

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

International Union of Operating	)	
Engineers, Local 150,	)	
	)	
Petitioner	)	
	)	
	)	Case No. S-RC-15-054
and	)	
	)	
DuPage County,	)	
	)	
Employer	)	

**ORDER**

On February 10, 2016, Administrative Law Judge Thomas Allen, 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 April 12, 2016 public meeting, the Board, having reviewed the matter, 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the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.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 12th day of April, 2016.**

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

  
\_\_\_\_\_  
**Kathryn Zeledon Nelson**  
**General Counsel**

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

International Union of Operating	)	
Engineers, Local 150,	)	
	)	
Petitioner	)	
	)	
	)	Case No. S-RC-15-054
and	)	
	)	
DuPage County,	)	
	)	
Employer	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On January 23, 2015, the International Union of Operating Engineers, Local 150 (IUOE or Union) filed a petition with the State Panel of the Illinois Labor Relations Board (Board) seeking to represent the employees in the titles of Highway Maintenance Supervisor, Grounds Maintenance Supervisor and Vehicle Maintenance Supervisor in the DuPage County Division of Transportation. DuPage County (County or Employer) opposed the petition, 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.

A hearing on the matter was conducted on May 11, 2015, in Chicago, Illinois. 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 subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a) of the Act.
- 2) The Petitioner is a labor organization within the meaning of Section 3(i) of the Act.
- 3) The petitioned-for employees' principal work is substantially different than that of their subordinates.
- 4) If any of the petitioned-for employees are found to be public employees, the petitioned-for unit is an appropriate unit for bargaining.
- 5) The petitioned-for employees are not managerial or confidential as defined by Section 3 of the Act.

**II. Issue and Contentions**

At issue is whether the petitioned-for employees are supervisors under Section 3(r) of the Act.

The Employer claims that the petitioned-for employees use independent judgment when they perform the supervisory functions of directing, hiring and promoting their subordinates. The petitioned-for employees direct their subordinates when they assign work to their subordinates, inspect their subordinates' work, evaluate employees, assign overtime in emergency situations, and approve time off without input from their supervisor. The Employer asserts that the petitioned-for employees also have the authority to hire and promote employees, they make recommendations that are almost always followed, and their supervisor is usually not involved in the process of selecting candidates or conducting the interviews. The Employer contends that the

petitioned-for spend a preponderance of their time, whether measured quantitatively or qualitatively, performing supervisory duties.

The Petitioner claims that the petitioned-for employees do not direct, hire or promote their subordinates with independent judgment. Every hiring or promotion recommendation they make travels up multiple levels of management before it reaches the decision maker and the recommendations have been rejected in the past. The Petitioner alleges that the direction provided by the petitioned-for employees does not require the exercise of independent judgment. Moreover, because the petitioned-for employees spend less than one hour per day with their subordinates, they do not spend a preponderance of their time performing these duties.

### **III. Facts**

There are six employees in the petitioned-for unit. All four Highway Maintenance Supervisors (HMS), one Grounds Maintenance Supervisor (GMS) and one Vehicle Maintenance Supervisor (VMS) (collectively referred to as Supervisors<sup>1</sup>) report to the Manager of Highway Operations, John Kawka, in the Maintenance Section within the County's Division of Transportation (DOT). Kawka reports to the Director of Transportation and County Engineer, Christopher Snyder. The Maintenance Section has approximately 67 employees below the Supervisors in the job titles of Crew Leader, Equipment Operator I and II, Heavy Equipment Mechanic, Automotive Mechanic, Laborer, Senior Grounds Maintenance Leader and Grounds Maintenance Worker. The Petitioner represents these subordinate employees in a bargaining unit (subordinate employees' unit) with a collective bargaining agreement (Agreement) that is effective from December 1, 2011, to November 30, 2015. This Agreement is the parties' first collective bargaining agreement covering these employees. Fifty of the employees in the

---

<sup>1</sup> Here, I am not using the term "supervisor" as it is used in Section 3(r) of the Act. I am using that term because all of the petitioned-for employees' job titles include the word "supervisor."

subordinate employees' unit report to the four HMS's,<sup>2</sup> six employees report to the GMS and eleven employees report to the VMS. The HMS's and GMS offices are located in the garage where most of their subordinates report for work in the morning. The VMS' office is located in the shop where his subordinates work.

Twice a year, the HMS's meet to determine their subordinates' job assignments for the upcoming season. During these meetings, the HMS's produce a worksheet with job assignments for all of their subordinates. The seasonal worksheet dictates the subordinates' job assignments for that current season, and assigns each employee a specific job or role on the crew. Job assignments do change during the season for various reasons. The HMS's might change the job assignments on any given day to adjust for weather or the absence of a subordinate. The HMS's also move employees from one crew to another to prioritize a certain project, and they do so about once or twice a month. In these situations, all four HMS's and Kawka discuss the change and make the decision together. One other way that HMS's change job assignments is by moving employees from one crew to another during the work day. The only other time that job assignments are changed is if the Crew Leaders trade employees at the beginning of the day.

Every morning, the HMS's have a morning meeting with their subordinates to discuss job assignments for the day. The HMS's give their respective subordinates their job assignments for that day and discuss any changes that have been made. Because the daily worksheet usually dictates the job assignments, there is not much to discuss and this meeting takes between 5 and 15 minutes. During the day, the HMS's stay at their offices in the garage while their subordinates go out to perform their jobs. Most days, the HMS's check on one or more of the crews out in the field. They occasionally make a trip specifically to check a crew and other times they drop in to

---

<sup>2</sup> Three of the HMS's oversee groups of 12 subordinates while the fourth HMS oversees a group of 14 subordinates.

observe a crew if they are in the area. When an HMS is out at a job site, he can and does direct his subordinates on how to perform their jobs. When the HMS is not out at a job site, the Crew Leader has this same authority and performs this duty. The rest of the day, the HMS's complete paperwork related to billing and purchasing for their projects, communicate with employees from other departments about work that needs to be done and schedule and prioritize projects.

The GMS and VMS assign and review their subordinates' work in a similar manner as the HMS's. The GMS also assigns regular jobs to his subordinates twice a year and these assignments usually stay the same. The GMS' morning meeting with his subordinates to review job assignments usually does not take very long because the assignments are almost always the same. The GMS can assign his subordinates many different jobs and is only restrained by the fact that certain employees have a license to apply pesticides while some do not. The GMS is responsible for meeting with department heads out in the field to discuss problems that the grounds crew can resolve. He usually attends one or more meetings of this nature per day. He checks in on his subordinates to review their work in the morning and again in the afternoon. The rest of the day, the GMS is back at his office in the garage reviewing work requests from other departments and completing paperwork related to billing and purchasing for his projects.

The VMS meets with his subordinate Crew Leaders and Mechanics for about 10 to 15 minutes at the beginning of the day to discuss work to be done that day and any new maintenance requests. After that meeting, the Crew Leaders distribute work to the Mechanics. The VMS does not work on vehicles himself or observe his subordinates' work during the day unless he passes by them in the shop. The VMS maintains the parts stockroom by ordering parts for current and future jobs and he is in charge of billing and purchasing for these parts. The VMS prices out every maintenance request to determine whether there is enough money in the budget

to perform the work. He also prioritizes maintenance requests with Sheriff's Department cars always getting highest priority and snow removal vehicles getting a higher priority during the winter. He spends the vast majority of his day in his office performing these duties.

The Supervisors are involved in disciplinary decisions in several ways. There is an objective point system for discipline based on tardiness or absenteeism and discipline for any other reason is at the discretion of the petitioned-for employees and their supervisors. In the case of possible discipline for anything other than tardiness or absenteeism, the Supervisor is in charge of identifying a possible issue and bringing it to Kawka's attention. If the subordinate employee files a grievance, the Supervisor is present at the Step 1 grievance meeting. Kawka conducts these hearings and makes the decision to deny or accept the grievance. The Supervisors do not have the authority to independently adjust the grievance or make the decision to deny or accept it. This system has been in place since the Board certified the Petitioner as the representative of the subordinate employees' unit in 2011.

Since this disciplinary system has been in place, the HMS's have issued discipline on a discretionary basis seven times. Out of these seven instances, Kawka chose to alter a recommendation one time. In that case, HMS Jason Walsh recommended that a subordinate be discharged for damaging property in the garage while operating a vehicle. The Employer did not follow this recommendation and issued a written reprimand instead. On another occasion, informally Walsh told Kawka that he wanted to discipline a subordinate who did not report to work during a snow event, because that employee had a pattern of missing work. Kawka declined to pursue any discipline and told Walsh to "let it go."

The GMS testified that he has not made any disciplinary recommendations during this time period.

Kawka testified that the VMS recommended that a subordinate receive harsher punishment than the punishment that employee ultimately received. The record does not include any more evidence regarding the GMS or VMS authority to make recommendations regarding discipline for one of their subordinates. However, the record suggests that they have the same authority as the HMS's.

The Supervisors present written discipline to their subordinates with the Supervisor's name and signature. Even in the situations where the HMS's recommendations were altered, the same disciplinary letter was issued with the HMS' name and signature on it. When a Supervisor brings an issue to Kawka's attention, he decides whether to proceed. If so, Kawka, somebody from the Human Resources Department (HR), and an HMS conduct an interview with the employee. During this interview, Kawka and the HR employee ask questions but the HMS does not. After this interview, the HMS makes a formal recommendation to Kawka. Kawka, Snyder and HR decide whether to follow the HMS' recommendation or adjust it and issue more or less severe discipline. Although it has not happened before, the record suggests that Kawka, Snyder and HR can decide to issue no discipline at all. The final written discipline is given to the HMS who signs it and presents it to the employee being disciplined.

The Supervisors are involved in hiring and promoting and make recommendations regarding the same to their superiors.<sup>3</sup> When a job opening is posted, HR collects all of the completed applications and sends them to the HMS's. Together, the four HMS's decide which candidates they want to interview and inform HR of their choices. HR decides which candidates from the HMS' list are qualified for the job and give the HMS's permission to interview them. HR often tells the HMS's that their list of the candidates is too long and there can not possibly be that

---

<sup>3</sup> The record does not include evidence of the GMS or VMS making recommendations regarding hiring or promoting. However, the record suggests that they have the same authority as the HMS's.

many qualified candidates. In those cases, the HMS's must submit a shortened list of candidates. The interview is usually conducted by two employees from HR and one or two HMS's. Kawka had participated in several interviews recent to the hearing, but he does not usually participate. In the interview, the HMS's and HR employees ask the candidate questions from a list prepared by HR. The HMS's are not allowed to ask any other questions. The HMS's also speak to the candidate in order to give him or her an idea of what the job entails. The interview process is the same for interviews for promotions with the only major difference being that the HMS's spend less time spent explaining the job to an internal applicant because that employee is already familiar with the job. Walsh testified that he has participated in around 40 interviews for temporary employees and 12 interviews for full-time job openings.

After the interviews, the HMS's rank the candidates and discuss their rankings. Based on their rankings, the HMS's make a recommendation to Kawka who submits it to HR where they conduct a background check. As long as the candidate passes the background check, HR submits the hiring recommendation to the County Board for approval. All hiring decisions are formally made by the County Board. Walsh testified that only one of his hiring recommendations has not been followed and all of his promotion recommendations have been followed.

The Supervisors complete yearly performance evaluations for their subordinates. The Supervisors submit these performance evaluations to Kawka who reviews them and then submits them to HR. Under the Employer's policy, these performance evaluations determined whether an employee would receive a merit pay increase in 2014 and 2015. The successor collective bargaining agreement for the subordinate employees that became effective on December 1, 2015 does not include language regarding merit pay increases so this system will not continue. Performance evaluations are consulted when deciding whether or not to promote an employee,

and this policy will continue. Kawka has never changed the overall score in a performance evaluation. However, Kawka has directed the HMS's to change three or four evaluations to add a recent behavioral incident and to clarify language so that it makes sense to somebody who does not have experience as a mechanic, heavy equipment operator or groundskeeper. HR also sent a group of evaluations back to the HMS's because some sections were blank and needed to be completed. In 2011 or 2012, the Employer directed GMS Keith Fuchs to change the score on the evaluation for one of his subordinates because the score was too high.<sup>4</sup> It is not clear exactly how many evaluations the petitioned-for employees have completed. However, evaluations are done every year so it is safe to assume that, between the six Supervisors, they complete 67 evaluations each year.

The Supervisors make decisions regarding their subordinates' overtime in some situations. They approve emergency overtime for their subordinates, but Kawka must approve any non-emergency overtime or continuance of the work day. Throughout the year, the Supervisors assign overtime from a rotating list and are not authorized to deviate from the list. In the non-winter months, a subordinate may refuse to accept overtime. In that case, the Supervisor assigns overtime to the next employee on the list. During the winter, overtime is mandatory.

The Supervisors also approve time off requests from their subordinates and apply different standards based on the season. In the winter, the Agreement states that only two to four employees in the subordinate employees' unit may be off work at the same time. Therefore, during the winter, the Supervisors can and do deny time off requests from one of their subordinates if it would result in more than four employees being off work at the same time. During the rest of the year, the Supervisors routinely approve time off requests and only deny

---

<sup>4</sup> This yearly evaluation did not affect the employee's pay because it occurred before performance evaluations were used to determine whether an employee would receive a merit pay increase.

them if the employee does not have enough time available to cover his absence. Additionally, the Supervisors do not have the authority to approve time off requests for more than two weeks off. These requests must be approved by Kawka.

Kawka prepared a table depicting his version of a “perfect day,” listing the job duty and percentage of time spent performing that task for all of the tasks performed by the HMS’s, VMS and FMS. The Employer presented Kawka’s table to show that the HMS’s spend 25-30% of their time assigning work to their subordinates. Kawka estimated that the GMS spends about 20% of his time assigning work, checking the grounds and overseeing his subordinates’ work in the field. Finally, Kawka determined that the VMS spends 15% of his time in the non-winter months assigning work and meeting with his subordinates to review their work and as much as 30% of his time in the winter months performing these tasks.

However, HMS Walsh testified that he spends about 5 minutes performing the tasks that Kawka estimates account for 25-30% of his day. Kawka’s table does not account for the time the HMS’s spend directing their subordinates out in the field. Walsh testified that he spends about one hour per day visiting job sites to observe his subordinates’ work and, if necessary, provide instruction. GMS Fuchs testified that he spends around 5 minutes assigning work and 30 minutes reviewing work. FMS, Chuck Curcio, testified that he spends about 10 to 15 minutes assigning work in the morning and sees his subordinates less than one hour per day. The petitioned-for employees are in the best position to determine what they do and how much time they spend doing it. Therefore, I credit the petitioned-for employees’ estimates.

#### IV. Discussion and Analysis

The Employer argues that the HMS, GMS and VMS are supervisors within the meaning of Section 3(r) of the Act.<sup>5</sup> Under Section 3(r), employees are supervisors if they (1) perform principal work substantially different from that of their subordinates; (2) have the authority, in the interest of the employer, to perform any of the enumerated supervisory functions; (3) consistently use independent judgment in performing those functions; and (4) spend a preponderance of their time exercising that authority. Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. and Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 515 (1992).

As the party asserting the statutory exclusion, the Employer has the burden to prove, by a preponderance of the evidence, that the petitioned-for employees are supervisors. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003). The Employer “cannot satisfy its burden by relying on vague, generalized testimony.” State of Ill. Dep’t of Cent. Mgmt. Servs., 26 PERI ¶ 116 (IL LRB-SP 2010). Rather, it must “support its arguments with specific examples of the alleged supervisory, managerial, or confidential status.” Id.

---

<sup>5</sup> Section 3(r) of the Act states:

“Supervisor” is an employee whose principal work is substantially different from that of his or her subordinates and who has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising that authority.

### **A. Principal Work Requirement**

If the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different, the principal work requirement is satisfied. Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). If not, the Employer can satisfy this prong where it is determined that the “nature and essence” of the alleged supervisor’s principal work is substantially different than the “nature and essence” of his or her subordinates’ principal work. Id.

Here, the parties stipulated that the petitioned-for employees’ principal work is substantially different than that of their subordinates. Therefore, the principal work requirement is satisfied.

### **B. Supervisory Indicia and Independent Judgment**

To fulfill the second and third prongs of the Act’s supervisory definition, the Employer must establish that the Supervisors have the authority to perform or effectively recommend any of the 11 supervisory functions listed in the Act, and exercise independent judgment when doing so. Vill. of Bolingbrook, 19 PERI ¶ 125. In order to rise to the level of supervisory authority, an alleged supervisor must exercise significant discretionary authority which affects the terms and conditions of his subordinates’ employment. Vill. of Broadview v. Ill. Labor Relations Bd., 402 Ill. App. 3d 503, 510 (1st Dist. 2010) *citing* Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999) and Chief Judge of the Circuit Court of Cook Cnty., 9 PERI ¶ 2033 (IL SLRB 1993).

A decision requires independent judgment when it involves a choice between two or more significant courses of action. Vill. of Bolingbrook, 19 PERI ¶ 125. Decisions that are “routine or clerical in nature or made on the basis of the alleged supervisor’s superior skill, experience, or knowledge” are not indicative of independent judgment. Id. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 532 (1990) (employees’ decisions “derived from their

superior skill, experience and technical expertise... [do] not require the use of independent judgment ‘in the interest of the employer’ as required by the statute.).

An effective recommendation satisfying the Act’s supervisor requirements is one that is almost always adopted by the employee’s supervisor. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., State Panel, 2011 IL App (4th) 090966. 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.” State of Ill. Dep’t of Cent. Mgmt. Serv. (Ill. Commerce Comm’n) v. Ill. Labor Relations Bd., State Panel, 406 Ill. App. 3d 766, 777 (4th Dist (2010)).

1. Direct

“The term ‘direct’ encompasses a number of distinct, yet related, functions when reviewing and monitoring work activities, scheduling work hours, approving time off and overtime, assigning duties, and formally evaluating employees’ pay and employment status.” Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013) *citing* Ill. Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 382 Ill. App. 3d 208, 224 (4th Dist. 2008). However, in order to qualify for “supervisory authority to direct” within the meaning of the Act, an alleged supervisor’s responsibilities must involve significant discretionary authority to affect his or her subordinates’ terms and conditions of employment.” Id.

*a. Review*

A superior’s oversight and review of a subordinate’s work constitutes the statutory authority to direct if the superior is responsible for his or her subordinate’s work. Cnty. of Lake and Sheriff of Lake Cnty., 16 PERI ¶ 2036 (IL LRB-SP 2000). That responsibility must involve

more than merely observing and monitoring subordinates, or being responsible for the operation of a shift. Id. Rather, the supervisor is required to be actively involved in checking, correcting, and giving instructions to subordinates, without guidelines or review by others. City of Lincoln, 5 PERI ¶ 2041 (IL SLRB 1988); State of Ill. Dep't of Cent. Mgmt. Servs., 4 PERI ¶ 2013 (IL SLRB 1988); City of Chicago, 10 PERI ¶ 3017 (IL LLRB 1994). However, an employee relying on his or her skills as an engineer and knowledge of federal standards, rather than implementing employer policies, when reviewing subordinates' work is not using supervisory authority. State of Ill. Dep't. of Cent. Mgmt. Servs., 26 PERI ¶ 131 (IL LRB-SP 2010).

Here, the HMS's inspect and correct their subordinates' work out in the field. They occasionally make trips to a job site for the express purpose of inspecting the work and other times stop by job sites to inspect work if they are in the general area. The GMS usually checks on his subordinates' work in the morning and again in the afternoon. The VMS works in the same shop as his subordinates, so he has the opportunity to observe their work whenever he is walking around the shop. While there are Crew Leaders directly subordinate to the HMS's and the VMS who immediately review work, all of the Supervisors are in charge of making sure that their subordinates' work is done correctly, and they review their subordinates' work to ensure this is happening. Moreover, when at a job, the Supervisors can and do direct their subordinates how to perform their work.

The Petitioner claims that the Supervisors' authority to review their subordinates' work is based on their greater skill and experience. All of the Supervisors have previously done some of the work currently performed by their subordinates and were promoted to their current jobs because they excelled at that work for many years. However, the exception that the Petitioner cites applies to situations where the petitioned-for employee follows policies other than that of

the employer when making decisions. State of Ill. Dep't. of Cent. Mgmt. Servs., 26 PERI ¶ 131; Vill. of Bolingbrook, 19 PERI ¶ 125. In these cited cases, the petitioned-for employee followed federal standards rather than the employer's policies. Here, the Supervisors implement the Employer's policies. Therefore, they possess the authority to review their subordinate employees' work with independent judgment under the Act.

*b. Assign work*

Where an alleged supervisor 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,” he or she exercises independent judgment in assigning work.” Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) *citing* County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999).

Here, the HMS's and GMS assign regular tasks to their subordinates twice a year and consider these factors when they make the assignments. The VMS, with the help of his Crew Leaders, assigns work to his subordinates as maintenance requests come in. Additionally, the Supervisors have occasion to change their subordinates' work assignments during the day or from one day to the next. The Supervisors also have occasion to choose which one of their subordinates will respond to an emergency call. Therefore, the Supervisors possess the authority to assign work to their subordinates with independent judgment under the Act.

*c. Assign overtime*

Where an alleged supervisor 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,” he or she exercises independent judgment in assigning work.”

Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) *citing* County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999).

Here, subordinates receive overtime on a rotating basis, and the Supervisors do not use independent judgment to make the decision in these situations. On some occasions, the HMS's recommend assigning overtime to their subordinates to extend the work day in order to finish a job.<sup>6</sup> Kawka must approve these recommendations, but the record suggests that these recommendations occur infrequently and he routinely approves them. Therefore, the Supervisors possess the authority to assign overtime to their subordinates with independent judgment under the Act.

*d. Approve time off*

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 judgement and is not of a mere routine or clerical nature. *See* Vill. of Morton Grove, 23 PERI ¶ 72 (IL LRB-SP 2010) *citing* City of Carbondale, 3 PERI ¶ 2044 (IL SLRB 1987).

During the non-winter months, the Supervisors approve their subordinates' time off requests on a routine basis and only deny the request if the employee does not have enough time to take. During the winter, the subordinates' Agreement states that between two to four employees may be off at any given time. The Supervisors have the authority to deny time off requests in the winter if it would result in more than four of their subordinates being off work at the same time. The HMS's have done this in the past.<sup>7</sup> When a Supervisor denies a subordinate's

---

<sup>6</sup> The record does not contain evidence showing that the other petitioned-for employees have also recommended assigning overtime to their subordinates to extend a day in order to finish a job. However, the record does show that all of the petitioned-for employees have this authority.

<sup>7</sup> *See* footnote 6.

time off request in the winter, the decision is still routine. The record does not contain evidence that the Supervisors have the authority to do anything more than deny the time off request of the fifth subordinate. In both cases where a subordinate requests time off, the Supervisors perform a routine check and apply the rules found in the Agreement. Therefore, they do not possess the authority to approve time off with independent judgment under the Act.

*e. Evaluate performance*

Evaluating a subordinate's work performance is evidence of supervisory authority to direct if the evaluation is used to affect an employee's pay or employment status. Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013). The Supervisors evaluate their subordinates' job performance by way of written performance evaluations. Therefore, if the performance evaluations can affect terms and conditions of employment, then the Supervisors satisfy the supervisory function of evaluating. In 2014 and 2015, the Employer considered these evaluations when granting merit pay increases, but this practice ended after 2015 and the subordinate employees' successor collective bargaining agreement does not include any reference to this policy. Even when these performance evaluations were used to affect the subordinates' pay, they were occasionally altered by Kawka or HR. These changes ranged in substance from a direction to change some of the language so that a person who was not familiar with the jobs could understand it to an order to change the score in the evaluation. Therefore, I find that the Supervisors do not exercise independent judgment when evaluating their subordinates' performance.

Moreover, the record does not show that the Supervisors' recommendations regarding evaluations are effective. In fact, these recommendations are occasionally substantively altered.

Therefore, they do not have the authority to evaluate their subordinates' performance with independent judgment under the Act.

## 2. Discipline

The supervisory authority to discipline employees can be established by the authority to give oral reprimands and does not require the authority to impose more severe discipline. State of Ill. (CMS) and Ill. Fed'n of Public School Employees, Local 4408, 12 PERI ¶ 2032 (IL SLRB 1996). 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 Relations Bd., 362 Ill. App. 3d 469, 478-9 (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).

The Supervisors do not make recommendations for discipline based on tardiness or absenteeism, because the Agreement dictates discipline by a strict points system. For discipline for any other reason the Supervisors bring the matter to Kawka's attention, attend the investigatory interview and make a recommendation to Kawka and an employee from HR. However their recommendations are not always followed. Ultimately, Kawka, Snyder and HR decide how severely an employee should be disciplined. The Supervisor's role is to identify disciplinary problems and bring them to Kawka's attention. Kawka has the authority to refuse to proceed in the disciplinary process and he has exercised this authority once. The two times Kawka issued a lower level of discipline than the Supervisor recommended, he did so based on

his assessment of what happened and issued the level of discipline he felt was appropriate, despite the Supervisor's recommendation. In eight instances of discretionary discipline, Kawka altered an HMS' recommendation once, altered the VMS' recommendation once, and declined to issue any discipline on a third occasion. The record shows that the Supervisors use independent judgment when recommending discipline for their subordinates but that the final decision is based on Kawka's independent judgment. The record reveals that the Supervisors' recommendations are not effective because they do not almost always persuade Kawka. Therefore, they do not have the authority to discipline their subordinates with independent judgment under the Act.

### 3. Hire and promote

The Employer does not contend that the Supervisors have the authority to hire or promote but that they make effective recommendations. However, decisions reached by consensus are not evidence of supervisory authority within the meaning of the Act. Cnty. of Lake, 16 PERI ¶ 2036. If an individual participates in a committee which includes his or her supervisors, his or her recommendation is not "effective" within the meaning of the Act. County of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); State of Ill. Dep't of Cent. Mgmt. Servs. and Children and Family Services, 8 PERI ¶ 2037 (IL SLRB 1992), *aff'd* 249 Ill. App. 3d 740, 619 N.E. 2d 239 (1993); Vill. of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990), *aff'd* 221 Ill. App. 3d 47, N.E. 2d 824 (1991).

In cases of new hires and promotions, the Supervisors participate in an interview with employees from HR and occasionally Kawka. After the interview, they meet with Kawka and discuss the candidates. The Supervisors make a recommendation to Kawka, but he ultimately decides what to tell HR. Regardless of whether Kawka agrees or disagrees with the Supervisor's

recommendation, he and the Supervisors talk about it during that meeting. In these post-interview meetings with Kawka, each Supervisor does more than just present him with a recommendation of who to hire. Kawka and the Supervisor collaboratively discuss the merits of the candidates. These meetings produce a consensus, although ultimately on Kawka's terms, of who to hire. Therefore, the Supervisors do not have the authority to hire or promote with independent judgment under the Act.

### **C. Preponderance Requirement**

The fourth prong of the Act's definition of a supervisor requires that the alleged supervisor spend more time on supervisory functions than any one non-supervisory function. City of Freeport, 135 Ill. 2d at 533. Following City of Freeport, the Fourth District of the Illinois Appellate Court created two different tests for determining whether the preponderance standard has been met. The first test looks at a quantitative measure; it requires the alleged supervisor to spend more than 50% of his or her time engaged in supervisory duties. Dep't of Cent. Mgmt. Servs. v. Illinois State Labor Relations Bd., 249 Ill. App. 3d 740, 746-7 (4th Dist. 1993). The second test is a qualitative test, focusing on the significance of the supervisory duties rather than on the time spent performing specific functions. Dep't of Cent. Mgmt. Servs. v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 85-87 (4th Dist. 1996). Regardless of the test used, the Employer must support its argument with specific examples and conclusory testimony is insufficient. State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶ 116; See also State of Ill., Dep't of Cent. Mgmt. Servs., (EPA, DPH, DHS, DCEA), 26 PERI ¶ 155 (IL LRB-SP 2011).

Here, as discussed above, I find that all of the Supervisors engage in the supervisory task of directing their subordinates by assigning their work, reviewing their work and approving overtime in emergency situations. The HMS's and GMS assign regular duties to their

subordinates twice a year and occasionally when a need arises. The VMS assigns duties to his subordinates as well. All of the Supervisors review their subordinates' work whenever they have a chance to observe it. The HMS's usually visit job sites daily for the express purpose of reviewing work. Based on the petitioned-for employees' own testimony, the HMS's spend about 5 minutes assigning job duties and one hour reviewing work. The GMS spends around 5 minutes assigning job duties and 30 minutes reviewing work. The VMS spends 10 to 15 minutes assigning work and less than one hour reviewing work. I credited the petitioned-for employees' estimates and found that they spend this amount of time performing these duties. Therefore, quantitatively, the Supervisors do not spend a preponderance of their time engaging in supervisory job duties.

The Employer does not identify the most important job duty of the HMS, GMS or VMS, and only asserts that they spend more time engaging in supervisory activities than non-supervisory activities. The Petitioner also does not present an argument regarding the importance of the Supervisors' job duties. Regarding the qualitative test, the Illinois Appellate Court stated that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions. Dep't of Cent. Mgmt. Servs. v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 86. In this case, the Supervisors would satisfy the preponderance requirement if their duties assigning and reviewing their subordinates' work are more significant than their other duties.

While all of the Supervisors perform supervisory job duties, they also perform important job duties that are not supervisory. The Supervisors' most important job duties are all related to the general duty of overseeing their section within the Division of Transportation. They process billing and purchasing, communicate with employees from other departments regarding work

requests, prioritize work requests, schedule work and maintain the parts stock room in the VMS' case. None of the Supervisors' subordinates have the authority to perform these functions. However, the HMS's and VMS have Crew Leaders below them who also regularly perform the same supervisory functions that they perform. The Employer's Division of Transportation operates so that the Highway, Grounds and Fleet sections each control their own work. The Division of Transportation, and the Employer in general, can only function if the Supervisors oversee their sections, so this must be their most important function. Therefore, qualitatively, the Supervisors do not spend a preponderance of their time engaging in supervisory job duties.

**V. CONCLUSIONS OF LAW**

The Highway Maintenance Supervisors, Grounds Maintenance Supervisor and Vehicle Maintenance Supervisor are not supervisors within the meaning of Section 3(r) of the Act.

**VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the International Union of Operating Engineers, Local 150 shall be certified as the exclusive representative for the following bargaining unit:

INCLUDED: All full time and regular part time employees in the job titles of Highway Maintenance Supervisor, Grounds Maintenance Supervisor and Vehicle Maintenance Supervisor.

EXCLUDED: Any and all other employees.

**VII. EXCEPTIONS**

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may

include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The 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. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

**Issued at Chicago, Illinois, this 10<sup>th</sup> day of February, 2016.**

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

A handwritten signature in cursive script, appearing to read "Thomas Allen", is written over a horizontal line.

**Thomas Allen**

**Administrative Law Judge**