STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

City of East Peoria,	)	
	)	
Employer	)	
	)	
and	)	
	)	Case No. S-RC-13-060
Policemen's Benevolent Labor Committee,	)	
	)	
Petitioner	)	

ORDER

On July 24, 2015 Administrative Law Judge Sarah R. Kerley, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its November 17, 2015 public meeting, the Board, having reviewed the matter, and declined to take it up on its own motion.

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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 18th day of November 2015.

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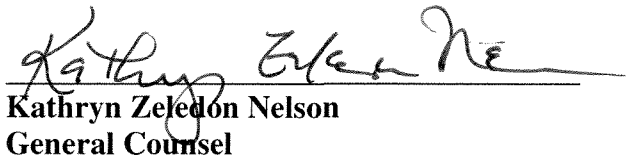

Kathryn Zeledon Nelson
General Counsel

STATE OF ILLINOIS
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ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 28, 2013, the Policemen's Benevolent Labor Committee (Petitioner or PBLC) filed a petition in Case No. S-RC-13-060 with the State Panel of the Illinois Labor Relations Board ("Board") pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315/1-1 *et seq.* (2012), *as amended* ("Act"). The Petitioner seeks to represent all full-time sworn police officers in the rank of Sergeant employed by the City of East Peoria ("Employer" or "City"). The Employer contends the Sergeants should be excluded as supervisory employees pursuant to Section 3(r) of the Act.

A hearing was held on February 13 and 14, 2014, before the undersigned administrative law judge. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties.

After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following:

I. ISSUES AND CONTENTIONS

The Employer makes the following arguments: the Sergeants' work is substantially different from the work of Department's Patrolmen; the Sergeants have authority to discipline, direct, reward, adjust grievances, and/or effectively recommend such action; and that in doing so, the Sergeants exercise independent judgment. Therefore, the Sergeants are supervisory employees and should be excluded from the Act's coverage.

The Petitioner contends that the Act "does not authorize a public employer to collectively bargain with a group of employees while also claiming that they are supervisors not entitled to unionize." Moreover, the Petitioner contends that the Employer has failed to show that the

City's Sergeants are statutory supervisors. The Petitioner does not specifically dispute that the Sergeants' work is substantially different from a Patrolman's work. However, the Petitioner argues that Sergeants are not statutory supervisors for the following reasons: they lack independence to perform the supervisory indicia of disciplining; they do not direct Patrolmen in areas likely to affect wages, hours, and terms and conditions of employment; they do not exercise independent discretion when directing; Patrol Sergeants lack discretion to reward employees, as that term is used in the Act; and, while Sergeants may respond to grievances, they do not "adjust grievances" as that term is contemplated by the Act.

Finally, the Petitioner argues that the Board should not consider the Employer's argument that the Petitioner is violating the Act by seeking to represent employees designated as the Employer's representative at the first step of the grievance process negotiated by the parties.

II. FINDINGS OF FACT

A. Stipulations of the Parties

The parties stipulate,[1] and I find, that:

1. Petitioner, PBLC, is a labor organization within the meaning of Section 3(i) of the Act.
2. Petitioner was certified in Case No. S-RC-02-038 on May 20, 2002, as the exclusive representative for a bargaining unit of all regular full-time Patrolmen of the City of East Peoria Police Department, excluding the Chief of Police, Deputy Chiefs, Sergeants and all other employees of the Police Department.
3. Petitioner is separately certified as the representative of a civilian unit of Telecommunicators employed by the East Peoria Police Department, excluding the Telecommunications Supervisor.
4. The Employer, the City of East Peoria, is a non-home rule municipality of 23,000 located in Tazewell County, and a public employer within the meaning of Section 3(a) of the Act.
5. The City operates under the Commission form of government, 65 ILCS 5/4-101 *et. seq.*, under which the Mayor is designated as the Commissioner of Public Affairs. The City's Police Department is part of the Department of Public

[1] Stipulations 1-22 were included in the parties' joint pre-hearing memorandum and were collectively marked and admitted at the hearing as Joint Exhibit 1. The parties stipulated to number 23 during the course of the hearing.

Affairs, and the Chief of Police is appointed by the Mayor with the approval of the City Council. The Mayor of East Peoria presently[2] is David Mingus. The current Chief of Police, Richard Ganschow, was appointed in August of 2012, replacing Edward Papis, who retired after serving ten years as East Peoria's Police Chief between 2002 and 2012.

6. The City ordinance establishing the Police Department authorizes the City Council by resolution to determine the ranks within the Police Department, and the number of individual positions in each rank.

7. The City is subject to the Fire & Police Commission Act, 65 ILCS 5/10-2.1-1 *et. seq.*

8. Since April 30, 2002, City Council resolutions have authorized two positions of Deputy Chief, who are appointed by the Chief of Police, with the concurrence of the Mayor, and may be removed by the Chief of Police at his discretion. Current Deputy Chiefs are Shannon Swearingen and Richard Brodrick, who were appointed from the rank of Sergeant in 2009, and 2012, respectively.

9. Brodrick is presently in charge of the Operations Division, while Swearingen is in charge of the Administrative Division.

10. The resolution also authorizes the Chief of Police to designate from the rank of Sergeant one Detective Sergeant to serve in that assignment at the discretion of the Chief of Police. The Detective Sergeant is in charge of the Investigations Unit, reporting to the Deputy Chief in charge of the Administrative Division. Brian Despines is the present Detective Sergeant.

11. The City resolution authorizes seven Sergeants positions, in addition to 38 Patrolmen.

12. Six Sergeants are assigned to the Operations Division under Operations Commander Brodrick. In addition to specific administrative functions assigned to each Sergeant, two Sergeants are assigned to each of three patrol shifts, day shift (6:00 a.m. to 2:00 p.m.), afternoon shift (2:00 p.m. to 10:00 p.m.), and night shift

[2] All references to "current" or "present" appointments are accurate as of the dates of the hearing, February 13 and 14, 2014.

(10:00 p.m. to 6:00 a.m.), and are in charge of patrol operations on that shift, working eight hours, five days a week with 2 days off.

13. Patrolmen never serve as shift commanders in place of a Sergeant. Where a Sergeant is absent, the vacancy is filled by another Sergeant, or by the Operations Commander, unless someone is temporarily promoted to the Sergeants' rank through the Fire and Police Commission.

14. Petitioner's most recent bargaining agreement for the Patrolmen unit, effective May 1, 2011, through April 30, 2013, excludes the Sergeants, as have the predecessor Agreements with PBLC, and its predecessor, AFSCME Council 31.

15. Sergeants' terms and conditions of employment are set by the City's Personnel Policies, adopted by the City Council, and the City Council's Annual Resolution,[3] as are those applicable to the Police Chief and the two Deputy Chiefs. Unlike Patrolmen, Sergeants' discipline is handled by the Fire & Police Commission and the Chief of Police.

16. Section 5.2 of the Agreement between the City and the patrol officers provides Patrolmen shall work five eight-hour days. The Sergeants on each shift approve requests for time off, whether for vacation, [earned time off] ETO, personal time, sick leave or other reasons.

17. With the exceptions of probationary Patrolmen, who may be terminated by the Chief of Police through the Fire & Police Commission without cause during their initial 12-month probationary period, Patrolmen are subject to discipline pursuant to Section 6.8 of the Agreement, which bypasses the Fire & Police Commission completely in favor of alternative procedures set out in Section 6.8.

18. Article 15 of the Agreement contains the grievance procedure agreed upon by Petitioner and Respondent for the Patrolmen's unit. Sergeants are the City's designated Step 1 grievance representatives in the Agreement, which provides "The sole and exclusive manner for handling and processing grievances shall be as follows:

[3] This document was admitted at the hearing as Employer Exhibit 4.

Step 1: Any patrolman who believes he has a grievance shall present it to his Sergeant who shall give his answer within five (5) calendar days after such presentation.

Step 2: If a grievance is not settled in Step 1 and the Union desires to appeal, the specific nature of the grievance, including the provisions of the Agreement involved, shall be referred in writing by the Union to the Chief of Police within five (5) calendar days after the Sergeant's answer in Step 1." The Agreement provides for arbitration after Step 2.

19. The Chief of Police, and the two Deputy Chiefs normal duty hours are during the business day, 7:00 a.m. to 5:00 p.m., except when the Deputy Chief of Operations works in place of one of the Patrol Division Sergeants. Sergeants are the only ranking officers normally on duty after 5:00 p.m. until 7:00 a.m. on weekdays and throughout the weekend, including those times when demand for police services are greatest, 4:00 p.m. to 3:00 a.m. Friday and Saturday.

20. The Sergeants conduct shift briefings for Patrolmen assigned to the patrol shifts on each duty shift. The PBLC Agreement establishes minimum manning as four on-duty patrolmen in the Patrol Division, and the City is divided into 4 patrol zones or "districts."

21. There are three Patrolmen assigned to the Investigations Division under the Detective Sergeant. One investigator is on call at all times - with on-call duty rotating among the three detectives - and may be contacted by either the Patrol Division Sergeant, or by the Investigations Sergeant, to assist in the initial investigation of a criminal case.

22. The Board's State Panel has jurisdiction to hear this matter pursuant to Section 5 of the Act.

23. Of approximately 20 grievances filed by the Union over 13 years, only two went to arbitration.

B. Findings of the Administrative Law Judge

In addition to the parties' stipulations, I make the following additional findings:

1. Sergeants' Duties Generally

Sergeants attend monthly command staff meetings with the three chiefs (Chief, Deputy Chief for Administration, and Deputy Chief of Operations) and have regularly assigned administrative duties relating to the overall operation of the East Peoria Police Department ("Department"). For example, one Sergeant may be assigned, among other duties, to supervise the firing range, another assigned as the K-9 supervisor, and yet another is designated as the "digital photo manager." In addition, the record reveals that Sergeants are assigned collateral duties not assigned to Patrolmen. These include the following: range supervisor; maintaining gas pumps; roll call training; defensive tactics supervisor; less than lethal supervisor; in-car video supervisor; laptop maintenance; liquor license compliance; rapid deployment training; Taser maintenance and training; calendar maintenance; abatements; awards; overseeing the motorcycle unit; portable breath test maintenance and training; administration of towing practices; overseeing the accounting related to towing; and maintaining booking room video.

Prior to beginning work in their promoted title, Sergeants are not required to attend a management training course or other training regarding how to perform the duties of a Sergeant. However, in the past, the Department has sent Sergeants to courses for law enforcement management, including topics such as risk management, managing difficult employees, and labor law.

a. Corrective Measures

Sergeants have multiple options to use in addressing unsatisfactory conduct by subordinates. When a Deputy Chief or Chief becomes aware of a situation with a Patrolman, he may direct the Sergeant to take action. Depending on the circumstances, that direction can include a specific instruction or the Sergeant may be left to decide the appropriate action. If a Deputy Chief directs a Sergeant to issue a letter of instruction, the Sergeant is not authorized to disregard that directive. Sgt. Despines testified that on one occasion, then-Deputy Chief Chris Hutt directed him to document a verbal instruction to Despines' subordinate Patrolman whom Hutt believed had violated policy. Though Despines was not convinced of the factual basis for the instruction, he did not challenge Hutt's directive.

i. Training

A Sergeant is authorized to do one-on-one coaching and to recommend that Patrolman/Detective for additional training. The Sergeant's recommendation must be included on a training request before it is considered up the chain of command. Deputy Chief Swearingen testified that training recommendations are followed 90-95% of the time.

ii. *Contact cards and verbal instruction*

Sergeants may also verbally instruct a Patrolman of his need to improve his conduct; these instructions are often documented for future reference. The documentation of verbal instruction is forwarded up the Sergeant's chain of command, is maintained for one year, and is not considered a letter of discipline. Sergeants may use a non-disciplinary contact card to document having addressed an area or situation needing improvement. Contact cards are also used to document positive performance. Contact cards are maintained in an officer's file for one year. These are issued without prior approval by Deputy Chiefs or the Chief. The Sergeants forward contact cards up the chain-of-command for informational purposes. If the deficiency identified in either the verbal instruction or contact card is not remedied, the officer can face more severe discipline.

iii. *Oral reprimands, written reprimands, and letters of instruction*

Sergeants are not authorized to suspend or discharge subordinate officers, but they can issue oral reprimands and written reprimands, draft a letter of instruction (that goes to the Chief for signature and issuance), or recommend up the chain of command that the Patrolman/Detective be suspended. Oral and written reprimands are issued by the Sergeant, and include the signatures of Deputy Chief and Chief, indicating they have "examined and approved" the reprimand. Oral reprimands are kept in an officer's file for one year; written reprimands are maintained for two years. In order to issue a letter of instruction, the Sergeant submits the content of the instruction up his chain of command; the Deputy Chief and Chief review and put the instruction on letterhead. After the Deputy Chief, Chief, and Sergeant sign the letter, it is issued to the officer.

With respect to documents that are "examined and approved" by a Deputy Chief and Chief, Swearingen testified that as a Deputy Chief, he has never failed to give his approval, and as a Sergeant, he never had approval withheld. Deputy Chief Brodrick testified that he was not aware of any remedial action he took as a Sergeant with one of his subordinates ever having been reversed. Former-Sergeant Chris Hutt testified that he had never been told that he could not take

a remedial action, including sanctions from a contact card through a letter of reprimand. Even if others in command did not particularly agree with a Sergeant's action, they would sign that they examined and approved the action if they understood why the Sergeant took the action. Chief Ganschow testified that while he would not sign something that he did not agree with, he would give the Sergeant as much leeway as possible when the Sergeant was reprimanding a subordinate. In the nearly two years that Ganschow has been Chief of Police, he has never substantially changed or refused to sign any oral or written reprimands issued by Sergeants.

Sgt. Jeff Ball testified about two specific situations when, serving as Deputy Chief, he learned that a Sergeant had issued an unwarranted letter of instruction regarding vehicle crashes. In each case, Ball directed the Sergeant to rescind the letter of instruction. However, Ball further testified that if he reviewed a letter of instruction that was factually accurate and reasonable, he allowed the Sergeant's letter to stand. Ball further testified that as Deputy Chief he could have directed a Sergeant to rescind a verbal instruction or a non-disciplinary contact card if he disagreed with it. However, he does not recall ever having done so as Deputy Chief or having been directed to do so when serving as a Sergeant. Ball described the prior Chief's administration as "nit-picky" and striving to "know everything about everything," but further testified that now, as Sergeant, he has the ability to discuss performance issues one-on-one with a Patrolman without getting command involved.

iv. <u>More severe discipline</u>

Hutt testified that on one occasion when he was Detective Sergeant, he recommended a Detective receive a one-day suspension. To the best of his recollection, that recommendation was not followed.

b. Directing Subordinates

i. Assignment

In an emergency situation, like the tornados that hit East Peoria in November 2013, the Sergeant initially directed dispatch to call in all other available personnel and directed the on-duty Patrolmen how to respond. After the initial search and rescue efforts slowed, the Department put a Sergeant in charge of each of the three main affected areas and directed the Sergeants to coordinate the personnel and efforts in their assigned area.

ii. Scheduling and Approval of Benefit Time and Overtime

Sergeants are responsible for scheduling the Patrolmen/Detectives under their command. This responsibility includes approving requests for use of benefit time. Sergeants have been subject to discipline for failing to schedule subordinates in a manner consistent with the expectations of their Deputy Chief and for approving time off that a Deputy Chief did not think should have been granted. Deputy Chief Brodrick testified that 95% of the time, review of a Sergeant's decision regarding time off occurs only after the time has been taken. Deputy Chief Brodrick further testified that, to his knowledge, command has not rescinded an approval of a Patrolman's time off even if command thought the Sergeant erroneously approved the time off. Instead, command would consider taking remedial action to take with the Sergeant.

iii. Review

Sergeants are accountable for the performance of their subordinates. Approving a poorly written report or failing to take action to remedy a Patrolmen's repeat poor performance could subject the Sergeant to discipline for poor performance. Sergeants are also responsible for being a reference for and providing guidance to their subordinates. Sergeants are expected to oversee the actions of their subordinates to ensure they are not creating a liability for themselves, the City, the Department, and otherwise are complying with rules and regulations.

Though the Department has suspended the use of its formal performance evaluation, Sergeants are responsible for evaluating the performance of the Department's Patrolmen and Detectives. In addition to reviewing reports, Sergeants are expected to assess the performance of their subordinates not only with respect to activity level, but also as to the quality of the police work they are performing.

c. Reward

Sergeants are authorized to reward a Patrolman/Detective's superior performance with days off without loss of pay or having to use of earned time off. This is generally referred to as an "administrative day." Sergeants inform their Deputy Chief that they allowed a Patrolman/Detective an administrative day. Sergeants may inform the Deputy Chief of their plan, but are not required to do so. There is no command sign-off or formal paperwork for a Sergeant to grant a day off with pay. Current Sergeants testified that they did not believe they had the authority to grant administrative days without receiving permission, though this had not been stated directly from anyone in command.

d. Adjust grievances

Sergeants are the designated first step of the contractual grievance procedure for the PBLC-represented Patrolmen. It is uncontested that a Sergeant has never granted a grievance that has been presented to him at the first level.

Deputy Chief (and former Sergeant) Swearingen testified that Sergeants have the authority to grant grievances at the first step, though he is not aware of a Sergeant doing so. Should a Sergeant decide to grant a grievance, the City would be bound by the Sergeant's adjustment of the grievance. The Sergeant's supervisors could review the decision as evidence of the Sergeant's performance. Swearingen testified that he believes that the reason a Sergeant has not adjusted a formal grievance is because, in most cases, the issue is vetted with the Sergeant before a grievance is filed. If the Sergeant agrees that the issue discussed with him should be addressed, it is resolved informally before a formal grievance is filed by the Union. Situations occur as frequently as weekly where a Sergeant handles an issue that could give rise to a written grievance if unresolved.

Current Sergeants testified that they did not believe they have the authority to grant grievances and that they would not do so without consultation with a Deputy Chief and/or the Chief. In November 2013, Deputy Chief Swearingen specifically directed Sergeants that if they received a grievance related to holiday pay, they should deny it based on the language of the collective bargaining agreement. No other evidence was presented of Sergeants ever having been informed or notified that they were not authorized to grant grievances.

When Patrolmen or Detectives have a problem or dispute regarding a co-worker or employment conditions, they bring such issues to a Sergeant's attention. Sergeants are expected to evaluate the issues brought to them, regardless of whether they are presented on the Union's grievance form. If they are contractual in nature, the Sergeant looks to the Patrolmen's collective bargaining agreement for guidance. If they are not contractual, the Sergeant could consult the City's personnel policies and then handle the question as he sees fit.

2. <u>Duties Specific to the Six Patrol Sergeants</u>

During a shift, Sergeants are never assigned to a specific district; instead, they are expected "to be driving throughout the entire city, usually responding to calls [to which] officers are responding." Sergeants answer questions Patrolmen may have regarding how to handle calls. Sergeants are also expected to be "checking on the officers" while patrolling.

a. Assignment

At the start of a shift, the Sergeant, acting as shift commander, usually conducts a shift briefing. Sergeants are not expected to regularly make traffic stops as part of their duties.

Each year, Patrolmen bid, by seniority, on shift assignments. At least one officer is assigned to each district per shift; that Patrolman is the primary officer in that district for that shift. Sergeants often allow Patrolmen to select, by seniority, the district in which they would like to be assigned. However, if a Patrolman did not perform well, he could be removed from the district he preferred. Sgt. Ball testified that if he thought a Patrolman was inappropriate for a specific assignment, he would not allow the Patrolman to work that assignment, regardless of the Patrolman's seniority.

Up to eight Patrolmen can report for each shift. When more than four Patrolmen are scheduled for a shift, Sergeants assign the additional Patrolmen. Sergeants generally assign additional Patrolmen as traffic units or as primary backup unit (also referred to as a "boy car") in a specific district. Sergeants can also choose to saturate a particular district or to have a specific traffic patrol with the additional staff. Infrequently, Sergeants would receive correspondence from their chain of command regarding special events or circumstances, directing the Sergeant to assign personnel to cover the event. Sgt. Ball testified that, even if not specifically directed by his chain of command, a Sergeant is authorized to address problems, *e.g.*, a rise in number of DUIs near a local attraction, by assigning a Patrolman to focus on that problem. If the Sergeant's superiors disagreed with the assignment, the Sergeant could be directed to make an alternative assignment.

When a call comes in and is dispatched by a Telecommunicator, the Sergeant is authorized to overrule and reassign the call to another officer. This occurs often, as the Sergeant knows best what the Patrolmen are doing and what he has planned for them that shift.

b. Scheduling

Patrol Sergeants are also responsible for scheduling time off for the Patrolmen on their shift. In addition to the contractual minimum staffing of four Patrolmen per shift, the Department's policy includes a minimum of five Patrolmen for the second shift. Sergeants are authorized to deny time off requests. The PBLC contract for the Patrolmen outlines "normally only one [P]atrolman per shift will be allowed vacation time," personal leave must be used in half day increments unless a smaller increment is authorized by a shift commander, and personal

leave "may be denied if it will result in more than two [P]atrolmen being off during the shift" or result in overtime. Leave requests made with less than 48 hours' notice may be granted or denied "at the complete discretion of the Department." Denials could be based on Department need, like a large event occurring. Though denials of requests for time off are infrequent, they are in the Sergeant's discretion.

c. Overtime

Patrol Sergeants also determine whether overtime is warranted on their shift. For example, if a Patrolman has incomplete reports as he is going to be off for his "weekend," the Sergeant can decide to keep him on overtime to finish or can decide to allow the reports to be completed on the Patrolman's "Monday."

d. Review

Sergeants are responsible for reviewing reports generated by Patrolmen. The Patrol Sergeants are responsible for sending reports back to the issuing Patrolmen if they need correction. Deputy Chief Swearingen testified that the majority of a Sergeant's time is spent reading reports; responding to questions from Patrolmen about process, procedures, or the law; and scheduling.

In a February 2014 email, Deputy Chief Brodrick directed Sergeants to document corrective action for the purpose of keeping other Sergeants and Brodrick informed of issues being addressed with Patrolmen. This directive specifically stated that the instruction was not intended to "take away [the Sergeants'] discretion for supervising [their] shifts."

3. <u>Duties Specific to the Detective Sergeant</u>

The Detective Sergeant position is an appointment from the rank of Sergeant. The Detectives are appointed by the Chief from the rank of Patrolman. These appointments can be rescinded, after which the Sergeant or Detective would return to the Patrol Division. The Detective Sergeant has historically served as the Department's Freedom of Information Act officer. The Detective Sergeant oversees the operation of the Department's evidence room and oversees the licensing functions of the city, such as completing background checks on people who apply for taxi permits or permits to solicit within the City.

a. Review

The Detective Sergeant reviews reports generated by Patrolmen working as Detectives as well as those assigned to the Patrol Division. After review, the Detective Sergeant decides

whether to open a case for further investigation. If a case is going to be opened, he decides to whom the report will be assigned and monitors the ongoing progress of the Department's investigations.

b. Scheduling

The Detective Sergeant is also responsible for scheduling the Detectives and one civilian secretary, including approving their requests for time off. The Detective Sergeant determines how on-call duties will be rotated between the Detectives, and determines whether overtime should be offered. There is no four-officer minimum requirement for the Detective Bureau, so the Detective Sergeant has more flexibility to allow Detectives to flex their hours. This flexibility also allows the Detective Sergeant to allow a Detective to take a couple hours off with pay, separate from an administrative day. Other than general and on-going guidance to keep overtime costs in control, the Detective Sergeant is expected to manage the Detectives in such a way as to get the work done.

c. Assignment

In determining which Detective will be assigned a particular case, the Detective Sergeant weighs the Detective's experience, specific training or expertise, his current caseload, relative competence in the particular type of case, and the overall prioritization of cases. Under normal staffing, the Detective Sergeant does not carry his own day-to-day caseload. Instead, he may work "easier" cases to alleviate the workload of his Detectives or he may assign himself cases where he initially responded as the on-call Detective. The Detective Sergeant is generally included in the on-call rotation only when another Detective is off work for an extended period, such as for maternity leave. The Detective Sergeant is responsible for handling internal investigations and could be specifically directed to handle a high-publicity case himself rather than assign it to one of his Detectives.

4. <u>Duties Specific to the Administrative Sergeant</u>

The Administrative Sergeant's regular schedule is 8:00 a.m. to 4:00 p.m. Monday through Friday. The Administrative Sergeant oversees and administers grant programs, is responsible for fleet maintenance, and relieves other Sergeants. When overseeing grants, then-Sergeant Brodrick would look at the minimum requirements of the grant (*e.g.*, IDOT speed or alcohol enforcement grants) and then set more stringent production requirements to apply to Patrolmen who can sign up to work overtime to fulfill the grants. Brodrick testified that he set

these standards without seeking approval from anyone above him in the chain of command, and was informed by his Deputy Chief that the practice of his unilaterally setting the parameters was what was expected of him.

In the course of his duties as Administrative Sergeant, he does not regularly review Patrolmen reports. However, when the Administrative Sergeant serves as a relief Patrol Sergeant, he reviews the reports from that shift.

5. Other Findings

The Department's Duty Manual[4] defines "grievance" as "any dispute or difference of opinion raised by an employee against the City involving the meaning, interpretation or application of the provisions of the labor agreement or the personnel policy." The Duty Manual further directs that, "[w]hen filing a grievance the employee should provide: an oral or written statement of the grievance and the facts upon which it is based; an oral or written allegation of the specific wrongful act and harm done citing sections of the contract believed to be violated; and, an oral or written statement of the remedy or adjustment sought." The Patrolmen's contract defines a "grievance" as "any dispute or difference of opinion raised by an employee against the City involving the meaning, interpretation or application of the provisions of the Agreement." The collective bargaining agreement does not dictate the manner in which this dispute or disagreement is presented to the Sergeant at first step.

In June 2010, while PBLC had a pending representation petition with the Board,[5] the Employer entered into a "Memorandum of Understanding For Sergeants." This agreement was signed by the Chief of Police, the Mayor, and the six Sergeants employed at that time. The MOU includes a "me too" clause regarding percentage wage increase with the Patrolmen, creates longevity pay, allows Sergeants to remain in their assignment for at least one year, and creates a one-year probationary period for new Sergeants. After the agreement was signed, the representation petition was withdrawn.

[4] This specific provision was effective March 1, 2005, and revised on March 10, 2006. The record reveals that the Duty Manual is under consideration for updates. However, no one testified, and no party argued, that the definitions in this section had been rescinded or were otherwise no longer effective.
[5] ILRB Case No. S-RC-09-166

III. DISCUSSION AND ANALYSIS

With respect to police employment,[6] a supervisor is an employee who: (1) engages in principal work that is substantially different from that of his subordinates; (2) has the authority, in the interest of the employer, to engage in at least one of 11 enumerated indicia of supervisory authority, or to effectively recommend such actions; and (3) must consistently use independent judgment in performing or recommending the enumerated actions. 5 ILCS 315/3(r) (2012); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512 (1990). The Act also directs that the Board "shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service law, ordinances, personnel codes, or Division 2.1 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status." 5 ILCS 315/3(r); *See also* City of Sandwich v. Ill. Labor Rel. Bd., 406 Ill. App. 3d 1006 (2nd Dist. 2011). As the party asserting the supervisory exclusion, the Employer has the burden of demonstrating by a preponderance of the evidence that the Sergeant position satisfies all three prongs of the statutory definition. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

A. Principal Work

The requirement that a supervisor's principal work be substantially different from that of his or her subordinates is easily satisfied where that work is obviously and visibly different from the work of the subordinates. City of Freeport, 135 Ill. 2d at 514. However, even when an alleged supervisor performs functions that are facially similar to those of his subordinates, the first statutory requirement is still satisfied where the employee's functions render the nature and essence of his work substantially different. Id. *citing* City of Burbank, 1 PERI ¶2008 (IL SLRB 1985).

In this case, the Petitioner does not specifically contest that the work of the Sergeants is obviously and visibly different from his subordinates' work. The evidence on this point strongly supports that that the Sergeants' work is both obviously and visibly different from his subordinates, and where similar, the nature and essence of the work is substantially different. It

[6] With respect to other types of employment, individuals must perform the indicia of supervisory authority "a preponderance of the employment time" in order to be statutory supervisors.

is uncontested that all Sergeants are assigned standing additional duties from their everyday responsibilities – *e.g.*, supervising the firing range, reviewing the gas pumps, supervising the field training officer program, managing the department's grants. These additional tasks are not assigned to Patrolmen.

Patrol Sergeants serve as shift commanders, a function that never is performed by a Patrolman without his having been temporarily appointed as a Sergeant by the Police and Fire Commission. Patrol Sergeants do not have a specific assignment each shift, do not handle calls as a primary responder, are responsible for additional equipment than Patrolmen, and spend substantial time reviewing both the written and field work of Patrolmen. The Administrative Sergeant is charged with overseeing grant programs and acting as a relief Sergeant. The Detective Sergeant oversees the Department's investigations and, unlike the Patrolmen assigned to work as Detectives, he does not regularly carry a set caseload, is not routinely scheduled to be on call, and reviews the written work of all Patrolmen, including those assigned as Detectives.

Based on this voluminous evidence, I find that the Employer has satisfied the first prong of the supervisor test.

B. Performing Supervisory Indicia with Independent judgment

In order to show that the Sergeants are supervisors under the Act, the Employer must show that they have the authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust subordinates' grievances, or to effectively recommend any of these actions. It is uncontested that Sergeants are not authorized to hire, transfer, layoff, recall, or promote Patrolmen; however, the Employer contends that the Sergeants perform the remaining indicia.

Moreover, to be a statutory supervisor, the employee must consistently use independent judgment when exercising supervisory authority, such that the employee at issue "make[s] choices between two or more significant courses of action without substantial review by superiors." Chief Judge of the Circuit Court of Cook County v. AFSCME, Council 31, 153 Ill. 2d 508, 516 (1992) *citing* St. Clair Housing Authority, 5 PERI ¶2017 (IL SLRB 1989). The frequency with which independent judgment might be required, rather than the number of times supervisory authority requiring independent judgment is actually used, controls the analysis under the third prong. City of Freeport, 135 Ill. 2d at 520-21. With respect to multiple indicia of supervisory authority, the Union contends that the Sergeants do not use independent judgment

but instead, the Sergeants rely solely on their superior skill, experience, and technical expertise. However, as set out below, the record reveals that this is not case.

For the following reasons, I find that the Sergeants have the authority, in the interest of the employer, to discipline, direct, reward, and adjust grievances of the Patrolmen, and/or effectively recommend such actions. The Sergeants also consistently use independent judgment when exercising their supervisory authority.

1. Discipline

a. Authority to Issue Discipline through Negative Contact Cards and Documented Verbal Instructions

The Department's Sergeants are authorized to issue letters of instruction; non-disciplinary contact cards; oral reprimands, which are often documented; and written reprimands. The Employer argues that this is evidence of the Sergeants performing the supervisory indicium of disciplining. The Union argues contact cards and oral reprimands are not evidence of an authority to discipline, because they do not affect an employee's wages, hours, or terms and conditions of employment. The Union further argues that a Sergeant's role in issuing letters of instruction and written reprimands is not evidence of the performance of a supervisory function, because their actions are reviewed by those above them in the chain of command and can be overturned.

In City of Freeport, the Illinois Supreme Court regarded oral warnings and written reprimands as discipline. City of Freeport, 135 Ill. 2d 499. Reprimands constitute supervisory authority to discipline if (1) the individual has the discretion or judgment to decide whether to issue such a reprimand; (2) the reprimand is documented; and (3) the reprimand can serve as the basis for future disciplinary action, that is, it functions as part of a progressive disciplinary system. Metro. Alliance of Police v. Ill. Labor Rel. Bd., 362 Ill. App. 3d 469, 478-479 (2nd Dist. 2005); *see also* Northern Ill. Univ. (Dep't of Safety), 17 PERI ¶2005 (IL LRB-SP 2000) (verbal reprimands that are not recorded are not discipline within the meaning of the Act).

Verbal reprimands must have an impact on an employee's job status or terms and conditions of employment in order to constitute the supervisory authority to discipline within the meaning of the Act. Chief Judge of the Cir. Ct. of Cook Cnty. v. AFSCME, Council 31, 153 Ill. 2d at 530-533; State of Ill. Dep't of Cent. Mgmt. Serv. State Police v. Ill. Labor Rel. Bd., State Panel, 382 Ill. App. 3d 208 (4th Dist. 2008) *aff'g* State of Ill. Dep't of Cent. Mgmt. Serv. (State

Police), 23 PERI ¶38 (IL LRB-SP 2007). If verbal reprimands are documented and form the basis for more severe discipline, those reprimands have an effect on the employee's job status and can be an example of the supervisory authority to discipline. Metro. Alliance of Police v. Ill. Labor Rel. Bd., 362 Ill. App. 3d at 478; Metro. Alliance of Police, Bellwood Command Chapter No. 339 v. Ill. Labor Rel. Bd., 354 Ill. App. 3d 672, 681-682 (1st Dist. 2004) *aff'g* Vill. of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Chief Judge of the Cir. Ct. of Cook Cnty., 26 PERI ¶117 (IL LRB-SP 2010); *but see* City of Chicago (Dep't of Bldg.), 15 PERI ¶3012 (IL LLRB 1999) (a written reprimand did not impact an employee's terms and conditions of employment because the reprimand was never placed in the employee's personnel file).

Under this analysis, the negative contact cards and documented verbal instructions issued by Sergeants are discipline. Each is documented and maintained in a Patrolman's file for a year. The Union argues that the contact cards and documented verbal instructions do not impact wages, hours, or terms and conditions of employment. However, the testimony adduced at hearing reflects that these documents may form the basis for more severe discipline if the identified issue is not remedied. Accordingly, I find that Sergeants perform the supervisory indicium of disciplining when they issue negative contact cards and documented verbal instructions.

b. Authority to Effectively Recommend Other Discipline

An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superior. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., State Panel, 2011 IL App (4th) 090966. A recommendation is effective within the meaning of Section 3(r) of the Act when it is adopted as a matter of course with very little, if any, independent review. Vill. of Plainfield, 29 PERI ¶123 (IL LRB-SP 2013) *citing* City of Peru v. Ill. State Labor Rel. Bd., 167 Ill. App. 3d 284, 290 (3d Dist. 1988). The Appellate Court has explained that because all recommendations necessarily involve some sort of a review by superiors, a superior's 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 the superiors." Vill. of Plainfield, 29 PERI ¶123 *quoting* State of Ill. Dep't of Cent. Mgmt. Serv. (Ill. Commerce Comm'n) v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 777 (4th Dist. 2010).

In this case, Sergeants are responsible for authoring oral reprimands, written reprimands, and letters of instruction. In the instances where a Sergeant finds one of these disciplinary steps to be warranted, he writes the document and sends it up to his Deputy Chief and ultimately to the Chief. In addition to the Sergeant's signature on the disciplinary document, the Deputy Chief and Chief sign as well. The Union argues that this review by higher command defeats the effectiveness of the Sergeants' recommendations. The Union specifically points to two letters of instruction issued by Sergeants that were overturned or reversed.

However, the evidence in the record reveals that remedial action taken by Sergeants is almost always followed by upper command, such that their recommendations are effective. In the situations the Union uses to support its claim, the testimony reflects that upper command believed that the letters of instruction were unwarranted in that they were not factually accurate and/or reasonable. Sgt. Ball, who was the then-Deputy Chief directing the Sergeants to rescind the letters of instruction, further testified that he viewed his role in reviewing a Sergeant's action was to ensure the Sergeant was not acting on emotion, namely that the incident was accurately described and the remedial action was reasonable. Further, Sgt. Ball testified that even if it were a close call and he, as Deputy Chief, did not particularly agree with the remedial action, he would allow the Sergeant's action to stand. Even more telling, four current and former Sergeants testified that, to their knowledge, none of the remedial action they had taken was reversed or rescinded by upper command. Chief Ganschow, Deputy Chief Swearingen, and Deputy Chief Brodrick all testified that they had not substantively changed, reversed, or rescinded any action taken or proposed by a Sergeant.

Sergeants are also able to recommend a Patrolman receive a suspension, which can only be imposed by the Chief. The only evidence in the record on this point is a recommendation by then-Sergeant Hutt. Hutt testified that, to his knowledge, his recommendation for a suspension was not followed. Therefore, I find that the Employer has failed to show that Sergeants' recommendations for suspension of their subordinates are almost always followed by their supervisors.

Accordingly, I find that the Sergeants are authorized in the interest of the employer to effectively recommend oral reprimands, written reprimands, and letters of instruction. Therefore, they perform the supervisory indicium of disciplining.

c. Independent Judgment

Sergeants consistently use independent judgment when they issue or recommend discipline. Sergeants determine whether conduct they observe is sufficiently severe to warrant documentation at all, and, if so, they decide the level of discipline to pursue. Sergeants issue both negative contact cards and documented oral instructions without any prior review from their chain of command. Further, if a Sergeant determines that more severe discipline is warranted, he decides what level of discipline to pursue, either by drafting the documentation for an oral reprimand, written reprimand, or letter of instruction or by recommending a suspension. The decision between whether to informally discuss a situation with a Patrolman or to seek his suspension is certainly the choice among significant courses of action.

The Union does not argue that the Sergeants do not use independent discretion when they issue negative contact cards or documented oral instructions. With respect to documents that are "approved and reviewed" by upper command, the Union argues that whatever discretion the Sergeants possess is subject to substantial review by superiors. The Union cites Chief Ganschow's testimony that he would not sign a document with which he did not agree as proof of this position. However, when viewed as a whole, Chief Ganschow's testimony indicates that he gives Sergeants the leeway to take the remedial action they see fit. In his time with the Department, he has never made a substantive change to a Sergeant's proposed disciplinary action. Moreover, in the two instances in the record where a Sergeant's issuance of a letter of instruction was reversed, the directive to remove the discipline was because the recommendation was premised on inaccurate facts.

The Union also points to a situation when a Detective Sergeant was directed by his superiors to issue a letter of instruction when he did not particularly think it was warranted. Sgt. Despines testified that the conduct was reported directly to upper command, and though he was not convinced that his subordinate was sufficiently at fault, he followed his supervisor's directive to issue a letter of instruction. Sgt. Despines did not raise any concerns about the propriety of the letter with the Deputy Chief. Because the collective bargaining agreement for Patrolmen sets out that discipline is formally issued by his supervisor, the Sergeant, Despines was performing the contractual function of issuing the discipline in accord with the Patrolmen's contract. That a Deputy Chief has the authority to discipline subordinate staff, does not negate the Sergeant's authority and discretion to issue or recommend discipline when he believes it is appropriate.

Because I find that the Sergeants, like the ranking officers in City of Freeport, use independent judgment when they perform the supervisory indicium of disciplining, I find that they are supervisory employees. City of Freeport, 135 Ill. 2d at 521.

2. Directing

Several functions can indicate the authority to direct: giving job assignments; overseeing and reviewing daily work activities; providing instruction and assistance to subordinates; scheduling work hours; approving time off and overtime; and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL LRB-SP 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999), *aff'd by unpub. order* No. 1-99-1183 (Ill. App. Ct., 1st Dist. 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). It is uncontested that the Employer has formally suspended use of annual performance evaluations. However, the Employer contends that the Sergeants exercise the authority to direct their subordinates by giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, and approving time off and overtime. The Union argues that the Sergeants (1) do not direct Patrolmen in ways that affect terms and conditions of employment; (2) do not exercise independent judgment, as the Sergeants' direction of Patrolmen is subject to review by the upper command.

The second prong is met s only when alleged supervisors exercise discretionary authority that affects the terms and conditions of employment, such that the alleged supervisors would be potentially torn between their duty to the employer and loyalty to the union. Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). Scheduling and approving time off or overtime affect the pay of Patrolmen, so, these function certainly affect terms and conditions of employment. In the vast majority of cases, day-to-day review and oversight does not rise to the level of supervisory authority. Id. However, the Board has long held that where, as here, the alleged supervisor has the authority to discipline or effectively recommend discipline, his direction of subordinates affects terms and conditions of employment. County of Cook, 15 PERI ¶3022 (Shift Commanders' oversight and review of subordinates' work and assignment of work affected terms and conditions of employment where they also exercised authority to effectively

recommend discipline). Therefore, if the Sergeants exercise the authority to direct with independent judgment, they are supervisory employees under the Act.

For the reasons stated below, I find that all Sergeants consistently use independent judgment when exercising supervisory authority to direct their subordinates when they give job assignments, oversee and review the work of Patrolmen, and approve overtime. Moreover, the Detective Sergeant uses independent judgment when he schedules Detectives.

a. Giving Job Assignments

The Union argues Sergeants' assignment decisions are based on their "superior skill, experience and technical expertise" not on supervisory authority. However, the record reveals that the decisions Sergeants make are more in line with implementing Department policies and seeing that operational needs of the Department are met than merely informing subordinates of applicable law enforcement industry standards. *See* State of Ill. (Cent. Mgmt. Srvs.), 26 PERI ¶131 (employee relying on his skills as an engineer and knowledge of federal standards, rather than implementing employer policies, when reviewing subordinates' work is not using supervisory authority). Moreover, this argument ignores the fact that Sergeants do not necessarily have superior skill, experience, or technical expertise compared to their subordinates. For example, Patrolman Chris Hutt has been employed with the Department for approximately 20 years and has served as Sergeant and Deputy Chief in the past. Regardless of his experience and skill, Patrolman Hutt testified that he abides by the decisions made by the Patrol Sergeant overseeing his shift, because he is the Sergeant.

i. Patrol Sergeants

Though it is uncontested that the Patrol Sergeant, and Administrative Sergeant acting in relief, is expected to assign one Patrolman to each of four districts in the city, the record reveals that Sergeants still exercise their authority to assign Patrolmen. Sergeants generally allow Patrolmen to request assignment based on seniority, though they are not required by contract to do so. Regardless of the seniority-order requests by Patrolmen, Sergeants exercise their discretion and independent judgment with respect to shift assignments. For example, if a Patrolman with performance problems requests assignment to the most crime-ridden district, the Sergeant would exercise his discretion to assign him otherwise.

Where there are more than the minimum levels of staffing, the Sergeant also decides what the other Patrolmen will do for the shift, e.g. whether to have the additional Patrolmen

serve as back-up cars, have a specific traffic detail, to saturate a particular district, etc. In so deciding, the Sergeant assesses known problems, like an increase in DUIs in a particular area; the strengths of the Patrolmen on the shift; and the Department's operational needs. The Board has long held that an alleged supervisor exercises independent judgment in assigning work when he considers "the knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the employer's operational need." County of Cook, 15 PERI ¶3022.

Accordingly, I find that the Patrol Sergeants consistently use independent judgment when they give job assignments to Patrolmen in the Patrol Division.

ii. Detective Sergeant

The Detective Sergeant also directs subordinates. When any report of criminal activity is written, the Detective Sergeant decides whether the Patrolmen needs to take any steps to further elaborate on the initial police report. He is also responsible for determining whether to open the case for further investigation. When he opens a case, he decides to whom the report will be assigned by weighing the Detectives' general experience, any specific training or expertise, their current caseload, their relative competence in the particular type of case, and the overall prioritization of cases. This is a classic example of the exercise of independent judgment in the assignment of cases. *See* County of Cook, 15 PERI ¶3022. As such, I find that the Detective Sergeant consistently uses independent judgment when he gives job assignments to Detectives.

b. Overseeing and Reviewing Daily Work Activities

Patrol Sergeants, including the Administrative Sergeant, review all of the reports generated by Patrolmen on their assigned shift. The Detective Sergeant reviews all reports of alleged criminal activity whether by Patrolmen or Detectives. The record reveals that this review is more than just a ministerial action of proofreading. Sergeants are expected to follow up with the Patrolman if a report reveals that there is information lacking or identifies issues the Patrolman needs to address. Sergeants direct the additional investigative steps to take. *See* Service Employees Int'l Union, Local 73 v. Ill. Labor Rel. Bd., Local Panel and City of Chicago, 2013 IL App (1st) 120279 at ¶56 *aff'g* City of Chicago, 28 PERI ¶86 (IL LRB-LP 2011) (Providing feedback, written notes, identification of issues, ensuring follow up, and supplemental reports is more than proofreading or quality control; thus, it is evidence of supervisory authority.)

They also review the general activity level of Patrolmen and quality of the Patrolmen's police work. Should the Sergeant identify problems, he exercises discretion to determine how best to handle the matter. The Sergeant can request additional training, informally counsel the Patrolman, or seek discipline to correct the unsatisfactory performance. As such, the Sergeant's exercise of the authority to oversee and review the work of the Patrolmen affects terms and conditions of employment.

Moreover, the Board has held, "Direction becomes supervisory where, in addition to being responsible for his subordinates' proper performance, the employer relies upon the supervisor to exercise significant discretionary authority, which affects the subordinates' employment, in order to carry out that responsibility and to effectuate the employer's policies." City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). Here, the record strongly reflects that Sergeants are accountable for the performance of their subordinates. Should a Sergeant approve a poorly written report or fail to take action to remedy a consistently poor performing Patrolman, the Sergeant may be subject to discipline for *his* poor performance.

The record supports the finding that Sergeants direct their subordinates when they review and oversee their daily work activities.

c. Providing Instruction and Assistance to Subordinates

In this case, giving shift briefings is not indicative of the Sergeants' exercising supervisory authority to direct. The record reveals that these briefings, in and of themselves, are routine, and are, at times, performed by Patrolmen. The evidence does not support that the Sergeants use discretionary authority to affect terms and conditions of employment of the officers when they give shift briefings.

Moreover, the record reveals that Sergeants respond to questions from Patrolmen seeking advice about process, procedures, or what the law requires. However, the record is insufficient to find that the Sergeants use independent judgment when they answer these kinds of questions.

Therefore, I find that the record does not support a finding that the Sergeants direct their employees when they provide instructions and assistance to Patrolmen.

d. Scheduling Work Hours and Approving Time Off and Overtime

The ability to approve requests for time off or to otherwise create schedules can constitute supervisory authority so long as the exercise of this authority involves the consistent use of independent judgment and is not merely routine or clerical in nature. *See* Village of

Morton Grove, 23 PERI ¶72 (IL LRB-SP 2010) *citing* City of Carbondale, 3 PERI ¶2044 (IL SLRB 1987). As supported below, I find that the Detective Sergeants direct Detectives when they create schedules and approve overtime. I find that the Patrol Sergeants and Administrative Sergeant, acting as relief Patrol Sergeant, direct the Patrolmen when they approve overtime.

i. Scheduling in the Patrol Division

The Patrol Sergeants' role with setting the schedule is routine and clerical and does not rise to the level of a supervisory function. Patrolmen annually bid on their shifts; the collective bargaining agreement mandates a minimum level of staffing per shift and dictates the number of Patrolmen that can use pre-approved benefit time per shift. Patrol Sergeants do not have the discretion to make changes to the general schedule. Therefore, the record is insufficient to find that Sergeants in the Patrol Division use independent judgment relating to scheduling Patrolmen.

ii. Scheduling of Detectives

In contrast, the Detective Sergeant is authorized to schedule the Detectives as he sees fit and exercises independent judgment in doing so. With little to no review by his superiors, the Detective Sergeant establishes the rotation for on-call duties, and determines how to handle coverage if a Detective uses benefit time and does not find someone to cover for him.

iii. Approval of Time Off

The collective bargaining agreement for the Patrolmen sets criteria for the number of Patrolmen using benefit time per shift. However, the contract also sets out that, in certain circumstances, approval of a time off request is solely at the discretion of the Department. In those instances, it is the Sergeant, taking into account Department need, who exercises his discretion in approving or denying the request. I find that the Sergeants direct the Patrolmen, in that they are authorized to approve time off.

However, I find that they do not consistently exercise independent discretion in doing so. The record reveals that most time-off requests result in a routine, clerical approval, and denials are infrequent. I find that because the vast majority of requests are approved or denied in a routine or clerical manner by looking to the contract's requirements, the Sergeants do not consistently exercise independent discretion in approving time off.

iv. Approval of Overtime

Sergeants exercise discretion in determining whether to approve overtime. The Union argues that Sergeants are following policy, practice, and procedure when granting overtime.

This argument is persuasive with respect to Patrol Sergeants using overtime to meet minimum staffing. The record reveals that approval of overtime, as in the case of a scheduled Patrolman calling in sick, is routine and clerical.

However, Patrol Sergeants do use independent judgment when they decide to call a Patrolman in on overtime when faced with increased calls for service. Such overtime is justified when additional staff is required to get done "what needs to be done." Sergeants also use independent judgment to direct their subordinates when they assess pending reports to determine whether to direct a Patrolman to stay on overtime to complete them. Similarly, the Detective Sergeant uses independent judgment when he decides whether to grant overtime to a Detective or to allow the Detective to flex his hours.

The Union argues that the Sergeants' approval of overtime is subject to review by the Deputy Chief, which could result in disciplinary action against the Sergeant if the Deputy Chief disagreed. This argument is unpersuasive. All employees can be subject to discipline if they unsatisfactorily perform their duties. Exercising sound judgment to manage staff and overtime costs is part of a Sergeant's job. Being accountable for performance of those duties certainly does not preclude an employee from being a statutory supervisor under the Act. A finding otherwise would be nothing short of absurd.

3. Authority to Reward

The Union concedes that the Detective Sergeant exercises his authority to allow Detectives to take "administrative days" and that any review of the exercise of this authority is "deferential rather than substantial." I agree with the Union, and find that the record supports that the Detective Sergeant exercises independent judgment when he rewarding Detectives with "administrative days."

Deputy Chief Swearingen testified that all Sergeants are authorized to grant administrative days. In response to questions about Sergeants rewarding Patrolmen with administrative days, Deputy Chief Brodrick testified that, when he was a Patrolman, a Deputy Chief announced as much at a Department-wide meeting. While no documents were produced reflecting administrative days, Deputy Chief Brodrick provided uncontroverted testimony that when he served as Administrative Sergeant, he awarded a Patrolman "a couple days to spend with his family" as a reward for his extra effort regarding additional duties.

The Union argues that the Patrol Sergeants do not have the same authority, pointing to the testimony of current Sergeants that they did not believe they could grant an administrative day without approval. Deputy Chief Swearingen conceded that Patrol Sergeants face the obstacle of minimum staffing requirements when seeking to exercise their authority, and testified that he was not aware of any specific Patrolmen receiving an administrative day off. Deputy Chief Brodrick testified, without specificity, that he was aware of instances where Patrolmen were granted administrative days ("guys have caught burglars in businesses and they've been given some time off for it"), but it is unclear who approved those days off. Sergeant Ball, however, testified that he has recommended Patrolmen for administrative days and that those recommendations have always been followed.

I agree with the Union that the record is weak regarding Patrol Sergeants' exercise of independent judgment to reward Patrolmen with administrative days, and thus insufficient to find that the Patrol Sergeants exercise authority to reward. However, the record reveals, at a minimum, that Patrol Sergeants effectively recommend administrative days as rewards to Patrolmen. Therefore, the test is satisfied as to this indicium.

4. Authority to Adjust Grievances

More than a decade ago, the Board applied the Illinois Supreme Court's holding in City of Freeport, 135 Ill. 2d at 235, to find that the resolution of informal employee complaints about inequitable work assignments, personality disputes, and equipment problems constitutes the resolution of grievances within the meaning of the Act. In State of Illinois (Dep't of Cent. Mgmt. Serv.), 11 PERI ¶2011 (IL SLRB 1994), the Board found that State employees who informally resolve conflicts between employees before they become a formal grievance perform the supervisory indicium of resolving grievances. The Appellate Court similarly found in Metro. Alliance of Police v. Ill. Labor Relations Bd., 362 Ill. App. 3d at 480, that the employer's police sergeants "enjoy more than a 'mere designation' as first reviewers of grievances." Even absent specific evidence that a sergeant had granted a grievance, because the sergeants were identified as the first step of the grievance procedure; have "addressed grievances at the first step"; and have not been directed by an unwritten rule to deny all grievances, even those with which they agree; the sergeants performed the supervisory indicium of adjusting grievances. Id.

Board precedent requires a similar finding here. The at-issue Sergeants are the designated first step of the grievance procedure. Though there is no evidence of a Sergeant

granting a grievance at that first step, the record reveals that Sergeants routinely review issues regarding wages, benefit time, employment conditions, or a dispute with a coworker, often resolving them prior to the issue being filed as a formal, written grievance.

Both the Department's Duty Manual and the collective bargaining agreement define grievance as "any dispute or difference of opinion raised by an employee against the City" regarding the interpretation of the collective bargaining agreement or personnel policy.[7] The collective bargaining agreement does not outline a specific procedure for presenting a grievance to the first step; however, the Duty Manual directs that an employee filing a grievance should provide "an oral or written statement of the grievance…." This evidence supports the Employer's argument that grievances are more than just those issues presented on the Union's grievance form. Likewise, Sergeants are expected to respond to all grievances, regardless of whether they appear on a grievance form. The uncontested testimony reveals that a Sergeant may handle an issue that could give rise to a written grievance as frequently as weekly.

Finally, the Union argues that Sergeants do not "adjust" grievances, because they only deny them. However, this contention is undercut by the evidence in the record. In November 2013, Deputy Chief Swearingen specifically directed Sergeants to deny any grievances related to holiday pay, in keeping with discussion "with Union leadership." If Sergeants were not authorized to adjust grievances, or had been directed to uniformly deny all grievances, even those they believed should be granted, then Deputy Chief Swearingen would not have had to advise the Sergeants how to respond to grievances they received regarding holiday pay.

I further find that in deciding how to respond to issues raised by their subordinate Patrolmen/Detectives, Sergeants consistently use independent judgment. Other than the November 2013 directive regarding holiday time, the record is devoid of evidence that Sergeants are somehow limited in how they choose to resolve the issues presented to them by their subordinates. The testimony presented at hearing reflects that Sergeants may look to the collective bargaining agreement or the City personnel policies for guidance, but ultimately handle the situation as they see fit.

Accordingly, I find that Sergeants perform the supervisory indicium of adjusting grievances with independent judgment.

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[7] The collective bargaining agreement definition includes only questions of interpretation of the agreement, but the Duty Manual includes interpretations of the City's personnel policies.

D. Propriety of a Unit Made Up of the Employer's Designated First Step of the Grievance Procedure

The Employer argues that a unit of its "grievance adjusters is inappropriate as a matter of law." The Employer notes that it could not lawfully refuse to honor grievance resolutions entered into by the Sergeants, even if they acted beyond their authority. It goes on to cite National Labor Relations Board authority for the proposition that the Petitioner's attempt to organize the Sergeants is an unlawful attempt to "restrain or coerce a public employer in the selection of [its] representatives for purpose of collective bargaining or the settlement of grievances." 5 ILCS 315/10(b)(2). To the extent that the Employer is attempting to make a Section 10(b)(2) claim in the context of this proceeding, I find than any alleged unfair labor practice is not before me. *See* Am. Fed. of State Cnty. and Mun. Employees v. Ill. Labor Rel. Bd. and County of Menard, 187 Ill. App. 3d 585 (4th Dist. 1989) *aff'g* County of Menard, 4 PERI ¶2033 (IL SLRB 1988)(party "should not be allowed to raise unfair labor practice issues in the context of a representation case").

E. Limitation on the Employer's Ability to Object to the Sergeants' Inclusion in a Bargaining Unit When it has Already Collectively Bargained with them

The Petitioner argues in its post-hearing brief that the Act "does not authorize a public employer to collectively bargain with a group of employees while also claiming that they are supervisors not entitled to unionize." The Petitioner does not cite any authority for this proposition other than pointing to precedent that stands for the proposition that the supervisory exclusion guards against the potential for a conflict of interest in exercising supervisor authority if the supervisor is in the same bargaining unit as his subordinates. *See* City of Washington, Illinois v. Ill. Labor Relations Bd., 383 Ill. App. 3d 1112 (2008). The Petitioner points out that, when asked, Employer's representatives were unable to point to any conflict of interest arising out of the memorandum of understanding entered with the Sergeants.

While conflict of interest is a concern underlying the supervisory exclusion, I am unaware of any limit on an Employer's ability to negotiate terms and conditions of employment with its non-bargaining unit employees absent an exclusive representative. Further, under Section 3(s)(2) of the Act, supervisor-only units represented by an exclusive representative may be created *if* the Employer agrees to recognize them and negotiate with them. By the Employer's objection to the present petition, it does not appear that it consents to such an arrangement.

The Petitioner's claim regarding the "disingenuous conduct" or "legal maneuvering" of the Employer is not relevant to any issue pertinent to the question of whether the Sergeants are statutory supervisors.

IV. CONCLUSIONS OF LAW

The Sergeants employed by the City of East Peoria are supervisory employees under the Illinois Labor Relations Act.

V. RECOMMENDED ORDER

The petition is dismissed.

VI. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code §§1200-1300, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five 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, if at all, with Kathryn Nelson, General Counsel, Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. Exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Springfield, Illinois, this 24th day of July, 2015.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

s/ *Sarah R. Kerley*
Sarah Kerley
Administrative Law Judge