in that they each run a shift, the only difference being that Det. Sgt. Kivisto runs a shift in the building while a Patrol Sergeant runs a shift on the road.

As the excerpt from the job description for the Detectives Sergeant-Criminal Investigations provides, Det. Sgt. Kivisto is responsible for calling in staff to work overtime. In the event that a crime occurs, the on-duty Patrol Sergeant contacts Det. Sgt. Kivisto who, in turn, contacts the detective on-call for that seven day period. Sgt. Kivisto may decide that it is necessary to call in multiple detectives.

Comm. Greco had instructed Det. Sgt. Kivisto to have a detective on-call each day from 10:30 a.m. to 6:30 p.m.. In response, Det. Sgt. Kivisito allowed his subordinate detectives to determine how they would provide the coverage that Comm. Greco wanted. A system was devised in which one of the four detectives is on-call for seven days and then rotated so that another is on-call. The Agreement governing the officers does not address the detectives' on-call status. Comm. Greco testified that Det. Sgt. Kivisto has denied requests that a detective be called out.

Further, Det. Sgt. Kivisto determines how many detectives are necessary to call in. On cross-examination, Det. Sgt. Kivisto acknowledged that when the on-call investigator is on the scene, that person may indicate to Det. Sgt. Kivisto that additional investigators are needed. Det. Sgt. Kivisto then decides if he should call in more personnel. Det. Sgt. Kivisto acknowledged that he is "relying on [his] own judgment of the [investigators'] abilities" when he calls in detectives. The record shows that in the year 2008 Det. Sgt. Kivisto approved call-in and holdover overtime in the amount of $32,869.43.

Comm. Greco explained this on-call status of a detective. While a detective is on-call, he/she is restricted in terms of how far he/she can travel from Plainfield as well as his/her alcohol consumption. A detective on-call does not receive overtime pay until he/she is called in to work. Pursuant to the Agreement, a minimum of two hours pay is guaranteed when a detective is called in to work.[23]

In lieu of overtime, Det. Sgt. Kivisto may suggest that an officer take flex-time. For example, if a detective stays beyond his/her shift two hours today, Det. Sgt. Kivisto may suggest that the detective begin his/her shift two hours later tomorrow rather than receive overtime pay. Comm. Greco is not involved in Det. Sgt. Kivisto's decisions to grant/deny overtime or to suggest flex-time.

Additionally, Det. Sgt. Kivisto may adjust the work hours of the detectives so that they can investigate cases during what would otherwise be off duty hours. He may deny such a rearrangement of schedules depending on the Department's needs. When adjusting

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[23] Section 7.7 of the Agreement provides that a minimum of two hours pay is guaranteed for all "call backs"—defined as an official assignment of work which does not continuously precede or follow an officer's regularly scheduled work hours.

his subordinates' hours, Det. Sgt. Kivisto does not need to obtain the approval of Comm. Greco.

Det. Sgt. Kivisto's duties include reviewing the reports of the detectives in his unit. He reviews them for accuracy, and he may send them back due to grammatical errors or substantive reasons such as a lack of thoroughness.

Det. Sgt. Kivisto also calls in the Property/Evidence Custodian to work. While that officer's hours are generally 8:00 a.m. to 4:00 p.m. Monday through Friday, the Property/Evidence Custodian may be called in when a crime occurs. In such a situation, he may be needed to collect evidence, take pictures or dust for finger prints. Det. Sgt. Kivisto, as well as a Patrol Sergeant, an OIC, a Commander or the Chief of Police could call him in to work.

The record includes leave requests which Det. Sgt. Kivisto granted in June and July 2008 to two subordinates. Neither testimony nor documentation shows that Det. Sgt. Kivisto has ever denied a leave request. Det. Sgt. Kivisto completes the performance evaluations for his direct subordinates as well as for the one undercover officer assigned to the drug task force. The record includes a performance evaluation which Det. Sgt. Kivisto completed in June 2008 as Detective Sergeant-Criminal Investigations for one of his investigators covering the calendar year 2007. The form he fills out for the performance evaluation of the Property/Evidence Custodian is modified to reflect his/her specific duties. Comm. Greco does not tell Det. Sgt. Kivisto how many points totals to award any of the officers who report to him.

The record does not show that Det. Sgt. Kivisto has issued any discipline.

5. Detective Sergeant-School Resource Officer/DARE Novak

Anthony Novak, the Detectives Sergeant-School Resource Officer/DARE, was hired as a Police Officer in April 2003. He was promoted to Sergeant in July 2007 after placing first out of 16 officers on the eligibility list posted in May of that year. After an initial assignment as a Patrol Sergeant, he became the Detectives Sergeant-SRO/DARE in the summer of 2008. Det. Sgt. Novak was in that assignment when the Petition was filed in February 2009. He testified that his authority to enforce the Department's rules and regulations and to discipline his subordinates had not changed from the time he was a Patrol Sergeant to the time he became the Det. Sergeant-SRO/DARE.

Det. Sgt. Novak oversees a unit consisting of four sworn Police Officers assigned as detectives called School Resource Officers. Each is assigned to a particular high school and normally that assignment does not change. Det. Sgt. Novak's direct reports include another two sworn officers assigned to the DARE program who are responsible for community events as well. His hours are generally 8:00 a.m. to 4:00 p.m. Monday through Friday. The hours of his six subordinates range from 7:00 or 8:00 a.m. until 3:00 or 4:00 p.m.. There is no minimum manning requirement in the SRO/DARE unit.

Det. Sgt. Novak's duties include making assignments, calling in officers and completing performance evaluations. These functions are among those set forth in a job description for the Detectives Sergeant-SRO/DARE which Det. Sgt. Novak testified on cross-examination accurately depicts his position for the period prior to the filing of the Petition in February 2009.

Any cases involving a juvenile crime are referred to Det. Sgt. Novak for assignment to one of the six officers in his unit. If a particular case involves a student known to attend

one of the School Resource Officers' assigned schools, that case is assigned to the corresponding School Resource Officer. In the event of a crime involving a juvenile not a part of the Plainfield School District, Det. Sgt. Novak can assign it to any of the six investigators in his unit. In making such assignments, Det. Sgt. Novak considers the knowledge and skills of the officers. He may then choose to reassign cases based on these same factors, in an effort to improve results, or due to investigators' workloads. Sgt. Novak may also decide to reassign a case to adult investigations if it is going to be too time consuming. He does not need the approval of Comm. Greco to make these assignments.

The record shows that in the year 2008, Det. Sgt. Novak approved call-in/holdover overtime for a total of $3,515.11. Some event late in the day at a school, such as an arrest, may give rise to this overtime. In certain situations, Det. Sgt. Novak might not have a choice but to approve overtime for members of his unit. Other circumstances call upon Det. Sgt. Novak to decide whether it is necessary for his officers to stay beyond their shift. When approving overtime requests, Det. Sgt. Novak does not need to obtain Comm. Greco's permission. As an alternative to overtime, Det. Sgt. Novak can suggest that the officer use flex time. Comm. Greco is not involved in his decisions whether to grant/deny overtime and/or to suggest flex-time. Det. Sgt. Novak testified that in early 2009 he was aware that the Department faced fiscal challenges, and thus the Department strongly encouraged the use of flex time in lieu of overtime.

Det. Sgt. Novak is responsible for making sure that his direct reports show up for work and do so on time. He has the authority to take corrective action without obtaining the permission of Comm. Greco if they fail to perform this function. Det. Sgt. Novak's duties include ensuring that the SRO and DARE officers perform their job duties in accordance with the Department's rules and regulations. In the event that they do not perform their duties

appropriately, he has the authority to issue a range of discipline. The record does not contain any instances when Det. Sgt. Novak has issued any discipline in this role.

The record includes an employee leave form which Det. Sgt. Novak approved at the end of May in 2008. Det. Sgt. Novak testified that he approves all employee leave requests as long as they comply with the policy requiring 15 days advanced notice.

Det. Sgt. Novak's responsibilities include completing the performance evaluations for his six direct reports. The performance evaluation form differs from that used in the Patrol Division or the Investigations Unit in that there is an additional section related to the specific job duties of the relevant assignment such as School Resource Officer. The record includes multiple performance evaluations which were done of "school liaison/juvenile/DARE officers" covering the periods 2003 through 2006 before Det. Sgt. Novak had his current assignment.

The record includes two disciplinary documents which Det. Sgt. Novak prepared as a Patrol Sergeant. Based on an incident in January 2008, he issued a counseling letter to one of his Patrol Officers for failing to provide a driver with the requisite paperwork at the conclusion of a traffic stop. Comm. Ruggles had instructed him to issue the counseling letter.

Additionally, in March 2008 as a Patrol Sergeant, Det. Sgt. Novak wrote a memorandum to a Patrol Officer in his unit notifying him that the allegation of a citizen complaint against the officer had been investigated and was determined to be not substantiated. Det. Sgt. Novak had investigated the allegation and recommended to Comm. Ruggles that it could not be substantiated. Neither Comm. Ruggles nor anyone other than Det. Sgt. Novak conducted an investigation of this citizen complaint.

6. Sergeant-Accreditation/Code Enforcement Adams

When the Petition was filed in February 2009, Kevin Adams served as the Department's Sergeant-Accreditation/Code Enforcement. Hired as a Police Officer in July 1989, he was promoted to Sergeant in October 1994. After serving as a Patrol Sergeant, Sgt. Adams has had several different assignments as a Sergeant. In October 2007 he became the Department's Sergeant-Accreditation/Code Enforcement. In that assignment, his subordinates work eight hours each day, Monday through Friday.

As the title of this 2007 assignment indicates, Sgt. Adams' duties, in part, focus on the Department's efforts to obtain accreditation from the Commission on Accreditation of Law Enforcement Agencies (CALEA). The Department has been engaged in a multi-year process in which it seeks to meet the standards which CALEA, an independent agency, has established for a professional law enforcement agency. In order to gain CALEA certification, the Plainfield Police Department has been redrafting its general orders, policies and procedures. Assessors from CALEA will evaluate not only this written work but also conduct onsite evaluations to determine whether the Department complies with its criteria.

In charge of this accreditation process, Sgt. Adams drafts general orders by combining parts of the Department's general orders with portions of those from other departments. He then gives them to a civilian CALEA accreditation manager who reports to him. She takes each general order that he develops, puts it into the correct format, makes sure that it meets the accreditation standards, and sends the general order to the command staff for review. Based on the notations made during command review, Sgt. Adams makes changes to the draft. After successful completion of another command staff review, the general order goes to the Chief of Police for his review and signature.

Sgt. Adams' assignment also places him in charge of the Department's code enforcement work. In January 2009, the Department reduced its staff from two civilians—called Code Enforcement Officers—to one who was responsible for this non-criminal type of complaint alleging violation of an ordinance. Complaints about high grass and broken windows are examples of the subject matter of code enforcement work. The Code Enforcement Officer writes citations and notices to appear in court for the property owners of a given case. When there were two Code Enforcement Officers, Sgt. Adams used a system already in place when he started in October 2007 that divided the Village of Plainfield into two zones.

Sgt. Adams is responsible for the time off requests from the Code Enforcement Officer and the CALEA manager. There is no minimum manning for either of these civilian Department members. When either submits a request for time off, Sgt. Adams approves the request. The record does not include any performance evaluations that Sgt. Adams completed for his civilian subordinates.

Comm. Greco maintains that Sgt. Adams has approved overtime for the Code Enforcement Officers during the summertime when they had an estimated 400 cases between them, but the Employer exhibit which showed the amount of holdover and call-in overtime which each of the petitioned-for Sergeants approved in 2008 did not contain any for Sgt. Adams. Sgt. Adams testified that neither the Code Enforcement Officer nor the CALEA manager earn overtime. The Employer exhibit which shows the amount of holdover and call-in overtime which each of the petitioned-for Sergeants approved in 2008 does not contain any for Sgt. Adams.

The record shows that in August 2008 Sgt. Adams issued a counseling letter to a Code Enforcement Officer that the Department no longer employs. He investigated a complaint made

against that Department member, and concluded that she was not correctly performing her duties. Sgt. Adams reported these findings to Comm. Greco and Chief Bennett and it was determined to issue a counseling letter which Sgt. Adams drafted. Sgt. Adams' testimony does not suggest that anyone after him did an independent investigation of the facts giving rise to the counseling letter, but Chief Bennett revised the language of his draft while maintaining the same level of discipline recommended by Sgt. Adams originally. Comm. Bennett's revision of the counseling letter consisted of a more thorough description in the "Statement of Facts" section and a rewording of the sentence describing the "Disposition." The Code Enforcement Officer who received this counseling letter was laid off in January 2009.

The record indicates that in his assignment as Sergeant-Accreditation/Code Enforcement Sgt. Adams has the authority to adjust the hours for his direct reports. When Sgt. Adams was a Patrol Sergeant, he noted problems in the evaluation system rather than issue discipline.

IV. DISCUSSION AND ANALYSIS

Pursuant to Sections 3(n) and 6 of the Act, employees who are supervisory employees are excluded from the protections of the Act. The party which seeks to exclude an individual from a proposed bargaining unit has the burden of proving that statutory exclusion. City of Washington v. Illinois Labor Relations Board, 383 Ill. App. 3d 1112, 1120, 891 N.E.2d 980, 24 PERI ¶76 (3rd Dist. 2008); County of Cook (Provident Hospital) v. Illinois Labor Relations Board, 369 Ill. App. 3d 112, 123, 859 N.E.2d 80, 22 PERI ¶163 (1st Dist. 2006); Chief Judge of the Circuit Court of Cook County and Illinois Fraternal Order of Police Labor Council, 193 PERI¶123 (IL LRB-SP 2003).

A. Supervisory Analysis

In relevant part, Section 3(r) of the Act defines a supervisory employee as follows:

> an employee whose principal work is substantially different from that of his or her 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, to adjust their grievances, or to effectively recommend any of these actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term 'supervisor' includes only those individuals who devote a preponderance of their employment time to exercising that authority.

Applying this definition, a peace officer will be deemed a supervisor within the meaning of the Act if he or she meets a three-part test: the alleged supervisor must 1) perform principal work substantially different from that of his subordinates; 2) exercise or recommend the exercise of one or more supervisory functions enumerated in Section 3(r) of the Act; and 3) consistently use independent judgment in the performance of those functions. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 6 PERI ¶4019 (1990). The petitioned for Sergeants may qualify as supervisory employees within the meaning of the Act even if they do not devote a preponderance of their employment time exercising supervisory authority. Id., at 512.

The parties stipulated that the principal work of the petitioned-for Sergeants is substantially different from that of their subordinates. It is the second and third prongs which are in dispute.

1. Supervisory Indicia and Independent Judgment

With regard to the second and third prongs of the Act's supervisory definition, it must be determined whether each of the alleged supervisors has the authority to perform any of the 11 supervisory functions enumerated in the Act or to effectively recommend the same. Moreover, the Employer must show that performance of those indicia involves the use of independent judgment in the interest of the employer, i.e. the choice between two or more significant courses of action rather than routine or clerical choices. Chief Judge of the Circuit Court of Cook County

v. AFSCME, Council 31, 153 Ill. 2d 508, 516, 607 N.E.2d 182, 9 PERI ¶4004 (1992); City of Freeport, 135 Ill. 2d at 520. Even the ability to effectively recommend one of the supervisory indicia is enough to support a finding of supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 516; Village of Hazel Crest, 385 Ill. App. 3d at 118 (1st Dist. 2008). A recommendation that is adopted by the alleged supervisor's superiors as a matter of course, absent any independent or de novo review, is an effective recommendation satisfying the Act's requirements for supervisory employee. City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290, 521 N.E.2d 108, 4 PERI ¶4008 (3d Dist. 1988); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub.order, 269 Ill. App. 3d 1148, 685 N.E.2d 462 (3d Dist. 1995); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999). However, "[r]eview 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 Illinois, Dep't of Cent. Mgmt. Services (Illinois Commerce Comm'n) v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766, 777, 943 N.E.2d 1146, 26 PERI ¶136 (4th Dist. 2010). The Appellate Court has explained that any recommendation involves some sort of review, and the extent of the review could indicate its effectiveness. Id.

B. Legal Effect of Prior ALJ Decision

I note that a Board Administrative Law Judge (ALJ) has found the predecessors to two of the Sergeants at issue to be supervisors within the meaning of the Act. Metropolitan Alliance of Police, Plainfield Sergeants, Chapter 94 and Village of Plainfield, 22 PERI ¶71 (IL LRB ALJ 1996). Under well-settled Board law, it is not appropriate to reconsider a prior decision binding upon the same parties unless there has been a substantive change in the relevant facts (i.e., a substantial change in the duties and functions of an existing title), or a significant change in the

controlling statutory or case law.[24] Metropolitan Alliance of Police v. Village of Woodridge, 362 Ill. App. 3d 469, 475, 839 N.E 2d 1073, 21 PERI ¶218 (2d Dist. 2005); Cook County Hospital Doctoral Staff/1199 Nat'l Union of Hospital and Health Care Employees and Cook County, Cook County Hospital, 4 PERI ¶3017 (Il LLRB 1988). However, in the instant case, the prior decision at issue was not binding on the Petitioner—Fraternal Order of Police Labor Council—one of the parties before me but not a party in the prior case. Thus, I am not bound to follow the ALJ's conclusions. See AFSCME, Council 31 and County of Cook, 27 PERI ¶58 (IL LRB-LP 2011) (Board not bound by the prior RDO of Board ALJ where petitioner was not a party to that prior RDO).

Further, the Petitioner has established substantive changes in Respondent's structure which warrant a reconsideration of the Sergeants' status as supervisors. Although a prior decision was issued in 1996 concerning the supervisory status of one of the Department's Patrol Sergeants and its Investigative Sergeant, the ALJ's conclusion that they were supervisors was based on their authority and its exercise in November 2002. However, the Petition giving rise to the instant dispute was filed in February 2009. During the more than six years that elapsed between these two filings, significant changes occurred to the Respondent's organization. In particular, in 2002 the Department included one Commander, one Deputy Chief, six Sergeants—

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[24] This principle not only applies to Board decisions but also to an Administrative Law Judge's Recommended Decision and Order (RDO) which becomes binding on the *parties* once the General Counsel issues such an order. For example, in 2004 the Board issued a decision finding that a petitioner had demonstrated a sufficient change in circumstances surrounding sergeants' employment to warrant a reexamination of their public employee status. Village of Woodridge and Metropolitan Alliance of Police, 20 PERI ¶125 (IL LRB-SP 2003). Previously in 1995, an ALJ issued an RDO based on a different petition seeking to represent the sergeants in the Village of Woodridge, but the ALJ dismissed the petition after concluding that the sergeants were supervisors within the meaning of the Act. Village of Woodridge and MAP, Case No. S-RC-95-081 (IL SLRB ALJ 1995). This non-precedential decision became final and binding on the parties upon the issuance of the General Counsel's order in 1995.

five Patrol Sergeants and one Investigative Sergeant. See Metropolitan Alliance of Police, Plainfield Sergeants, Chapter 94 and Village of Plainfield, 22 PERI ¶71 (IL LRB ALJ 1996). By contrast, in January 2009 there were three Commanders, no Deputy Chief, and the Sergeants included a Traffic Sergeant, an Administrative Sergeant, a Detectives Sergeant-SRO/DARE, and a Sergeant-Accreditation/Code Enforcement which had not existed in 2002. In light of these changes in the structure of the Department, the facts establishing the Sergeants' supervisory authority within the meaning of the Act must be re-examined.

Evidence concerning the affect of performance evaluations on the promotional opportunities of an officer who is a candidate for Sergeant reinforces the conclusion of changed circumstances warranting a reappraisal of the Sergeants' supervisory status. While in 2002 a maximum of 10 points could be awarded to a candidate for Sergeant based on that officer's performance evaluations, in 2009 25 percent of the officer's overall score for promotion was based on prior performance evaluations.

C. Petitioned-for Sergeants

1. Patrol Sergeants McQuaid, Mikos, Norton and Fisher

The evidence shows that Patrol Sgts. McQuaid, Mikos, Norton and Fisher are supervisory employees within the meaning of the Act. Each satisfies the second and third prongs of the three part test for supervisory employee. In particular, they have the supervisory authority to discipline, promote, reward and direct their subordinates, or to recommend these actions, and have exercised such authority while consistently using independent judgment in the interest of the employer.

The record establishes that Patrol Sergeants have the authority to discipline and have exercised that authority with the consistent use of independent judgment in the interest of the

employer. General Order 08-313, Section 313.12 outlines that disciplinary authority, starting with documentation of minor infractions in the Department's Evaluation System, then documentation of oral reprimands, progressing to issuance of counseling letters, written reprimands, and finally written recommendations for more severe penalties. It is well-settled that counseling letters and verbal reprimands constitute disciplinary authority within the meaning of the Act when three criteria are met: 1) engaging in this activity requires an individual to use independent judgment; 2) the action is documented; and 3) the counseling letters or verbal reprimands can serve as the basis for future discipline. See e.g., Village of Hinsdale and Fraternal Order of Police Labor Council, 22 PERI ¶176 (IL LRB-SP, 2006). The record demonstrates that Patrol Sgt. Norton exercised this very authority in February 2009 when she issued a counseling letter to a subordinate.

While it was the Accident Review Board determined that an officer was at fault in an accident, the record shows that Patrol Sgt. Norton determined the level of discipline imposed for that fault. That is, there is no evidence in the record establishing that the Accident Review Board's finding of fault automatically results in a certain level of discipline. See City of Sandwich v. ILRB, 26 PERI 148 (2d Dist. 2011) (where sergeants investigate, report and recommend discipline but do not actually impose it, sergeants exercise disciplinary authority within meaning of Act); Village of Woodridge and Metropolitan Alliance of Police, Woodridge Police Sergeants, Chapter #132, 20 PERI ¶125 (IL LRB-SP 2004) (sergeants are supervisory where they have discretion to decide whether to counsel or orally reprimand an officer for rule violation).

The record shows that such a counseling letter is maintained in the officer's personnel file where it can form the basis of future disciplinary action. See Village of Hinsdale, 22 PERI ¶176.

At the same time, the record fails to show that the Patrol Sergeants are required to consult their superiors before issuing a counseling letter. See Town of Cicero v. ILRB, 25 PERI ¶150 (1st Dist. 2009) (factor in conclusion that lieutenants are supervisors is lack of evidence that they are told must consult with superiors before issuing discipline). Under these circumstances, the Patrol Sergeants have supervisory authority to discipline within the meaning of the Act.

In reaching the conclusion the Patrol Sergeants have the authority to discipline and do so while consistently using independent judgment in the interest of the employer, I rely on both the Employer exhibits which assert that the Sergeants have supervisory authority and evidence that they have exercised that authority. Specifically, Department Directive 02-007 and Department General Order 08-313 authorize any Sergeant, regardless of assignment, to issue discipline up to and including written reprimands, and to recommend more severe discipline. The Employer has shown that in February 2009 a Patrol Sergeant exercised this authority. It is this authority, coupled with the example of a Patrol Sergeant's exercise of it, on which I rely.

While I have not relied on ALJ Kazanjian's Recommended Decision and Order which analyzed the issue of supervisory status as the Department existed in 2002, I note that this determination that Patrol Sergeants have exercised supervisory authority to discipline based on the Petition filed in February 2009 is consistent with the prior ruling when Sergeants had *less* authority to discipline. Specifically, ALJ Kanzanjian's previous RDO refers to Sgts. Altenhoff and Sacco having the authority to recommend written reprimands to the Chief of Police. However, the record in the instant case establishes that the Sergeants—regardless of assignment—have the authority to issue reprimands.

A review of Administrative Sgt. Anderson's actions as Acting Patrol Sergeant demonstrates additional exercise of this supervisory authority to discipline. The record

establishes that on one occasion Sgt. Anderson served as an Acting Patrol Sergeant when he had signed up for an overtime shift. Specifically, Acting Patrol Sgt. Anderson conducted an internal investigation of a complaint against an officer, and wrote a memorandum in which he recommended that the complaint was unfounded. Such a recommendation demonstrates Acting Patrol Sgt. Anderson's exercise of disciplinary authority within the meaning of the Act. See City of Sandwich v. ILRB, 406 Ill. App. 3d 1006, 1012-13, 942 N.E.2d 675, 26 PERI ¶148 (2d Dist. 2011) (where sergeants investigate, report and recommend discipline but do not actually impose it, sergeants exercise disciplinary authority within meaning of Act).

Additionally, the memorandum which Det. Sgt. Novak wrote to an officer while a Patrol Sergeant in March 2008 underscores the Patrol Sergeants' exercise of disciplinary authority within the meaning of the Act. The evidence demonstrates that Comm. Ruggles relied on him while a Patrol Sergeant to conduct an investigation of a racial profiling allegation and make a recommendation concerning the resolution of a complaint made against an officer. Novak thus exercised disciplinary authority, with the requisite independent judgment in the interest of the employer, within the meaning of the Act. Id.

The record also shows the Patrol Sergeants have the authority to make notes of misconduct in the Department's evaluation system and have exercised this authority. In particular, Patrol Sgt. McQuaid acknowledged that he made notes in the Department's evaluation system regarding officers who were late to their shift. In doing so, he had to choose between two or more courses of action such as issuing a counseling letter or ignoring the tardiness altogether. Consequently, Patrol Sgt. McQuaid used independent judgment in deciding to document the tardiness in the Department's evaluation system. See Chief Judge of the Circuit Court of Cook County v. AFSCME, Council 31, 153 Ill. 2d at 516; City of Freeport, 135 Ill. 2d at 520.

However, Patrol Sgt. McQuaid maintains that making such notes in the Department's evaluation system is not discipline. Although General Order 08-313 suggests that it is, I find the Employer did not establish that such notes form the basis of future discipline, and, consequently, I conclude that making these notes is not exercising disciplinary authority within the meaning of the Act. See Village of Hinsdale, 22 PERI ¶176 (actions must be documented and form the basis of future discipline in order to constitute disciplinary authority within meaning of Act).

Additionally, the record demonstrates that the Patrol Sergeants have the authority to recommend promotion which they consistently exercise with independent judgment by completing annual performance evaluations for the officers in their respective teams. Substantial parts of these performance evaluations require the Patrol Sergeant to make subjective determinations concerning the performance of an officer. Superiors to the Patrol Sergeants do not instruct them about the number of points to award an officer, and do not modify the performance evaluations once completed. When an officer applies for a promotion to Sergeant, the Commission calculates 25 percent of the candidate's score for promotion from the average score of three successive years of performance evaluations. The Patrol Sergeant's completion of performance evaluations thus constitutes effective recommendation for promotion.[25] See Village of Romeoville, 12 PERI ¶2022 (IL SLRB ALJ 1996) (alleged supervisors exercise supervisory authority when they recommend how to use five chief's points in promotion process). The Board's decision in State of Illinois (Dep't of Cent. Mgmt. Services), 12 PERI ¶2032 (IL SLRB 1996), supports this conclusion. In that case, the Board held that the lieutenants' responsibility to complete the officers' performance evaluations was indicative of supervisory authority within

[25] The record establishes that when Sgt. Anderson was a Patrol Sergeant he had and exercised this same authority within the meaning of the Act.

the meaning of the Act where a poor performance evaluation can prevent an officer from receiving a promotion.

As the Illinois Appellate Court for the 4th District indicated in 2010, the litmus test for effective recommendation as that term is used in the Act is the influence of the recommendations. State of Illinois, Dep't of CMS (Illinois Commerce Comm'n) v. Ill. Labor Relations Bd., 406 Ill. App. 3d at 777. Here, where the performance evaluations for three successive years constitute 25 percent of a candidate's score for promotion, the Patrol Sergeants' make effective recommendations by completing them. A record which shows a difference of less than two points separating the final score for promotion of the officer listed third on the eligibility list who was promoted and that of the officer listed fourth who was not emphasizes the influence of the Sergeants' authority.

The evidence that officers have filed grievances to challenge their performance evaluations reinforces my conclusion that the Patrol Sergeants' responsibility to complete performance evaluations indicates supervisory authority within the meaning of the Act. The record includes two occasions where officers have sought to change their respective performance evaluations. In one of these instances, the officer wrote a memorandum explicitly stating that the Patrol Sergeant gave him a lower score in an attempt to limit his promotional opportunities. Clearly it was that officer's impression that performance evaluations have a direct impact on promotions.

The Petitioner was unable to rebut the Employer's evidence establishing the Patrol Sergeants' supervisory authority to recommend promotion. The record contains evidence that at the time of the hearing in 2010 Det. Sgt. Novak submitted two FOIA requests, one to the Department and the other to the Commission, in order to obtain the 48 performance evaluations

that should have been used in the 2007 promotion process. In response to those FOIA requests, the Department provided the 16 or 17 performance evaluations that it had, while the Commission refused to provide any.

These facts simply fail to support the inference which the Petitioner wants me to make: that whatever performance evaluation scores the Department provided to the Commission for the 2007 promotion process were not created by the Sergeants. I will not make such an inference based on the inability or unwillingness of the Department and/or Commission to produce in April/May 2010 all of the evaluations that should have been used in a promotion process which took place *about three years* earlier from March through May 2007.

Further, the record establishes that the Patrol Sergeants have the authority to effectively recommend a reward for their subordinates and have exercised this authority with the consistent use of independent judgment by selecting the OIC. In particular, the facts show a Patrol Sergeant recommends to Comm. Ruggles that an officer serve as OIC, and that he, in turn, adopts that recommendation without independent or de novo review.[26] See City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290, 521 N.E.2d 108, 4 PERI ¶4008 (3d Dist. 1988); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub.order, 269 Ill. App. 3d 1148, 685 N.E.2d 462 (3d Dist. 1995); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999). Appointment to a position as OIC constitutes a "reward" within the meaning of the Act since the officer serving as OIC receives an additional $2.00 per hour. See Illinois Fraternal Order of Police Labor Council, Lodge No. 54 and City of Elgin, 9 PERI 2005 (IL SLRB 1991) (holding that Sergeants possess supervisory

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[26] The record shows that when Administrative Sgt. Anderson was a Patrol Sergeant prior to October 2007, he, too, exercised this supervisory authority.

authority to reward patrol officers by making effective recommendation for appointments to senior patrol officers receiving a four percent increase over their regular salary).

While the record shows that Comm. Ruggles has asked a Patrol Sergeant questions concerning why he/she made a certain recommendation for OIC, such questions do not indicate that a recommendation is ineffective or lacks independent judgment. See State of Illinois, Dep't of Cent. Mgmt. Services (Dep't of Human Services), 27 PERI ¶71 n. 5 (IL LRB-SP 2011) (Board rejects ALJ's conclusion that, as a matter of law, any consultation with a superior defeats independent judgment necessary for finding supervisor; instead, the nature of that consultation must be examined, and requires a case-by-case analysis; Board concludes that where superior does not countermand alleged supervisor's recommendation for training, that recommendation is supervisory). Further, Patrol Sgt. McQuaid's conclusory testimony that selection of an OIC is a group decision made by a Patrol Sergeant and Comm. Ruggles is insufficient to rebut this evidence of a Patrol Sergeant's exercise of supervisory authority. The Employer provided evidence that Comm. Ruggles had never countermanded a Patrol Sergeant's recommendation for OIC, nor told a Patrol Sergeant whom to recommend for that position. Further, the record establishes that neither the Agreement nor any directive determines whom to recommend to serve as OIC.

The evidence also demonstrates that the Patrol Sergeants perform several functions which constitute "direction" and have done so with the consistent use of independent judgment. Specifically, the record shows that the Patrol Sergeants' monitoring of calls and reassigning them is a duty they perform while consistently using independent judgment in the interest of the employer. Comm. Ruggles testified to this ongoing process of listening to calls and redirecting them in which he engaged as a Patrol Sergeant. Comm. Ruggles pointed out that this process

was the same for the Patrol Sergeants serving under him. The Petitioner's evidence, through the testimony of Patrol Sgt. McQuaid, confirmed Comm. Ruggles' testimony that a Patrol Sergeant performs this task with the consistent use of independent judgment. That is, Patrol Sgt. McQuaid testified that he can countermand an officer's decision to handle a call, and he is responsible for terminating a pursuit if he deems it too dangerous to continue.

Another example of the Patrol Sergeants' authority to direct while consistently using independent judgment is their assignment of overtime to Patrol Officers for holdover or call-in situations. While the record shows that they have limited discretion to authorize overtime when certain events occur late in the shift, such as an arrest for DUI or a crash, they nevertheless have to consistently use independent judgment in determining the length of time for that overtime or the number of officers needed. The existence of a minimum manning requirement for the Patrol Units does not mean that a Patrol Sergeants' approval/denial of overtime is without independent judgment. See Illinois Fraternal Order of Police Labor Council and County of McHenry, 11 PERI ¶2010 (IL SLRB 1994) (alleged supervisor uses independent judgment in approving leave requests when approvals result in staffing levels falling below contract's minimum requirement); Metropolitan Alliance of Police, Crest Hill, Sergeants Chapter No. 142 and City of Crest Hill, 11 PERI ¶2006 (IL SLRB ALJ 1994) (although chief establishes minimum staffing levels, sergeant still uses independent judgment where he has authority to call in more officers than minimum manning requires). In particular, the record establishes that the Patrol Sergeant may consider factors in addition to minimum staffing such as the specialized skills of an officer or a deadline that must be met.

This conclusion that the Patrol Sergeants consistently use independent judgment in resolving overtime matters is reinforced by the facts which show that the Patrol Sergeant denies

overtime as well as authorizes it. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB SP 2003) (holding that approval of *all* time off requests is evidence of a routine, ministerial function). The record shows that as a Patrol Sergeant, Comm. Ruggles denied overtime for writing reports if the report did not need to be completed to meet a deadline. In addition, Patrol Sgt. McQuaid acknowledged that he has the authority to deny an officer's overtime request if he considers the overtime "needless," i.e., that it does not serve a Department objective.

Further, Administrative Sgt. Anderson's testimony that as a Patrol Sergeant he was disciplined, i.e., held accountable, for approving the payment of overtime without having conducted a sufficient investigation reinforces the conclusion that the Patrol Sergeants' assignment of overtime is evidence that they are supervisors within the meaning of the Act. cf. Metropolitan Alliance of Police, Sergeants Chapter No. 435 and Village of Morton Grove, 23 PERI 72 (IL LRB-SP 2007) (holding Sergeants fail to meet statutory definition of supervisor where not held accountable for subordinates' performance); Metropolitan Alliance of Police, Chapter No. 4 and Village of Bolingbrook, (IL LRB-SP 2003) (holding that sergeants and lieutenants lack supervisory authority where they are not held accountable for overseeing subordinates).

Similarly, the record demonstrates that the Patrol Sergeants exercise authority to direct when they review the incident reports of their subordinates. In reviewing incident reports for completeness, such as the elements of a crime, collection of evidence and the interviewing of witnesses, they are exercising independent judgment. See Illinois Fraternal Order of Police Labor Council and City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011), aff'd by unpub.order, 2012 IL App (1st) 111692-U (holding that sergeants use independent judgment where their corrections of officers' work is substantive instead of limited to fixing typos or filling in blanks). This

conclusion is consistent with the evidence that the Patrol Sergeants, not the OICs, can review officers' incident reports.

However, the Patrol Sergeants' function of approving time off requests does not establish authority to direct while consistently using independent judgment in the interest of the employer. Specifically, the Patrol Sergeants' approval of *all* time off requests is evidence of a routine, ministerial task. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003) (holding that approval of *all* time off requests is evidence of a routine, ministerial function). The record contains no evidence that the Patrol Sergeants have denied a time off request.

Even those functions requiring the consistent use of independent judgment do not constitute supervisory direction within the meaning of the Act unless the direction of subordinates also significantly affects the terms and condition of their employment such as when it is accompanied by the authority to discipline, hire, promote or discharge. See e.g., Village of Bellwood and Metropolitan Alliance of Police, Bellwood Command Chapter No. 339, 19 PERI ¶106 (IL LRB-SP 2003); City of Naperville and SEIU, Local No. 1, 8 PERI ¶2016 (IL SLRB 1992). In this case, where the record establishes that the Patrol Sergeants approve/deny overtime, discipline and promote their subordinates, the authority to direct is supervisory within the meaning of the Act.

Because Patrol Sgts. McQuaid, Mikos, Norton and Fisher exercise the authority to discipline, promote, reward and direct their subordinates with the consistent use of independent judgment, I conclude that each is a supervisory employee within the meaning of the Act.

2. Traffic Sergeant Munson

The record demonstrates that Traffic Sgt. Munson is a supervisory employee within the meaning of the Act. He has the supervisory authority to discipline, to promote and to direct his subordinates and exercises that authority while consistently using independent judgment.

The evidence demonstrates that Traffic Sgt. Munson has the authority to discipline and has exercised that authority with the consistent use of independent judgment. Specifically, in June 2009 he issued a counseling letter to a member of the Traffic Unit. In issuing that discipline, Traffic Sgt. Munson had to make a determination that an infraction took place, and then he had to decide what level of discipline, if any, to issue. Given these facts, coupled with the fact that the counseling letter is placed in the officer's personnel file so that it can be considered in the event of future discipline, Traffic Sgt. Munson has exercised supervisory authority to discipline with the consistent use of independent judgment. See e.g., Village of Hinsdale and Fraternal Order of Police Labor Council, 22 PERI ¶ 176 (IL LRB-SP 2006). The unrefuted testimony of Comm. Ruggles established that prior to the filing of the Petition on February 27, 2009, Traffic Sgt. Munson had the same authority to issue that counseling letter. Consequently, it is irrelevant that Traffic Sgt. Munson issued this counseling letter about a month and a half after the Petition was filed.

However, Traffic Sgt. Munson's approach to tardiness among the officers in his Unit—making the officer stay late that day or another within the same pay period—does not constitute discipline within the meaning of the Act. While Traffic Sgt. Munson used independent judgment in devising this method, there is no evidence that his actions are documented and form the basis of future discipline. Id.

The record also establishes that Traffic Sgt. Munson has exercised the supervisory authority to recommend promotion of the officers in his Unit by completing their performance evaluations. The evidence shows that this function requires that he use independent judgment in rating an officer's performance. Traffic Sgt. Munson's superiors do not instruct him about how to complete the evaluations, or alter them once he has done so. The scores that he gives the officer can constitute 25 percent of the Commission's score for promotion. In this way, Traffic Sgt. Munson's completion of performance evaluations for members of his Unit is an effective recommendation for promotion. See Village of Romeoville, 12 PERI ¶2022 (IL SLRB ALJ 1996) (alleged supervisors exercise supervisory authority when they recommend how to use five chief's points in promotion process); State of Illinois (Dep't of Cent. Mgmt. Services), 12 PERI ¶2032 (IL SLRB 1996) (Board held that the lieutenants' completion of officers' performance evaluations was indicative of supervisory authority within the meaning of the Act where a poor performance evaluation can prevent an officer from receiving a promotion). The grievances discussed supra at pp. 8-9 reinforce this conclusion that the Traffic Sergeant's completion of performance evaluations is an effective recommendation of promotion within the meaning of the Act.

The record demonstrates that Traffic Sgt. Munson performs a number of duties which fall within "direction." The evidence shows that he decided that the shift length of the officers in the Unit would be determined based on a consensus of those officers and himself. Consequently, Sgt. Munson and the officers agreed that the two officers dedicated solely to traffic would work 10-hour shifts, and those who split their time between park patrol and traffic duties would work 12-hour shifts. Sgt. Munson could have chosen another method of selecting the shift length. For example, he could have decided himself what the length of the shift would be and told his

subordinates what the shift length was. Or Traffic Sgt. Munson could have decided that all four officers would have the same shift length. In thus choosing between two or more significant courses of action, Traffic Sgt. Munson used independent judgment. Chief Judge of the Circuit Court of Cook County, 153 Ill 2d at 516; City of Freeport, 135 Ill. 2d at 520. The existing Agreement limited those choices, but it did not eliminate them. See County of Cook and Sheriff of Cook County (Dep't of Corrections) and Illinois Fraternal Order of Police Labor Council, 15 PERI ¶3022 (IL SLRB 1999) (despite comprehensive rules and procedures governing situations which may arise in facility, corrections employees are not automatons following regulations with no exercise of personal judgment).

The evidence also establishes that Traffic Sgt. Munson exercises his authority to direct with independent judgment when he instructs all Department members how to address various traffic situations. In one memorandum sent to "[a]ll [p]olice [r]ecipients," he states, in his judgment, what information needs to be provided in a crash report. Another memorandum which Traffic Sgt. Munson wrote to all Department members advising them of a call-out list for Traffic Investigators that he created similarly reflects his independent judgment. The Petitioner introduced no evidence that Traffic Sgt. Munson's superiors told him how such a call-in system would work. Cf. Village of Streamwood and Metropolitan Alliance of Police, Streamwood Sergeants Chapter, #217, 26 PERI ¶134 (IL LRB-SP 2010) (where sergeants' superiors instructed them to take certain action, sergeants lacked independent judgment); AFSCME, Council 31 and City of Chicago, 9 PERI ¶3012 (IL SLRB ALJ 1993) (where alleged supervisor's instructions were not the result of guidance from upper management, she used independent judgment).

The record also demonstrates that Traffic Sgt. Munson directs officers with the consistent use of independent judgment when he approves/denies their overtime. His testimony provides evidence of the numerous factors he needs to consider when confronted with a crash that may require overtime. These factors include the number of officers and the length of overtime. In addition, the record indicates that Traffic Sgt. Munson bears in mind an officer's level of training in determining whom to call in. See City of Washington and Policemen's Benevolent Labor Committee, 27 PERI ¶3 (IL LRB-SP 2011) (alleged supervisors' approval of overtime where no minimum staffing requirements shows their independent judgment in directing employees).

While several of Traffic Sergeant Munson's duties establishes direction of officers while using independent judgment, he does not exercise such authority when changing officers' schedules to meet particular needs. For example, the evidence shows that he may make schedule adjustments in order to obtain personnel for a roadside safety check. In making such a schedule change, Traffic Sgt. Munson is not choosing between two or more *significant* courses of action. See Chief Judge of the Circuit Court of Cook County, 153 Ill 2d at 516; City of Freeport, 135 Ill. 2d at 520.

Similarly, Traffic Sgt. Munson does not direct the officers in the Traffic Unit when he approves their leave requests. In particular, the evidence fails to show that he denies any leave requests. He testified, without rebuttal, that as long as leave requests comply with the Agreement's notice requirements, he approves them. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003) (holding that approval of *all* time off requests is evidence of a routine, ministerial function).

Traffic Sgt. Munson's direction of officers with independent judgment only rises to supervisory direction within the meaning of the Act when the direction of subordinates also

significantly affects the terms and condition of their employment such as when it is accompanied by the authority to discipline, hire, promote or discharge. See e.g., Village of Bellwood and Metropolitan Alliance of Police, Bellwood Command Chapter No. 339, 19 PERI ¶106 (IL LRB-SP 2003); City of Naperville and SEIU, Local No. 1, 8 PERI ¶2016 (IL SLRB 1992). Because the record establishes that Traffic Sgt. Munson approves/denies overtime, disciplines and promotes his subordinates, his authority to direct is supervisory within the meaning of the Act.

Because Traffic Sgt. Munson has exercised the authority to discipline, promote and direct his subordinates with the consistent use of independent judgment, I conclude that he is a supervisory employee within the meaning of the Act.

3. Administrative Sergeant Anderson

The evidence shows that Administrative Sgt. Anderson is a supervisory employee within the meaning of the Act. In particular, the record establishes that he has disciplinary authority which requires the consistent use of independent judgment.

This conclusion is supported by a record that demonstrates that Sgt. Anderson still retains the same authority to discipline that he had as a Patrol Sergeant. In addition to the language of Department Directive 02-007 and General Order 08-313 which provide that Sergeants have disciplinary authority, Sgt. Anderson acknowledged that he had this same authority as an Administrative Sergeant. The plain language of those documents does not only apply to Patrol Sergeants, but rather to *all* Department Sergeants regardless of assignment. Although the record does not show that Sgt. Anderson has exercised this authority to discipline, he acknowledged having it. Further, Sgt. Anderson has daily contact with subordinate Police Officers who are subject to his disciplinary authority.

I have not based this finding on the investigatory recommendation which Sgt. Anderson made to Comm. Ruggles *as an Acting Patrol Sergeant.* The record establishes that when the recommendation was made, Sgt. Anderson was serving as Acting Patrol Sergeant during an overtime shift, not during his regular shift as Administrative Sergeant.

Nor have I based my finding of disciplinary authority with the requisite use of independent judgment on Sgt. Andersons' investigation of complaints against officers. The record does not establish that Sgt. Anderson makes a recommendation to Comm. Ruggles when performing this function.

Similarly, Administrative Sgt. Anderson has not demonstrated the supervisory authority to promote or to reward. In particular, the record shows that he completed evaluations and selected an OIC *as a Patrol Sergeant*, not during his tenure as Administrative Sergeant.

Further, Administrative Sgt. Anderson has not directed the Department's officers in scheduling them for training classes. While he spends time reserving slots for officers in the training classes which regional organizations make available, this action does not require him to consistently use independent judgment within the meaning of the Act.

Nor does the record show that in directing the Department's officers as firearms instructor Administrative Sergeant Anderson consistently uses independent judgment. The evidence demonstrates that he prepares a lesson plan when he instructs a class, but the record reveals nothing more. While the record establishes that Administrative Sgt. Anderson decides if an officer passes the firearms training, it does not indicate how he makes that determination. In addition, the evidence does not demonstrate that Administrative Sgt. Anderson has recommended or engaged in remedial firearms training of an officer in lieu of discipline. See AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Services, 28 PERI ¶160 (IL

LRB-SP 2012) (where record does not show that alleged supervisors recommend training to correct deficiencies in lieu of discipline, they lack independent judgment to direct).

Even if the facts sufficiently establish that Administrative Sgt. Anderson has to consistently use independent judgment in serving as the firearms trainer, the record does not sufficiently demonstrate how passing the firearms training affects the terms and conditions of an officer's employment. See e.g., Village of Bellwood and Metropolitan Alliance of Police, Bellwood Command Chapter No. 339, 19 PERI ¶106 (IL LRB-SP 2003); City of Naperville and SEIU, Local No. 1, 8 PERI ¶2016 (IL SLRB 1992). The record reveals only that the officers are required to pass the firearms training. It does not indicate the consequences of failing to pass the firearms training.

The evidence is also insufficient to conclude that during the two instances Administrative Sgt. Anderson served as Acting Patrol Commander in 2008 he directed subordinate Patrol Sergeants, OICs or Police Officers while consistently using independent judgment. Although the memoranda that Comm. Ruggles wrote on each occasion provided that Administrative Sgt. Anderson might have to engage in direction of such subordinates, the record does not establish that he did so. In particular, Administrative Sergeant Anderson pointed out that not all the duties outlined in Comm. Ruggles' memoranda came to fruition.

Because I find that Administrative Sgt. Anderson has disciplinary authority which consistently requires the use of independent judgment, I conclude that he is a supervisory employee within the meaning of the Act.

4. Detective Sergeant-Criminal Investigations Kivisto

The evidence establishes that Det. Sgt.-Criminal Investigations Kivisto is a supervisory employee within the meaning of the Act. The record shows that he has the authority to

recommend promotion and to direct the detectives in the Investigations Unit, and exercises this authority while consistently using independent judgment.

The evidence establishes that Det. Sgt. Kivisto has exercised the supervisory authority to recommend promotion of the detectives in the Investigations Unit by completing their performance evaluations. His consistent use of independent judgment in the interest of the employer is an intrinsic element of this predominantly subjective task. The scores that Det. Sgt. Kivisto gives to his subordinates are not modified pursuant to the wishes of his superiors. Instead, he independently assesses the work performance of each his detectives, and his ratings may count as 25 percent of that candidate's score for promotion. Det. Sgt. Kivisto thus effectively recommends promotion of these subordinates by annually completing their performance evaluations. See Village of Romeoville, 12 PERI ¶2022 (alleged supervisors exercise supervisory authority when they recommend how to use five chief's points in promotion process); State of Illinois (Dep't of Cent. Mgmt. Services), 12 PERI ¶2032 (Board held that the lieutenants' completion of officers' performance evaluations was indicative of supervisory authority within the meaning of the Act where a poor performance evaluation can prevent an officer from receiving a promotion).

The record demonstrates that Det. Sgt. Kivisto engages in several functions which constitute direction and he does so while consistently using independent judgment in the interest of the employer. He uses his judgment in determining how to select a method for on-call status among the detectives. In response to Comm. Greco's instructions that Det. Sgt. Kvisto have a detectives on-call during certain hours of each day, he opted to allow the Investigators to decide how they wanted to meet the on-call requirement. The Agreement does not determine the on-call system to be used in the Investigations Unit. Rather than dictating to his four detectives what

system the Investigations Unit would employ, Det. Sgt. Kivisto chose to permit then to decide with him. He thus used his independent judgment in the interest of the employer. See Chief Judge of the Circuit Court of Cook County, 153 Ill 2d at 516; City of Freeport, 135 Ill. 2d at 520

While Det. Sgt. Kivisto and the Investigations Unit decided on a rotation system that places each detective on-call for seven days each month, Det. Sgt. Kivisto still consistently uses independent judgment when he determines if more than one person must be called out, and if so, who the additional detective is. During redirect examination, Det. Sgt. Kivisto testified that he relies on his own judgment of the investigators' abilities in deciding whom to call out in such a situation. It was only when responding to a leading question from the Petitioner's attorney that Det. Sgt. Kivisto stated that he relies on his own experience, training and knowledge. His response to such a leading question is not persuasive. See Ruiz and City of Chicago, 366 Ill. App. 3d 947, 954, 852 N. E. 2d 424 (4th Dist. 2006) (Appellate Court affirmed trial court's decision that plaintiff's alleged expert was not competent as an expert where he only testified to local standard of care in response to leading questions and admitted that he did not know the local standard of care).

Although Det. Sgt. Kivisto initially stated under oath that the four detectives are fairly equal regarding their expertise, with the exception of the one knowledgeable about financial crimes, he soon modified his testimony by stating that "[e]verybody has their strengths and weaknesses and brings different things to the table." Based on this record which establishes distinctions among the Investigator' abilities, Det. Sgt. Kivisto consistently uses independent judgment in the interest of the employer when he decides to call in more than the one Investigator. Further, Det. Sgt. Kivisto's decision to call in a detective to work results in him/her receiving overtime pay. It thus affects the terms and conditions of that person's employment.

See e.g., Village of Bellwood and Metropolitan Alliance of Police, Bellwood Command Chapter No. 339, 19 PERI ¶106 (IL LRB-SP 2003); City of Naperville and SEIU, Local No. 1, 8 PERI ¶2016 (IL SLRB 1992).

In addition, the record demonstrates that Det. Sgt. Kivisto directs the Investigations Unit with the consistent use of independent judgment in the interest of the employer when he assigns cases to the Detectives. See e.g., Illinois Fraternal Order of Police Labor Council and City of Carbondale, 27 PERI ¶68 (IL LRB SP 2011) (investigative sergeants consistently use independent judgment in assigning cases to detectives where they consider the type of crime at issue and the officer's level of expertise); AFSCME, Council 31 and Chief Judge of the Circuit Court of Cook County, 26 PERI ¶117 n. 1 (IL LRB-SP 2010 (alleged supervisor uses independent judgment in assigning duties to subordinates when he/she considers the nature of the tasks to be performed and the subordinates' relative levels of skill and experience). The record establishes that Sgt. Kivisto considers factors such as the detectives' expertise, length of experience and availability when he assigns new cases to them.

Further, the evidence shows that Sgt. Kivisto monitors and oversees the Investigations Unit as the detectives complete the cases assigned to them. This function is not routine or clerical but consistently requires independent judgment in the interest of the employer. See, AFSCME, Council 31 and State of Illinois Dep't of Cent. Mgmt. Services (Dep't of Employment Security), 11 PERI ¶2021 (IL SLRB 1995) (alleged supervisors direct subordinates with independent judgment where they provide guidance and instruction to them). The unrebutted evidence establishes that he alone is responsible for running the shift, including making sure the detectives appear for work on time, ensuring they are dressed properly, and investigating any complaints against them. This activity contributes to my conclusion that Det. Sgt. Kivisto directs

the detectives in the Investigations Unit with the consistent use of independent judgment in the interest of the employer. See Cook County and Cook County Sheriff, 15 PERI 3022 (IL SLRB 199).

Similarly, Det. Sgt. Kivisto's review of the detectives' reports, and his ability to return them to address a substantive area reflects direction with independent judgment. See Illinois Fraternal Order of Police Labor Council and City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011), aff'd by unpub.order, 2012 IL App (1st) 111692-U (holding that sergeants use independent judgment where their corrections of officers' work is substantive instead of limited to fixing typos or filling in blanks).

By contrast, the record does not demonstrate that Det. Sgt. Kivisto directs his subordinates while consistently using independent judgment in the interest of the employer by making schedule changes for his subordinates. See Chief Judge of the Circuit Court of Cook County, 153 Ill 2d at 516; City of Freeport, 135 Ill. 2d at 520. Nor does he engage in such supervisory activity by approving leave requests. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003) (holding that approval of *all* time off requests is evidence of a routine, ministerial function).

Similarly, Det. Sgt. Kivisto lacks the supervisory authority to discipline his subordinates where the record establishes that he has not exercised this authority since becoming Detective Sergeant-Criminal Investigations in January 2005. While it is possible to exercise disciplinary authority without issuing discipline, this record contains no evidence that Det. Sgt. Kiviso ever considered issuing discipline but decided against it.

Because Det. Sgt. Kivisto exercises his authority to recommend promotion and direct with the consistent use of independent judgment, I conclude that he is a supervisory employee within the meaning of the Act.

5. Detective Sergeant-School Resources Officer/DARE Novak

The record demonstrates that Det. Sgt. School Resource Officer/DARE Novak is a supervisory employee within the meaning of the Act. In this assignment Det. Sgt. Novak has exercised the authority to promote and direct his subordinates while using independent judgment.

The evidence establishes that Det. Sgt. Novak recommends promotion with the consistent use of independent judgment when he completes performance evaluations for the subordinates on his team of six detectives. While the record does not contain performance evaluations which he completed as the Detective-Sergeant-SRO/DARE, Det. Sgt. Novak confirmed that he performed this function. Further, many of the assessments which he makes in completing this task require him to use independent judgment. The evidence indicates that the Commission calculates 25 percent of a candidate's score from the average of three successive performance evaluations. Det. Sgt. Novak's completion of performance evaluations thus constitutes effective recommendation of promotion. See Village of Romeoville, 12 PERI ¶2022 (alleged supervisors exercise supervisory authority when they recommend how to use five chief's points in promotion process); State of Illinois (Dep't of Cent. Mgmt. Services), 12 PERI ¶2032 (Board held that the lieutenants' completion of officers' performance evaluations was indicative of supervisory authority within the meaning of the Act where a poor performance evaluation can prevent an officer from receiving a promotion).

The record establishes Det. Sgt. Novak also directs his subordinates while consistently using independent judgment when he approves/denies overtime for call-in and holdover

situations. The record demonstrates that in 2008 Det. Sgt. Novak approved call-in/holdover overtime totaling $3,515.11. Det. Sgt. Novak's consistent use of independent judgment is further emphasized here where the facts show that Comm. Greco does not have a role in the day-to-day assignment of overtime. Det. Sgt. Novak's ability to suggest that a detective use flex-time in lieu of overtime again highlights his use of independent judgment. His consistent use of independent judgment is further reinforced in the SRO/DARE unit where no minimum manning requirement dictates his approval of overtime.

The evidence again demonstrates Det. Sgt. Novak's direction of his subordinates with the consistent use of independent judgment in the interest of the employer when he assigns cases to them. This conclusion is based on those cases involving a juvenile outside the Plainfield School District. In such an instance, Det. Sgt. Novak cannot assign the case by rote to the detective who works at the juvenile's school but instead considers which of his subordinates has the knowledge and skills to address the particular issues presented. See e.g., Illinois Fraternal Order of Police Labor Council and City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011) (investigative sergeants consistently use independent judgment in assigning cases to detectives where they consider the type of crime at issue and the officer's level of expertise); AFSCME, Council 31 and Chief Judge of the Circuit Court of Cook County, 26 PERI ¶117 n. 1 (IL LRB-SP 2010) (alleged supervisor uses independent judgment in assigning duties to subordinates when he/she considers the nature of the tasks to be performed and the subordinates' relative levels of skill and experience).

Although the record includes an employee leave request form which Det. Sgt. Novak approved in 2008, his role in that approval is not supervisory within the meaning of the Act since the record fails to show that this function requires the consistent use of independent judgment in

the interest of the employer. In particular, the evidence demonstrates that Det. Sgt. Novak approves *all* employee leave requests which meet the notice requirement. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003) (holding that approval of *all* time off requests is evidence of a routine, ministerial function).

Similarly, the evidence does not establish that Det. Sgt. Novak has supervisory authority to discipline his subordinates within the meaning of the Act. In particular, the record does not show that he has ever exercised this authority as a Detective Sergeant-SRO/DARE. For example, the record does not include any instances when he contemplates issuing discipline but decides against it.

Because Det. Sgt. Novak exercises the authority to promote and direct his subordinates with the consistent use of independent judgment, I conclude that he is a supervisory employee within the meaning of the Act.

6. Sergeant-Accreditation/Code Enforcement Adams

The record establishes that Sgt.-Accreditation/Code Enforcement Adams is a supervisory employee within the meaning of the Act. The evidence indicates that he has exercised the authority to discipline, and has done so with the consistent use of independent judgment.

After investigating a complaint made against a Code Enforcement Officer and reporting his findings that she did not perform her duties, he issued a counseling letter to that Code Enforcement Officer. While Sgt. Adams testified that he consulted with Comm. Greco and Chief Bennett concerning the August 2008 complaint against the Code Enforcement Officer, this consultation does not indicate that Sgt. Adams lacked independent judgment. See State of Illinois, Dep't of CMS (Dep't of Human Services), 27 PERI ¶71 n.5 (IL LRB-SP 2011) (holding that not *any* consultation with a superior defeats the independent judgment necessary for a

finding of supervisor, but rather, it is the *nature* of the consultation or review which determines whether an alleged supervisor acts with independent judgment). Sgt. Adams acknowledged that he originally determined that a counseling letter was the appropriate level of discipline.

The record does not establish that Sgt. Adams has exercised any other supervisory authority within the meaning of the Act. In particular, even assuming *arguendo* that Sgt. Adams assigned overtime when there was an increased number of code enforcement cases over the summer, such an approval of overtime does not show any independent judgment. Similarly the record does not support the Employer's contention that it was Sgt. Adams who decided to divide the Village into two zones, one for each of two Code Enforcement Officers at the time. The record demonstrates that Sgt. Adams testified, without rebuttal, that two zones were already in the Code Enforcement Unit when he was first assigned as a Sergeant there in October 2007. Nor does the record indicate that he completes performance evaluations for his staff, and those evaluations affect their terms and condition of employment. See e.g., Village of Bellwood and Metropolitan Alliance of Police, Bellwood Command Chapter No. 339, 19 PERI ¶106 (IL LRB-SP 2003); City of Naperville and SEIU, Local No. 1, 8 PERI ¶2016 (IL SLRB 1992).

Because Sgt. Adams has exercised the authority to discipline while consistently using independent judgment, I conclude that he is a supervisory employee within the meaning of the Act.

V. CONCLUSIONS OF LAW

Patrol Sergeants Kevin McQuaid, Ronald Mikos, Jennifer Norton, and Michael Fisher, Traffic Sergeant Eric Munson, Administrative Sergeant Grant Anderson, Detective Sergeant-Criminal Investigations Troy Kivisto, Detective Sergeant-School Resource Officer/DARE

Anthony Novak and Sergeant-Accreditation/Code Enforcement Kevin Adams are supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

It is hereby recommended that the Petition filed in this case be dismissed.

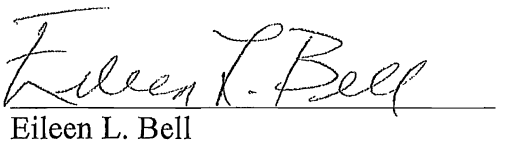
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of the Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions and cross-responses must be filed with the Board's General Counsel at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. The exceptions and cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions have been provided to them. The exceptions and cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed

to have waived their exceptions.

Issued in Chicago, Illinois on July 27, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD



Eileen L. Bell
Administrative Law Judge