

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

Laborers' International Union of North America, Local 2002, Illinois State Employees Association (ISEA),	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-10-214
	)	
State of Illinois, Department of Central Management Services (Illinois Department of Corrections),	)	
	)	
Employer	)	

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

On May 3, 2011, Administrative Law Judge Elaine L. Tarver issued a Recommended Decision and Order in the above-captioned case finding that three individuals in the job title of Public Service Administrator, Option 7, employed as Internal Security Investigator IIIs by the State of Illinois, Department of Central Management Services (Illinois Department of Corrections) (Employer) were neither confidential employees or supervisors within the meaning of Sections 3(c) and 3(r), respectively, of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act). Administrative Law Judge Tarver further ordered that the petition filed by the Laborers International Union of North America, Local 2002, Illinois State Employees Association (ISEA) seeking to represent those three individuals be granted.<sup>1</sup> Thereafter, in accordance with Section 1200.135 of the Rules and Regulations of the Illinois

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<sup>1</sup> Neither the petition nor the parties' post-hearing briefs indicate whether Petitioner is seeking a stand-alone bargaining unit of the three positions at issue or to add them to an existing bargaining unit. However, there is an oblique reference in the testimony of Chief Hartigan that the parties intended to add those positions to an existing bargaining unit of Employer's employees represented by Petitioner. That unit includes the subordinates of the petitioned-for employees.

Labor Relations Board, 80 Ill. Admin. Code Parts 1200 through 1240, the Employer filed timely exceptions to the Recommended Decision and Order, to which the Petitioner did not file a response. After reviewing the record and the exceptions, we adopt the Administrative Law Judge's conclusion that the three individuals at issue are not confidential employees within the meaning of the Act but, for the reasons set forth below, find that they are supervisors within the meaning of the Act.

The three individuals at issue in the title of Public Service Administrator, Option 7, serve as Internal Security Investigator IIIs for the Illinois Department of Corrections. As Commanders within either the Department's Investigations Unit or Intelligence Unit they each have responsibility over a specified geographic region and a subordinate staff of six or more deputy commanders, investigators, or parole agents located throughout each region. The Commanders perform little if any of the investigative duties of their subordinates but instead serve in a variety of administrative functions. The Commanders also assign cases to investigators, review their subordinates' investigative reports, grant requests for time off, approve requests for training from their subordinates and complete annual performance evaluations of their subordinates and probationary evaluations of new hires. They also have authority to discipline subordinates. While we agree that not all of these responsibilities demonstrate that Commanders exercise supervisory authority as contemplated by the Act, we do not concur with the ALJ's findings regarding their authority to direct and discipline subordinate personnel.

Commanders approve their subordinates' overtime requests and assign and review their investigations. Requests for overtime are approved or denied by a Commander based on his sole, independent judgment of the operational needs of his or her unit. In making case assignments, Commanders not only consider caseloads and the closest investigator to the

investigation site but also whether one of their subordinates has a particular expertise in handling a given type of case. This latter consideration presents a choice between two significant courses of action as it involves an examination of the strengths and weaknesses of a subordinate that is more than a routine and/or clerical function. Commanders, as a group, review approximately 350 investigations a year not only for spelling and grammar, as noted by the ALJ, but also to analyze whether an investigator's findings of fact support his or her determination that some misconduct or unlawful activity has or has not taken place. If a Commander concludes that an investigative report is deficient the Commander will return it to the investigator with instructions on what needs to be corrected. In our estimation, though some elements of a Commander's review are clerical, that review also involves a substantive analysis and the exercise of independent judgment indicative of a Commander's supervisory status under the Act. These responsibilities, in conjunction with their authority to discipline as described below, are functions of the Commanders' authority to direct their subordinates as supervisors within the meaning of Section 3(r) of the Act.

The record testimony is clear and undisputed that Commanders possess and have exercised the authority to recommend oral and written reprimands and that those recommendations have been approved. A Commander's decision to recommend discipline, in and of itself, has a substantial impact on employees' terms and conditions of employment and, in the absence of any record evidence to the contrary, is a decision involving a choice between two or more significant courses of action subject to minimal review. For these reasons, we find that the Commanders effectively recommend discipline as defined by the Act.

Having found that Commanders possess and exercise supervisory authority to direct and discipline subordinate personnel, we further find they do so a preponderance of their working

time. As we recently held in State of Illinois, Department of Central Management Services (Department of Human Services), Case No. S-RC-10-176 (ILRB-SP June 1, 2011), an individual spends a preponderance of his working time engaged in supervisory tasks if he spends more time on those supervisory tasks than on any one non-supervisory task. Based on the record of this case, the Commanders meet that standard. Commanders assigned and reviewed 350 investigations in one year which, as the only evidence in the record shows, took between 15% and 30% of their working time. Since no other single non-supervisory function of the Commanders equaled or exceeded that percentage of work time<sup>2</sup> we conclude that the Commanders perform supervisory functions a preponderance of their working time.

We are well aware that the Employer did not file any exceptions to the ALJ's conclusion that the Commanders had no authority to discipline subordinates, and of Board law establishing the Employer's burden to support its contention that the Commanders are supervisors. Nonetheless, a representation hearing is a non-adversarial proceeding at which all parties and the administrative law judge share a responsibility to develop as full and complete a record as possible.<sup>3</sup> Moreover, the Act imposes an obligation on this Board to determine a unit appropriate for the purpose of collective bargaining and ensure that supervisors are excluded from that unit unless the Act provides otherwise.<sup>4</sup> Accordingly, where we are convinced upon review of the

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<sup>2</sup> This comparison is based on the job descriptions of the Commanders, the only evidence that addressed the preponderance of time spent on supervisory functions. While the job description for one of the Commanders, Mark Delia, indicates he spends 30% of his time developing and planning strategy for the Intelligence Unit there is no evidence that the other two Commanders perform a similar function. Since the parties have agreed that the Commanders perform the same or similar duties, we make no distinction between Delia and the other Commanders.

<sup>3</sup> Though we have found that a respondent employer has the burden to present evidence in support of a supervisory exclusion, we have never suggested that a petitioner labor organization need not present contrary evidence. Given that reasonable persons may differ on the significance of a particular witness' testimony or the conclusions to be drawn based on the record as a whole, we think it prudent in representation matters for a party to elicit record testimony in support of its position rather than rely solely on the perceived failure of the opposing party to support its position.

<sup>4</sup> See Sections 3(r) and 9(b) of the Act.

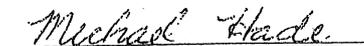
record of a representation hearing, however incomplete or undeveloped, that individuals subject to that proceeding are supervisors as defined by the Act, we will exercise our authority to make that finding.

For the reasons stated above, we find that the petitioned-for employees are supervisors as defined by Section 3(r) of the Act and order that the instant petition is dismissed.

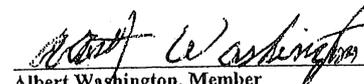
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

  
Jacalyn J. Zimmerman, Chairman

  
Michael Coli, Member

  
Michael Hade, Member

  
Jessica Kimbrough, Member

  
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on July 12, 2011; written decision issued at Chicago, Illinois, August 5, 2011.

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ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

Laborers' International Union of North )  
America, Local 2002, Illinois State )  
Employees Association (ISEA), )  
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Petitioner )  
 )  
and )  
 )  
State of Illinois, Department of Central )  
Management Services (Illinois Department )  
of Corrections), )  
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Case No. S-RC-10-214

**AFFIDAVIT OF SERVICE**

I, John F. Brosnan, on oath state that I have this 5th day of August, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

Kendra Doellman-Best  
ISEA Laborers Local 2002  
2945 Stanton Avenue  
Springfield, Illinois 62703

Justin Smock  
CMS  
100 W Randolph, Room 4-500  
Chicago, Illinois 60601

~~Chicago, Illinois 60601~~ *JS*

*[Handwritten Signature]*

**SUBSCRIBED and SWORN to  
before me this 5th day  
of August 2011.**

*Carla Stone*  
\_\_\_\_\_  
NOTARY PUBLIC

