STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

International Brotherhood of Teamsters, Local 700,	)	
Charging Party	)	
and	)	Case No S-RC-10-145
Lake County Forest Preserve District,	)	
Respondent	)	

ORDER

On December 10, 2012 Administrative Law Judge Kimberly Faith Stevens, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its February 5, 2013 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 6th day of February 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Jerald S. Post
General Counsel

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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International Brotherhood of Teamsters, Local 700, Petitioner and Lake County Forest Preserve District, Respondent	)	Case No. S-RC-10-145

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 24, 2010, the International Brotherhood of Teamsters, Local 700 (Petitioner or Union), filed a majority interest petition in Case No. S-RC-10-145 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). This petition seeks to include the title of sergeant with the Lake County Forest Preserve District Police Division in a bargaining unit consisting only of the sergeants at issue. The Employer objects to the representation of these employees.

A hearing was held on January 13 and 14 and February 17, 2011, before Administrative Law Judge Elaine Tarver at the Board's offices in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, introduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 5(a) and 20(b) of the Act.

2. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

3. The parties stipulate, and I find, that the Employer is a public employer within the meaning of Section 3(o) of the Act.

4. The parties stipulate, and I find, that the principal work of the petitioned-for employees is substantially different from that of their subordinates, such that it satisfies the first prong of the supervisory test pursuant to Section 3(r) of the Act.

5. The parties stipulate, and I find, that the authority to layoff, recall, and discharge employees is not at issue in this case.

II. ISSUES AND CONTENTIONS

The central issue to be resolved is whether the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act. The Employer contends that these employees are supervisors within the meaning of the Act and therefore are not public employees under the Act. The Union contends that the record does not support the Employer's contention and that the petitioned-for employees are public employees as defined by the Act.

II. FINDINGS OF FACT

The Lake County Forest Preserve District includes the public safety division, also known as the police division. The District itself is comprised of 28,000 acres. The police division provides public safety to park patrons and employees, protects the Forest Preserve properties and

natural resources, and responds to calls for service. At the time of hearing, 42 employees worked for the police division. These employees included a chief, deputy chief, two commanders, three sergeants, ten full-time sworn police officers, one full-time community service officer, a full-time records specialist, 18 part-time sworn police officers, and five part-time community service officers. Siefken is the operations commander, wherein he is responsible for overseeing patrol functions, payroll, evidence, and training officers. He directly supervises the three sergeants at issue in this case. The three sergeants at issue are Sergeants Mendoza, White, and Anderson. Siefken reports to Deputy Chief Galford. The other commander is Commander Ken Hoffman, who is the administrative commander responsible for paying bills and procuring uniforms and supplies for the department. The ten full-time sworn police officers are represented by the Fraternal Order of Police. All of the full and part-time officers and community service officers are subordinates of the sergeants.[1] This is a total of approximately 34 subordinates. The organization has a chain of command and order of rank.

When an individual becomes a sergeant, he or she attends a 40-hour first-line supervisory school, along with other classes focused on supervision. Sergeants have private offices with names on the doors. The pay scale for sergeants is higher than that of full- and part-time officers. The vehicles sergeants drive are also different than the officers' vehicles. Two sergeants drive Chevrolet Tahoe SUVs with no exterior police lights; one sergeant drives a Chevrolet Impala like the officers' squad cars, but it does not have exterior police lights or a cage barrier between the front and back seats. The sergeants' uniforms are white shirts with gold name plates, gold badges, and chevron insignias on the arm band and collar. The officers' uniforms are tan shirts with silver name plates and badges. Community service officers wear

[1] Siefken testified that these individuals would report to administrative commander Hoffman regarding equipment needs, but not for operations or supervisory purposes.

gray polo shirts or a dress shirt. In the police division, white shirts and gold star badges signify supervisory rank. Sergeant White testified that the officers have offices for their use at the Black Crown facility. However, on rebuttal, photographs introduced by the Employer and testimony from Siefken revealed that this facility had not been used by the division for a year prior to the hearing in this matter.

The sergeants assign vehicles for patrol, assign districts in which the officers work, assign tasks and calls for service, approve or deny time off requests, approve or deny overtime, act as the first step of the grievance process for officers, suggest training for officers, evaluate the officers, and discipline officers as needed. Siefkin further testified that the job description of the sergeants was accurate. Other job duties of the sergeants are provided in such documents as the Department's general orders, which at times refer to the sergeants as "supervisors".

The sergeants assign the officers to a patrol district in the county, which is divided into five separate districts, and the officers maintain the public peace in that district and respond to calls for service. The sergeants do not need to obtain their superiors' approval prior to making these assignments. The sergeants also can and do assign officers to do specific types of patrol, such as by bicycle, snowmobile, or on foot. In making these assignments, sergeants attempt to rotate newer officers to all the districts so that they can learn the districts. If particular problems arise in a district, a sergeant may assign an officer that he feels is more specialized or trained to handle that situation. Sergeants base these assignments on their assessment of the officers' skills as well as their own experience. If an assignment is not completed, sergeants have discretion to counsel the employee, issue discipline, or take no action.

Sergeants direct the officers to complete work in a particular manner. For example, Sergeant White has directed subordinates as to the proper way to complete tickets, reports,

paperwork, and building checks. White did not need approval from his superior to institute these procedures. Officers also perform duties as assigned by the sergeants, such as conducting school programs or teaching a class. Other examples of sergeants assigning tasks to their subordinates are assignments of officers to a gang task detail, assigning officers to request assistance from other police forces, and directing their officers at the scene of an incident. Siefken testified that the sergeants notify him about serious incidents after the incidents take place so that he can inform the chief, but the sergeants have discretion as to which incidents to report to Siefken.

Sergeants are responsible for reviewing the officers' field reports. Sergeant White's performance review revealed that he was responsible for reviewing and correcting work of the officers, specifically the reports they are required to submit regarding daily incidents. Sergeants can also assign or delegate duties to their subordinates. Sergeants have authority to use independent judgment in requesting or granting requests for mutual aid with other law enforcement agencies, and these decisions do not require prior approval. Sergeants are responsible for conducting inspections of their subordinates, including uniform and vehicle inspections. They have authority to direct officers to rectify issues with their uniforms and discretion not to send officers on patrol if they are not in compliance with uniform policies or if they look ill. They are also responsible for identifying problem areas in the districts and then assigning officers to do patrols for crime prevention. The sergeants do not need their superiors' approval to perform this function. Siefken testified that the sergeants have full discretion and authority to run their shifts, and that he has minimal contact with the sergeants during their shifts.

Sergeants are the "immediate supervisor" of the officers for purposes of the full-time officers' collective bargaining agreement. Sergeants have authority to staff extra officers to handle exigent or emergency circumstances. Sergeants oversee the two shifts of officers, the

morning and afternoon shifts. The police division has policy requirements for minimum staffing levels. These policy requirements do not set out a specific number of officers needed to staff a shift; rather, it is in the discretion of the sergeant to ensure that staffing is adequate to ensure that protection and services are provided to the public and also to ensure that staffing remains consistent with budgetary constraints. Sergeants do not need to obtain their superior's prior approval to adjust staffing requirements. Sergeants have authority and discretion to adjust the minimum staffing standards set by the chief of police, by both raising and lowering the standard levels, and they have done so in the past. These adjustments affect the amount of pay and overtime of the officers.

Sergeants have authority to approve or deny time off requests for their subordinates based on the circumstances surrounding the requests and the operational needs of the department as to the shift impacted. In one such instance, Sergeant Mendoza denied an officer use of a personal day and instead disciplined the officer for failing to come to work due to his driveway not being cleared of snow. For bargaining unit members, vacation is selected on the basis of seniority on an annual basis. After those selections are made by the officers, time off is granted on a first come, first served basis. Sergeants have authority to use their judgment to approve or deny this time off based on ability to cover the shift and the circumstances of the request, and they do not need approval to do so. Sergeant White is in charge of the schedule, and he prepares the shift schedules and district assignments. In one instance, White gave direction to the part-time officers on the exact hours at which their shifts were to begin and end. He also gave direction to these officers as to the possible need for them to extend their shifts if an important call for service were to come in at the end of the shift, such as a call for a crime in progress. In another situation, White directed an officer to provide documentation as to a class in which the officer

was enrolled that precluded the officer from working on a scheduled day. White had previously marked this officer as having missed work due to the class. White did not need Siefken's approval to take these actions. The sergeants have authority to determine whether an officer will be kept on the clock after the end of the officer's shift based on the circumstances, and they do not need Siefken's approval prior to doing so. Siefken signs off on the requests and schedules, but his testimony was that, as long as the sergeants sign off on the schedule or request, he approves it. Sergeants also have authority to deviate from or relax the general requirements regarding requests for time off, such as notice time frames. Sergeants can and do allow part-time officers to vary their scheduled starting and ending times on the shifts without approval of their superiors. For scheduling purposes, the division uses a computer program researched and recommended by Sergeant White.

Sergeants also have authority to approve overtime for officers and are responsible for assigning officers to work on special details, which can result in overtime. They do not need approval to perform this function. Sergeants may also decide to utilize part-time officers in an effort to save on full-time officer overtime costs. They do not need approval to do so. Sergeants have authority to transfer officers between districts and to different patrols. Transferring an officer in this manner has, at times, resulted in overtime in the past. Sergeants do not need approval to perform this function.

With regard to part-time officers, sergeants evaluate whether they have met minimum availability standards in terms of how often they make themselves available to work. If a part-time officer fails to meet these standards, a sergeant has discretion to issue formal discipline, have an informal conversation with the officer, or do nothing in response. Consistently failing to meet these standards can result in a part-time officer not being utilized any longer by the District.

Sergeants conduct roll call during their shifts. They assign tasks and give directions to the officers during roll call. The Sergeants have discretion as to whether to have roll call or change the time of the roll call. In one case, a sergeant recommended that roll call be changed to the end of the shift for the second shift to maximize the daylight hours that the officers would be on patrol. This recommendation was made to the chief and was accepted. Sergeants have authority to send the part-time, non-bargaining unit officers home early from a shift, without approval by the sergeants' superiors, which would result in a loss of pay for the officers concerned. They also have authority to require all officers to work beyond their shifts, without getting approval from superiors. Officers required to work beyond their shifts are paid overtime.

With regard to investigations of incidents, sergeants have authority to determine whether follow-up investigation is needed after an initial report of an incident, and they also have discretion to assign an officer to complete the follow-up. They do not need their superiors' approval to take these actions. In terms of an active scene, the sergeants have authority to determine whether they need to contact the chief for assistance. In responding to death investigations, the sergeants are responsible for monitoring the work of the officer assigned to the investigation to make sure it is conducted properly and to ensure that additional resources are obtained where needed, such as calling the coroner, crime scene staff, and/or additional officers to the scene. The sergeants do not need prior approval to take these actions. Sergeants have authority to direct full-time officers to assist on critical incidents. If an officer disregards such an order, that officer may be disciplined if the sergeant decides that discipline is appropriate. Department policy requires that division employees follow any lawful order of a superior, including a lawful order relayed from a superior by an employee of the same or lesser rank. Ultimately, sergeants are responsible for the performance of their subordinates. It is the role of

the sergeant to correct deficiencies of their subordinates, whether through counseling, training, creating an action plan, or discipline.

Sergeants identify a need for training, perform training during roll calls, identify weaknesses regarding the performance of specific officers, and develop plans to correct officers who require help. Sending an officer for training could impact that officer's pay if the officer is certified as a field training officer and performs that job duty. In the past, Sergeant White decided that a particular officer would not be sent to field training officer school until he had a certain amount of experience. Sergeant White did not need approval to deny this training request from the officer. The sergeants make recommendations for training for officers both in terms of advancing the officers' strengths and to remedy deficiencies. Sergeant Anderson was the training sergeant at the time of hearing; as such, he recommends and schedules officers for training. Sergeants also use discretion to initiate and conduct roll call training on police scenarios based on experience and needs of the shift. If an officer requests to attend a particular training, Sergeant Anderson can deny the request without consulting his superiors. Such a request might be denied if the sergeant determines the class is too expensive. Sergeant Anderson can also recommend to Siefken that an officer attend training. Siefken testified that he gives great weight to such a recommendation and that it is usually accepted unless the division's budget does not allow for it. If an officer is sent for training, a sergeant may call in other available officers to cover the resulting absence. This can result in overtime. Sergeants also have discretion to decide not to fill the void left by an absent officer.

If a sergeant will not be present on a shift, the sergeants are responsible for appointing an officer in charge to run the shift. The sergeants have discretion as to who to assign to act as the officer in charge, and they do not need prior approval to make this assignment. The sergeants

consider the skills of the officers on the shift in making these assignments. The officer in charge does not have all of the same duties or authority of the sergeants. On weekends, holidays, and after approximately 6:00 p.m., the sergeants are the highest-ranking officials of the police division on duty.

Sergeants have authority and discretion to counsel an officer, issue discipline in the form of a documented oral warning or written warning, or they may choose not to issue discipline. Sergeants also have authority to recommend suspension. Discipline issued by the sergeants may serve as the basis for future discipline, including unpaid suspension. Such discipline can also affect promotional opportunities of the officer disciplined as well as the decision to appoint a particular officer as the officer in charge on a shift. The Employer provided evidence that Sergeant Mendoza and Sergeant White issued discipline in the form of written and oral warnings. Discipline is placed in the subject employee's personnel file. Certain incidents of discipline were based on insubordination or failure to follow supervisory orders to perform particular tasks. In these cases, the supervisory direction given was in the discretion of the sergeant, as was the decision to discipline and the level of discipline to be issued. In at least one instance, Sergeant White created and submitted an action plan for an employee's performance to Commander Siefken, and White and Siefken presented the plan to the employee. Siefken accepted some of White's recommendations for the plan and rejected others. White also conducted an investigation into allegations that an officer had engaged in outside employment without approval. Siefken sat in on an interview during this process, but White had discretion as to how to conduct the investigation. Discipline given by sergeants is reviewed by their chain of command and human resources personnel for proper grammar, spelling, consistency, and proper citation of relevant policy. This review is not for the purpose of changing substance, nor is it an

independent investigation of the discipline. There have been a few instances when the level of discipline was changed by upper command or human resources, but Sergeant White's testimony shows that some level of discipline was still issued in all but one of these cases.

Siefken testified that sergeants have authority to grant, deny, or adjust grievances at the first level for officers who are bargaining unit members as well as for the community service officers and part-time officers. Sergeants also have authority to address issues or complaints with their subordinates before the problems rise to the level of a formal grievance.

Sergeants evaluate all of their subordinates annually. The evaluations have three rating options: below expectations, meets expectations, or exceeds expectations. The sergeants decide on the ratings for the subordinates, basing these decisions on their day-to-day observation of the officers. If an officer who is a bargaining unit member receives two consecutive "below expectations" ratings, that officer is eligible for termination. Evaluations may also be considered in opportunities for promotion, and they can further impact the pay of the officers because training, resulting in specialty pay, may be suggested by the evaluations. With regard to part-time, non-bargaining unit officers, two "below expectations" ratings makes them eligible for termination, and their annual pay increase is based on the score of their evaluation. During the evaluation process, sergeants decide which goals and objectives for the next year will be included in the evaluation. After the evaluations are drafted, the sergeants send them up the chain of command for what appears to be a cursory review, mostly focused on grammar, spelling, format, and ensuring that ratings are supported by documentation. A sergeant or sergeants meet with each evaluated officer to review the evaluation, and the officer and sergeant will sign the evaluation. The evaluation is eventually signed by the Director and/or the Chief, although this may happen at some later time. The evidence at hearing showed only a small

number of times where the rating had been changed from what was provided by the sergeants. Sergeant White testified that the sergeants complete the evaluations collaboratively while meeting in the same room.

IV. DISCUSSION AND ANALYSIS

The Employer asserts that the sergeants are supervisors within the meaning of Section 3(r) of the Act.[2] Under that Section, petitioned-for police employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the Employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, and (3) consistently exercise independent judgment in exercising supervisory authority. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 162 (1990); Village of New Lenox, 23 PERI ¶104 (IL LRB-SP 2007); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). The party which seeks to exclude an individual from a proposed bargaining unit has the burden of proving that statutory exclusion by a preponderance of the evidence. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). In this

[2] Section 3(r) of the Act states, in relevant part:

> "Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has the 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 those 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, State supervisors notwithstanding. In addition, in determining supervisory status in police employment, rank shall not be determinative. The Board shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service law, ordinances, personnel codes, or Division 2.1 of Article 10 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status.

case, the parties have stipulated to the first prong of the test, that the principal work of the sergeants is substantially different from that of their subordinates.

Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007. An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superiors. Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[3] See City

[3] There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB, State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks

of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); County of Union, 20 PERI ¶9 (IL LRB-SP 2003); Northern Illinois University (Department of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Illinois, Department of Central Management Services (Department of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); County of Union, 20 PERI ¶9. Notwithstanding these considerations, a single indicium of supervisory authority (of 11 possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 529, 607 N.E.2d at 192. In this case, the evidence presented establishes that the sergeants do perform more than one of the supervisory indicia using independent judgment.

i. Direct

The indicium "direct" includes a variety of job functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL SLRB 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). In order to constitute "direction" within the

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with significant discretionary authority). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

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

In the instant case, the record demonstrates that the sergeants do perform the supervisory indicium of directing employees with independent judgment. Moreover, it appears from the record that they largely perform these functions without consulting a supervisor in order to obtain approval or review.

Ultimately, the sergeants are responsible for ensuring that the work of their subordinate officers is completed in compliance with the rules and regulations of the District. They must decide the most effective way to assign and distribute the work of the officers in order to accomplish this objective, and in doing so direct the work of subordinate employees. While the specific patrol districts are predefined, sergeants are responsible for assigning these districts to the officers in accordance with their particular levels of experience and skills in order to provide the best coverage and protection possible for the District. They are also responsible for assigning the type of patrol, such as foot, bicycle, or snowmobile. Sergeants must also assign an officer to act as the "officer in charge" of a shift when a sergeant will not be present. Moreover, the sergeants are responsible for identifying "problem areas" that have greater need for crime prevention patrols within the District and assigning officers accordingly. Indeed, where an employee considers "knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the Employer's operational needs" without review by a supervisor, that employee engages in assigning work with independent judgment. County of Cook, 15 PERI ¶3022 (IL LLRB 1999). The record

demonstrates that this is precisely the type of activity in which sergeants engage with regard to assignment of work.

The union argues that these decisions to assign particular officers to particular work are not made with the requisite independent judgment, but this assertion is not borne out by the evidence. The Board has held that, where assignments and approval of time off are contingent only upon minimum staffing levels, such actions are not performed with independent judgment. See, e.g., Village of Oak Brook, 26 PERI ¶7 (IL LRB-SP 2010); Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 511-512 (1st Dist. 2010). Here, although sergeants must consider minimum staffing levels set by upper command in the division, the testimony showed that these levels are not a set number but are flexible. Sergeants have, in fact, deviated from these levels in the past without needing to seek approval from upper command. Moreover, where the union alleges that assignment of work is routine and clerical because it is made in conjunction with a plan outlined by upper command, such as in the case of special events, the record shows that the sergeants still have discretion within those plans to assign the work to their subordinates as they see fit, and they remain responsible for ensuring that the work is completed in satisfactory fashion. Furthermore, as the sergeants are often the highest-ranking member of the division on duty on a shift, they are in the best position to judge what assignments need to be made to effectively carry out the work of the division. Therefore, it is evident that the sergeants have and use discretion in assigning work.

Moreover, the sergeants monitor, instruct, and assist their subordinates in the performance of their job duties. Testimony shows that the sergeants assist their subordinates with their work, instruct subordinates on how to properly complete work or respond to particular situations, and monitor their work to ensure that they are performing it properly. Specifically,

the sergeants have, in the past, instructed subordinates on the proper way to perform certain duties, such as building checks and writing tickets. Similarly, the sergeants are responsible for reviewing and directing corrections to the reports written by their subordinates regarding incidents that happen in the District. In addition, the sergeants are responsible for directing the actions of their subordinates in response to crime scenes and investigations. While certain components of this direction are based on the skills and experience of the sergeants, the record shows that they also use independent judgment in performing aspects of this function. Specifically, the sergeants have the ability to decide whether their personnel will be able to adequately respond to an incident or whether a sergeant needs to call for mutual aid and/or notify the chief. Moreover, the sergeants have authority to assign subordinates to perform follow-up on an investigation, and they have authority to direct full-time officers to assist on critical incidents. The sergeants also have authority to inspect the uniforms of their subordinates and to direct subordinates to bring their uniforms into compliance if necessary.

The fact that the sergeants may, at times, be monitoring the work performance of their subordinates as measured against directives from upper command does not take away from the fact that they are exercising discretion and independent judgment when they instruct their subordinates, assist them in performing their duties, and monitor their work. Moreover, where a supervisor has an active role in "checking, correcting, and giving instructions to subordinates" and "assesses his subordinates' performance and behavior to ensure compliance with departmental norms," this is evidence of directing subordinates with independent judgment. County of Cook, 15 PERI ¶3022, citing City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). In addition, the Board has found that reviewing subordinates' work and monitoring and instructing subordinates in the field are examples of

directing the work of subordinates. City of Chicago (Department of Public Health), 17 PERI ¶3016 (IL LRB-LP 2001). The record reflects that this is precisely the type of activity in which sergeants engage with regard to monitoring the work of their subordinates.

The sergeants are responsible for approving time off requests for their subordinates, and they must evaluate staffing levels and operational needs in so doing. While the record demonstrates that some vacation time is pre-determined through a process of picks by seniority in accordance with the full-time officers' contract, this does not account for all time off utilized by the officers. The sergeants are responsible for approving or denying time off that falls outside of this process, such as vacation and personal time utilized throughout the year. The record shows that, in fact, the sergeants have denied use of this time, such as in the case of a personal day that was denied to an officer who attempted to use the excuse of inclement weather as a reason to take a personal day. The sergeant who responded to that request utilized his authority and discretion in denying that time off request. Moreover, the sergeants have discretion to allow variation in the starting and ending times of subordinates, and they also have authority to hold a subordinate over on a shift to complete work. This is one example of a situation that can result in overtime, which sergeants also have authority to grant in a number of circumstances without seeking prior approval from their superiors. Sergeants are also responsible for evaluating whether part-time officers have met minimum availability standards and taking appropriate action if they have not.

The sergeants utilize discretion and independent judgment in conducting training. Specifically, the record demonstrates that they initiate and conduct training at roll call, deciding when it is necessary and choosing scenarios to use for training purposes. Even where the subject matter is predetermined by information from upper command that needs to be transmitted,

sergeants have authority and responsibility to format the training in such a way as to effectively and efficiently train their subordinates. In so doing, the sergeants must exercise discretion and independent judgment in designing and executing training. At times, it appears that sergeants have also made effective recommendations regarding training for their subordinates. Although there have been times where a sergeant's request for training has been denied, Seifken testified that, where training is affordable given the division budget, he gives great weight to the sergeants' recommendations for training. Moreover, sergeants have authority to recommend or provide training where they believe that a subordinate's performance is defective or deficient in some way.

There are, however, areas in which the sergeants do not exercise independent judgment within the meaning of the Act. Specifically, in granting prescheduled overtime and vacation in accordance with the contract, the role of the sergeant is more routine and clerical. Moreover, with regard to evaluations, while there was evidence that sergeants participated in evaluating their subordinates, the testimony showed that this function was performed jointly among the sergeants and that they reached consensus on the ratings of their subordinates in performing the evaluations. Specifically, it appears that the sergeants, in using a collaborative and consensus-based process for evaluations, do not use independent judgment in that function within the meaning of the Act. See Village of Oak Brook, 26 PERI ¶7.

Notwithstanding these considerations and for the foregoing reasons, the Employer has demonstrated that the sergeants direct subordinates using independent judgment and discretion as required by the Act.

ii. Discipline

Sergeants have authority to discipline their subordinates if they perceive that an individual has a performance or behavioral deficiency. The record demonstrates that sergeants have authority to counsel a subordinate, give oral or written warnings, recommend suspension, or decline to discipline altogether. These include the types of disciplinary action that have been found to satisfy the requirements of the Act. See, e.g., City of Freeport, 135 Ill. 2d at 518-519; Village of Glen Carbon, 8 PERI ¶2025 (ILRB 1992). Moreover, the record demonstrates that sergeants have initiated and issued discipline in the past. Their decision to initiate discipline is performed with independent judgment of the situation at hand and whether discipline is warranted. After a sergeant determines that discipline should be issued under a set of circumstances, the recommendation is forwarded to upper command and human resources for review. The testimony on this point shows that this review is chiefly for format and consistency. There are a limited number of examples in which the level of discipline has been changed through this process, but in all but one of the examples presented at hearing, some level of discipline was issued to the subordinate.

The union attempts to argue that the disciplinary process is one of "consensus" and therefore does not constitute discipline with independent judgment in satisfaction of the requirements of the Act. However, the evidence does not support such a conclusion. The type of discussions sergeants have had regarding discipline with their superiors do not show that the decisions have been reached "by committee" or that the superiors even always agreed with the substance of or reason for the recommendation. The evidence shows that the sergeants both discipline and make effective recommendations for discipline. A recommendation is not ineffective "simply because it is not rubber-stamped." City of Peru v.

ISLRB, 167 Ill. App. 3d 284, 290 (3d Dist. 1988). Moreover, the fact that the specific level of discipline may not always remain the same does not render the recommendations ineffective so long as a form of discipline is imposed per the recommendation of the sergeant. See City of Chicago (Department of Public Health), 17 PERI ¶3016. As the testimony indicates, in most cases, when a sergeant recommends discipline, some form of discipline is issued to the subordinate, making these recommendations effective.[4]

iii. The remaining indicia

With regard to the other supervisory indicia, the record shows that the sergeants do not hire, transfer, reward, promote, adjust grievances, or effectively recommend any of the remaining indicia of supervisory authority using independent judgment of the kind that would satisfy the requirements of the Act. Specifically, with regard to grievances, Siefken testified that sergeants have authority to grant, deny, or adjust grievances as the first level representative of management for officers who are bargaining unit members as well as for the part-time and community service officers. However, as the union points out, there was no explanatory testimony on the part of the Employer as to whether the sergeants had been instructed that they could grant grievances, and all examples at hearing concerned situations where the sergeants denied grievances. See, e.g., Metropolitan Alliance of Police v. ILRB, 362 Ill. App. 3d 469, 479-480 (discussing that, where an alleged supervisor is merely the first step in the grievance procedure but routinely denies all grievances at the first level, the employee does not exercise independent judgment as required by the Act). Without more, the evidence provided on this

[4] The union makes an argument as to whether the division has a true "paramilitary" structure that would arguably warrant application of a relaxed standard with regard to discipline. However, as I have determined that sergeants have authority to discipline even under traditional standards, I do not reach the question of whether the division is a paramilitary organization.

point is not enough to demonstrate that the sergeants have authority to adjust grievances as required by the Act.

Notwithstanding these considerations, because the Employer has submitted evidence showing that the sergeants direct the work of subordinates and make effective recommendations on discipline using independent judgment, I find that the second and third prongs of the supervisory test are satisfied.

V. CONCLUSIONS OF LAW

I find that the Employer has demonstrated that the sergeants are supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the majority interest petition to represent the sergeants in the police division of the Lake County Forest Preserve District filed by the International Brotherhood of Teamsters, Local 700, is denied.

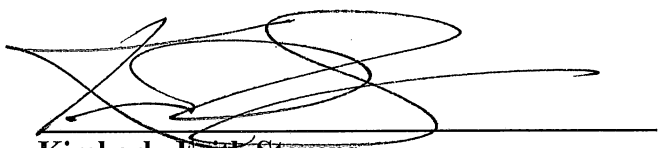
VII. EXCEPTIONS

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

Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 10th day of December, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Kimberly Faith Stevens
Administrative Law Judge