

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

I. PRELIMINARY FINDINGS

The Parties stipulate and I find as follows:

1. At all times material, the Petitioner has been a labor organization within the meaning of the Section 3(i) of the Act.
2. At all times material, the Employer has been a public employer within the meaning of Section 3(o) of the Act.
3. At all times material, the Employer has been subject to the jurisdiction of the Board's State Panel pursuant to Sections 5(a) and 20(b) of the Act.

II. ISSUE AND CONTENTIONS

The issue is whether the Payroll Administrators Melton Baxter in the Office of Emergency Management & Communication and Margie Bradford at the Chicago Fire Department are supervisors within the meaning of the Act, and should therefore be excluded from the petitioned-for bargaining unit. The Employer does not object to the inclusion of Payroll Administrator Gladys Thomas in the Department of Fleet Management.

The Employer argues that Bradford and Baxter have the supervisory authority to direct, discipline, suspend, reward, adjust or respond to grievances and hire and discharge employees with the requisite independent judgment. The Employer further maintains that they perform these duties for a preponderance of their time.

The Petitioner contends that Bradford and Baxter do not perform any supervisory duties in accordance with the Act, and therefore are not supervisory employees within the meaning of the Act.

III. FINDINGS OF FACT

The payroll division within the City of Chicago (Employer) is decentralized with a payroll division section within each department that processes time sheets and works on the payroll for the employees in that department. The payroll administrator in each department oversees that process in their respective departments. They handle the troubleshooting aspects of the payroll system such as discrepancies that arise during processing. Their subordinates handle the data entry functions of payroll ensuring that each employee's time is entered correctly into the computer system. That information is then sent to the Employer's Department of Finance where that payroll division produces the citywide paychecks for all of the Employer's employees.

Margie Bradford heads the payroll division for the Chicago Fire Department (CFD). She reports to Steven Swanson, the Director of Finance for the CFD. The payroll supervisor, Kittrell Lewis, and eight field payroll auditors report to Bradford. Her office is located at CFD headquarters along with the payroll supervisor and three auditors. The five remaining auditors' offices are located at firehouses throughout the city. The auditors at the firehouses are responsible for preparing the timesheets for the firemen, EMS technicians and paramedics at their locations. This data is sent to CFD headquarters where the other three auditors key it into the payroll system. The payroll supervisor oversees the work of the field payroll auditors as it is distributed, received and entered into the system. She also monitors and checks this work daily.

Bradford assigns her subordinates regular work assignments and special projects. Bradford monitors the progress of their work related to the special projects assigned, but not their daily work assignments. She also prioritizes work assigned. For example, the auditors are working on FLSA and she has pulled several auditors from the field to complete this project.

She also assigns research projects to different auditors depending on the complexity of the issues. Bradford assigns the auditors urgent matters and gives them immediate deadlines. Often times she follows up with the auditors via email and if she does not receive a response from them she will contact the chief of their firehouse and then they will usually respond.

Bradford spends approximately 50% of her time per month communicating with the payroll auditors by assigning duties, following up on urgent matters and special projects and answering their questions. The auditors inform Bradford when they have a problem and when they want to take vacation. The auditors located at headquarters notify Bradford when they are going to be late and the auditors at the firehouses notify the chief.

Bradford approves or denies all time off requests. Her subordinates do not work overtime. Regarding vacation, the auditors can choose their dates on the calendar annually. When there is a dispute, Bradford grants vacation based on seniority. However, Bradford does have the ability to determine how many auditors are on vacation at any given time. When Bradford started as payroll administrator; she, the payroll supervisor and the previous director of finance limited the amount of auditors off at a time to two because they were having problems with a couple of the employees. This year Bradford expects to independently change this requirement to allow only one auditor to take vacation at a time due to lower staffing levels. This change is solely her decision.

Although progressive discipline is not required, when disciplining her subordinates Bradford does follow the disciplinary process of verbal warning, written reprimand, suspension – depending on the severity of the case suspensions are from 5, 10, 15, 20 days, or more – and discharge. Bradford can initiate discipline on her own or follow Kittrell's recommendation. Before she issues any form of discipline she consults with the director, Steven Swanson.

Bradford wants to make sure Swanson is not blind-sided and that he knows of everything going on in the department. Bradford, along with Kittrell and Swanson also consult with labor management. Bradford has recommended specific discipline and Swanson has followed her recommendations. Bradford's is the only signature on disciplinary documents.

When deciding merit increases, Bradford and Kittrell consult and decide whether to deny or grant an increase. Several auditors have been denied merit increases. The auditors find out when they receive their paychecks. Both Bradford and Kittrell sign off on all merit increase documentation. Although Bradford and Kittrell grant or deny merit increases together, Swanson only takes into consideration Bradford's decision.

When handling grievances, Bradford has the ability to grant or deny a grievance at any step without Swanson's approval. Although Bradford has never granted or denied any grievances, she has assisted labor management and Swanson when an employee grieves a suspension. They collectively decide whether to give that employee back pay. Most often the grievance is denied. She has also been involved in pre-disciplinary hearings to provide information about an employee's work performance.

Bradford may have the authority to transfer an employee from her department but she has never done so. She would also be involved in the hiring process of employees in the future but since her employment in 2008, the department has not hired new employees. Bradford would also be involved in the training of new employees when the department hires new employees. Currently she keeps her subordinates updated on any new procedures by relaying messages through email or having meetings.

Bradford's additional duties include processing tuition reimbursements, unpaid holidays submitted by firemen, continuing education, Dinosaur day³, furlough pay, fitness pay, uniform pay, and administrative pay. She is also responsible for handling any special projects given to her by Swanson. She handles any discrepancies in payroll that occur. Bradford assists the Bureau of Labor Relations with grievances when payroll related matters are at issue. Those grievances are given to Swanson and he forwards them to Bradford to research. She either handles the research herself or gives it to a payroll auditor to complete depending on the complexity of the matter. Bradford is also the main point of contact with the law department regarding requests for documents involving FLSA pay and how the department pays its paramedics. This has been an ongoing task for the last eight years. Bradford's duty is to gather the records the law department requests. She also delegates these duties.

Melton Baxter oversees payroll for the Office of Emergency Management & Communication (OEMC). OEMC is responsible for "on-boarding" new employees, the exit process for employees that are leaving City employment, leave of absence administration and salary administration. Baxter reports to the Director of Personnel, John Arvetis. As payroll administrator, Baxter addresses any problems or questions that arise from his subordinates. This includes fixing issues with paychecks like missing overtime or straight-time pay and incorrect check amounts. He can decide to make a special payment to that employee immediately or have them wait until the next payroll. He is also the liaison to the Comptroller's Office of Finance Division as it relates to any changes to policies and procedures and pay schedules. Baxter also trains employees on the Chicago Automated Time and Attendance system (CADA). He ensures the clerks are updated on the use of the system and he holds training courses for others using the system in OEMC. Baxter developed the training program for the CADA users in OEMC

³ A form of reimbursement to CFD employees processed by Bradford.

because the handbook the Department of Finance provides does not take into consideration employees in OEMC who work 8 hour shifts, 24 hours a day. He gives these classes on an as-needed basis.

Baxter directly oversees two clerks and a payroll supervisor. The payroll supervisor's position is currently vacant. The clerk's duties are to add and delete employees in the payroll system. They also enter any changes to an employee's profile including: union dues, deduction codes and changes to their tax status and they update the CADA system. They also complete settlement agreements like withholdings, and process terminal vacation time for employees leaving City employment.

Baxter meets with the clerks every morning to discuss issues, assign them tasks for the day and to outline that day's projects. When assigning duties, Baxter prioritizes work that needs to be completed immediately. It is Baxter's duty to ensure payroll functions are performed in a timely fashion because payroll is the department's main priority. He also reviews the clerk's settlement agreements and terminal vacation requests for accuracy and to ensure all contract rules and City policies are followed. Baxter then approves these documents.

Baxter approves or denies his subordinates' requests for time off including vacation time. Baxter makes certain that the office is fully staffed when his subordinates request time off. If a project needs to be completed in a timely fashion, Baxter can extend or mandate overtime to complete to the project. By request from the clerks, Baxter grants or denies them overtime to finish projects. He has also allowed an employee to alter his or her work schedule and leave an hour early instead of taking a lunch period. These requests are approved by Baxter without knowledge or input from Artveis.

When evaluating his subordinates, Baxter determines what criteria to use in ranking them. He also applies a numerical score. The evaluations then go to Mr. Arvetis who reviews them, makes a note of their scores and places them in the employee's file. Arvetis defers to Baxter's assessments on evaluations since Baxter works more closely with his subordinates.

Regarding hiring, Baxter is expected to perform duties similar to those of his predecessor. Although no one has been hired while Baxter has been in this position, he will be expected to formulate hiring criteria, update interview questions and interview potential candidates for the currently vacant payroll supervisor position and other titles that directly report to him. He will also be responsible for training new employees.

Baxter also has the ability to discipline his subordinates and adjust grievances, but he has never done so. He has been involved in grievance proceedings as a witness in arbitration hearings. Baxter testified to CADA documents that were entered into evidence regarding the attendance of a police communications operator.

IV. DISCUSSION AND ANALYSIS

The Employer argues that the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act because they direct and discipline their subordinates using independent judgment.⁴ The Board has interpreted this provision to require that an employee in State employment meet each of the four following criteria: 1) his principal work must be substantially different from that of his subordinates; 2) he must possess the authority to perform

⁴ Section 3(r) of the Act provides:

"Supervisor" is an employee whose principal work is substantially different from that of his 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, or to adjust their grievances, or to effectively recommend such actions, if the exercise of such 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 such authority State supervisors notwithstanding.

one or more of the enumerated supervisory functions, or he must effectively recommend the performance thereof; 3) his function, as such, must not be routine or clerical in nature, but must require the consistent use of independent judgment; and 4) he must devote a preponderance of his time to performing supervisory functions. State of Illinois Department of Central Management Services (DCFS), 8 PERI ¶2037 (IL SLRB 1992).

Principal Work

An analysis of the “principal work” portion of the supervisor test starts from the proposition that “an employee may engage in the same work as his subordinates the majority of his time, but if the essence of his work differs from that of his subordinates, a supervisory determination may result if other indicia are present.” Secretary of State, 1 PERI ¶2009 (IL SLRB 1985). Thus, while the test is “easily satisfied where the work of the alleged supervisor is obviously and visibly different from that of the subordinates ... the Board will look at what the alleged supervisor actually does, to determine whether the ‘nature and essence’ of his work is substantially different.” City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499; 554 N.E.2d 155, 162-63 (1990).

The payroll administrators perform work substantially different from that of their subordinates. Their subordinates perform payroll data entry functions that neither payroll administrator performs. Bradford also processes several other forms of payment including tuition reimbursements, unpaid holidays, continuing education, Dinosaur day and furlough pay that her subordinates do not process. Baxter trains employees on the CADA system, is the liaison between his office and the comptroller’s office and also has the authority to make special payments, none of which his subordinates have the authority to perform.

The payroll administrators perform duties that are obviously and visibly different from that of their subordinates. Therefore, they meet the principal work standard of the supervisory test.

Supervisory Authority

Direct

The Employer contends that the payroll administrators direct their subordinates with the requisite independent judgment. The authority to "direct" encompasses several functions, including reviewing and monitoring work activities, scheduling work hours, scheduling training, approving time off and overtime, assigning duties, and formally evaluating job performance, provided the evaluations are shown to affect the subordinates' pay or other terms and conditions of employment. Performance evaluations that have no role in determining pay or employment status do not constitute supervisory direction. Illinois Department of Central Management Services, 26 PERI ¶39 (ILRB SP 2010) (citing, Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 117 (2d Dist. 1993)); County of Cook (Department of Corrections), 15 PERI ¶3022 (IL LLRB 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992).

Supervisory direction is not established by conclusory statements that the alleged supervisors are responsible for the operation of their shifts, but is instead established only by evidence that they check and, where necessary correct their subordinates' work, giving them instructions without guidelines or review by others. City of Chicago, 10 PERI ¶3017 (IL LLRB 1994). The alleged supervisor must make choices between two or more significant courses of action without substantial review by superiors; those choices may not be routine or clerical in nature or made on the basis of the alleged supervisor's superior skill, experience or knowledge.

City of Freeport, 135 Ill. 2d at 519; Chief Judge of the Circuit Court of Cook County v. AFSCME, 153 Ill. 2d 508, 512 (1992) (citing St. Clair Housing Authority, 5 PERI ¶2017 (IL SLRB 1989); State of Illinois, 12 PERI ¶2032 (IL SLRB 1996)).

To constitute supervisory authority to direct within the meaning of the Act, the employees' responsibility for their subordinates' proper work performance must involve significant discretionary authority to affect the subordinates' terms and conditions of employment. City of Naperville, 8 PERI ¶2016. The Board has held that functions of direction are not considered to be supervisory unless there is evidence that the purported supervisor possesses significant discretion to affect the subordinate employee's employment in areas that fall within the scope of union representation such as discipline, transfer, promotion or hiring. County of Lake, 16 PERI ¶2036 (IL LRB-SP 2000); City of Bloomington, 13 PERI ¶2041 (IL SLRB 1997); City of Sparta, 9 PERI ¶2029 (IL SLRB 1993).

Assign and Monitor

The record demonstrates that Bradford assigns work by deciding which auditors will handle certain research assignments based on the complexity of the issues. Bradford also prioritizes the regular work of the auditors with duties that have more immediate deadlines. She has taken auditors out of the field houses to perform specific duties based on her needs and their abilities. Bradford is also in constant communication with her subordinates monitoring their progress and answering questions and giving assistance and guidance. She testified that she has direct contact with her subordinates regarding their workload, answering questions and monitoring their work about 50% of her time per month.

Bradford also testified to having the independent authority to change minimum staffing based on lower staffing levels and, in the past, issues with work performance of her subordinates.

Moreover, there is no routine, or guideline, that defines when or how such decisions are to be reached, and therefore Bradford is exercising her independent judgment. Such staffing and work assignment decisions constitute operational decisions involving two or more significant courses of action. Village of Gary, 7 PERI ¶2037 (IL SLRB H.O. 1991); County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶3022 (IL LLRB 1999), aff'd by unpub. order, 16 PERI ¶4004 (1999). Her instruction and guidance is also considered supervisory according to the Act. In order for the alleged supervisor to effectively direct under the Act, the supervisor “must be actively involved in checking, correcting and giving instruction to subordinates.” Superior Officers Council and County. of Cook, Sheriff of Cook County (Department of Corrections), 15 PERI ¶3022 (IL LLRB 1999). As a result, I find that Bradford’s assignment of work to her subordinates is evidence of her supervisory authority to direct.

Baxter checks and corrects the settlement agreements and terminal vacation forms submitted by the clerks, according to City policies. The record does not establish that Baxter monitors or observes the performance of the clerks or that he provides them necessary instruction and advice. Instead he corrects errors himself. Moreover, these errors are brought to his attention by either the clerks or an employee with a payroll issue. These matters are routine and clerical in nature and Baxter’s decisions do not involve two or more significant courses of action. Instead he simply follows protocol put forth by the Employer’s procedures and policies. Although the Employer argues that Baxter performs the duties of the supervisor of payroll title which is currently vacant, there is no evidence that these duties are more than routine and clerical in nature. Therefore, the Employer fails to establish the Baxter has the authority to direct within the meaning of the Act.

Approval of Time Off and Overtime

Regarding the payroll administrators' authority to approve time off, the record establishes that Bradford authorizes vacation ensuring that minimum staffing requirements are satisfied. However, the minimum staffing requirements are not predetermined by the Employer and are instead determined by Bradford. Village of Broadview, 402 Ill. App. 3d 503 (1st Dist. 2010) (no supervisory authority to direct when decision to allow leave is constrained by considerations of seniority and predetermined staffing requirements). Instead, Bradford determines minimum staffing based on the issues she is having with her subordinates and lower staffing levels. On the other hand, Baxter decides whether to grant or mandate overtime when there is a project that needs immediate attention or when a subordinate requests overtime. Baxter is also not bound by minimum staffing requirements set by the Employer. In these situations the payroll administrators' decision to authorize time off is evidence of a choice between two or more significant courses of action. Moreover, their decisions are based on their judgment as to the staff and time necessary to function and not on departmental policies or routine standards. Such decisions that are not based on maintaining minimum staffing standards constitute the exercise of the supervisory authority to direct. City of Freeport, 135 Ill. 2d 499; City of Carbondale, 3 PERI ¶2044 (IL SLRB 1987).

Rewards

Bradford has the supervisory authority to reward her subordinates when she grants or denies merit increases. Instead of formal evaluations, Bradford only evaluates her subordinates as it relates to merit increases. The Board has held that employees exercise the supervisory authority to reward when they use independent judgment to complete evaluations which determine whether subordinates receive merit raises. Village of Streamwood, 26 PERI ¶134

(authority to reward where employees' positive evaluations determined whether certain subordinates would receive longevity/merit raises even though the petitioned-for employees did not determine threshold eligibility which was established by time served); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992) (supervisory authority found where evaluations affected merit increase raises).

Although Bradford indicated that she completes merit increase evaluations together with the payroll supervisor, Swanson testifies that it is Bradford that has the final decision-making authority. The Board has held that a structured selection or evaluation process where each participant offers input on each candidate, eventually reaching consensus on the nominee or rating, lacks the requisite independent judgment. Village of Broadview, 25 PERI ¶63 (IL SLRB 2009)(where the participants were sergeants, laterals, evaluating patrol officers) (citing County of Knox and Knox County Sheriff, 7 PERI ¶2002 (IL SLRB 1991)(where none of the sergeants possessed or exercised the authority to recommend awards on an independent bases). The facts in this case are distinguishable. As Bradford's subordinate, Kittrell's role is merely advisory. Bradford can overrule Kittrell's decision. Swanson testified that it is Bradford's decision on which he relies, and not their collective decision. Lastly, Swanson does not perform substantive review of these merit increases.

The Employer provided no evidence or argument regarding Baxter's ability to reward his subordinates.

Evaluations

Evaluations that directly affect an employee's pay or employment status are evidence of supervisory direction. Elk Grove Village, 245 Ill. App. 3d 109, 117-18 (2d Dist. 1993) (Evaluations that have only a limited or no role in determining pay or employment status do not

constitute evidence of supervisory direction. Village of Elk Grove Village, 8 PERI ¶2015 (IL SLRB 1992); Village of Hinsdale, 22 PERI ¶176 (IL SLRB 2006) (employer demonstrated that evaluations affected terms and conditions of employment because patrol officer was required to achieve an overall “standard” to advance to the next pay grade and officers could fail to advance based on a sergeant's negative overall rating). Baxter is responsible for evaluating the work performance of his subordinates. However, those evaluations do not affect or determine the clerks’ pay or pay raises and do not otherwise affect their employment status. Therefore, I find that the responsibility for conducting such evaluations is not evidence of the authority to direct within the meaning of the act.⁵

Promote, Hire and Train

The Employer argues that the payroll administrators have the supervisory authority to promote, hire and train their subordinates, with the requisite independent judgment. Swanson testified that Bradford would have the authority to hire and train new employees but that the department has not done so since 2008. Swanson also testifies that Bradford trains her current subordinates on any new procedures by relaying the procedures to them either by email or meetings, and ensuring that they are followed.

Arvetis testified that Baxter would also have the authority to hire and promote employees, if in fact, the department hired new personnel, but that they have yet to do so. Baxter does train employees on the CADA system. These trainings include updating his subordinates who use the system, implementing training guidelines for all employees who use the system in OEMC, and training new employees, who are not his subordinates, on the system. While there is evidence of Baxter training his subordinates and other employees on the CADA system, Baxter

⁵ Bradford’s evaluations of her subordinates merely dictate whether merit increases will be awarded. As such, her authority regarding evaluations was instead discussed as her authority to reward.

does not independently decide to provide training for his subordinates based on deficiencies in their work performance. Chief Judge, 19 PERI ¶123 (The Board has found supervisory authority to direct where training was based on the petitioned-for employee's judgment that the subordinate's performance was deficient or to correct a deficiency).

To establish independent judgment the Board has consistently required evidence of an employee making a choice between two or more significant courses of action, without significant review by the employee's superior. Metropolitan Alliance of Police, 362 Ill. App. 3d 469, 477-78 (2nd Dist. 2005). To meet its burden, the Employer must demonstrate by clear and specific evidence that the petitioned-for employees fall within the excluded category. See State of Illinois, Department of Central Management Services (Illinois Gaming Board and Illinois Department of Revenue), 26 PERI ¶149 (IL LRB-SP 2011); Village of Bolingbrook, 19 PERI ¶125 (IL SLRB 2003). General and conclusory statements are insufficient to prove independent judgment. Although the Employer argues that the payroll administrators would have significant authority to hire and promote subordinates, there is no evidence that they could do so with the requisite independent judgment. The record also lacks evidence that these duties are a part of their job description. Therefore, neither payroll administrator directs their subordinates with the requisite independent judgment when training, hiring or promoting.

Discipline and Adjustment of Grievances

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. Documented oral reprimands constitute supervisory authority to discipline if: (1) the individual has the discretion or judgment to decide whether to issue such a reprimand; (2) the reprimand is documented; and (3) the reprimand can serve as the basis for future disciplinary

action, that is, it functions as part of the disciplinary system. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469 (2d. Dist. 2005); Village of Hinsdale, 22 PERI ¶176 (IL SLRB 2006); Northern Illinois University (Department of Safety), 17 PERI ¶2005 (IL SLRB 2000).

Bradford effectively recommends discipline. Although Bradford consults with her supervisor Swanson prior to issuing any discipline, she testified that she has the authority to initiate and recommend specific levels of discipline. Bradford has recommended suspensions of her subordinates and her recommendations have been followed by Swanson. She testified that she consults with Swanson so that he is aware of everything that is going on in the department. Both Swanson and Bradford also consult with labor relations to ensure that they are able to issue the specific discipline recommended. Not *any* consultation with, or review by, a superior defeats the independent judgment of effective recommendation of an alleged supervisor. See State of Illinois, DCMS, 27 PERI ¶715 (IL LRB-SP 2011). Although Bradford does consult with her superior, it is clear that she does so because she wants to keep Swanson informed and not because she cannot make the decision otherwise. Also, there is no indication of Swanson changing or refusing to follow any of Bradford's disciplinary recommendations. Under these circumstances, Bradford exercises the supervisory authority to effectively recommend discipline.

Although Baxter has never issued discipline, the Employer argues that Baxter's decision *not* to discipline is evidence of his authority. Although the decision *not* to discipline is evidence of choosing between two or more courses of action when deciding discipline; the record establishes that his subordinates are very good and there is no indication that he has ever had to make a decision either way. As with his authority to hire, promote and train, the Employer has

not provided sufficient evidence to warrant a finding that Baxter possesses the supervisory authority to discipline.

The record also lacks evidence supporting the Employer's assertion that Baxter has the authority to adjust grievances. The Employer must show that the employees at issue consistently use independent judgment when disciplining and adjusting grievances for the authority to be supervisory under the Act. City of Freeport, 135 Ill. 2d at 519. Where the adjustment of grievances extends only to minor matters of a routine nature, the exercise of that authority does not require the consistent use of independent judgment. Village of Bolingbrook, 19 PERI ¶125 (IL SLRB 2003). In addition, the mere designation as the first step in a grievance procedure, without more, does not constitute supervisory authority under the Act. Village of Bolingbrook, 19 PERI ¶125. Baxter has never adjusted a grievance and his only involvement with grievance proceedings have been related to his expertise with the CADA system. There is no evidence that he consistently uses independent judgment in adjusting grievances.

Bradford, however, does have the supervisory authority to adjust grievances. She testified that she has the authority to grant or deny a grievance at any step without the approval of Swanson. She has also decided, or recommended to Swanson and labor management, whether a subordinate should receive back pay when he or she has grieved a suspension.

Preponderance of Time

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. The Illinois Supreme Court, in City of Freeport, interpreted the preponderance standard to mean that the alleged supervisor must spend more time on supervisory functions than on any one non-supervisory function. 135 Ill. 2d at 533. Since the

Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued differing interpretations of the preponderance analysis. The first interpretation defines preponderance as requiring that the employee spend a majority, or more than 50% of his time, engaged in supervisory activity. Department of Central Management Services (Department of Children and Family Services) v. Illinois State Labor Relations Board, 249 Ill. App. 3d 740 (4th Dist. 1993). The second interpretation relies on whether the supervisory functions are more significant, or of “superiority in importance” than the non-supervisory functions. State of Illinois (Department of Central Management Services) v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 86 (4th Dist. 1996). (“Whether 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.”).

The Employer maintains that the payroll administrators spend more time exercising the supervisory function of directing their subordinates than on any one non-supervisory function. Bradford testified to spending approximately 50% of her month assigning and monitoring the work of her subordinates. Because Bradford has the supervisory authority to direct, reward and discipline her subordinates with the requisite independent judgment, her testimony supports her ability to do so with a preponderance of her time. As such, Bradford does spend a majority of her time performing supervisory duties over any other non-supervisory function.

Although Avertis testified that Baxter spends 80% of his time scheduling work, assigning work or reviewing the work, the record indicates that these duties are not supervisory in nature. Baxter only has the supervisory authority to grant overtime. Deciding overtime between two clerks does not require more than 50% of his time and, additionally, it is not the most significant

function of his duties. As such, Baxter does not spend a preponderance of his time supervising his subordinates.

V. CONCLUSIONS OF LAW

I conclude that the Payroll Administrator position held by Margie Bradford is supervisory and should be excluded from the petitioned-for bargaining unit. However, the Payroll Administrator position held by Melton Baxter and Gladys Thomas are not supervisory, within the meaning of the Act, and the petition to include them in the AFSCME represented, existing Unit #1 should be granted.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that Unit #1 is clarified to include the Payroll Administrator positions in the Department of Fleet Management and Office of Emergency Management & Communication currently held by Gladys Thomas and Melton Baxter and to exclude the Payroll Administrator position in the Chicago Fire Department held by Margie Bradford.

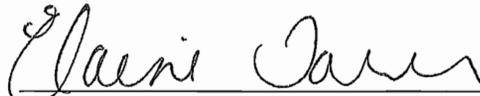
VII. EXCEPTIONS

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 Recommended Decision and Order. 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, 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 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 19th day of April, 2012

**ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**



Elaine L. Tarver, Administrative Law Judge