

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

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| Teamsters Local 700,                 | ) |                      |
|                                      | ) |                      |
| Petitioner                           | ) |                      |
|                                      | ) |                      |
| and                                  | ) | Case No. L-RC-10-036 |
|                                      | ) |                      |
| City of Chicago, Office of Emergency | ) |                      |
| Management and Communications,       | ) |                      |
|                                      | ) |                      |
| Employer                             | ) |                      |

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

On June 18, 2010, Teamsters Local 700 (Petitioner or Union), filed a majority interest representation/certification petition in Case No. L-RC-10-036 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). The Petitioner seeks to become the exclusive representative of all full-time regular employees in the title of Shift Supervisor of Security Communications Centers employed at O’Hare International Airport and Midway Airport by the City of Chicago, Office of Emergency Management and Communications (Employer or OEMC).

A hearing was held on March 21, 2011, before Administrative Law Judge Joseph Tansino in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally.<sup>1</sup> Briefs were timely

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<sup>1</sup> In 1993, the International Brotherhood of Electrical Workers, Local 165, petitioned to represent the same title in Case No. L-RC-93-029. City of Chicago (Office of Emergency Communications), 10 PERI

filed by both parties.<sup>2</sup> 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 Employer is a public employer within the meaning of Section 3(o) of the Act and is subject to the Board's jurisdiction pursuant to Section 5 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 party to a collective bargaining agreement for Unit II, a single bargaining unit jointly represented by International Brotherhood of Electrical Workers, Local 21 and Service Employees International Union, Local 73, consisting of approximately 2,551 non-sworn, uniformed City of Chicago employees in various titles, including the title Aviation Communications Operator.
4. The parties stipulate, and I find, that annual vacation and watch selection for Aviation Communications Operators is done by seniority, pursuant to the Unit II collective bargaining agreement as it has been done since approximately 1993.

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¶ 3014 (IL LLRB 1994). In that case, the Administrative Law Judge determined that the petitioned-for employees were supervisors under the Act. No exceptions were filed resulting in a non-precedential decision binding only on the parties. On December 13, 2010, Administrative Law Judge Deanna Rosenbaum held a hearing in which the Petitioner was given an opportunity to present evidence which would indicate a change in the title's job duties and/or authority such that the decision in the prior proceeding was no longer applicable. On March 4, 2011, Administrative Law Judge Rosenbaum determined that the Petitioner had satisfied its burden of demonstrating a change in the title's job duties and authority which would warrant a re-examination of the petitioned-for employees' supervisory status. On March 11, 2011, the case was reassigned to Administrative Law Judge Tansino.

<sup>2</sup> The case was subsequently reassigned to the undersigned Administrative Law Judge.

5. The parties stipulate, and I find, that under the Employer's Complaint Investigation process, the Shift Supervisor's role is to initiate discipline, but not formally recommend discipline and that it is the Employer's role to investigate and ultimately issue discipline.
6. The parties stipulate, and I find that, the Employer's discipline procedure provides an alternative to the Complaint Investigation process known as the Discipline Action Report process, which does not provide for review by the Employer, and has never been used by Shift Supervisors at O'Hare when issuing discipline.
7. The parties stipulate, and I find that, Shift Supervisor Paul Pollard participated in the most recent interview and selection process of Aviation Communications Operator candidates, which occurred between approximately November and December 2010.

## **II. ISSUES AND CONTENTIONS**

The issues to be resolved are whether the petitioned-for Shift Supervisors are supervisors within the meaning of the Act, and if so, whether the petitioned-for unit is appropriate within the meaning of Section 9(b) of the Act. The Employer contends that the petitioned-for employees are supervisors and the petitioned-for unit is inappropriate. The Petitioner asserts that the petitioned-for employees are, instead, public employees as defined by the Act, the petitioned-for unit is appropriate, and accordingly, the petitioned-for unit should be certified.

### **III. FINDINGS OF FACT<sup>3</sup>**

#### **A. Background**

The Employer operates security communications centers at O'Hare International Airport and Midway Airport. The primary function of the centers is to dispatch emergency and security personnel throughout the airports. There are three job positions at the centers: managers, Shift Supervisors, and Aviation Communications Operators (ACOs). The O'Hare Communications Center (OCC) has one manager, seven Shift Supervisors, and 27 ACOs. The Midway Communications Center (MCC) has one manager, one Shift Supervisor, and 12 ACOs.

Managers set policy, ensure that the centers are running properly, and ensure staffing is appropriate. John Valdez is the manager of the MCC; Ken Warrick is the manager of the OCC. The managers report to the chief of security for the City of Chicago's Department of Aviation. Warrick also reports to the Employer's director.

ACOs respond to alarms and calls for service throughout the airport, monitor video surveillance throughout the airports, dispatch appropriate emergency personnel, answer calls from the public, and document incidents using the center's incident reporting system. There are three ACO shifts at the centers: first watch, 10:00 p.m. to 6:30 a.m.; second watch, 6:00 a.m. to 2:30 p.m.; and third watch, 2:00 p.m. to 10:30 p.m. The ACOs are members of a bargaining unit and subject to a collective bargaining agreement.

#### **B. Shift Supervisors' Duties**

Shift Supervisors are responsible for overseeing dispatch operations, monitoring ACOs, and ensuring proper dispatch procedures are being followed. They are also in charge of ensuring adequate staffing, assigning ACOs to consoles, reviewing time off requests, and tracking

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<sup>3</sup> The facts are based on the testimony of John Valdez, Ken Warrick, Donald O'Malley, Richard Urbinati, Krishna Joseph, and Paul Pollard.

employee time. ACOs and Shift Supervisors work in one large room, which is divided into consoles. The centers have separate consoles for fire, police, aviation police, and access control.

At the MCC, the Shift Supervisor works from 9:00 a.m. to 5:00 p.m. At the OCC, there are three Shift Supervisor shifts: 5:00 a.m. to 1:00 p.m., 1:00 p.m. to 9:00 p.m., and 9:00 p.m. to 5:00 a.m. ACOs and Shift Supervisors have different shift times so that the Shift Supervisors can review incidents that occurred during the prior shift, do administrative work, review staffing levels for that shift, adjust the schedule if needed, and determine what needs to be done on the current shift.

At the beginning of a shift, the incoming Shift Supervisor will be briefed by the outgoing Shift Supervisor on any incidents that have occurred on the previous shift. The Shift Supervisor will review information concerning activities or special events occurring at the airport, for example, construction work or a news crew filming in an area of the airport. The manager may also give the Shift Supervisor information to be presented to the ACOs at the beginning of their shift. The Shift Supervisor will then conduct roll call for the incoming ACOs and present this information, and may also review particular standard operating procedures. For example, if there was a major incident, the Shift Supervisor will go over the proper procedure to use if the incident were to occur again. The Shift Supervisor will also update the ACOs on any new standard operating procedures. During their shift, the Shift Supervisor will monitor the ACOs to make sure that proper procedures are being followed. By the end of his or her shift, the Shift Supervisor will complete a supervisor's turnover report, which details the events that occurred on his or her shift. The report is entered into the incident reporting computer system and also given to the incoming Shift Supervisor.

## 1. Hire

When ACOs need to be hired, the manager puts together an interview panel. After the interview, the panel discusses the candidates. Each panel member then fills out a candidate assessment form, where he or she will write down his or her opinion and observations of the candidate. The panel member also indicates on the form whether he or she recommends the candidate for hire. The form is then submitted to the Employer's human resources department, which makes the final determination on which candidate should be hired.

The last interview panel included one Shift Supervisor and two managers. This was the first time that a Shift Supervisor had been included on the panel. Pollard, the Shift Supervisor on the panel, spent two to three hours a day for a two and a half week period interviewing candidates. Candidates have been selected, but have not yet been hired. On the next panel, Warrick plans to have two Shift Supervisors.

## 2. Direct

### a. Reviewing, monitoring, and instructing

Shift Supervisors monitor ACOs during their shift. Shift Supervisors are responsible for ensuring that ACOs comply with the department rules and regulations and personnel rules. The Shift Supervisors have the ability to listen to the calls that the ACOs are handling, an ability ACOs do not have. The Shift Supervisors also review ACO incident reports and the control board to see if alarms are being responded to properly and the appropriate personnel dispatched.

If a Shift Supervisor observes a deficiency in the performance of an ACO, he can immediately correct the ACO. If it cannot be fixed then, the Shift Supervisor can suggest that the ACO go to refresher training which is performed by a private contractor.

The Shift Supervisors are responsible for maintaining and updating the written and electronic standard operating procedures manual. The manual governs all the dispatch protocols. ACOs, Shift Supervisors, and managers all provide input and recommendations into what manual updates are needed. However, the manager makes the ultimate determination of what changes will be adopted. The Shift Supervisors cannot change the manual without the manager's approval.

b. Assigning work

At the OCC, Shift Supervisors assign ACOs to particular consoles at roll call. Shift Supervisors are free to determine who will be assigned to each console. Shift Supervisors try to assign ACOs on a rotation so that ACOs do not get "too comfortable" or "complacent" in a particular console and have "variety." They also assign based on the Shift Supervisor's knowledge of the console and how they want to set up their shift. At the MCC, the Shift Supervisor assigns ACOs to consoles on a rotation based on a list from the manager.

To train new ACOs, the centers use a process called "sidesaddle," in which the new hire will sit with another ACO at his or her console to monitor how the work is performed. The Shift Supervisors are responsible for assigning new hires to particular ACOs during sidesaddle. They base the assignment on their knowledge of the ACOs' skills, abilities, strengths, and which ACOs are available on the shift.

c. Scheduling work hours

ACOs bid on shift assignments once a year, which are determined by seniority pursuant to the ACOs' collective bargaining agreement. Shift Supervisors do not have authority to change ACO shift assignments.

The MCC has a minimum staffing policy of two ACOs per shift. OCC has a minimum staffing policy of four ACOs per shift. Generally, the Shift Supervisor will consult with the manager if the center must go below minimum staffing. The one reported instance of a Shift Supervisor going below minimum staffing without a manager's approval occurred because the manager was on vacation and unreachable.

To maintain minimum staffing, the centers have a mandatory overtime procedure as required by the ACOs' collective bargaining agreement. The Shift Supervisor will first ask the ACOs working on the shift if they would be willing to stay on and receive overtime. If no one accepts, the Shift Supervisor will send out a page to all of the ACOs for volunteers. If no one accepts, the Shift Supervisor follows a mandatory overtime list. The list is designed in reverse seniority. The ACO on the top of the list is contacted and advised that he or she is to report for work. The Shift Supervisor is not free to deviate from the seniority lists.

At the MCC, lunch break times are set on an annual basis by the manager. At the OCC, the Shift Supervisor will schedule the ACO's lunch break times at roll call. Based on staffing needs, the Shift Supervisor may ask an ACO to take compensatory time in exchange for his lunch break but cannot mandate that an ACO forgo his scheduled break.

#### d. Training

The Employer uses a private contractor to train ACOs. After the initial training, Shift Supervisors can recommend to the manager that an ACO receive additional training if he or she is still deficient in a certain area. The manager may then pass the recommendation onto the contractor. Shift Supervisors have recommended more fire console training and police dispatch training for ACOs. These additional training sessions have yet to be conducted by the contractor. In regard to scheduling training sessions, the Shift Supervisor may either assign an

ACO to a particular training session date based on the ACO's schedule and availability or have the ACOs sign up for the sessions themselves.

e. Leave requests

ACOs submit their personal time and compensatory time requests to their Shift Supervisor. If the request would create a staffing shortage for the shift, the Shift Supervisor can deny the request. Vacation requests are determined by seniority pursuant to the ACOs' collective bargaining agreement. If an ACO wants to change his or her vacation schedule, he or she will go to the Shift Supervisor, who has the authority to approve the changes. The Shift Supervisor is responsible for adjusting the schedule to ensure appropriate minimum staffing levels. Shift Supervisors cannot deny ACO sick time requests. If an ACO needs to arrive late or leave work early, he or she reports to the Shift Supervisor, who can approve or deny the request.

Shift Supervisors review and sign off on employee time sheets and swipe correction request forms. Swipe correction forms are used to adjust time sheet entries if, for example, the ACO worked overtime, used vacation time, called in sick, or worked on a holiday. The Shift Supervisor will deny correction request forms if they contain clerical errors, such as incorrect dates or times. At the MCC, swipe correction forms are sent to an OCC Shift Supervisor, who will enter the information into the Employer's time keeping and pay computer system.

f. Performance evaluations

Shift Supervisors do not currently complete ACO performance evaluations. However, this year the Employer plans to have Shift Supervisors conduct them. About two weeks prior to the Board hearing, the Employer directed the Shift Supervisors to develop examples for the various performance evaluation factors included on the evaluation forms. The Shift Supervisors have not yet used these forms.

### 3. Discipline

Shift Supervisors can counsel an ACO to correct a deficiency in performance or behavior. Valdez reports that counselings are done both formally and informally. The Employer's disciplinary procedure states that Shift Supervisors must document the counseling, which is placed in the ACO's personnel file, but is not to be considered discipline. The ACO's collective bargaining agreement states that only similar disciplines that are within the previous 18 months may be considered for progressive discipline purposes. The Shift Supervisors can give counselings without approval from managers.

There are two different procedures for discipline: the Discipline Action Report (DAR) process or the Complaint Investigation (CI) process. If the appropriate level of discipline is a written reprimand or a suspension of three days or less, the Shift Supervisor will use the DAR process. If the appropriate level is higher than that, the Shift Supervisor will use the CI process.

The Shift Supervisors only recently found out about the DAR process. No Shift Supervisors at the OCC have used the DAR process. Krishna Joseph, the only Shift Supervisor at MCC, has used the DAR process about three or four times. In those cases, Joseph did not initiate the DAR process on his own accord, rather the manager directed him to begin it. Joseph also did not recommend the level of discipline and the manager did not ask for his recommendation. Joseph's role was to notify the employee of the pre-disciplinary meeting, conduct the meeting, fill out the DAR form outlining the infraction and level of discipline sought, forward all documents for approval by the manager, and present the employee with the discipline.

Shift Supervisors at both the OCC and the MCC have used the CI process. For the CI process, the Shift Supervisor initiates the discipline by filling out a complaint intake form, which

describes the alleged infraction. The Shift Supervisor will then send it to the manager for approval. The manager will recommend a level of discipline and submit the form to OEMC. If OEMC determines that discipline is warranted, it will send back a form indicating that the center should proceed with the CI process. The Shift Supervisor will then conduct a pre-disciplinary hearing, where he or she will present the evidence supporting the Employer's disciplinary action to the ACO and, if applicable, a union representative. At the hearing, the Shift Supervisor will also inform the ACO whether the manager is recommending an oral warning, written warning, or suspension. The Shift Supervisor then writes a summary of the hearing and the level of discipline sought by the manager. This information is then sent to OEMC, which makes the final decision on the level of discipline to issue.

The example provided at hearing of a Shift Supervisor, Paul Pollard, using the CI process involved an ACO who had violated the Employer's rule against excessive tardiness. Pollard could not recall who initiated the complaint. He stated that in these types of cases either he, someone from the Employer's main office, or another Shift Supervisor will notice that an ACO is often late and then he will begin the CI process.

Richard Urbinati, a Shift Supervisor at the OCC, reports that often he does not meet with the manager to discuss the level of discipline to be issued. The few times that they have discussed discipline, the manager asked Urbinati his opinion on what level of discipline should be issued. Urbinati has disagreed with the level of discipline that the manager ultimately recommended. Urbinati has suggested both higher and lower levels of discipline than what was ultimately issued by the OEMC.

Shift Supervisors can send an ACO to get a drug and/or alcohol test if they suspect that the ACO is intoxicated. However, this has never occurred.

### **C. Preponderance of Time**

The Shift Supervisors spend about 40-50% of their shift monitoring the ACOs and overseeing the activities of the centers to ensure that proper procedures are being followed. They spend about 15% of their shift on staffing and scheduling. Pollard reports that in a “bad month” he will issue discipline two to three times. When Shift Supervisors are dealing with discipline, they spend about 15% of their day on those duties. The remainder of their shift is devoted to payroll and reviewing sick, compensatory, and vacation time requests.

## **IV. DISCUSSION AND ANALYSIS**

### **A. Supervisory Exclusion**

The Employer argues that Shift Supervisors are supervisors within the meaning of Section 3(r) of the Act.<sup>4</sup> A supervisor is not a “public employee” or “employee” for purposes of the Act. The purpose of the supervisory exclusion is avoid the conflict of interest that may arise when supervisors, “who must apply the employer’s policies to subordinates, are subject to control by the same union representing those subordinates.” City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 517 (1990).

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<sup>4</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, State supervisors notwithstanding.

A supervisor (1) performs principal work substantially different from that of his or her subordinates; (2) possesses authority to perform one or more of the 11 listed supervisory functions, or to effectively recommend such performance; (3) consistently exercises independent judgment in exercising supervisory authority; and (4) devotes a preponderance of his or her time to exercising that authority. Id. at 505.

1. 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. Id. If not, the determining factor is whether 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 work of the Shift Supervisors is obviously and visibly different from that of the ACOs. The Shift Supervisors oversee dispatch operations, monitor ACOs, ensure adequate staffing, assign ACOs to consoles, review time off requests, track employee time, conduct roll call, and participate in the disciplinary process. The ACOs do not perform any of these duties. The ACOs’ main duties are answering calls for service and dispatching emergency personnel. The evidence does not indicate that Shift Supervisors perform these duties. Therefore, the principal work requirement is met.

2. Supervisory Indicia and Independent Judgment

To satisfy the second and third prongs of the Act’s supervisory definition, the Employer must establish that the Shift Supervisors have the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act and consistently exercise that authority with independent judgment. A decision is based on independent judgment when it involves making a choice between two or more significant courses of action as opposed to being

routine or clerical in nature or made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. City of Freeport, 135 Ill. 2d at 521. A recommendation is effective when it 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, 290 (3d Dist. 1988); Village of Justice, 17 PERI ¶2007 (IL LRB-SP 2000). The extent of the review by the superior determines whether a recommendation is effective. State of Illinois, Department of Central Management Services, 25 PERI ¶161 (IL LRB-SP 2009). In this case, the Employer asserts that the Shift Supervisors exercise supervisory authority under the Act to hire, direct, discipline, or effectively recommend the same.

a. Hire

If an individual participates on a committee that includes his or her supervisors and committee decisions are reached by consensus, his or her recommendation is not "effective" within the meaning of the Act. County of Lake, 16 PERI ¶2036 (IL SLRB 2000).

Here, I find that Shift Supervisors do not have the authority to hire or effectively recommend hire. The Employer plans to have two Shift Supervisors on the next interview panel. However, only one Shift Supervisor has participated in the process so far, and there is insufficient evidence to establish that he effectively recommended hiring in that case. The interview panel's recommendations were sent to the Employer's human resources department, which is responsible for making the final decision on who to hire. The Employer did not provide the extent of the review that the human resources department conducts after it receives the recommendations from the interview panel. Further, although committee decisions do not appear to be reached by consensus, there is no record evidence to establish whether the candidates whom Pollard checked as recommended for hire were in fact the candidates who were

selected, and therefore whether his recommendation was adopted as a matter of course. In sum, the Employer has failed to establish that the Shift Supervisors have the authority to hire or effectively recommend hire.

b. Direct

The authority to direct involves functions relating to overseeing the employer's operations or which indicate responsibility for the performance of a subordinate's work. Village of Glen Carbon, 8 PERI ¶2026 (IL SLRB 1992); City of Lincoln, 4 PERI ¶2041 (IL SLRB 1988). These functions include reviewing and monitoring work activities, instructing employees on how work is to be performed, assigning work if it is not based on routine factors like balanced workload, scheduling work hours, training if a supervisor is choosing between discipline or training, approving requests for leave or overtime if the requests are not routinely granted, and completing performance evaluations if the evaluations are used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 518-19 (1992); City of Freeport, 135 Ill. 2d at 513; Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County (Adult Probation Department), 19 PERI ¶123 (IL LRB-SP 2003); County of Boone, 19 PERI ¶74 (IL LRB-SP 2003); State of Illinois, Department of Central Management Services, 12 PERI ¶2032 (IL SLRB 1996). These functions are not supervisory unless the alleged supervisor also has significant discretionary authority to affect his or her subordinates' employment in areas likely to fall within the scope of union representation, such as discipline, transfer, promotion, or hire. State of Illinois, Department of Central Management Services (State Police) v. Illinois Labor Relations Board, 382 Ill. App. 3d 208, 224 (4th Dist. 2008); County of Lake, 16 PERI ¶2036; City of Bloomington, 13 PERI

¶2041 (IL SLRB 1997); City of Sparta, 9 PERI ¶2029 (IL SLRB 1993). The authority to direct requires more than simply observing and monitoring subordinates or being responsible for the operation of a shift. City of Chicago, 10 PERI ¶3017 (IL LLRB 1994). The authority to direct requires that the employee be actively involved in checking, correcting, and giving instructions to subordinates without guidelines or review by others. Id.; City of Lincoln, 4 PERI ¶2041 (IL SLRB 1988).

i. Reviewing, monitoring, and instructing employees

In this case, the Shift Supervisors are responsible for monitoring and reviewing the work of the ACOs and overseeing the centers' operations. But, the Employer has failed to show that the Shift Supervisors are actively involved in checking, correcting, and giving instructions to ACOs without guidelines or review by others. The Shift Supervisors testified that they have the ability to listen in on ACO calls and are able to correct ACOs if they see a deficiency in their performance. However, no further evidence was provided of how or to what extent the Shift Supervisors check, correct, or give instructions to ACOs. Moreover, the evidence suggests that the Shift Supervisors' role in correcting ACOs is dictated by objective, specific guidelines on proper dispatching protocols and procedures rather than their independent discretion. Finally, the Employer also did not establish how in reviewing and monitoring the ACOs, the Shift Supervisors have significant discretionary authority to affect the ACOs' terms and conditions of employment. There is no record evidence of Shift Supervisors affecting wage increases, promotions or disciplining ACOs, for example, due to the Shift Supervisors' ability to monitor and review the ACOs.

The Shift Supervisors' role in updating standard operating procedures is not evidence of supervisory authority. ACOs, Shifts Supervisors, and managers all provide input into updating

the manual, but only the manager can make changes to the manual. Further, there is insufficient evidence to determine whether the Shift Supervisors' recommendations for changes to standard operating procedures are adopted by the managers as a matter of course.

ii. Assigning work

Shift Supervisors' assigning ACOs to consoles is not indicative of the supervisory authority to direct. At the MCC, the Shift Supervisor clearly does not exercise independent judgment in assigning ACOs to consoles because assignments are made on a rotation. Assignment of work is not indicative of supervisory direction where it is based primarily on rotation or other routine factors. County of Vermillion, 18 PERI ¶2050 (IL LRB-SP 2002). At the OCC, the evidence suggests that, for the same reason, Shift Supervisors do not exercise independent judgment in assigning ACOs to consoles. The Employer argues that Shift Supervisors are free to assign ACOs to consoles as they choose. However, the two Shift Supervisors who testified explained that ACOs are assigned to consoles on a rotation to prevent ACOs from becoming too comfortable or complacent at a console. Thus, the Employer has provided insufficient evidence to establish that Shift Supervisors exercise independent judgment in assigning ACOs to consoles.

Shift Supervisors do appear to use independent judgment in assigning new hires to particular ACOs during "sidesaddle" because they do so based on their knowledge of the available ACOs' skills, abilities, and strengths. However, the evidence does not establish that the Shift Supervisors have significant discretionary authority to affect the ACOs' terms and conditions of employment. Therefore, this function does not satisfy the Act's definition of supervisory direction. State of Illinois, Department of Central Management Services (State Police), 382 Ill. App. 3d at 224.

### iii. Scheduling work hours

Shift Supervisors do not use independent judgment in scheduling work hours. ACOs bid on shift assignments once a year, which are determined by seniority pursuant to the ACOs' collective bargaining agreement. The Shift Supervisors do not have authority to change the shifts that ACOs work. Further, the centers have minimum staffing policies, which the Shift Supervisor must abide by. The one reported instance of a Shift Supervisor going below minimum staffing levels without manager approval occurred because the manager was unreachable. The Shift Supervisors also do not use independent judgment in scheduling overtime. The ACOs' collective bargaining agreement establishes a mandatory procedure to follow in dealing with overtime. In addition, there was insufficient evidence to establish that the Shift Supervisors' scheduling of lunch break times at the OCC requires the use of independent judgment. Rather, the Shift Supervisor appears to schedule lunch breaks based on routine or clerical factors such as the pre-established minimum staffing levels.

### iv. Training

The evidence fails to establish that Shift Supervisors train or effectively recommend training. A private contractor conducts training for the ACOs, Shift Supervisors do not. Shift Supervisors have recommended additional training for ACOs. However, the recommendations are subject to the review of the manager as well as the private contractor. Further, the trainings that Shift Supervisors have recommended have not occurred. Therefore, the Shift Supervisors' recommendations for training were not effective. Finally, there is no evidence to suggest that Shift Supervisors recommend training based on a choice between training or discipline.

v. Leave requests

The Shift Supervisors do not exercise independent judgment in approving and denying leave requests. Rather, their role in handling requests appears routine, clerical in nature, and based on minimum staffing requirements. Vacation requests are determined by seniority pursuant to the ACOs' collective bargaining agreement. Shift Supervisors cannot deny sick leave requests. Time sheets and swipe correction forms are reviewed for accuracy and the evidence suggests that they are only denied if there are clerical errors. If an ACO needs to arrive late or leave work early, he or she reports to the Shift Supervisor, who can approve or deny the request. However, there was no evidence presented to establish whether the requests are routinely approved or involve making a consistent choice between two or more significant courses of action.

vi. Performance evaluations

Shift Supervisors do not currently conduct performance evaluations. However, the Employer plans to have them do so in the future. The extent of Shift Supervisors' role in performance evaluations has been developing examples for the performance evaluation factors. There is no evidence in the record that the Shift Supervisors' current role affects the ACOs' pay or employment status.

In sum, I find that the Shift Supervisors do not have authority to direct with the requisite independent judgment required by the Act.

c. Discipline

To constitute discipline within the meaning of the Act, reprimands must have an impact on an employee's job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶125. Verbal reprimands constitute supervisory authority to discipline if they are

documented, placed in an employee's personnel file, and can serve as the basis for more severe discipline. *Id.*; Carpentersville Countryside Fire Protection District, 10 PERI ¶2016 ( IL SLRB 1994); City of Sparta, 9 PERI ¶2029; Village of Hinsdale, 2 PERI ¶2042 (IL SLRB 1986).

In this case, Shift Supervisors have the authority to give formal and informal counselings. The Employer's disciplinary procedure states that the counselings are documented, placed in an ACO's personnel file, and can be considered for progressive discipline purposes. However, the Employer did not give any examples of these counselings serving as the basis for more severe discipline, and thus did not demonstrate their impact on the subordinates' terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶125. Therefore, the evidence does not establish that the Shift Supervisors' ability to counsel constitutes supervisory authority.

Further, the Shift Supervisors' role in the DAR process does not establish supervisory authority. The only Shift Supervisor who has used the process did not initiate discipline in those cases and did not recommend discipline. The Employer has therefore failed to establish that through the DAR process Shift Supervisors effectively recommend discipline.

The Shift Supervisors' role in the CI process also does not constitute supervisory authority. As the parties stipulated, the Shift Supervisors have the authority to initiate discipline in the CI process. However, the parties also stipulated that Shift Supervisors do not make formal recommendations for discipline. Instead, the manager will recommend discipline to the OEMC, which is responsible for investigating the complaint and deciding the level of discipline to issue.

A Shift Supervisor at the OCC has discussed with the manager the level of discipline to be recommended to the OEMC. However, the record reveals that the Shift Supervisor's suggestions, or recommendations, are not adopted as a matter of course. The Shift Supervisor

has suggested both higher and lower levels of discipline than the manager ultimately recommended. Thus, the Shift Supervisors' alleged recommendations are not effective.

Finally, the Employer did not provide any authority to support its assertion that the Shift Supervisors' ability to send an ACO to get a drug and/or alcohol test constitutes discipline. Moreover, the Employer did not explain how this ability relates to the Employer's disciplinary process in general.

In sum, I find that the Shift Supervisors do not have the authority to discipline or effectively recommend discipline.

### 3. Preponderance Requirement

The fourth prong of the Act's definition of a supervisor requires that the alleged supervisor spend a preponderance of his or her employment time exercising supervisory authority, as defined by the Act. Here, I have found that the Shift Supervisors do not have authority to hire, direct, or discipline or effectively recommend the same. Therefore, I cannot find that they exercise such authority for a preponderance of their employment time. In sum, I find that the Shift Supervisors are not supervisors within the meaning of Section 3(r) of the Act.

### **B. Appropriateness of the Bargaining Unit**

The Employer argues that the petitioned-for unit, a stand-alone unit of Shift Supervisors, is inappropriate because of the Employer's historical pattern of collective bargaining, the community of interest between the Shift Supervisors and the ACOs, and the Board's policy against fragmentation of bargaining units. The Employer contends that the only appropriate unit is Unit II, which currently includes the ACOs.<sup>5</sup>

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<sup>5</sup> The ACOs have been represented by IBEW and SEIU in Unit II, a single bargaining unit consisting of approximately 2,400 City of Chicago employees in various non-sworn, uniformed public safety titles since about 1994.

Section 9(b) of the Act identifies the criteria to examine in determining whether a unit is appropriate:

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.

Shift Supervisors have never been represented by a union, so therefore there is no historical pattern of recognizing Shift Supervisors. Illinois Council of Police, 26 PERI ¶104. There is clearly a community of interest among the Shift Supervisors, including their skills, working conditions, and job duties. The Shift Supervisors' desire is to be represented by Teamsters Local 700, as evidenced by the petition.

Nonetheless, the Employer argues that Shift Supervisors share a community of interest with the ACOs and Unit II in general. This may be true, and Unit II may be an appropriate unit for the Shift Supervisors. However, the Act does not require that a proposed unit be the most appropriate unit, rather it only requires that the petitioned-for unit be an appropriate unit. City of Chicago v. Ill. Labor Relations Bd., 396 Ill. App. 3d 61, 71 (1st Dist. 2009); Rend Conservancy District, 14 PERI ¶2051 (IL SLRB 1998). Further, neither of Unit II's bargaining representatives, IBEW and SEIU, seek to represent the petitioned-for employees. Their absence in this case undercuts the Employer's argument, for as the Board has stated in circumstances such as this case presents, "[i]t is fundamentally at odds with the Act itself to place the petitioned-for employees' right to organize completely under the control of a third party." State

of Illinois, Department of Central Management Services (Department of Healthcare and Family Services), 23 PERI ¶173 (IL LRB-SP 2007).

The Employer also argues that ACOs and Shift Supervisors share the “hallmark” of the City-wide Unit II bargaining unit: responsibility for “dealing with the public in a law enforcement and public safety-related capacity,” and therefore a stand-alone unit would improperly fragment employee groups. However, the Board has stated:

Although the preference for large, functionally-based units was, and continues to be, an important consideration, as the Board has previously observed and the foregoing cases illustrate, excessive concern with avoiding fragmentation and promoting economy and efficiency in public bargaining and contract administration consumed not only the employees' right to organize, but also the criteria set forth in Section 9(b). The Act demands a balance between these extremes so as to avoid regularly and completely depriving public employees of the rights granted therein.

City of Chicago, 25 PERI ¶77 (IL LRB-SP 2009) (citation omitted), *aff'd sub nom. Ill. Council of Police v. Ill. Labor Relations Bd.*, 404 Ill. App. 3d 589 (1st Dist. 2010). In this case, fragmentation is the only factor which favors the Employer’s position that the petitioned-for unit is inappropriate. As the Act clearly states, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit. In sum, I find that the petitioned-for unit is an appropriate unit for the purpose of collective bargaining.

## **V. CONCLUSIONS OF LAW**

1. I find that the petitioned-for employees are not supervisors as defined by Section 3(r) of the Act.
2. I find that the petitioned-for unit is an appropriate bargaining unit under Section 9(b) of the Act.

## **VI. RECOMMENDED ORDER**

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, Teamsters Local 700 shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

**INCLUDED:** All full-time regular employees of the City of Chicago, Office of Emergency Management and Communications in the job title of Shift Supervisors of Security Communications Centers at O'Hare Airport and Midway Airport.

**EXCLUDED:** All others defined in the Act.

## **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 Board's General Counsel 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 Springfield, Illinois, this 21st day of November, 2011.**

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



**Michelle N. Owen  
Administrative Law Judge**

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

Teamsters Local 700,

Petitioner

and

City of Chicago, Office of Emergency  
Management and Communications,

Employer.

Case No. L-RC-10-036

DATE OF  
MAILING: November 21, 2011

**AFFIDAVIT OF SERVICE**

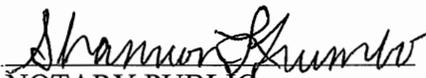
I, Lori Novak, on oath, state that I have served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

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Teamsters Local 700  
1300 W. Higgins  
Park Ridge, IL 60068

Melinda Lawrence  
Assistant Corporation Counsel  
City of Chicago  
30 N. LaSalle Street, Suite 1040  
Chicago, IL 60602

  
\_\_\_\_\_  
Lori Novak

**SUBSCRIBED and SWORN to**  
before me, November 21, 2011

  
NOTARY PUBLIC

