STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	
	)	Case No. L-RC-12-004
and	)	
County of Cook,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE
RECOMMENDED DECISION AND ORDER

On September 3, 2011, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME), filed a majority interest representation petition with the Illinois Labor Relations Board, State Panel (Board), pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). This petition seeks to include the title of Medical Records Unit Manager employed by the City of Chicago (Employer), within its historically recognized bargaining unit certified in Case No. L-UC-08-011.

A hearing in this case was held on March 9, 2012, in the Chicago office of the Illinois Labor Relations Board. At that time, all parties appeared and were given an opportunity to participate, adduce relevant evidence, examine witnesses, argue orally and file written briefs. 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

The Parties stipulate and I find as follows:

1. At all times material, AFSCME is a labor organization within the meaning of the Section 3(i) of the Act.
2. At all times material, the Employer is 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 CONTENTION

At issue is whether the petitioned-for employees, Medical Records Unit Managers (managers), Tanya Gavin, Brenda Henderson and James Harrold are supervisors within the meaning of Section 3(r) the Act. The Employer argues that the managers direct, discipline, suspend, adjust or respond to grievances and effectively hire and discharge employees, using independent judgment. Further, the Employer maintains that the managers perform these duties for a preponderance of their employment time, and therefore are supervisors within the meaning of the Act. AFSCME contends that the managers perform duties similar to that of their subordinates and do not perform any supervisory duties in accordance with the Act.

III. FINDINGS OF FACT

The County of Cook Medical Records Department is headed by interim Chief Financial Officer, John Cookingham. Natasha Lafayette-Jones is the interim Director and Systems Director of Health Information Management. Tanya Gavin, Brenda Henderson and James Harrold are Medical Records Unit Managers who report directly to Jones. Each manager has at least one supervisor and other support staff who are their direct reports. The Medical Records

Department is comprised of the following sections: Administrative Office, Unit Control, Release of Information, Coding, Scanning and Assembly Analysis, and Loose Sheets.

Jones testified that the all have the same authority per their job descriptions and the differences are related to the technical functions of each section. As managers, Jones testified that they are responsible for their entire area including overtime hours, scheduling coverage and work flow management.[1] Jones stated that the managers have the authority to hire and fire employees. She testified that Brenda Henderson was instrumental in hiring two employees. Managers also evaluated their subordinates as a baseline for improvements but merit increases and promotions are based on the collective bargaining agreement. Jones testified that the managers also have the authority to issue discipline and adjust grievances but they have not done so during her tenure.[2]

Jones estimates that the managers spend 20 to 25 percent of their time with work flow and scheduling, 25 to 30 percent of their time managing their areas including responding to and handling situations via email. Jones estimates the managers spend 10 percent of their time training employees on how things need to be accomplished. Managers also spend 10 to 15 percent of their time giving discipline (including informal discipline and counselings) and resolving grievances. As for filling in for their subordinates, Jones testified that the managers do so approximately 10 to 15 percent of the time.

a. Tanya Gavin

Tanya Gavin is the manager in the Release of Information, Unit Control, and Administrative Office Sections. She oversees one supervisor and approximately 13 other

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[1] Jones testified that the managers (except Harrold) also manage vendors. Because vendor or independent contractors are not public employees, duties performed related to them are considered non-supervisory.

[2] At the time of hearing Jones had only been in her position for approximately six months.

subordinates within all three units. All of Gavin's subordinates are required to follow HIPPA, confidentiality and password protection policies and procedures, department practices and guidelines, and the hospital's attendance policy.

Gavin approves all time-off requests. Gavin approves vacation requests based on seniority and in accordance with the Collective Bargaining Agreement (Agreement). After Gavin's approval, the requests are then forwarded to Gavin's superior for further approval. Gavin is not authorized to approve overtime.

Gavin has the ability to issue oral and written reprimands to subordinates without approval from her superior. However, discipline is mandated by the agreement.[3] The agreement also specifies that an oral or written reprimand be issued after a specified amount of tardies. However, Gavin testified that she has leeway in deciding how many tardies a person will get before she issues discipline. For example, two of her subordinates were progressively tardy and she did not follow the agreement in disciplining for each infraction. Instead, Gavin allowed additional tardies without discipline depending on the reasons given for each tardy. Gavin did not consult with her superior when making this decision. She has also recommended a one-day suspension that was upheld at a hearing. Gavin's disciplinary recommendations have never been overturned.

Gavin conducts the performance evaluations of her subordinates to improve performance and productivity. These evaluations are not tied to any merit increases or promotions as that is mandated in the agreement. Gavin also manages vendors and is responsible for collaborating

[3] To issue any discipline above a written reprimand, the collective bargaining agreement mandates that a hearing be conducted with the employee, a union representative, a member of management, and a hearing officer present. At these hearings, management and employee both state their respective cases and the hearing officer decides the actual course of discipline, if any. The hearing officer's decision is final.

and coordinating all functions associated with vendor functionality, including scheduling and hiring.

Gavin testified to spending 80% of her work time performing the same duties as her subordinates, but at a higher function. For instance, Gavin handles records requests when the State's Attorney's Office or other attorneys make the requests. Although she may also delegate this duty, she only does so to someone she believes will fulfill the request at the standard in which she would. She testified to spending 1% of her work time on discipline, two hours per week checking the work of staff, ten hours per week assigning work duties, and a de minimis amount of time reviewing vacation requests.

i. Release of Information Unit

The Release of Information unit is responsible for processing record requests. These employees work at the front counter assisting processing information for patients requesting copies of their records. This unit also prints electronic records out of a database at the request of outside agencies. The Release of Information unit consists of six employees: a data entry operator, a senior clerk typist, a senior clerk, and three clerk IV's who all report to Gavin.

As manager of the Release of Information Unit, Gavin's work duties include assigning work to her subordinates, ensuring that the record requests are processed within 30 days (which is a legal mandate), monitoring the work of the staff, and overseeing birth certificates and fetal death certificates. Gavin has unilaterally mandated that some record requests be completed in less than 30 days. Gavin handles requests that come from the State's Attorney's Office, HIPAA privacy officer, senior executives and other attorneys. She may assign this work to subordinate staff who she feels is able to handle such high profile requests. Gavin also assigns staff to

interview birth mothers. Gavin monitors her staff by checking on their work on a weekly basis and by getting status updates. She attains this information electronically through her computer.

ii. Unit Control Section

The Unit Control Section handles the medical record numbers for patients and gathers charts for physicians to review. It is also responsible for merging medical record numbers of patients to ensure that duplicates do not exist. Gavin has six subordinates in the Unit Control Section: a supervisor with approximately 15 years of seniority in the department, on whom she relies heavily, and five support staff.

The process of merging medical record numbers is overseen by Gavin because it is a new process. Occasionally, Gavin will personally complete a merger when she receives notification via email or when her subordinates are not available.

iii. Administrative Office Section

The Administrative Office Section consists of two individuals who order supplies and other items as needed by the hospital. These two individuals are Gavin's subordinates. Gavin does not perform the same work duties as these subordinates and does not actively check their work.

b. Brenda Henderson

Brenda Henderson is over the Assembly Analysis, Coding and Loose Sheets sections. Each section has minimum staffing requirements and all employees work a set schedule in which Henderson cannot alter. Henderson makes the final approval on vacation requests and if there are any conflicts, the requests are approved on the basis of seniority in accordance with the agreement. Henderson does not approve, grant or deny overtime for any of her subordinates.

Henderson has never received a grievance and is unsure as to whether she has the authority to process one.

Henderson has initiated discipline of her subordinates. Consistent with all managers, Henderson can issue verbal and writing warnings with the knowledge of the Director. More severe discipline goes through the same hearing process. Henderson has recommended the suspension and discharge of employees in the past. Her recommendation for discharge was not upheld and instead of being terminated, that employee was ultimately demoted. Henderson testified that she would discuss any discipline with her superior but would take another route other than discipline independently. She has had a counseling overturned but counselings are not discipline.

Henderson was involved in the hiring of two coders. She did not select the applicants to be interviewed or prepare the interview questions (questions were prepared by an outside agency because at that time the Director position was vacant); however, she interviewed potential candidates with her subordinate. She also made the hiring recommendations to human resources and the employees recommended were hired. Henderson testified that she would have also solicited the Director's input if the position was filled at the time.

Regarding performance evaluations, Henderson evaluates her subordinates annually and like all other managers, these evaluations do not effect promotions or raises.

Henderson testified that her work flow is determined by her work load and the number of discharges within the hospital. Discharges generally occupy 20-25% of her time and this includes working with vendors. Henderson estimated that she spends 25-30% of her time responding to emails from management or IT, as email is the most common form of communication. She spends 10% of her time training her subordinates on the skills needed to

maintain the work area. Henderson testified that the issuance of any discipline must be done collaboratively with her superior and subordinate supervisor. She stated that she spends 10-15% of her time disciplining employees.

i. Assembly Analysis

The Assembly Analysis section is responsible for ensuring medical records are complete. There are two supervisors and a statistician that report to her in this section. Henderson does a weekly "top ten" list of delinquencies that she presents to the director at monthly meetings. She also works heavily with vendors and oversees the transcription services provided for by an outside service. Henderson checks the work of her subordinates in this unit once every two weeks and spends 30-40% of her time performing the same duties, due to short staff.

ii. Loose Sheets

The Loose Sheets section goes through paperwork and places "loose sheets" of records back into the appropriate files. They are also responsible for validating emergency room records. Henderson works in this area only when the supervisor is unavailable which is approximately once every three months. She has a supervisor and ten other subordinates that report to her.

iii. Coding

Coders are certified to identify diagnosis and procedures. Henderson creates a schedule for the staff handling inpatient records. She also reviews the invoices from outside vendors. Henderson is not a coder so she does not perform the same duties. She has six subordinates and a supervisor that report to her. Henderson assigns her subordinates work daily, and she also reviews invoices from outside services. Henderson's supervisor actively checks the work of the subordinates.

iv. Statistician

The statistician on staff also reports to Henderson. The statistician is responsible for preparing the DNFC report every morning. This report summarizes the number of transmitters that have not been coded and the outstanding amount to code. This report is prepared regularly to gauge how well the section is functioning within the hospital. Henderson spends approximately an hour daily reviewing the productivity and methods used by the statistician. She is also working with the statistician on a project regarding time cards for an outside resource company. When the statistician is absent, Henderson runs the reports. She does not perform these duties very often. These reports are completed by 9 a.m. every day. Henderson spends approximately an hour once a month actively checking the work of the statistician.

c. James Harrold

James Harrold is the Medical Records Manager over the Scanning section where he oversees two supervisors: Dorothy Gibson and Darrell Wilbourn. He also oversees 14 other scanners that process scanning for inpatient and outpatient records. The supervisors handle most of the daily operations but when he feels the need to, Harrold speaks with his staff and redirects their work flow. The supervisors do not implement a process without his oversight and guidance. Harrold also holds section meetings to provide direction.

Harrold is responsible for overtime, scheduling and work flow management. When the supervisor is absent, Harrold performs their duties. Harrold is also responsible for making a schedule to ensure coverage, assigning work and scheduling vacations. Just like the other managers, Harrold's vacation conflicts are handled by seniority.

Harrold also evaluates his subordinates. These evaluations are also only to make improvements on performance, including productivity and attendance, and they do not affect merit increases or promotions.

IV. DISCUSSION AND ANALYSIS

The Employer argues that the managers are supervisors within the meaning of Section 3(r) of the Act.[4] Under this Section, the Employer has the burden of proving that the petitioned-for employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates; (2) possess authority, in the interest of the employer, to perform one or more of the 11 indicia of supervisory authority enumerated in the Act; (3) consistently use independent judgment in exercising supervisory authority; and (4) devote a preponderance of their employment time to exercising that authority, to establish supervisory status. Chief Judge of the Cir. Ct. of Cook County v. American Fed'n of State, County, and Mun. Employees, Council 31, 153 Ill. 2d 508, 514 (1992); City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 505 (1990). The party which seeks to exclude an individual from the proposed bargaining unit has the burden of proving that statutory exclusion by a preponderance of the evidence. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

Principal Work Requirement

To meet the principal work requirement, the petitioned-for employees' work must be substantially different from that of their subordinates. City of Freeport, 135 Ill. 2d 499; Vill. of Elk Grove Vill. v. ISLRB, 245 Ill. App. 3d 109 (2d Dist. 1993); Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999); Northwest Mosquito Abatement Dist., 13 PERI ¶ 2042 (IL SLRB 1997), aff 'd sub nom., Northwest Mosquito Abatement Dist. v. Ill. State Labor Rel. Bd., 303 Ill. App.

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

"Supervisor" is an employee whose principal work is substantially different from that of his or her subordinates and who has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.

3d 735 (1st Dist. 1999); Vill. of Glen Carbon, 8 PERI ¶ 2026 (IL SLRB 1992). The initial consideration is whether the work of the employee is "obviously and visibly" different from that of their subordinates. City of Freeport, 135 Ill. 2d at 511. If the work of the alleged supervisor is "obviously and visibly different" from that of his or her subordinates, then the principal work test is satisfied. City of Freeport, 135 Ill. 2d at 514.

However, where the work of the supervisor is "facially similar" to that of his or her subordinates, the Board looks at what the supervisor actually does, to determine if the "nature and essence" of his work is substantially different. Id. The Board considers the totality of the duties and functions of the supervisor and subordinates to make the qualitative comparison of the nature and essence of their duties, and in effect, compares and contrasts their duties to see how much they have in common. Id.

Although AFSCME initially argued that the managers perform the same work as their subordinates, in its post-hearing brief, AFSCME conceded that point. AFSCME stated that the Medical Records Managers perform work that is substantially different than that of their employees in their assigned areas but maintained that they do not possess authority to perform or effectively recommend any of the 11 supervisory indicia, according to the Act, with independent judgment. Even without the concession, it is clear that the managers' principal work is substantially different than that of their subordinates. In some cases the managers perform some of the same duties but the nature and essence of their work is different. For example, although Gavin performs records requests like her subordinates, she consistently functions at a higher level of responsibility when performing these duties. She only occasionally performs the same duties as the Unit Control section and never performs administrative duties. Instead she only oversees their work.

Henderson performs the same duties as her subordinates in the Assembly and Analysis section due to low staff but does not perform the same duties as her subordinates in the Coding section and very rarely does so in Loose Sheets and Statisticians sections. Again, her work performance is markedly different in every other area except Assembly and Analysis. The evidence is such that Harrold only performs the same duties as his subordinates when someone is absent. Otherwise, he is responsible for oversight, coordination and managing the scanners. Therefore, I find that the managers' principal work is substantially different than that of their subordinates.

Supervisory Authority and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the petitioned-for employees have authority to perform, or effectively recommend, at least one of the 11 indicia of supervisory authority listed in the Act consistently with independent judgment. City of Freeport v. ISLRB, 135 Ill. 2d 499, 512 (1990). The use of independent judgment must involve choosing between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Cir. Ct. of Cook County v. Am. Fed'n of State, County, and Mun. Employees, Council 31, 153 Ill. 2d at 514; City of Freeport, 135 Ill. 2d at 531. The ability to effectively recommend one of the supervisory indicia is sufficient support in a finding of supervisory status. Freeport, 135 Ill. 2d at 512.

Job descriptions alone may be insufficient evidence to establish employees' duties as it relates to their supervisory status. City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 25 PERI ¶184 (IL LRB-SP 2009); Northern Illinois University, 17 PERI ¶ 2005 (IL LRB-SP 2000). Moreover, the party asserting

the statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job functions. Instead, the Board requires that the party support its arguments with specific examples of the alleged supervisory, managerial, or confidential authority. State of Illinois, Department of Central Management Services, 24 PERI ¶ 112 (IL LRB-SP 2008); County of Union, 20 PERI ¶ 9 (IL LRB-SP 2003).[5]

The record evidence does not address whether the petitioned-for employees have the ability to recall, reward, transfer, promote or lay off their subordinates. As such, I will discuss the Medical Records Managers' authority to direct, train, adjust grievances, and effectively recommend discipline.

a. 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. Vill. 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

[5] However, the districts of the Illinois Appellate Court are not consistent on this issue. Specifically, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 372 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (opinion discusses the authority to perform supervisory tasks even in apparent absence of concrete examples of said performance); but see Illinois Department of Central Management Service v. ILRB, State Panel, 382 Ill. Ap. 3d 208, 228-9 (4th Dist. 2008) (holding that although a job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). However, the First and Third Districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof, See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 208 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

completing performance evaluations if the evaluations are used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook Cnty. v. Am. Fed' n of State, Cnty. & Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 518-19 (1992); City of Freeport, 135 Ill. 2d at 513; Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook Cnty. (Adult Prob. Dep' t). 19 PERI ¶ 123 (IL LRB-SP 2003); County of Boone. 19 PERI ¶ 74 (IL LRB-SP 2003); State of Ill., Dep' t of Cent. Mgmt. Servs., 12 PERI ¶ 2032 (IL SLRB 1996). Supervisory authority is established when the alleged supervisor exercises discretionary authority that affects the terms and conditions of their subordinate's employment. Vill. of Broadview v. IL Labor Relations Bd, 402 Ill. App. 3d 503, 510 (1st Dist. 2010).

Here, the evidence does not demonstrate that the managers have supervisory authority to approve time-off, vacation requests or evaluate their subordinates because they do so in accordance with the collective bargaining agreement and evaluations do not affect the terms and conditions of their subordinates' employment.

However, the managers consistently use independent judgment when making assignments, monitoring their subordinates, instructing and assisting their subordinates in the performance of their job duties, and hiring.

Reviewing, Monitoring and Assigning

The managers assign their subordinates work, instruct them on how to properly complete it, and monitor their work to ensure that they are performing it properly. All of the managers actively monitor the work of their subordinates. Gavin and Henderson testified to spending several hours a week monitoring the work of her subordinates in each respective section that she oversees. Specifically, Gavin monitors the work of her subordinates in the Release of Information section specifically to ensure they are following protocol in a timely manner. She is

also well aware of their abilities as she assigns specific requests based on such. Gavin will only delegate high level information requests to those qualified to handle said requests. Henderson also consistently checks and corrects the work of her subordinates and has determined some of them are unable to perform to departmental standards. The Board has held that where a supervisor has an active role in checking, correcting and giving instructions to subordinates and also assesses his or her subordinates' performance and behavior to ensure compliance with departmental norms, this is evidence of directing subordinates with independent judgment. City of Chicago, 17 PERI ¶ 3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). Moreover, the Board has found that reviewing subordinate's work and monitoring and instructing subordinates in the field are examples of direction. City of Chicago, 17 PERI ¶3016 (IL LRB-LP 2001).

Here, the record also indicates that the managers assign work with independent authority. Where an employee considers the knowledge of the individual involved, the nature of the task performed, the employees' relative levels of experience and skill and the employer's operational needs without review by a superior, that employee engages in assigning work with independent judgment. County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999). Gavin testified to delegating work based on her subordinates' ability to handle specific tasks and initiating mandates on time frames to accomplish departmental objectives independently. Gavin also assigns employees to either pull records or work on fetal birth and death certificates using her discretion. The managers have the discretionary authority to make assignments on specific functions without the input from their superiors. These assignments involve a consistent choice between two or more significant courses of action. City of Freeport, 135 Ill. 2d at 521.

Hiring

The record reflects the managers' have authority to hire. Where an individual participates on a hiring committee which includes his or her supervisors, the recommendations are typically not effective within the meaning of the Act. County of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); State of Illinois, Department of Children and Family Services, 8 PERI ¶ 2037 (IL SLRB 1992) aff'd 249 Ill. App. 3d 740, 9 PERI ¶ 4014 (4th Dist. 1993). Hiring decisions reached by consensus are also not considered supervisory within the meaning of the Act. County of Lake, 16 PERI ¶ 2038 (IL LRB-SP 2000). Here, Henderson participated in the hiring of several subordinates. Henderson maintains that her hiring decisions were collaborative because she interviewed individuals with her supervisor. Although this may be true, her supervisor is a subordinate and it was ultimately the decision of Henderson, as the manager, that was taken as recommendation. Moreover, the interviews conducted were not in conjunction with Henderson's laterals or superiors. She made the hiring recommendations of several employees without the oversight of her superior because at that time, the superior position was vacant. Her recommendations were followed by HR.

b. Discipline

The managers have the discretionary authority when deciding whether to discipline an employee that exhibits a performance or behavioral deficiency. Reprimands must have an impact on an employee's job status or terms and conditions of employment in order to constitute discipline within the meaning of the Act. Chief Judge, 153 Ill. 2d 530-3, AFSCME, Council 31 and State of Illinois, Illinois State Police, 23 PERI ¶ 38 (IL LRB-SP 2007) aff'd, 382 Ill. App. 3d 208 (4th Dist. 2008). When verbal and written reprimands are placed in an employee's personnel file and form the basis for more severe discipline, they have an effect on the employee's job status and terms and conditions of employment and constitute discipline within

the meaning of the Act. Chief Judge of the County of Cook, 26 PERI ¶117 (IL LRB-SP 2010); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003). Although the managers have the authority to give counselings, there is no evidence that these counselings are documented or placed in the employees file as a basis of progressive discipline. However, the managers do have the authority to issue oral and written reprimands without seeking approval from their superiors. These reprimands are placed in the employee's file and are used for progressive discipline. Even though the managers testified to notifying their superiors prior to issuing discipline, these levels of discipline are independently initiated by the managers and at their discretion. Only higher levels of discipline must go before a hearing board.

Discipline is followed according to the parties' collective bargaining agreement; however, the managers do not always follow the agreement. Gavin testified to not following the agreement every time she makes a decision on discipline. For instance, Gavin has allowed her subordinates far more than the amount of tardies allotted by the agreement, prior to issuing discipline. She noted that she does not discuss her discretionary decisions with her superior. This is considered disciplinary authority within the meaning of the Act. AFSCME, Council 31 and State of Illinois, Illinois State Police, 23 PERI ¶ 38 (IL LRB-SP 2007); City of Naperville, 8 PERI ¶ 2016 (IL SLRB 1992) (significant discretionary authority to affect subordinate's employment in areas likely to fall within the scope of union representation must accompany an individual's oversight authority in order to make that authority supervisory within the meaning of the Act). See City of Freeport, 135 Ill. 2d at 520; Chief Judge of the Circuit Court of Cook County v. AFSCME, Council 31, 153 Ill. 2d 508, 516, 9 PERI ¶ 4004 (1992).

c. Overtime, Training and Adjust Grievances

The evidence presented does not establish that the managers grant overtime, train or adjust grievances with independent authority.

There is no evidence that the managers grant overtime with independent authority. The managers denied having the authority at all and the Employer merely stated that the authority exists. There is no evidence that the managers ascertain the character of the proposed overtime work before deciding whether to permit it instead of basing overtime decisions, if they even make them, on manpower. Vill. of Morton Grove, 23 PERI ¶72 (IL SLRB 2007) (grant of time off based on minimum manpower requirements not supervisory); County of Cook, 27 PERI ¶58 (IL LRB-SP 2011) (grant of overtime for nurses deemed supervisory the extent that it did not rely on seniority or guidelines outlined in the personnel policy).

Jones testified that the managers train their subordinates on how things need to be accomplished within their sections. There is no evidence that these trainings are based on corrective or performance deficiencies. 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. Chief Judge, 19 PERI ¶123.

Additionally, the evidence presented did not establish that the managers had supervisory authority to adjust grievances. Jones generally stated that the managers have the authority but also acknowledged that they have never exercised such. The managers also testified to never having adjusted a grievance. Gavin specifically testified to only being involved with a grievance when she was a party to one against her. In this case she did not adjust or handle the grievance at all. Most importantly, there is no evidence as to the extent of which a manager can adjust a grievance. Village of Bolingbrook, 19 PERI ¶125 (IL SLRB 2003) (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 (in addition, the mere designation as the first step in a grievance procedure, without more, does not constitute supervisory authority under the Act).

Preponderance Requirement

The fourth prong of the supervisory test requires that the alleged supervisors devote a preponderance of their employment time to exercising supervisory authority, as defined by the Act. City of Freeport, 135 Ill. 2d at 532. To satisfy this test, employees must spend more time on supervisory functions than on any one nonsupervisory function. Dep 't of Cent Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 83-85 (4th Dist. 1996); State of Ill., Dep ' t of Cent. Mgmt Serv., 26 PERI ¶155 (IL LRB-SP 2011), appeal pending, No. 4-11-0638 (Ill. App. Ct. 4th Dist.). The Employer must demonstrate such allotments of time by setting forth the employees' day-to-day activities, as documented by specific facts in the record. Stephenson Cnty. Circuit Court, 25 PERI ¶92 (IL LRB-SP 2009)); Vill. of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

The calculation of times under the preponderance requirement is based on time spent in the exercise of supervisory authority that qualifies as such under the Act. See State of Illinois, Department of Central Management Services, 26 PERI ¶155; citing Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 55 (2d Dist. 1992) (where the court held that the actual time does not include work time spent instructing or directing employees when such instruction or direction does not qualify as supervisory direction under the Act). The alternate test for preponderance addresses the importance of supervisory job duties to the position rather than mathematical time spent on the duties. Specifically, the Fourth District of the Illinois Appellate Court has stated that 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." State of Illinois, Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 86 (4th Dist. 1996).

In this case, the managers have been determined to have the supervisory authority under the Act to direct subordinates by assigning, monitoring and reviewing their work, and to hire and discipline their subordinates. The testimony in this case provides that the managers spend anywhere from 40% to 80% of their time directing the work of their subordinates by assigning work to subordinates, reviewing their work orders and making certain their work is done, and disciplining. Although one manager testified that she spends 80% of her time performing the same duties as her subordinates, she also testified to doing so in a different capacity, at a higher level. Moreover, Henderson testified to spending approximately 55% of her time performing supervisory duties. Jones testified that the managers have the same authority but that their functions may change slightly depending on the technical duties of the department in which they oversee. In view of this testimony I conclude that, as a whole the managers spend more time directing their subordinates than on any one non-supervisory function and more than 50% of their time engaged in supervisory functions.

I further find that the managers' authority to direct is more significant or important than their non-supervisory functions. It is clear that the managers' primary non-supervisory responsibility is to oversee the duties and functions of their subordinates. Their oversight alone is specifically related to their authority to direct their subordinates in carrying out the duties necessary to fulfill their responsibilities. For example, Gavin oversees the Release of Information staff making sure they are properly carrying out functions of her position. Henderson and Harrold have the same responsibilities with the Coders and Scanners. Although

Gavin and Henderson engage in duties that require managing vendors, they do not, overall, spend a majority of their time on these functions and these duties are not more significant than their duties related to overseeing their subordinates.

Based on the foregoing discussion, under any of the present interpretations of the preponderance standard, the managers are engaged in supervisory functions within the meaning of the Act, a preponderance of their working time.

V. CONCLUSIONS OF LAW

I conclude that the Medical Records Unit Manager position held by Tanya Gavin, Brenda Henderson and James Harrold is supervisory within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

It is hereby recommended that the petition filed in this case be dismissed.

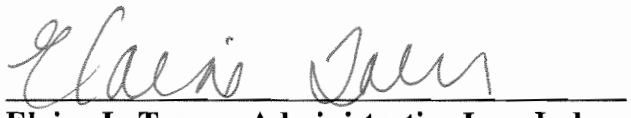
VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's 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 General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield

office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and 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 23rd day of October, 2013

ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Elaine L. Tarver, Administrative Law Judge