STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County And Municipal Employees, Council 31,	)	
Charging Party,	)	
and	)	Case Nos. S-RC-15-032
	)	S-RC-15-012
Chief Judge of the Circuit Court of Cook County,	)	
Respondent.	)	

DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

On May 12, 2016, Administrative Law Judge Anna Hamburg-Gal (ALJ) issued a Recommended Decision and Order (RDO) recommending that the Board dismiss the charge in the above-captioned matter.

Charging Party, American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed petitions with the State Panel of the Illinois Labor Relations Board seeking to represent the titles Assistant Team Leader and Supervisor in Charge. Both titles are employed by the Chief Judge of the Circuit Court of Cook County (Employer) at the Juvenile Detention Center. The Employer opposed both petitions, asserting that the at-issue employees are excluded from coverage under the Illinois Pubic Labor Relations Act, 5 ILCS 315 (2014), *as amended* (Act), pursuant to the exemption for supervisory employees.

The ALJ conducted hearing on these consolidated charges and ultimately concluded that both titles are supervisors within the meaning of Section 3(r) of the Act. Her extensive fact findings and thoroughly reasoned analysis are set out in the RDO.

The Union timely filed exceptions to the RDO, pursuant to Section 1300.135(b) of the Board's Rules and Regulations, 80 Ill. Admin Code Parts 1200 through 1300. The Employer filed a timely response.

After review of the record, exceptions and response in this matter, we affirm the ALJ's RDO, as written, for the reasons stated in that document.

BY THE STATE OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ John J. Hartnett
John J. Hartnett, Chairman

/s/ Michael G. Coli
Michael G. Coli, Member

/s/ John R. Samolis
John R. Samolis, Member

/s/ Keith A. Snyder
Keith A. Snyder, Member

/s/ Albert Washington
Albert Washington, Member

Decision made at the State Panel's public meeting in Chicago, Illinois on August 9, 2016;
written decision issued in Chicago, Illinois on October 3, 2016.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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American Federation of State, County and Municipal Employees, Council 31,	)	
Employer,	)	
and	)	Case Nos. S-RC-15-032 S-RC-15-012
Chief Judge of the Circuit Court of Cook County,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 27, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Illinois Labor Relations Board (Board) in Case No. S-RC-15-012 seeking to represent the title Assistant Team Leader employed by the Chief Judge of the Circuit Court of Cook County (Employer) at the Juvenile Temporary Detention Center (JTDC). On October 20, 2014, the Union filed a petition with the Board in Case No. S-RC-15-032 seeking to represent the title Supervisor in Charge employed by the Employer at the JTDC. The Employer opposed both petitions, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory employees. The cases were consolidated at the request of the parties. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on November 19 & 20, 2015. Both parties elected to file post-hearing briefs.

I. Preliminary Findings

The parties stipulate and I find:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act and the Board has jurisdiction over this matter pursuant to Sections 5(b) and 20(b) of the

Act.

2. The Union is a labor organization within the meaning of Section 3(i) of the Act.
3. The principal work of the Supervisors in Charge is substantially different from that of their subordinates.
4. The principal work of the Assistant Team Leaders is substantially different from that of their subordinates.
5. Neither the Supervisors in Charge nor the Assistant Team Leaders have authority to hire.

II. Issues and Contentions

The issue is whether the Assistant Team Leaders (ATLs) and Supervisors in Charge (SICs) are supervisors within the meaning of Section 3(r) of the Act.

The Employer argues that the ATLs and SICs are supervisors because they direct, discipline, and adjust grievances, or effectively recommend such action, using the requisite independent judgment, and spend a preponderance of their work time performing such functions.

The Union denies that the ATLs or SICs perform any of the above-referenced supervisory indicia with independent judgment and asserts that the Employer has not demonstrated that employees in these titles spend a preponderance of their work time performing supervisory tasks. In support, the Union asserts that there is insufficient evidence that ATLs have authority to adjust grievances. The Union concedes that SICs have adjusted grievances but asserts that they do not exercise independent judgment in doing so because their role is limited to resolving routine procedural issues. The Union argues that SICs and ATLs do not discipline their subordinates because counseling is not discipline. Furthermore, it claims that their recommendations that the Employer conduct a disciplinary hearing are not recommendations to impose discipline. Finally, the Union denies that the ATLs and SICs direct their subordinates with independent judgment. It claims that their decisions concerning the direction of their subordinates are dictated by policy or concern routine and clerical matters. Alternatively, the Union claims that they make decisions in a non-supervisory manner because they choose a course of action using their greater skill, experience, and technical expertise.

III. Facts

The Cook County Juvenile Temporary Detention Center (JTDC) is 24-hour facility run by an Executive Director. The JTDC includes the following five divisions: Division for Resident Daily Life; Division for Administrative & Legal Services; Division for Programs and Professional Services; Division for Admissions, Security & Control; and Division for Resident Advocacy and Quality of Life. A Deputy Executive Director oversees each division.[1] JTDC employees work one of three shifts: 6:00 am to 2:00 pm; 2:00 pm to 10:00 pm; 10:00 pm to 6:00 am.[2]

The Division for Resident Daily Life includes eight centers. Each center is comprised of three residential pods. Deputy Executive Director William Steward[3] heads the division and oversees Team Leaders. One Team Leader oversees each center and supervises three ATLs. The ATLs each oversee one residential pod and the employees who work on that pod. Specifically, each ATL oversees three case workers, two recreation specialists and approximately 30 youth development specialists or associates (YDSs). The YDSs are responsible for the direct and continuous care of JTDC residents. There are appropriately 12-14 residents in each pod and approximately 36 to 58 residents in each center.

The Division for Admissions, Security & Control is comprised of the Office of Supervisors in Charge, Office of Resident Internal Affairs, Security and Control, External Transportation, Internal Movement, and the Administrative Intervention/Rapid Response Team. Deputy Executive Director Millicent McCoy heads the division and directly oversees the SICs. The SICs oversee the following positions: Security Specialist I, Security Specialist II, Motor Vehicle Driver I, Youth Development Specialist/Associate (YDS), Case Worker, Recreation Worker, and Rapid Response Specialist. The SIC is responsible for the security of the JTDC facility. The SIC ensures that the exits and entrances are monitored and that all visitors are approved. The position also oversees emergency situations and runs the building.

There are different categories of SIC positions. The SIC DC-4 position is a generalist position, which receives reports from subordinate staff, takes call offs, sick calls, or emergency

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[1] The organizational chart indicates that the Division for Resident Advocacy and Quality of Life has no Deputy Executive Director.

[2] General Counsel Alonzo testified to these times. Deputy Executive Director William Steward testified that Assistant Team Leaders' shifts are 5:45 am to 2:15 pm and 1:45 to 10:15 pm.

[3] Steward is also the Acting Executive Director.

calls, addresses vacation issues, and collects all the paperwork generated from the Division for Admissions, Security & Control. The SIC DC-6 position oversees reception/admission. The SIC DC-6A position oversees the medical unit. The SIC RT-1 oversees the rapid response team.

The Division for Programs and Professional Services is comprised of the Alpha Center, Office of Training & Professional Development, Office of Volunteer & Community Services, Office of Gender Response Services, and the Office of Food Services. Deputy Executive Director Philippe Magloire oversees the division. This division includes Team Leaders, who are assigned to Alpha Center, and SICs. The Team Leaders and the SICs assigned to this division oversee the same titles as the SICs and Team Leaders assigned to the other divisions.

1. Assistant Team Leaders' Duties

a. Direction

The ATL is the highest ranking individual at the center when the Team Leader is absent. ATL August testified that he works approximately two out of five shifts per week without a Team Leader present.

ATLs, SICs, and Team Leaders perform a mass roll call together. The ATLs, Team Leaders, and SICs rotate in leading the roll call. The leader of the roll call reads staff memos and bulletins, gives staff updates on policy as directed by the Team Leader or Deputy Executive Director, ensures that that staff who are assigned to work are present, and ensures that there are a sufficient number of employees present to implement the programming. During roll call, ATLs perform uniform inspection. They inform their subordinates of uniform violations and how or whether the subordinates need to correct the violations. An ATL has discretion to simply caution the subordinate and instruct the subordinate to be in compliance next time, or he may decide to perform an official coaching, which is documented in the employees' personnel file. The ATL's course of action depends on whether he has observed and commented on the same violation in the past.[4] The ATLs then distribute the radios and keys to staff and keep a log of who has received them.

[4] In making this factual determination, I rely on the testimony provided by Deputy Executive Director William Steward concerning the duties performed by SICs at roll call. Both ATLs and SICs perform uniform inspections/compliance at roll call. Steward testified more specifically concerning the process by which an SIC may correct a subordinates' failure to appear in proper uniform. There is little basis on

Following mass roll call, one ATL at each center performs a separate roll call for that center, during which he disseminates information relevant to that center to his subordinates and the other ATLs. ATLs conduct roll call three times a day and ensure that there is a sufficient number of employees present. Each roll call lasts approximately 15 minutes.

ATL August testified that the Team Leader determines the primary pod assignments for the YDSs and that the Deputy Executive Director for the Resident Daily Life develops the schedule for the recreational workers assigned to the pods. By contrast, Deputy Executive Director Steward testified the ATLs assign the staff to pods based on their subordinates' strengths and weaknesses. He further testified that they have complete discretion in making such assignments and that they can switch staff around as necessary if they perceive a need for it. General Counsel Zenaida Alonzo similarly testified that the ATLs make assignments to their subordinates during roll call. The ATL job description states that ATLs are responsible for "monitor[ing] work schedules of all assigned unit staff to ensure accountability with the assigned units."

ATLs have authority to grant requests for overtime or to mandate overtime. Each pod has minimum shift staffing requirements. The ATL must ensure that those staffing requirements are met. If staffing falls below minimum requirements, ATLs must assign overtime. ATLs first assign overtime to volunteers. They mandate overtime if there is an insufficient number of volunteers to cover the shift. ATLs mandate overtime based on an equalization policy and reverse seniority. Deputy Executive Director Steward testified that ATLs exercise discretion in determining whether to grant overtime to address emergencies. For example, Steward noted that in one case an ATL determined that the center needed to maintain two holding pods to separate residents who were violent towards each other. The ATL mandated overtime to staff those two separate pods.[5]

Once the ATLs complete roll call, they perform announced and unannounced rounds. During rounds, ATLs inspect the pods, perform 15-minute log checks posted on the doors to check for discrepancies, review searches performed by their subordinates, observe staff and

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which to find that the ATLs, who perform the same uniform inspections in rotation with the SICs, have any less discretion in determining the manner in which to correct these deficiencies.

[5] Not every ATL receives requests for overtime, which is a duty that is reserved to a particular ATL. However other ATLs address requests for overtime when the TL or the ATL responsible for that function are absent.

resident interaction, assist with breaks and resident movement, and ensure that their subordinates are in compliance with policies. Alonzo testified that the ATLs have discretion in determining whether to initiate a formal, documented coaching of a subordinate for failing to adhere to a JTDC policy, where the violation is not a major infraction. ATLs perform at least two unannounced rounds on each shift. They spend an hour or two on each round.

Following rounds, ATLs return to their offices to input the 15-minute log checks into the computer and to complete paperwork, which includes incident reports, shift reports, bi-weekly reports, call-out documentation, and MRVs.[6] ATLs create incident reports to document incidents that occur within the facility and they review incident reports completed by their subordinates. The reported incidents may include lost keys, a fight between residents, or observed rule violations. The ATLs review their subordinates' reports for grammatical errors, ensure that they are understandable, and ensure that they contain all the relevant information. The ATLs have authority to direct their subordinates to fill out the incident reports properly or to rewrite them if they are illegible. Shift reports summarize events that have occurred on the pod and matters that require administrative action.[7] The biweekly reports summarize attendance, overtime, and vacation hours used by staff. According to General Counsel Alonzo, ATLs spend between 10 minutes and an hour and a half per day conducting such administrative tasks.

At 11:00 am, the ATLs hold an administrative intervention meeting with case workers to address incidents with residents. The ATLs present the administrative team with an intervention plan for the resident and then spend time with the resident. ATLs spend approximately one to two hours a day attending such meetings.

ATLs have authority to grant requests for time off. The pods have minimum staffing requirements. ATLs deny requests for time off if they have insufficient staff on a pod but will otherwise approve the time off. ATLs have no authority to allow more than two employees off on the first and second shifts. ATLs have no authority to allow more than one employee off on the third shift. Alonzo testified that the ATLs spend approximately 30 minutes to an hour per day evaluating their staffing levels.

ATLs evaluate their subordinates' performance. The three ATLs at each center work on the evaluations together and the evaluations are therefore the product of several ATLs' input.

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[6] This acronym was not explained.

[7] General Counsel Alonzo testified that the shift reports also document assignments made by the ATLs, but the shift report in the record does not document any assignments made by the ATL.

ATL August testified that he works on the evaluations he receives and then leaves them for his colleagues to work on. When there is a dispute among the ATLs in choosing a ranking, the ATLs try to resolve the dispute themselves. If they cannot resolve the matter, they defer to the Team Leader's judgment. The signature on the evaluation is the signature of the ATL who tendered the form to the subordinate. The Team Leader reviews the evaluations and may make corrections. He then sends the evaluations to the Deputy Executive Director. There is no indication from the face of the evaluation that the Team Leader changed any of the evaluations. Deputy Executive Director Steward testified that he assigns the evaluation of a subordinate to a particular ATL. He recalled that one YDS complained that the ATL assigned to perform his evaluation was not on the same rotation as the evaluated YDS. Steward discussed the matter with his staff and determined that the ATL who oversaw the YDS 60% of the time would perform the YDS's evaluation.

The Employer uses the evaluations in deciding whether to promote an employee. The Employer may terminate employees if they receive consistently poor evaluations. The Employer may discipline an employee or place an employee on a performance improvement plan if he receives consistently poor performance evaluations. ATLs evaluate their non-probationary subordinates on a yearly basis. ATLs spend approximately 30 minutes to an hour on performance evaluations for each subordinate.

b. Discipline

ATLs have authority to counsel[8] a subordinate who violates the Employer's rules or policies. The Employer's Discipline Procedure policy states that counseling is not discipline. It further provides that counseling will be documented and placed into the employees' personnel file. The policy additionally states that the Employer considers the existence of prior counseling in deciding whether to terminate an employee. Specifically, it provides that an employee may be terminated "if an employee's unacceptable behavior continues after that employee has been counseled and appropriately warned or if less severe discipline has been rendered and has not proven to be effective in changing the employee's conduct...." ATLs have discretion in determining whether to initiate a formal, documented coaching of a subordinate for failing to adhere to a JTDC policy.

[8] The Employer also refers to counseling as coaching.

An ATL has authority to draft a memo recommending that the Employer hold a predisciplinary hearing to assess the subordinate's alleged misconduct, if the subordinate committed an infraction that was the subject of prior counseling.[9] ATL Williams testified that she consults with her Team Leader before she completes the recommendation for predisciplinary hearing and that she recommends a predisciplinary hearing "based off of what the Team Leader states." The labor relations department reviews the recommendation. It accepts the recommendation to schedule a predisciplinary hearing before a Hearing Officer if it deems a predisciplinary hearing to be appropriate. The ATL represents management at the hearing and offers management's position. The Hearing Officer makes a recommendation on whether the employee should receive discipline and the level of discipline that the employee should receive. The superintendent determines whether to accept the Hearing Officer's recommendation.

ATL August testified that he sat in on one predisciplinary hearing at the request of his superior but that he did not recommend that the predisciplinary hearing should take place. Other than this incident, August testified that he has never been involved in the discipline of an employee.

c. Adjustment of Grievances

General Counsel Alonzo testified that ATLs act as the first step in the grievance process and that they may grant or deny a subordinate's grievance. She further stated that most grievances relate to the award of overtime. According to the ATLs' job description, the ATLs mediate disputes to promote reconciliation, professional growth, and development.

ATL James August and ATL Charisa Williams testified that the Team Leader hears first step grievances, not the ATL.

At hearing, the Employer moved for the admission of two documents (Employer's Exhibit 2, Tab 6) that the Employer labeled "grievances handled by ATLs." General Counsel Alonzo identified the documents as "employee grievance forms." I reserved ruling on documents' admission at hearing until the Employer provided clearer copies. Union Counsel likewise reserved her objections to the documents until she received a legible copy. Union

[9] ATLs sometimes receive reports from residents concerning a subordinate's alleged misconduct that require additional investigation. A report requires additional investigation when the ATL cannot determine what occurred or where the resident alleges abuse. In such cases, the ATL refers the matter to the Employer's investigators.

Counsel did not object to the admission of these documents at any time following the close of hearing. The documents are hereby admitted into the record.

ATL Boyle adjusted one of the grievances admitted into the record. The grievance claimed that the Employer was unfairly and unnecessarily mandating overtime for YDSs on the weekends. It asserted that the Employer mandated YDSs as replacements for recreational workers, but was not mandating recreational workers as replacements for YDSs. It also claimed that a second break staff member was not needed on the weekends when there was no school activity.[10] ATL Boyle responded to the grievance stating, "in an effort to become more consistant [sic] w/ staffing and to meet the needs of the center at this time we will be mandating to 8 staff on the AM + PM shift." There is no indication that the grievant pursued the grievance past the first step. Accordingly, ATL Boyle's adjustment resolved the grievance.

There is insufficient evidence in the record from which to determine how much time ATLs spend adjusting grievances. ATLs Williams and August testified that they have never adjusted employee grievances.

2. Job Duties of the Supervisor In Charge

a. Direction

The SIC is the top ranking employee on a shift after 5 pm each day. After 5 pm on each weekday and on the weekends a member of the executive staff (a Deputy Executive Director, the Deputy Superintendent, or the Program Director) serves as the Administrator On Duty (AOD). Deputy Executive Director Steward testified that he receives most of his information about operations from the SICs.

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[10] The grievance is difficult to read and the text is typed here for ease of review:

> On May 3, 2015 [Sunday], I was mandated for what was disclosed as a "9 [?] second break staff." Weekends only require one break staff as movements are limited on weekends due to no school activity. Upon further investigation, it was disclosed that our center had scheduled the moves and no recreation worker on schedule to work. On weekends, when there is a recreation worker, management only requires one break staff, but when there is no recreation worker they state they need two. It is quite inconsistent and has become a common practice that can be implied that the mandation is due to no recreation staff. Recreation workers do not get mandated in the absence of a YDS but we are mandated due to their absences. I am requesting that this matter be looked into for further clarity and consistency in hopes that mandation not be abused in this manner. Not only do we get mandated for call offs, uncovered vacations, vacancies, and management not knowing what time, scheduled over-time people will arrive but now because recreation workers are not present.

ATLs, SICs, and Team Leaders perform a mass roll call together. The ATLs, Team Leaders, and SICs rotate in leading the roll call. When the SIC leads roll call, he reads memos to staff and discusses their content. The SIC may correct a subordinate's behavior at roll call, if he determines that the behavior violates policy.

SICs assign their subordinates to posts. SIC Wilson testified that he assigns his subordinates to particular posts based on whether they have worked in the division. SIC Sadjak testified that he makes reassignments of staff to adjust workload. If two subordinates are not getting along, the SIC has the authority to separate them by assigning them to different posts. SIC Wilson testified that he likes to rotate his subordinates, but testified that "there's not really a whole lot to decide." During special events, an SIC can exercise discretion to close certain posts and use the staff from those posts at other locations, if necessary.

SICs perform unannounced rounds to ensure that their subordinates are performing their duties, that they are in compliance with the Employer's rules, and to correct their behavior. The main purpose of the rounds is to ensure safety and security of the JTDC. SICs perform rounds in an unannounced fashion to ensure that the SIC does not create a pattern of oversight, anticipated by the subordinate. If a subordinate is not in compliance, the SIC has authority to direct the subordinate to correct the deficiency. SICs perform at least two unannounced rounds per shift. Deputy Executive Director Steward testified that he performed three per shift when he served as an SIC. Wilson testified that he sometimes completes more than two unannounced rounds per shift. Each round lasts about an hour and a half.

During rounds, the SIC's subordinates approach the SIC with problems or concerns. The SIC determines whether to address the problem immediately or to instead address it later. The SIC also makes an inventory of supplies and materials to ensure the safety and security of residents. Deputy Executive Steward testified that when he performed unannounced rounds as an SIC, he sometimes found his subordinates away from their posts or on cell phones. If a staff member was away from his post, he would call another staff member to take over. There were also times when he sent staff home because they were acting unprofessionally.

SICs approve their subordinates' requests for time off. There is limit on the number of staff members who are allowed to take time off on any shift. The SIC may allow three employees off on the first and second shifts. The SIC may allow only one employee off on the third shift. SICs must deny the request for time off if that number is met.

SICs select volunteers for overtime and mandate the performance of overtime when no subordinates volunteer. SICs apply the seniority equalization policy to determine which employees to mandate for overtime. If an employee has met his limit for permissible overtime, the SIC cannot award overtime to that employee. When there is a lot of fighting amongst the residents, the SIC may determine that more staff are needed to ensure resident safety than the minimum number required. General Counsel Alonzo stated that employees may ask for overtime if they have an assignment they need to finish. An SIC or ATL has discretion to grant overtime if he determines that the assignment must be completed that day. Alonzo testified that she did not know whether an SIC or ATL had ever granted overtime on such a basis.

Alonzo testified that the SIC makes the final decision on staffing requirements when the JTDC holds special events, which include programming attended by visitors.[11] SICs determine staffing levels based on the number of residents and visitors expected for the event. When a TV crew for the TV show Empire came to film at the JTDC, Deputy Executive Director McCoy delegated responsibilities for staffing to an SIC during the filming. An SIC decided the level of staffing that the JTDC needed to maintain security and programming for residents during that filming. Alonzo testified that she not know whether McCoy approved, altered, or changed the SIC's staffing plan for that particular special event. SIC Sadjak testified that he does not make a decision concerning the number of staff needed for a special event and that he instead obtains that number from a superior. SIC Wilson testified that the Deputy Executive Director usually informs the SICs "around the amount" she wants for a special event. SIC Wilson then clarified that sometimes the Deputy Executive Director gives her an estimated number and sometimes she simply instructs the SIC to ensure there is extra coverage.

SICs complete performance evaluations for their subordinate security specialists and YDSs. SICs evaluate their subordinates' performance in 10 categories.[12] The categories include attendance/punctuality; professionalism/appearance; facility policies/procedures and guidelines; job description/post orders; security; safety; resident care, behavior management; crisis intervention; documentation; and training/professional development and physical fitness. Every category but attendance requires a subjective interpretation of the subordinate's performance. SIC Wilson and SIC Williams testified that SICs perform evaluations in groups of two. The

[11] Special events may include a dinner where family members are permitted to attend.
[12] Although there are 11 categories listed on the evaluation, one of them is inapplicable to the SICs' work and is left blank.

numbers on the evaluations represent a consensus of the two SICs who perform the evaluation together. The SICs first ask their subordinates for a self-evaluation. They use that self-evaluation and the opinion of the other SIC working on the evaluation to arrive at a rating number. SIC Sajdak testified that he does not collaborate with other SICs in evaluating his subordinates. He simply asks them if they have any recommendations concerning the subordinate in question or if they recall any issues. There is no indication from the documents that the Deputy Director changed the SICs' ratings. Nor did the Union present testimony demonstrating the Deputy Executive Director changed the SICs' ratings. One or two SICs then present the evaluation to the subordinate, who then returns a signed copy. Wilson testified that he may return the evaluation to his subordinate by himself or with other SICs, depending on scheduling.

The Employer uses the evaluations to determine whether employees will receive promotions. If an SIC does not give his subordinate a passing performance evaluation, the subordinate will not receive a promotion. The Employer may terminate employees who receive consistently poor performance evaluations. If the SIC gives a poor evaluation to a probationary employee it can lead to that employees' termination.

SICs review incident reports drafted by their subordinates. The SIC ensures that the report contains all the required information and that it is legible. If it does not contain the required information, the SIC directs his subordinate to obtain the information. If the document is illegible, the SIC directs his subordinate to rewrite it. Most incident reports stem from resident behavior, not employee behavior.

SICs have responsibilities during emergency situations, which include medical emergencies, fights, fires, attempted escape, and riots. In emergencies, the SIC becomes the incident commander who controls the building and makes decisions to ensure the safety and security of those in the facility. The SICs have the final say in directing operations during these times. If a fight breaks out, the SIC can decide to activate the Rapid Response Team. If an SIC arrives on the scene during an emergency and views a subordinate who is not performing as required, the SIC can order the subordinate to perform. If a resident is unaccounted for, the SIC calls control, stops movement of residents, and institutes an emergency count. The SIC can also decide to lock down a unit, building or floor and stop movement. The SIC must notify the AOD or the Deputy Executive Director of the lockdown and the AOD and Deputy Executive Director

have the authority to countermand the SIC's directive to lockdown. The SIC decides what level of notice to provide to the superintendent or other administrators.

SICs follow policies during an emergency. There are policies that address proper course of action in the case of fires, escapes or attempted escapes, medical emergencies, fights, and natural disasters. The SIC must ensure that he and his subordinates implement the policies when emergencies arise. However, the policies do not cover every eventuality. The SIC must make a judgment call in each circumstance to determine whether to hold staff, lock down the building, or call in additional staff.

When a fight breaks out between residents, the SIC informs the AOD. In the case of a medical emergency, the SIC likewise notifies the AOD or the Deputy Executive Director and calls 911 if directed to do so by medical staff. The SIC may also call transportation staff to serve as an escort to the individual in the emergency. In one case, a resident passed out in the gym and the SIC reassigned staff to handle the emergency because some staff members had to escort the resident to the hospital.

The SIC also generates shift reports that documents events that occurred during his shift. He looks up the resident count on the computer, reviews the logbooks, and summarizes the incidents that arose on the shift. The SIC receives information about a shift from incident reports drafted by ATLs or Team Leaders. The SIC emails the shift report to the other SICs, the Deputy Executive Directors, the Deputy Superintendent, the Superintendent, the AODs, and the Project Directors.

SICs also schedule training for staff and "monitor time" for staff members. In monitoring time, SICs complete reports for their subordinates based on their time clock swipes to check if they have clocked in on time and did not leave early.

Sadjak further testified that he spends approximately 50% of his time directing his subordinates. In defining direction, Sadjak included making assignments, instructing his subordinates to take photographs of an incident, and instructing a staff member to perform duties outside their post description. Sadjak specifically testified that that he spends approximately 15% of his time assigning or reassigning his subordinates. Sadjak testified that spends approximately 25% of his time evaluating his subordinates.[13]

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[13] Steward testified that when he was an SIC, he spent 100% of his time directing and supervising his subordinates. I do not weigh this testimony heavily because Steward did not elaborate on this statement.

b. Adjustment of grievances

SICs have authority to grant or deny grievances at the first step. SICs have granted overtime grievances. When SICs grant overtime grievances, HR receives a copy of the adjusted grievance and pays the employee the overtime to which he is entitled.

Deputy Executive Director Steward testified that when he was an SIC he heard first step grievances and had authority to adjust the grievance at the first step.[14] He resolved grievances alleging that a supervisor did not award overtime on a fair basis. In investigating the merits of the grievance, Steward looked at the hours of work performed by other security specialists and when the overtime was offered.

SIC Brian Sajdak testified that he has adjusted employee grievances. In one case, he adjusted a grievance concerning the Employer's failure to award overtime. Sajdak forwarded the adjusted grievance to the labor relations office. He testified that he believed the subordinate received overtime pay.

The record contains a grievance filed by a Security Specialist I concerning the claim that his station posed significant health a safety risks to the officers assigned. SIC Robinson granted the grievance. He stated that "reasonable accommodations were made including an illuminated keyboard, wrist pads, work orders, and additional opportunities for DC-5 to stand and move."[15]

SIC Terry Wilson testified that in his five years as an SIC, she has only been involved in one employee grievance. The employee in question ultimately withdrew the grievance and declined to proceed with it.

General Counsel Alonzo testified that ATLs spend approximately one hour a day hearing employee grievances. According to the grievance log, there were only 20 grievances filed in a single year for a given division.

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[14] Steward further stated that the current SIC job description is the same in substance as it was when he was an SIC.

[15] SIC Sajdak testified to the grievance because he had personal knowledge concerning its circumstances. However, he was not the SIC who granted the grievance and he therefore did not sign it.

3. Discipline

SICs have authority to counsel their subordinates when they identify rule infractions or poor performance. In cases where the infraction is not major, SICs have the discretion to decline to administer a formal, documented counseling and to instead counsel the subordinate without documenting the infraction. Wilson testified that a subordinate's prior violation of the same work rule would impact his decision of whether to administer a second supervisory coaching, depending on how recently the subordinate had violated the same rule. When an SIC counsels a subordinate, he reviews the violated policy with the subordinate to make sure the subordinate understands it. When SICs issue a documented counseling, the Employer places the documentation in the subordinates' personnel file.

The Employer's disciplinary policy states that the Employer considers the existence of prior counseling in deciding whether to terminate an employee. Specifically, it provides that an employee may be terminated "if an employee's unacceptable behavior continues after that employee has been counseled and appropriately warned or if less severe discipline has been rendered and has not proven to be effective in changing the employee's conduct…." In addition, counseling has an adverse impact on promotions if an employee has a significant number of them in his personnel file.

SICs have authority to recommend a predisciplinary hearing when they observe a subordinate committing a rule or policy violation or when they receive a report of such an infraction from another employee. SICs must recommend predisciplinary hearings when they observe major infractions, but they have discretion to issue counseling in lieu of recommending a predisciplinary hearing where the infraction is minor.

SIC Sajdak testified that he sometimes discusses his recommendation of a predisciplinary hearing with his Deputy Executive Director. SIC Sajdak testified that he could not remember a time when his Deputy Executive Director ever asked him to change his report. By contrast, SIC Wilson testified that the Deputy Executive Director directs him to recommend a predisciplinary hearing. SIC Wilson further stated that he does not have discretion to independently initiate a recommendation for a predisciplinary hearing. He simply drafts an incident report and forwards it to the Deputy Executive Director for further instruction. When Union counsel questioned Wilson about the genesis of a particular recommendation for disciplinary hearing, admitted into the record, Wilson stated "the outcome probably, I'm thinking came from my…deputy director,

Ms. McCoy, and then she gave me the directive to write the referral." Wilson also testified that he forwards the predisciplinary recommendation to the Deputy Executive Director and that, if the Deputy Executive Director approves it, Wilson forwards the recommendation to the labor relations department, which then arranges a predisciplinary hearing.

The SIC represents management at the hearing and offers management's position. The Hearing Officer makes a recommendation on whether the employee should receive discipline and the level of discipline that the employee should receive. The superintendent determines whether to accept the Hearing Officer's recommendation.

Steward estimated that he spent approximately 10-12% of his time engaged in discipline when he was an SIC. SIC Sadjak likewise testified that he spends approximately 10% of his time as an SIC correcting his subordinates' behavior. SIC Sajdak has issued supervisory coaching only twice in the year preceding hearing and he makes a recommendation for a predisciplinary hearing approximately once every other month. The Employer ultimately imposed discipline following each recommendation of a disciplinary hearing by Sajdak. SIC Wilson testified that he had not performed a supervisory coaching in two years but that he recommends predisciplinary hearings between two and five times a year.

IV. Discussion and Analysis

ATLs and SICs are supervisors within the meaning of Section 3(r) of the Act because they discipline, direct, and adjust grievances with independent judgment, and spend a preponderance of their work time engaged in supervisory functions.

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. Supervisors as defined by Section 3(r) of the Act are not public employees and are therefore excluded from the Act's coverage. City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512, (1990).

Under Section 3(r), employees are supervisors if they (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently exercise independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. Id. The Employer

has the burden of proving by a preponderance of the evidence that the petitioned-for employees satisfy those four elements. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook Cnty., 18 PERI ¶2016 (IL LRB-SP 2002).

The parties in this case stipulate that the principal work of the ATLs and the SICs is substantially different from that of their subordinates. Accordingly, the only remaining issues are whether the ATLs and the SICs perform any indicia of supervisory authority with independent judgment and whether they devote a preponderance of their work time to exercising supervisory authority.

1. Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercises that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Circuit Court of Cook Cnty. v. Am. Fed. of State. Cnty. and Mun. Empl., Council 31, 153 Ill. 2d 508, 531 (1992); City of Freeport, 135 Ill. 2d at 531; Vill. of Lombard, 31 PERI ¶ 123 (IL LRB-SP 2015); Vill. of Justice, 17 PERI ¶ 2007 (IL LRB-SP 2000). An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superiors. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966 ¶ 193 (4th Dist. 2011).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[16] See

[16] There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Vill. of Maryville v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966 (4th Dist. 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance);

City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Servs. (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); Cnty. of Union, 20 PERI ¶ 9 (IL LRB-SP 2003); Northern Ill. Univ. (Dep't of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); Cnty. of Union, 20 PERI ¶ 9.

i. ATLs

i. Discipline

ATLs have the authority to discipline their subordinates through counseling.

ATLs exercise the authority to discipline their subordinates within the meaning of the Act when they counsel their subordinates who violate the Employer's rules or policies and document the counseling. Counseling constitutes discipline within the meaning of the Act where the employer places a record of the counseling in the employee's personnel file and where that counseling forms the basis for more severe discipline. Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003) (letters of counseling constituted discipline where they satisfied these requirements). Here, the ATLs have authority to counsel a subordinate who violates the Employer's rules or policies and direct the subordinate to correct deficient behavior. The ATLs complete counseling forms to document the directives they make to their subordinates. The Employer's personnel policy provides that the Employer places the counseling forms into the employees' personnel files. The counseling forms serve as the basis for more severe discipline because the Employer considers the existence of prior counseling when deciding whether to terminate an employee. Specifically, the Employer's policy provides that the Employer may terminate an employee "if [his] unacceptable behavior continues after [he] has been counseled

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but see Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). The First and Third Districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Vill. of Broadview v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru, 167 Ill. App. 3d at 291.

and appropriately warned or if less severe discipline has been rendered and has not proven to be effective in changing [his] conduct...." Thus, the documented counseling performed by the ATLs constitutes discipline.

Finally, the ATLs use independent judgment in disciplining their subordinates because they exercise discretion in determining whether a policy violation requires mere oral counseling or documented counseling. Metro. Alliance of Police, Bellwood Command Chapter No. 339 v. Ill. Labor Rel. Bd., 354 Ill. App. 3d 672, 680 (1st Dist. 2004)(determining whether discipline is warranted requires the consistent use of independent judgment); Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) (petitioned-for employee's determination as to whether officer's conduct should be documented in a disciplinary manner constituted independent judgment); but see Chief Judge of the Circuit Court of Cook Cnty., 26 PERI ¶ 117 (IL LRB-SP 2010)(petitioned-for employees did not possess authority to discipline where they made no recommendations, simply investigated possible violations, and presented their findings to a superior who made the disciplinary determination).

Thus, the ATLs discipline their subordinates when they issue them documented counseling.[17]

ii. Direct

ATLs direct their subordinates when they perform roll call, perform unannounced rounds, and grant overtime during emergencies. However, they do not make pod assignments to their subordinates. Further, they do not direct their subordinates with independent judgment when they correct their subordinates' reports, evaluate their subordinates' performance, and approve requests for time off.

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

[17] In light of this finding, it is unnecessary to determine whether the ATLs also discipline their subordinates through the effective recommendation of higher levels of discipline.

Naperville, 8 PERI ¶ 2016 (IL SLRB 1992). In order to constitute "direction" within the meaning of the Act, an employee's responsibility for his or her subordinates' work performance must also involve discretionary authority that affects the subordinates' terms and conditions of employment. Serv. Employees Intern. Union, Local 73 v. Ill. Labor Rel. Bd., 2013 IL App (1st) 120279; Dep't of Cent. Mgmt. Serv./Dep't of Public Health v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110209, ¶ 27; Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Serv., 25 PERI ¶ 186 (IL LRB-SP 2009).

ATLs exercise independent judgment in directing subordinates when they perform roll call. During roll call, ATLs perform uniform inspections and exercise independent judgment in determining whether a subordinate's non-compliance with the JTDC's uniform policy requires additional training and instruction on the policy or whether it instead requires counseling that can serve the basis for greater discipline. Although the identification of the uniform policy violation may be a routine exercise, the ATL's selection between two different courses of action in determining how to remedy poor behavior demonstrates the exercise of independent judgment. See Cnty. of Cook (Health and Hospital System), 32 PERI ¶ 55 (IL LRB-LP 2015).

Similarly, ATLs exercise independent judgment in directing subordinates when they perform unannounced rounds to observe and correct subordinate behavior, in furtherance of the security and proper care of the residents. During rounds, ATLs ensure that their subordinates are in compliance with policies and they exercise independent judgment in determining whether a subordinate's behavior constitutes a violation of the JTDC's rules. For example, the ATL must determine whether a subordinate has sufficiently varied the timing of his security check on residents to ensure that the resident does not expect the check. Likewise, ATLs must assess whether the subordinate's conduct constitutes "perform[ance] at less than a satisfactory level" such that it qualifies as minor misconduct. Such subjective assessments necessitate the exercise of independent judgment. Furthermore, the ATLs have discretion in determining whether to counsel a subordinate orally on their performance or to instead document the counseling in a manner that can serve as the basis for greater discipline. Cnty. of Cook (Health and Hospital System), 32 PERI ¶ 55.

The Union contends that the ATLs' identification of policy violations during unannounced rounds does not require independent judgment because they make such identifications based on their greater skill, experience, and technical expertise. However, the

relevant question is not whether the purported supervisor exercises superior skill and knowledge in direction. Rather, it is whether he does so simply to ensure compliance with industry standards, in a non-supervisory capacity, or whether he instead exercises that superior knowledge and skill in the interests of the employer such that he qualifies as a statutory supervisor. Compare City of Freeport., 135 Ill. 2d at 518-519 (exercise of superior skill, experience and technical expertise to ensure compliance with industry standards deemed non-supervisory) and Nat'l Union of Hosp. & Health Care Employers, Am. Fed'n of State, County & Mun. Employees, AFL-CIO v. County of Cook, 295 Ill. App. 3d 1012, 1026 (1st Dist. 1998); City of Chicago, Department of Buildings, 32 PERI ¶ 155 (IL LRB-LP 2016); City of Chicago, Office of Emergency Management and Communications, 32 PERI ¶ 72 (IL LRB-SP 2015); Ill. Sec'y of State, 20 PERI ¶ 11 (IL LRB-SP 2003); State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Empl. Security), 11 PERI ¶ 2021 (IL LRB-LP 1995). Here, the ATLs identify policy violations in furtherance of the security and well-being of the Employer's residents and therefore use their superior skill and experience in the interest of the Employer.

Notably, the ATLs' interest in ensuring the proper care of residents through the oversight of their subordinates is inseparable from the Employer's interest in running a facility that complies with state and federal regulations covering the detention of juveniles. County of Cook, 295 Ill. App. 3d at 1029 (citing United States Supreme Court case law for the proposition that union presented a false dichotomy in arguing that direction of residents by petitioned for attending physicians in the interest of patient care was not also in the interest of the employer).

Next, ATLs exercise independent judgment when they assign overtime in emergencies. Generally, alleged supervisors do not assign overtime using independent judgment if they are required to assign overtime in accordance with a collective bargaining agreement. See Circuit Clerk of Champaign Cnty., 17 PERI ¶ 2032 (IL LRB-SP 2001). However, the alleged supervisors may still grant overtime using independent judgment if they have discretion to decide when overtime is needed. See Dep't of Cent. Mgmt. Servs./Dep 't of Transp. v. Ill. Labor Relations Bd., State Panel, 2013 IL App (4th) 110825, ¶ ¶ 15, 52; Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999). Here, ATLs have discretion in some cases to determine when the JTDC requires overtime. For example, Deputy Executive Director Steward described a circumstance in which an ATL determined that his center required more than the minimum number of employees where two residents were fighting and needed to be separated in different pods, which each

required staff members. The assessment of the problem in that case and the discretion of the ATL to call in additional staff to resolve exigent circumstances evidences the exercise of independent judgment. Thus, although ATLs are required to maintain minimum manning levels and must grant overtime when levels fall below the minimum manning requirements, the ATLs do exercise discretion in assigning overtime in other circumstances.

However, the preponderance of the evidence suggests that ATLs do not have authority to make regular assignments to their subordinates. There is an undeniable conflict in the testimony. ATL August testified that the Team Leader and the Deputy Executive Director determine the primary pod assignments for their subordinates whereas Deputy Executive Director Steward and General Counsel Alonzo testified that the ATLs make such assignments. The Employer's job descriptions better support ATL August's testimony than they do that of the Employer's witnesses. The ATL job description states that ATLs are responsible for simply "monitor[ing] work schedules of all assigned unit staff to ensure accountability with the assigned units." This language suggests that the ATLs simply oversee the assignments made by others. The SIC job description further supports this interpretation and stands in stark contrast to the ATL job descriptions. The SIC job description includes a broader range of responsibility for the assignment stating that the SIC "**develops**, **approves**, and monitors work schedules of all assigned unit staff to ensure accountability within the assigned division." (emphasis added). Had the Employer wished to confer authority upon the ATLs to make assignments, it would have expressed that authority within the job description using the terms "develop" and approve" rather than simply monitor.

Likewise, ATLs do not exercise supervisory authority when they review their subordinates' incident reports. Review of subordinates' work constitutes supervisory direction when it involves checking, correcting, and giving instructions to subordinates without guidelines or review by others. Chief Judge of the Circuit Court, 153 Ill. 2d at 518. However, routine and clerical corrections do not require significant discretion and are therefore nonsupervisory. Id. Here, the ATLs review and correction of their subordinates' work is of a routine nature. They review their subordinates' reports for grammatical errors, to ensure that they are understandable and legible, and to ensure that they contain all the relevant information. County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-SP 2015) (checking work for accuracy and completeness was non-supervisory); City of Chicago (Dep't of Public Health), 17 PERI ¶ 3016

(IL LRB-LP 2001)(determining whether subordinate's report was missing information and instructing subordinate to add such information did not require independent judgment); Carbondale, 3 PERI ¶ 2044 (IL SLRB 1987)(ensuring that report was legible did not require independent judgment). There may be cases in which a superior's instruction to a subordinate to add information to a report may require independent judgment. However, the Employer's failure to provide examples or reports corrected by ATLs and failure to point to specific examples of information that the ATLs added to such reports makes it impossible to reach that conclusion. Cf. Service Employees International Union, Local 73, Petitioner, v. Illinois Labor Relations Board, Local Panel, 2013 IL App (1st) 120279 (review of work deemed supervisory where petitioned-for employees gave their subordinates feedback and written notes, and ensured that subordinates followed through on the instructions to undertake further investigation).

Next, ATLs do not exercise supervisory authority when they evaluate their subordinates because the preponderance of the evidence indicates that in practice they do not use independent judgment in completing those evaluations. The Board has held that decisions made by consensus do not require the exercise of independent judgment. County of Lake, 16 PERI ¶ 2038 (IL LRB-SP 2000)(addressing decision by consensus in the hiring process); Peoria Housing Authority, 10 PERI ¶ 2020 (IL LRB-SP 1994), aff'd by unpub. order, docket no. 3-94-0317 (3rd Dist. 1995)(same). Here, the ATLs testified that they ATLs at each center work on the evaluations together and reach agreement on the rating. When they disagree, they refer the matter to the Team Leader for resolution. Although Deputy Executive Director Steward assigns the evaluations to one ATL for completion, the actual process by which the ATLs complete the evaluations, and the manner by which the Team Leader resolves disagreements, eliminates the ATLs' exercise of independent judgment. Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel. 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that alleged supervisors did not "in practice" perform the tasks with significant discretionary authority, despite job description that purported to give them the authority to do so).

Finally, ATLs do not exercise supervisory authority in granting requests for time off because their decisions on these matters are devoid of independent judgment. The Employer's policy circumscribes the number of subordinates who may take time off on any given shift and also sets forth a minimum manning requirement. Circuit Clerk of Champaign Cnty., 17 PERI ¶ 2032. ATLs cannot grant requests for time off when the maximum permissible number of

employees per shift has already taken leave. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011); Village of Morton Grove, 23 PERI ¶ 72 (IL SLRB 2007) (decisions regarding overtime and leave circumscribed by department policy are routine and clerical, not supervisory), see also Village of Broadview, 402 Ill. App. 3d 503 (1st Dist. 2010) (no supervisory authority to direct when decision to allow leave is constrained by considerations of seniority and predetermined staffing requirements); City of Carbondale, 3 PERI ¶ 2044 (the ability to review requests for time off and vacation is a routine and clerical function not mandating' the use of independent judgment).

Thus, the ATLs exercise the supervisory authority to direct when they perform unannounced rounds, perform roll call, and assign overtime in emergencies.

iii. Adjustment of Grievances

ATLs adjust grievances with the requisite independent judgment.

As a preliminary matter, the preponderance of the evidence indicates that ATLs do in fact adjust grievances at the first step. Although two ATLs denied that they possessed the authority to adjust grievances, General Counsel Alonzo testified that the ATLs do possess such authority. Moreover, the Employer introduced into evidence two grievances adjusted by ATLs, to support Alonzo's assertion.

In addition, the content of grievances in the record indicates that ATLs adjust grievances using independent judgment. In one case, a YDS claimed that the Employer was unfairly and unnecessarily mandating YDS's on the weekends. According to the YDS's grievance, the Employer's mandation was unfair because it disproportionately impacted YDSs over recreational workers, whom the Employer did not mandate to replace YDSs. The Employer's mandation was allegedly also unnecessary because the Employer did not require a second break staff member on the weekends where there was no school activity scheduled. In response to the grievance, ATL Boyle made a choice between at least two significant courses of action and demonstrated the exercise of independent judgment when she elected to reduce the total maximum number of employees on the shift to reduce the need to mandate overtime on the weekends. Boyle could have instead mandated recreational workers on the weekends, instead of YDSs, which similarly would have resolved the grievance, but chose a different course of action. Chief Judge of the

Circuit Court of Cook Cnty., 153 Ill. 2d at 531 (independent judgment requires consistent choices between two or more significant courses of action).

Thus, ATLs exercise the supervisory authority to adjust grievances.

iv. Preponderance Requirement

The ATLs spend a preponderance of their work time engaged in supervisory functions because they spend more than 50% of their work time performing supervisory tasks.

The Illinois Supreme Court, in City of Freeport, interpreted that preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions. Stated another way, the employee must spend more time on supervisory functions than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 532.

Since the City of Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued different interpretations of how preponderance may be analyzed. The first interpretation defines preponderance as requiring that the employee spend a majority, or more than 50% of his or her time, engaged in supervisory authority. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 249 Ill. App. 3d 740, 746 (4th Dist. 1993). The second interpretation of preponderance relies on whether the supervisory functions are more "significant" than the non-supervisory functions. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996).

ATLs spend a preponderance of their work time on supervisory tasks because they spend over 50% of their time directing their subordinates during roll call and unannounced rounds. Specifically, they spend approximately four hours each day performing unannounced rounds, which comprises 50% of an eight-hour shift, and they perform additional supervisory functions during roll call. The evidence also indicates that at least some ATLs also spend an unspecified amount of work time adjusting their subordinates' grievances, which adds to the total time spent performing supervisory tasks and lends weight to the finding that they perform supervisory functions for a preponderance of their work time.

Thus, the ATLs spend a preponderance of their work time engaged in supervisory functions.

2. SICs

SICs are supervisors within the meaning of the Act because they direct and discipline their subordinates and adjust their subordinates' grievances with the requisite independent judgment. Furthermore, they engage in supervisory functions for the preponderance of their work time.

a. Direction

SICs direct their subordinates when they make assignments, make effective recommendations concerning the evaluation of their subordinates, perform unannounced rounds, grant requests for overtime, and perform roll call. However, they do not direct their subordinates when they grant requests for time off and generate shift reports.

SICs direct their subordinates with independent judgment when they assign their subordinates to posts because they consider their subordinates' ability to work together and the priority of the work that their subordinates must complete. The SICs have the authority to separate subordinates by assigning them to different posts if they do not get along. Judging the extent of the tension between two subordinates and their ability to work together in the interest of resident care and safety is an exercise of independent judgment. In addition, SICs have the authority to close certain posts and use the staff from those posts at other locations, if necessary. Although the SICs sometimes make assignments to balance workload, the SICs' consideration of workplace harmony and work priority evidence the exercise of independent judgment in assignment. St. Clair Housing Authority, 5 PERI ¶ 2017 (IL SLRB 1989) (property managers exercised independent judgment where they had a wide range of options regarding the type of work to be performed and the priority it would receive); but see Chief Judge of the Circuit Court of Cook Cnty.,153 Ill. 2d at 518-22 (1990) (no independent judgment where assignment of tasks was routine and done to balance workload) and Serv. Empl. Intern. Union, Local 73, 2013 IL App (1st) 120279 ¶ 52 (assignments that simply balance workload do not require independent judgment).

SICs direct their subordinates with independent judgment when they make effective recommendations concerning their subordinates' evaluations. SICs evaluate their subordinates

in categories including attendance/punctuality, professionalism/appearance, facility policies/procedures and guidelines, job description/post orders, security, safety, resident care, behavior management, training/professional development and physical fitness, crisis intervention, and documentation. A Union witness conceded that every category except for attendance/punctuality requires the evaluator to undertake a subjective assessment of the subordinates' performance. Cf. State of Ill., Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227 (where there was no evidence concerning the categories in performance evaluations, the Court was "unable to say that the categories [were] more subjective than quantitative," and therefore found that the petitioned-for employees did not exercise independent judgment). Furthermore, the preponderance of the evidence indicates that the SICs have the authority to complete the evaluations on their own and in fact do so. The SICs provided conflicting accounts of the evaluation methodology, but SIC Sajdak's account warrants greatest weight. Sajdak explained that he asks his SIC colleagues whether they have any recommendations concerning the evaluated subordinate or whether they had any issues with them, but stated that he did not collaborate with other SICs in evaluating his subordinates. By contrast, SICs Wilson and Williams stated that they perform evaluations in groups of two and that the evaluations represent a consensus of the two SICs. However, their failure to explain the manner in which they resolve potential disagreement in ratings sheds doubt on the reliability of their testimony. Accordingly the evaluation methodology described by SIC Sajdak is more persuasive.

Notably, the fact that the Deputy Executive Director must approve the recommendation fails to diminish the fact that SICs initial determination is an exercise in judgment between the various rating choices. See Dep't of Cent. Mgmt. Serv./Dep't of Public Health v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110013 ¶ 77.

The SICs' recommendations on these ratings are effective because the Employer accepts them, without change. Indeed, there is no indication from the evaluations themselves or from testimony that the Employer has ever changed an SIC's evaluation of a subordinate. Dep't of Cent. Mgmt. Servs./Pollution Control Bd. v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 26; (effective recommendations are those that are almost always implemented or followed; addressing recommendations in the context of managerial authority); Service Employees Intern. Union, Local 73, 2013 IL App (1st) 120279 ¶ 61 (finding evaluations to

constitute effective recommendations on direction where reviewing superior had never rejected the evaluations completed by the purported supervisor)

Finally, the SICs' evaluation of their subordinates' work performance is evidence of the supervisory authority to direct because the Employer may terminate employees who consistently perform poorly. Furthermore, the Employer considers the evaluations in determining whether to grant promotions. Vill. of Elk Grove Village, 245 Ill. App. 3d 109 (2nd Dist. 1993); Serv. Empl. International Union, Local 73, 2013 IL App (1st) 120279 ¶ 61 (finding direction affected subordinates' terms and conditions of employment where petitioned-for employees evaluated their subordinates and where performance evaluations were considered in promotions); Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013)(same); City of Naperville, 8 PERI ¶ 2016; Ill. Dep't of Cent. Mgmt. Serv. (Division of Police), 4 PERI ¶ 2013 (IL SLRB 1988).

SICs direct their subordinates with independent judgment when they perform unannounced rounds, during which they identify and address policy violations. First, they exercise independent judgment in identifying policy violations. The Union correctly observes that the SICs do not always exercise independent judgment in identifying a violation of policy, but it is equally clear that in some cases, they do. For example, it is easy to determine if a staff member is away from his post; however, an SIC must exercise judgment in determining whether his subordinate is performing at less than a satisfactory level.[18] Second, SICs exercise discretion in addressing those violations. When the policy violation is a minor infraction, the SIC can either instruct his subordinate to follow policy or can write up a counseling form that the Employer places in the subordinate's personnel file.

As noted above, with respect to the ATLs, the SICs' exercise of greater skill and experience does not eliminate their exercise of independent judgment identifying rule violations where they exercise their skill in the interest of the employer rather than to simply ensure compliance with industry standards. See cases supra.

SICs likewise direct their subordinates with independent judgment when they perform roll call because SICs perform the same oversight and monitoring of subordinates' behavior as they do during unannounced rounds. During roll call, the SIC may correct a subordinate's behavior, if he determines that the behavior violates policy. The judgment he exercises in identifying the policy violation and determining how to address the matter is an exercise in

[18] Less than satisfactory performance violates the Employer's rule 8.03(c)(2).

independent judgment because it is the same assessment as the one he performs during unannounced rounds.

SICs direct their subordinates with independent judgment when they grant requests for overtime and mandate overtime because they decide when overtime is required and how many staff members are required. The preponderance of the evidence indicates that SICs make the final decision on staffing requirements during special events. Alonzo testified to this authority and SIC Wilson's testimony on the whole confirms it. Wilson stated that although her Deputy Executive Director sometimes gives an estimate of required staff during special events, she sometimes gives her more general instructions to ensure there is extra coverage. In both cases, SIC has the authority to select the exact number of staff needed to cover a special event, in consideration of the number of guests anticipated and the type of programming provided. Moreover, the SICs exercise broad discretion in choosing the required number of staff needed for special events where the Deputy Director Executive offers no estimate.

SICs do not direct their subordinates when they grant requests for time off because their decisions on these matters are devoid of independent judgment. The Employer's policy circumscribes the number of subordinates who may take time off on any given shift and also sets forth a minimum manning requirement. Circuit Clerk of Champaign Cnty., 17 PERI ¶ 2032. SICs cannot grant requests for time off when the maximum permissible number of employees per shift has already taken leave. City of Carbondale, 27 PERI ¶ 68; Village of Morton Grove, 23 PERI ¶ 72 (decisions regarding overtime and leave circumscribed by department policy are routine and clerical, not supervisory), see also Village of Broadview, 402 Ill. App. 3d 503 (no supervisory authority to direct when decision to allow leave is constrained by considerations of seniority and predetermined staffing requirements); City of Carbondale, 3 PERI ¶ 2044 (the ability to review requests for time off and vacation is a routine and clerical function not mandating' the use of independent judgment).

Thus, SICs direct their subordinates when they make assignments, make effective recommendations concerning the evaluation of their subordinates, perform unannounced rounds, grant requests for overtime, and perform roll call.

b. Discipline

SICs have the authority to discipline their subordinates with the requisite independent judgment.

SICs exercise the authority to discipline their subordinates within the meaning of the Act when they counsel their subordinates. Counseling constitutes discipline within the meaning of the Act where the employer places a record of the counseling in the employee's personnel file and where that counseling forms the basis for more severe discipline. Vill. of Bolingbrook, 19 PERI ¶ 125 (letters of counseling constituted discipline where they satisfied these requirements). Here, the SICs have authority to counsel a subordinate who violates the Employer's rules or policies and to direct the subordinate to correct deficient behavior. The SICs complete counseling forms to document the directives they give their subordinates. The Employer's personnel policy provides that the Employer places the counseling forms into the employees' personnel files. In turn, the counseling serves as the basis for more severe discipline in some cases. Specifically, the JTDC's Employee Discipline Procedure document provides that the Employer considers the existence of prior counseling when deciding whether to terminate an employee. It states that an employee may be terminated "if an employee's unacceptable behavior continues after that employee has been counseled and appropriately warned or if less severe discipline has been rendered and has not proven to be effective in changing the employee's conduct...."

The SICs exercise independent judgment in determining whether to impose discipline (i.e., counseling) for minor infractions. The decision to impose discipline in the first instance demonstrates the exercise of independent judgment when the purported supervisor has the discretion to determine whether to impose it or to grant leniency. Metro. Alliance of Police Bellwood Command Chapter No. 339., 354 Ill. App. 3d at 681-83. Here, the SIC has discretion to decide whether to document his subordinates' misconduct in their personnel file or whether to instead simply instruct the subordinate to comply with the Employer's policy, without documenting it.[19] The SIC job description further supports this conclusion because it provides that SICs have the duty to "initiate...correction action proportionate to performance issues or non-compliance [with] policies and procedures."[20]

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[19] The SIC has no such discretion in the case of a major infraction, which is a conduct that may result in harm to a resident.

[20] In light of this finding, it is unnecessary to determine whether the SICs also effectively recommend higher levels of discipline.

Thus, SICs discipline their subordinates with independent judgment.

c. Adjustment of Grievances

SICs adjust grievances with the requisite independent judgment.

SIC have authority to adjust grievances at the first step, and the content of grievances in the record indicates that SICs exercise independent judgment in making such adjustments. For example, in one case, a grievant alleged that the "current DC-5 station poses significant health and safety risks to the officers assigned." The SIC resolved the grievance by making reasonable accommodations for the employees assigned to that post. Specifically, the SIC provided employees with an illuminated keyboard, wrist pads, work orders, and additional opportunities to stand and move. The SIC's response to the grievance indicates that he assessed the working conditions of his subordinates and tailored a response that would meet the subordinates' needs. Notably, the SIC did not grant the employees all the accommodations requested and thereby demonstrated the exercise of independent judgment in determining the extent of accommodations necessary to maintain employee safety. Specifically, he declined to provide the glare screens for monitors, requested by the grievance. Nevertheless, the accommodations resolved the grievance because there is no indication that the employee moved the grievance to the second step. Chief Judge of the Circuit Court of Cook Cnty., 153 Ill. 2d at 531 (independent judgment requires consistent choices between two or more significant courses of action).

Thus, SICs exercise the supervisory authority to adjust grievances.

d. Preponderance of Time

The SICs spend a preponderance of their work time engaged in supervisory functions because they spend more than 50% of their work time performing supervisory tasks.

The Illinois Supreme Court, in City of Freeport, interpreted that preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions. Stated another way, the employee must spend more time on supervisory functions than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 532.

Since the City of Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued different interpretations of how preponderance may be analyzed. The first interpretation defines preponderance as requiring that the employee spend a majority, or

more than 50% of his or her time, engaged in supervisory authority. Dep't of Cent. Mgmt. Serv., 249 Ill. App. 3d at 746. The second interpretation of preponderance relies on whether the supervisory functions are more "significant" than the non-supervisory functions. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996).

Here, SICs spend well over 50% of their work time engaged in supervisory functions. SICs spend approximately 10% of their time correcting subordinate behavior, 25% of their time evaluating their subordinates, and 15% of their time making assignments, totaling 50% of work time. They additionally spend at least three hours performing unannounced rounds, which accounts for approximately 38% of their time, and at least some time performing roll call in a supervisory capacity. SICs also spend a non-zero amount of time adjusting their subordinates' grievances. SICs thereby spend almost all their time on supervisory tasks.

Thus, SICs spend a preponderance of their work time on supervisory tasks.

V. Conclusions of Law

1. Assistant Team Leaders are supervisors within the meaning of Section 3(r) of the Act.
2. Supervisors in Charge are supervisors within the meaning of Section 3(r) of the Act.

VI. Recommended Order

The petition is dismissed.

VII. Exceptions

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1300, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the 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 the Board's General Counsel, Kathryn Zeledon Nelson, at 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 Chicago, Illinois this 12th day of May, 2016,

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

/S/ *Anna Hamburg-Gal*

Anna Hamburg-Gal
Administrative Law Judge