STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

Teamsters Local Union 700, Petitioner and County of Cook, Oak Forest Hospital, Respondent	)	Case No. L-RC-11-003

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 13, 2010, Teamsters Local Union 700, (Petitioner) filed a Representation/Certification Petition in Case No. L-RC-11-003 with the Illinois Labor Relations Board, pursuant to Section 11 of the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), *as amended* (Act), and the Rules and Regulations of the Illinois Labor Relations Board (Rules), 80 Ill. Admin. Code, Parts 1200 through 1240, seeking to represent all Public Hospital Security Officer III's (HSO-III's) employed in the Department of Public Safety at Oak Forest Hospital, County of Cook, Oak Forest Hospital (Employer).

The case was heard on February 22, 2011, in Chicago, Illinois, at which time the parties appeared and were given a full opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. Briefs have been timely filed on behalf of all parties. After full consideration of the parties' stipulations, evidence, arguments and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

1. The parties stipulated and I find that, at all times material the Petitioner, Teamsters Local Union 700 has been a labor organization within the meaning of Section 3(i) of the Act.
2. The parties stipulated and I find that, at all times material Cook County, Oak Forest Hospital has been a public employer within the meaning of Section 3(o) of the Act
3. The Employer is subject to the jurisdiction of the Board under Sections 5(b) and 20(b) of the Act.
4. I find that the petitioned-for employees are peace officers within the meaning of Section 3(k) of the Act.[1]

II. ISSUES AND CONTENTIONS

The issue in this case is whether the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act.[2]

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[1] Employer stipulated to the above and the petitioner does not take a contrary position and the record does not indicate any dispute to that issue.

[2] I note that a Board Administrative Law Judge (ALJ), Sharon B. Wells, has found the same classification of public safety officers, HSO-III's, at issue in Case No. L-RC-00-018, to be supervisors. Under well-settled Board law, "it is not appropriate to reconsider a prior decision binding upon the same parties unless there has been a substantive change in relevant facts (i.e., a substantial change in the duties and functions of an existing title), or a significant change in the controlling statutory or case law." Metropolitan Alliance of Police v. Village of Woodridge, 362 Ill. App. 3d 469, 475, 839 N.E.2d 1073, 21 PERI ¶218 (2d Dist 2005); Cook County Hospital Doctoral Staff/1199 Nat'l Union of Hospital and Health Care Employees and Cook County, Cook County Hospital, 4 PERI ¶3017 (IL LLRB 1988). In the instant case, the duties and functions of the HSO-III's in 2010 vary from the duties and functions of the HSO-III's in 2000. After reviewing the Employer's Offer of Proof and the Union's Response, ALJ Eileen Bell determined that there was an issue of representation which warranted a hearing.

The Employer argues that the Hospital Public Safety Officer III's (HSO-III's) are supervisors, contending that their principal work as Watch Commander is substantially different than that of their subordinates.

The Petitioner insists that HSO-III's are not supervisors because the HSO-III's do not exercise independent judgment in undertaking their duties.

III. FINDINGS OF FACT

Oak Forest Hospital

Oak Forest Hospital (Hospital) is a public facility operated by the Employer. The Hospital is bound by 159th Street on the north, 163rd Street on the south, Cicero on the west and Pulaski on the east. The Hospital has an average daily patient census of about 50 or 60. As of February 22, 2011, the Hospital employed about 400 employees.

Department Organization

The Hospital's Department of Public Safety is responsible for the safety of all patients, visitors and staff, as well as fire prevention. Sidney Kelly has been the Director of Public Safety at Oak Forest for two-and-a-half years, as of the date of this hearing, February 22, 2011.

The Hospital has three ranks of Public Safety Officers, Public Safety Officer I, Public Safety Officer II and Hospital Safety Officer III. The officers are police officers, certified by the State of Illinois. The officers have the power to make arrests on warrants for violations of state statutes and county ordinances on Hospital premises, when required for the protection of such premises, personnel, students, patients, visitors and properties. The officers issue passes to designate the areas where people have access to on the Oak Forest campus. They also handle traffic and traffic enforcement.

There is a budget for 25 Hospital Security Officers and currently 24 positions are filled. There are three shifts, also referred to as watches. The watches are designated as first watch (12:00 midnight – 8:00 am), second watch (8:00 am to 4:00 pm) and third watch (4:00 pm to 12:00 midnight). Each watch has a Lieutenant, the Hospital Safety Officer III, and a Sergeant,

the Public Safety Officer II. There are usually four officers working during the course of a shift. Of the four officers, three have assigned posts, and one officer is the roaming patrol officer. Officers take a 1-hour lunch period between the hours of 10:00 am and 2:00 pm. During that time frame, the Lieutenant relieves the patrol officer. There are two days when the Sergeant is off and another two days when the Lieutenant is off.

Public Safety Officer I

Public Safety Officer I's (PSO-I's) are the first rank for entry level officers. PSO-I's provide a safe environment for individuals dispensing and receiving health care services as well as visitors and contractors and provide information and direction to patients, visitors, staff and vendors. They are responsible for the day-to-day operation of controlling access to and egress to the Hospital property, and monitoring specific locations such as the main gate, emergency room or the dispatch position. PSO-I key duties and responsibilities include a high visibility police presence, while performing foot patrol, motorized patrol, emergency response, access control, main gate control, traffic control, and fire prevention and control.

While on Hospital premises, PSO-I's are tasked with keeping the peace by making arrests on view or warrant for violations of state statutes and county ordinances, including those involving motor vehicle and parking ordinances. They investigate crimes committed on Hospital premises, and prepare and submit complete, accurate and timely case investigation reports. They operate radio equipment and dispatch beat officers to investigate incidents, alarms and complaints.

Public Safety Officer II

Public Safety Officer II's (PSO-II's) or Sergeants, are the second rank of officers. There is a budget for three PSO-II's and each position is filled. They are responsible for the supervision, direction, and coordination of activities of the PSO-I's. They observe PSO-I's to ensure that they are performing their assigned tasks in accordance with existing department policy. Then, they log their observations in the Supervisor's Management Log as directed by their department policy.

PSO-II's train PSO-I's in the performance of duties, assignments, and operation and maintenance of equipment in accordance with Hospital and Department policies, while adhering to State of Illinois mandated training guidelines. PSO-II's check the case report number log to ensure that a report has been written, and that report numbers are obtained in sequential order. Then, the PSO-II's review the reports prepared by PSO-I's to ensure they are accurate, complete, timely, concise and grammatically correct before signing, indicating approval. PSO-II's also inspect all Department vehicles and equipment, including computers on a daily basis, reporting any damage in writing to the Watch Commander immediately. PSO-II's must also have knowledge of the current PSO-I Labor Agreement.[3]

PSO-II's also assist their superiors, Hospital Security Officer III's (HSO-III's) in establishing and settling goals for employee performance for PSO-I's. In the absence of the HSO-III, a PSO-II may assume responsibility as Watch Commander. If the PSO-II is functioning as the Watch Commander, the original report will be held for the Watch Commander and a copy will be forwarded to the Deputy Chief immediately. For example, on December 31, 2008, Lawrence Clipper, Jr., in his capacity as a Sergeant,[4] issued an interoffice memorandum, carbon copying Lieutenant Aken, Lieutenant Honore, and Director Kelly. The memorandum was regarding Officer Michael McClain's violation of department policy for failure to swipe in and out.

Hospital Public Safety Officer III

The last rank of public safety officers, are Lieutenants and more commonly referred to as HSO-III's. They serve as Watch Commanders in the Field Services Division. The primary responsibility of the Watch Commander is to exercise overall responsibility of their respective shift. They are responsible for watch operations and the training, direction and coordination of Public Safety Officers II and I. They also promote and maintain security and protection

[3] There is nothing in the record stating that PSO-II's participate in grievances or Collective Bargaining.

[4] Lawrence Clipper, Jr. is one of the three employees at issue, seeking representation as an HSO-III.

programs for the Oak Forest Hospital grounds and the entire facility. HSO-III's report directly to Kelly, and James Owczarski, the Assistant Director of Public Safety.

The HSO-III key responsibilities include training, monitoring and disciplining and notice of rule violations to PSO-I's and PSO-II's. Training is identified by the two investigators in the Public Safety Department, or Director Kelly. HSO-III's and PSO-II's also have input as to when training is needed. The PSO-II's or HSO-III's will inform Director Kelly of what types of procedures to implement, related to the type of training the employees need each month.

Regarding monitoring, disciplining and giving notice of rule violations, HSO-III's issue violations and participate in the disciplinary hearings as the primary prosecutor. HSO-III's have the authority to issue counseling forms or verbal warnings. The counseling forms are written by the HSO-III's and addressed to Assistant Director Owczarski. However, if the action requires a written warning or a higher level of discipline such as suspension or recommendation of separation, then that discipline has to be documented on a form. That form must be sent to Human Resources for a disciplinary hearing where punishment can be entered.

The exhibits and record present several instances of HSO-III's issuing counseling forms for PSO-I's and PSO-II's violations of policies. On November 15, 2009, a HSO-III, whose name has been redacted, recommended a three-day suspension for an employee who violated the Attendance Policy by acquiring one additional unexcused absence and two additional unexcused tardy events within the rolling 12-month period after receiving a one-day suspension for attendance.

On February 23, 2010, a HSO-III, whose name has also been redacted, recommended a 10-day suspension for an employee who violated the Attendance Policy by acquiring two unexcused tardy events within the rolling 12-month period after receiving a three-day suspension Additionally, memorandums documenting officer counseling conducted by HSO-III's are also prepared by the HSO-III and addressed to Owczarski.

HSO-III's can discipline for facial hair, as well as failure to appear in court. The HSO-III's and the PSO-II's investigate allegations of misconduct, such as improper usage of identification

cards and failure to swipe in and out. There are two ways to determine whether an employee did not swipe in or swipe out. Procedurally, timesheet printouts are always sent to the Field Service Division and HSO-III's also get a copy of the printout. If there is a failure to swipe in or swipe out, a memorandum is generated by the Assistant Director or the Director to the supervisor instructing him to address the concern. Other times, the HSO-III's will see the infraction when reviewing the time clock log sheets that they receive. According to policy, if the HSO-III sees the infraction, they are free to impose any level of discipline they feel is appropriate.

HSO-III's conduct investigation of infractions and determine whether any actions or allegations are factual. If they find them to be factual, then they have the authority to initiate corrective action. The HSO-III has a table that lays out the number of occurrences of policy violations and corresponding amounts of discipline to impose for violations without a clear path of corrective action. When corrective action has been recommended, the Human Resource Department receives a disciplinary action Employee Data Form. During the hearing, the HSO-III assumes the prosecutorial role, if he or she initiated the action. At the hearing, the HSO-III provides input on how he or she came to document the information on the Data Form, information from their investigation and the employee's past history.

As outlined by departmental policy, the HSO-III who brings the discipline carries the procedure out through the entire process. Generally, when there is discipline at a pre-disciplniary hearing, the discipline is sustained in the various review and grievance processes. During Director Kelly's tenure, over two-and-a-half-years, there were just two forms that were adjusted. One form was adjusted when the officer was marked absent for what was actually a Department snow day. The other instance was where a nine-day suspension was reduced to a one-day suspension.

HSO-III's and PSO-II's both complete the supervisor management log. Completing the supervisor management log entails documenting contacts and observations of their subordinates, as well as any activities they performed.

The HSO-III's are expected to check on the subordinate officers twice during their shift to ensure that the officers are where they are supposed to be and performing their required tasks. This check is expected to take place once during the first four hours of the HSO-III's shift and once during the second four hours of the HSO-III's shift. In the event of a traffic accident on the hospital grounds, the HSO-III reviews the traffic accident report, completed by the PSO-I, for accuracy.

HSO-III's are also responsible for the overtime projections form for the next pay period. Projections include the need for overtime to meet the minimum staffing requirements, scheduled events, details, or other matters that will cause a need for additional personnel for a shift.

IV. DISCUSSION AND ANALYSIS

The issue presented in this case is whether the petitioned-for employees, HSO-III's, are supervisory employees within the meaning of Section 3(r) of the Act, and therefore must be excluded from collective bargaining.

The Petitioner states that the HSO-III's spend a preponderance of their time engaging in patrol functions that are similar to those undertaken by their subordinates. Furthermore, Petitioner contends HSO-III's do not exercise independent judgment with respect to any of the supervisory functions they may perform.

The Respondent indicates first that the substantial work difference of HSO-III's is first apparent from their job descriptions. The Respondent states that HSO-III's have greater supervision requirements. The Respondent also states that the HSO-III's exercise independent judgment to determine whether the subordinates are correctly performing their duties, whether they need additional training, and how they respond to incidents.

A. Supervisory Analysis

A conflict of interest arises when supervisors are in the same bargaining unit as their subordinates. City of Washington v. Illinois Labor Relations Board, 383 Ill. App. 3d 1112, 1120,

891 N.E.2d 980, 986 (2008). Pursuant to Sections 3(r) of the Act, employees who are supervisory employees are excluded from the protections of the Act.

In relevant part, Section 3(r) of the Act defines a supervisory employee as follows:

> "Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has 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.

Applying this definition, a peace officer will be deemed a supervisor within the meaning of the Act, if he or she meets a three-part test: the alleged supervisor must 1) perform principal work substantially different than his or her subordinates; 2) have authority in the interest of the employer to perform one or more of the 11 enumerated supervisory functions, or to effectively recommend such action; and 3) consistently use independent judgment in performing or recommending the enumerated actions. City of Freeport v. Illinois States Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 162, 6 PERI ¶4019 (1990). Unlike other employees, police officers are not subject to the requirement that they devote the preponderance of their work time to exercising supervisory authority in order to be supervisors within the meaning of the Act. Id. The party which seeks to exclude the employees from the proposed bargaining unit has the burden of proving that statutory exclusion exists. Washington, 383 Ill. App. 3d at 1120.

1. **The principal work of the alleged supervisor must be substantially different from that of his or her subordinates.**

The threshold requirement for finding that the police officers are supervisors under the Act is that their principal work be substantially different from that of their subordinates. Freeport, 135 Ill. 2d at 512. The alleged supervisor may, at times, engage in similar work as his subordinates, however, his foremost activity must not be similar. Id. at 513. In determining

whether the principal work of the alleged supervisor is substantially different from that of their subordinates, the Board has stated that the work of the alleged supervisor ought to be "obviously and visibly" different from that of the subordinates. Id. at 514; Village of Glen Carbon, 8 PERI ¶2026 (IL SLRB 1992). However, if the work is not obviously and visibly different from the work of their subordinates, then the determinative factor is whether the "nature and essence" of the principal work is substantially different. Freeport, 135 Ill. 2d at 514.

Petitioner contends that the work of a HSO-III is not obviously and visibly different from that of his or her subordinates. The Respondent contends that the substantial work difference is apparent from the job descriptions of the HSO-III's.

HSO-III's responsibilities are primarily related to monitoring or overseeing the performance of the PSO-I's and PSO-II's whereas PSO-I's and PSO-II's are wholly or in large part performing tasks which aid in the functionality of the police department. PSO-I's are responsible for providing a high visibility police presence while performing foot patrol, motorized patrol, emergency response, access control, main gate control, traffic control, fire prevention and control. PSO-II's monitor the PSO-I's and ensure that they are carrying out their responsibilities as assigned.

However, HSO-III's are responsible for watch operation and the direction and coordination of Public Safety Officers II and I. They coordinate, conduct and request on-the-job and in-service training of officers assigned to their shift. Also, HSO-III's promote and maintain security and protection program for the Hospital.

Although HSO-III's perform some tasks which are facially similar to PSO-II's such as monitoring subordinates, the foremost activity is not similar. Additionally, HSO-III's are tasked with the added responsibility of issuing and recommending discipline. Therefore, the first-prong of the three-part test, principal work is substantially different from that of his or her subordinates, is satisfied.

2. **The alleged supervisor must exercise or recommend the exercise of one or more supervisory functions enumerated in Section 3(r) of the Act.**

In addition to meeting the principal work requirement, it must be determined whether each of the HSO-III's exercise authority, in the interest of the employer, to perform any of the 11 supervisory functions enumerated in the Act or to effectively recommend the same. Freeport, 135 Ill. 2d at 512. The 11 supervisory functions, enumerated in the Act, require that the HSO-III's possess the authority to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, or adjust their grievances, or effectively recommend such action. Id. Even the ability to effectively recommend one of the supervisory indicia is enough to support a finding of supervisory status. Id.

Petitioner contends that HSO-III's play no role in hiring, firing, promotions and the grievance procedure. The Respondent contends that the HSO-III's perform indicia of supervisory authority because they recommend and perform disciplinary actions.

The record evidence establishes that HSO-III's do not have authority to hire, transfer, layoff, promote or effectively recommend any of the aforementioned supervisory functions. And the record evidence does not convey whether they have the authority to recall, reward or adjust grievances. However, HSO-III's have the authority to direct, discipline, suspend, and effectively recommend discharging employees.

a. Direct

The Board has previously held that the term direct encompasses several functions, including assigning duties, reviewing and monitoring work activities, evaluating job performance, and approving time off and overtime. City of Naperville, 8 PERI ¶2016 (1992). Supervisory authority is established, with regards to direction of subordinates' work, when the alleged supervisor exercises significant discretionary authority, affecting the terms and conditions of the subordinate's employment. Village of Broadview v. Illinois Labor Relations Board, 402 Ill. App. 3d 503, 510, 932 N.E.2d 25, 32 (1st Dist. 2010).

HSO-III's schedule personnel to provide adequate staffing on perspective watch and oversee changes to assignments. HSO-III's also have discretion to approve and assign overtime. For example, if a person calls in sick, the HSO-III has the duty of filling that void to maintain minimum staffing. The record also reflects that HSO-III's are involved in training.

b. Discipline/Discharge/Suspend

The record evidence establishes that HSO-III's can impose discipline or corrective action, which includes oral reprimand or counseling, written warnings, suspension, and stress management classes. HSO-III's can issue forms for progressive discipline concerning repeated excessive tardiness, insubordination, reporting to work without an ID card, and failure to punch in and out. If an HSO-III sees an instance where an officer fails to swipe in or swipe out, the HSO-III fills out a counseling form and it goes to pre-disciplinary hearing. Moreover, the record presents evidence that HSO-III's have the authority to effectively recommend discipline that rises to the level of suspension in the interest of the Hospital.

Therefore, the second-prong of the three-part test, exercise or recommend the exercise of one or more supervisory functions enumerated in Section 3(r) of the Act, is satisfied with direction and discipline. The discipline in turn leads to suspension and in some cases, discharge.

3. The alleged supervisor must consistently use independent judgment in the performance of those functions.

Thirdly, the Employer must show that performance of those indicia involves the use of independent judgment in the interest of the employer. Independent judgment in the interest of the employer has been defined as the choice between two or more significant courses of action rather than routine or clerical choices. Freeport, 135 Ill. 2d at 520; Chief Judge of the Circuit Court of Cook County v. American Federation of State, County, and Municipal Employees, Council 31, 153 Ill. 2d 508, 516, 607 N.E.2d 1182, 9 PERI ¶4004 (1992). Whether the independent judgment is used consistently is determined based on the number of times in which independent judgment might be required in performing a particular supervisory function rather

than the number of times it is actually exercised. Freeport, 135 Ill. 2d at 520; State of Illinois (Dep't. of Cent. Mgmt. Serv.), 12 PERI ¶2032 (IL SLRB 1996).

The Petitioner contends the HSO-III's do not use independent judgment in their duties. The Respondent contends that the HSO-III's use discretion and exercise independent judgment when carrying out their duties.

The record evidence shows that the HSO-III's use a table to determine what type of discipline to impose for any infraction that does not have a clear path of corrective action. It is well-settled that counseling letters and verbal reprimands constitute disciplinary authority within the meaning of the Act when three criteria are met: 1) engaging in this activity requires an individual to use independent judgment; 2) the action is documented; and 3) the counseling letters or verbal reprimands can serve as the basis for future discipline. Village of Hinsdale and Illinois Fraternal Order of Police Labor Council, 22 PERI ¶176 (IL SLRB 2006).

The record demonstrates that the counseling letters issued by Commanders served as a basis for future discipline. The record also demonstrates that Ramon Honore exercised this very authority on June 13, 2008, when he issued a counseling letter to a subordinate, Officer Darryl Johnson. The counseling letter mandates Johnson's facial hair was "highly visible." His use of the adjective "highly" lends to the subjective and independent nature of his judgment, which led him to issue the counseling form.

At the same time, the record fails to show that the HSO-III's are required to consult with their superiors before issuing a counseling letter. In fact, the HSO-III's carry out the entire disciplinary procedure through the entire process. The Director has the option to attend the hearing but typically does not attend. This further supports the proposition that the HSO-III's are operating under independent judgment. Under these circumstances, the HSO-III's have supervisory authority to discipline using independent judgment within the meaning of the Act.

Because I find the HSO-III's have authority to recommend and perform disciplinary functions and they consistently use independent judgment in exercising such authority, I

conclude that the Respondent has met its burden of showing that the HSO-III's are supervisors within the meaning of the Act.

V. CONCLUSIONS OF LAW

Under the Act, the peace officers with the rank of HSO-III are supervisors within the meaning of Section 3(r) and hence, are statutorily exempt from collective bargaining and therefore cannot be included in the bargaining unit.

VI. ORDER

It is hereby recommended that the Petition for Certification filed in this case be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommendation and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 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 7 days from the filing, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exception and cross-responses must be filed with the Board's General Counsel, Jerald Post, 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 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 14th day of September, 2012.

ILLINOIS LABOR RELATIONS BOARD

Christina O. Alabi
Administrative Law Judge