

I. BACKGROUND

A. Employer's Position Statement

On July 15, 2011, the Employer filed a Position Statement in which it argued that Dorothy Gibson, the occupant of the RDIPAS position in the Medical Record Department at Stroger Hospital, is a supervisory employee within the meaning of the Act. The Employer contends that the petitioned-for position meets the four-part test for supervisory employee which the Illinois Supreme Court set forth in Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d 508, 515, 607 N.E. 2d 182 (1992). Pursuant to that test, the alleged supervisor must 1) perform principal work substantially different from that of his/her subordinates; 2) have authority to perform some or all 11 functions enumerated in Section 3(r) of the Act; 3) consistently use independent judgment in the performance of these 11 enumerated functions; and 4) generally, devote a preponderance of his/her time to exercising the authority to handle these 11 functions.

Id.

First, the Employer maintains that the job description for the RDIPAS position shows that Gibson does not perform any tasks of her subordinates. It indicates that she is responsible for the effectiveness and efficiency of the Chart Retrieval Section (Section) of Stroger Hospital which involves record retrieval for patients, providers and requestors, record maintenance and processing of reports. In addition, the job description lists the supervision of subordinate staff first among Gibson's duties.

Regarding the alleged supervisor's performance of supervisory functions, the second prong of the test for supervisor, the Position Statement asserts that Gibson disciplines subordinates by issuing documented verbal and written reprimands to them. The written reprimand and documented verbal reprimand attached to the Position Statement were for, respectively,

excessive absenteeism and disruption of the workplace. Further, the Employer's Position Statement asserts that Gibson uses independent judgment in issuing this discipline. It does not maintain that she performs any of the other 10 indicia of supervisory authority.

Finally, the Employer maintains that Gibson spends a preponderance of her employment time performing supervisory functions. The Employer argues that Gibson spends "the preponderance of time engaged in what would be considered supervisory activities rather than one non-supervisory activity." In order to support this contention, the Employer points out that Gibson spends only six hours per week filling in for subordinates during their absences. As evidence of this amount of time, the Employer attached a chart to its Position Statement which Gibson's direct superior, Unit Manager James Harrold, prepared in October 2010 at least five months prior to the filing of the instant Petition.

This chart has three columns, designated as "Hours Per Week," "Managerial Activity," and "Production Activity," respectively. Each of the 14 rows of the chart lists a different activity. According to the chart, Gibson spends a total of 43 hours each week on eight functions. One of these eight functions is a task described as "Attendance/Tardy Reports/Counseling/Discipline" which takes up three hours of her time a week. Another, referenced in the paragraph above, is described as "Assist[ing] staff during absenteeism and/or vacation." Of the remaining six activities outlined in the chart, no time is listed in the column entitled "Hours Per Week."²

After reviewing the Employer's Position Statement, on July 11, 2011, the undersigned Administrative Law Judge (ALJ) wrote a letter to the parties informing them of her finding that the evidence was insufficient to support the Employer's objection that Gibson was a supervisory employee within the meaning of the Act. Further, the letter ordered the Employer to show cause

² The chart indicates that 13 of the functions listed are "Managerial Activities" and that one is a "Production Activity."

why the petitioned-for employee should not be added to the existing unit. In responding to this Order to Show Cause, the letter asked the Employer to include the following information: 1) a statement of which supervisory authorities outlined in Section 3(r) it contends that Gibson exercises with independent judgment; and 2) the number of times that Gibson has issued discipline or recommended discipline in 2009, 2010 and 2011.

B. Employer's Offer of Proof

On August 3, 2010, in response to the Order to Show Cause, the Employer filed an Offer of Proof consisting of an affidavit of Unit Manager James Harrold, Gibson's direct superior, job descriptions of her 12 direct subordinates, and "samples of discipline"—disciplinary documents which Gibson wrote for two of them in 2009 and 2010. The "samples of discipline" attached to the Employer's Offer of Proof all concerned alleged excessive tardiness, excessive absenteeism, or disruption of the work place. They consisted of disciplinary action forms which Gibson completed to document verbal reprimands, written reprimands, and suspensions, as well as letters she wrote to them related to pre-disciplinary hearings.³

II. DISCUSSION AND ANALYSIS

In a representation hearing, the party claiming a statutory exclusion has the burden of proving its existence. Chief Judge of the Circuit Court of Cook County and Chicago Newspaper Guild, Local #34071, 18 PERI ¶2016 (IL LRB SP 2002). Consequently, no hearing is required where the party seeking that exclusion fails to raise an issue of fact or law.⁴ See e.g., City of Chicago v. Illinois Labor Relations Board., 396 Ill. App. 3d 61, 71-72, 25 PERI ¶158 (1st Dist.

³ The Employer's affidavit contends that there are 13 "samples of discipline." Three of the letters that comprise these "samples of discipline" are related to one subordinate's three-day suspension for excessive tardiness on the same days.

⁴ The Act does not guarantee a hearing to a party objecting to a representation petition. As the Board explained in its decision in AFSCME, Council 31 and State of Illinois Dep't of Cent. Mgmt. Services, 26 PERI ¶132 (IL LRB-SP 2010), provision of a hearing referenced in Section 9(a) of the Act "is contingent upon finding 'reasonable cause to believe that a question of representation exists.' "

2009) (insufficient evidence to warrant hearing on employer's objections that supervisory or managerial); AFSCME, Council 31 and State of Illinois, Dep't of Cent. Mgmt. Services (Dep't of Public Health and Pollution Control Board), 26 PERI ¶113 (IL LRB-SP 2010) (inadequate evidence to necessitate hearing on employer's objections that supervisory and managerial employees). After careful consideration of the parties' submissions, I find that the Employer has failed to raise a question of fact or law as to whether Dorothy Gibson, the RDIPAS at Cook County's Stroger Hospital, is a supervisory employee within the meaning of the Act.

A. Supervisory Issue

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

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 these 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.

Applying this definition, an individual will be deemed a supervisor within the meaning of the Act if he or she meets all four parts of the test: the alleged supervisor must 1) perform principal work substantially different from that of his subordinates; 2) exercise or recommend the exercise of one or more supervisory functions enumerated in Section 3(r) of the Act; 3) consistently use independent judgment in the performance of those functions; and 4) devote a preponderance of employment time exercising such supervisory authority. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 6 PERI ¶4019 (1990); Northwest Mosquito Abatement District v. Illinois State Labor Relations Board, 303 Ill. App. 3d 735, 748, 708 N.E.2d 548, 15 PERI

¶4007 (1st Dist. 1999); AFSCME, Council 31 and State of Illinois, DCMS (ISP), 23 PERI ¶38 (IL LRB-SP 2007).

Assuming that the Employer has submitted sufficient evidence to warrant a hearing concerning the initial three elements of the test for supervisor, the Employer has failed to raise an issue concerning the fourth element.⁵ In other words, neither the Employer's Position Statement nor its Offer of Proof provide sufficient evidence to raise a question as to whether Gibson spends a preponderance of employment time exercising supervisory functions within the meaning of the Act. See Dep't of Cent. Mgmt. Services (Dep't of Public Health and Pollution Control Board), 26 PERI ¶113 (IL LRB-SP 2010) (no hearing warranted where employer fails to raise issue of fact or law on whether alleged supervisors spend a preponderance of time on supervisory tasks).

The Board applies the preponderance of time standard articulated in State of Illinois, Dep't of Cent. Mgmt. Services v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 85-86, 662 N.E.2d 131, 13 PERI ¶4003 (4th Dist. 1996). As the excerpt below shows, in that Opinion the Illinois Appellate Court emphasized that preponderance of time should be defined qualitatively in terms of the *significance* of the time spent exercising supervisory functions rather than the quantitatively, *i.e.*, amount of time spent.

[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions. No one can expect mathematical certainty in these types of cases.

Id. at 86. In so interpreting "preponderance of time," the Illinois Appellate Court explained the words of the Illinois Supreme Court in City of Freeport, 135 Ill. 2d. 499, 532-33 (1990) that,

⁵ The issuance of discipline for attendance related issues *may not* require the use of independent judgment, and, hence, may not satisfy the second and third prongs of the test for supervisor. See AFSCME, Council 31 and County of Cook, 28 PERI 109 (IL LRB-LP 2012) (discipline for attendance related issues showed routine application of the employer's policy, not consistent use of independent judgment). But the Employer's Position Statement and Offer of Proof show that Gibson also issued discipline for disruption of the workplace—conduct unrelated to attendance issues and much more likely to involve the consistent use of independent judgment.

based on the Board's interpretations, the term "preponderance" means that "the most significant allotment of the employee's time must be spent exercising supervisory functions; the employee must spend more time on supervisory functions than on any one nonsupervisory function." *Id.* at 85.

Analyzing the instant case based on this principle, the Employer does not even argue that the employee at issue spends the most significant part of her day exercising supervisory authority. Instead, the Employer's evidence shows that Gibson spends three hours per week on discipline for attendance related issues. This conclusion is based on the chart which the Employer attached to its Position Statement. More importantly, the Employer fails to contend that the time Gibson spends disciplining her subordinates is any more significant than the time she spends doing the other 12 activities designated as "managerial activities" on the chart.

Further, the exercise of supervisory authority to be considered in determining whether the Employer's evidence raises an issue of fact or law concerning preponderance of time is restricted to the authority to discipline or recommend discipline. See City of Naperville and SEIU, Local No. 1, AFL-CIO, 8 PERI ¶2016 (IL SLRB 1992) (preponderance requirement interpreted as time spent performing *supervisory* functions). This limitation is based on both the Employer's Position Statement and Offer of Proof which cite no other supervisory authority which Gibson exercises. The Order to Show Cause sent to the Employer explicitly asked the Employer to include in its response a statement on which Section 3(r) supervisory authorities it was basing its objection. In response, the Employer filed an Offer of Proof which provides that Gibson has the supervisory authority to discipline and/or recommend discipline. As a result, there is no basis for me to find that Gibson exercises any other supervisory authority enumerated in Section 3(r) of the Act. Consequently, the time which she spends exercising tasks other than discipline

identified in the Employer's chart cannot be considered in analyzing "preponderance of time."

Id.

III. CONCLUSIONS OF LAW

I find that Dorothy Gibson, the petitioned-for Retrieval, Document Imaging and Prepping/Assembly Supervisor, is not a supervisor within the meaning of Section 3(r) of the Act, and, should therefore be included in the bargaining unit certified in Case No. L-UC-08-011.

IV. RECOMMENDED ORDER

It is hereby recommended that the petitioned-for Retrieval, Document Imaging and Prepping/Assembly Supervisor position, occupied by Dorothy Gibson, be added to the bargaining unit certified in Case No. L-UC-08-011.

V. 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 the 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. The exceptions and cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions have been provided to them. The exceptions and cross-exceptions will not be considered without this

statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 18th day of September 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD

Eileen L. Bell

Eileen L. Bell
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County and)
Municipal Employees, Council 31,)
)
Petitioner)
And)
)
County of Cook,)
)
Respondent)

Case No. L-RC-11-019

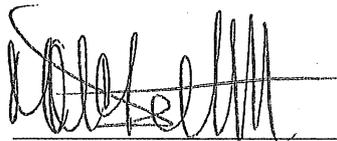
AFFIDAVIT OF SERVICE

I, Melissa L. McDermott, on oath state that I have this 18th day of September, 2012, 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 5:00 p.m., copies thereof in the United States mail at 100 West Randolph Street, Chicago, Illinois, addressed as indicated and with postage for regular mail.

Mr. Gregory Vaci
Labor & Employment Division
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, Illinois 60602

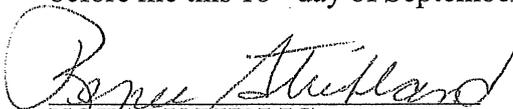
Mr. Rodney Douglas
American Federation of State, County and
Municipal Employees, Council 31
205 North Michigan Avenue
Suite 2100
Chicago, Illinois 60601

Mr. Thomas Edstrom
American Federation of State, County and
Municipal Employees, Council 31
205 North Michigan Avenue
Suite 2100
Chicago, Illinois 60601



Melissa L. McDermott, ILRB

SUBSCRIBED and SWORN to
before me this 18th day of September, 2012.


NOTARY PUBLIC

