STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	
and	)	Case No. S-RC-10-220
State of Illinois, Department of Central Management Services,	)	
Employer	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On November 16, 2011,[1] Administrative Law Judge (ALJ) Eileen L. Bell issued a Recommended Decision and Order (RDO), recommending that the Illinois Labor Relations Board, State Panel, find that employees of the State of Illinois, Department of Central Management Services (Employer) in the job title of Senior Public Service Administrator, Option 3 (SPSA Option 3) who work at various State agencies should be added to the existing RC-63 bargaining unit represented by the American Federation of State, County and Municipal Employees, Council 31 (Petitioner). The parties had agreed that 57 of the petitioned-for employees were "public employees" within the meaning of Section 3(n)[2] of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) as amended (Act), and should be included in the unit, and that 32 of the petitioned-for employees were not public employees and should be excluded from the unit.

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[1] For a period of several months, the parties requested that the Board delay its consideration of the exceptions to the ALJ's recommendations.

[2] In parts most relevant to this case, Section 3(n) provides:

> "Public employee" or "employee", for the purposes of this Act, means any individual employed by a public employer ... but excluding all of the following: ... managerial employees; ... confidential employees; ... and supervisors except as provided in this Act.

The ALJ determined that all but two of the remaining 17 petitioned-for employees should be included in the unit. She found that Gary Cochran employed at the Illinois State Police should be excluded as a confidential employee within the meaning of Section 3(c)[3] of the Act, and that Dennis Kirk Mulvaney employed at the Department of Central Management Services should be excluded as a managerial employee within the meaning of Section 3(j)[4] of the Act. However, she rejected the Employer's contentions (1) that all 17 disputed employees (including Mulvaney and Cochrane) were supervisors within the meaning of Section 3(r)[5] of the Act; (2) that, in addition to Mulvaney, another 13 of the employees were managerial employees (including Cochran); (3) that, in addition to Cochran, Lambert Fleck employed at the Illinois State Police was a confidential employee; and (4) that two of the disputed employees, Stephen DePooter at the Department of Veterans Affairs and Joe Woodward at the Office of the State Fire Marshall, should also be excluded simply because their positions were exempt from provisions of the Personnel Code, 20 ILCS 415 (2010).

Pursuant to Section 1200.135(b) of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200 through 1240 (Board Rules), the Employer filed timely exceptions to the ALJ's

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[3] Section 3(c) provides:

> "Confidential employee" means an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies.

[4] Section 3(j) provides:

> "Managerial employee" means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.

[5] In relevant part, Section 3(r) provides:

> "Supervisor" is 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 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.

RDO, and Petitioner filed timely cross-exceptions and a response. Petitioner cross-excepted to the ALJ's finding that Gary Cochran was a confidential employee, but did not except to her finding that Dennis Kirk Mulvaney was a managerial employee. The Employer excepted to every ruling adverse to its positions, including arguing that, in addition to being excluded as a managerial employee, Mulvaney should have been excluded as a supervisor, and that, in addition to being excluded as a confidential employee, Cochrane should have been excluded as a supervisor and as a managerial employee.

Issues Presented

At issue is whether Gary Cochran and Lambert Fleck, both employed at the Illinois State Police, are confidential employees within the meaning of Section 3(c) of the Act. Also at issue is whether employees employed at various agencies are managerial employees within the meaning of Section 3(j), and whether employees employed at various agencies are supervisors within the meaning of Section 3(r). Finding any of these employees to be confidential employees, managerial employees, or supervisors would necessitate finding that they are not public employees within the meaning of Section 3(n), and would require that they be excluded from the petitioned-for bargaining unit.[6]

[6] Because no party filed exceptions to the ALJ's recommendation with respect to the Mulvaney's managerial status, we need not, and do not address that issue. Pursuant to Section 1200.135(b)(2) and (5) of our regulations, that determination will stand as a non-precedential decision binding on the parties. Because Mulvaney is excluded from the bargaining unit on that basis, we need not, and do not, address whether he might also have been excluded on the redundant basis that he is a supervisor. Similarly, since we affirm the ALJ's conclusion that Cochrane is a confidential employee for the reasons set out below, we need not, and do not, consider whether he might also be excluded on the redundant bases that he is a supervisor or a managerial employee. And because we find for the reasons articulated below that DePooter and Woodward are excluded from the unit as managerial employees, we do not address the Employer's additional argument that they should also be excluded simply because they are exempt from the Personnel Code. We note merely that we previously rejected this argument in State of Ill., Dep't of Cent. Mgmt. Serv., 25 PERI 184 (IL LRB-SP 2009), appeal pending, Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., No. 4-10-0149 (Ill. App. Ct., 4th Dist.). Finally, we accept the parties' stipulations that an additional 57 employees are public employees within the meaning of Section 3(n) and should be included in the bargaining unit, and that another 32 employees are not public employees within the meaning of Section 3(n) and should be excluded from the unit. Consequently, we do not separately address the status of these employees.

I. Petitioner's cross-exception to the finding that Gary Cochran was a confidential employee and Employer's exception to the finding that Lambert Fleck was not

The Petitioner's sole cross-exception is to the ALJ's finding that Gary Cochran should be excluded from the unit because he was a confidential employee. Cochran is an assistant bureau chief at the Illinois State Police whom the ALJ found had authorized access to confidential matters regarding the collective bargaining process in that he made recommendations to the bureau chief concerning second level grievances. According to the ALJ, whether his recommendations are accepted is irrelevant; implicitly he knows the employer's response at the second level in advance of the response being conveyed to the Union. While an Employer's witness testified Cochran was also on the Employer's negotiating team, the ALJ rejected this testimony. She also did not rely on other evidence proffered to show access to other types of confidential information. The Union argues that, while Cochrane is asked for his opinion prior to second level grievance responses, there is no evidence the bureau chief conveys her decision to him prior to issuance of her response, and no basis for an implicit finding of such communication.

Conversely, the Employer excepts to the ALJ's finding that Lambert Fleck was *not* a confidential employee. Fleck is the radio services network manager at the State Police, essentially one level below assistant bureau chief Cochrane. The ALJ found that email messages submitted by the Employer failed to support a finding of confidential status in that (1) a promotion granted through the grievance procedure (of which Fleck had prior information) had been orchestrated by management and, since the grievance had been filed by the union in cooperation with management, was not really confidential; (2) Fleck's prior knowledge of contemplated discipline was insufficient where there was no evidence the disciplined employee had been a member of the bargaining unit; and (3) information sent Fleck from labor relations

personnel as part of its request for factual information consisted merely of allegations made by the union which were not confidential. In arguing that Fleck is confidential, the Employer points to communication between labor relations personnel and Fleck regarding contract negotiation strategy and with respect to discipline and grievances.

We affirm the ALJ's finding that Cochrane is a confidential employee, and reverse her finding that Fleck is not. There is little distinction between Cochran and Fleck with respect to confidential status. Laurette Waters, from the State Police labor relations department, testified that she seeks similar sorts of input from each man. Email exchanges in evidence, while addressed individually to Cochran or Fleck, are relevant to both, and, particularly with respect to Fleck, are sufficient to show that in the normal course of his duties, Fleck would have access to confidential information. They show Fleck had prior knowledge of contemplated discipline of an employee which suggests he may have similar prior information regarding discipline against other employees in the future. It hardly matters whether the particular employee already disciplined was a member of the bargaining unit where there is no evidence that in the normal course of his duties Fleck would be walled off from information regarding one particular group of employees and not other groups. And it hardly matters if the promotion of which Fleck had prior knowledge had been orchestrated by management, because that prior knowledge indicates Fleck might in the future have prior knowledge of contemplated grievance resolutions where the grievance had not been orchestrated by management. We find both Fleck and Cochrane are confidential employees.

II. Employer's exceptions regarding managerial status

As previously noted, the ALJ found Mulvaney was a managerial employee (the only finding not excepted-to by either party), but found a dozen others were not managerial employees. The Employer has excepted to each of these findings. We reject the ALJ's finding

with respect to five of these employees, and find that Jeremy Margaron and Susie Saputo at the Department of Human Services, Stephen DePooter at the Department of Veterans Affairs, Joe Woodward a the Office of the State Fire Marshal, and Hal Waggoner at the Illinois Environmental Protection Agency are managerial employees whose positions should not be added to the bargaining unit. We find the evidence insufficiently developed with respect to the remaining employees, and therefore remand for a further evidentiary hearing regarding their status.

The two-part test for managerial status closely follows the statutory language. A managerial employee is an employee who is (1) engaged predominantly in executive and management functions and (2) charged with the responsibility of directing the effectuation of such management policies and functions. Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n. v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766, 774 (4th Dist. 2011). The first component references the nature of the work the employee performs most of his time, limiting the definition's application to those who "run the organization" by performing tasks such as establishing policies and procedures, preparing the budget, or "otherwise assuring that the agency or department operates effectively." Id. at 774-75.

The second component emphasizes that a managerial employee's authority extends beyond theorizing and into the realm of practice. Id. at 775. For example, a managerial employee would not merely make policy, but bears responsibility for making sure that such policy happens. Id. He directs the effectuation of policy where he "oversees or coordinates policy implementation through development of means and methods of achieving policy objectives, determines the extent to which the objectives will be achieved, and is empowered with a substantial amount of discretion to determine how policies will be effected." Id. A

managerial employee does not need final authority in such matters, effective recommendation or control is the key. State of Ill., Dep't of Cent. Mgmt. Servs. (Ill. Envt'l Protetion Agency), 26 PERI ¶155 (IL LRB-SP 2011) (citing Chief Judge of the 16th Judicial Cir. v. Ill. Labor Relations Bd., 178 Ill. 2d 333, 339 (1997)).

Jeremy Margaron is chief of the Department of Human Service's Management Information Services' Bureau of Information Management and Development. He reports to the Chief Information Officer and has four direct reports, each a head of an area (and a petitioned-for employee), as well as scores of indirect reports. In his role in building redundancies within the agency's hardware (so it can work around one component's failure) he makes recommendations to the infrastructure provider to bring newer technologies into the system. He works with his section managers and others to prioritize the enormous backlog of "change requests" (e.g., to change a system or add a new application). He frequently makes recommendations regarding the purchase of hardware or software, and these are accepted 90% of the time. When policy changes are made by the legislature or the agency, Margaron and his staff determine the feasibility of implementing the necessary program changes and their effects on the systems.

The ALJ found Margaron was not a manager. First, without specific examples in the evidence, she found his expenditure recommendations could not evidence managerial status. Furthermore, he used the term "requests" rather than recommendations, which to her suggested a subservient role. Although she recognized Margaron had "a role" in prioritizing competing change requests, the evidence did not explain the nature or extent of his function.

While we, too, would prefer there were more evidence on the issue, we disagree with the ALJ's conclusion that Margaron is not a manager. His purchase recommendations apparently go beyond recommendations to merely replace existing equipment in that he advocates for inclusion

of newer technologies with an eye for ensuring that redundancies are built into the system. His role with respect to prioritizing his bureau's work could be better explained, but he is the chief of the bureau and we assume that ultimately he is responsible for deployment of resources. He has authority to broadly affect the effectiveness of the agency's operations, and is responsible for an important component of the means by which the agency fulfills its policy objectives. We find Margaron is a managerial employee.

Susie Saputo is also in DHS's Management Information Services and is responsible for both developing and delivering the training curriculum which MIS provides to all DHS employees. The ALJ found she was not a managerial employee because she believed Saputo's duties concerning training involved nothing more than her professional discretion and technical expertise. She further found that Saputo did not make effective recommendations for training because only half her recommendations for training were accepted. She rejected the Employer's explanation that disapproval was driven by budgetary restrictions.

We reject the assumption that persons with technical expertise in information technology (IT) necessarily do nothing other than bring their technical expertise to their positions. Here, Saputo is responsible for delivery of IT training for a huge state agency, and is even responsible for developing that training. The fact that the budget concerns cause only half her recommendations to be approved does not mean that higher ups second guess or do not value her judgment, but that Saputo may be trying to initiate more than the current fiscal crisis can allow. Her adaption to virtual training in place of classroom training suggests her creative resolution to impediments to more effective operations by all agency employees. In the context of how agency employees use IT services, she clearly is predominantly engaged in broadly affecting the effectiveness of agency operations and meets the first element of the test. As far as directing

effectuation of management functions, she also clearly oversees development of one means (personnel use of IT) by which the agency attempts to reach its policy objectives. We find Saputo, too, is a managerial employee.

The ALJ rejected the contention that **Stephen DePooter**, the chief information officer at the 1250-employee Department of Veterans Affairs, was a managerial employee because she found he used his technical expertise in performing his critical role in high level projects. In fact, she found he used *only* his technical skill in arriving at those recommendations. Though all of DePooter's recommendations have been accepted, she found his role lacked any link to policy concerns, and that he acted only in an advisory and subordinate capacity.

In her findings of fact, the ALJ also found DePooter helped the agency develop new policies and procedures. More specifically, the ALJ found that DePooter proposed adopting the time collection system used in one of the agency's four veterans' homes throughout the agency, thus allowing the agency to collect data on a daily basis rather than monthly, which in turn would allow the agency to use a payroll system from the Department of Human Services rather than one used under the Department of Central Management Services. He also chaired a three-person committee to determine why cable TV rates varied at the four veterans homes. He was assigned to investigate moving to a new program for the agency's central database after his superiors determined the existing one was inadequate, and he set out the different options for them to choose between. He proposed setting all printer and copier defaults to duplex to reduce paper use, and initiated implementation once the recommendation was made. He was involved in a project to scan documents to save as electronic files, and managed a project to upgrade the agency's email service. In all these instances, it does not appear that DePooter initiated the project—even his proposal to change time collection systems appears to have been a component

of a larger project prompted by someone's direction to investigate using the DHS payroll system instead of the CMS payroll system.

However, the ALJ also found that, based merely upon a colleague's complaint about inadequacies of agency identification badges, DePooter updated and standardized the agency's badge system. Though not as significant as other projects, his actions here suggest he was a decision-maker, and initiator. Consequently, we find that he meets the first element of the test for managerial status in that he apparently has the authority to broadly affect the agency's means of effectuating its purposes and has functions showing responsibility for effective operations. It can be said that he meets the second element in that it appears he oversees policy implementation by developing the means of reaching policy objectives. DePooter is, after all, the chief information officer for a large agency, and the lack of a tight fit between the evidence presented and the statutory formulation may be due to the nature of IT positions which fundamentally perform services enabling agencies to effectuate their programs rather than administer the programs themselves. In contrast to the ALJ, we find that DePooter does not use *only* his technical skills and knowledge; his recognition of the need to have more tamper-proof badges demonstrates this. We find under the evidence presented that DePooter is a managerial employee.

The ALJ found that **Joe Woodward**, employed at the Office of the State Fire Marshal, is not a managerial employee. Woodward reports directly to the State Fire Marshal. Among his five subordinates are a network manager, an information systems analyst, and an information software specialist, who with Woodward appear to compose the entirety of the agency's technical IT people. Projects Woodward personally performs include designing a web page (though his testimony indicates he merely provided options and the State Fire Marshal made all

decisions), implementation of document management, selection of equipment, and writing requests for proposals (though CMS has final authority there). In addition, he is responsible for management of the National Fire Incident Reporting System (NFIRS), which involves coordinating with all fire departments and upon which his non-IT subordinates, an executive I and her assistant, work. Woodward, alone, analyzes the data that is produced in this system. Woodward also created the OSFM's IT procedures manual, though three of its 13 chapters were adopted from CMS policy and though upper management made some changes to it. He spent 10 to 20% of his time over a period of several months working on this project.

The ALJ found Woodward was not a manager, stating he had no discretion in designing the website, the NFIRS did not involve formulation of policy, and Woodward's analysis of its data was merely a consequence of his technical expertise. She found his work on the IT procedures manual did not constitute making effective recommendations because upper management made some changes and found that his work merely involved compiling data because nearly a quarter of the manual was adopted from pre-existing CMS policies. Plus, she felt the fact that he spent only 10 to 20% of his time on the manual showed it was not the predominant portion of his work.

That Woodward's work with respect to the NFIRS did not directly involve the "formulation of policy" does not mean it was irrelevant to his potential managerial status. Policy formulation is only one of three explicit examples of "functions related to running an agency" and the statute's list of examples are not meant to be exclusive. One would assume that analysis of the data concerning all fire incidents in the state would be crucial to the OSFM's ability to operate effectively and would drive determinations regarding where best to expend office resources to curtail the number of fire incidents and diminish their impacts.

We also find relevant Woodward's work on the IT manual. First, it is an example of the types of projects Woodward works on and not intended to reflect the entirety of his executive and management functions. Consequently the fact that he spent only 10 to 20% of his time on it for only a limited duration of a few months does not eliminate its value in ascertaining whether he is a managerial employee. Plus, the fact that Woodward was able to adapt three chapters out of 13 from a CMS manual suggests he wrote the bulk of the book—10 chapters—on his own and that clearly is not merely "compiling data."

These examples, together with the fact that Woodward is the top IT person at the OSFM, strongly suggests that he is predominantly engaged in management functions in that he has authority to broadly affect the agency's ability to operate effectively. And he clearly coordinates policy implementation through developing the (IT) means of reaching policy objectives. We find Woodward is a managerial employee.

Hal Waggoner, at the Illinois Environmental Protection Agency, is the Application Development and Systems Manager of the Information Services Section of the IEPA. In 2009, programmers from the IEPA's various bureaus (land, air, water, etc.) were moved into a distinct section for information technology. The Chief Information Officer position is currently vacant, so Waggoner is the top person in the section, reporting directly to Lisa Bonnet who is the Acting Deputy Director and Chief Financial Officer. Waggoner is responsible for the section's day-to-day operations, and has 23 subordinates, each working in a specific area. Bonnet testified that Waggoner sets the agency's policy with regard to security of information, and makes recommendations and sets policy with regard to system development. Waggoner also worked with the Acting Budget Officer on parts of the sections' budget concerning training and

personnel development. He is the IEPA's liaison to CMS, and represents the agency in various external groups, including the Governor's office.

The ALJ found the fact that Waggoner is the highest-ranking official in the Information Services Section was insufficient to make him a manager. She discounted the testimony regarding his role with security of the computer system because there were no examples evidenced and no evidence his recommendations were accepted. The record did not explain Waggoner's duties with respect to the budget and, in any event, that role may have arisen in his temporary placement as acting CIO. She found he failed to meet either prong of the definition of a managerial employee.

We find to be relevant the fact that Waggoner is the top person with respect to information services in a huge agency involved in highly technical work and accumulation of massive amounts of data. We credit Bonnet's testimony that Waggoner sets the policy for information security. Although Waggoner denied making policy, the record fails to show that someone else performs that task. Waggoner almost certainly has authority to broadly affect one of the means by which the IEPA effectively operates and oversees policy implementation by developing the (IT) means by which it achieves its policy objectives. We find Waggoner is a managerial employee.

Also at issue is the managerial status of seven additional employees, Melissa Kahle, Matthew Penning, Steve Washburn, and four of Margaron's direct reports: Dave Palmatier, Julie Hagele, John Minnick, and John Rigg. We find the record insufficiently developed to make a confident determination with respect to any of these employees, and for that reason, we remand for an additional evidentiary hearing concerning their status.

In summary, we find Jeremy Margaron, Susie Saputo, Stephen DePooter, Joe Woodward and Hal Waggoner to be managerial employees who should be excluded from the unit, and remand for further factual development with respect to the purported managerial status of Matthew Penning, Steve Washburn, Dave Palmatier, Julie Hagele, John Minnick and John Rigg.[7]

III. Employer's exceptions regarding supervisory status

The Employer asserted that numerous employees should be excluded as supervisors. The statutory definition of a supervisor contains three elements (often expressed as four): 1) performance of principal work that is substantially different from that of subordinates; 2) consistent use of independent judgment in exercising (or effectively recommending) in the interest of the employer one or more of 11 statutory indicia of supervisory status; and 3) exercising such supervisory authority a preponderance of employment time.[8] 5 ILCS 315/3(r) (2010); City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 512 (1990). The ALJ rejected the Employer's contentions with respect to all 17 employees, finding eight met none of the elements for supervisory status, five met only the first element, and four met all of the elements except the last.

The Employer has excepted to the ALJ's findings with respect to all the purported supervisors. We find the record contains sufficient information to make a determination with respect to only one of the employees, Melissa Kahle, and consequently remand for a determination with respect to the purported supervisor status of the rest.

Melissa Kahle works for the Department of Central Management Services' Bureau of Communications and Computer Services (BCCS) within its Division of Enterprise Applications. She and her staff support three procurement related computer systems, and three other computer

[7] We do not remand for a hearing regarding Melissa Kahle's purported managerial status because, as explained below, we find she should be excluded from the bargaining unit as a supervisor.
[8] The last element is not needed for police employment.

systems. CMS uses the term "business owner" to refer to upper-level management persons in other state agencies who are responsible for a system, and these people determine the requirements for work. Kahle's superiors within BCCS determine the priorities, but Kahle decides how work is done daily. Kahle has five subordinates, and she does none of the programming work that occupies most of their time. The ALJ found (1) that Kahle's principal work was different from that of her subordinates, (2) that the only indicia of supervisory authority that she exercises with independent judgment was her completion of performance appraisals, and (3) that this sole task cannot take a preponderance of her employment time. Because in her view Kahle failed to meet the third element of a supervisor, the ALJ concluded that Kahle was not a supervisor, and that her position should be added to the collective bargaining unit. We find Kahle performs additional tasks that constitute indicia of supervisory status, and consideration of these tasks causes us to find she meets the preponderance element as well.

Kahle herself divided her duties into "functional management" and "program management," placing tasks related to the supervisory indicia into the first category and estimating that she spends about 40% of her time on those types of tasks and 60% on program management. In its exceptions, the Employer references that estimation, and also argues that the ALJ should have included Kahle's approval of overtime in her calculations because lack of evidence that Kahle lacks discretion supports a conclusion that she has supervisory authority.

We find Kahle's distribution of work assignments is an indication of supervisory status, and time spent on this task counts toward consideration of the preponderance element. The ALJ found that Kahle's assignment lacked independent discretion because she merely assigns new matters to the lead programmer for the system to which that assignment relates. However, she

also found that it is Kahle who, once each year, selects who will serve as the lead programmers over the various systems. In doing so, she considers their expertise, background and workload. Consequently, assignment becomes routine only because Kahle has exercised her independent judgment to set up the system by which she will make assignments for the following year. This evidences independent judgment in making assignments, supporting the conclusion that Kahle directs.

Also in line with direction is evidence that Kahle determines how work is to be done each day, communicates with her staff on a daily basis, and often visits their workstations to ensure they are progressing satisfactorily in order to meet deadlines. She also reviews their work product, and does not merely make corrections before the product goes out the door, but discusses inadequacies with subordinates, escalating the issue to upper-management where necessary. Again, this evidences direction, and direction in such a way as to consume a significant portion of Kahle's time.

As found by the ALJ, Kahle also completes performance evaluations, and there was evidence they could impact potential merit increases, so it's the type of evaluation that can effectively be used to direct employees. Furthermore, Kahle's evaluations with respect to probationary employees can determine whether or not they will remain employed. She also has the authority to recommend counseling or a reprimand.

As the ALJ noted, Kahle typically approves overtime requests, which can indicate that they are a matter of routine and would not require Kahle to make a choice between alternative significant courses of action, but the ALJ's findings of fact include an additional detail which undermines such an assumption. Each pay period Kahle has subordinates make estimates in advance of the overtime they anticipate accumulating, Kahle then pre-approves that amount, and

Kahle subsequently makes final approvals once the work has been performed. In making her determinations, she considers work schedules, deadlines and priorities, so the Employer is clearly right to assert that Kahle exercises independent authority with respect to granting overtime. Again, this evidences the authority to direct, and adds to the amount of time that Kahle performs supervisory functions.

In summary, Kahle directs in a variety of ways, not merely by means of completing five annual performance evaluations each year as found by the ALJ. Moreover, Kahle spends a preponderance of time in direction. Some of the evidence regarding direction suggests time-consuming tasks, and Kahle's own estimate of her time spent on "functional managing" was 40 percent, suggesting she spends more time on supervisory tasks than on any one non-supervisory task. That constitutes a preponderance within the meaning of the Act. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79 (4th Dist. 1996). For these reasons, we find Kahle is a supervisor.

As previously stated, we find the record insufficiently developed to make a determination with respect to the remaining purported supervisors: Matthew Penning, Steve Washburn, Dave Palmatier, Julie Hagele, John Minnick, John Riggs, Charles Cicora and William Schneider.

Conclusion

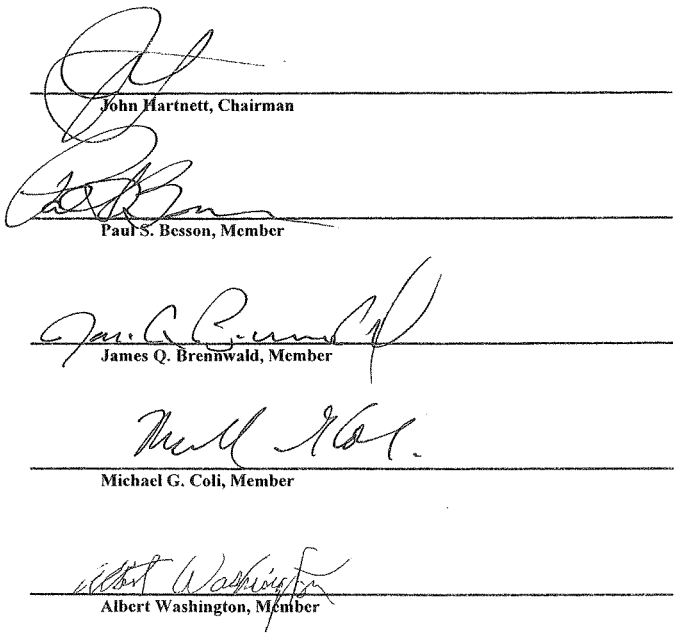
We find Gary Cochran and Lambert Fleck employed at the Illinois State Police to be confidential employees within the meaning of Section 3(c) of the Act, and that their positions should not be added to the RC-63 bargaining unit as proposed by the Petitioner. We further find that Jeremy Margaron and Susie Saputo at the Department of Human Services, Stephen DePooter at the Department of Veterans Affairs, Joe Woodward at the Office of the State Fire Marshal, and Hal Waggoner and the Illinois Environmental Protection Agency are managerial

employees within the meaning of Section 3(j) of the Act, and that their positions, too, should be excluded from the RC-63 bargaining unit. We find that Melissa Kahle at the Department of Central Management Services is a supervisor within the meaning of Section 3(r) of the Act and that her position should also be excluded from the RC-63 bargaining unit. We make no finding with respect to Dennis Kirk Mulvaney employed at the Department of Central Management Services, but note that, as no party filed an exception with respect to the ALJ's determination that he was a managerial employee, that determination is non-precedential but binding on the parties and his position, too, should be excluded from the RC-63 bargaining unit.

We remand for further factual development with respect to the purported managerial status of Matthew Penning, Steve Washburn, Dave Palmatier, Julie Hagele, John Minnick and John Rigg, and with respect to the purported status as a supervisor of Matthew Penning, Steve Washburn, Dave Palmatier, Julie Hagele, John Minnick, John Riggs, Charles Cicora and William Schneider.

Finally, we acknowledge the parties' stipulations that an additional 32 employees are not public employees within the meaning of Section 3(n) and their positions, listed in Appendix A to this decision, should be excluded from the RC-63 bargaining unit, and to their stipulations that another 57 employer are public employees within the meaning of the Act, and that their positions, listed in Appendix B to this decision, should be added to the RC-63 bargaining unit. With respect to these 57 employees listed in Appendix B, we direct the Executive Director to issue a certification including their positions within the RC-63 bargaining unit.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD



John Hartnett, Chairman

Paul S. Besson, Member

James Q. Brennwald, Member

Michael G. Coli, Member

Albert Washington, Member

Decision made at the Board's public meeting in Chicago, Illinois on November 15, 2012; written decision issued in Chicago, Illinois on January 28, 2013.

APPENDIX A
(excluded from RC-63)

Name	Position Number	Agency
Rich Fetter	40070-3 7 -10-000-00-01	Central Management Services (CMS)
Kevin Rademacher	40070-37-11-000-00-01	CMS
Lori Sorenson	40070-37-13-000-00-01	CMS
Mike Porter	40070-37-12-000-00-01	CMS
Rafael Diaz	40070-37-16-000-00-01	CMS
Robin Woodsome	40070-37-13-300-00-01	CMS
Steve Washko	40070-37-11-200-00-01	CMS
Don Warren	40070-37-11-100-00-01	CMS
Rebecca Morgan	40070-37-11-040-00-01	CMS
Dawn Reilly	40070-37-11-340-00-01	CMS
Steve Nation	40070-37-11-000-10-01	CMS
Burley Howard	40070-49-10-300-00-01	Illinois Department of Human Rights
Antonio Daniels	40070-44-30-000-00-01	Illinois Department of Employment Security (IDES)
Thomas Revane[9]	40070-44-30-000-00-01	IDES
Gerald Mitchell	40070-50-74-000-00-03	State Retirement Systems (SRS)
Daniel Robertson	40070-50-74-600-00-01	SRS
Gary Baker	40070-I 6-09-200-00-01	Department of Children and Family Services
Bernard Clancy	40070-47-10-300-00-01	Department on Aging
Herb Quinde	40070-29-00-120-00-01	Department of Corrections (DOC)
Doug Kasamis	40070-10-06-000-00-01	Department of Human Services (DHS)
James Blakely	40070-21-42-000-00-01	Illinois State Police (ISP)
Anita Corey	40070-33-62-000-00-61	Department of Healthcare and Healthcare and Family Services (HCFS)
Jim Howard	40070-33-62-200-00-61	HCFS
Beverly Virden	40070-33-60-200-00-61	HCFS
William Schuh	40070-33-62-600-00-61	HCFS
David Johnson	40070-33-62-700-00-91	HCFS
Rebecca Moore	40070-25-20-110-00-01	Department of Revenue (DOR)
David Richardson	40070-25-20-160-00-01	DOR
Thomas Pantier	40070-25-20-170-00-01	DOR
Dorian Jones	40070-20-90-000-00-01	Department of Public Health (DPH)

[9] The patties stipulated that the position which Thomas Revane currently occupies should be excluded from the bargaining unit based in part on duties which he currently and has for many years performed but which may not be reflected in the title or placement of the above position on the organizational chart of the Department of Employment Security. The parties further stipulated that if Revane vacates the above position or has a significant change in his duties and responsibilities but remains in the above position, AFSCME may seek to include the above position through the unit clarification process.

Bonnie Loftus[10]	40070-20-90-211-00-01	DPH
Trey "Harry" McGee	40070-48-00-200-00-01	Historic Preservation Agency

[10] The parties stipulated that the position which Bonnie Loftus currently occupies should be excluded from the bargaining unit based, in part, on duties which she currently and has for many years performed but which may not be reflected in the title or placement of the above position within the Department of Public Health organizational structure. The parties further stipulated that if Loftus vacates the above position or has a significant change in her duties and responsibilities but remains in the above position, AFSCME may seek to include the above position through the unit clarification process.

APPENDIX B
(included in RC-63)

Name	Position Number	Agency
Cindy Allen	40070-37-11-110-10-01	CMS
Misty Anderson	40070-37-11-122-00-01	CMS
Michael Bartholomew	40070-37-11-110-40-01	CMS
Dianne Breen	40070-37 -10-0 10-36-01	CMS
Gary Doering	40070-37 -10-0 10-04-06	CMS
Thomas Farney	40070-37 -13-500-10-01	CMS
Douglas Jackson	40070-37 -10-010-04-05	CMS
Cindy Lex	40070-37-11-110-50-01	CMS
Keith McVay	40070-37-13-000-01-01	CMS
Ronald Miller	40070-37-11-040-10-01	CMS
Mark Poland	40070-37-11-200-10-01	CMS
Teena Rawlins	40070-37-11-010-10-01	CMS
Richard Shulz	40070-37-11-021-31-01	CMS
George Scanlon	40070-37-11-110-21-01	CMS
Deborah Shotts	40070-37-16-010-00-01	CMS
William Tumulty	40070-37-12-120-20-01	CMS
Dennis Twitchell	40070-37-10-010-35-01	CMS
Deb Harvey	40070-37-11-010-00-01	CMS
Leslie Domalgowski	40070-37-11-121-01-01	CMS
Bruce Hamilton	40070-44-33-320-00-01	IDES
Larry Moritz	40070-29-00-130-00-01	DOC
Susan Hamlin	40070-10-06-131-10-01	DHS
Roger Williams	40070-10-06-320-00-01	DHS
Craig Carpentier	40070-10-06-132-00-01	DHS
Carol Gibbs	40070-21-42-300-00-01	ISP
Doug Phillips	40070-21-42-320-00-01	ISP
Cindy Eicher	40070-21-42-310-00-01	ISP
Kari Lauterbach	40070-21-42-300-00-01	ISP
Douglas Fuchs	40070-33-62-400-00-61	HCFS
Joseph Segobiano	40070-33-62-660-00-61	HCFS
Ronald Michel	40070-33-62-610-00-61	HCFS
Kathryn Dickerson	40070-33-62-630-00-61	HCFS
Karon McGrath	40070-33-62-670-00-61	HCFS
Mark Woloshyn	40070-33-62-720-00-91	HCFS
Brenna Mauck	40070-33-62-730-00-91	HCFS
Charles Hurst	40070-33-62-750-00-91	HCFS
Timothy Hattener	40070-33-62-740-00-91	HCFS
John Mitchell	40070-33-62-710-00-91	HCFS
Michael McIntyre	40070-33-62-230-00-61	HCFS
Vincent Roth	40070-33-62-220-00-61	HCFS
Tarr Bond	40070-33-62-640-00-61	HCFS
Wei-Shin Wang	40070-33-16-100-00-61	HCFS
John Adkins	40070-25-20-140-80-01	DOR

Matthew Bell	40070-25-20-160-60-01	DOR
James Blane	40070-25-20-110-19-01	DOR
Debra Ciotti	40070-25-20-160-70-01	DOR
Jeffrey Copelin	40070-25-20-120-20-01	DOR
Robert Griffin	40070-25-20-160-20-01	DOR
David Hunter	40070-25-11-140-20-01	DOR
Doris Morris	40070-25-20-140-70-01	DOR
Mary Shyrock	40070-25-20-170-70-01	DOR
Mary Thomas	40070-25-20-170-50-01	DOR
Randy Tish	40070-25-20-140-30-01	DOR
Cheryl West	40070-25-20-110-20-01	DOR
Lisa Logan	40070-42-00-540-00-01	Department Commerce and Economic Opportunity
Paul Escarrez	40070-14-16-100-00-01	Department of Insurance
Bruce Carlson	40070-46-25-300-20-01	Illinois Environmental Protection Agency

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal, Employees, Council 31,	)	
Petitioner	)	
and	)	**Case No. S-RC-10-220**
State of Illinois, Department of Central Management Services,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On April 5, 2010, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Petitioner) filed a Majority Interest Petition with the Illinois Labor Relations Board, State Panel (Board) in the above-captioned case as authorized by the Illinois Public Labor Relations Act, 5 ILCS 315, (2010), as amended, (Act). Petitioner seeks to become the exclusive representative of the employees of the State of Illinois employed in the title Senior Public Service Administrator, Option 3 (SPSA Option 3) by including them in the existing RC-63 bargaining unit. The Employer maintains that certain of the petitioned-for employees must be excluded from the RC-63 bargaining unit because they are supervisory, managerial and/or confidential employees within the meaning of the Act, and/or the positions they occupy are exempt from the Personnel Code, 20 ILCS 415 (2010), as amended, (Code), pursuant to Section 4d(3) of the Code.

A hearing in this matter was held on June 29, July 16, August 2, August 12 and August 19, 2010, at which times, all parties appeared and were given a full opportunity to participate, present relevant evidence, examine witnesses and argue orally. Post-hearing briefs have been

timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, my recommendation appears below.

I. PRELIMINARY FINDINGS

1. I find that the Employer is a public employer within the meaning of Section 3(o) of the Act.

2. I find that the Employer is a unit of local government employing five or more public employees and is under the jurisdiction of the State Panel of the Board pursuant to Sections 5(a) and 20(b) of the Act.

3. I find that that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

4. I find that the Petitioner is the exclusive representative of bargaining unit RC-63.

5. I find that if any of the SPSA Option 3's at issue are found to be public employees within the meaning of Section 3(n) of the Act, it is appropriate to include them in the existing RC-63 bargaining unit.

6. The parties agree that the following employees are excluded from the unit:[1]

Name	**Position Number**	**Agency**
Rich Fetter	40070-37-10-000-00-01	Central Management Services (CMS)
Kevin Rademacher	40070-37-11-000-00-01	CMS
Lori Sorenson	40070-37-13-000-00-01	CMS
Mike Porter	40070-37-12-000-00-01	CMS
Rafael Diaz	40070-37-16-000-00-01	CMS
Robin Woodsome	40070-37-13-300-00-01	CMS
Steve Washko	40070-37-11-200-00-01	CMS

[1] The parties stipulated that the following vacant positions shall be excluded from the bargaining unit: Chief Information Officer in the Department of Revenue (DOR), position number 40070-25-20-000-00-01; Division Manager position in DOR, position number 40070-25-20-140-00-01; Chief Information Officer position in Department of Commerce and Economic Opportunity, position number 40070-42-00-500-00-01; and Division Manager position in Department of Insurance, position number 40070-14-16-000-00-01. The Board's certifications do not include bargaining unit status of vacant positions in any case.

Don Warren	40070-37-11-100-00-01	CMS
Rebecca Morgan	40070-37-11-040-00-01	CMS
Dawn Reilly	40070-37-11-340-00-01	CMS
Steve Nation	40070-37-11-000-10-01	CMS
Burley Howard	40070-49-10-300-00-01	Illinois Department of Human Rights
Antonio Daniels	40070-44-30-000-00-01	Illinois Department of Employment Security (IDES)
Thomas Revane[2]	40070-44-30-000-00-01	IDES
Gerald Mitchell	40070-50-74-000-00-03	State Retirement Systems (SRS)
Daniel Robertson	40070-50-74-600-00-01	SRS
Gary Baker	40070-16-09-200-00-01	Department of Children and Family and Family Services
Bernard Clancy	40070-47-10-300-00-01	Department on Aging
Herb Quinde	40070-29-00-120-00-01	Department of Corrections (DOC)
Doug Kasamis	40070-10-06-000-00-01	Department of Human Services (DHS)
James Blakely	40070-21-42-000-00-01	Illinois State Police (ISP)
Anita Corey	40070-33-62-000-00-61	Department of Healthcare and Healthcare and Family Services (HCFS)
Jim Howard	40070-33-62-200-00-61	HCFS
Beverly Virden	40070-33-60-200-00-61	HCFS
William Schuh	40070-33-62-600-00-61	HCFS
David Johnson	40070-3362-700-00-91	HCFS
Rebecca Moore	40070-25-20-110-00-01	Department of Revenue (DOR)
David Richardson	40070-25-20-160-00-01	DOR
Thomas Pantier	40070-25-20-170-00-01	DOR
Dorian Jones	40070-20-90-000-00-01	Department of Public Health (DPH)
Bonnie Loftus[3]	40070-20-90-211-00-01	DPH
Trey "Harry" McGee	40070-48-00-200-00-01	Historic Preservation Agency

[2] The parties stipulated that the position which Thomas Revane currently occupies should be excluded from the bargaining unit based in part on duties which he currently and has for many years performed but which may not be reflected in the title or placement of the above position on the organizational chart of the Department of Employment Security. The parties further stipulate and agree that if Thomas Revane vacates the above position or has a significant change in his duties and responsibilities but remains in the above position, AFSCME may seek to include the above position through the unit clarification process.

[3] The parties stipulated that the position which Bonnie Loftus currently occupies should be excluded from the bargaining unit based, in part, on duties which she currently and has for many years performed but which may not be reflected in the title or placement of the above position within the Department of Public Health organizational structure. The parties further stipulate and agree that if Bonnie Loftus vacates the above position or has a significant change in her duties and responsibilities but remains in the above position, AFSCME may seek to include the above position through the unit clarification process.

7. The parties agree that the following employees are included in the unit:

Cindy Allen	40070-37-11-110-10-01	CMS
Misty Anderson	40070-37-11-122-00-01	CMS
Michael Bartholomew	40070-37-11-110-40-01	CMS
Dianne Breen	40070-37-10-010-36-01	CMS
Gary Doering	40070-37-10-010-04-06	CMS
Thomas Farney	40070-37-13-500-10-01	CMS
Douglas Jackson	40070-37-10-010-04-05	CMS
Cindy Lex	40070-37-11-110-50-01	CMS
Keith McVay	40070-37-13-000-01-01	CMS
Ronald Miller	40070-37-11-040-10-01	CMS
Mark Poland	40070-37-11-200-10-01	CMS
Teena Rawlins	40070-37-11-010-10-01	CMS
Richard Shulz	40070-37-11-021-31-01	CMS
George Scanton	40070-37-11-110-21-01	CMS
Deborah Shotts	40070-37-16-010-00-01	CMS
William Tumulty	40070-37-12-120-20-01	CMS
Dennis Twitchell	40070-37-10-010-35-01	CMS
Deb Harvey	40070-37-11-010-00-01	CMS
Leslie Domalgowski	40070-37-11-121-01-01	CMS
Bruce Hamilton	40070-44-33-320-00-01	IDES
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Karon McGrath	40070-33-62-670-00-61	HCFS
Mark Woloshyn	40070-33-62-720-00-91	HCFS
Brenna Mauck	40070-33-62-730-00-91	HCFS
Charles Hurst	40070-33-62-750-00-91	HCFS
Timothy Hattener	40070-33-62-740-00-91	HCFS
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Tarr Bond	40070-33-62-640-00-61	HCFS
Wei-Shin Wang	40070-33-16-100-00-61	HCFS
John Adkins	40070-25-20-140-80-01	DOR
Matthew Bell	40070-25-20-160-60-01	DOR

James Blane	40070-25-20-110-19-01	DOR
Debra Ciotti	40070-25-20-160-70-01	DOR
Jeffrey Copelin	40070-25-20-120-20-01	DOR
Robert Griffin	40070-25-20-160-20-01	DOR
David Hunter	40070-25-11-140-20-01	DOR
Doris Morris	40070-25-20-140-70-01	DOR
Mary Shyrock	40070-25-20-170-70-01	DOR
Mary Thomas	40070-25-20-170-50-01	DOR
Randy Tish	40070-25-20-140-30-01	DOR
Cheryl West	40070-25-20-110-20-01	DOR
Lisa Logan	40070-42-00-540-00-01	Department Commerce and Economic Opportunity
Paul Escarrez	40070-14-16-100-00-01	Department of Insurance
Bruce Carlson	40070-46-25-300-20-01	Illinois Environmental Protection Agency (IEPA)

II. ISSUES AND CONTENTIONS

The issues presented are set forth below:

1) whether the following employees are supervisory employees within the meaning of Section 3(r) of the Act:

Melissa Kahle (CMS)
Dennis Kirk Mulvaney (CMS)
Stephen DePooter (Department of Veterans Affairs (DVA))
Joe Woodward (Office of State Fire Marshall (SFM))
Charles Cicora (IDES)
William Schneider (IDES)
Matthew Penning (DHS)
Susie Saputo (DHS)
Steve Washburn (DHS)
Jeremy Margaron (DHS)
Dave Palmatier (DHS)
Julie Hagele (DHS)
John Minick (DHS)
John Rigg (DHS)
Gary Cochran (ISP)
Lambert Fleck (ISP)
Hal Waggoner (IEPA)

2) whether the following employees are managerial employees within the meaning of Section 3(j) of the Act:

Melissa Kahle (CMS)
Dennis Kirk Mulvaney (CMS)
Stephen Depooter (DVA)
Joe Woodward (SFM)
Matthew Penning (DHS)
Susie Saputo (DHS)
Steve Washburn (DHS)
Jeremy Margaron (DHS)
Dave Palmatier (DHS)
Julie Hagele (DHS)
John Minick (DHS)
John Rigg (DHS)
Gary Cochran (ISP)
Hal Waggoner (EPA)

3) whether the following employees are confidential employees within the meaning of Section 3(c) of the Act:

Gary Cochran (ISP)
Lambert Fleck (ISP)

4) whether the following employees are excluded from RC-63 because the employee is exempt from the Employer's Personnel Code under Section 4d(3):[4]

Stephen DePooter (DVA)
Joe Woodward (SFM).

III. FACTUAL BACKGROUND

A. Central Management Services

1. Melissa Kahle

Melissa Kahle is a Senior Public Service Administrator Option 3 who works for CMS in its Bureau of Communications and Computer Services (BCCS). Within that bureau, Kahle works

[4] The Employer's Position Statement submitted in this matter acknowledges that the Act does not explicitly exempt employees that are exempt from the hiring and firing restrictions in the State of Illinois Personnel Code.

for the Division of Enterprise Applications where she is responsible for applications development and support.[5] The services which her staff supports include the enterprise service desk system, the enterprise service request system, and the enterprise change management system. Her staff also provides support for three procurement related systems.

Kahle has five subordinates. While she may work on the same projects as they do, Kahle does none of the programming work that occupies 75 to 85 % of their time. She assigns work to them after receiving it electronically as a help-desk ticket or a service request. Kahle gives it to the lead programmer for the particular system involved. Kahle selects lead programmers about two or three times a year after discussion with her team. She considers expertise, background and workload in determining who is designated as a lead programmer. However, due to the reduction in the numbers of her staff, there is only about one person to support a given system.

Kahle's superiors in BCCS determine the priorities, but she decides how work is done daily. Situated down the hallway from her staff, Kahle communicates with them each day by electronic mail or directly. Kahle often visits her subordinates' work stations to make sure they are progressing to meet deadlines. She reviews the work of her subordinates to see to it that they are meeting the requirements established by the business owner.[6] In the event that a subordinate's work is not properly supporting the project plan, Kahle discusses the problem with the subordinate or she may have to escalate the issue to upper-management and/or the business owner. Kahle relies on her subordinates' status reports in ascertaining that they are making adequate progress toward completion.

[5] The term "applications" refers to programming type work.

[6] The term "business owner" refers to an upper-level management person in a state agency who is responsible for a system.

Kahle has not had to order remedial training or discipline employees for underperformance. However, she is authorized to recommend either counseling or a reprimand for an employee based on poor performance or misconduct.

Kahle does performance evaluations for her five subordinates who are now in a bargaining unit. The record includes one performance evaluation for the fiscal year 7/1/2005 to 7/1/2006 that Kahle signed in November 2006 as supervising attorney and the employee being evaluated also signed. The performance evaluation also includes the signature of another employee, and the initials of still a different one. That performance evaluation is on a merit compensation system form which is no longer used for that subordinate, a Public Service Administrator (PSA) Option 3, because his position since became part of a bargaining unit. Kahle testified that a merit increase of a bargaining unit employee can be withheld due to a poor evaluation.

About eight years ago, Kahle evaluated three probationary employees during the second three months of their six month evaluation period. If a probationary employee received a poor evaluation for that final three month period, then he/she would not be certified and become a State of Illinois employee.

Kahle has the authority to approve and deny overtime requests. She has approved overtime for her subordinates, but has never denied such requests. Twice a month—once during each pay period—Kahle signs off on forms requiring her pre-approval for an estimate of overtime to be worked. Once the overtime is actually worked, she again signs off on the form. Both signature lines which Kahle uses—before and after the overtime is worked—are designated "Supervisor Signature." The form provides an additional signature line designated as "Manager Signature," but Kahle's current superior does not require that it be used. Kahle's subordinates constantly

work overtime. In deciding whether to approve overtime, she considers such factors as work schedule, deadlines and priorities.

Kahle's subordinates also submit time off requests to her. She has the authority to grant or deny them. If Kahle has issues, questions or concerns about coverage, she seeks advice from her supervisor. She has never denied time-off requests.

About two years ago when there was ample funding, Kahle recommended training for new employees or existing employees on new tools. Her recommendations were approved 80 to 90% of the time. However, currently no money is available for training.

Kahle divides her duties into functional management and program/project management. Functional management includes approving her subordinates' time off requests, making work assignments, completing her own reports and involves her subordinates' overtime requests as well. Kahle estimates that functional management takes about 40% of her time. The remaining 60% Kahle defines as program/project management.

She is currently the program manager in her division related to Senate Bill 51 about the procurement process. Within the one program, there are several different projects. About half are assigned to Kahle while two other managers in her division are the project managers for the four remaining projects related to Senate Bill 51.

2. Dennis Kirk Mulvaney[7]

Dennis Kirk Mulvaney is an SPSA Option 3 in BCCS of CMS who works in the telecommunications area. He reports directly to Lori Sorenson, the Chief Information Officer (CIO) of BCCS. Mulvaney is part of a section which is responsible for maintaining a network

[7] The undersigned's description of Mulvaney's duties as SPSA, Option 3 is based on the transcript which the parties submitted from a prior hearing on December 3, 2009. That transcript set forth Mulvaney's duties when he was acting as Network Engineer Manager III. He has been acting up to that position for an estimated three to five years.

that runs critical applications for the State of Illinois that affect, for example, law enforcement and healthcare.

Mulvaney has been involved with large agency initiatives. For example, once Sorenson and the Deputy Director to whom she reports made the decision to switch from leased phone lines to state-owned fiberoptic cables throughout the state, Mulvaney was responsible for implementing that decision. The project is estimated to cost $130,000,000 over three years. Sorenson testified that while Mulvaney's role had a technical element, it involved more. He had to stay within the three year time period for the project, and the money allocated. Mulvaney had the option of creating new positions, which required the state to hire, or of putting out requests for bids (RFPs) to an outside vendor. He recommended doing the latter, and his recommendation was adopted. Mulvaney's team will retain some duties while the service vendor will perform others.

Mulvaney works with a colleague, Jean Taylor, in developing RFPs concerning the initiative. In creating an RFP, Mulvaney must not only gather information, he must also strategize, considering, for example, how dollars will be managed. Sorenson has always approved the RFPs that she receives from him. While Sorenson has offered comments and edited some RFPs, none are simply rejected. Sorenson relies on Mulvaney because neither she nor the Deputy Director have technical backgrounds.

Mulvaney and Taylor make recommendations as to how money is spent in maintaining and replacing equipment. The criteria for these recommendations include the manufacturer's end-of-life date, the degree to which network technicians are experiencing problems with a certain piece of equipment and the areas in which the state wants to expand service Sorenson has never reversed their recommendations regarding network equipment.

Mulvaney has two direct reports. He makes assignments to them, and Sorenson is not involved in that process. Mulvaney has approved his subordinates' requests for time off and overtime, and Sorenson testified that she did not know if he has ever denied either type of request. He is authorized to deny requests for overtime and time off. Each of the five forms in the record that Mulvaney's subordinates use to request overtime or time off contain a box for "Earned Equivalent," indicating that they are merit compensation, not bargaining unit employees. Other than requests for emergency overtime, Mulvaney has to pre-approve overtime requests based on the requesting employee's statement of why the overtime is needed. Mulvaney signs off on the performance evaluations for his direct reports. Sorenson does not see the evaluation until after it is administered to the employee. She has never rejected a score that Mulvaney gave to an employee. Sorenson has discussed with Mulvaney improvement of his performance evaluations by providing more detailed information

Mulvaney annually submits a training plan to Sorenson about training recommendations. Sorenson does not know how Mulvaney determines for whom to request training. He recently submitted a request for training on fiber technology to Sorenson, and the training was conducted in the last three to four months. While Sorenson has not rejected any of Mulvaney's training recommendations, they may be placed on hold due to budget considerations.

In August 2009, Mulvaney updated interview questions and a candidate evaluation form for a position. Sorenson did not know when Mulvaney had last taken part in an interview of a candidate.

The evidence shows that Sorenson adopts a set of standards which she receives through Mulvaney's chain of command. However, the record does not indicate what these standards are or Mulvany's role in their development.

Mulvaney is more engaged in initiatives, monitoring work status, and reviewing work product while his subordinates do more assigned, day-to-day, routine types of activities. The record does not reveal what these "activities" are. Sorenson estimates that Mulvaney spends 40 to 50% of his day assigning his subordinates work and assessing their progress.

B. Department of Veterans Affairs

1. Stephen DePooter

Stephen DePooter is a Senior Public Service Administrator Option 3 who works for the Department of Veterans Affairs (DVA) as the CIO. He began his employment there in December 2009. The DVA operates four veterans homes in the state, and provides skilled and domiciliary care to 850 veterans. It employs approximately 1250. In addition, the DVA includes 50 Veterans Service Offices throughout the state. headquartered in downtown Chicago, where veterans returning from active duty can access benefits from the state and federal governments.

As CIO, DePooter reports to Stewart Reeve, the Chief of Staff for the Director of the DVA. Reeve does not have an information technology (IT) background, and relies on DePooter's IT expertise 100%. DePooter has complete discretion over the projects which he handles. Reeve approves all of his recommendations.

Seven staff employees report directly to DePooter. They consist of one Area Administrator, two programmers and four employees responsible for operations. The Area Administrator's duties include making sure that systems are working in the four homes that the DVA runs in the state—in Quincy, LaSalle, Manteno and Anna. DePooter provides guidance and direction to the two programmers on writing programs to track the data in the homes. The four operations staff are in the field where their duties include fixing and installing equipment as well as updating computer software.

DePooter is responsible for overseeing those seven staff members. He assigns them work. The record shows that on numerous occasions Depooter has authorized overtime for his subordinates. The form used for this purpose requires DePooter's signature, and that of his superior, Reeve, both before and after the overtime is worked. Reeve testified that he accepts DePooter's recommendations on overtime 100% of the time. The record includes numerous examples of DePooter approving overtime for his staff. Overtime usually occurs on a big project. He also approves time off requests, but the Employer provided no examples. DePooter also authorizes time off.

DePooter does performance evaluations for his subordinates. The Employer did not introduce any examples into evidence. A poor evaluation of a bargaining unit employee—each of DePooter's subordinates is a member of a bargaining unit—could result in the withholding of that employee's step increase.

While DePooter has the authority to discipline, he has not had the need to do so.[8] Similarly, DePooter has the authority to handle formal grievances at the first level, but he has not had any yet. DePooter has resolved informal workplace issues, but the record does not include any examples.

Regarding the interview process, DePooter serves as Reeve's technical advisor. In this role, he formulates interview questions. Although DePooter does not participate in the interview, Reeve later speaks with him to learn who is the best candidate.

According to Reeve, DePooter spends 80% of his time overseeing his subordinates while the other 20% is consumed by activities as an analyst. Yet, on direct examination, Reeve did not

[8] The record does not distinguish between DePooter's authority to discipline and his recommendation to a superior to discipline.

dispute a position description for DePooter's position which provides that he performs various duties "supervising" his staff 35% of his time.[9]

When DePooter was asked about the same position description, he estimated that he spent 15 to 25% of his time assigning work, approving time off and other tasks listed in the job description. He further testified that he spends about 60% of his time doing the same work as the people who report to him.

DePooter's responsibilities include helping the DVA develop new policies and procedures. Since he was first employed by the agency in December 2009, all of his recommendations have been accepted. When DePooter was hired, he was asked if he could review information to determine whether the DVA could convert its payroll system under CMS to one based on the payroll system in the Department of Human Services (DHS). After DePooter determined that the DVA's current infrastructure was compatible with the DHS payroll system, he determined that the conversion project to the DHS payroll system could proceed. The DVA's Chief of Staff, the Chief Fiscal Officer (CFO), Human Resources Manager (HR Manager) and Labor Relations personnel were involved in this project as well.

DePooter proposed adopting the time collection system used in the DVA's home in Anna throughout the agency. This change would enable the DVA to collect attendance data on a daily basis as opposed to monthly, a requirement for conversion to the DHS payroll system. After DePooter made his proposal to the Chief of Staff, the CFO, and the HR Manager, they approved

[9] The relevant portion of the job description reads as follows:

> Supervises staff; assigns work; approves time off; provides guidance and training; gives oral reprimands; effectively recommends grievance resolutions; completes and signs performance evaluations. Establishes annual goals and objectives; counsels staff on problems with productivity, quality of work and conduct; determines staffing needs to achieve program objectives.

it. He then showed the homes' Administrators and HR Managers that the proposed daily time collection method was efficient.

He investigated the use of cable T.V. at the homes to determine if a single cable T.V. carrier could be used in the four separate homes. An email dated April 12, 2010 showed that Reeve assigned DePooter to chair a three person task force to find out the variations on cable payments among the four homes, why there are variations and their recommendations on a uniform policy throughout the agency. DePooter concluded that the multiple homes could all use one carrier. Reeve testified that "we" subsequently learned that it was equally cost-effective to have four separate systems.

DePooter updated and standardized the DVA's ID badging system after a colleague complained to him that the badges were flimsy and subject to fraudulent reproduction. In an email dated March 23, 2010, DePooter wrote the following:

> [m]y intention is to ensure we are standardizing the hardware and software for the agency so we can use our ID's at any site with consistency and external agencies will recognize our badges as official.

In another email dated April 7, 2010, DePooter indicates that he is moving forward with the purchase of an ID badge printer for the agency.

Reeve testified that DePooter was "instrumental" in the agency's use of a new program, called Virtual Veteran, to replace its old program, Vet Recs, so that its staff in Veterans Service Offices throughout the state would have a central data base. DePooter elaborated that he acted as a project manager when the Assistant Director and the manager over the Veterans Service Officers told him that the existing program was inadequate and asked him to investigate moving to a new information system. DePooter set forth the different options that allowed them to evaluate and choose from among the possibilities.

DePooter had made a presentation to the central office management team that the default mode of all of the agency's printers and copiers be set on duplex as a means of reducing the amount of paper that the DVA uses. In an email dated March 12, 2010, Depooter indicated that management had accepted his proposal and, accordingly, changes would be made to the equipment in upcoming weeks. Similarly, as part of the Green IT Challenge, DePooter consolidated the agency's use of equipment such as scanners, facsimile machines, and printers. The record is unclear as to the origin of these projects.

An email dated April 5, 2010 documents DePooter's attempt to start a clinical informatics focus group to discuss the agency's needs for clinical systems in its four homes. The record does not disclose DePooter's efforts other than that email.

DePooter was also involved in a project which enabled the agency to scan its hard copy files from past years so that it could maintain them as electronic files. The record does not indicate the nature of his participation.

Reeve testified that DePooter "managed" a project to upgrade the agency's email server. Other than updating the Director, Assistant Director and Chief of Staff on his progress, the record does not indicate DePooter's actions.

The record shows that during the training of employees on the Accu-Care project, DePooter and his team provided technical support. DePooter also sent an email announcing a short training session on the new payroll and timekeeping system.

C. Office of State Fire Marshal

1. Joe Woodward

Joe Woodward is the SPSA Option 3 employed with the Office of the State Fire Marshal (OSFM) since June 2006. He reports directly to the State Fire Marshal who is also the Director of the agency.

Woodward has five subordinates, four of whom are bargaining unit members. The merit compensation position is that of a Public Service Administrator (PSA) Option 3 who serves as a network manager, providing support for the network and help desk, as well as implementation of systems. Woodward's other subordinates are as follows: an Information Systems Analyst (ISA) I; an Information Software Specialist (ISS) II; an Executive I; and her assistant. The ISA I does help desk work and hardware implementation. The ISS II does help desk work, inventory and small procurements. The Executive I is the official program administrator for the National Fire Incident Reporting System.

Woodward assigns work to his five subordinates based on the nature of the tasks each performs. He estimates that he spends less than 5 to 10% of his time approving the time off requests of his subordinates. Woodward has also approved overtime requests from them. He has to request overtime from the State Fire Marshal prior to its use and then Woodward has to approve it once the work has been performed. The Employer provided a time and activity report from 2008 of one of Woodward's subordinates which includes overtime that Woodward approved. The current State Fire Marshal who began in February 2010 has not denied any of the overtime requests that Woodward has approved, but the previous State Fire Marshal denied a couple

Although Woodward's duties include requesting training for his subordinates, he has not done so in the past two years due to budgetary constraints. When he made training requests, they were approved.

Woodward completes the performance evaluations for the five subordinates referenced above. The one performance evaluation form in the record, that for the merit compensation employee among Woodward's five subordinates, includes a part describing the extent to which the subject meets specified goals. A box is marked to denote the level that the employee has demonstrated certain characteristics such as planning, initiative and quality, as well as an overall performance rating ranging from "exceptional" to "unacceptable." Woodward testified that when he evaluates a merit compensation position, he is able to recommend a raise for the employee. However, he has not done so since he began working in the OSFM in 2006.

Woodward testified that he has the ability to discipline if necessary. The record does not indicate what levels of discipline he can issue and/or recommend, and under what circumstances. The one disciplinary event that occurred was addressed by the agency's Chief Legal Counsel. Although Woodward's input was sought, his recommendation was not followed. Regarding the grievance procedure, he recently provided a Step 1 response to a grievance which two employees had filed over the agency's policy concerning flex-time. Because the grievance challenged an agency-wide policy, Woodward could not resolve it at his level. He "just received the form and signed it and sent it up the chain." The OSFM has only had that one grievance.

Woodward's responsibilities include several projects that are "outside the scope of [his] employees [sic] work." For example, he recently designed a web page for the agency. Woodward presented different options to the State Fire Marshall who then selected from among them. Woodward had no discretion in the process. He is also involved in implementing a project known as document management. Woodward provides technical assistance in selecting and procuring a given product while members of his staff are involved in installing it and

providing any support. His recommendations for inclusion in the Request for Proposal (RFP) were not approved by CMS, the final authority for that project.

Woodward also manages the National Fire Incident Reporting System (NFIRS) program on which his Executive I and her assistant work. NFIRS is a nationwide program of the U.S. Fire Administration for fire departments across the country to report their fire and emergency medical incidents to a federal database. Each state has a program administrator who helps the departments in the state do the reporting. When asked on direct examination about his involvement in the NFIRS program, Woodward responded "we maintain a complicated data warehouse of the data. We send the data to the federal government and then we make a copy back to the state." Woodward alone is responsible for analysis of the data warehouse information. His staff coordinates with fire departments and assists them in resolving their reporting issues, does training for those departments, facilitates password changes and performs other support issues.

Woodward is also a liaison to the Illinois Emergency Management Agency (IEMA). A few others in the agency have the same designation. The record does not indicate what this role entails.

Woodward testified on direct examination that he "created" the OSFM IT Procedures manual that became effective January 15, 2009. On cross-examination he acknowledged that three of its 13 sections were adapted from CMS policy to make them more applicable to OSFM. Upper management approved Woodward's draft after making some changes to it. The record is silent as to the persons in upper management who approved it, and the nature of their changes to it. Woodward's email distributing the document thanked two people for "helping me get this done." Handwriting at the bottom of that same page states that the document was "developed

due to audit finding" and that "edits [were] made by Exec. Staff before release." For a period of two to three months, Woodward spent 10 to 20% of his time working on this project.

D. Department of Employment Security

1. & 2. Charles Cicora and William Schneider

Charles Cicora and William Schneider each hold the position of Senior Public Service Administrator Option 3 in the Department of Employment Security (DES) where Cicora is in Support Services and Schneider is in Revenue Systems. The primary function of DES is the payment of unemployment insurance benefits. Cicora and Schneider have similar responsibilities but over different areas within DES.

In Support Services, five employees report to Cicora directly, and another 15 report to those five. Cicora is responsible for computer operations which entail production control and computer room operations. During the day, teams support personnel in the computer room as they do print jobs. At night, production controllers monitor the batch processing jobs which run on schedules. The four employees who supervise the teams report to Cicora directly. His fifth direct report is Cicora's "right-hand" person who is responsible for making sure that all schedules are updated.

Schneider's responsibilities in Revenue Systems include the major employer taxing system and storing wage records for all State of Illinois employees. Schneider has three direct reports who are among the 15 employees in Revenue Systems. Two of them are PSA Option 3's who supervise the program analysts below them. The third individual provides technical support to Schneider. Although Schneider has the ability to do the programming and design tasks of those who report to him, such work is not his main function.

Cicora assigns new jobs that come from the application development area by making sure that those jobs are placed in the appropriate schedules. His subordinates then do their work based on those schedules.

Schneider makes assignments based on the work generated from his frequent meetings with user groups. After such meetings, he assigns the work to his two supervisors who, in turn, have the program analysts that report to them perform the work. Which employees do the work depends on the kind of application that is being supported.

Cicora and Schneider each approves or denies leave requests from his subordinates. When one of Cicora's direct reports requests leave, Cicora signs as the immediate supervisor, and has to check a box indicating his approval or denial. Thomas Revane, the Chief Information Officer, then has to provide the final, authorized signature, and indicate his approval or denial. Cicora has not denied any such leave requests other than those in which records indicate that the employee requesting leave has insufficient time to cover his absence. Revane has never overturned Cicora's approval of a leave request.

The record includes four leave requests which Schneider approved and signed as the final, approving authority. Schneider has always signed leaves requests as the final authority, and his signature is not accompanied by that of another.

Both Cicora and Schneider assign overtime. Overtime may be necessary to meet a due date or fix a problem in a timely manner. Cicora makes overtime assignments based on staffing shortages, including absences due to sick leave and/or vacation. He posts the need for overtime and makes assignments on a rotating basis in conformance with the collective bargaining agreement. Schneider has never denied a request to work overtime.

Cicora is responsible for on-the-job training of his subordinates to understand how to operate and maintain software products, called schedulers, as well as the printers. In the last few years, Schneider has recommended that two of his subordinates take an outside training class on dot net technology, and those recommendations were approved.

Both Cicora and Schneider evaluate their subordinates annually. As an example, Cicora performed an annual evaluation of an employee in March 2009 when that employee was subject to the Merit Compensation and Performance System. He had to determine whether to rate that employee as exceptional, accomplished, acceptable or unacceptable. Cicora signed that document as the employee's supervisor, and the initials of Cicora's superior appeared beside his signature.

In another example, Cicora signed a performance evaluation as the "next higher level" supervisor reviewing the evaluation which his direct subordinate conducted of a probationary employee in January 2010. Cicora's direct subordinate had to rank an employee for his final probationary evaluation. If his direct subordinate rated the probationary employee as "fails to meet expectations," then under the collective bargaining agreement that probationary employee could be terminated.

In January 2010, Schneider did the final probationary evaluation of an employee. In that case, he rated his direct subordinate as "meets expectations" on eight of 10 criteria and determined that there was insufficient time to evaluate the subordinate on two items. Schneider and the employee being evaluated both signed the document the same day, and Schneider's superior subsequently signed it. If a probationary employee fails to meet expectations in his final evaluation, that employee may be terminated rather than certified as a state of Illinois employee.

Cicora and Schneider have the authority to issue oral and written reprimands without consulting others. In the event that either wants to issue more severe discipline, he must make a recommendation to his superior. While neither Cicora nor Schneider are required to consult with labor relations when either imposes an oral or written reprimand, they may choose to do so..

Cicora issued two oral reprimands in 2009. In order to memorialize those incidents, documents were copied to the subject employee's personnel file. One of these two documents was also copied to the agency's labor relations manager.

On two occasions when Schneider told his superior of the discipline that he was contemplating, the superior advised him to contact labor relations to make sure he was complying with the rules. The superior testified that Schneider "probably" did contact labor relations. The Employer did not introduce any examples of discipline which Schneider had issued.

Cicora had identified to his superior the positions in his area that need to be filled. Specifically, when there are vacancies, he asks his superior to obtain an electronic personnel action request (EPAR) form approved by the Governor's office to fill the position. Seven individuals have been hired to fill vacancies. Cicora worked with the human resources to conduct interviews and make recommendations for hire. A three-member panel conducted interviews, the panelists' scores of the candidates were then averaged, and the candidate with the highest score was offered the position. In the past eight months, Schneider was part of an interview panel that made a recommendation for hire.

Both Cicora and Schneider are the first level grievance response for their respective direct subordinates. All of their direct reports are in a bargaining unit and thus can file grievances under the applicable collective bargaining agreement.

Cicora's position description, dated from 1993, provides that the time he spends on supervisory tasks, including training evaluations, approval of all personnel transactions, is 20% of time. His superior testified that this sum is accurate.

Schneider's position description, effective 2004, estimates that he spends 20% of his time directing, coordinating, reviewing and evaluating his subordinates, preparing and signing their performance evaluations, hearing first level grievances, implementing discipline, conducting staff meetings and discussing problems with them. On direct examination, Thomas Revane, the CIO in IDES who signed off on this position description, estimated that Schneider spends more than 50% of his time assigning work, scheduling training and evaluating employees. On cross-examination, Revane explained this difference between the position description and his testimony regarding the time Schneider spends on certain tasks. He stated that his testimony about time spent was consistent with the position description's time estimate because the more than 50% that he estimated included the time that Schneider meets with user groups and individuals from the federal government.

1. Department of Human Services

1. Bureau of Disability Determinations

(a) Matthew Penning

Matthew Penning, an SPSA Option 3 in the Bureau of Disability Determination Services (BDDS) within the Department of Human Services (DHS), reports to Rhonda Pratt.[10] BDDS, made up of 400 to 500 employees, addresses claims for Social Security disability within the State of Illinois. The Social Security Administration (SSA) contracts with the state to process

[10] Of the eight SPSA Option 3's at issue in DHS, one—Matthew Penning—is in BDDS and reports to Pratt. The remaining seven—Jeremy Margaron, Susie Saputo, Steve Washburn, Dave Palmatier, Julie Hagele, John Minick, and John Rigg—report to CIO Doug Kasamis in Management Information Systems.

disability claims. BDDS is entirely funded by the federal government through SSA. The information systems at BDDS are necessary to interact with SSA, and enable it to process Social Security claims. The employees at DHS follow federal and state guidelines that apply to the Social Security disability process.

Penning is the expert for Information Technology (IT) systems used in BDDS. His direct supervisor, Rhonda Pratt, does not have a background in IT. The record does not indicate when she became Penning's direct supervisor. She relies on Penning for computer equipment upgrades, including enhancements to the Legacy Systems.[11] He makes recommendations to the Director of BDDS as to the equipment necessary to purchase after he or his staff does an evaluation.[12] These recommendations are done periodically as part of the normal business process. According to a schedule, equipment is to be replaced about every six years. Robert usually approves his recommendations. Penning has also made recommendations to Robert on the purchase of a security system—video cameras—needed to comply with SSA standards.

He is in a section of BDDS which does not have a separate budget, but is rather part of a larger bureau budget. After researching the cost for a particular piece of equipment, Penning asks the fiscal SPSA if there are sufficient funds to support a request for a certain item. "He evaluates the monetary amount that goes to the [Legacy System] vendor."

Penning's functions include conducting random, internal audits of the entire BDDS workforce to determine if any were inappropriately using the Internet. The Director receives the information that he gathers. BDDS is required to perform such audits periodically.

Penning has four direct subordinates: two of them are (non-senior) Public Service Administrators, one is an Office Administrator and the other is an Executive Secretary. Penning

[11] Legacy Systems is a case processing system that facilitates electronic processing of Social Security disability claims.
[12] Robert is a Deputy Director of DHS.

has at least eight indirect reports. All of these subordinates are in a bargaining unit. When a piece of equipment needs immediate repair or a subordinate is absent, Penning may do the same work as them. If Penning is absent, no one fills in for him. Rather, his subordinates continue to work in the area for which he/she is responsible, such as Legacy Systems or Outlook.

When Penning receives an email indicating that there is an IT issue in the agency, he forwards it to the appropriate person on his staff. On cross-examination Pratt explained that Penning's section, BDDS, is divided into three distinct functions, and most work requests automatically go to one of those functions.

In performing his duties, Penning has sent a memorandum to a subordinate informing her that her hours were changed. That letter was copied to two individuals. Penning also recommends that his staff get appropriate training. Specifically, he has made training recommendations for his staff when Outlook was enhanced and to learn the IROBOT program. Pratt usually approves Penning's training recommendations. Pratt testified that he determines when his subordinates need to work overtime.

Penning does performance evaluations for his subordinates The record includes seven performance evaluations which Penning did and bear his signature as supervisor. Each was for a year that occurred sometime in the second half of 2008 to the first half of 2010. Above Penning's signature, that of the employee at issue appears. Below Penning's signature, the signature of Ann Robert, or that of her designee signing her name, appears as the "next higher authority." An additional signature appears on the line for agency head.[13]

[13] Two of these performance evaluations were signed by all individuals *after* AFSCME filed the majority interest petition at issue on April 5, 2010. It is well established that, in analyzing representation cases arising under the Act, the petition's date of filing is the significant date for purposes of resolving such issues as whether a public employee is covered by the Act. See e.g., State of Illinois, DCMS and AFSCME, Council 31 20 PERI ¶105 (IL LRB-SP 2004); County of Boon and Sheriff of Boone County and International Union, United Automobile, Aerospace and Agricultural Implement Workers, Local

All seven performance evaluations were done on the same form. This form is not the one used for merit compensation employees. On the cover page of two of these performance evaluations, box #8, entitled "TYPE OF REPORT," encompasses smaller boxes, two of which read "ANNUAL" and "SALARY INCREASE," and both of these smaller boxes have marks in them.[14] The remaining five evaluations only have the box reading "ANNUAL" marked off, not the one which reads "SALARY INCREASE."

Within the evaluation document, the performance of the employee being evaluated was rated on each of 10 criteria as "exceeds expectations," "meets expectations," "needs improvement" or "insufficient opportunity to observe." The two employees whose evaluations had a mark by the box "SALARY INCREASE" did not have the best evaluations based on the ten criteria. The record does not indicate who made the decision to check the box that read "SALARY INCREASE" or why.

Pratt testified that she approves Penning's performance evaluations. She added that on one or two occasions, she has asked Penning about a rating. Pratt continued that on these occasions, she approved the performance evaluations after Penning gave a satisfactory explanation. None of the seven performance evaluations in the record bear Pratt's signature.

He is responsible for disciplining his subordinates when their conduct warrants such action. Penning gives the Employer's response at the first level of the grievance procedure. He has addressed one grievance. In June 2006, Penning signed it at Step 1 following type written words indicating that the grievance could not be resolved at the first level. Pratt had no personal

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1761, 19 PERI ¶74 (IL LRB-SP 2003). The Board has declined to consider information concerning employment matters arising after that date. See e.g., State of Illinois and AFSCME, 20 PERI ¶105 (IL LRB-SP 2004); County of Boone, 19 PERI ¶74 (IL LRB-SP 2003). In this case, I admitted documents issued after April 5, 2010, the date the petition at issue was filed, because there was no allegation that Penning's duties regarding completion of performance evaluations changed after April 5, 2010.

[14] One of these performance evaluations was signed after the petition at issue was filed.

knowledge of his involvement with that grievance; the date by Penning's signature preceded her direct supervision of him.

The job description for Penning, effective in June 2008, estimates that an employee occupying his SPSA, Option 3 position does the following for 15% of his time:

> Supervises staff, assigns work; approves time off; provides guidance and training; recommends and imposes disciplinary action; effectively recommends grievance resolutions; completes and signs performance evaluations. Establishes annual goals and objectives; counsels staff on problems with productivity; quality of work and conduct; determines staffing needs to achieve program objectives.

Pratt estimated that Penning spends between 10 and 15% of his time doing "hands-on" supervision. When she considered this supervision in conjunction with direction of his subordinates to address issues occurring in other parts of the agency, she approximated that supervision occupied about 45 to 50% of his time. However, on cross-examination, Pratt acknowledged that the assignment of work due to work orders coming from elsewhere in the agency was routine rather than requiring independent judgment.

2. Management Information Systems

The Management Information Systems (MIS) division within DHS delivers applications to support business processes within DHS, the largest agency that is part of state government, as well as its back office systems.[15] These business processes support scores of social service programs. For example, DHS delivers applications used in determining Medicaid eligibility, administering food stamps, and supporting casework for child care. MIS is also responsible for delivery of the systems used in the agency's internal accounting and human resources systems.

[15] The term "business processes" refers to the various programs that DHS operates. Similarly, the word "business user" mean that part—division/section/unit—of DHS responsible for a program.

Doug Kasamis is the CIO of MIS. Of the seven employees at issue in MIS, three report directly to him, while the remaining four are his indirect subordinates.

(a) Susie Saputo

Susie Saputo, an SPSA Option 3 in MIS who reports directly to Kasamis, is the head of Customer Service and Training. She is responsible for developing and delivering the training curriculum which MIS provides to all DHS employees. Saputo maintains the customer service hotline for questions about software from DHS employees. For example, a DHS employ may use the hotline to ask about preparing an Excel spreadsheet.

Saputo makes recommendations to Kasamis regarding spending for training. Kasamis accepts her recommendations about 50% of the time due to budget constraints. Saputo disagreed with Kasamis' decision to close some training sites. As a result of Kasamis' decision, Saputo became involved in a project to provide virtual training via computer as opposed to classroom training.

Saputo is responsible for maintenance of OneNet, an application system, and is involved in compliance with the Illinois Technology Accessibility Act. The record is silent as to what her duties are with regard to either.

Saputo has three to six direct subordinates. All of them are in a bargaining unit. Saputo's responsibilities include responding to grievances at the first level. She does performance evaluations for her subordinates.[16] She has authority to discipline them.

Saputo sent an email to these six subordinates in April 2010 setting forth the schedule of different classes to be taught to other employees of DHS as part of the virtual training. The email provides "We decided on a training schedule. That schedule also assigned each of her subordinates as instructors of the training classes. The record includes another email from

[16] No evidence was provided showing that these evaluations are written.

Saputo dated about a month earlier to the same six direct reports with an attachment entitled Training Methodology. On that attachment, she assigned each of her subordinates to prepare a training module used in the virtual training.

Saputo approves requests for time off which her direct reports make. On the form that is used in this process, there is a line with the words "Supervisor Signature" beside it which Saputo signs and a box alongside the word "Approved" another by the word "Denied." Other than the signature of the requesting employee, Saputo's signature is not accompanied by another. Although she has the authority to deny such requests based on workload and training class time, Saputo has not done so.

She determines if her subordinates need to work overtime. Kasamis testified that she makes this decision about the overtime request based on training class location and the volume of work. The record includes two forms for overtime authorization which she signed on the line for "Supervisor's signature" and marked next to the word "Approved," not the word below, "Denied." No signatures accompany her own on this form. Kasamis does not know if Saputo approves overtime before or after her subordinates perform the work. She also has the authority to handle grievances at the first step of the grievance procedure. Kasamis estimates that Saputo spends 35% of her time supervising her subordinates.

(b) Steve Washburn

Steve Washburn, an SPSA Option 3 who reports directly to CIO Kasamis, heads up the Innovation, Productivity and Adaptive Technology Bureau within MIS.[17] In that position he addresses change requests that come into MIS such as one seeking a printer or a desk top.[18]

[17] Washburn also serves temporarily as the Acting Bureau Chief of Security, Quality Assurance and Planning. The Employer limited its questioning to Washburn's official position.
[18] These change requests are also referred to as MISR requests.

Washburn translates these requests, known as MISR requests, into a CMS process known as Enterprise Service Requests. He also works on special projects.[19]

Kasamis testified that Washburn makes recommendations on spending, and that he accepts Washburn's recommendations "probably over 80% of the time." When Kasamis was asked during direct examination what kind of recent policy decisions Washburn was involved in, he responded as follows:

> [t]hose related to email migration. As far as the controls that are in place, the schedule that is determined when given divisions will be rolling out—rolling out. Also, he's responsible for the MISR requests. So any changes to our request process itself, these would actually go up through Steve.

In his official role, Washburn has three subordinates.[20] He makes assignments based on the system in question. Washburn authorizes overtime based on the volume of MIS requests for change. As an example, Washburn authorizes overtime to work on the migration to Outlook so that it can be done after hours without impacting business.[21] Kasamis does not know if Washburn approves overtime before or after it is worked. Kasamis testified on direct examination that Washburn approves/denies time off request from his subordinates based on "availability and workload." During cross-examination, Kasamis acknowledged that he was unaware that Washburn had denied a time off request. Washburn does performance evaluations for his subordinates.

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[19] As an example of these special projects, Kasamis testified that Washburn was coordinating the implementation of the statewide migration to Outlook from Groupwise. However, on cross-examination, Kasamis acknowledged that this Outlook migration was a planning function under Washburn's acting role.

[20] While Kasamis initially testified that Washburn had four subordinates, on cross-examination he testified that this number is three on the basis of the organizational chart in the record that depicts Washburn's official position.

[21] On cross-examination, Kasamis acknowledged that this function concerning the migration to Outlook is part of Washburn's acting role.

Kasamis testified that Washburn handles grievances for his bargaining unit employees. He is also authorized to discipline them.

(c) Jeremy Margaron

Jeremy Margaron, an SPSA Option 3, is the bureau chief of the Bureau of Information Management and Development (IM & D) within the MIS division.[22] In this position, he is responsible for application development and maintenance. Margaron has four direct reports—Dave Palmatier, Julie Hagele, John Minick and John Rigg—each of whom heads up an area within the bureau.[23] He has scores of indirect reports. Margaron's immediate superior is Doug Kasamis, the CIO of MIS.

Margaron is the MIS division's "strongest technical architect." This term refers to his ability to configure the hardware to build redundancies into the system in the event of a component's failure. In this role, Margaron looks at the system's infrastructure, and makes recommendations to the infrastructure provider to bring newer technologies into the system.

He also works with the Section Managers to prioritize the change requests which MIS receives. There is currently a backlog of an estimated 1400 change requests. These change requests come from program areas in divisions of DHS other than MIS, as well as the Department of Health and Family Services. A change request will be signed off by an executive level person in the program area and includes a statement identifying the system that needs to be changed. As an example of a change request, a program area may request that a system perform a new application. The appropriate section within IM & D then meets with the program area to determine how it wants to prioritize its competing change requests. When Margaron signs off on

[22] Prior to Kasamis starting as the CIO of DHS in October 2009, Margaron was acting in that position.
[23] Three of these direct reports are Section Managers, and Hagele is an acting Section Manager. Each of these four individuals is not in a bargaining unit and is at issue in this proceeding. The record is unclear as to whether Margaron has an additional direct report who is in a bargaining unit.

a change request form, he does not have to first obtain Kasamis' approval. When there are several program requests for a program area over the same span of time, Margaron testified that "we'll go back, we'll figure it out" in order to prioritize among them.

Margaron does not have direct spending authority. On direct examination, Kasamis testified that Margaron makes recommendations to him concerning the purchase of hardware or software, and that he accepts them more than 90% of the time due to Margaron's knowledge and judgment. On cross-examination, Kasamis explained that he asked Margaron how MIS typically deals with a specific spending request and what the function is of the equipment involved. Kasamis' further testified as follows:

> [o]ftentimes [Margaron] would know the answer straightaway and tell me this is something we need to continue to support.

Margaron estimates that he made four or five requests for budget expenditures in the last six months. He makes these requests during a project when he needs additional software.

When policy decisions arise, Kasamis consults Margaron for advice before implementing those technology policies. In the event that program areas ask for new capabilities or there is new statutory language, Margaron and the Section Managers determine the feasibility of implementing program changes and their affects on the systems.

Margaron assigns work to his direct reports. He makes those assignments based on the computer system involved in the change requested. He has authority to assign overtime to his direct reports. On cross-examination, Kasamis acknowledged that he did not know if Margaron had ever addressed an overtime request from any of his direct reports. He has authorized overtime for subordinates who are not his direct reports. Margaron approves/denies his subordinates' time off requests. While Kasamis testified that Margaron has the authority to deny time off requests based on workload volume, on cross-examination he acknowledged knowing of

no such denials. Margaron has not denied a time off request, approving them as long as the individual employee has the time on the books and there are not too many people off on the same day.

Margaron does performance evaluations for the three Section Managers and one acting Section Manager who are his direct reports. Since Kasamis began as Margaron's direct superior, CIO of MIS in October 2009, Margaron has not recommended that any of the section managers receive a salary increase because there is a salary freeze on all such merit compensation employees.

In his role as bureau chief of IM & D, Margaron's responsibilities include hearing first level grievances. Kasamis provides the Employer's response at the second step. He would seek Margaron's explanation as to why the grievance was not resolved at the previous step. Margaron has not attended second level grievance hearings in Kasamis' absence. Margaron estimates that he spends 30% of his time doing programming.

(d) Dave Palmatier

Dave Palmatier is an SPSA Option 3 who is the Section Manager of the Administrative and Human Resources section in the bureau of IM & D within MIS. He reports directly to Margaron. The organization chart shows that the positions for his three direct reports are each vacant. Due to these vacancies, employees who would otherwise be Palmatier's indirect subordinates, report to him directly. Specifically, six team members on the team for the Consolidated Accounting and Reporting System (CARS), nine members on the child care team,

as well as three consultants, fall into this latter group.[24] All of the positions subordinate to that of Palmatier are in the bargaining unit.

Palmatier's position is responsible for maintaining the accounting system, CARS. Kasamis testified that he has relied on Palmatier's recommendations relating to the accounting system. Palmatier is in contact with DHS' Chief Fiscal Officer concerning changes that are needed in the accounting system to meet new federal reporting guidelines

He is also responsible for the child care system and the case management system that supports it. In August 2010, Palmatier was working with Kasamis and Margaron in preparing the contract for the vendor of the new case management system. His duties include other special projects related to the child care and accounting systems. Palmatier acts in a technical advisory role.

Palmatier assigns work to his subordinates. Kasamis testified that Palmatier makes these assignments based on "their knowledge of the specific aspects of the system." He approves overtime for his subordinates. Palmatier's approval of overtime is often date driven. Palmatier has approved time off requests for his subordinates, and has the ability to deny them.[25] Kasamis testified that he does not know how Palmatier determines his resolution of a time off request. Palmatier is able to authorize overtime and time off without the approval of a superior.

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[24] The position to which the CARS team reports became vacant in June 2006, while the position to which the Child Care team reports became vacant in January 2008. Each of these vacancies is a direct report to Palmatier.

[25] The record includes Palmatier's approval of overtime and time off requests which were dated after the representation petition at issue was filed. The Board has declined to consider information concerning employment matters arising after the filing of a representation petition. See e.g. State of Illinois and AFSCME, 20 PERI ¶105 (IL LRB-SP 2004); County of Boone, 19 PERI ¶74 (IL LRB-SP 2003). In this case, I admitted documents dated after April 5, 2010, the date the petition at issue was filed, because there was no allegation that Palmatier's duties regarding the overtime and time off requests changed after the April 5, 2010.

Palmatier does performance evaluations for his subordinates. He has authority to handle discipline. The record includes a memorandum from Palmatier to the file documenting an oral reprimand of a subordinate, and the memorandum was copied to Margaron.[26] Kasamis knew of one instance when a verbal reprimand was issued, but he did not know if Margaron or Palmatier had issued it. The document in the record memorializing that verbal reprimand was from Palmatier and copied to Margaron.

Palmatier has the authority to handle grievances of his subordinates, but he has not done so since Kasamis became the head of MIS in October 2009. The record does not state at what level of the grievance procedure he is involved in grievances. The record includes a memorandum which Palmatier wrote to Margaron in May 2009 concerning a subordinate's grievance sking a promotion.

Palmatier is involved in the hiring process for his subordinates. Kasamis testified that Palmatier ensures that the position description for the vacancy in question is accurate, and he is involved in the interviewing process. An email in the record that Palmatier wrote in November 2007 stated when he would be available to conduct interviews and "probably in conjunction with" another employee.

Palmatier estimates that he spends about 20 to 25% of his time doing supervisory duties. He approximates that he and his subordinates do the same programming work 40 to 45% of the time. According to Palmatier, he spends the remainder of his time on special projects.

(e) Julie Hagele

[26] That memorandum was dated in June 2010—a date after the petition at issue was filed. I admitted it for the same reason stated supra note 25.

Julie Hagele, an SPSA Option 3, is a Unit Manager acting as a Section Manager who reports directly to Jeremy Margaron.[27] In her official position, she is responsible for the systems used to support the Division of Community Health and Prevention, one of six divisions within DHS. Those systems include the Women, Infant and Children program (WIC). Hagele is also responsible for the Contract Management System used to generate the contracts to over 1300 providers of services to the citizens of Illinois.

Hagele does not have direct spending authority. Kasamis testified that she makes recommendations concerning spending through the procurement process, the Community Health and Prevention division (the division in DHS that runs the programs for which Hagele provides support), or through MIS. In the event that Hagele makes her recommendations for spending through MIS, her recommendations go to Kasamis who usually accepts them.

Hagele makes recommendations for changes as the WIC federal program is revised so that the systems in DHS can continue to support the underlying business process. Kasamis described Hagele's role as follows:

> She would make recommendations for changes both in terms of the capability system (sic), as well as how long it would take them to actually implement it, and the underlying cost, if it requires overtime or if it requires contract extensions to support.[28]

Hagele has four direct subordinates, all of whom are in a bargaining unit.[29] Hagele makes work assignments for these direct reports.[30] She decides whether her subordinates need to work

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[27]The parties agreed that Hagele's acting role is not to be considered in this RDO. All of the other unit managers are in a bargaining unit.

[28] Hagele directs the day-to-day activities of the vendors.

[29] An organizational chart in the record lists Hagele's name and position/title above those of four direct reports.

[30] During direct examination, Kasamis' initially stated that Hagele made her assignments based on each direct subordinate's "knowledge of the underlying business process." However, when the Employer's attorney asked him further questions to establish a foundation for his testimony, Kasamis acknowledged that Hagele does not communicate with him how she makes assignments.

overtime depending on the "requirements of the workload." No specific examples of her making assignments or authorizing overtime were introduced. Hagele has approved time-off requests, and her superior's approval is not needed. The two examples of time off requests introduced and in the record are approvals by Hagele.[31] She is authorized to deny these requests as well. However, Kasamis does not know of any situation when time off requests were denied. Hagele does performance evaluations for her direct reports. The Employer did not provide any specific examples of these performance evaluations.

Kasamis testified that Hagele is authorized to "handle" their discipline. The Employer did not introduce any evidence explaining her role in the disciplinary process.[32] Kasamis testified that she is authorized to "handle" grievances for them. The record contains documents that show Hagele provided the Employer's first level response to a grievance, denying it.

An exchange between Kasamis and the Employer's attorney at hearing concerning specific authorities performed by Hagele demonstrates the extent of Kasamis' testimony:

Q. Does [Hagele] have authority to handle grievances for [her direct subordinates]?
A. Yes, she does.
Q. Does she perform performance evaluations?
A. Yes, she does.
Q. Does she have authority to handle discipline for her employees?
A. Yes, she does.
Q. Does she make work assignments to them?
A. Yes, she does.

(f) John Minick

John Minick, an SPSA Option 3, is a Section Manager who reports directly to Jeremy Margaron. His duties in the Client Systems section of IM & D focus on the major case

[31] The time-off requests that are part of the record were dated after the petition at issue was filed.
[32] I did not admit a document in the record—a memorandum which Hagele wrote to an employee in September 2008—since the disciplinary incident in question took place before the Employer's witness, Kasamis, arrived there, and he had no independent knowledge of the incident. The Employer's attorney did not make an offer of proof.

management systems, Medicaid eligibility, the Temporary Aid for Needy Families (TANF) programs, and the web case management system that MIS supports. In particular, Minick is responsible for the application, development and maintenance of those systems, and maintaining the change request log as it relates to those systems.[33] Kasamis testified that Minick's duties include determining the priorities of the MISR change requests related to those systems. However, Minick subsequently explained that users with competing MISR requests in his area—employees from policy areas such as Human Capital Development (HCD) dealing with what used to be called food stamps—determine the priorities of MISR requests in monthly priority meetings.

While Minick does not have direct spending authority, he can make recommendations to Margaron, and eventually, Kasamis. The latter usually accepts Minick's spending recommendations.

Minick is involved in implementation of changes in Medicaid eligibility and the TANF programs. Along with the business leaders, he defines the business and technical requirements of the systems. Kasamis testified as follows about Minick's responsibilities concerning Medicaid eligibility:

> The very nature of [Minick] being the person responsible for Medicaid eligibility is the automation of eligibility logic of those business rules. When that eligibility logic changes, he's involved in figuring out ways in which, so that our systems, when the information is captured, actually reflects those changes.

Minick reviews legislation that could affect the systems for which he is responsible and provides comments. For example, he wrote an email, copied to Margaron and Kasamis, which stated that the bill in question would have no impact on Client Systems.

[33] "Change requests" are synonymous with the MISRs referenced supra note 18 at p. 31.

Of Minick's 50 subordinates, three or four are direct reports.[34] One of these direct reports was in a bargaining unit as of August 2010. Minick makes work assignments based on an employee's knowledge of a particular system. He has approved requests for overtime and time off. The record includes two examples of his approval of each kind of request.[35] Minick has the authority to deny time off requests based on workload. On cross-examination, Kasamis testified that operational needs were considered in resolving time off requests. During cross-examination, Kasamis acknowledged that he did not know of any time off requests which were denied. Minick alone signs the forms authorizing overtime and approving time off for his subordinates; his signature is not accompanied by that of a superior.

He does performance evaluations for his subordinates. Minick has the authority to discipline, but Kasamis did not know of any instances in which he has exercised this authority. Minick has the authority to handle grievances related to this employee at the first level. The Employer did not introduce any examples of Minick exercising either authority.

Kasamis estimates that Minick spends about 50% of his time supervising by assigning work to employees and tracking the status of their execution. According to Kasamis, Minick spends another 25% of his time managing changes or working with business people, and spends the remaining 25% of his time on internal processes. Minick testified that he spent only about 20% of his time doing supervisory tasks, noting that the three unit supervisors who report to him do the day-to-day supervisory work.

(g) John Rigg

[34] An organizational chart shows some of Minick's subordinates with their titles/positions.

[35] The overtime authorizations and time off approvals in the record are dated in June 2010 after the petition at issue was filed in April 2010. I admitted these documents dated after April 5, 2010, the date the petition at issue was filed because there was no allegation that Minick's duties regarding overtime and time off requests changed after April 5, 2010.

John Rigg is the SPSA Option 3 who is the Section Manager of the Information Resource Management group within MIS. He reports directly to Margaron. Rigg's responsibilities include maintaining large data repositories. Rigg also does project management.

Rigg makes recommendations for spending. Kasamis typically approves them following Margaron's review.

Rigg's duties include tracking the charter process through CMS. Whenever MIS has a new system, a major system enhancement, or a procurement that needs to go through channels, CMS requires the creation of a document called a charter. A project charter describes both the technical and the business requirements for the system.

The record includes an organizational chart which shows that Rigg's position is over one direct report which is occupied and another two which were vacant as of April 2010 when the chart was made.[36] Each of Rigg's direct reports was in the bargaining unit. Rigg assigns them work, determines if overtime is needed for them, approves their time off requests, does performance evaluations for them, and has authority to discipline them.[37] On cross-examination, Kasamis acknowledged that he consulted with Rigg about a performance evaluation that Rigg did for a subordinate, requiring Rigg to make changes to the performance evaluation before Rigg provided it to the subordinate in question.

Kasamis estimated that Rigg spends less than 20 to 25% of his time on supervising the Data Administration group. He acknowledged that most of Rigg's time is centered around project management.

Regarding a specific disciplinary incident, Rigg issued an oral reprimand to a subordinate when Kasamis directed him to do so. Kasamis, upon returning from lunch, observed a

[36] Each of the vacant positions, in turn, has direct reports.
[37] The Employer offered no documentary evidence to supplement Kasamis' testimony about Rigg's performance of these tasks.

subordinate employee sitting in his cubicle in the Chicago office with his feet up and playing on an iPAD. He then indicated to Rigg—the latter was in the Springfield office—that he wanted Rigg to take some action. In response, Rigg sent an email to Kasamis asking if he wanted Rigg to give the subject employee an oral reprimand. Kasamis responded that he did. Rigg then gave the subordinate employee an oral reprimand.

2. Illinois State Police

1. Gary Cochran

Gary Cochran is an SPSA Option 3 who is employed as the Assistant Bureau Chief of the Bureau of Communications in the Illinois State Police (ISP). As such, he reports to Deb Edwards, the Bureau Chief.[38] Cochran has two direct reports. neither of whom is in a bargaining unit. One is a PSA, and the other is Lambert Fleck, an SPSA Option 3 also at issue in this case.

Cochran manages the technical operations of state police communications. This responsibility includes all of ISP's field communications operations, radio procurement and maintenance, as well as tower communications. He assists with the preparation of the technical budget.[39] An exchange between him and the Employer's attorney is set forth below:

> Q: Do you assist in preparation of any part of the agency's budget?
> A: Technical budgets, absolutely. For what we deal with as far as the Starcom system, system maintenance. The maintenance of the Illinois State Police radio network. The services contracts that we try to represent, those are issues that we supply information on, on what the budget should be for that year.
> Q: Any other parts of the budget that you assist with?
> A: No, that's it. Strictly on the technical operation.

Cochran makes requests to the Bureau Chief for the purchase of equipment.

Cochran testified that he was concerned with the accuracy of the dated position description for the position which he occupies in that its enumeration of his duties includes a

[38] She is part of a bargaining unit for sworn police officers distinct from that being petitioned-for.
[39] The term "technical budget" refers to the budget for technical operations.

statement that he "[e]stablishes and formulates Bureau policies as it relates to the technical operation."[40] Cochran testified to the following:

> My concern with the—the language that's here is formulating policy. All we do is evaluate existing policy and only from a technical perspective. . . So our relative input to any issue is analyzing technical input to policy for correctness, and developing the policy direction would be a technical nature of the operation of the very equipment that we spec [sic], to be more correct.

Further, Cochran denied that he was responsible for effectuating or implementing ISP policy regarding telecommunications. His explanation, in part, of this denial is described in the ensuing passage:

> [a]s technology changes, sometimes we have to change policy based on the use of technology . . . And that's really our direct input into the policy issue.

This same position description also provides that the occupant of Cochran's position "[s]erves as [a] member of the Bureau negotiating team regarding collective bargaining." However, the document is inaccurate in this regard; Cochran is not on the Employer's bargaining team.

Cochran frequently instructs his staff to perform certain duties. He assigns work if needed. On a daily basis he reassigns his subordinates from their current work to a new priority. The Bureau Chief determines these priorities. Cochran approves earned equivalent time requests from his two direct reports, and he has not denied such requests.[41] However, Cochran does not have the ability to grant a request for overtime. Instead, he has to make a request to the Bureau

[40]The position description was written in 1981. It incorrectly refers to the occupant's title as Communications Systems Administrator II, a title which has not existed for 12 years. It also refers to its occupant as an "Engineer" even though Cochran is not an electrical engineer.

[41] Earned equivalent time for employees not in a bargaining unit is similar to compensatory time earned by bargaining unit members. The requests for time in the record were made in April and May 2010 after the petition at issue was filed. I admitted these forms into the record because there was no allegation that Cochran's duties with regard to them changes after the filing of the petition.

Chief. Cochran also approves/denies requests for vacation, time off and personal time from his direct subordinates.[42]

He does the performance evaluations for his two direct reports.[43] The record includes a performance evaluation which Cochran did for one of them, signing it in October 2008. Based on the rating that Cochran gave in that evaluation, he then recommended a dollar increase and a bonus amount. His recommendation as to the sum of each was based on a range from which he could choose. The record includes a performance evaluation which Cochran did for his other direct subordinate, signing it in January 2010. However, the accompanying merit increase recommendation form which Cochran signed that same day provides that effective July 1, 2009, no bonus or salary increase recommendations were allowed. Cochran signed each of these performance evaluations the same day as his direct subordinate. Bureau Chief Deb Edwards signed one the same day and the other the next day. Cochran's 1981 job description in the record estimates that he spends five percent of his employment time evaluating performance of subordinates.

Cochran can issue an oral or written reprimand after the Bureau Chief approves such action. The record shows that he was copied on the July 27, 2007 documentation of an oral reprimand which Fleck was instructed by the Bureau Chief to give to a subordinate. When Cochran is confronted with disciplinary issues, he contacts Labor Relations Administrator Laurette Waters.

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[42] The vacation requests in the record were made in June and August 2010, respectively, after the petition at issue was filed. Again, I admitted them because there was no allegation that Cochran's duties concerning vacation requests changed after the petition was filed.

[43] Each of these performance evaluations provides that the direct subordinate performs activities in support of the Assistant Bureau Chief and Bureau Chief on issues relating to the STARCOM21 management system. In addition, each assists in the technical training of staff.

Field supervisors provide the first level grievance response.[44] These employees work for Cochrans' two direct reports. Cochran's superior, Bureau Chief Deb Edwards, is the second level grievance response. As Assistant Bureau Chief, Cochran makes recommendations to the Bureau Chief.[45] Cochran contacts labor relations before making a recommendation when discipline is involved. Of the three grievances last year, the Bureau Chief accepted his recommendation on two, but not on the third. Regarding the third grievance, Cochran made a recommendation as to the appropriate level of discipline.

Labor Relations Administrator Waters contacts Cochran and Fleck when resolving grievances so that she can minimize the impact on operations. She testified that there are times when Cochran knows what a grievance resolution will be prior to the Union. Waters gave no specific examples of this occurrence. She does not maintain that she spoke with Cochran about any of the grievances in the record.

In an email dated April 21, 2009, from Waters to both Cochran and Fleck at separate email addresses, Waters asked them to provide an answer to a question which a CMS representative from Step 4 of the grievance procedure relayed to her. The grievance being addressed at that level was the one in the record challenging discipline which an employ had received for his use of state equipment. Waters' email indicated that the Union had provided information that the disciplined employee performed the work in question for his supervisors' private vehicle. In her email, Waters' asked Cochran and/or Fleck to respond to the accuracy of that information. Fleck answered, copying Cochran, that he, as well as the employee's two other

[44] These field supervisors are members of a bargaining unit. If a grievance were filed by one of them, Fleck would become the first level grievance response. However, Fleck has not handled any grievances at the first level. In the event that Fleck becomes part of the bargaining unit, Cochran would become the first level grievance response.

[45] Of the four grievances regarding ISP in the record, two include responses at Step 2.

supervisors, did not have any work done by the employee in question during state time with state equipment.

On July 29, 2009, Waters sent an email to both Cochran and Fleck in which she asked if a certain employee title normally performed the work at issue in an AFSCME subcontracting grievance. Fleck's email response to Waters later that same day, also copied to Cochran, provided that the answer was "yes" and that she could call him for more background.

In June 2010 Cochran sent an email to Waters to find out her position on a subordinate's request for a four day work week before he made a recommendation on that request to Bureau Chief Deb Edwards.[46] Waters responds later that same day, informing Cochran that she did not get the attachment he sent, but "[i]n any case [ISP has] the right to schedule his work since he is functionally assigned to the ISP." She then asks a number of questions including whether his position was in the bargaining unit. Cochran sent an email to Bureau Chief Deb Edwards concerning the subordinate's request which stated "[f]or the record, Laurette agrees."

Cochran last interviewed candidates for positions in 2005 or 2006. He conducted these interviews with others. Cochran made recommendations as to the candidate hired.

On direct-examination, Waters testified that during bargaining with AFSCME for a supplemental agreement she confers with Cochran if the proposals relate to communication equipment technicians. On cross-examination when the Union's attorney asked Waters about supplemental negotiations with AFSCME in 2003, she could not recall whether she had contacted Cochran about any proposals.

Cochran's duties include serving as a delegate for the Director of the agency on the State Interoperability Executive Committee. It consists of Fire, EMS and Police representatives

[46] June 2010 is after the petition at issue was filed. I admitted it because there was no allegation that this email represented a change in his duties.

throughout the state. Only five of its members are allowed to vote. Cochran also serves on the Regional Review Conformance Committee which has 11 voting members and one vacancy. Actions of each committee are based on a vote of its members.

Cochran estimates that he spends five to seven percent of his time directing his staff, approving request forms for earned equivalent time and time off requests, and involved in discipline and grievances. He spends about five percent of his time doing the same work as his subordinates, but that number can increase when his subordinates are off.

2. Lambert Fleck

Lambert Fleck, an SPSA Option 3, is the Radio Network Services Manager in ISP. He reports directly to Cochran. His five direct reports—known as field supervisors—are in a bargaining unit. Fleck's chain of command consists of the field staff below him, Assistant Bureau Chief Cochran directly superior, then Bureau Chief Edwards above the latter.

Fleck's duties include all technical operations in the field—installation, system maintenance, tower site and backhaul maintenance.[47] The record shows that Fleck's direct reports are responsible for installation. Fleck's duties are bureau-wide while each of his subordinates are responsible for only their individual region.

He makes assignments to his subordinates. In an email exchange that began on June 22, 2010, Fleck asked Labor Relations Administrator Waters' opinion about the assignments and schedule he made to deal with the staffing shortages that he faced.[48] In particular, his email relates his plans to detail an employee to a different location. Before contacting Waters, he first checked with his Bureau Chief, the Assistant Bureau Chief, the Regional Manager, and the Radio Lab Manager. Fleck approves overtime which his subordinates request.

[47] The field includes 19 dispatch centers.
[48] The date of the email—after the petition was filed—was not the basis of an objection.

He approves time off and vacation requests from his subordinates. Fleck completes performance evaluations for his direct reports.[49] Cochran estimates that Fleck spends about 15% of his time directing his subordinates, assigning them work and doing their performance evaluations.

On a specific occasion, the Bureau Chief directed Fleck to give an oral reprimand to a subordinate. He was copied on the documentation of that discipline, dated July 27, 2007. That documentation contains Fleck's handwritten notation that he was so directed. Fleck does not have the authority to decide that such discipline is given, but he can recommend that it be issued.

Fleck has contact with Labor Relations Administrator Waters in the event there is a disciplinary issue regarding one of his subordinates. Fleck may telephone her to discuss, for example, whether a pre-disciplinary conference is needed or whether the charges should be changed due to an employee's rebuttal.

The record shows that Fleck sent Waters an email on May 7, 2008 to inquire whether bargaining unit personnel could administer discipline. The email in question provides as follows:

> Just received a letter saying that we have to give [Employee A] an oral reprimand for a car accident. Seems like I just saw something recently that said bargaining unit employees could not administer discipline, or possibly that it was being considered. My point is, normally I would assign this to his supervisor to do, which is Bob Kane. Bob, of course as a PSA, is now in the bargaining unit too. Can Bob administer this discipline or not?

On November 9, 2009, Fleck sent an email to Waters to learn if the Office of Labor Relations

[49] The record does not contain any examples of them. I did not admit the one performance evaluation and merit increase recommendation form, both dated 2007, completed by Fleck which the Employer introduced and moved into the record. Regarding the form for merit increase recommendations, this form is no longer applicable since the employee became a bargaining unit member. As for the performance evaluation, a different form is used for performance evaluations of bargaining unit members. I kept the record open so that the Employer could introduce a performance evaluation which Fleck did on the appropriate form, but none were submitted. I allowed the Employer to make an offer of proof, but the Employer declined.

had determined that it would not follow through with discipline of certain case files. Waters sent an email back to Fleck providing a response.

Fleck's direct reports have provided the first level grievance response.[50] Bureau Chief Edwards is the second level response. Labor Relations Administrator Waters contacts Fleck, as well as Cochran, in resolving grievances so that she can minimize the impact on operations. She also testified that she has been contacted by each of them. Waters' contact with Fleck is similar to her contact with Cochran.[51]

During cross-examination, Waters acknowledged that she could not recall if she had any conversations with Fleck regarding each of three grievances concerning ISP in the record. With regard to a fourth grievance filed on March 23, 2009, Waters testified on direct examination during the Employer's case-in-chief that she had conversations with Fleck when the grievance was filed about the agency's ability to resolve it and how. She added that the grievance at issue "was orchestrated by management in order to get [Employee X] promoted." After the Bureau Chief suggested that he ask Waters the status of the grievance, Fleck telephoned Waters to learn of its disposition. On direct examination during the Union's case-in-chief, Fleck testified that Waters told him that the employee in question "would be promoted." He then stated that when he learned the status of the grievance, it had "probably already been approved." Fleck shared this information from Waters with another employee. Fleck described this other employee as a bargaining unit member.[52]

In a separate email dated April 21, 2009, Waters asked both Fleck and Cochran to provide an answer to a question which a CMS representative from Step 4 of the grievance

[50]See supra at p. 45.
[51]See supra at pp. 45-46.
[52]This employee was identified as a Public Service Administrator (PSA) Option 3. The Board's records show that the PSA Option 3 title became part of RC 63 pursuant to a certification issued May 9, 2007 in Case No. S-RC-04-044.

procedure relayed to her.[53] The grievance at issue was challenging discipline which an employee had received for his use of state equipment. Waters' email indicated that the Union had provided information explaining the disciplined employee performed the work in question for his supervisors' private vehicle. In her email, Waters' asked Fleck and/or Cochran to respond to the accuracy of the Union's information. Fleck sent an email in response, copying Cochran, which provided that he, as well as the employee's two other supervisors, did not have any work done by the employee in question during state time with state equipment.

Waters sent an email to Fleck on July 29, 2009 concerning an AFSCME subcontracting grievance. In that email she asked him whether his subordinates' normal work included the work at issue in the grievance. He responded that it did, and told her to call if she wanted the background.

3. Illinois Environmental Protection Agency

1. Hal Waggoner

Hal Waggoner. an SPSA Option 3, is the Application Development and Systems Manager of the Information Services Section (Section) in the Illinois Environmental Protection Agency (IEPA).[54] He received that promotion in 2009 from his former position as a PSA Option 3 in IEPA's Bureau of Land. During a reorganization, programmers who at one time worked out of each of three bureaus for Land, Water and Air in the agency were instead moved into a distinct section for information technology. As a result of that consolidation, Waggoner's former PSA Option 3 position is located in the Section. Due to the vacant CIO position, Waggoner

[53] The grievance cited in the email is that listed as Grievance No. 454052, one of the grievances included in the record.

[54] He also serves as the Acting Chief Information Officer (CIO). The CIO position, directly superior to Waggoner's assigned position, was vacated by its last occupant in 2009. The Employer has no current plans to fill it. The Petitioner is not seeking to represent Waggoner in his acting position. Accordingly, I ruled that the questioning at hearing about Waggoner's duties was limited to his assigned position. The Employer did not make an offer of proof concerning his acting duties.

occupies the highest ranking position within the Section. Because the Section is part of the Deputy Director's Office, Waggoner reports directly to the Acting Deputy Director, Lisa Bonnet. also the agency's Chief Financial Officer.

Waggoner is responsible for the day-to-day operations of the Section. His duties include project management. He has 23 subordinates.[55] Each of these subordinates works in a specific area. Waggoner, in conjunction with other staff, makes assignments to his reports based on the type of project. Other than one employee, the others who report to Waggoner are in a bargaining unit.

Waggoner has approved time off requests from his subordinates, and has never denied one. He has approved overtime—both planned before the event and emergency after it occurs. He approves overtime carryover requests signed by employeess and their supervisors. Waggoner has instructed subordinates to do performance evaluations for which they are responsible. He does performance evaluations for 14 of his subordinates. The record includes one performance evaluation which Waggoner did for a merit compensation subordinate[56] All of the performance evaluations which Waggoner does are accepted. He is responsible for training of his employees and developing training plans for them.

Waggoner has issued one oral reprimand in the presence of a subordinate's direct supervisor. He does not know if documentation of the discipline was placed in that subordinate's personnel file. During potential discipline investigations, he has been asked to gather information. In one instance, he reviewed logs of computer activity during certain time periods. In another case, he directed federal agents to the appropriate person in CMS to open a laptop.

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[55] The testimony did not distinguish between direct and indirect subordinates.

[56] Waggoner and the employee signed the document on the same day, May 4, 2010, and the agency head signed it several days later. The performance evaluation covers a period before the petition at issue was filed on April 5, 2010.

Bonnet testified that Waggoner is able to resolve grievances at levels one and two. However, he has not had any grievances yet. He has the authority to participate in the hiring of a direct report, but such hiring has not occurred since Waggoner's promotion. Bonnet testified that Waggoner would participate in hiring by developing interview questions and taking part in the interview. Although he has authority to make recommendations for layoffs, Waggoner has not had to do so.

When Lisa Bonnet, the superior to whom Waggoner directly reports, was asked how much time he spends disciplining, training, assigning work, approving time off and overtime requests, doing performance evaluations, monitoring his staff, resolving grievances and recommending subordinates for layoff, she estimated that these tasks took 80% of his time. Waggoner testified that it was difficult for him to distinguish performing duties related to his role as Acting CIO and those of his assigned position. He estimated that in the last six months he spent the equivalent of two days doing maintenance on systems.[57]

Waggoner uses his technical expertise to make recommendations for security of the computer system. Bonnet testified that Waggoner

> really sort of sets the agency's policy with regard to security of information . . . and makes recommendations and sets policy with regard to the system development.

He implements the means of securing the agency's firewalls and data. Waggoner testified that he has never formulated policy.

For fiscal year 2010, he worked with the agency's Acting Budget Officer on the parts of the Section's budget concerning training and personnel development. Bonnet, as the CFO, approved Waggoner's budget recommendation. He reviews bills for payment as part of his

[57] The record is unclear if this maintenance work is from his former position as a PSA Option 3 in the Bureau of Land, which remains vacant.

duties as Acting CIO.[58] Waggoner is also the agency's liaison to CMS and represents the agency on various external groups, including the Governor's office.

IV. DISCUSSION AND ANALYSIS

Pursuant to Sections 3(n) and 6 of the Act, employees who are supervisory, managerial and/or confidential 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 party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). Instead, in order to support a statutory exclusion, the Board requires the party to present specific examples of the alleged supervisory, managerial and/or confidential status. American Federation of State, County and Municipal Employs, Council 31 and State of Illinois, Department of Central Management Services, 24 PERI ¶112 (IL LRB-SP 2008); Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill. App. 3d 1128,13 PERI ¶4011(2nd Dist. 1997).

While some Illinois Appellate Courts have found job descriptions or policies-and-procedures manuals alone sufficient to meet this burden in specific instances, others have looked to such written documents as supplements to testimonial evidence. See Village of Broadview v. ILRB,

[58] The record is unclear if Waggoner's Acting CIO duties also include his duties related to the budget. His position description, dated June 2009, does not include a reference to any budget responsibilities.

402 Ill. App. 3d 503, 508-09, 932 N.E. 2d 25, 26 PERI ¶66 (2nd Dist. 2010) (upholds Board decision that employees not supervisors based on testimony, despite rules and regulations to contrary); Village of Bloomingdale v. ILRB, 24 PERI ¶93 (2nd Dist. 2008) (upholds Board decision that employees not confidential employees where employer relies solely on vague job descriptions rather than providing specific examples of duties); City of Peru v ILRB, 167 Ill. App. 3d 284, 291, 521 N.E. 2d 108, 4 PERI ¶4008 (3rd Dist. 1988) (rules and regulations alone are insufficient to establish exercise of supervisory authority); but cf. DCMS and ILRB, No. 4-09-0966 at ¶201 (IL App. Ct. 4th Dist. Sept. 28, 2011) (court finds job description satisfies Act's requirement that a supervisor "direct" his subordinates with independent judgment); Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 376, 932 N.E. 2d 558, 26 PERI ¶67 (5th Dist. 2010) (policies-and-procedures manual establishes sergeants' supervisory authority and use of independent judgment).

The decision of the U.S. Court of Appeals for the District of Columbia Circuit in Beverly Enterprises-Massachusetts, Inc. v. NLRB, 165 F.3d 960, 963 (D.C. Cir. 1999) concerning an employer's contention that certain employees are supervisors as defined by the National Labor Relations Act, 29 U.S.C. §151 et seq, (NLRA), provides guidance for the Board and the Illinois Appellate Courts in interpreting the Act. In that case, the U.S. Court of Appeals states that beyond statements and directives, the NLRA requires "evidence of actual supervisory authority visibly translated into tangible examples demonstrating the existence of such authority." Id. Because "tangible examples" evidencing such authority were absent from the record before the D.C. Circuit, it found that substantial evidence supported the NLRB's conclusion that the employees at issue were not supervisors. Id.

Similarly, the Act requires tangible examples of actual supervisory, managerial and/or confidential authority. Such examples are necessary to determine that all elements of the statutory definition at issue are satisfied. For example, it is impossible to determine whether a given duty requires the consistent use of independent judgment from a job description alone. Instead, in order to sustain its burden of showing that an employee should be excluded under that Act, a party must present specific examples of the activities being performed. Village of Bloomingdale, 24 PERI ¶93 (2nd Dist. 2008).

The Employer maintains that all 17 of the employees at issue are supervisory employees, 14 are managerial employees, and two are confidential employees. In addition, the Employer contends that two employees are exempt from the Act due to Section 4d(3) exemptions of the Personnel Code. 20 ILCS 415/4d(3)(2010). As the Board recognized in a January 2011 decision, it must apply the statutory exceptions as written by the legislature and lacks the authority to create a new hybrid exception. State of Illinois, Dep't of CMS (EPA, Dep't of Public Health, DHS, Dep't of Commerce and Economic Activity), 26 PERI ¶155 (citing County of Vermillion V. Ill. Labor Relations Bd., 344 Ill. App. 3d 1126, 1136 (4th Dist. 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, an individual will be deemed a supervisory employee within the meaning of the Act if he or she meets all four parts of the 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; 3) consistently use independent judgment in the performance of those functions; and 4) devote a preponderance of employment time exercising such supervisory authority. City of Freeport and Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 6 PERI ¶4019 (1990); Northwest Mosquito Abatement District v. Illinois State Labor Relations Board, 303 Ill. App. 3d 735, 748, 708 N.E.2d 548, 15 PERI ¶4007 (1st Dist. 1999); AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38 (IL LRB-SP 2007); Village of Wheeling, 3 PERI ¶2005 (IL SLRB 1986): aff'd, 170 Ill. App. 3d 934. aff'd sub nom., City of Freeport and ISLRB, 135 Ill. 2d 499, 6 PERI ¶4019 (1990).

(a) Principal Work

In determining whether an employee's principal work is substantially different from that of his subordinates, the Board must determine whether the employee's work is "obviously and visibly different" from that of his subordinates. City of Freeport, 135 Ill. 2d at 514; City of Washington, Illinois and ISLRB, 383 Ill. App. 3d 1112, 1120, 891 N.E.2d 980 (3rd Dist. 2008). If the work is obviously and visibly different, the first part of the statutory test is met and the inquiry proceeds to the second part which analyzes the employee's supervisory authority. However, if the supervising employee's work is similar to that of his subordinates, the Board determines whether "the nature and essence" of the work is substantially different. City of Freeport, 135 Ill. 2d at 514; City of Washington, 383 Ill. App. 3d at 1120: Village of Alsip, 2 PERI ¶2038 (IL SLRB 1986).

(b) 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, i.e. the consistent choice between two or more significant courses of action rather than routine or clerical choices. City of Freeport, 135 Ill. 2d at 520; 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). Even the ability to perform or 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.

Finally, an effective recommendation satisfying the Act's supervisor requirements is one that is adopted by the alleged supervisor's superiors as a matter of course absent any independent or de novo review.[59] City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290, 521 N.E.2d 108, 4 PERI ¶4008 (3rd Dist. 1988); 10 PERI ¶2020 (IL SLRB 1994, aff'd by unpub.order, 269 Ill. App. 3d 1148, 685 N.E.2d 462 (3rd Dist. 1995); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999). In explaining what constitutes effective recommendation, the Illinois Appellate Court for the 4th District recently issued an opinion which stated that "review 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

[59] The Board recently clarified that not *any* consultation with, or review by, a superior defeats the independent judgment or effective recommendation 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 or makes an effective recommendation. See State of Illinois, Dep't of CMS (Dep't of Human Services), 27 PERI ¶71 n.5 (IL LRB-SP 2011). Consultation must be distinguished from consensus which necessarily involves collective rather than independent judgment.

the superiors." State of Illinois, Dep't of CMS/Ill. Commerce Commission v. Ill. Labor Relations Bd., 406 Ill. App. 3d 766, 777, 943 N.E.2d 1146, 26 PERI ¶136 (4th Dist. 2010). In this case, the Employer maintains that the SPSA Option 3's have the supervisory authority to direct, discipline, hire and/or adjust grievances.

i. Direct

The term "direct" encompasses several distinct but related functions, including give job assignments, overseeing and reviewing daily work activities, evaluating job performance, approving vacation and leave requests, and providing instruction and assistance to subordinates. Chief Judge, 153 Ill. 2d at 519-20, 522; City of Freeport, 135 Ill. 2d at 520; AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38 (IL LRB-SP 2007), aff'd, 382 Ill. App. 3d 208 (4th Dist. 2008). Although employees may be responsible for overseeing the operations of a department, assigning work to other employees, and for ensuring that those assignments are properly completed in a timely fashion, this oversight function is inconsequential unless the alleged supervisor has significant discretionary authority to affect the employment of his or her subordinates. AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38; City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). Significant discretionary authority to affect subordinates' employment in areas likely to fall within the scope of union representation must accompany an individual's oversight authority in order to make that authority supervisory within the meaning of the Act. AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38; City of Naperville, 8 PERI ¶2016.

ii. Discipline

Verbal and written reprimands must have an impact on an employee's job status or terms and conditions of employment in order to constitute discipline within the meaning of the Act.

Chief Judge 153 Ill. 2d at 530-3, AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI (IL LRB-SP 2007), aff'd, 382 Ill. App. 3d 208 (4th Dist. 2008). If verbal and written reprimands are placed in an employee's personnel file and form the basis for more severe discipline, those reprimands have an effect on the employee's job status and constitute discipline within the meaning of the Act. See e.g. Chief Judge of the County of Cook, 26 PERI ¶117 (IL LRB-SP 2010): Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

iii. Hire

Where an individual participates on a hiring commit which includes his or her superiors, his or her recommendations are typically not effective within the meaning of the Act. County of Lake, 16 PERI ¶2036 (IL SLRB 2000): State of Illinois, DCMS (Department of Children and Family Services), 8 PERI ¶2037 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993). Additionally, hiring decisions reached by consensus are not considered supervisory within the meaning of the Act. County of Lake, 16 PERI ¶2038 (IL LRB-SP 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL LRB-SP 1994), aff'd by unpub. order, docket no. 3-94-0317 (3rd Dist. 1995).

iv. Adjustment of Grievances

Where the adjustment of grievances extends only to minor matters of a routine nature, the exercise of that authority does not require the consistent use of independent judgment. State of Illinois, DCMS (ICC), 26 PERI ¶84 (IL LRB-SP 2010). The mere designation as the first step in a grievance procedure, without more, does not constitute supervisory authority within the meaning of the Act. See e.g. State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); State of Illinois (ICC), 26 PERI ¶984; Village of Bolingbrook, 19 PERI ¶125.

(c) Preponderance Requirement

The fourth prong of the supervisory test requires that the alleged supervisors spend a preponderance of their employment time exercising supervisory authority. City of Freeport, 135 Ill. 2d at 532. According to the preponderance of time standard articulated in State of Illinois, Dep't of Cent. Mgmt. Serv. v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 83, 662 N.E.2d 131, 13 PERI ¶4003 (4th Dist. 1996), the term preponderance means that the purported supervisor spends more time on supervisory functions than on any one nonsupervisory function.[60] The time used in measuring preponderance is the actual exercise of supervisory authority rather than the mere possession of that authority. City of Freeport, 135 Ill. 2d at 533 (holding that lieutenants employed by Wheeling fire department did not meet this fourth prong of supervisory definition because they rarely exercised their authority to suspend or discipline firefighters): Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 56, 581 N.E. 2d 824, 8 PERI ¶4002 (2nd Dist. 1991); State of Illinois, DCMS, 278 Ill. App. 3d at 86.

Melissa Kahle (CMS)

The evidence does not show that Melissa Kahle is a supervisor within the meaning of the Act. Although she meets the initial elements of the test for supervisory employee, she fails to meet the last prong.

The record establishes that Kahle's principal work is substantially different from that of her five subordinates. She does none of the programming work that occupies about 80% of their time.

The record also establishes that Kahle performs certain tasks that comprise the statutory indicia of supervisory status with the consistent use of independent judgment, but does not perform as many of these duties as the Employer suggests. For example, the evidence fails to

[60] An earlier decision of that same court interpreted preponderance as requiring that supervisors spend a majority, or more than 50% of their time, engaged in supervisory activities. State of Illinois, Dep't of CMS, 249 Ill. App. 3d 740, 747-8, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993).

establish that Kahle's assignment of work to her subordinates is supervisory authority within the meaning of the Act. The record shows that she assigns work to her subordinates based on the particular system at issue, but indicates no more. Kahle's use of such a predetermined means of making assignments evidences routine rather than independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 518, 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993). (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Although Kahle testified that in the past she designated a lead programmer after discussion with her team, she does not indicate her team's function in determining this selection. Without more evidence to show the extent of Kahle's role, I am unable to find that she exercised independent judgment in choosing a lead programmer. In addition, Kahl's testimony reveals that at present, designation of a lead programmer no longer constitutes a choice since there are so few employees to support a given system.

Kahle's approvals of overtime and time off requests from her subordinates do not require her to use independent judgment. While she testified that she considers schedules, deadlines and priorities in deciding whether to grant overtime requests, Kahle has never denied such requests. Nor has she ever denied a request for time off. Her approval of *all* overtime and time off requests is evidence of a routine, ministerial action rather than independent judgment within the meaning of the Act. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB 2003).

Kahle's role in recommending training about two years ago when there were funds available is not persuasive evidence of her authority to direct with independent judgment. The Employer introduced no evidence showing that Kahle consistently uses her independent judgment in recommending training. When she recommended training in the past, it was routine—for new employees or existing employees on new equipment. There is no evidence that she had to make a choice between two or more significant courses of action rather than take a routine action. See City of Freeport, 135 Ill. 2d at 520; State of Illinois, DCMS, 26 PERI ¶119 (IL LRB-SP 2010).

The record establishes that Kahle has the authority to complete performance evaluations for her five subordinates and exercises this authority with independent judgment. Because a poor performance evaluation may result in the withholding of an employee's wage increase, these evaluations can have an effect on the terms and conditions of employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

The Employer also provides sufficient evidence that Kahle has authority to complete performance evaluations of probationary employees. The record shows that when she had probationary employees, she did their performance evaluations during the final three months of their probationary period. Further, the record indicates that if a probationary employee receives a poor evaluation during the final three months of his/her probationary period, then he/she would not be certified and become a State of Illinois employee. Such evaluations thus have an affect on the employment status of those employees. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. Order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992). At the time that Kahle completed the performance

evaluations of the probationary employees, it required the consistent use of independent judgment. See City of Freeport, 135 Ill. 2d at 520.

Although the record shows that Kahle has the authority to discipline employees for underperforming, the Employer has not shown that she exercised this authority with the consistent use independent judgment. For example, the record does not establish the occurrence of any incident when Kahle considered issuing discipline—even though she may have ultimately decided against it—and thereby used independent judgment.[61]

Only the time Kahle spends actually exercising this supervisory authority can be counted in determining whether the preponderance requirement has been met. City of Freeport, 135 Ill. 2d at 533; Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 56, 581 N.E. 2d 824, 8 PERI ¶4002 (2nd Dist. 1991); State of Illinois, DCMS, 278 Ill. App. 3d at 86. "Preponderance of time" has been interpreted to mean that the alleged supervisor spends more time on supervisory functions than on any one non-supervisory function. DCMS v. ISLRB, 278 Ill. App. 3d at 83. The record does not indicate how much of Kahle's time is spent doing the annual performance evaluations of her five subordinates. It seems likely that she spends "only a very minor portion" of her time completing performance evaluations. See DCMS (ICC), 26 PERI ¶84 (IL LRB-SP 2010). Accordingly, Kahle does not spend a preponderance of her employment time, exercising supervisory authority. I conclude that she is not a supervisory employee.

[61] An alleged supervisor can use the authority to discipline with the consistent use of independent judgment *without* issuing discipline.

Dennis Kirk Mulvaney (CMS)

The evidence presented does not show that Dennis Kirk Mulvaney is a supervisor within the meaning of the Act. The Employer fails to prove any element of the four part test for supervisor.

Sorenson's statement that Mulvaney's subordinates do more day-to-day routine type of activities while Mulvaney is more involved in initiatives and reviewing their work is insufficient to establish the first prong. The record does not even reveal in what kind of activities Mulvaney's subordinates are engaged.[62]

The record does not show that Mulvaney has the authority to direct with independent judgment. His assignment of work is insufficient to establish that he consistently uses independent judgment. Sorenson testified that Mulvaney makes assignments to his team, but she did not know how he does so. As the party contending that Mulvaney is a supervisory employee who must be excluded from the bargaining unit, the Employer must establish that Mulvaney consistently uses independent judgment in assigning work. It does not meet that burden.

Similarly, the record fails to demonstrate that Mulvaney consistently uses independent judgment in resolving time off and overtime requests. His approval of *all* such requests is evidence of a routine, ministerial task. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB SP 2003).

Likewise, the limited record evidence about Mulvaney's role in recommending training does not show that he uses independent judgment in making his training recommendations. While the Board recognizes that recommending training may be a supervisory authority, an employer must demonstrate that such a recommendation of training requires the alleged

[62] The Employer's brief asserts that Mulvaney "performs substantially different work from his subordinates, which is evident from the testimony regarding his supervisory functions and job duties." The brief contains no argument based on specific facts presented.

supervisor to consistently make a choice between two courses of action. See State of Illinois DCMS, 26 PERI ¶116 (IL LRB SP 2010). However, in the instant case, Sorenson does not know the basis for Mulvaney's training recommendations. More specifically, the Employer does not establish that Mulvaney had to choose between two or more significant courses of action. City of Freeport, 135 Ill. 2d at 520; Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d 508, 516, 607 N.E. 2d 182, 9 PERI ¶4004 (1992).

Mulvaney's completion of performance evaluations for his subordinates does not establish that he has the supervisory authority to direct. The facts establish that Mulvaney does performance evaluations for his subordinates, but the record fails to show that these performance evaluations have any effect on their terms and of employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992.

Nor does Mulvaney have authority to hire with independent judgment. Although the record indicates that he has revised interview questions and a candidate evaluation form, the facts do not show that he has made a recommendation to hire. See AFSCME and Illinois DCMS, 26 PERI ¶116 (IL LRB-SP 2010) (holding that alleged supervisor lacks supervisory authority to hire where alerts superiors to vacancies and has role in screening applicants).

Since there is no evidence that Mulvaney has any supervisory authority within the meaning of the Act, the Employer has failed to show that he spends a preponderance of employment time exercising that supervisory authority. Consequently, Mulvaney is not a supervisor within the meaning of the Act.

Stephen DePooter (DVA)

The evidence presented does not show that DePooter is a supervisory employee within the meaning of the Act. Other than demonstrating that his work is substantially different from that of his seven subordinates, the Employer has not satisfied the test for supervisor.

The record establishes that DePooter's principal work is substantially different from that of his subordinates. The responsibilities of his respective subordinates involve maintaining the computer systems at the veterans homes, as well as programming, fixing, installing and updating equipment. By contrast, the record shows that DePooter's duties include project management.

However, the evidence does not demonstrate that DePooter has any of the enumerated indicia of supervisory authorities which he consistently uses with independent judgment. Addressing first his assignment of cases, the Employer has not shown that DePooter uses independent judgment in performing this task comprised in the supervisory authority "to direct." In particular, the record does not reveal how he makes assignments. Reeve merely testified that DePooter makes assignments. Without that information, I cannot conclude that DePooter had to choose between two significant courses of action rather than exercise a routine duty when he performed these duties. See City of Freeport, 135 Ill. 2d at 520; 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).

Similarly, the record fails to establish that DePooter uses independent judgment in resolving time off and overtime requests of his subordinates. His approval of all such requests is evidence of a routine task rather than one requiring independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

The Employer has not established that DePooter trains his subordinates or that he effectively recommends, with the consistent use of independent judgment, that they undergo training. The record merely demonstrates that DePooter and his team provided technical support during the Accuvu Project, and he sent an email announcing a short training session on the agency's new payroll and timekeeping system.

The evidence with regard to DePooter's completion of performance evaluations is also inadequate. While the record establishes that DePooter is responsible for his subordinates' performance evaluations, the Employer does not establish that he exercises this authority with independent judgment.

The record does not establish that DePooter has the authority to discipline with the consistent use of independent judgment. The record shows that DePooter has the authority to discipline his subordinates, but he has not had to impose any discipline. In such a situation, the alleged supervisor may still use independent judgment although he has not issued discipline or recommend that it be issued. For example, an incident may occur where the alleged supervisor considers issuing discipline but determines that the subordinate's conduct does not warrant it. In such a case, the alleged supervisor uses independent judgment in his decision not to issue discipline. However, the Employer does not contend that any incident occurred when DePooter uses independent judgment in deciding to refrain from issuing discipline or recommending that it be issued.

The record does not support the conclusion that DePooter has the authority to adjust grievances with the requisite independent judgment. Although DePooter has the authority to resolve formal grievances at the first level of the grievance procedure, the Board has issued decisions establishing that the mere designation as the first level response in a grievance

procedure is insufficient to establish supervisory authority within the meaning of the Act if it is unaccompanied by evidence that the employee can make significant decisions against the employer's interests at that low level. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). The Employer does not provide any examples of the informal workplace issues which DePooter resolves; consequently, I cannot determine that he has to consistently use independent judgment in performing this function. See AFSCME, Council 31 and State of Illinois, DCMS (ICC), 26 PERI ¶84.

The evidence does not show that DePooter hires with independent judgment. His formulation of interview questions as well as functioning as Reeve's technical advisor are inadequate to find that he has authority to hire. See AFSCME and Illinois DCMS, 26 PERI ¶116 (IL LRB-SP 2010)(holding that alleged supervisor lacks supervisory authority to hire where alerts superiors to vacancies and has role in screening applicants).

Because DePooter has no supervisory authority with the requisite independent judgment, he cannot satisfy the preponderance prong of the supervisor test. Accordingly, he is not a supervisory employ within the meaning of the Act.

Joe Woodward (OSFM)

The facts fail to show that Joe Woodward, an SPSA Option 3 in the Office of the State Fire Marshal, is a supervisory employee within the meaning of the Act. Although the record indicates that he meets the initial prong of the test for supervisor, the evidence does not establish the remaining elements.

Woodward's principal work is substantially different than that of his five subordinates. While his duties include project management, the primary duties of his subordinates are limited to, respectively, providing support for the network, hardware implementation, inventory and small procurements, and serving as the official program administrator for a national reporting system.

Woodward's assignment of cases is insufficient to demonstrate that he has the authority to direct with the consistent use of independent judgment The record shows that Woodward assigns tasks to his subordinates based on the type of work that they perform. Such a predetermined basis of assigning tasks reflects a rote process rather than one which consistently uses independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Woodward also does not consistently use independent judgment in approving overtime and time off requests. The evidence which the Employer introduces shows that Woodward approves all such requests. The Board has recognized that an alleged supervisor's approval of *all* such requests is evidence of routine actions rather than the consistent use of independent judgment. Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Similarly, the record does not establish that Woodward has the authority to train with independent judgment. Although the record demonstrates that Woodward's training requests

were approved two years prior to the hearing before budget constraints, the evidence is seilent as to how he used independent judgment in making these requests.

The record fails to establish that Woodward's completion of performance evaluations is sufficient evidence of the supervisory authority to direct. While the facts show that he completes performance evaluations for his five subordinates, four of whom are in a bargaining unit. there is no evidence that these performance evaluations have an effect on the terms and conditions of employment of these subordinates. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

The record does not show that Woodward has the authority to discipline with the consistent use of independent judgment. While the facts show that he has the authority to discipline, Woodward has not yet issued any discipline or recommended to his superiors that it be issued. Nor does the record show that any incident occurred which caused Woodward to consider issuing or recommending the issuance of discipline. Given these facts, the Employer has not established that Woodward has exercised his disciplinary authority while using independent judgment.

Since the record fails to establish that Woodward has any supervisory authority within the meaning of the Act, he does not exercise supervisory authority for a preponderance of his employment time. I thus conclude that Woodward is not a supervisor within the meaning of the Act.

Charles Cicora (IDES)

The evidence does not show that Charles Cicora, an SPSA Option 3 in the Support Services unit of IDES, is a supervisor within the meaning of the Act. While the record

establishes that he meets the first three prongs of the test for supervisor, the Employer does not prove that he meets the last element.

The record shows that Cicora's principal work is substantially different from that of his subordinates. Only he is responsible for overall computer operations while his five subordinates report directly to him about their respective roles in supervising teams and updating all schedules.

Turning to the supervisory indicia with the consistent use of independent judgment, the facts do not demonstrate that Cicora assigns new jobs while consistently using independent judgment. In particular, the Employer does not show how assigning new jobs by placing them in the appropriate schedule requires Cicora to consistently use independent judgment rather than take a routine action. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 518, 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Similarly, the record fails to show that Cicora consistently uses independent judgment in approving or denying leave requests. Other than a situation when an employee requesting leave has insufficient time on the books to cover his absence, Cicora has never denied a request for leave. Such an automatic approval of leave requests shows that the alleged supervisor does not consistently use independent judgment. See MAP and Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Nor does Cicora's assignment of overtime require him to consistently exercise independent judgment. His posting of overtime opportunities and rotation of overtime assignments as required by the collective bargaining agreement show that he uses no independent judgment in doing so. See Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993). (rotation as basis of work assignment is not indicative of independent judgment required for supervisory direction). In assigning overtime, the only determination that Cicora must make is whose turn is it to work overtime.

Cicora does not train his subordinates while consistently using independent judgment. The record shows that Cicora trains his subordinates on-the-job so that they understand how to operate and maintain software products. There is no evidence that Cicora's on-the-job training involves him making a choice between two significant courses of action. See City of Freeport, 135 Ill. 2d at 520; State of Illinois, DCMS, 26 PERI ¶119 (IL LRB-SP 2010).

The record does not establish that Cicora's completion of performance evaluations for his five subordinates. constitutes supervisory authority. Specifically, there is no evidence that these performance evaluations have an effect on the terms and conditions of employment of his subordinates. See

Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

However, the facts demonstrate that Cicora has the authority to discipline while consistently using independent judgment. The record shows that he issued oral reprimands twice in 2009. Although he may consult with labor relations, the record does not show that any such consultation in these instances vitiated his independent judgment. See State of Illinois, DCMS,

27 PERI ¶71 n. 5 (IL LRB-SP 2011) (not *any* consultation with, or review by, a superior defeats the independent judgment of effective recommendation of an alleged supervisor).

The record does not demonstrate that Cicora has the authority to hire with the consistent use of independent judgment. In particular, where Cicora's score of a job candidate was averaged with those of other panel member, the resulting recommendation to hire does not show his independent judgment. See County of Lake, 16 PERI ¶2036 (IL SLRB 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995). In addition, Cicora's role in identifying vacant positions to fill does not establish that he has the authority to hire. See AFSCME and Illinois DCMS, 26 PERI ¶116 (IL LRB-SP 2010) (holding that alleged supervisor lacks supervisory authority to hire where alerts superiors to vacancies and has role in screening applicants).

The record does not establish that Cicora's role as the first level grievance response gives him the authority to adjust grievances with the consistent use of independent judgment. This conclusion is consistent with the Board's prior decisions in which it found the mere designation as the first step in a grievance procedure, without more, does not constitute supervisory authority within the meaning of the Act. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Although Cicora's authority to discipline his subordinates is supervisory authority within the meaning of the Act, the record does not show that he spends a preponderance of his employment time exercising this authority. "Preponderance of time" has been interpreted to mean that the alleged supervisor spends more time on supervisory functions than on any one supervisory function. State of Illinois, DCMS v. ISLRB, 278 Ill. App. 3d at 83. The record does

not indicate how much of Cicora's time is spent issuing discipline. However of the 20% of his time which the record shows that he spends on multiple supervisory tasks, it seems likely that he spends only a fraction issuing discipline. See City of Freeport, 135 Ill. 2d 499, 532-33 (although the firefighters issued discipline. they were not supervisors within the meaning of the Act because they did not exercise such authority a preponderance of the time). Accordingly, I conclude that Cicora is not a supervisor within the meaning of the Act.

William Schneider (IDES)

The evidence does not show that William Schneider. an SPSA Option 3 in IDES, is a supervisor within the meaning of the Act. Although he satisfies the first three prongs of the test for supervisor, the record demonstrates that he does not spend a preponderance of his employment time engaging in supervisory authority within the meaning of the Act.

Schneider's principal work is substantially different from that of his three direct reports. His two subordinates supervise the program analysts below them, and the third provides technical support. By contrast, Schneider's responsibilities in Revenue Systems include the major employer taxing system used to charge employers when their former workers are collecting unemployment benefits. Although Schneider is able to do the same programming and design work of these subordinates, the nature and essence of his job is substantially different.

The record reveals that Schneider does not assign work to his subordinates with consistent use of independent judgment. The facts merely demonstrate that after Schneider's meetings with user groups, he gives the work to his two subordinates who act as supervisors for program analysts. Those subordinates then make assignments to employees based on the type of application that is being supported. The testimony and exhibits are silent as to any distinction that Schneider may make between these two direct reports. As for subsequent assignments

which the direct reports make to program analysts, the facts fail to show that Schneider is involved in this process. Besides, these assignments were based on a routine element—the type of application being supported—not independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 518, 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993). (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

The Employer has not demonstrated that Schneider approves/denies leave requests with the consistent use of independent judgment. Each of the four leave requests in the record was one which Schneider had approved. The record indicates that Schneider does not deny such requests unless the subordinate has insufficient time to cover the absence. This automatic approval is not indicative of the consistent use of independent judgment. See Village of Bolingbrook, 19 PERI ¶1 (IL LRB-SP 2003).

The evidence that Schneider recommends training for his subordinates with the consistent use of independent judgment is inadequate. Neither the testimony nor exhibits show that Schneider had to choose between two or more significant courses of action on the few occasions when he recommended training on dot net technology for two subordinates. See City of Freeport, 135 Ill. 2d at 520; 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); State of Illinois, DCMS, 26 PERI ¶119 (IL LRB-SP 2010).

The record does not establish that Schneider assigns overtime with the consistent use of independent judgment. The facts indicate that he has never denied a request to work overtime.

Such uniform approval of all overtime requests is evidence of a lack of independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

However, the record establishes that Schneider directs his subordinates by doing their performance evaluations. The facts demonstrate that in 2010 Schneider administered the final probationary evaluation of a subordinate. A rating that a probationary employee fails to meet expectations may lead to the termination of that employee. Schneider's evaluation of such a probationary employee thus have an effect on the employee's terms and conditions of employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

The evidence also demonstrates that Schneider has the authority to issue oral and written reprimands with the consistent use of independent judgment. The facts indicate that Schneider's superior advised him to consult labor relations when he was considering disciplinary action, and then the record does not show that he took any disciplinary action. Under these circumstances, Schneider exercised the authority to discipline although the record shows that he did not issue any discipline. While he may have contacted labor relations, the record contains no evidence that labor relations made the determination to not issue the discipline. See State of Illinois, DCMS, 27 PERI ¶71 n. 5 (IL LRB-SP 2011) (not *any* consultation with, or review by, a superior defeats the independent judgment of effective recommendation of an alleged supervisor).

The record does not demonstrate that Schneider has the authority to recommend hiring with the consistent use of independent judgment. Although the facts indicate that he was recently part of a three-person hiring panel that led the hiring of a candidate, his role on such a panel where his scores were averaged with other panelists does not indicate independent

judgment. See County of Lake, 16 PERI ¶2036 (IL SLRB 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995).

Nor does Schneider have the authority to adjust grievances with the requisite consistent use of independent judgment. Although the record shows that he is the first level response in the grievance procedure, the Board has held that such designation, by itself, does not constitute supervisory authority within the meaning of the Act. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

While the evidence establishes that Schneider has the authority to direct by evaluating probationary employees and the authority to discipline, both with the consistent use of independent judgment, he does not exercise these authorities for a preponderance of his employment time. In particular, the record shows that Schneider spends 20% of his time on several supervisory tasks which include the authority to complete performance evaluations and the authority to discipline. It seems likely—especially since there is no evidence to the contrary—that he spends only a small portion of this 20% completing performance evaluations. See DCMS (ICC), 26 PERI ¶84 (IL LRB-SP 2010). Similarly, it appears likely that he spends only a minor amount of time issuing discipline. See City of Freeport, 135 Ill. 2d 499, 532-33 (although the firefighters issued discipline, they were not supervisors within the meaning of the Act because they did not exercise such authority a preponderance of the time). Cumulatively, I conclude that Schneider fails to spend a preponderance of his employment time exercising supervisory authority within the meaning of the Act. Consequently, Schneider is not a supervisory employ within the meaning of the Act.

Matthew Penning (DHS)

The record fails to demonstrate that Matthew Penning, an SPSA Option 3 in the Bureau of Disability Determination Services within DHS, is a supervisor within the meaning of the Act. The Employer has not established that he meets any of the prongs of the test for supervisory employee.

The record does not show that Penning's principal work is substantially different from that of his four direct reports. While one of them is an Office Administrator and another is an Executive Secretary, neither testimony nor exhibits describe their duties. Any inference on my part would be wholly based on their respective titles, and thus inappropriate. Supervisory status is not determined by job title or job classification, but by the nature of the individual's functions and authority in the workplace. See e.g. Erica Inc. and United Food and Commercial Workers International Union Local No. 1564, 344 NLRB 799, 805 (2005); Mack Supermarkets, Inc. and United Food and Commercial Workers International Union, Local 227, 288 NLRB 1082, 1084 (1988). The facts demonstrate that on occasion Penning may do the same work as them or his other two direct reports, both PSA Option 3's, but the record does not indicate what that work is. Without more, I cannot conclude that Penning satisfies the initial prong of the test for supervisory employee. To reach the opposite conclusion, I would essentially be eliminating the first element of the test for supervisor.

Nor do the facts demonstrate that Penning has supervisory authority with the requisite consistent use of independent judgment. He does not direct his subordinates with the consistent use of independent judgment. The record shows that he exercises no independent judgment in assigning work. Rather, the subordinate to whom he forwards an email requesting work is determined by the task to be done. Since his section of BDDS is divided into distinct functions,

his assignments are made based on function. He thus uses a rote means of distributing work, not independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 518, 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Nor has the Employer established that Penning has the authority to change the schedules of his subordinates while consistently using independent judgment. Although the record contains a memorandum which Penning wrote to a subordinate informing her that her hours were changed, that letter does not demonstrate that Penning has such authority while consistently using independent judgment. The witness, Rhonda Pratt, who identified the document was not familiar with it. Consequently, she provided no elaboration as to the facts surrounding its issuance. Moreover, the document itself shows that it was copied to two individuals

The record fails to demonstrate that Penning has the authority to recommend training while consistently using independent judgment. While the record establishes that Penning recommended training for his staff when Outlook was enhanced and to learn IROBOT programs, the facts do not demonstrate that these recommendations were approved. Specifically, the record does not indicate whether this training was among that which Pratt testified she "usually" approves. Most important, the evidence fails to show that Penning uses independent judgment in making training recommendations in that he had to choose between two or more significant courses of action rather than routine or clerical choices. See City of Freeport, 135 Ill. 2d at 520;

Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d 508, 516, 607 N.E. 2d 182, 9 PERI ¶4004 (1992).

Similarly, Pratt's testimony that Penning determines when his subordinates need to work overtime does not establish that he has the authority to recommend overtime with the consistent use of independent judgment. The record does not demonstrate that his recommendations for overtime require him to consistently use independent judgment. Since the record shows that all of his subordinates are in a bargaining unit, the overtime which each may work is governed by the applicable collective bargaining agreement. Penning's role is limited to recognizing whose turn it is to work overtime.

Penning's completion of performance evaluations for his subordinates does not constitute direction within the meaning of the Act. The record fails to show that he has independent judgment. While all but one of the seven performance evaluations were signed off by Ann Robert after Penning and the employee being evaluated signed off, Pratt's testimony indicates that she reviews these evaluations *before* Penning is allowed to give them to the employee. The evidence indicates that she only approved two of Penning's evaluations after he provided satisfactory explanations of his ratings. Evidence of her role in the evaluation process is far too sparse to find that Penning has independent judgment.

Similarly, the evidence does not establish that he determined which of the seven employees would receive wage increases. While two of the seven evaluations for which Penning signed as supervisor had a mark in the box designated "SALARY INCREASE,' those employees who apparently were selected to receive a salary increase did not have the best evaluations in terms of having the most criteria that Penning rated as "exceeds expectations. Simply stated, there was no apparent correlation between Penning's rating and who was selected for a salary

increase. Based on these facts, I cannot conclude that Penning completed performance evaluations that had an effect on the terms and conditions of his subordinates' employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

The evidence fails to demonstrate that Penning has authority to discipline with the consistent use of independent judgment. Although Penning has the authority to discipline or recommend discipline, the record does not indicate that he has exercised it with independent judgment.

Likewise, the Employer has not proved that Penning has the authority to adjust grievances with independent judgment. The record establishes that Penning provides the first level grievance response. However, the Board has already decided that such a role does not alone establish supervisory authority. See County of Lake, 16 PERI ¶2036 (IL SLRB 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995). On the one occasion that Penning dealt with a grievance at Step One, Penning merely signed the grievance by indicating that he lacked the authority to resolve it at the first level.

Because a review of the record indicates that Penning has no supervisory authority, he cannot satisfy the fourth prong of the supervisor test. That is, he does not spend a preponderance of his employment time exercising supervisory authority. I conclude that he is not a supervisor within the meaning of the Act.

Susie Saputo (DHS)

The evidence does not show that Susie Saputo, an SPSA Option 3 who is the head of Customer Service and Training in DHS, is a supervisor. She only meets the first prong of the test for supervisor.

The record establishes that Saputo's principal work is substantially different from that of her subordinates. The evidence shows that only Saputo is involved in the scheduling of the classes while her subordinates instruct other employees of DHS.

Saputo does not have the authority to direct with the consistent use of independent judgment. First, the evidence shows no more than Saputo sending an email to her subordinates which assigned them to instruct certain training classes.[63] Although the email was from Saputo, the Employer did not establish that she was the individual who determined the schedule of training classes or the assignments of her subordinates as instructors. No evidence was provided about what gave rise to the email that was entered into evidence. Based on the statement in the email that "*We* decided on a training schedule," Saputo alone did not determine that schedule.

Even assuming that Saputo determined the schedule and assignments in the email, the Employer introduced no evidence showing that Saputo used independent judgment in doing so. See City of Freeport, 135 Ill. 2d at 520. The same criticism applies to the other email from Saputo which assigns her subordinates to prepare different training modules—there is no evidence demonstrating Saputo's use of independent judgment. Id.

Regarding Saputo's disposition of her subordinates' time off requests and overtime authorizations, the record fails to show that she consistently uses independent judgment. The evidence shows that Saputo has never denied a request for time off. Such uniform approval

[63] In these training classes, Saputo's subordinates instruct other employees of DHS. There is no evidence or contention that Saputo trains or recommends training for her subordinates.

indicates a routine action, not one using independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

In addition, Kasamis' testimony that Saputo decides whether to authorize overtime based on training class location and work volume is insufficient to show that she is required to consistently use independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

The record fails to show that Saputo exercises significant discretionary authority to affect her subordinates' terms and conditions of employment when she completes their performance evaluations. Kasamis' testimony included a single statement about Saputo's authority to complete performance evaluations for her direct reports: it established that she does them. However, the Employer provided no examples of these evaluations. In particular, the evidence does not establish that these evaluations have any impact on the terms and conditions of Saputo's subordinates.

Similarly, Saputo's role as the response at the first level of the grievance procedure is inadequate to establish that she has supervisory authority within the meaning of the Act. See County of Lake, 16 PERI ¶2036 (IL SLRB 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995).

Saputo does not satisfy the fourth prong of the test for supervisor requiring that she spend a preponderance of her employment time exercising supervisory authority. An analysis of the

record shows that she does not have any supervisory authority within the meaning of the Act. Accordingly, I conclude that she is not a supervisor.

Steve Washburn (DHS)[64]

The evidence does not show that Steve Washburn, an SPSA Option 3 in DHS, is a supervisor within the meaning of the Act. He fails to meet any of the prongs of the test for supervisor.

First, the Employer has not proven that the principal work of Washburn is different from that of his subordinates. The record only indicates that he has three subordinates, but does not explain the nature of their duties.

Washburn does not have any supervisory authority which he consistently exercises with independent judgment. The evidence shows that he makes assignments, authorizes overtime and resolves time off requests—tasks which come under the authority to direct. However, the record fails to demonstrate that he consistently uses independent judgment in making assignments. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Nor does the record establish that he uses independent judgment to authorize overtime or resolve time off requests. Washburn's approval of *all* time off requests is evidence of a lack of independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

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[64] This analysis is based solely on the duties of Washburn's official position.

The evidence fails to establish that he completes performance evaluations for his subordinates that have an effect on their terms and conditions of employment. See AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38 (IL LRB-SP 2007), aff'd, 382 Ill. App. 3d 208 (4th Dist. 2008); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). The Employer provided no examples of the performance evaluations that he does.

The record does not demonstrate that Washburn has the authority to discipline while consistently using independent judgment. While he can still use independent judgment without issuing discipline, the evidence does not establish that he has done so. For example, the record includes no incidents when Washburn considered issuing oral or written reprimands or recommending suspensions, but decides against taking such action.

Nor does the evidence establish that Washburn has the supervisory authority to adjust grievances while consistently using independent judgment. While Washburn serves as the first level grievance response, the Board has decided that such designation alone does not constitute supervisory authority within the meaning of the Act. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Washburn fails to meet the fourth prong of the supervisory test since the evidence shows that he has no supervisory authority that requires the use of independent judgment. Therefore, I conclude that he is not a supervisor within the meaning of the Act.

Jeremy Margaron (DHS)

The evidence shows that Jeremy Margaron, an SPSA Option 3 who is the bureau chief of IM&D, is not a supervisory employ within the meaning of the Act. The record demonstrates that he does not meet any of the prongs of the test for a supervisory employee.

The facts fail to establish that Margaron's principal work is substantially different from that of his subordinates, the four Section Managers—Palmatier, Hagele, Minick and Rigg—whose bargaining unit status is at issue in this proceeding.[65] While Margaron and each of the Section Managers work with change requests, the record does not provide an adequate distinction in their respective roles. The evidence also shows that Margaron and John Minick are involved in the implementation of the Temporary Aid for Needy Families (TANF) project, but it does not describe their respective functions. Contrary to the assertion in the Employer's brief, the supervisory functions and job duties of Margaron do not show that he performs substantially different work from that of his subordinates.

Nor does the record establish that Margaron has supervisory authority with the requisite consistent use of independent judgment. Although the evidence demonstrates that he makes assignments to his direct reports, those assignments are made based on the computer system involved in the change requested. Consequently, Margaron does not use his independent judgment in making assignments. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Similarly, the evidence shows that Margaron does not authorize overtime or resolve time off requests with the requisite independent judgment. While Margaron is authorized to assign overtime to his direct subordinates, the record does not demonstrate that he has ever done so. His uniform approval of time off requests is evidence of a routine act rather than one requiring

[65] One of these individuals—Julie Hagele—is an acting Section Manager.

the consistent use of independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Although Margaron does performance evaluations for his direct reports, the evidence does not establish that these evaluations that have an effect on his subordinates' terms and conditions of employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992). The Employer's evidence does not show that he ever recommended salary increases for the Section Managers before a salary freeze was imposed. Rather, Kasamis acknowledged that Margaron has not recommended a salary increase since he began as CIO in October 2009.

Margaron's role in hearing grievances at the first level of the grievance procedure fails to demonstrate that he has supervisory authority with independent judgment. The Board has already ruled that the mere designation as the first level response in a grievance procedure does not constitute supervisory authority within the meaning of the Act. See e.g. State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); State of Illinois, DCMS (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

The evidence does not show that Margaron spends a preponderance of his employment time exercising supervisory authority. Rather, none of his employment time is spent exercising supervisory authority as defined by the Act. Consequently, I conclude that Margaron is not a supervisory employee within the meaning of the Act.

Dave Palmatier (DHS)

The record does not establish that Dave Palmatier, an SPSA Option 3 in MIS of DHS, is a supervisor within the meaning of the Act. The evidence fails to prove any of the elements of the test for supervisory employee.

Neither the testimony nor the exhibits support the contention that the principal work of Palmatier is substantially different from that of his subordinates. The record does not indicate what his subordinates do as compared to what Palmatier does. Although the evidence discloses that they are on the CARS team, the child care team and consultants, respectively, the Employer presented no facts whatsoever concerning their duties.

The record shows that Palmatier does not have any supervisory authority which he consistently performs with the requisite independent judgment. Kasamis' statement that Palmatier makes assignments based on an employee's knowledge of a system is simply inadequate to show that Palmatier consistently uses independent judgment. His testimony establishes that Palmatier routinely makes assignments based on which employee has expertise in a certain area rather than weighing the relative knowledge, skills, and experience of his subordinates. See e.g., AFSCME, Council 31 and Chief Judge of the Circuit Court of the County of Cook, 26 PERI ¶117 n. 1 (IL LRB-SP 2010); AFSCME, Council 31 and State of Illinois, DCMS, 21 PERI ¶46 (IL LRB-SP 2005).

While the evidence demonstrates that Palmatier approves overtime and time off requests, the Employer has failed to prove that he consistently uses independent judgment in doing so. The record only shows approvals, not denials, of such requests. The Board has recognized that uniform approval of such requests is evidence of a routine action. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Although the record shows that Palmatier does performance evaluations for his subordinates, it does not establish that they have an effect on the terms and conditions of the employees being evaluated. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992). Only one line in the transcript addresses Palmatier's involvement with performance evaluations. It merely establishes that he completes them. Thus, I conclude that in completing his subordinates' performance evaluations, Palmatier does not have significant discretionary authority to affect his subordinates' employment. See State of Illinois, DCMS (ISP), 23 PERI ¶38 (IL LRB-SP 2007), aff'd, 382 Ill. App. 3d 208 (4th Dist. 2008); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992).

The facts fail to demonstrate that Palmatier has the authority to discipline with the requisite independent judgment. Although the record establishes that Palmatier has this authority, Kasamis did not know if he ever exercised it. Kasamis acknowledged that the verbal reprimand, memorialized in a document from Palmatier, may have been issued by Margaron. There is no evidence of any other incident when Palmatier exercised his disciplinary authority by considering the issuance of discipline.

The evidence does not establish that Palmatier has the authority to adjust grievances with the consistent use of independent judgment. While the record shows that Palmatier has the authority to handle grievances of his subordinates, Kasamis testified that Palmatier had not done so since October 2009 when he became the CIO of MIS. Moreover, Kasamis does not explain precisely what Palmatier's involvement with grievances is. The evidence does not show that the memorandum which Palmatier wrote to Margaron in May 2009 was a part of his formal response

in the grievance procedure. Based on the record, there is insufficient evidence that Palmatier has the authority to adjust grievances with the consistent use of independent judgment.

The evidence does not establish that Palmatier has the authority to hire with the consistent use of independent judgment. The record contains no examples of Palmatier's involvement in the hiring process. An email from November 2007 that Palmatier wrote states that his involvement in the interview process may be in conjunction with another employee. The facts do no establish what the hiring process is, and Palmatier's role in that process. The Board has determined that hiring decisions made by consensus are not considered supervisory within the meaning of the Act. County of Lake, 16 PERI ¶2038 (IL LRB-SP 2000); Peoria Housing Authority, 10 PERI ¶2020 (IL LRB-SP 1994), aff'd by unpub. order, docket no. 3-94-0317 (3rd Dist. 1995).

Since the record fails to demonstrate that Palmatier has any supervisory authority, he cannot satisfy the fourth prong. I conclude that he is not a supervisor within the meaning of the Act.

Julie Hagele (DHS)

The facts fail to demonstrate that Julie Hagele, a Unit Manager in MIS who is acting as a Section Manager, is a supervisor within the meaning of the Act. The record does not show that she meets any prong of the test for supervisory employee.

The evidence in the record does not establish that Hagele's principal work is different from that of her four direct subordinates. The Employer does not provide any information concerning the functions of these subordinates so that I can compare their work to that of Hagele. Merely providing an organizational chart that shows Hagele's name and position/title listed above those of four direct reports is insufficient to meet this prong. See e.g. Erica Inc. and United

Food and Commercial Workers International Union Local No. 1564, 344 NLRB 799, 805 (2005)(supervisory status is not determined by job title or job classification, but by the nature of the individual's functions and authority in the workplace).

The record does not demonstrate that Hagele has supervisory authority which she consistently exercises with independent judgment. While the evidence shows that she makes assignments to her direct subordinates, Hagele does not exercise independent judgment in performing this task. First, Kasamis does not know the basis on which Hagele makes assignments. Even assuming that Hagele makes her assignments on the basis of her direct subordinates' "knowledge of the underlying business process," these words alone indicate no more than rote assignment according to an automatic process in which certain employs cover certain systems. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction). Accordingly, I conclude that Hagele does not consistently exercise independent judgment in making assignments.

Nor do the facts establish that Hagele consistently uses independent judgment in her authorization of overtime. The evidence establishes that she authorizes overtime "based on the requirements of the workload." The record contains no explanation of what this phrase means. However, the Illinois Supreme Court has already determined that making assignments to balance workload does not require the alleged supervisor to consistently use independent judgment. City

of Freeport, 153 Ill. 2d 508, 519, 521 (1990). Accordingly, I conclude that Hagele does not consistently use independent judgment in authorizing overtime.

Hagele's approval of requests for time off also fails to establish that she consistently uses independent judgment in performing this task. The evidence presented indicates that she has only approved, not denied, time off requests. The Board has decided that an alleged supervisor does not use independent judgment when he/she approves *all* time off requests. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB 2003). In the instant case, Hagele's uniform approval of time off requests reflects the routine nature of this function.

The record fails to prove that Hagele's completion of performance evaluations constitutes authority to direct within the meaning of the Act. In particular, the evidence does not demonstrate that the performance evaluations which Hagele completes have an affect on her subordinates' terms and conditions of employment. Consequently, I am unable to conclude that she has significant discretionary authority to impact the employment of her subordinates. AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38; City of Naperville, 8 PERI ¶2016 (IL SLRB 1992).

Nor does the record establish that Hagele has the authority to discipline with the requisite consistent use of independent judgment. While the testimony establishes that Hagele has the authority to "handle discipline," the record includes no evidence that she has exercised this disciplinary authority. For example, the facts do no demonstrate that Hagele considered issuing written reprimands for an incident but ultimately decided against it.

Likewise, the facts do not establish that Hagele has the authority to adjust grievances with the consistent use of independent judgment. At most, the evidence shows that she is as the first level response in a grievance procedure, and has denied a grievance at that step. The Board

has determined that such a role does not constitute alone supervisory authority within the meaning of the Act. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Since Hagele has no supervisory authority with the consistent use of independent judgment, the Employer has failed to show that she spends a preponderance of employment time exercising that authority. I thus conclude that she is not a supervisor within the meaning of the Act.

John Minick (DHS)

The evidence fails to show that John Minick, an SPSA Option 3 in DHS, is a supervisor within the meaning of the Act. The facts establish that he does not satisfy any of the elements of the test for supervisor.

The record does not demonstrate that Minick's principal work is substantially different from that of his subordinates. The Employer provides no evidence about the duties of Minick's direct reports. Although the record includes an organizational chart identifying Minick and his subordinates' job titles, it does not indicate their functions. Without that information, I cannot conclude that Minick meets the first prong of the test for supervisor.

The evidence does not establish that Minick has any supervisory authority which he consistently uses with independent judgment. Kasamis' statement that Minick makes work assignments based on an employee's knowledge of a particular system is inadequate to show that he uses independent judgment in assigning work. His words indicate that Minick makes assignments according to a mechanical process where certain employees are responsible for designated systems. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521

(holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of work based on rotation is not indicative of independent judgment required for supervisory direction).

Similarly, the record fails to show that in authorizing overtime and approving time off requests Minick consistently uses independent judgment. The evidence shows only approvals of both requests. Such uniform approvals of time off or overtime requests do not demonstrate the consistent use of independent judgment. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

The evidence does not establish that Minick directs or recommends the direction of his subordinates with the requisite independent judgment when he completes their performance evaluations. The record fails to show that these performance evaluations have an impact on the terms and conditions of his subordinates' employment. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB-SP 1992).

The record also does not establish that Minick has the authority to discipline with the use of independent judgment. While the evidence shows that he has the authority to discipline, the facts indicate that he has not exercised it thus far. For example, the evidence fails to demonstrate that Minick contemplated issuing written reprimands on any occasion but ultimately decided not to do so. Given these facts, the record does not indicate that Minick consistently uses independent judgment in exercising his disciplinary authority.

Nor does Minick have the authority to adjust grievances with the requisite use of independent judgment. The facts show that Minick serves as the first level response to grievances filed on behalf of his subordinates. However, previous decisions of the Board establish that such a role, by itself, is inadequate to establish supervisory authority. See e.g. AFSCME, Council 31 and State of Illinois, DCMS, 26 PERI ¶116 (IL LRB-SP 2010); AFSCME and State of Illinois (ICC), 26 PERI ¶84 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

In sum, the record shows that Minick spends no time exercising supervisory authority with independent judgment. He thus does not spend a preponderance of his time exercising supervisory authority. I conclude that Minick is not a supervisor within the meaning of the Act.

John Rigg (DHS)

The evidence fails to demonstrate that John Rigg, an SPSA Option 3 in DHS, is a supervisory employee within the meaning of the Act. Under the facts which the Employer presented, he does not satisfy any of the prongs of the test for supervisor.

The record does not establish that Rigg's principal work is substantially different from that of his subordinates. The Employer does not indicate who those subordinates are and what functions they perform. Merely providing an organization chart that includes the titles of subordinates is insufficient. See e.g. Erica Inc. and United Food and Commercial Workers International Union Local No. 1564, 344 NLRB 799, 805 (2005)(supervisory status is not determined by job title or job classification, but by the nature of the individual's functions and authority in the workplace).

Nor does the evidence show that Rigg has any supervisory authority which requires the consistent use of independent judgment. The record reveals that he performs several tasks which

may comprise the supervisory authority to direct such as assigning work, determining if overtime is needed, and approving time off requests. However, the facts do not indicate that Rigg consistently uses independent judgment in performing any of them. Specifically, the Employer does not introduce evidence that Rigg's performance of these duties requires him to consistently choose between two or more significant courses of action. See City of Freeport, 135 Ill. 2d at 520; 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).

In addition, the Employer does not demonstrate that Rigg consistently uses independent judgment in completing performance evaluations. In particular, cross-examination of Kasamis revealed that Kasmais required Rigg to make changes to a performance evaluation *before* presenting the evaluation to an employee.

Further, the record fails to demonstrate that the performance evaluations Rigg completes have an effect on the terms and conditions of employment for his subordinates. The Employer introduces no evidence in this regard. However, Board precedent establishes that direction becomes supervisory only where the alleged supervisor exercises significant discretionary authority which affects the employment of his subordinates. AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38; City of Naperville, 8 PERI ¶2016 (IL SLRB 1992).

The evidence also does not prove that Rigg has the authority to discipline while consistently using independent judgment. The unrebutted evidence shows that Rigg only issued an oral discipline when Kasamis directed him to do so—an action devoid of independent judgment. Nor does the record indicate other incidents when Rigg exercised authority to discipline even though he decided not to issue any oral or written reprimands. Accordingly, the facts do not demonstrate the consistent use of independent judgment.

Since the facts show that Rigg has no supervisory authority, the record fails to demonstrate that Rigg spends a preponderance of his employment time exercising supervisory authority. Consequently, I conclude that he is not a supervisory employee within the meaning of the Act.

Gary Cochran (ISP)

The record demonstrates that Gary Cochran, an SPSA Option 3 in ISP, is not a supervisor within the meaning of the Act. Although the evidence demonstrates that he meets the three initial prongs of the supervisor test, he does not satisfy the remaining element.

Cochran's principal work is substantially different from that of his two direct reports. As Assistant Bureau Chief, Cochran manages the technical operations of state police communications throughout the state. One of his subordinates, Lambert Fleck, is responsible for field operations and the day-to-day direction of his field staff of five. Both Fleck and Cochran's other direct subordinate are responsible for various duties in support of STARCOM21, a management network. Cochran's two direct reports have responsibilities concerning technical training of staff.

However, the record reveals that Cochran does not have any supervisory authority which consistently requires independent judgment. While the record shows that he performs various duties which fall within "direction," the evidence fails to demonstrate that he uses independent judgment in performing them. The record indicates that he can assign work as needed and may reassign it as new priorities necessitate. However, the record establishes that the Bureau Chief, not Cochran, determines the priorities. His approval of *all* his direct reports' requests for earned equivalent time is evidence that he does not use independent judgment in granting them. See Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). Regarding the other requests that he

receives concerning vacations, personal time, time off and overtime, the record contains no evidence that in resolving them Cochran has to choose between two or more significant courses of action. See City of Freeport, 135 Ill. 2d at 520; 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).

Cochran's lack of independent judgment is evident in his treatment of a subordinate's request for a four day work week, He sent an email to Laurette Waters, Labor Relations Administrator, to find out if the agency had any issues with his subordinate's request for a schedule change. Cochran relied on Waters to determine compliance with the agency's policy.

In addition, the evidence does not establish that Cochran's recommendations that overtime be granted were effective. While the record demonstrates that Cochran cannot grant a request for overtime but instead has to make a recommendation to the Bureau Chief, there is no evidence of the Bureau Chief's response to such requests.

The evidence establishes that Cochran does performance evaluations of his direct subordinates. Further, the record does demonstrate that these evaluations have an effect on the terms and conditions of his subordinates' employment. While effective July 2009 no salary increase or bonus recommendation was allowed due to budgetary reasons, Cochran recommended salary increase and bonus in October 2008 to correspond to the rating which he gave an employee in a performance evaluation at that time. See State of Illinois, Dep't of CMS (EPA, Dep't of Public Health, DHS, Dep't of Commerce and Economic Activity, 26 PERI ¶155, n. 7 (IL LRB-SP 2011) Based on this record, I conclude that Cochran's completion of performance evaluations is supervisory within the meaning of the Act.

The record does not establish that Cochran effectively recommends discipline with the consistent use of independent judgment. The record demonstrates that Cochran can only issue an

oral or written reprimand *after* he first obtains the approval of the Bureau Chief. The record does not indicate that he has made any such recommendations which the Bureau Chief has granted. Consequently, the evidence shows that Cochran effectively recommends discipline with the consistent use of independent judgment. See City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290, 521 N.E. 2d 108, 4 PERI ¶4008 (3rd Dist. 1988); 10 PERI ¶2020 (IL SLRB 1994, aff'd by unpub. order, 269 Ill. App. 3d 1148, 685 N.E.2d 462 (3rd Dist. 1995); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999).

Cochran does not have the authority to adjust grievances with the consistent use of independent judgment. The facts show that Cochran does not provide a response during the grievance procedure. Field supervisors provide the first step response, and the Bureau Chief provides the second step response. Although the record shows that Cochran makes recommendations to the Bureau Chief, there is no evidence of how those recommendations have led to the adjustment of any grievance.

Cochran also lacks the authority to hire with the consistent use of independent judgment. Although the record demonstrates that Cochran took part in interviews with others in 2005, the record does not indicate that he used independent judgment or made an effective recommendation to hire a job candidate at that time.

While the record establishes Cochran's supervisory authority in that he completes performance evaluations for his two direct reports, the evidence does not demonstrate that Cochran spends a preponderance of his employment time exercising that supervisory authority. It is likely that he only spends a minor part of his time doing the performance evaluations of his two direct reports. See DCMS (ICC), 26 PERI ¶84 (IL LRB-SP 2010). This conclusion is

consistent with the 1981 job description in the record. I conclude that Cochran is not a supervisory employ within the meaning of the Act.

Lambert Fleck (ISP)

The evidence demonstrates that Lambert Fleck, an SPSA Option 3 in ISP, is not a supervisory employee within the meaning of the Act. Other than establishing that Fleck meets the first prong of the supervisory test, the record fails to show that he satisfies the remaining elements.

The facts indicate that Fleck's principal work is substantially different from that of his subordinates. While Fleck's responsibilities for field operations are bureau-wide, each of his direct subordinates' installation duties is limited to his/her particular region.

However, the evidence does not demonstrate that Fleck has supervisory authority which he consistently exercises with independent judgment. Although the record establishes that Fleck makes assignments, approves overtime, time off and vacation requests, there is no evidence that he consistently uses independent judgment in performing these tasks. City of Freeport, 135 Ill. 2d at 520; 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). The record only shows Fleck's *approval* of requests for overtime, time off and vacation. Evidence of uniform approval of such requests does not establish independent judgment. See Village of Bolingbrook 19 PERI ¶125 (IL LRB-SP 2003). Additionally, the record shows that Fleck's decision as to whom to assign to administer an oral reprimand is based on the information learned from Labor Administrator Laurette Waters, not based on his own judgment.

The record does not establish that Fleck directs within the meaning of the Act in that he completes, with the consistent use of independent judgment, performance evaluations for his five

direct subordinates. In particular, the evidence fails to establish that these performance evaluations have any effect on the terms and conditions of employment for his subordinates now that they are in a bargaining unit. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove, 8 PERI ¶2015 (IL SLRB 1992).

Nor do the facts demonstrate that Fleck recommends discipline with the consistent use of independent judgment. The record establishes that he has the authority to recommend discipline, but Bureau Chief Edwards makes the decision as to whether discipline will result from his recommendation. The evidence does not demonstrate whether he has made any recommendations for discipline, and, if so, what has happened to them. Consequently, the record does not show that he makes effective recommendations to discipline. See City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290, 521 N.E.2d 108, 4 PERI ¶4008 (3rd Dist. 1988); 10 PERI ¶2020 (IL SLRB 1994, aff'd by unpub. order, 269 Ill. App. 3d 1148, 685 N.E.2d 462 (3rd Dist. 1995); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999).

The record does not show that Fleck has the authority to adjust grievances while consistently using independent judgment. The record establishes that field supervisors provide the first step response and that Bureau Chief Edwards provides the second level response. Although the evidence demonstrates that Fleck would become the first level response in the event that a field supervisor files a grievance, no evidence of such an occurrence was introduced. to date

Since Fleck does not have any supervisory authority that he consistently exercises with independent judgment, the record fails to show that he spends a preponderance of his

employment time exercising supervisory authority. Accordingly. I conclude that Fleck is not a supervisory employ within the meaning of the Act.

Hal Waggoner (IEPA)

The record fails to establish that Hal Waggoner, an SPSA Option 3 in the Information Services Section of IEPA, is a supervisory employee within the meaning of the Act. Although he satisfies the first prong of the test for supervisory employee, the remaining prongs are not met.

The evidence demonstrates that Waggoner's principal work is substantially different from that of his subordinates. The facts show that Waggoner's principal work is project management and running the day-to-day operations of the Information Services Section while his subordinates' principal work is programming.

The record does not indicate that Waggoner "directs" his subordinates with the consistent use of independent judgment. Although the evidence reveals that some of Waggoner's duties come within the authority "to direct," he does not consistently use independent judgment in performing them. Specifically, the facts indicate that Waggoner assigns work based on the type of application being developed, approves—and has never denied—time off requests, approves overtime and overtime carryover requests, and instructs subordinates to complete performance evaluations. However, assignment of work based on the application being developed is a mechanized, routine process which does not require Waggoner to use independent judgment. See e.g. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 521 (holding that assignment based on balancing workload is routine, not involving independent judgment); Illinois DCMS (Department of Children and Family Services), 8 PERI ¶2037, n. 2 (IL SLRB 1992), aff'd, 249 Ill. App. 3d 740, 619 N.E. 2d 239, 9 PERI ¶4014 (4th Dist. 1993) (holding that assignment of

work based on rotation is not indicative of independent judgment required for supervisory direction).

This lack of independent judgment also describes Waggoner's approval of *all* time off and time off requests. See MAP and Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). Similarly, Waggoner's role instructing subordinates' to do performance evaluations does not consistently require the use of independent judgment.

In addition, the evidence fails to establish the he consistently uses independent judgment or makes effective recommendations in developing training plans for his subordinates. The record merely shows that Waggoner's responsibilities include the training of his employees, but nothing more. The Employer did not introduce any specific examples of Waggoner performing this function to supplement the testimony of Acting Deputy Director Bonnet.

The record also fails to demonstrate that Waggoner's completion of performance evaluations for fourteen of his subordinates constitutes supervisory authority under the Act. In particular, the Employer introduced no evidence that these performance evaluations have an impact on the terms and conditions of employment of his subordinates. See Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994), aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995); Village of Elk Grove. 8 PERI ¶2015 (IL SLRB 1992).

Moreover, the evidence does not establish that Waggoner has the authority to discipline with the consistent use of independent judgment. The evidence merely shows that he has issued an oral reprimand to a subordinate, but he testified that he does not know whether documentation of the disciplinary action was placed in the employee's personnel file. Before an oral reprimand can constitute disciplinary authority, documentation of such a reprimand must be placed in the employee's personnel file so that it can form the basis of more severe discipline. See e.g., MAP

and Village of Oak Brook, 26 PERI 7 (IL LRB-SP 2010); City of Chicago (Department of Public Health), 17 PERI ¶3016(IL SLRB 2001). Nor does his role assisting in potential disciplinary investigation constitute the exercise of disciplinary authority within the meaning of the Act.

The evidence also fails to demonstrate that Waggoner has authority to adjust grievances with the consistent use of independent judgment. While the record establishes that Waggoner responds to grievances as part of the grievance procedure, he has not had any grievances yet. Accordingly, the record does not establish that he uses independent judgment in resolving them.

Similarly, the record does not show that Waggoner has authority to lay off employees while consistently using independent judgment. Even if Waggoner were to exercise this authority, the order of such a layoff would be governed by the collective bargaining agreement governing his bargaining unit employees rather than his independent judgment. See County of Cook and AFSCME, Council 31, 19 PERI ¶18 (IL LRB-LP 2003).

In addition, the record does not establish that Waggoner has the authority to hire with the consistent use of independent judgment. While Acting Deputy Director Bonnet testified that he "would participate" in hiring if it were to occur, at this point the record fails to establish that Waggoner uses independent judgment in performing this hiring function.

Based on the evidence presented, Waggoner does not spend a preponderance of his employment time exercising supervisory authority. Like several other SPSA Option 3's at issue, he has no supervisory authority. Therefore, I conclude that Waggoner is not a supervisory employ within the meaning of the Act.

B. Managerial Analysis

Pursuant to Section 3(j) of the Act, a managerial employee is defined as "an individual who is engaged predominantly in executive and management functions and is charged with the

responsibility of directing the effectuation of management policies and practices." 5 ILCS 315/3(j) (2010). The Act excludes these managerial employees from the class of employees who are entitled to engage in collective bargaining. See 5 ILCS 315/3(n), 6(a) (2010). This exclusion is intended to maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management. See Chief Judge of the Sixteenth Judicial Circuit v. ISLRB, 178 Ill. 2d 333, 339, 687 N.E.2d 795, 13 PERI ¶4014 (1997)(citing National Labor Relations Board v. Yeshiva University, 444 U.S. 672, 682, 100 S.Ct. 856, (1980)). This rationale has been summarized as follows:

> managerial status is not limited to those at the very highest level of the governmental entity for it is enough if the functions performed by the employee sufficiently align him with management such that the employees should not be in a position to divide their loyalty to an exclusive collective-bargaining representative.

Salaried Employees of North America v. Illinois Local Labor Relations Board, 202 Ill. App. 3d 1013, 1031, 560 N.E.2d 926, 6 PERI ¶4004 (1st Dist. 1990).

In order to be deemed managerial, the employees at issue must satisfy a two-part test: 1) be engaged predominantly in executive and management functions; and 2) exercise responsibility for directing the effectuation of such management policies and functions. County of Cook (Oak Forest Hospital) v. Illinois Labor Relations Board, 351 Ill. App. 3d 379, 386, 813 N.E.2d 1107, 20 PERI ¶113 (1st Dist. 2004); State of Illinois, Dep't of CMS ("CMS") and Healthcare and Family Services, 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep'ts of CMS and Public Aid and AFSCME, 2 PERI ¶2019 (IL SLRB 1986). Regarding the first prong, the Board has interpreted it to mean that a managerial employee must possess and exercise a level of authority and independent judgment sufficient to broadly affect the organization's purpose or its means of effectuating these purposes. INA and State of Illinois, Dep't of CMS and Healthcare and Family

Services, 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep't of CMS and AFSCME, 1 PERI ¶2014 (SLRB 1985). The Board has defined executive and management functions as those functions which specifically relate to the running of an agency or department including the following: establishment of policies and procedures; preparation of the budget; and/or the responsibility for assuring that the agency or department operates effectively. INA and State of Illinois, Dep't of CMS and Healthcare and Family Services, 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep't of CMS and AFSCME, 1 PERI ¶2014 (SLRB 1985). Executive functions require more than simply the exercise of professional discretion and technical expertise. County of Cook (Oak Forest Hospital) v Illinois Labor Relations Board, et al., 351 Ill. App. 3d 379, 386, 813 N.E.2d 1107, 20 PERI ¶113 (1st Dist. 2004); City of Evanston v. State Labor Relations Board, et al., 227 Ill. App. 3d 955, 975, 592 N.E.2d 415, 8 PERI ¶4013 (1st Dist. 1992); INA and State of Illinois, Dep't of CMS and Healthcare and Family Services, 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep't of CMS and AFSCME, 1 PERI ¶2014 (SLRB 1985).

Illinois courts have stated that the relevant consideration is effective recommendation or control rather than final authority. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 387 (citing Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 339-340; State of Illinois, DCMS (Department of Commerce and Economic Opportunity), 27 PERI ¶56 (IL LRB-SP 2011); State of Illinois, DCMS (IEPA, IDPH, DCOE) 26 PERI ¶155 (IL LRB-SP 2011).

With respect to the second element of the test, it requires that the alleged managerial employee exercise responsibility for directing the effectuation of such management policies and practices. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 386, 813 N.E.2d at 1114, 20 PERI ¶113; INA, 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep't of CMS, 2 PERI ¶2019 (IL SLRB 1986). An employee directs the effectuation of management policy when

he/she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 387; INA 23 PERI ¶173 (IL LRB-SP 2007); State of Illinois, Dep'ts of CMS and Public Aid, 2 PERI ¶2019 (IL SLRB 1986). Such individuals must be empowered with a substantial measure of discretion to determine how policies will be effected. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 387; INA, 23 PERI ¶173 (IL LRB-SP). In a decision issued last year, the Illinois Appellate Court clarified that an employee's effective recommendation may also satisfy this prong. Department of Central Management Services/Illinois Commerce Commission, 406 Ill. App. 3d at 781.

In addition to this traditional test for a managerial employee, Illinois courts have developed an analysis in which certain publicly employed attorneys have been held to be managerial employees under the Act as a matter of law and thus excluded from collective bargaining. See e.g., Chief Judge of the Sixteenth Judicial Circuit v. Illinois State Labor Relations Boards, et. al., 178 Ill. 2d 333, 344, 687 N.E.2d 795, 13 PERI ¶4014 (1997); Office of the Cook County State's Attorney v. Illinois Local Labor Relations Board, 166 Ill. 2d 296, 304, 652 N.E.2d 301, 11 PERI ¶4011(1995). The Illinois Supreme Court focused on the statutory duties of the attorneys at issue rather than on a factual record in determining that the attorneys were managers as a matter of law. Id. In Cook County State's Attorney, 166 Ill. 2d at 304, the Court relied heavily on the existence of the following three factors to support its conclusion that the attorneys at issue were managers as a matter of law: 1) the close identity of a State's Attorney with the actions of his/her assistant; 2) the unity of their professional interests; and 3) the power of the assistants to act on behalf of the State's Attorney. Cook County State's Attorney, 166 Ill. 2d at 304; See also Chief Judge of the Sixteenth Judicial Circuit 178 Ill. 2d at 344.

However, the doctrine "manager as a matter of law" has limited applicability. See Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 347; Office of Cook County State's Attorney, 166 Ill. 2d at 305. The Illinois Supreme Court has stated that the "manager as a matter-of-law" analysis should not be used to deem all publicly employed lawyers managerial employees under the Act. Id. When there was no "office holder" and statute enumerating the duties of the public employees at issue, the Board has upheld the conclusion that they were not managers within the meaning of Section 3(j) of the Act. AFSCME and State of Illinois, Dep't of CMS (Capital Development Board), 20 PERI ¶18 (IL LRB-SP).

Melissa Kahle (CMS)

The record does not show that Melissa Kahle is a managerial employee within the meaning of the Act. She does not satisfy either part of a two-part traditional test in that she is neither engaged predominantly in executive and management functions nor exercises responsibility for directing the effectuation of such management policies and functions. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 386; INA, 23 PERI ¶173.

Nor does the evidence meet the manager as a matter of law analysis. The facts do not show that Kahle's duties are statutorily based and that she acts a surrogate for an office holder. Where the records fails to establish a statutory basis for an alleged manager's duties and the existence of an office holder, the Board has not found a manager under this alternative rationale. See AFSCME and State of Illinois, Dep't of CMS (Capital Development Board), 20 PERI ¶18 (IL LRB-SP). Accordingly, I conclude that Kahle is not a managerial employee within the meaning of the Act.[66]

Dennis Kirk Mulvaney (CMS)

[66] Although the issues at hearing included whether Kahle is a managerial employee, the Employer's post-hearing brief did not make any argument that she is managerial.

The evidence establishes that Dennis Kirk Mulvaney is a managerial employee within the meaning of the Act. The facts demonstrate that he is predominantly engaged in executive and management functions, and he is responsible for directing the effectuation of such management policies and functions.

Mulvaney is predominantly engaged in executive and management functions by making effective recommendations. Once Sorenson and the Deputy Director decided to change from leased phone lines to state-owned fiberoptic cables throughout the state, Mulvaney was in charge of implementing that decision. In order to accomplish the policy, Mulvaney formulated another: he recommended that the state hire an outside vendor rather than hire additional employees, and his recommendation was adopted. He had to use discretion in choosing to use an outside vendor for the project. The fiberoptic cable project is throughout the state and involves an estimated cost of $130,000,000 over three years. In addition to the example of the fiberoptic cable project, Mulvaney makes effective recommendations when he proposes other RFP's to his superior, CIO Sorenson of BCCS. The record shows that Sorenson has always approved the RFP's received from Mulvaney. Due to these effective recommendations, Mulvaney's role is not merely advisory and subordinate. His daily monitoring of the execution of the fiber-optic cable project is characteristic of a managerial employee within the meaning of the Act. See City of Evanston, 227 Ill. App. 3d at 976.

While Mulvaney's recommendations require him to use his technical expertise, they also call for him to make policy judgments. Regarding the fiberoptic cable project, he determined that cost considerations and the time frame—the $130,000,000 estimated cost over a three year period—could best be met by hiring an outside contractor rather than hiring additional state

employees. The facts show that a similar policy consideration—how to manage the dollars allocated—is also characteristic of the other RFP's that he creates.

Mulvaney's pivotal role in implementing the agency's decision to use state-owned fiber-optic cables rather than leased phone lines exemplifies his effectuation of management policy. As a step in its implementation, he developed an RFP calling for the hire of an outside vendor. Mulvaney's function monitoring execution of the fiber-optic cable project on a daily basis is characteristic of the duties of a managerial employee. See City of Evanston, 227 Ill. App. 3d at 976. He thus meets both elements of the traditional test for managerial employ.

In reaching this conclusion, I emphasize that Mulvaney's work on the fiberoptic cable project is broad in scope, impacting the entire state. In addition, the Board has decided that an individual may be a managerial employee within the meaning of the Act though he is subject to supervision. AFSCME, Council 31 and State of Illinois, DCMS (DCEO), 27 PERI ¶56 (IL LRB-SP 2011).

Stephen DePooter (DVA)

The record does not demonstrate that Stephen DePooter. an SPSA Option 3 in the DVA, is a managerial employee within the meaning of the Act. Instead, the evidence consistently shows that he uses his technical expertise in performing his critical role in high level projects.

Although the evidence shows that all of his recommendations have been accepted since he began with the agency in 2009, each of the recommendations described in the record relies solely on DePooter's technical expertise. For example, DePooter's determination that the agency's payroll system under CMS could be converted to that under DHS was based only on his skills, abilities, and knowledge acquired from his education and years of experience. At the same time,

DePooter's role in the projects described in the record lacks any link to policy concerns. Instead, he acts in an advisory and subordinate capacity.

The limited nature of DePooter's function is evident from a review of the project concerning cable T.V. carriers at the agency's homes. The record shows that DePooter concluded that the four separate homes could use a single cable T.V. carrier. However, the record provides that a cost comparison—*not attributed to DePooter*—disclosed that it was equally cost-effective to have four separate systems. DePooter's role is thus removed from any policy considerations that might render him a managerial employee within the meaning of the Act.[67]

Application of the manager as a matter of law analysis also leads to the conclusion that DePooter is not a managerial employee. The two fundamental elements present when the courts have found a manager as a matter of law—a statute setting forth the duties of the alleged manager and an "officer holder" on whose behalf the alleged manager acts—are non-existent in DePooter's case. Chief Judge of the Sixteenth Judicial Circuit v. Illinois State Labor Relations Boards, et. al., 178 Ill. 2d at 344; Office of the Cook County State's Attorney, 166 Ill. 2d at 304. The Board has not found a manager as a matter of law when those two factors were not present. AFSCME and State of Illinois, Dep't of CMS (Capital Development Board), 20 PERI ¶18 (IL LRB-SP).[68]

There is no doubt that DePooter's work is important. However, the importance of the work is not the test for a managerial employee. AFSCME, Council 31 and State of Illinois, DCMS; ISEA/SEIU and State of Illinois, DCMS, 25 PERI ¶161 (IL LRB-SP 2009).

Joe Woodward (OSFM)

[67]It would be inaccurate to state that the evidence *implies* that DePooter did this cost comparison.
[68]This same result applies to each of the remaining disputed employee—none is a manager as a matter of law for the reasons discussed here. Hence, I will not repeat this discussion.

The evidence does not establish that Joe Woodward, an SPSA Option 3 in OSFM, is a managerial employee. The record fails to show that Woodward is predominantly engaged in executive and management functions. In particular, the evidence does not prove that Woodward establishes policies and procedures. Although the record demonstrates that he designed a web page for the agency, his performance of this duty does not constitute formulation of policy. The testimony demonstrates that Woodward had no discretion in designing the website. Woodward's testimony that he presented different options to the State Fire Marshall who chose from among them supports this finding of a lack of discretion.

Similarly, the evidence does not demonstrate that Woodward's management of the National Fire Incident Reporting Systems (NFIRS) program entails formulation of policy. NFIRS is a nationwide reporting program of the U.S. Fire Administration in which an Executive I and her assistant work. The record does not include any alleged policies which Woodward formulated as a result of his effective recommendations concerning the NFIRS program. Although the record establishes that Woodward is responsible for analysis of the data that is maintained as part of the NFIRS program, such analysis is a consequence of his technical expertise. It does not render him a managerial employee within the meaning of the Act.

The record also does not establish that Woodward's role in the issuance of the OSFM IT Procedures Manual amounts to formulation of policy. The facts do not demonstrate that Woodward made effective recommendations which led to its adoption. Woodward's testimony establishes that almost a quarter of the sections in OSFM's manual were adapted from a CMS manual to make them more applicable to OSFM. To that extent, he was compiling data. In addition, the handwritten notation on the IT Procedures Manual shows that upper management made changes to provisions in Woodward's draft. Such a process does not establish that

Woodward makes effective recommendations. Further, Woodward's email distributing the final document thanks two individuals for helping him. The evidence does not establish who these others were and the extent to which they contributed to the manual. Most importantly, the handwritten notation on Woodward's email distributing the document indicates that the OSFM IT Procedures Manual was developed as a result of an audit finding. Because of this origin of the document, any discretion which Woodward may have had regarding this document was too limited to constitute managerial authority.

Assuming arguendo that Woodward developed policy in performing his role in the OSFM IT Procedures Manuel, the facts demonstrate that he spent about 10 to 20% of his time working on this project. Consequently, he does not meet the Act's requirement that he be "predominantly" engaged in executive and management functions.

The evidence also fails to demonstrate that Woodward meets the second part of the test for a managerial employee: that he directs the effectuation of management policies and functions. While the record shows that Woodward is involved in implementing a project known as document management, the evidence does not explain what that project is. Nor does it describe Woodward's role in implementing it.

Matthew Penning (DHS)

The evidence fails to demonstrate that Matthew Penning, an SPSA Option 3 in the Bureau of Disability Determination Services (BDDS) within DHS, is a managerial employee within the meaning of the Act. Applying the traditional test, the record demonstrates that Penning is not predominantly engaged in executive and management functions. Rather, the facts show, and the Employer acknowledges, that he is the expert for the IT systems used in BDDS. More than this reliance on Penning's technical expertise is necessary in order to conclude that he is engaged

predominantly in executive and management functions. See e.g. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 386; City of Evanston, 227 Ill. App. 3d at 975; INA, 23 PERI ¶173; State of Illinois, Dep't of CMS, 1 PERI ¶2014 (SLRB 1985). However, the record does not provide more.

In addition, the evidence does not establish that Penning's recommendations for the purchase of equipment upgrades and a security system are effective. Pratt's testimony that Director Robert "usually approves" Penning's recommendations is insufficient. The Board requires that the party advancing the exclusion present specific examples of the alleged managerial authority. American Federation of State, County and Municipal Employees, Council 31 and State of Illinois, Department of Central Management Services, 24 PERI ¶112 (IL LRB-SP 2008); Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill. App. 3d 1128,13 PERI ¶4011(2nd Dist. 1997). However, the record contains no examples of these recommendations.

The record also fails to show that Penning meets the second element of the traditional test for managerial employee in that he directs the effectuation of management policies and functions. The Employer alleges that Pennings' same activity that constitutes his engaging in executive and management functions---effective recommendations for the purchase of equipment upgrades and a security system—is evidence of his effectuation of management policies. First, the record does not connect Pennings' recommendations to any management policies. Second, as mentioned earlier, the record does not contain any specific examples of Penning's recommendations.

Susie Saputo (DHS)

The evidence fails to demonstrate that Susie Saputo is a managerial employee within the meaning of the Act. First, the record does not establish that she predominantly engages in executive and management functions within the meaning of the Act. As the Board and Illinois Appellate Courts have decided, executive and management functions involve more than simply the exercise of professional discretion and technical expertise. County of Cook (Oak Forest Hospital), 351 Ill. App. 3d at 386; City of Evanston, 227 Ill. App. 3d at 975; INA, 23 PERI ¶173; State of Illinois, Dep't of CMS, 1 PERI ¶2014. The record simply does not show how Saputo's duties concerning training involve more than her professional discretion and technical expertise.[69]

In addition, the facts do not establish that Saputo makes effective recommendations. The record shows that Kasamis only accepts 50% of her recommendations for spending. Although the Employer attempts to discount this low percentage due to budget limitations, such restrictions do not provide an exception to the requirement that a managerial employee make effective recommendations. The record does not indicate that her recommendations are effective, and hence, that she is engaged predominantly in executive and management functions.

Steve Washburn (DHS)

The record does not establish that Steve Washburn, an SPSA Option 3 in DHS, is a managerial employee within the meaning of the Act. The record fails to show that Washburn satisfies either part of the traditional inquiry for a manager. The facts do not demonstrate that he is engaged predominantly in executive and management functions within the meaning of the Act. Although the record reveals that Washburn is involved in recommendations for spending, the Employer does not establish any specific activities which render him a manager. For example,

[69] Although the record mentions to Saputo's duties include maintenance of the OneNet system and compliance with the Illinois Technology and Accessibility Act, it does not describe them. Thus, I have no basis to conclude that these duties—whatever they are—involve more than her technical expertise.

Kasamis testified that Washburn makes "recommendations on spending." However, the record fails to provide more detailed information in this regard. As the party arguing that Washburn is a managerial employee and should thus be excluded from the RC-63 bargaining unit, the Employer must provide examples of the alleged managerial authority on which it is relying. See State of Illinois, Dep't of CMS, 24 PERI ¶112; Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill. App. 3d 1128,13 PERI ¶4011 (2nd Dist. 1997). Without the necessary examples, I cannot conclude that Washburn makes recommendations on spending.[70]

Assuming arguendo that Washburn makes recommendations on spending, the evidence does not establish that they are effective. Kasamis testified that he accepts Washburn's spending recommendations "probably over 80% of the time." Again, the Employer does not provide specific examples of his acceptance of Washburn's spending recommendations. Without a detailed description of the respective roles of Washburn and Kasamis in the spending authorization process, I cannot conclude that Washburn makes effective recommendations.

Jeremy Margaron (DHS)

The record fails to show that Jeremy Margaron, an SPSA Option 3 in DHS, is a managerial employee within the meaning of the Act. Kasamis' testimony that Margaron makes recommendations to him concerning the purchase of hardware and software which he accepts 90% of the time does not establish that Margaron is engaged predominantly in executive and management functions. Although the courts and the Board have decided that effective recommendation or control, rather than final authority, is a means of establishing that an alleged managerial employee engages in executive and management functions, the record simply does

[70] The record does not assert that Washburn makes recommendations related to the email migration project or to MISR's. Kasamis testified that Washburn was involved in policy-making decisions related to these activities.

not demonstrate that Margaron makes effective recommendations on spending. First, the Employer provides no examples of these alleged recommendations on spending which Margaron supposedly makes to Kasamis Well settled Board decisions establish this same principal: that the party arguing for a statutory exclusion must provide specific examples of the activity on which it is relying. State of Illinois, Dep't of CMS, 24 PERI ¶112 (IL LRB-SP 2008); Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill.App.3d 1128,13 PERI ¶4011(2nd Dist. 1997).

Second, when Margaron testified for the Union, he stated that he provided *requests*, not recommendations, to Kasamis for additional software about four or five times in the last six months. His testimony was unrebutted by the Employer. *Assuming arguendo* that Margaron makes spending recommendations, such activities fail to establish that he is *predominantly* engaged in executive and management functions.

In sum, with regard to the first part of the traditional analysis for managerial employee, the Employer has shown no more than Margaron's role is advisory and subordinate. Since Margaron does not make effective recommendations to Kasamis, he is not managerial. See . Dep't. of CMS (ICC), 406 Ill. App. 3d at 775, 781). The evidence proves only that his technical expertise has made him MIS division's "strongest technical architect."

In addition, the record fails to establish that Margaron directs the effectuation of management policies and functions, the second component of the traditional test for managerial employee. Although the evidence demonstrates that Margaron has a role in the process of prioritizing the MISR requests, the record does not establish what that function is or its extent. The information which the Employer provides—that Margaron meets with the program areas to

prioritize competing requests, and that he signs-off on change request forms without first obtaining Kasamis' approval—is insufficient.

Dave Palmatier (DHS)

The evidence fails to establish that Dave Palmatier, the SPSA Option 3 who is a Section Manager in DHS' Bureau of Information Management & Development (IMD), is a managerial employee within the meaning of the Act. The record does not demonstrate that Palmatier is engaged predominantly in executive and management functions. Although Kasamis testified that he relies on Palmatier's recommendations to him about the state's accounting system, the Employer provides no examples of these recommendations. The party maintaining a statutory exclusion does not satisfy its burden of proof by producing vague, generalized testimony regarding the disputed individual's job functions. Rather, the Board requires specific examples of the alleged authority to support the argument of statutory exclusion. State of Illinois, Dep't of CMS, 24 PERI ¶112; Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill.App.3d 1128,13 PERI ¶4011(2nd Dist. 1997). However, in the instant case, the Employer does not meet that burden.

Assuming arguendo that Palmatier makes recommendations to Kasamis, the record does not establish that these recommendations are effective. Kasamis testified that he relies on Palmatier's recommendations relating to the accounting system, but the record lacks essential information as to what Kasamis means, including how often this reliance takes place. Further, the record does not establish what first happens to Palmatier's recommendations from Margaron, his direct superior.

Nor does the evidence demonstrate that Palmatier directs the effectuation of management policies and functions, the second element of the two-part test for managerial employee. While

the record indicates that Palmatier worked with Kasamis and Margaron to prepare the contract for the vendor in a new case management system, the Employer did not elicit any information which shows that Palmatier uses more than his technical expertise in this process.

Julie Hagele (DHS)

The record does not establish that Julie Hagele, a Unit Manager who acts as a Section Manager in MIS, is a managerial employ. As a preliminary matter, the evidence fails to demonstrate that she is engaged predominantly in executive and management functions. Although Kasamis testified that he usually accepts Hagele's recommendations on spending, the evidence does not indicate that she makes effective recommendations in this subject area. The record does not define what these recommendations are. The Employer failed to provide specific examples of Hagele's recommendations on spending so that the extent of her managerial authority, if any, can be determined. See State of Illinois, Dep't of CMS, 24 PERI ¶112; Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill. App. 3d 1128, 13 PERI ¶4011(2nd Dist. 1997). The record simply does not establish that Hagele has attained the level and breadth of authority and independent judgment characteristic of managerial authority. See INA, 23 PERI ¶173; State of Illinois, Dep't of CMS, 1 PERI ¶2014 (SLRB 1985).

Nor does the record establish that Hagele effects management policies by making recommendations to correspond to revisions in the WIC program. Although Kasamis testified that Hagele has an impact in this area, the record does not demonstrate what it is that she does. Further, the record is silent as to what happens to any recommendations that she may make concerning the WIC program.

John Minick (DHS)

The evidence does not show that John Minick, an SPSA Option 3 in MIS, is a managerial employee. First, the record does not establish that he is engaged predominantly in executive and management functions. The testimony of the Employer's witness that Minick determines the priorities for MISR requests is inadequate to accomplish this task. It is a conclusory statement unsupported by sufficient familiarity with relevant facts. See AFSCME, Council 31 and State of Illinois, DCMS and ISEA, Laborers Internat'l Union, Local 2002 and Service Employs Union, Local 73 and State of Illinois, DCMS, 25 PERI ¶161 (IL LRB-SP 2009. The record does not contain a detailed description of the process for prioritizing MISR requests or Minick's role in it. In addition, the Petitioner provided unrebutted testimony countering the comments of the Employer's witness. In particular, the record shows that a monthly meeting takes place at which the users from the policy areas generating the competing MISR requests play a major role in determining the priorities.

Nor does the evidence demonstrate that Minick makes effective recommendations related to spending. The Employer has failed to provide specific examples of Minick's spending recommendations so that I can determine the extent of his managerial authority, if any. See State of Illinois, Dep't of CMS, 24 PERI ¶112; Quadcom Public Safety Communications System, 12 PERI ¶2017 (IL LRB 1996), aff'd by unpub. order, 287 Ill. App. 3d 1128,13 PERI ¶4011(2nd Dist. 1997). Instead, the record includes only conclusory testimony of an Employer witness insufficient to mt its burden of proof. See AFSCME, Council 31 and State of Illinois, DCMS and ISEA, Laborers Internat'l Union, Local 2002 and Service Employs Union, Local 73 and State of Illinois, DCMS, 25 PERI ¶161 (IL LRB-SP 2009.

The record does not indicate that Minick's review of legislation which may impact the systems for which he is responsible constitutes effective recommendations. The evidence does

not show that Minick makes a recommendation regarding such legislation or what happens to his review. *Assuming arguendo* that he makes effective recommendations, the record is silent as to the frequency with which this occurs.

The evidence also fails to demonstrate that Minick effectuates management policies, the second part of the traditional test for managerial employ. Again, the record contains only a conclusory statement that Minick is involved in implementation of changes in Medicaid eligibility and the Temporary Aid for Needy Families programs. The Employer did not provide specific examples showing how Minick implements the Employer's policies.

John Rigg (DHS)

The record does not demonstrate that John Rigg, an SPSA Option 3 in DHS, is a managerial employee. Applying the traditional test for managerial employee, he fails to meet either of its tenets. The evidence does not demonstrate that he makes effective recommendations concerning spending. The Employer's witness provided only a conclusory statement that Rigg makes recommendations on spending. Such testimony reflects the witness' lack of familiarity with relevant facts. As the party asserting the managerial exclusion, the Employer has the burden of providing specific examples of managerial authority. It did not satisfy this burden in the instant case.

Further, assuming that Rigg makes recommendations, the Employer does not demonstrate that they are effective. The testimony of the Employer's witness that he "typically" approves these recommendations after Margaron's review is inadequate. In order to establish that Rigg makes effective recommendations, the record must disclose the role of Rigg's direct superior, Jeremy Margaron, in the review of Rigg's recommendations.

The record does not contain any other responsibilities of Rigg which demonstrate that he engages predominantly in executive and management functions, as well as effectuates such management policies. For example, the record does not show that Rigg's project management work or tracking of the charter process makes him a managerial employ.

Gary Cochran (ISP)

The record does not establish that Gary Cochran, an SPSA Option 3 in ISP, is a managerial employee. He does not meet either prong of the traditional test for manager.

Regarding the first part of the doctrine, the evidence does not demonstrate that Cochran is engaged predominantly in executive and management functions. The record shows that he assists in preparing the budget for technical operations, but it does not explain what that "assistance" is. Further, it is silent as to the importance or quantitative element of this task.

The evidence about Cochran's involvement in policy is also insufficient to satisfy this initial element of the test. Although Cochran's testimony refers to his input in "developing policy direction" and having "to change policy based on the use of technology," the record is not developed. Even if I were to conclude from Cochran's testimony that he formulates Bureau policy relating to technical operations, the Employer offers no evidence to show that he engages *predominantly* in managerial activities.

Contrary to well-settled Board case law, no specific examples of Cochran's alleged managerial authority in this area were given. Consequently, the evidence is inadequate to establish the second part of the traditional test—that he effectuates management policies.

In reaching this conclusion that the record fails to show that Cochran is a managerial employee within the meaning of the Act, I have not relied on the inaccurate position description, issued in 1981, for the position he now occupies. The evidence shows that the 30 year old job

description is incorrect regarding Cochran's job title, its reference to him as an engineer, and its statement that the job occupant—Cochran—is on the bargaining team.

Hal Waggoner (IEPA)

The record does not show that Hal Waggoner, an SPSA Option 3 in IEPA, is a managerial employee. The evidence fails to establish that he meets either part of the traditional test for manager.

First, the record does not prove that Waggoner is engaged predominantly in executive and managerial functions. His role as the highest-ranking official in the Information Services Section (Section) for IEPA who is responsible for the day-to-day operations of the Section, alone, is inadequate to meet the initial prong of the traditional test. His position does not show that Waggoner exercises a level of authority and independent judgment sufficient to broadly affect the agency's purpose.

Although an Employer witness testified that Waggoner makes recommendations regarding the security of the computer system, the record contains no examples of him making these recommendations. His recommendations may be the result of his personal expertise rather than managerial authority More importantly, the evidence does not establish that any recommendations Waggoner made were effective. Again, no examples of this efficacy were introduced.

In addition, the evidence that Waggoner has some involvement in the budget is insufficient to establish the first prong of this test. The record merely establishes that he works with the Acting Budget Officer for the agency on the portion of the budget dealing with training and personnel development. The record does not explain Waggoner's duties with regard to the budget. Further, these budget responsibilities may be part of his role as Acting CIO, not his

assigned position as the Application Development and Systems Manager subject to the instant petition.

Regarding the second part of the traditional test, the record does not demonstrate that Waggoner directs the effectuation of management policies and functions. The evidence does not establish his role in implementing management policies.

C. Confidential Analysis

Section 3(c) of the Act defines a confidential employ as

> an employee who, in the regular course of his or her duties, assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations or who, in the regular course of his or her duties, has authorized access to information relating to the effectuation or review of the employer's collective bargaining policies.

Such an exception to the Act's broad extension of collective bargaining rights must be narrowly construed. City of Decatur v. American Federation of State, County and Municipal Employ, Local 268, 122 Ill. 2d 353, 364-66, 522 N.E. 2d 1219, 4 PERI ¶4016 (1988); Metropolitan Alliance of Police, Sergeants Chapter No. 534 and Village of Oak Brook, 26 PERI ¶7 (IL LRB-SP 2010). The purpose of excluding confidential employees is to prevent employs from having their loyalties divided between their employer and the bargaining unit which represents them. Chief Judge of the Circuit Court of Cook County and AFSCME, Council 31, AFL-CIO, 153 Ill. 2d 508, 523, 607 N.E. 2d. 182, 9 PERI ¶4004 (1992) (citing City of Wood Dale, 2 PERI ¶2043 (IL SLRB 1986)). The union may seek disclosure of management's labor relations materials to gain a bargaining advantage, but the employer expects confidentiality in labor relations. Id.

The Board has formulated two primary tests to determine whether an employee has confidential status: the "labor-nexus" test and the "authorized access" test.[71] Chief Judge, 153

[71] The Board has also formulated a third confidential status test, called the "reasonable expectation" test, to be applied where no collective bargaining agreement was previously in place, but it is expected that the

Ill. 2d at 523; County of Peoria, 2 PERI ¶2022 (IL SLRB 1986). If an employee meets the requirements of either of these tests, then the employee is found to be confidential. Chief Judge, 153 Ill. 2d at 523; County of Peoria, 2 PERI ¶2022 (IL SLRB 1986).

Under the labor-nexus test, if an employee "assists in a confidential capacity in the regular course of his or her duties a person or persons who formulate[s], determine[s] [and] effectuate[s] labor relations policies, then the employee holds confidential status." Chief Judge, 153 Ill. 2d at 523; AFSCME and State of Illinois, Department of Central Management Services, 26 PERI ¶34 (IL LRB-SP 2010). The person assisted by the employee must perform all three functions—formulating, determining and effectuating—before a finding of a confidential employee can be made. Chief Judge, 153 Ill. 2d 523; AFSCME and SOI, DCMS, 26 PERI ¶34, (IL LRB-SP 2010); City of Wood Dale, 2 PERI ¶ 2043 (IL SLRB 1986).

The authorized access test, the second method for determining if an individual is a confidential employee within the meaning of the Act, deems an individual confidential if he or she "ha[s] authorized access to information concerning matters specifically related to the collective-bargaining process between labor and management" Chief Judge, 153 Ill. 2d at 523;State of Illinois, DCMS, 26 PERI ¶34 (IL LRB SP 2010); City of Burbank and AFSCME, 1 PERI ¶2008 (IL SLRB 1985). Authorization, not mere capability of access, is critical under this test. County of Cook (Provident Hospital) v. Illinois Labor Relations Board, Local Panel, 369 Ill. App. 3d 112, 125, 859 N.E. 2d 80, 22 PERI ¶163 (1st Dist. 2006); cf Niles Township High School District 219 v. Illinois Educational Labor Relations Board, 387 Ill. App. 3d 58, 75, 900 N.E. 2d 336, 24 PERI ¶123 (1st Dist. 2008)(applying similar provision of Illinois Educational Labor Relations Act). The purpose of the authorized access test is to guard against the premature

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establishment of the unit will require that confidential responsibilities be assumed by the employee. Chief Judge, 153 Ill. 2d at 523; City of Burbank, 1 PERI ¶2008 (IL SLRB 1985). Here, where the RC-63 bargaining unit is already in place, the reasonable expectation test could not be applicable.

disclosure of an employer's ongoing or future collective bargaining positions. Village of Homewood, 8 PERI ¶2010 (IL SLRB 1992).

The Board and Illinois courts have clarified the type of information to which an individual must have access in order to be deemed a confidential employee. "Confidential" information concerning the general workings of the department or relating to personnel or statistical information which serves as the basis for an employer's labor relations policy is insufficient to confer confidential status. City of Evanston v. State Labor Relations Board, 227 Ill. App. 3d 955, 978, 592 N.E. 2d 415, 8 PERI ¶4013 (1st Dist. 1992). The Board has specified that authorized access to matters arising from the collective bargaining process, as indicated in the Act's definition of confidential employee, includes information such as that concerning the employer's strategy in dealing with an organizational campaign, actual collective bargaining proposals and information relating to matters of contract administration. City of Burbank 1 PERI ¶2008 (IL SLRB 1985). Confidential information does not include that which a union already possesses through, for example, bargaining or the grievance procedure. Village of Homewood, 8 PERI ¶2010 (IL SLRB 1992) (purpose of authorized access test is to guard against *premature disclosure* of employer's collective bargaining policies).

Gary Cochran (ISP)

The evidence demonstrates that Gary Cochran, an SPSA Option 3 who is an Assistant Bureau Chief in ISP, is a confidential employ. The record shows that Cochran has authorized access to information related to the collective bargaining process *before* that information is known to the Union.

Specifically, Cochran has authorized access in his role making recommendations to Bureau Chief Deb Edwards who is the agency's response at the second level of the grievance process.

The grievance process is an extension of the collective bargaining process. County of Cook, 3 PERI ¶3013 (IL LLRB 1987). The record establishes that in the year prior to the instant hearing Cochran made recommendations to Edwards concerning the second level response for three grievances. While the record indicates that Edwards did not adopt his recommendation as to the appropriate level of discipline in one case, whether she adopts his recommendations is irrelevant. However, due to Cochran's role in making these recommendations, it is implicit that he knows the Employer's response to the second level in advance of that response being conveyed to the Union.

Although the record shows that Cochran made a recommendation to Bureau Chief Edwards regarding the second level grievance response only a limited number of times in the year preceding the hearing, he is still a confidential employee within the meaning of the Act since his access was part of his normal course of duties. See Niles Township High School, District 219, Cook County v. Illinois Educational Labor Relations Board, 387 Ill. App.3d 58, 70-1, 900 N.E.2d 336, 24 PERI ¶123 (1st Dist. 2008). This interpretation of the statutory language "in the regular course of duties" is consistent with the Board's recent decision that a task may still be performed in the regular course of duties even though it is only performed occasionally. See City of Chicago, 26 PERI ¶114 (IL LRB-LP 2010)

In making this recommendation that Cochran is a confidential employ within the meaning the Act, I want to point out a number of arguments advanced by the Employer on which I did not rely. First, I am not relying on the testimony of Employer witness Laurette Waters, Labor Relations Administrator, who stated that at times Cochran knows of a grievance resolution prior to the Union. Waters was unable to give any specific examples of this occurrence. The Board has rejected such a conclusory statement to support a statutory exclusion. See AFSCME, Council

31 and State of Illinois, DCMS and ISEA, Laborers Internat'l Union, Local 2002 and Service Employs Union, Local 73 and State of Illinois, DCMS, 25 PERI ¶161 (IL LRB-SP 2009).

Nor is my recommendation based on the Employer's argument that Cochran has authorized access to confidential information about negotiations policy and/or strategy between the Employer and Petitioner. Although the position description states that Cochran is on the Bureau's negotiating team, Cochran, as a witness for the Employer, refuted this inaccurate statement. On direct-examination, Waters testified that she confers with Cochran when proposals are about communications equipment technicians. However, on cross-examination, she could not recall whether she had contacted Cochran about any proposals in the 2003 negotiations with AFSCME.

In addition, my recommendation is not based on the Employer's argument that Cochran has authorized access to confidential information due to other communications he has with Waters. The record shows that in a June 2010 exchange of emails, Cochran inquired with Waters about a subordinate's request for a four day work week. However, the Employer does not establish that Cochran was privy to any information related to contract administration in the process. Specifically, the record does not establish that the employee requesting a four-day work week was a member of a bargaining unit. Further, although the record shows that Cochran contacts Waters about disciplinary issues, the evidence does not indicate what information she provides to him and when this information is conveyed.

Lambert Fleck (ISP)

The record shows that Lambert Fleck, an SPSA Option 3 who is the Radio Services Network Manager in ISP, is not a confidential employee. The record establishes that Fleck does not have authorized access to confidential information.

In particular, the record demonstrates that when Fleck learned of the disposition of the grievance filed March 23, 2009 seeking the promotion of an employee, Waters' communication of that information to him did not render him a confidential employee. During his testimony as a Union witness, Fleck explained that Waters told him either that the employee at issue in the grievance "would be promoted" or that the promotion "probably already had been approved." The Employer's witness, Labor Relations Administrator Laurette Waters, acknowledged that the grievance was "orchestrated by management" to get the employee in question promoted. Since management does not file grievances, Waters' word choice—"orchestrated by management"—may well imply that the Union had knowledge of a grievance resolution with management before the grievance was even filed. Such a reading is supported by Fleck's testimony that he shared the information from Waters with a bargaining unit employee. While the authorized access test was meant to prevent premature disclosure of confidential information, such premature disclosure was non-existent here. Accordingly, application of the authorized access test does not render Fleck a confidential employee.

Other evidence similarly fails to establish that Fleck has authorized access to confidential information. The email dated May 7, 2008 that Fleck sent to Waters' asking her if a bargaining unit member could administer discipline was one such document. Although that email was troubling in that it shows that Fleck has advanced knowledge to management's determination that an employee was to receive discipline, the Employer does not establish that the employee to be disciplined is a bargaining unit member. Consequently, the Employer has not met its burden of proving that Fleck has authorized access to information relating to the Employer's collective bargaining policies.

Likewise, Waters' email of April 21, 2009 asking Fleck about statements of the Union's representatives at the fourth step of a particular grievance does not demonstrate that he has authorized access to confidential information. The email that Waters initially sent to Fleck described information which was not confidential but rather which the Union had conveyed at level four in its effort to support the grievance at issue seeking removal of discipline.

Water's email of July 29, 2009 about an AFSCME subcontracting grievance also fails to establish that Fleck has access to confidential information. In that email, Waters asked Fleck whether the normal work of his subordinates included the work at issue in the grievance. Waters is not imparting any confidential information to Fleck.

D. Personnel Code Exemptions

I do not accept the Employer's argument that that the Section 4d(3) exemptions in the Personnel Code, 20 ILCS 415/4d(3)(2010) of the positions occupied by Stephen DePooter and Joe Woodward should also render them exempt from the Act. The Board has rejected this contention on numerous occasions. See e.g., AFSCME, Council 31 and State of Illinois, DCMS (Environmental Protection Agency, Department of Public Health, Department of Human Services, Department of Commerce and Economic Activity), 26 PERI ¶155 (IL LRB-SP 2011); AFSCME, Council 31 and State of Illinois, DCMS, 25 PERI ¶184 (IL LRB-SP 2009).

When the legislature promulgated the Act, it was careful to specify which employees were excluded from collective bargaining: Since the legislature did not provide in the Act that employees exempted under the Personnel Code were also excluded under the Act, I will not read this exclusion into the Act. See Solich v. George and Anna Porter Cancer Prevention Center of Chicago, Inc., 158 Ill. 2d 76, 82, 630 N.E. 2d 820 (1994).

V. CONCLUSIONS OF LAW

(a) I find that Melissa Kahle, Dennis Kirk Mulvaney, Stephen DePooter, Joe Woodward, Charles Cicora, William Schneider, Matthew Penning, Susie Saputo, Steve Washburn, Jeremy Margaron, Dave Palmatier, Julie Hagele, John Minick, John Rigg, Gary Cochran, Lambert Fleck and Hal Waggoner are not supervisory employees within the meaning of Section 3(r) of the act.

(b) I find that Melissa Kahle, Stephen DePooter, Joe Woodward, Matthew Penning, Susie Saputo, Steve Washburn, Jeremy Margaron, Dave Palmatier, Julie Hagele, John Minick, John Rigg, Gary Cochran and Hal Waggoner are not managerial employees within the meaning of Section 3(j) of the Act.

(c) I find that Dennis Kirk Mulvaney is a managerial employee within Section 3(j) of the Act and is thus statutorily excluded from becoming part of the RC-63 bargaining unit.

(d) I find that Lambert Fleck is not a confidential employee within the meaning of Section 3(c) of the Act.

(e) I find that Gary Cochran is a confidential employee within the meaning of Section 3(c) of the Act and is thus statutorily excluded from becoming a part of the RC-63 bargaining unit.

(f) I find that the positions exempt from the Personnel Code pursuant to Section 4d(3) of the Code, 20 ILCS 415/4d(3)(2010) which are held by Stephen DePooter and Joe Woodward are not exempt from the Act.

VI. RECOMMENDED ORDER

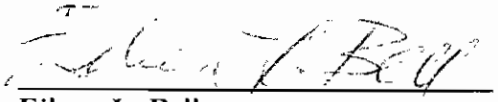
It is hereby recommended that Melissa Kahle, Stephen DePooter, Joe Woodward, Charles Cicora, William Schneider, Matthew Penning, Susie Saputo, Steve Washburn, Jeremy Margaron, Dave Palmatier, Julie Hagele, John Minick, John Rigg, Lambert Fleck and Hal Waggoner be added to the existing RC-63 bargaining unit.

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 this 16th day of November 2011.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD



Eileen L. Bell
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	
and	)	Case No. S-RC-10-220
State of Illinois, Department of Central Management Services,	)	
Employer	)	

AFFIDAVIT OF SERVICE

I, Elaine Tarver, on oath state that I have this 16th day of November, 2011, served the attached **ADMINISTRATIVE LAW JUDGE RECOMMENDED DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD** 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.

Kimberly Faith Stevens
CMS
501 Stratton Office Building
Springfield, IL 62706

Gail Mrozowski
Cornfield & Feldman
25 East Washington Street, Suite 1400
Chicago, IL 60602

SUBSCRIBED and **SWORN** to
before me this **16th day**
of November 2011.

NOTARY PUBLIC

NOTARY PUBLIC OFFICIAL SEAL STATE OF ILLINOIS
CARLA STONE
MY COMMISSION EXPIRES
OCTOBER 25, 2014