

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

American Federation of State, County
and Municipal Employees, Council 31,

Petitioner

and

State of Illinois, Department of Central
Management Services (Department of
Healthcare and Family Services),

Employer

Case No. S-RC-11-086

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

On June 23, 2011, Administrative Law Judge (ALJ) Martin Kehoe issued a Recommended Decision and Order (RDO) in the above-captioned case, finding that one employee in the job title of Public Service Administrator, Option 7, employed at the Illinois Department of Healthcare and Family Services should be added to the previously recognized RC-62 collective bargaining unit represented by the American Federation of State County and Municipal Employees, Council 31 (Petitioner). He rejected the contentions of the State of Illinois, Department of Central Management Services (Employer) that this employee needed to be excluded because he was either a supervisor or a confidential employee within the meaning of Section 3(r) or Section 3(c) of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act).

The Employer filed timely exceptions to the RDO pursuant to Section 1200.135 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200

through 1240 (Rules), and the Petitioner filed a timely response. After reviewing the record, briefs, exceptions, response and cross-exceptions, we adopt the ALJ's finding that the employee is not a confidential employee for the reasons articulated in the RDO, but for the reasons which follow, reverse his finding with respect to supervisory status and instead find that the employee is a supervisor and that his position should not be added to the RC-62 collective bargaining unit.

At issue is whether Larry Ayers, the assistant chief of the Chicago office of the Department of Healthcare and Family Services' Bureau of Internal Affairs,¹ is a supervisor within the meaning of Section 3(r) of the Act.² Ayers currently has three subordinates: a clerical employee and two investigators. A third investigator position is vacant. Ayers's superior, the bureau's chief, is based in the Springfield office.

The ALJ found that Ayers met the first element for supervisory status in that many of his duties are obviously and visibly different than those of the investigators he supervises. He further found that Ayers performs one of the 11 statutory indicia of supervisory authority in that he directs his subordinates by reviewing and evaluating their work, exercising his own independent judgment in the process. However, the ALJ found that Ayers did not spend a preponderance of his employment time performing this task of review and evaluation, and consequently found Ayers did not meet the final statutory element needed for supervisory status.

¹ The petition for representation originally sought to add two employees to the unit, but the parties have stipulated to the inclusion of Public Service Administrator, Option 7, Kevin Hearney, leaving only Larry Ayers's status in dispute.

² In relevant part, Section 3(r) defines a supervisor as follows:

"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. In addition, in determining supervisory status in police employment, rank shall not be determinative.

While we agree with the ALJ's findings on these particular points, for the reasons which follow we conclude that a broader range of Ayers's tasks constitute direction within the meaning of the Act. We also conclude that Ayers spends a preponderance of his time engaged in supervisory activities. We therefore dismiss the instant petition as it pertains to Ayers on the basis that he is a supervisor within the meaning of the Act.

While it is the chief who makes case assignments, and by necessity he assigns complex cases to the only one of Ayers's subordinates with experience, for the assignment of less complex cases the chief relies on Ayers's recommendations. Once a case is assigned, Ayers sits with his subordinate and maps out a plan for its investigation, either orally, or if the case is more complex, in writing. The bureau has a detailed procedures manual that requires certain actions be taken within certain time frames—a progress report so many days out, and plan for closure some designated time later, for example—as well as providing details such as that two investigators should be sent when interviewing a matter that is potentially hazardous or compromising. However, it is not a “cookie-cutter process” according to the chief, and there is lots of room for discretion. Someone has to assess what is hazardous or compromising for example. If a female witness needs to be interviewed in her home, and the investigator is a male, Ayers may determine that a second investigator should go along.

Depending on the experience and quality of the investigator, Ayers may give specific directions on what to do, directing his subordinates to collect certain information or interview certain witnesses. And while the investigator may complete the written progress report (due, per policy, at a designated time), it is Ayers who completes the case closure plan, and in doing so determines what needs to be done to complete the investigation. If additional evidence must be gathered, or a witness re-interviewed, he will send the investigator back out. The gist of the

evidence is that Ayers is repeatedly involved in all of the investigations taking place in the Chicago office, using his independent judgment to provide specific direction to his subordinates at multiple points.

Consideration of the full range of Ayers's duties that constitute direction has obvious implications for determining whether he spends a preponderance of his employment time exercising that authority. In 1996, the Appellate Court, Fourth District, abandoned the majority of time test for determining the preponderance element, and, citing a decision of the Illinois Supreme Court, articulated the standard in this way: "The term 'preponderance' means that the employee spends more time on supervisory functions than on any one nonsupervisory function." Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., 278 Ill. App. 3d 79, 83 (4th Dist. 1996) (citing City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 532 (1990)). That standard is met here.

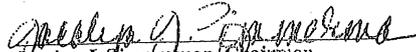
While Ayers has been assigned to personally investigate two cases, 20 percent of the Chicago office's investigations, his chief does not give him the most complex cases, so it cannot be said that he spends the majority of his time on this task, or that this non-supervisory duty predominates. In addition, while Ayers has very few subordinates—only two investigators and one clerical employee—and that might tend to suggest he would spend little time supervising, the description of his range of involvement of the supervision of the investigations suggests the opposite. And the only evidence of record directly on point, the testimony of his chief, supports a conclusion that he meets the preponderance test.

The chief is familiar with Ayers's duties because he supervises Ayers, because he formerly held the same assistant chief title in the bureau's Springfield office, and, because he continues to perform the duties of the Springfield assistant chief as that position is currently

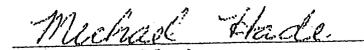
vacant. While the chief currently has five investigators reporting to him, not two like Ayers, he said he spends a considerable amount of his time supervising them. He stated that he spent 70 percent of his time on that task while he was still merely an assistant chief. Because Ayers's own case assignments "were not going anywhere," he expected Ayers to currently spend a "large block of his time right now ... supervising," and because he tries to avoid assigning cases to Ayers that will diminish his ability to supervise his subordinates, that "large block of ... time" assessment seems generally applicable. There is no evidence to the contrary. For that reason, we find the preponderance of time element, as defined by the court in Dep't of Cent. Mgmt. Serv., 278 Ill. App. 3d at 83,, has been met in this case.

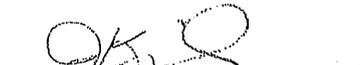
Except with respect to the stipulated inclusion of Public Service Administrator Option 7 Kevin Hearney, the petition for representation is dismissed and the position currently held by Public Service Administrator Option 7 Larry Ayers shall not be added to the RC-62 bargaining unit.

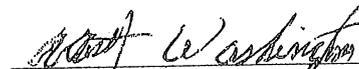
BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD


Jacalyn J. Zimmerman, Chairman


Michael Coli, Member


Michael Hade, Member


Jessica Kimbrough, Member


Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois, on October 4, 2011;
written decision issued at Chicago, Illinois, October 24, 2011.

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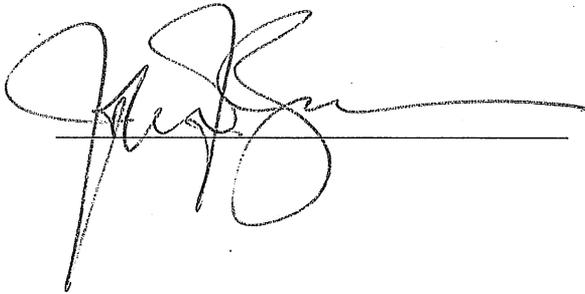
Employer

AFFIDAVIT OF SERVICE

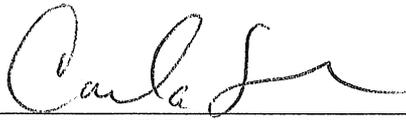
I, John F. Brosnan, on oath state that I have this 24th day of October, 2011, served the attached **DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD STATE PANEL** issued in the above-captioned case on each of the parties listed herein below by depositing, before 5:00 p.m., copies thereof in the United States mail at 100 W Randolph Street, Chicago, Illinois, addressed as indicated and with postage prepaid for first class mail.

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

Central Management Services
State of Illinois
Helen Kim, Labor Relations Counsel
100 West Randolph, Suite 4-500
Chicago, IL 60601



SUBSCRIBED and SWORN to
before me this **24th day**
of **October 2011**.



NOTARY PUBLIC

