STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

County, Municipal Employees', Supervisors and Foremen's Union, Local 1001, LIUNA, AFL-CIO,	)	
Petitioner	)	
and	)	Case No. L-RC-10-011
City of Chicago, Department of Aviation,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On November 6, 2009, County, Municipal Employees', Supervisors and Foremen's Union, Local 1001, LIUNA, AFL-CIO (Union) filed a majority interest petition in Case No. L-RC-10-011 with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010) *as amended* (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). This petition seeks to add the title of shift supervisor of aviation security or lieutenant (lieutenant or lieutenants) at the City of Chicago, Department of Aviation (City or Employer) to a proposed bargaining unit comprised only of lieutenants.

A hearing was held on April 14 and 15, 2010, before Administrative Law Judge Colleen Harvey at the Board's offices in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, introduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. On or about August 9, 2011, the Illinois Council of Police filed a petition of intervention in representation proceeding with the Board, seeking an election to determine which union would represent the employees at issue. After full

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

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 5(a) and 20(b) of the Act.
2. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.
3. The parties stipulate, and I find, that the Employer is a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate, and I find, that the Employer is a local government subject to the jurisdiction of the Board's local panel pursuant to Section 5(b) and 20(b) of the Act.
5. The parties stipulate, and I find, that there is no history of collective bargaining involving the petitioned-for employees.
6. The parties stipulate, and I find, that at the time of hearing, the Board's decision certifying the Illinois Council of Police as the exclusive bargaining representative of the Aviation Security Sergeants, as reported in City of Chicago, 25 PERI 77 (IL LRB-LP 2009), had been appealed and was under review in the Illinois Appellate Court

II. ISSUES AND CONTENTIONS

The central issues to be resolved are whether the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act and whether the petition for a unit is appropriate under Section 9(b) of the Act. The Employer contends that these employees are supervisors

within the meaning of the Act and therefore are not public employees under the Act. The Union contends that the record does not support the Employer's contention and that the petitioned-for employees are public employees as defined by the Act. Moreover, the Employer contends that the only appropriate bargaining unit for these employees is the City's existing Unit 2 and that placing them in a separate unit would lead to improper fragmentation. The Union contends that a bargaining unit within its structure is appropriate given other City employees already represented by the Union.

III. FINDINGS OF FACT

The Chicago Department of Aviation, Safety and Security Division, is responsible for access control, traffic enforcement, and security access control identification badge enforcement for both Midway International Airport and O'Hare International Airport. In terms of the organizational structure, the lowest level Department security position at the airports is the Aviation Security Officer ("ASO"), followed in increasing rank by the Aviation Security Sergeant ("sergeant"), and finally by the Shift Supervisor of Aviation Security. The shift supervisor position is commonly known as the "lieutenant."

The lieutenants report directly to the Deputy Commissioner in charge of the Security Division, who, at the time of hearing, was Joseph O'Connor. The Department previously had the title of Assistant Commissioner at both airports, and the lieutenants were directly subordinate to that position.[1] However, at the time of hearing, that position over the security staff was not filled at either airport, and the lieutenants are the highest-ranking security official of the Department in

[1] From the organizational chart and from testimony, it appears that one employee, Paulette White, does hold the title of Assistant Commissioner. However, this particular position is responsible for identification badges and compliance at both airports and does not directly supervise the lieutenants. Of the two Assistant Commissioner positions that are organizationally above the lieutenants, one was eliminated and the other was vacant.

that chain of command who are permanently stationed at each airport. The ASOs are subordinate to the sergeants, and both full-time and part-time ASOs, as well as the sergeants, are subordinates of the lieutenants. The ASOs, sergeants, and lieutenants are all required to be certified law enforcement officers or to complete law enforcement training and certification to meet the standards set by the Illinois Law Enforcement Officers' Training Board.

The primary function of ASOs is to provide access control at the perimeter of each airfield at fixed posts. The ASOs are also stationed at mobile posts in terminals to patrol check points, and they conduct mobile patrols of the airfield for enforcement activities. The ASOs are represented by the City's Unit 2 bargaining unit. Sergeants are normally assigned to a vehicle, and they patrol and monitor the ASOs at their posts and beats around the airport and airfield. Sergeants are represented by the Illinois Council of Police.[2] The three ranks are differentiated by uniform. ASOs wear a blue shirt, sergeants wear a white shirt with chevrons on the sleeves, and lieutenants wear a white shirt with metal bars on the collars. Most lieutenants are former sergeants that have been promoted within the department. At the time of hearing, there were approximately 202 ASOs, approximately 19 sergeants, and approximately nine lieutenants.

There are three eight-hour shifts, each with a half hour roll call prior to the shift, for a total of 8.5 hours on each shift. One lieutenant on each shift, or watch, serves as the Watch Commander. The watch commander position must be filled on each watch.[3] The watch commanders have access to a private, dedicated office from which they can conduct their administrative duties. The watch commander is responsible for the overall security posture of the airport on each watch. If two lieutenants work the same shift, one lieutenant serves as the

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[2] At the time of the hearing in this case, the certification of ICOP as the representative of the sergeants was on appeal in the Illinois Appellate Court. Subsequently, the certification was upheld by the court in Illinois Council of Police v. ILRB, 404 Ill. App. 3d 589 (1st Dist. 2010).

[3] Occasionally, sergeants are authorized to "act up" in the capacity of watch commander if no lieutenant is able to be assigned to that particular shift.

field lieutenant, patrolling and monitoring the work of the subordinate sergeants and/or officers. The field lieutenant, when one is assigned, is primarily assigned to the field and oversees and monitors the activities of the sergeants and ASOs on the airfield.[4] At the time of hearing, there was only one field lieutenant between the two airports.

Lieutenants are responsible for ensuring that they have the proper staff on duty and that they meet the compliance requirements of the federally mandated Airport Security Program. They maintain contact with ASOs and sergeants via radio and telephone throughout each watch. On a typical day, the lieutenant on a watch comes to work an hour prior to the start of the shift in order to prepare daily assignments and assess staffing levels for the day. A lieutenant may need to offer overtime in order to meet staffing requirements. The lieutenant serving as watch commander assigns the posts and beats for a given day to the ASOs and sergeants, and the lieutenant has discretion to assign particular ASOs or sergeants to posts and beats as he or she deems best. The lieutenant who testified at hearing, Lieutenant Johnson, testified that he rotates scheduling for the posts in order to maintain fairness and to keep the officers trained in the duties of all posts. The lieutenants receive information from the previous shift and disseminate information at roll call.

During the shift, Deputy Commissioner O'Connor stated that the lieutenants forecast scheduling, review time off requests, submit overtime reports, review and initiate disciplinary actions, and review reports regarding officers who may need access to the Employee Assistance Program – all functions he classified as "administrative" functions unique to lieutenants that sergeants would only perform if "acting up" as a watch commander. The watch commander is responsible for approving all time off for sergeants and ASOs. The lieutenants can offer

[4] The field lieutenant position is only used when more than one lieutenant is on a watch, as the watch commander capacity is mandatory.

overtime to ASOs presently working, call employees in for overtime, or mandate overtime, all in conjunction with the collective bargaining agreement governing the ASOs. Deputy Commissioner O'Connor testified that the lieutenants spend 80 percent of their time in the work day engaged in supervision and oversight of personnel and 20 percent on what he classified as "administrative" functions.

The lieutenants draft and issue memoranda regarding training and policy topics to their subordinates without review from their superiors. At the watch change, the watch commander briefs the incoming watch commander regarding the events of the shift and any special details or assignments. One of the lieutenants also instituted a roll call document that serves to disseminate information to all of the airport security personnel regarding assignments, beats, security updates, and breaks. The watch commander distributes reports on the activity of the sergeants, completes a daily strength report on staffing levels, and also completes a report to the communication center detailing the personnel assignments of the ASOs, sergeants, and watch commander. The watch commander may reassign tasks to different officers or sergeants in order to respond to particular issues that arise. Generally, lieutenants are responsible for reviewing and approving reports completed by their subordinates, including forms regarding notification of acting up, general case reports, field logs, and swipe correction request forms regarding timekeeping.

Lieutenants are also the first step in the grievance procedure for their subordinates and may respond to grievances at the direction of labor relations personnel. Lieutenant Johnson's testimony revealed that he has also directed a sergeant to respond to a particular grievance from an ASO.

Lieutenants conduct annual performance evaluations of the sergeants, which are then forwarded to the Deputy Commissioner or Managing Deputy Commissioner. According to O'Connor, these evaluations are very seldom changed. Lieutenants are also responsible for overseeing and approving any evaluations of ASOs that are performed by sergeants. If an employee scores below a 2.0 numerical score on an evaluation, that employee is not eligible for a merit increase and is placed on a performance plan that is completed by his or her supervisor. Lieutenants are responsible for recommending merit increases after evaluation for those subordinates who score a 2.0 or higher and for including supporting documentation to support their recommendations on this issue. O'Connor testified that these recommendations are normally accepted at his level, with only one exception that he noted where he disagreed with the lieutenant submitting the recommendation. In that exception, an employee had scored over a 2.0 but was not recommended for a merit increase. In that instance, the employee did ultimately receive an increase. Lieutenant Johnson also testified that he had taken the initiative to start the annual performance evaluation process while time was available to do so instead of waiting for evaluations to be due.

Lieutenants recognize subordinates at roll call for noteworthy performance, and they can submit a subordinate for department recognition for awards or commendations. They are responsible for forming details for special events at the airports, such as visiting dignitaries and press conferences. In terms of staffing levels, minimum staffing requirements are provided in policy in order to ensure compliance with the Airport Security Program. However, lieutenants have discretion to ensure proper staffing for special events, details, or the Passenger Assistance Program.

Lieutenants have a role in training subordinates. The watch commanders conduct a weekly training session with all sergeants on their watch, in addition to roll call training, regarding the collective bargaining agreement governing the ASOs and the Airport Security Program. They also provide individualized training or additional training sessions outside of roll call when needed. In roll call training, lieutenants may address policies and procedures, use of equipment, new equipment, and media relations. In one instance, a lieutenant provided training information via a roll call document regarding cell phone and police radio jamming devices. In another instance, a lieutenant provided information to subordinates and directed them on the use of biometric units. Lieutenants have also conducted drills for subordinates. Lieutenants are responsible for conducting uniform inspections of subordinates and making sure that the uniform policies are followed. A lieutenant may send a subordinate home if that individual is not fit for duty, whether because of an improper uniform or because of erratic or suspicious behavior.

O'Connor testified that the lieutenants are relied upon to use discretion in their duties to ensure compliance with the Airport Security Program and ensure appropriate coverage of the airport, because they bear the ultimate responsibility for the security posture of the airport while on duty. They are also representatives of the department when interacting with individuals regarding a dignitary visit, including the Secret Service and the President's advance team. They also attend meetings for airport tenants and serve as a representative of the department in interviews with potential candidates for hire. In terms of hiring, lieutenants have participated in the interview process as a member of the interview team and rate the performance of candidates They make recommendations for hire, and those recommendations have been accepted in the past.

The lieutenants are responsible for ensuring that sergeants and ASOs comply with department and city rules and regulations. To this end, lieutenants are charged with monitoring the activities of their subordinates and initiating discipline if necessary to correct violations. If lieutenants perceive a performance deficiency in a subordinate, they may offer that individual access to the Employee Assistance Program. They may also need to train that individual. Ultimately, if they determine that it is necessary, they may initiate progressive discipline. Lieutenants are authorized to do immediate training, oral counseling, and written reprimands. If a lieutenant believes a suspension or discharge is necessary, he or she recommends that action to labor relations and superiors. Lieutenants also participate in pre-disciplinary hearings. Normally, most infractions forwarded by lieutenants and on which they make a recommendation for discipline result in some form of discipline being issued to the employee at issue.

With regard to the appropriateness of the bargaining unit, the Employer solicited testimony from Donald J. O'Malley, the Director of Labor Relations for the City of Chicago. O'Malley testified that, prior to the Illinois Public Labor Relations Act being enacted, the City divided employees into five broad-based bargaining units, Units 1 through 5. These units were grouped based on community of interest, similar nature of work, and skill sets required for the job classifications, as well as how the employees in the unit work together. Unit 2 is comprised chiefly of non-sworn public safety City employees. The employees in Unit 2 are jointly represented by a coalition of two unions, SEIU and IBEW. The ASOs are currently represented by Unit 2, as are the Aviation Communications Operators in the Department of Aviation. The sergeants are represented by ICOP.. Mr. O'Malley testified that the benefits to the City of having job series represented by the same bargaining unit are clearer promotional paths through the

bidding process and similar discipline processes. The City's collective bargaining agreements do not provide for cross-bargaining unit promotional opportunities.

O'Malley testified that he does not believe that the lieutenants share a community of interest with other employees in Local 1001, because he stated that Local 1001 represents, for the most part, individuals who perform manual labor and their superiors. On cross-examination, O'Malley acknowledged that Local 1001 does represent employees in the titles of Airport Operations Supervisor, Airport Operations Supervisor 2, Assistant Chief of Airport Operations Supervisor, and Department of Aviation title Safety Specialist, along with administrative clerks, payroll clerks, and ward clerks.

IV. DISCUSSION AND ANALYSIS

The Employer asserts that the lieutenants are supervisors within the meaning of Section 3(r) of the Act.[5] Under that Section, petitioned-for 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 eleven 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. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d

[5] Section 3(r) of the Act states, in relevant part:

> "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, State supervisors notwithstanding. In addition, in determining supervisory status in police employment, rank shall not be determinative. The Board shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service law, ordinances, personnel codes, or Division 2.1 of Article 10 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status.

499, 512, 554 N.E.2d 155, 162 (1990); Village of New Lenox, 23 PERI ¶104 (IL LRB-SP 2007); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). The party which seeks to exclude an individual from a proposed bargaining unit has the burden of proving that statutory exclusion by a preponderance of the evidence. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

Principal Work Requirement

In determining whether the principal work requirement has been met, the initial consideration is whether the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Northwest Mosquito Abatement District, 13 PERI ¶2042 (IL SLRB 1997), aff'd. Northwest Mosquito Abatement Dist. v.Illinois State Labor Relations Board, 303 Ill. App. 3d 735, 708 N.E.2d 548 (1st Dist. 1999). If that work is obviously and visibly different, the principal work requirement is met. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162. However, in other cases, where the alleged supervisor performs functions facially similar to those of his or her subordinates, the Board has looked at what the alleged supervisor actually does to determine whether the "nature and essence" of his or her work is substantially different from that of his or her subordinates. See Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Village of Alsip, 2 PERI ¶2038 (IL SLRB 1986); City of Burbank, 1 PERI ¶2008 (IL SLRB 1985).

Although the lieutenants can and do perform some job duties that the sergeants and ASOs also perform in terms of patrol and security functions, their essential functions are substantially different from that of their subordinates. The lieutenants have responsibility for all employees on the shift and are ultimately responsible for ensuring that the security functions and overall

mission of the Department of Aviation at the airports are performed. They are also responsible for a variety of administrative and personnel duties that their subordinates do not regularly perform. Therefore, I find that the Employer has met the first prong of the supervisory test in that the lieutenants' principal work is substantially different from that of their subordinates.

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 eleven 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 exercise 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 County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007. An effective recommendation satisfying the Act's supervisor requirements is one that is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Illinois State Labor Relations Board, 167 Ill. App. 3d 284, 289, 521 N.E.2d 108, 112 (3rd Dist. 1988); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994); Village of Justice, 17 PERI ¶2007.

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[6] See City

[6] 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

of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); County of Union, 20 PERI ¶9 (IL LRB-SP 2003); Northern Illinois University (Department 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 Illinois, Department of Central Management Services (Department of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); County of Union, 20 PERI ¶9. Notwithstanding these considerations, a single indicium of supervisory authority (of eleven possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 529, 607 N.E.2d at 192. In this case, the evidence presented establishes that the lieutenants do perform more than one of the supervisory indicia using independent judgment.

i. Direct

The indicium "direct" includes 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.

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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. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB, 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 Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL SLRB 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999); City of 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. County of Cook, 28 PERI ¶85 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 25 PERI ¶186 (IL LRB-SP 2009).

In the instant case, the record demonstrates that the lieutenants perform the supervisory indicium of directing employees with independent judgment. It appears from the record that they perform most of these functions without consulting a supervisor in order to obtain approval or review. Ultimately, the lieutenants are responsible for ensuring that the work of the sergeants and ASOs is completed in compliance with federal, state, and city rules and regulations. They must decide the most effective way to assign the work of the sergeants and ASOs in order to accomplish this objective, and in doing so direct the work of subordinate employees. While the specific posts and staffing levels are mandated by City directive, the lieutenants are responsible for assigning posts to the sergeants and ASOs in accordance with their particular levels of experience and skills in order to provide the best security possible for the airfields. Indeed, where an employee considers "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 needs" without review by a supervisor, that employee engages in assigning work with independent judgment. County of Cook, 15 PERI ¶3022 (IL LLRB 1999). The record demonstrates that this is precisely the type of activity in which lieutenants engage with regard to assignment of work. Although Lieutenant Johnson alluded to a rotation as his method of

assignment, he went further, stating that the reason for this was to keep all employees trained in the various posts. Moreover, he stated that he did not know how other lieutenants did their scheduling. Even this testimony implies discretion as to how to schedule subordinates and the reasons for choosing a particular method. Therefore, it is evident that the lieutenants have and use discretion in assigning work.

Moreover, the lieutenants monitor, instruct, and assist their subordinates in the performance of their job duties. The record reflects that the lieutenants spend a large portion of their work time monitoring the sergeants and ASOs at their posts and beats. Testimony shows that the lieutenants assist their subordinates with their work, instruct subordinates on how to properly complete work or respond to particular situations, and monitor their work to ensure that they are performing it properly. The mere fact that the lieutenants are monitoring the work performance of their subordinates as measured against policies and procedures does not take away from the fact that they are exercising discretion and independent judgment when they instruct their subordinates, assist them in performing their duties, and monitor their work. Moreover, where a supervisor has an active role in "checking, correcting, and giving instructions to subordinates" and "assesses his subordinates' performance and behavior to ensure compliance with departmental norms," this is evidence of directing subordinates with independent judgment. County of Cook, 15 PERI ¶3022, citing City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). In addition, in the case of supervising sanitarians for the City of Chicago, the Board has found that reviewing subordinates' work and monitoring and instructing subordinates in the field are examples of directing the work of subordinates. City of Chicago (Department of Public Health), 17 PERI ¶3016 (IL LRB-LP 2001). The record reflects

that this is precisely the type of activity that the lieutenants engage in with regard to monitoring the work of their subordinates.

The lieutenants are responsible for approving time off requests for their subordinates, and they must evaluate projected staffing levels and operational needs in so doing. Moreover, as outlined by both O'Connor and Lieutenant Johnson, the lieutenants engage in substantial amounts of training of their subordinates. While the subject matter on which subordinates are to be trained is often determined by superiors of the lieutenants, this is not always the case, as indicated by Lieutenant Johnson's testimony regarding information included in roll call documents as well as his initiative in conducting drills.[7] Even when the subject matter is predetermined, lieutenants have authority and responsibility to format the training in such a way as to effectively and efficiently train their subordinates. In so doing, the lieutenants must exercise discretion and independent judgment in designing and executing training.

In addition, both O'Connor and Lieutenant Johnson testified that lieutenants are responsible for evaluation of subordinates. Testimony showed that these evaluations are normally accepted by the superiors of the lieutenants. Moreover, the lieutenants are responsible for reviewing and approving the sergeants' evaluations of the ASOs. The evidence shows that the lieutenants make decisions regarding evaluations using discretion and independent judgment, and that these decisions affect the employees' pay.

[7] Lieutenant Johnson's testimony revealed that he was responsible for conducting drills, at the minimum, at one post at the airfield. There was dispute between the parties about whether testimony about additional drills should be allowed on cross-examination by the Employer, and this information was ultimately disallowed by the ALJ. It appears that the testimony about drills that was allowed into evidence is just one small part of larger, consistent efforts to train subordinates. The additional information regarding drills offered by the Employer in its offer of proof, while helpful if accurate, would only further add to the determination that the lieutenants do engage in training of their subordinates with the requisite independent judgment. The Union filed a motion to strike portions of the Employer's post-hearing memorandum regarding the offer of proof on drills. I find no need to reach the question of whether the offer of proof should be considered as additional evidence of drills as the Employer has demonstrated that lieutenants engage in training.

The Union attempts to characterize the work of the lieutenants, as described in this section, as lacking independent judgment because the job functions of Aviation Security staff are determined by rule and policy. However, Lieutenants, as the highest ranking security official for the Department at each airport, take the above actions in the interest of their employer and to ensure the overall security of each airfield. They are ultimately responsible for enforcement of policy and procedure on behalf of the employer in order to ensure a secure airfield, and they must take actions to ensure that their subordinates are properly performing their work in order to accomplish this task. The fact that rules, procedures, and policies provide standards and guidelines does not render the lieutenants' work devoid of independent judgment and discretion, especially when they are serving as the highest ranking official of the department at their respective airfields. For the foregoing reasons, the Employer has demonstrated that the lieutenants direct subordinates using independent judgment and discretion as required by the Act.

ii. Discipline

Lieutenants have authority to discipline their subordinates if they perceive that an individual has a performance or behavioral deficiency. Lieutenants have discretion to determine if a subordinate's actions warrant referral to the Employee Assistance Program, or they can offer additional training to the subordinate. Where they deem it necessary, lieutenants may initiate progressive discipline. Lieutenants have authority to do immediate training, oral counseling, and written reprimands without review or approval. If a lieutenant believes a suspension or discharge is necessary, he or she recommends that action to labor relations and superiors in the Department. Lieutenants also participate in pre-disciplinary hearings. The record demonstrates that Lieutenants have initiated and issued discipline in the past. Normally, most infractions

forwarded by lieutenants and on which they make a recommendation for discipline result in some form of discipline being issued to the employee at issue.

The evidence shows that the lieutenants both discipline and make effective recommendations for discipline. They may issue discipline up to written reprimands without review. A recommendation is not ineffective "simply because it is not rubber-stamped." City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290 (3d Dist. 1988). Moreover, the fact that the specific level of discipline may not always remain the same does not render the recommendations ineffective so long as a form of discipline is imposed per the recommendation of the lieutenant. See City of Chicago (Department of Public Health), 17 PERI ¶3016. As the testimony indicates normally, when a lieutenant recommends discipline, some form of discipline is issued to the subordinate, making these recommendations effective.

iii. Reward

Although the Union attempts to characterize the evaluation process as distinct from the requirement that an employee who receives above a 2.0 rating is eligible for a merit increase, the two are inextricably linked. By evaluating subordinates, lieutenants have direct ability to affect whether subordinates receive merit increases. Testimony from O'Connor and Lieutenant Johnson indicated that lieutenants are well aware of the 2.0 rating requirement while conducting evaluations of subordinates. Therefore, to the extent that lieutenants actually rate their subordinates on individual categories, knowing that lower ratings may mean denial of a merit increase, they have the ability to affect whether their subordinates receive merit increases. In this way, they can reward subordinates for good work with better ratings, which will result in merit increases. In addition, testimony revealed that lieutenants have authority to reward subordinates when they commend subordinates in front of other employees for a job well done.

The lieutenants can also submit commendation recommendations to the Commissioner's office. The testimony was not clear as to whether these recommendations are usually accepted, so it is not possible to determine whether they are effective. However, the other evidence shows that lieutenants have discretionary authority to reward subordinates.

iv. The remaining indicia

With regard to the other supervisory indicia, the record shows that the lieutenants do not hire, transfer, lay off, recall, promote, or effectively recommend any of the remaining indicia of supervisory authority using independent judgment of the kind that would satisfy the requirements of the Act. Specifically, it appears that the lieutenants do have some authority to make recommendations with regard to hiring, but their participation in this process does not rise to the level of independent judgment necessary under the Act. Moreover, with regard to grievances, while it appears that lieutenants have some involvement in the grievance process at times, their ability to resolve a grievance at their level was not clearly established by the record.

Notwithstanding these considerations, because the Employer has submitted evidence showing that the lieutenants direct the work of subordinates, reward subordinates, and make effective recommendations on discipline using independent judgment, I find that the second and third prongs of the supervisory test are satisfied.

Preponderance Requirement

Except with respect to police employment, petitioned-for employees are only deemed supervisory if they spend the preponderance of their work time performing supervisory functions. To satisfy this test, employees must spend more time on supervisory functions than on any one nonsupervisory function. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 83-85 (4th Dist. 1996); State of Illinois,

Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (IL LRB-SP 2011). The Employer must demonstrate such allotments of time by setting forth the employees' day-to-day activities, as documented by specific facts in the record. State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (citing Stephenson County Circuit Court, 25 PERI ¶92 (IL LRB-SP 2009)); Village of Bolingbrook, 19 PERI ¶125. The calculation of time under the preponderance requirement is based on time spent in the exercise of supervisory authority that qualifies as such under the Act. See Department of Central Management Services, 26 PERI ¶155, citing Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 55 (2nd Dist. 1992) (noting that actual time does not include work time spent instructing or directing employees, when such instruction or direction does not qualify as supervisory direction under the Act).

As noted above, I find that the lieutenants do direct, reward, and effectively recommend discipline for subordinate employees with the requisite independent judgment to satisfy the second and third prongs of the supervisory test. In addition, the record reflects that they spend a preponderance of time on this job function. Specifically, O'Connor testified that the lieutenants spend approximately 80 percent of their work time supervising employees in the field, directing their work by monitoring them at their posts and ensuring proper work performance. Moreover, O'Connor testified that the other 20 percent of their work time is spent on what he classified as "administrative" functions. These functions include approving time off, discipline, and scheduling assignments for their subordinates. Moreover, the lieutenants spend time evaluating, rewarding, and effectively recommending discipline for subordinates.

The testimony from Lieutenant Johnson attempts to characterize time spent in the field by lieutenants as simply patrol. However, the record reflects that the lieutenants are directly

responsible for the performance of the sergeants and ASOs and that the lieutenants ensure this performance by monitoring and checking on employees in the field. As discussed in detail above, this demonstrates that they direct the work of subordinates while in the field. Moreover, as outlined by both O'Connor and Lieutenant Johnson, the lieutenants engage in training, rewarding, and evaluation of subordinates, as well as approval of time off and making disciplinary recommendations. Therefore, the Employer's estimate of time spent on supervisory duties is reasonable and borne out by the evidence. Furthermore, even if the lieutenant's time in the field is partially spent on patrol activities, the record still indicates that the main function of the lieutenant is to supervise subordinates, and that the lieutenant spends more time on this function than on any other one job function. Therefore, I find that the lieutenants do spend a preponderance of their work time performing supervisory indicia with independent judgment.

Accordingly, I find that the Employer has demonstrated that the lieutenants are supervisors within the meaning of Section 3(r) of the Act.

Bargaining Unit

With regard to the appropriate bargaining unit for a petitioned-for employee, Section 9(b) of the Act provides, in pertinent part:

> The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.

The Board has held that "[t]he standard for judging whether a unit is appropriate is not whether the petitioned-for unit is the most appropriate but whether it is an appropriate unit." City of

Chicago, 23 PERI ¶172 (IL LRB-SP 2007), citing Rend Lake Conservancy District, 14 PERI ¶2051 (IL SLRB 1998).

In this case, the Employer argued that the petitioned-for bargaining unit was inappropriate. It appears from the Union's majority interest petition that it intended to place the lieutenants in a stand-alone bargaining unit. The Employer argues that the only appropriate unit is the City's Unit 2, a broad-based unit including non-sworn public safety employees. Indeed, the ASOs are represented by Unit 2. The sergeants, however, are represented by the Illinois Council of Police (ICOP). The Union argues that the question is not whether the proposed unit is the only appropriate unit but whether it is *an* appropriate unit.

While it appears that placing the three security classifications in different bargaining units would fragment the classification, fragmentation is not alone a reason to deny a petition for certification pursuant to Section 9(b). City of Chicago (Public Health Nurses) v. ILRB, 396 Ill. App. 3d 61, 70-71 (1st Dist. 2009). In finding ICOP's proposed bargaining unit appropriate for the sergeants, the Appellate Court noted that the Board has "begun reconsidering its preference for large units and begun certifying small, stand-alone units." Illinois Council of Police v. ILRB, 404 Ill. App. 3d 589, 597 (1st Dist. 2010). One reason for this change is to promote the collective bargaining rights of individuals who want to organize but who the broad-based unit representative does not seek to represent. Id.

The record reflects that one of the collective bargaining representatives of Unit 2, SEIU, has apparently expressed willingness to represent the lieutenants via a letter to O'Malley from its general counsel. It is also clear that the lieutenants would share a community of interest as well as some level of functional integration with other members of Unit 2, particularly the ASOs, as well as with other members of Local 1001, particularly other Department of Aviation employees.

However, the record does not indicate that the Unit 2 representatives have made any formal attempt to represent the lieutenants, nor does such a letter mean that they would do so in the future.[8] To the extent that the lieutenants could be foreclosed from collective bargaining if indeed they were public employees under the Act, I find that the petitioned-for bargaining unit would theoretically be appropriate. However, as the lieutenants are supervisors as defined by the Act, the determination of whether the bargaining unit is appropriate is moot.

V. CONCLUSIONS OF LAW

I find that the Aviation Shift Supervisors, or Lieutenants, are supervisors as defined by Section 3(r) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the majority interest petition filed by the Union be denied.

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

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[8] ICOP has attempted to seek representation of the lieutenants, albeit perhaps not in the proper form. ICOP filed its own majority interest petition for the lieutenants in L-RC-11-017, but this petition was subsequently withdrawn as ICOP had previously entered into a stipulation with the City that the lieutenants are supervisors within the meaning of the Act, in the context of a representation petition filed by ICOP in 2007 in L-RC-07-032. After the hearing in this matter, ICOP filed a petition for intervention in Local 1001's majority interest petition in August 2011. The Board's rules prohibit intervention in majority interest petitions in 80 Ill. Admin. Code Section 1210.100(b)(8):

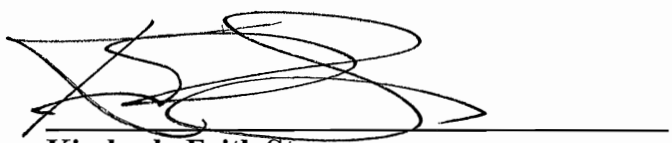
> No intervention petitions will be permitted in majority interest cases. If a labor organization seeks to file a representation petition for the same or a similar unit to the one described in the majority interest petition, it may file an election petition pursuant to the procedures of this Part. Where more than one petition exists for the same or a similar unit of employees, the Board will direct an election in the appropriate unit to determine the employees' choice of representative.

ICOP remains bound by its previous stipulation that lieutenants are supervisors. Even to the extent that its petition for intervention could be construed as seeking an election under the Board's rules, this attempt at intervention is moot as the petitioned-for employees are not public employees but supervisors.

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, 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 Springfield, Illinois, this 13th day of November, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL



Kimberly Faith Stevens
Administrative Law Judge