STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

City of Chicago, Office of Emergency Management and Communications,	)	
Employer	)	Case No. L-RC-13-017
and	)	
Policemen's Benevolent Labor Committee,	)	
Petitioner	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On May 29, 2013, the Policemen's Benevolent Labor Committee (Union or Petitioner) filed a majority interest representation/certification petition in Case No. L-RC-13-017 with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2014) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). On June 28, 2013, the Union filed an amended petition seeking to represent the Communications Operations Managers (Operations Managers or Managers) employed by the City of Chicago (City or Employer) in the Office of Emergency Management and Communications (OEMC).

A hearing was held on May 22 and 23, 2014, before Administrative Law Judge (ALJ) Michelle Owen in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Both parties timely filed written briefs. ALJ Owen subsequently left the Board, and the case was ultimately reassigned to the undersigned. 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

A. At all times material, the City has been a public employer within the meaning of Section 3(o) of the Act.

B. At all times material, the City has been subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.

C. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The City argues that the petition should be dismissed for several reasons. It contends that all of the Managers are statutory supervisors under Section 3(r) and that the Manager in Training Operations is also a confidential and managerial employee. The City also contends that the petitioned-for bargaining unit is inappropriate under Section 9(b).

The Union argues that the City failed to establish that the petitioned-for employees are statutorily excluded from bargaining. As to the City's contention that the Managers are supervisors, the Union argues that (1) the Managers do not perform substantially different work from their subordinates' work; (2) the Managers do not perform any supervisory functions using independent judgment because their decisions are subject to review, constrained by OEMC rules, and/or involve the use of their professional expertise; and (3) the City failed to demonstrate that the Managers meet the preponderance of time requirement. With regard to the City's argument that the Manager in Training Operations is a managerial employee, the Union argues that the Manager has no authority to establish policy or to determine how polices are effected. The Union

also contends that the Manager in Training Operations is not a confidential employee because he does not have regular access to confidential information. Lastly, the Union maintains that the petitioned-for bargaining unit is appropriate.

III. FINDINGS OF FACT

The OEMC, headed by Executive Director Gary Schenkel, employs almost 1,200 employees in a multitude of departments, one of which is 911 Operations. 911 Operations is subdivided into Police Dispatch, Fire Dispatch, and Training Operations. The at-issue Managers work in Police Dispatch and Training Operations.

Until approximately November 2013, the Managers reported directly to the head of 911 Operations, Deputy Director Clarence Thomas. Earlier that year, the OEMC created the position of Director of 911 Operations. The Managers began directly reporting to the Director in the Fall of 2013. While their titles may suggest otherwise, the Director directly reports to the Deputy Director.[1]

A. Background of Police Dispatch

Essentially, 911 Operations processes the City's 911 calls and provides emergency services for the City. Police Dispatch in particular processes all 911 calls and dispatches police units to incidents throughout the City. It operates 24 hours a day, seven days a week. When a citizen dials 911, the caller first speaks with a Police Communications Operator I (PCO-I). A PCO-I records the caller's information and determines whether the caller needs police, fire, or medical services. The PCO-Is forward fire and medical calls to Fire Dispatch. If the caller needs the police, the PCO-I sends the caller's information to a Police Communications Operator II (PCO-II). The PCO-IIs dispatch police units to the reported incident. The PCO-IIs also monitor

[1] Although the Managers reported to both the Director and the Deputy Director during the time period in question, for the sake of simplicity, I only refer to the Deputy Director as the Managers' direct superior.

incidents and alert the OEMC's Administration of any major emergencies. The approximately 140 PCO-Is and 220 PCO-IIs work at computer terminals on the Operations floor.

The PCOs report to the Supervising Police Communications Operators (SPCOs or Supervisors). Retired Deputy Director Thomas, a former SPCO and Operations Manager, testified that, "in a nutshell, [the SPCOs] monitor what the PCO-I's and II's are doing. They also will recommend disciplinary action when necessary. And they just control the operations on the floor to see that everything is functioning properly." The SPCOs are also stationed on the Operations floor. The 17 SPCOs in Police Dispatch report to the Operations Managers.

Both the PCOs and the SPCOs are represented by unions. The International Brotherhood of Electrical Workers, Local 21 represents the PCOs who are included in the City's bargaining unit known as Unit II. The SPCOs are organized into a stand-alone bargaining unit and represented by the International Brotherhood of Teamsters, Local 700.

B. The Police Dispatch Operations Managers.

Generally, the Managers are responsible for running their respective shifts. The Managers can be assigned to work one of three shifts: the first shift is 8:00 p.m. to 6:00 a.m., the second shift is 4:00 a.m. to 2:00 p.m., and the third shift is 12:00 p.m. to 10:00 p.m. By contrast, the Deputy Director and Director of 911 Operations typically work from 8:00 a.m. to 5:00 p.m. Unlike the PCOs and SPCOs, the Managers do not sit in a designated area on the Operations floor. Instead, the Managers have their own office, and the SPCOs act as the Managers' eyes and ears on the floor.

1. Authority to Assign Duties

The Managers assign duties to both the PCOs and SPCOs. For example, every day the Managers draft a daily assignment schedule for the following work day. On the daily assignment

schedule, the Managers assign the PCOs to a specific call position or zone and list the PCOs' breaks and lunch hour. When deciding where to station a particular PCO, the Managers take into account the average call volume for a particular zone, the PCO's skill level, and the PCO's interest in working in a particular zone. Operations Manager Ronald Stewart testified that the Managers "and the supervisors kind of get together and see who's adequate to work in certain zones. Certain zones are faster than other zones. You might have your better dispatchers on those zones." Operations Manager Cheryl Mitchell also testified that they "have certain dispatchers that like to work in particular zones. If I can accommodate that, I will do that. Most of the time, I just assign dispatchers where their expertise will be needed." The Managers can delegate drafting the assignment schedule to the Supervisors, but the Managers typically draft the schedule themselves.

The Managers can assign a number of other duties to their SPCOs as well. Many of these potential assignments are listed on the department's daily accountability worksheet. Essentially, this worksheet lists all of the day's events and details the PCOs' productivity and efficiency. The Managers can tell the SPCOs to complete the worksheet itself, monitor the productivity of the PCOs, or work with PCOs with low productivity. The SPCOs can also act as the Manager on duty when an Manager is unavailable, or "act up."

Exactly how the Managers assign duties to the SPCOs is somewhat unclear. Thomas testified that the Managers are supposed to rotate the SPCOs into different assignments. He said "[i]t helps to develop a well-rounded supervisor or at least gives them the opportunity to develop different skills and management procedures and styles." However, Thomas also testified that "[m]any times the supervisors will voluntarily say, 'Well, I'll do this, this and this today,' and then the others will do what is left."

2. Authority to Provide Oversight, Training, and Review

While overseeing their shifts, the Operations Managers monitor and review their subordinates' work. Although the Managers directly review the SPCOs' work, the Managers' review of the PCOs' work is largely indirect. For example, one of the SPCOs' responsibilities is to periodically observe the PCOs' performance and complete a supervisor monitoring checklist. The SPCOs evaluate how the PCO-Is handled the calls and determine, among other things, whether the PCOs were professional and patient with callers and transferred the caller's information to the right section. As for the PCO-IIs, the SPCOs check to see if they communicated information to the appropriate people, anticipated the needs of the units in the field, and communicated effectively and professionally. The Managers review the forms to see if the SPCOs noted any deficiencies in the PCOs' performance. If an SPCO has marked a PCO's performance as deficient, the Manager will discuss with the SPCO how the SPCO addressed the issue with the employee. Depending on the nature of the deficiency, the Manager may suggest additional training or instruct the SPCO to discipline the employee. The Managers later forward the monitoring sheets to their superior. While the Managers' review the monitoring forms to check on the PCOs' performance, the record does not demonstrate that the Managers review the forms to see if the SPCOs completed the forms properly. Additionally, the Managers can monitor the PCOs' productivity via the daily accountability worksheet. If they find any performance issues, the Managers can decide that the employee needs additional training or that the PCO should be placed on a performance improvement plan (PIP). The Manager can also instruct the SPCOs on how to address the PCO's performance issues.

The Managers are also responsible for making sure the SPCOs run the Operations floor effectively and efficiently. Police Dispatch largely measures its productivity and efficiency by

the number of calls processed by the PCOs. The Managers are required to maintain a call efficiency percentage of 95%; in other words, the PCOs have to effectively answer 95% of the 911 calls within a certain number of seconds. If the department's staffing levels drop too low or the call volume spikes, the PCOs' efficiency percentage drops. Usually, the SPCOs are responsible for tracking the efficiency percentage every half hour, but the Managers can do so as well. The Managers also have beepers that alert them if the efficiency percentage drops too low. If there is an issue, the SPCOs can adjust staffing levels accordingly. However, the Managers are ultimately responsible for maintaining the proper efficiency levels and, according to Thomas, "if the operations manager feels it's not being done, then he can inject himself."

The Managers also provide training and instruction to their subordinates. Every day at the beginning of the PCOs' shift, the Managers and the SPCOs conduct roll call. At roll call, the Managers take attendance, give the PCOs their work assignments, and make sure everyone is in uniform and has the appropriate equipment. The Managers and the SPCOs also use roll call as an opportunity to go over training topics, issues, or new procedures with the PCOs. Either the Managers or the SPCOs pick the topic to review during roll call. Thomas stated that "[i]t may be covering something that occurred the day before or something that occurred on the previous watch, and it may not have been handled quite the way it should have been." Roll call takes approximately 30 minutes.

The Managers can also provide additional training or instruction to a PCO by placing the employee on a PIP. The OEMC uses PIPs to help an employee work through a performance issue for which the employee has already been disciplined or to prevent the employee from being disciplined in the future. The SPCOs can also place an employee on a PIP. In those instances, first, the SPCO discusses with the Manager why a PIP is warranted. If the Manager agrees that a

PIP is appropriate, the SPCO drafts a plan for the Manager's review, and the Manager makes sure the PIP addresses the employee's performance issue. The Deputy Director also reviews the PIP to ensure the plan addresses the employee's deficiency, but Thomas did not recall ever rejecting a PIP.

Each month the employee is on a PIP, the SPCO completes an assessment form documenting the employee's progress and submits the form to the Manager. The Manager reviews the form to see if the employee improved. If the Manager does not agree with the Supervisor's assessment, the Manager will discuss with the Supervisor why the SPCO marked the PCO as improved. Thomas stated that the Manager "could either ask [the SPCO] to redo it, or worst case scenario, he could take action against the supervisor." The Deputy Director also signs off on the progress notes. "[U]nless I had received something independent of [the progress notes], then I would take it at [face] value, especially if the supervisor and operations manager had signed off on it."

3. Authority to Schedule and Approve Time-off

The Managers have some authority to schedule their subordinates. The Managers' superiors assign the PCOs and SPCOs to a specific shift. From there, the Managers draft a monthly schedule which lists all of the employees assigned to that shift, the employees' days off, and whether any employees are using vacation or sick time. The Managers can also approve time off requests for up to five consecutive days as long as the department's staffing levels are not negatively affected. In determining whether they will have adequate staffing, the Managers review the department's historical data and take into account the time of year and the weather.

It is unclear whether Police Dispatch has a minimum manning requirement. Operations Manager Carla Orlandini testified that the Managers "have a base number that we meet[,]" and

Operations Manager Stewart testified that the Managers "need 34 dispatchers to start the day." However, the record does not establish whether the OEMC created this number or whether it is simply a guideline the Managers established over the years. Also, Thomas testified that the Managers "determine how many personnel they may need in order to ensure that the shift functions effectively."

4. Authority to Grant Overtime

Additionally, the Managers can grant or mandate overtime. At the start of their shift, the Managers check in with the previous shift to see if there have been any major accidents, if anyone has called in sick, or if the call volume has been abnormally high. If the department needs extra help in order to maintain the requisite answering efficiency, the Managers can adjust the PCOs' schedules, and thus create overtime, by canceling breaks or extending shifts. However, the Managers do not usually call in extra employees on the day they are shorthanded. According to Thomas, they "are basically stuck with who [they] have got, who's on the floor at the time." The Managers also have a budgeted amount of overtime hours they can use each month.

Once they make their initial staffing adjustments, the Managers hand off the daily assignment schedule to the SPCOs who actually run the Operations floor. As stated above, both the Managers and the SPCOs can make additional adjustments throughout the day as needed, but the Managers are responsible for ensuring that the SPCOs make the necessary adjustments. While the Managers and the SPCOs make the actual decision to adjust schedules and grant overtime, the PCOs' collective bargaining agreements (CBAs) govern the assignment of overtime to specific employees.

5. Authority to Evaluate

The Managers evaluate their SPCOs every 6 months. Once the Managers complete an evaluation, they forward it to the Deputy Director for review. The Deputy Director briefly checks the evaluation to make sure it has been signed.

The SPCOs are responsible for evaluating the PCOs, and the Managers review those evaluations. Thomas stated "mainly what they are looking at . . . [is] if the evaluation form was filled out correctly and whether or not there are any comments that would cause them to look further into maybe the concerns of the employee, or maybe something that the supervisor indicated." The Manager can also check to make sure the SPCOs followed the OEMC's criteria when evaluating the PCOs and can change an evaluation or instruct the SPCO to redo the evaluation. However, the record does not specify what these criteria are that the SPCOs are supposed to follow. If the PCO takes issue with the evaluating SPCO, the Manager has "to make sure the evaluation was done fairly." However, the Manager will typically try and address those types of conflicts before the SPCO does the evaluation. Once the Managers review an evaluation, they send the evaluation to the Deputy Director. The Deputy Director also reviews any comments from the SPCO and the PCO. Sporadically, the Deputy Director checks to see if the evaluation was done correctly.

The record evidence does not establish that the PCOs' and SPCOs' performance evaluations have any impact on their rate of pay or that they may receive discipline for a poor evaluation. Instead, the Managers appear to separately evaluate their subordinates for merit increases. Thomas testified that merit increases are "pretty much automatic unless someone denies it." The Deputy Director reviews the Managers' decision. If a Manager denies a merit increase, the Deputy Director looks at the Manager's justification for denying the increase. If the

Manager approves the increase, the Deputy Director signs off on it unless he has personal knowledge of the employee. "If they are on record as being consistently late or they are on record as being sick in a no-pay status or they just haven't been to work for some reason, and I'm aware of that, then if they are marked good or excellent, then I would question it." The only instances in the record of the Managers denying a merit increase are where the increases were initially granted by the Managers but later called into question by the Deputy Director.

6. Time Spent on Duties Related to Directing Employees

The amount of time the Managers spend on duties related to directing their subordinates varies based on the call volume. Typically, the Managers spend approximately one and a half to two hours drafting the daily assignment schedule, 30 minutes conducting roll call, and two to three hours on average adjusting staffing, monitoring work, and providing instruction.

The record does not establish how much time the Managers spend reviewing or completing evaluations. Thomas simply testified that "they could spend quite a bit of time doing it." The Managers are typically responsible for evaluating five to six SPCOs and reviewing the evaluations for 80-100 PCOs every six months. The record is similarly unclear as to how much time the Managers spend approving time off.

7. Authority to Reward

The Managers can reward employees in addition to granting merit increases. For example, the Managers can nominate a subordinate for employee of the month or other team based awards. For winning employee of the month, the employee receives the use of the employee of the month parking spot for one month. Winners of a team award receive a pin.

8. Authority to Adjust Grievances

The Managers are authorized to resolve some types of employee grievances at Step 1. Thomas testified that "[i]f there [are] differences between employees that [do not] rise to the

level of balance in the workplace, then [the Managers] are expected to address those issues and make whatever decisions that they view as necessary to resolve it. It could be something like two employees who don't want to sit next to each other." They do not have authority to resolve a grievance that would require the expenditure of money. Thomas also testified that the amount of time Managers spend dealing with grievances varies month to month.

9. Authority to Discipline

Finally, the Managers and the SPCOs have the authority to discipline their subordinates. The OEMC uses a progressive discipline system which is outlined in OEMC General Order 09-011. These guidelines list the steps for progressive discipline and give examples of the types of infractions that would fall under a particular level of discipline. Managers and SPCOs are required to follow the OEMC's disciplinary guidelines.

Although the OEMC does not consider it disciplinary action, the first step in the progressive discipline process is an oral warning or a formal counseling session. Thomas stated that formal counseling "indicates that they had a conversation with the employee about something that they did wrong. And it serves as a warning that if they commit the same violation or similar to it, then the disciplinary action will go to the next level – or could go to the next level." After the Managers counsel an employee, they fill out a counseling form and have the document placed in the employee's personnel file. It is not clear whether the Managers' oral warnings are subject to review. Thomas testified that the Managers forward the counseling forms to Administration to be put in the employee's personnel file. However, the OEMC's disciplinary guidelines state the Deputy Director has to approve the forms.

The next step in the discipline process is a Discipline Action Report (DAR). Managers and SPCOs can complete a DAR form to request or recommend that an employee receive

discipline for minor transgressions or when the employee has previously received oral counseling for the same transgression. Using the DAR form, the Managers can recommend that an employee receive anywhere from a written reprimand to a three day suspension. The guidelines state that Managers could consider recommending discipline for employee misconduct such as tardiness, inattention to duty, and failing to perform assigned tasks due to laziness. However, the list does not appear exhaustive. The Mangers also review any recommendations from the SPCOs to ensure they have followed the OEMC guidelines. Thomas testified that the Managers usually approve the SPCOs' decision to reprimand an employee. The Deputy Director also has to review and approve the Managers' and SPCOs' recommendations to make sure they are in line with the guidelines. Thomas testified that he usually agrees with the Managers' recommendations. He also said that when he has disagreed, it was with the level of discipline, not the *decision* to discipline an employee.

When an employee commits a more egregious transgression, the Manager can request a Complaint Investigation (CI) number. Requesting a CI number essentially tells the OEMC's investigation unit that it needs to investigate an employee's alleged misconduct. After investigating the transgression, the unit reports the results to the Deputy Director who makes the disciplinary recommendation.

There are certain instances when the Managers are required to discipline an employee or request a CI number, such as for chronic tardiness. Thomas testified that the amount of time the Managers spend on discipline is "flexible."

10. Other Manager Duties

The Managers spend the rest of their work day performing various activities. Three or four times per shift, the Managers perform building security checks which take about 15 to 20

minutes each. The Managers also perform other administrative functions such as filling out monthly reports. Additionally, the Managers are responsible for making sure equipment is repaired as quickly as possible and are required to have procedures in place to operate in manual mode if there is a complete system failure.

C. Operations Manager in Training Operations

Training Operations handles the majority of the training duties for 911 Operations. For example, Training Operations is responsible for training new PCOs, preparing training materials, conducting trainings regarding new policies and procedures, and updating certain policies. Training Operations has one Operations Manager, Martin Doyle, and six PCO-IIs. The PCO-IIs report directly to Doyle.

1. Supervisory Duties

Doyle has some of the same supervisory duties as the Managers in Police Dispatch. For example, Doyle can issue discipline or recommend discipline in accordance with OEMC disciplinary guidelines. However, he has only issued one reprimand in the last five years. Doyle can also address grievances at Step 1 but has never received a grievance. Additionally, Doyle can reward his PCOs by nominating them for the same employee of the month and team awards as the Managers in Police Dispatch.

In terms of his authority to direct his PCOs, Doyle can assign them to perform various duties. He can assign them to lead classroom training, update training material, or attend a community meeting. Thomas testified that Doyle would assign the PCOs to complete specific tasks based on the PCOs' skill set. However, Doyle testified that the PCOs generally divide the work amongst themselves. "[T]hey sort of divvy up what needs to be done based on their best skills."

As to reviewing the PCOs' performance, Thomas testified that "he has to evaluate that." When asked how, Thomas stated that "[h]e would probably look at their classroom demeanor, how they conduct themselves in the classroom . . . anything relative to training." Doyle is also required to fill out performance evaluations for his PCOs. But, as with the Managers in Police Dispatch, the evidence does not establish that the performance evaluations have any impact on the PCOs' terms and conditions of employment. The record does not reveal whether Doyle evaluates the PCOs for merit increases.

Doyle can also grant overtime when necessary, such as if a last minute training needed to take place or the department was short staffed. Training Operations does not use a great deal of overtime. In terms of granting time off, Doyle testified that he does not have the authority to deny a PCO's request for time off for up to five consecutive days.

The evidence regarding the amount of time Doyle spends on these duties is somewhat unclear. Thomas testified that Doyle may spend "a couple of hours" directing and monitoring the PCO, but could spend "all day" supervising. By contrast, Doyle testified that he spends about an hour checking in with the Training staff to ensure they have everything they need for the day. "[T]hen I go about answering e-mails and different requests from other City departments, handling issues related to the operations [floor], attending various meetings." Doyle also teaches classes on occasion.

2. Alleged Confidential and Managerial Duties

Doyle has a number of other duties in addition to those described above. For example, Doyle is responsible for ensuring that all new PCOs receive the appropriate training. Doyle testified that the OEMC has an "established curriculum and list of what classes each new hire is supposed to receive." As new policies are adopted, Training Operations builds lesson plans

around the orders, separating out the information that may be relevant to a PCO-I versus a PCO-II.

One of Doyle's more distinct responsibilities is the review of new dispatching orders. Periodically, the Chicago Police Department (CPD) issues orders regarding the dispatching of police units. Doyle reviews the new orders to determine if they conflict with a current order or if it will create a logistical issue for Operations. "[I]f I get something that I know is going to conflict with what we do . . . that either our system will allow us to do or the call-taker simply can't do because it's not in their job description, then I know there is a problem." If Doyle sees an order that could be problematic, he alerts the Deputy Director. Doyle and the Deputy Director discuss the order and may set up a meeting between Operations and the CPD. However, Thomas also testified that 911 Operations is not always aware of the CPD orders until after they have been finalized. "[U]nfortunately, a lot of times these changes would come out and we could find out about them a month or two later and then we were sort of stuck trying to fit into what whatever they wanted." The OEMC's Executive Director must sign off on an order before it becomes official. Thomas testified that there have been times when the OEMC has not adopted an order based on an issue identified by Doyle.

If the OEMC adopts the order, someone in Training rewrites the CPD order to conform to the OEMC's standard operating procedure format. From there, Training matriculates the order to all employees. Training Operations can simply send out the written order or, if the order is particularly complicated, the Police Dispatch Managers or SPCOs can cover the order in roll call or Training may schedule an actually training session.

The OEMC's Executive Director has also assigned Doyle to work on or assist in certain OEMC projects. For example, when the Operations floor underwent reconstruction, the

Executive Director assigned Doyle to assist in the efforts. Doyle stated that he "was the advisor to the project for operations. If they wanted to – if they wanted to know how what they were going to [do] is going to impact call-taking or dispatching, I was there to answer those questions." Also, since new equipment was involved, Training needed to learn how to use the new equipment in order to train the other employees. Doyle said "the director asked me to be his eyes and ears in meetings; and if the train was coming off the tracks, to let him know what he needed to get involved."

Doyle has also taken part in the City's bargaining with the PCOs and SPCOs. For instance, Doyle was part of the bargaining team during negotiations for the SPCO's first contract. Doyle was also involved in bargaining the PCOs' most recent contracts. In particular, Doyle attended strategy sessions and received City proposals prior to them being sent to the unions. Tenaya Williams, a member of the City's bargaining team, testified that during strategy sessions, the group would discuss "anything relating to changes in existing provisions, new proposals, responding to Union proposals, strategies, wages, anything related to negotiating the contract." Doyle also testified that while he did not actually recommend any proposals, "[p]roposals would be sent to [him] the day before the day of negotiations." Furthermore, he said that the City would ask him questions about the feasibility of possible proposals as they related to the PCOs and SPCOs. At the time of the hearing, the City was negotiating with the SPCOs for a successor CBA.

Doyle spends the rest of his time on other administrative duties. He compiles all the historical performance information that the Police Dispatch Managers use when projecting future call volume. The Deputy Director also uses this information in budget meetings.

IV. DISCUSSION AND ANALYSIS

The City argues that the instant petition should be dismissed for several reasons. Primarily, the City contends that the Managers in Police Dispatch are supervisors and that the Manager in Training Operations is a supervisor, confidential, and/or managerial employee within the meaning of the Act. The City also argues that the petitioned-for bargaining unit is inappropriate.

With regard to the City's statutory exclusion arguments, as the party asserting the statutory exclusions, the City has the burden of proving the employees' supervisory, confidential, or managerial status by a preponderance of the evidence. City of Chi., 25 PERI ¶ 2 (IL LRB-LP 2009); Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003). Additionally, the City "cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function." Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-LP 2011). Rather, the City must "support its arguments with specific examples." Id.

A. The Operations Managers in Police Dispatch are Supervisors under the Act.

First, the City argues that the Police Dispatch Operations Managers are supervisors within the meaning of Section 3(r) of the Act. Under Section 3(r), employees are supervisors if they (1) perform principal work that is substantially different from that of their subordinates; (2) have the authority, in the interest of their employer, to perform any of the enumerated supervisory functions or effectively recommend such action; (3) consistently use independent judgment in performing those functions; and (4) spend a preponderance of their time exercising that authority. Chief Judge of Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 515 (1992).

1. The Operations Managers' Principal Work is Substantial Different.

As a threshold matter, the City must establish that the Managers in Police Dispatch perform substantially different work from their subordinates' work. Generally, this requirement is easily met if the alleged supervisor's work is obviously and visibly different from the other employees' duties. City of Chi. (Dep't of Sewers), 17 PERI ¶ 3017 (IL LRB-LP 2001). If the alleged supervisor's work is not obviously and visibly different, i.e. facially similar, the Board will apply the "nature and essence" test. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 514 (1990). "The nature and essence test [is] a qualitative, rather than a quantitative analysis" Id. at 518. Under the "nature and essence" test, the Board examines "the manner in which the alleged supervisor performed his work, his rank within the supervisory hierarchy and the extent to which he exercised supervisory authority over his subordinates" Vill. of Elk Grove Vill., 8 PERI ¶ 2015 (IL SLRB 1992), aff'd 245 Ill. App. 3d 109 (2d Dist. 1993); see City of Freeport, 135 Ill. 2d at 514, 518.

Although the Managers' work is obviously and visibly different from the PCOs' duties, it is less clear whether their work is obviously different from the SPCOs' duties. To a certain extent, the Managers' and SPCOs' duties overlap, some of which is due to the Managers delegating their duties to the SPCOs. Regardless, both the Managers and SPCOs can assign work, evaluate staff, adjust staffing levels, and complete paperwork. Thus, the Managers and SPCOs appear to perform facially similar work.

However, I do find that the "nature and essence" of the Managers' and Supervisors' work is substantially different. First, the two groups perform their work in different ways. The SPCOs are more actively involved with the PCOs on the Operations floor, while the Managers primarily review the SPCOs' and PCOs' work in offices off the floor. Second, the Managers are frequently the highest ranking official onsite since the Deputy Director only works from 8:00 a.m. to 5:00

p.m. Third, and most importantly, the Managers have authority over the SPCOs. Among other things, they have the ability to discipline the SPCOs and assign and review their work. As such, I find that under the "nature and essence" test, the Managers' work is substantial different from their subordinates' work.

2. The Managers Perform Supervisory Functions Using Independent Judgment.

Next, under the supervisor definition's second and third prongs, the City must prove that the Police Dispatch Managers possess the requisite supervisory indicia. In essence, the city must establish that the Managers have the authority to perform one of the 11 enumerated supervisory functions, or recommend such action, while consistently using independent judgment. 5 ILCS 315/3(r). Employees use independent judgment when they choose "between two or more significant courses of action." Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). Conversely, decisions which are "routine or clerical in nature or made on the basis of an individual's superior skill, experience or knowledge" are not indicative of independent judgment. Id. When determining whether the alleged supervisor consistently uses independent judgment, the critical inquiry is how many times independent judgment may be required and not the number of times it is actually used. City of Freeport, 135 Ill. 2d at 520-521. As to whether or not an employee's recommendations are effective, "[i]t is well-established that a recommendation is effective within the meaning of the Act only if it is adopted as a matter of course with very little, if any, independent review." Vill. of Justice, 17 PERI ¶ 2007 (IL SLRB 2000).

In this case, the City argues that the Managers have the authority to discipline, direct, reward, and adjust grievances, and that they perform these functions using independent judgment. I will discuss each activity in turn.

a. Authority to Discipline

The City contends that the Operations Managers have the authority to discipline or recommend discipline. As an initial matter, I note that while the OEMC does not consider formal counseling sessions discipline under the CBA, these verbal warnings may still constitute discipline under the Act. Generally, verbal warnings or counseling sessions are not discipline unless they have an impact on the employee's job status or terms and conditions of employment. Vill. of Bolingbrook, 19 PERI ¶ 125. Verbal warnings constitute discipline under the Act when they are documented, put in the employee's personnel file, and can serve as the basis for future discipline. Id. Since the OEMC places the formal counseling forms in the employee's file and they can serve as the basis for more serious discipline in the future, these verbal warnings do constitute discipline under the Act. As such, the record establishes that the Managers can issue an oral warning or formally counsel a subordinate and can recommend more serious discipline using a DAR form.

The record also establishes that the Managers can request a CI number to initiate a formal investigation into a subordinate's potential infraction. However, there are no examples in the record of the Managers actually requesting a CI number and little testimony on the issue. Thus, it is unclear whether the request of a CI number constitutes recommending discipline with independent judgment. As I can otherwise determine whether the Managers can discipline or effectively recommend discipline via counseling sessions and written reprimands, I decline to decide whether the request of a CI is an effective recommendation of discipline.

The Union argues that the Managers cannot effectively recommend discipline because their recommendations are subject to the review and approval of the Deputy Director. I am unpersuaded. Recommendations are not ineffective simply because they are not "rubber-

stamped. The term 'recommendation' implies some form of review by the person to whom the recommendation is made." City of Peru, 167 Ill. App. 3d 284, 290 (3d Dist. 1988). Furthermore, "[m]erely because the particular method and extent of discipline recommended was not carried out does not defeat a finding that the recommendation was effective." City of Chi. (Dep't of Public Health), 17 PERI ¶ 3016 (IL LRB-LP 2001). In fact, the Board has found individuals effectively recommended discipline where the particular discipline recommended had "not always been adopted as a matter of course, [but] the evidence demonstrate[ed] that, in each instance where a [supervisor] recommended that discipline issue, the employee was in fact disciplined[,]" and the recommendations underwent minimal review. Id.

Here, the Deputy Director reviews the Managers' disciplinary decisions but only to ensure the Managers have followed the OEMC's progressive discipline guidelines. The record does not suggest that the Deputy Director conducts an independent investigation into the employee's misconduct. Moreover, the Deputy Director appears to adopt the Managers' recommendations that discipline should issue in most, if not all, instances. That the Deputy Director has disagreed with the level of discipline recommended "does not defeat a finding that the recommendation was effective."[2]

The Union also argues that even if they can recommend discipline, the Managers do not do so using independent judgment. More specifically, the Union argues that the Managers do not use independent judgment because their authority only extends to minor offenses and the disciplinary process is strictly controlled by OEMC guidelines. I agree that the Managers are

[2] To any extent the Union argues that the recommendations are ineffective because the Deputy Director has lowered the recommended level of discipline from a written warning to what the City considers a "non-disciplinary" counseling session, I find this equally unavailing. As I have already discussed, even though the City considers oral warnings non-disciplinary, they do constitute discipline under the Act. As such, employees receiving oral warnings instead of written warnings are still being disciplined for purposes of the Act.

required to discipline their subordinates within OEMC guidelines, but I do not find the guidelines circumscribe the Managers' use of independent judgment. While the guidelines give examples of misconduct and the types of discipline that may be appropriate, the guidelines are not exhaustive. Additionally, the infractions listed under oral warnings and written warnings are similar, giving the Managers the choice of issuing or recommending two different levels of discipline. Most importantly, with few exceptions, the Managers are not required to issue discipline of any kind. Thus, Managers can choose to discipline an employee, give the employee additional training, or simply determine that the transgression does not warrant discipline. I am also find that the Managers do have the authority to discipline misconduct greater than the minor offenses the Union contends. While they are required to discipline for obvious transgressions such as absenteeism or tardiness, they also have the authority to discipline for more subjective work performance issues. Given the Managers ability to choose between multiple significant courses of action, I find that the Managers can issue or recommend discipline using independent judgment.

b. Authority to Direct

Next, the City argues that the Managers have the authority to direct using independent judgment. The term "direct" encompasses several different job functions, such as scheduling shifts, approving time off and overtime, assigning duties, overseeing and reviewing work, providing instruction on work is to be performed, and evaluating work performance. Vill. of Bolingbrook, 19 PERI ¶ 125; Peoria Housing Auth., 10 PERI ¶ 2020 (IL SLRB 1994). "Direct" means more than simply being responsible for a shift. City of Chi., 10 PERI ¶ 3017 (IL LRB 1994). Alleged supervisors must "also possess significant discretionary authority to affect their subordinates' employment in areas likely to fall within the scope of union representation, such as

discipline, transfer, promotion or hire." Cnty. of Lake, 16 PERI ¶ 2036 (IL SLRB 2000). The City contends that the Managers direct their subordinates by assigning work, overseeing and reviewing work, approving time-off and overtime, and evaluating their work performance. While the record supports many of the City's contentions, the Managers do not perform all of these functions using independent judgment.

i. Authority to Assign Duties

While the Managers assign work to both the PCOs and SPCOs, I find they only use independent judgment when assigning work to the PCOs. Generally, "[s]imply distributing work among unit employees is not 'direction' within the meaning of the Act, unless the assignment criteria are non-routine and require substantial discretion." City of Chi., 10 PERI ¶ 3017. The Operations Managers assign work to the PCOs by virtue of drafting the daily assignment schedule. The Union argues that writing the assignment schedule does not require independent judgment and is a fairly routine process. However, the evidence establishes that the Managers take into account multiple factors, including the PCO's skill level, when making assignments.[3]

Additionally, I am not convinced that drafting the daily assignment schedule is as routine a process as the Union contends. Both parties offered testimony that it takes the Managers approximately one and a half to two hours to draft the schedule. This suggests that the Managers do more than simply plug names into a schedule at random. It also does not appear that the Managers' assignments are subject to review. As such, I find that the Managers assign work to the PCOs using independent judgment.

[3] I do note that Operations Manager Stewart testified that she collaborates with the SPCOs to determine who is adequate to work in a particular zone. However, Stewart, as the Operations Manager, has final authority on who is assigned to a particular area. Even if that was not the case, I do not find her collaboration with the SPCOs is enough to overcome the other evidence establishing that the Managers' exercise independent judgment when drafting the assignment schedule.

However, I cannot conclude that the Managers assign work to the SPCOs using independent judgment. The City argues that the Managers rotate assignments among the SPCOs "in order to ensure that each SPCO acquires a comprehensive set of skills" and that the Manager takes the SPCO's skill level into consideration when assigning a particular task. This is not supported by the record. While Thomas testified that the Managers are supposed to rotate the SPCOs into different assignments, I find his testimony describes the reasons *why* the Managers rotate assignments, not *how* they rotate assignments. Additionally, Thomas testified that the SPCOs will volunteer for specific duties or divide up the work amongst themselves. Given this evidence, I cannot find that the Managers assign work to the SPCOs using independent judgment.

ii. Authority to Provide Oversight and Review Work

Next, the City argues that the Managers oversee and review their subordinates work using independent judgment. "For the [Managers] oversight and review of their subordinates to constitute the statutory authority to direct . . . [they must] be actively involved in checking, correcting and giving instructions to subordinates, without guidelines or review by others." Cnty. of Lake, 16 PERI ¶ 2036 (IL SLRB 2000). To a certain extent, the Managers' oversight and review of the SPCOs' and PCOs' work is intertwined. For example, the Managers review the monitoring checklists to see if the PCOs are meeting performance standards, decide whether the issue warrants discipline or training, and can instruct the SPCO on how to address the performance issue with the PCO. The Managers perform a similar process with the daily accountability sheets. In these instances, the Managers are reviewing the PCOs' work and providing instruction to the SPCOs using independent judgment.

The Union argues that the Managers do not review the PCOs' work in the manner required by the Act because the direct observation and oversight is done by the SPCOs. The Managers reliance on the SPCOs does not preclude a finding that the Managers monitor the PCOs' work within the meaning of the Act because the Managers are still ultimately responsible for those employees and review the PCOs' performance information on a daily basis. See City of Naperville, 8 PERI ¶ 2016 (IL SLRB) ("[D]irection, however, becomes supervisory where, in addition to being responsible for the proper performance of his subordinates, the supervisor is relied on to exercise significant discretionary authority, which affects the employment of his subordinates, in order to carry out that responsibility and to effectuate the policies of the employer.")

The Managers also review the SPCOs' work in several areas that require the use of independent judgment. For example, the Managers' use independent judgment when they ensure the SPCOs adequately handle the Operations floor as there are no strict guidelines on how to maintain efficiency levels. Additionally, they review the SPCOs' PIP recommendations and the progress forms using independent judgment because they have to ensure the plan is appropriate and decide whether they agree with the SPCOs' assessments. They also review the SPCOs' evaluations of the PCOs using independent judgment when employees raise concerns with how they are reviewed. However, based on the information in the record, I cannot conclude that the Managers' review of the evaluations otherwise involves the use of independent judgment as it is unclear what the Managers are looking for when they are checking to make sure the "evaluation form was filled out correctly." Further, the Managers' review of the SPCOs' disciplinary recommendations for PCOs do not require the use independent judgment. Thomas testified that

they always approve the SPCO's recommendation. Thus, the Managers' review of disciplinary recommendations is, essentially, routine.

Lastly, the City argues that the Managers provide training and instruction to the PCOs through roll call. I do not find this argument convincing. Training in and of itself is not a supervisory function, "but it can be when a supervisor is choosing between discipline or training." State of Ill., (Dep ' t of Cent. Mgmt Servs.), 26 PERI ¶ 116 (IL LRB-SP 2010). Here, the evidence does not establish that the Managers have any control over whether or not the training during roll call occurs. Rather, it appears that they only have authority over choosing the training's subject matter for that particular day. As such, I am unwilling to find that the roll call training is supervisory when the Managers cannot decide whether or not to hold the training in the first place.[4]

In sum, I find that the Managers oversee the PCOs' work by reviewing the monitoring checklists and the daily accountability sheet, as well as oversee the SPCOs' work and provide instruction in several areas.

iii. Authority to Grant Overtime and Approve Time-off

The City also argues that the Managers have the supervisory authority to grant overtime and approve time-off. As to overtime, there is a distinction between the decision to grant overtime and the actual assignment of overtime to a particular individual. Generally, alleged supervisors do not assign overtime using independent judgment if they are required to assign overtime in accordance with a collective bargaining agreement. See Circuit Clerk of Champaign Cnty., 17 PERI ¶ 2032 (IL LRB-SP 2001). However, the alleged supervisors may still grant overtime using independent judgment if they have discretion to decide when overtime is needed.

[4] To the extent that the roll call training can be considered instruction on how to perform work, the evidence is too vague for me to conclude that this type of instruction requires independent judgment.

See Dep't of Cent. Mgmt. Servs./Dep't of Transp. v. Ill. Labor Relations Bd., State Panel, 2013 IL App (4th) 110825, ¶¶ 15, 52; Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999).

In this case, the Managers have to assign overtime in accordance with the applicable CBAs. However, the Managers are able to decide when overtime needs to be worked. The Union argues that the Managers' decision to grant overtime is governed by minimum manning requirements, but the evidence does not establish whether Police Dispatch has a minimum manning requirement or even a typical manning level. Instead, the Union argues that the OEMC's requirement to maintain a 95% efficiency rating constitutes a minimum manning requirement. While it is correct that the Managers are tasked with maintaining an efficiency rating of 95%, I cannot find that this necessarily translates into a minimum manning requirement as the Union suggests. The Managers still have to decide whether the drop in efficiency is momentary or if the floor is really too short handed to handle the call volume.

In the alternative, the Union argues the Managers use their superior skill and expertise when deciding to grant overtime. More specifically, the Union argues that the Managers use their skill and experience to anticipate call volume and predict if they will need to use overtime to maintain answering efficiency. In some ways, all supervisory decisions are based on the individual's superior knowledge and expertise. However, the important question is whether the alleged supervisors use their expertise in the interests of the employer or, for example, to ensure compliance with industry standards. See Ill. Sec'y of State, 20 PERI ¶ 11 (IL LRB-SP 2003) (citing State of Ill. (Dep't of Cent. Mgmt Servs., Dep't of Emp't Sec.), 11 PERI ¶ 2021 (IL SLRB 1995) ("[A]n individual's oversight responsibilities constitutes supervisory direction in the interest of the employer if the individual's oversight decisions are 'driven not by industry-

wide or professional norms and standards . . . but by a desire to effectuate the public policies established by a particular employee.'").

Here, the Managers are certainly using their experience and skill in deciding whether or not to use overtime. However, their decision is driven "by a desire to effectuate" the OEMC's efficiency policies. Since their decision is not routine and not based on their superior skill or technical expertise as contemplated by the Act, I conclude that the Managers' decision to grant overtime requires the use of independent judgment.

Similarly, I find that the Managers' decision to approve time-off requires the use of independent judgment. Again, the evidence does not establish that Police Dispatch has minimum manning requirements. The Managers will approve time-off requests as long as they believe their ability to properly staff a shift will not be negatively affected. Thus, their decisions are based on operational needs and not criteria outside their control. Accordingly, I find the Managers grant overtime and approve time-off using independent judgment.

iv. Authority to Evaluate

The City also argues that the Managers evaluate their subordinates. "[T]he responsibility to rate employee performance is evidence of supervisory authority to direct only if the evaluation affects the employee's employment status." Cnty. of Lake, 16 PERI ¶ 2036. Here, the evidence does not establish that the PCOs and SPCOs may be subject to discipline based on their evaluation or that the evaluation has any impact on their wages. As such, I cannot find that the Managers' evaluation of the SPCOs or PCOs is evidence of their supervisory authority.

Rather, the Managers decide separately from the formal performance evaluations whether their subordinates are entitled to a merit increase. However, Thomas testified that merit increases are "pretty much automatic unless someone denies it." Furthermore, the evidence does not

suggest that the Managers have ever denied an increase on their own accord. The two instances in the record of a Manager denying an increase were precipitated by Thomas. In those instances, the Managers did not use independent judgment to deny the merit increase but rather did so on the direction of their superior. Thus, I cannot find that the Managers grant merit increases using independent judgment.

c. Authority to Reward

The Managers are able to reward their employees but their authority to *tangibly* reward employees is largely limited to approving the merit increases discussed above. The Operations Managers can nominate employees for employee of the month or other team awards. However, these awards have nominal, if any, value. As such, the Managers do not have the authority to reward their subordinates.

d. Authority to Adjust Grievances

Finally, the City argues that the Managers have the authority to adjust grievances. The Board has stated that, under the Act, grievances are "any complaint by an employee concerning any aspect of the employment relationship." Vill. of Bolingbrook, 19 PERI ¶ 125. "However, where the adjustment of grievances extends only to minor matters of a routine nature, the exercise of authority does not require the consistent use of independent judgment . . . The mere designation as the first step in a grievance procedure, without more, does not constitute supervisory authority under the Act." Id.

The Managers' authority to adjust grievances is fairly limited. For example, Thomas testified that the Managers can resolve "differences between employees that [do not] rise to the level of balance in the workplace . . . It could be something like two employees who don't want to sit next to each other." He also stated that the Managers cannot resolve a grievance that would

require a monetary award. Therefore, the Managers do not have the supervisory authority to adjust grievances.

3. The Police Dispatch Operations Managers Satisfy the Preponderance Requirement.

Under the fourth and final prong, the City must prove that the Managers "devote a preponderance of their employment time to exercising [supervisory] authority." 5 ILCS 315/3(r). Illinois courts have set out two tests by which the City can prove this element. First, the City can show that the Managers "spend more time on supervisory functions than on any one nonsupervisory function." City of Freeport, 135 Ill. 2d at 533; see also Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 249 Ill. App. 3d 740, 746-747 (4th Dist. 1993) (holding supervisory employees must spend more than 50% of their time on supervisory functions). Under this test, the only consideration is the time spent actually exercising the authority. Vill. of Downers Grove v. Ill. State Labor Relations Bd., 221 Ill. App. 3d 47, 56 (2d Dist. 1991).

The second test rejects the mathematical approach and instead focuses on the significance of the employee's duties. Dep't of Cent. Mgmt. Servs. v. Ill. State Labor Relations Bd., 278 Ill. App. 3d 79, 85-87 (4th Dist. 1996). Specifically, the Illinois Appellate Court stated that "[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." Id. at 86. Thus, the Managers will meet the second test if their supervisory functions are more "significant" than their non-supervisory functions.

Assessing the preponderance requirement under the first test, the record reveals that in a 10 hour shift, the Managers spend 30 minutes on roll call, an hour performing building security checks, an hour and a half to two hours drafting the daily assignment schedule, and approximately two to three hours overseeing the SPCOs and PCOs. The Managers spend the rest

of their day performing other administrative activities such as filling out forms or other paperwork. The record is too vague to conclude how much time the Managers spend disciplining employees, dealing with grievances, approving time off, or reviewing evaluations.

Of the activities that qualify as supervisory, the Managers spend anywhere from three and a half to five hours a day on supervisory activities. By contrast, the most time the Managers spend on any other duty is the one hour they spend performing building checks. As such, they spend more time on supervisory activities than any one non-supervisory activity.

Under the alternative test, I also find the Managers' supervisory duties are superior in importance to their non-supervisory duties. Arguably, the importance of their duties is somewhat diminished by the fact that many of their duties are also performed by the SPCOs. However, this is often due to the Managers delegating these duties to the SPCOs. It is also clear that the Managers are still ultimately responsible for the SPCOs' actions and their shifts as a whole. Thus, under either test, the Managers meet the preponderance requirement.

Given that the Managers in Police Dispatch satisfy all four prongs of the supervisor definition, I find they are appropriately excluded from the proposed bargaining unit.

B. The Operations Manager in Training Operations is not a Supervisor under the Act.

The City also contends that the Operations Manager in Training Operations, Martin Doyle, is a statutory supervisor. Again, the City must prove that Doyle satisfies all four prongs of the supervisor definition in order to be excluded from the proposed bargaining unit. As to the first prong, Doyle's work is obviously and visible different from his subordinates. The PCO-IIs are primarily involved in doing hands on training and updating training materials, while Doyle performs more administrative duties such as reviewing orders and attending meetings.

However, the evidence is largely insufficient to establish that Doyle has many of the supervisory functions the City argues he possesses. He is able to discipline employees and can grant overtime when necessary. However, the City failed to establish that he performs any other supervisory functions using independent judgment. Doyle has the same ability to respond to grievances, reward, and issue performance evaluations as the Police Dispatch Managers, which I already concluded were insufficient to constitute supervisory authority. The City also argues that Doyle evaluates his employees for merit increases, but this is unsupported by the record. Furthermore, I cannot find that he assigns work to the PCO-IIs using independent judgment. While Thomas testified that he can assign work to his subordinates according to their skill set, Doyle testified that the PCOs actually divide the work amongst themselves.

Even though the record demonstrates that Doyle has the supervisory authority to discipline and grant overtime, he does not spend a preponderance of his time performing these activities. In fact, Doyle testified that spends almost no time on these activities. Nor does the evidence suggest that these duties are of greater importance to the OEMC than Doyle's other functions.

Even if I were to find that the other duties are supervisory as required by the Act, the City's evidence regarding how much time Doyle spends on those duties is vague at best. Thomas testified that Doyle spends "a couple of hours" directing and monitoring the PCOs. Doyle, by contrast, testified that he spends about an hour making sure the Training staff have everything they need and spends the rest of the day on other activities. I find Doyle's testimony more convincing, particularly given the City's arguments that Doyle spends the rest of his workday on managerial and confidential functions.

Thus, given the deficiencies in record to support the City's argument, I find the City has failed to prove that Doyle is a supervisor as defined by the Act.

C. The Operations Manager in Training Operations is not a Managerial Employee.

In order to "maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management[,]" the Act excludes managerial employees from engaging in collective bargaining. Chief Judge of Sixteenth Judicial Circuit v. Ill. State Labor Relations Bd., 178 Ill. 2d 333, 339 (1997).[5] The courts utilize two tests to determine whether an individual is a managerial employee under Section 3(j). The first or traditional test examines whether an employee is managerial as a matter of fact. Dep't of Cent. Mgmt. Servs./Dep't of Healthcare & Family Servs. v. Ill. Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 330 (4th Dist. 2009). The second or alternative test analyzes whether an employee is managerial as a matter of law. Id. While the City clearly argues that Doyle satisfies the traditional test, it is less clear whether it contends Doyle satisfies the alternative test. As such, I will consider both.

1. Doyle is not a Managerial Employee as a Matter of Fact

Under the traditional test, the City must prove that Doyle is (1) predominately engaged in executive and management functions; and (2) responsible for directing the effectuation of management policies and practices. City of Evanston v. Ill. State Labor Relations Bd., 227 Ill. App. 3d 955, 974 (1st Dist. 1992).

[5] Section 3(j) of the Act defines a managerial employee "an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices."

a. Doyle is not Predominately Engaged in Executive and Management Functions.

Generally, executive and management functions are duties "which specifically relate to the running of an agency or department." Id. These duties include establishing policies and procedures, preparing the department's budget, and being responsible for a department or agency running efficiently. Id. As with statutory supervisors, managerial employees must perform these functions with a certain amount of independence. "Although managerial status is not limited to only the highest levels of the governmental entity, it does require sufficient independent authority and discretion to broadly effect a department's goals or means of achieving its goals." Cnty. of Cook v. Ill. Labor Relations Bd., Local Panel, 351 Ill. App. 3d 379, 388 (1st Dist. 2004). This requires the employee to do more than simply exercise professional discretion or technical expertise. Dep't of Cent. Mgmt. Servs./Dep't of Healthcare & Family Servs., 388 Ill. App. 3d at 331; see Cnty. of Cook, 351 Ill. App. 3d at 388 (finding "the only discretion the [attending physicians] exercise is in providing patient care and results from their professional and technical expertise. They have no independent authority to do anything besides practice medicine, let alone the authority to broadly effect a department's or the hospital's goals.")

The City argues that Doyle satisfies the first prong because he ensures Training Operations runs efficiently, is primarily responsible for determining how new hires are trained, reviews CPD orders to determine which orders the OEMC should adopt, attends management meetings, and works on projects as assigned by the Executive Director.[6] I find these arguments unconvincing.

---

[6] The City does not specifically argue that Doyle's attendance at management meetings and his assignments from the Executive Director satisfy the first prong. Instead, the City argues that these duties "align him with management." As Doyle's alignment with management is not a consideration in the traditional test and the City does not specify whether it is making a managerial as a matter of law argument, I have chosen to consider these specific duties under the traditional test's first prong.

First, the City contends that Doyle's responsibility for running Training Operations is a management function. As an initial matter, the City does not specify how it believes Doyle ensures Training Operations runs effectively and efficiently. I presume it is relying on the same evidence it relied on in its supervisory argument. I find that evidence no more convincing here. As I stated earlier, the record does not establish that Doyle runs Training Operations using independent judgment, let alone with the level of autonomy to establish the department's goals or means of achieving its goals on a broad scale.

The City also contends that Doyle determines how newly hired PCOs are trained. This is not supported by the record. While Doyle is responsible for ensuring all new hires receive the appropriate training, the evidence does not establish that Doyle has any control over the content of the "appropriate training." Rather, the OEMC has a set training curriculum for new hires.

Next, the City argues that Doyle's review of CPD orders is a management function. First, I note that the record is somewhat unclear as to whether the OEMC has the ability to refuse to adopt a CPD order. Regardless, I do not find that Doyle's review of the orders is a management function as required by the Act. Doyle reviews the orders to determine if the OEMC's dispatchers can practically or logistically accommodate them. I find this type of review entails the use of Doyle's technical expertise and not the sort of broad discretion the Act requires. Additionally, I find the record does not establish whether or not Doyle makes effective recommendations regarding the orders. The evidence establishes that the OEMC has not adopted an order because of Doyle's recommendations on a few occasions. But the record does not establish how many times Doyle has made recommendations or how frequently the OEMC adopts his recommendations.

To the extent the City also contends that Doyle's attendance at management meetings and assignments from the Executive Director satisfy the first prong, I disagree. At the management meetings, Doyle provides technical or logistical information regarding 911 operations. This duty is, essentially, dictated by his professional and technical knowledge and expertise. The evidence does not suggest that Doyle has significant discretion to affect the departments' goals. Further, the evidence does not establish that Doyle serves in anything other than an advisory role. It does not establish that Doyle makes effective recommendations regarding policies or procedures. Doyle merely gives factual information on what the department can physically do. Additionally, I do not find that the assignments from the Executive Director constitute a management function. Again, the record does not establish that Doyle has authority to make decisions on behalf of the department or that he makes effective recommendations to the Executive Director. In the example provided by the City, the Executive Director assigned Doyle to act as an advisor on the reconstruction project. But, yet again, Doyle simply provided factual information regarding the logistics of the department and learned about the department's new equipment. Doyle also acted as the Executive Director's "eyes and ears" but the record does not establish that Doyle made any effective recommendations to the Executive Director about the reconstruction or did anything beyond simply report to the Executive Director about the reconstruction activities.

Thus, in sum, the City has not established that Doyle satisfies the first prong.

b. Doyle is not Responsible for Directing the Effectuation of Management Policies.

Even if the City satisfied the first prong, it has failed to prove that Doyle "exercise[s] responsibility for directing the effectuation of such management policies and practices." City of Chi., 25 PERI ¶ 2. In order to satisfy this prong, an employee must "[oversee] or [coordinate]

policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. Such individuals must be empowered with a substantial measure of discretion to determine how policies will be effected." Id. (internal citations removed); see also Vill. of Elk Grove Vill., 245 Ill. App. 3d at 122 ("With regard to the second part of the test, the employee must have substantial discretion to determine how and to what extent policies will be implemented and have authority to oversee and direct that implementation.")

The City argues that Doyle satisfies the second prong because he determines how to effectuate the CPD orders as OEMC policies. The record establishes that once the OEMC's administration has adopted an order, Doyle and his PCOs are responsible for training the other employees in 911 Operations regarding the order. However, it does not appear that Doyle has any authority to determine the extent the policies will be put into practice or even determine the means of reaching the objectives in the policy. Doyle simply decides whether the training will be in the form of a written notice, a formal training, or a PowerPoint. That is, essentially, the extent of his decision making power in the matter. As such, I cannot find that Doyle possesses the substantial discretion to effectuate policy as required by the Act.

The City points out that employees do not need to act independently in order to effectuate policies. While I agree with the premise, I am unclear as to how the City means to apply it in this case. If the City implies that Doyle works in conjunction with the Deputy Director and the Executive Director to effectuate policies and procedures, I am unconvinced. As I have already stated, the evidence establishes that Doyle's role in implementing policy is largely ministerial. If the City is arguing that Doyle makes effective recommendations to his superiors on how these policies are implemented, it is not supported by the record. Again, the evidence does not

demonstrate that Doyle actually makes effective recommendations on how policies are either accepted or implemented by the OEMC. Further, Doyle is not actually implementing policies, via suggestion or otherwise, as the Act requires. For example, the record does not suggest that Doyle has any authority to ensure that the other operations' employees actually follow or comply with the policies or procedures. Essentially, the City attempts to conflate implementing policy with training employees on that policy.

Therefore, the City has not established that Doyle satisfies either prong of the traditional managerial test.

2. Doyle is not a Managerial Employee as a Matter of Law.

Alternatively, the City argues that Doyle is a managerial employee because he is aligned with management by virtue of his attendance at management meetings and work on projects assigned by the OEMC's Executive Director. However, the City does not articulate whether it is arguing that Doyle is managerial as a matter of law or whether his alignment with management satisfies either prong of the traditional test.[7] *Assuming arguendo* that the City is contending that Doyle is a managerial employee as a matter of law, it failed to satisfy this test.

Generally, the managerial as a matter of law test is only applicable where an employee's duties are prescribed by statute. State of Ill., (Ill. Commerce Comm'n), 30 PERI ¶ 206 (IL LRB-SP 2013). Typically, "absent a 'detailed statutory apparatus' that 'clothe[s] the employees with all the powers and privileges' of the office holder, employees would not be deemed managerial as a matter of law." Id. (internal citations removed). However, the courts have applied this analysis to attorneys who acted as judicial law clerks and surrogates of their employer, but where

[7] It is possible that the City is arguing that Doyle's alignment with management satisfies one of the prongs of the traditional test. However, an employee's alignment with management is not a consideration under the managerial as a matter of fact test. I also note that I did discuss, and discount, the management meetings and Executive Director's assignments under the traditional test.

no statutory apparatus existed. Id. Regardless, under the alternative test, the employee must, essentially, act as a surrogate of the employer. Id; see also Cnty. of Cook v. Illinois Labor Relations Bd.-Local Panel, Serv. Employees Int'l Union, Local 74-HC, 351 Ill. App. 3d 379, 392 (1st Dist. 2004). The Board will consider (1) whether there is "a close identification of the office holder with the actions of his or her subordinates[;]" (2) whether there is "a unity of their professional interests[;]" and if the employee has the power "to act on behalf of the public office holder." State of Ill., (Ill. Commerce Comm'n), 30 PERI ¶ 206.

Put simply, Doyle does not satisfy this test. The evidence does not establish that he closely identifies with Thomas or the Executive Director or that they have the same professional interests. Most significantly, Doyle does not have the authority to act on the OEMC's behalf.

Since the City has failed to prove that Doyle is a managerial employee under either test, I find that Doyle is not a managerial employee as defined by the Act.

D. The Operations Manager in Training Operations is a Confidential Employee.

Next, the City argues that Doyle is a confidential employee. "The Act's purpose in excluding 'confidential employees' from any bargaining unit is to prevent employees from having their loyalties divided between their employer, who expects confidentiality in labor relations matters, and the union, which may seek disclosure of management's labor relations material to gain an advantage in the bargaining process." Am. Fed'n of State, Cnty. & Mun. Employees, Council 31 v. Ill. Labor Relations Bd., State Panel, 2014 IL App (1st) 132455, ¶ 32. The Board has developed three tests for determining whether an employee is confidential within the meaning of the Act: the labor-nexus test, the authorized access test, and the reasonable expectation test. Chief Judge of Circuit Court of Cook Cnty.,153 Ill. 2d at 523-524. The City contends that only the first two tests are applicable here.

Under the labor-nexus test, employees are confidential if they, in the regular course of their duties, assist someone in a confidential capacity who formulates, determines, and effectuates labor relations policies. Chief Judge of Circuit Court of Cook Cnty., 153 Ill. 2d at 523. Under the authorized access test, employees are confidential if they, in the regular course of their duties, have authorized access to information regarding the employer's collective bargaining process such as information about the employer's collective bargaining strategy, bargaining proposals, or contract administration. Cnty. of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015).

First, the labor-nexus test is simply inapplicable to the facts in evidence. The labor-nexus test analyzes the duties of the employee's superior in the context of labor relations and the employee's duties in support of that superior, neither of which is evidenced by the record. However, Doyle is a confidential employee under the authorized access test. As the City points out, Doyle is part of the City's bargaining team for the SPCOs and PCOs, attends strategy sessions, has access to drafts of the City's proposals and is consulted about those proposals. As such, he has access to confidential collective bargaining information "which, if divulged, would give bargaining unit members advance notice of the employer's policies in regard to labor relations." Id.

The Union argues that Doyle is not a confidential employee because he only serves as an informational resource or in an advisory role, only assists in negotiations sporadically, and does not have routine access to collective bargaining information. I am unpersuaded. Even if Doyle's role is only advisory, the critical inquiry is whether he has access to confidential information, not what he does with it. As to the Union's remaining arguments, the Board has addressed the meaning of "in the regular course of duties" stating:

> [w]hile the frequency in which an employee assists in a confidential capacity is relevant, the fact that a task is performed only occasionally does not necessarily mean it is not performed in the regular course of duties. Many collective bargaining agreements, for example, have terms of three years and under that circumstance tasks relating to collective bargaining might be entirely unnecessary for periods of two years.

City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010). As such, the Board distinguishes "between infrequent but normal tasks and mere ad hoc assignments." Id; see State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Human Servs.), 28 PERI ¶ 16 (IL LRB-SP 2011) (applying same analysis to authorized access test). Although Doyle's access to confidential information is limited to actual contract bargaining, I find he has regular, if not frequent, access. As such, his involvement in bargaining is not a sporadic or an ad hoc assignment, but rather a result of the fact that contracts live for several years at a time. Therefore, based on the record, I find that Doyle is a confidential employee under the authorized access test.

E. If not Otherwise Excluded, a Bargaining Unit Solely Comprised of Managers Would be Appropriate.

Lastly, the City argues that the petitioned-for bargaining unit is inappropriate. Since I have already concluded that all of the petitioned-for employees are statutorily excluded, I need not decide this issue. However, for Board's convenience, I will note the following.

Section 9(b) of the Act states:

> The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. **For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.**

(emphasis added). Importantly, "Section 9(b) of the Act does not require that a proposed unit be the most appropriate or the only appropriate unit." City of Chi. v. Ill. Labor Relations Bd. Local Panel, 396 Ill. App. 3d 61, 67 (1st Dist. 2009) (citing Cnty. of Cook v. Illinois Labor Relations Bd., Local Panel, 369 Ill. App. 3d 112, 118 (1st Dist. 2006).

The City argues that a unit of only the Managers "would unduly fragment the City's bargaining structure" and that the Managers should be included in the SPCOs' bargaining unit. It states that under the factors listed in Section 9(b), "it is clear that the Managers' inclusion in the bargaining unit that represents the SPCOs is more appropriate than establishing a separate, single-title bargaining unit exclusive to Managers." The City also points out that the Board "has repeatedly held that single title units are inappropriate, and has repeatedly maintained a preference for more wide ranging units, upholding the City's well-established structure of cross-departmental, functionally-based, larger, broader units."

If the Board determines that the Managers should not be excluded as supervisory or confidential and reaches this question, I would reject the City's arguments and find the petitioned-for bargaining unit was appropriate. While the City is correct that historically the Board has preferred the City maintain large units, the Board's preference in that regard has waned in recent years. Interestingly, the City made this same argument when the SPCOs organized into a stand-alone bargaining unit. In that case, the Board noted that that "case [pitted] large functionally-based units and the City's administrative efficiency against the right of the petitioned-for employees to engage in collective bargaining." City of Chi., 23 PERI ¶ 172 (IL LRB-LP 2007). It went on to state that:

> [t]he Board's preference for large, functionally-based units when most of the City's workforce was unorganized, was in keeping with the judicious administration of the Act, however, over time, as the Board has often notes, and the record reflects, most of the City's workforce eligible to be organized is in fact,

> organized. Yet, small pockets of employees, like those petitioned-for herein, continue to exist, and their right to organize should not remain entirely under the control of a third party . . . when the circumstances that originally dictated such a policy have changed with time.

Id.

I also note that the City has offered no other argument in support of finding the petitioned-for unit is inappropriate. The majority of the City's argument is devoted to its contention that the SPCOs' unit is a *more appropriate* unit. However, the issue is not whether a unit of SPCOs and Managers is appropriate, but whether a unit consisting solely of Managers is appropriate. Given the City's sole argument involves the fragmentation of its bargaining structure and that the Act states that fragmentation will not be the sole or predominate factor in finding a unit inappropriate, I would find the petitioned-for unit of only Managers is an appropriate bargaining unit.

V. CONCLUSIONS OF LAW

A. I find that the Operations Managers in Police Dispatch are supervisors within the meaning of Section 3(r) of the Act.

B. I find that the Operations Manager in Training Operations is not a supervisor within the meaning of the Act.

C. I find that the Operations Manager in Training Operations is not a managerial employee within the meaning of the Act.

D. I find that the Operations Manager in Training Operations is a confidential employee within the meaning of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the petition be dismissed.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, the parties may file exceptions no later than 14 days after service of this recommendation. Parties may file responses to any 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 recommendation. Within five 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, if at all, with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois, 60601-3103. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted in the Board's Springfield office. 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. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on August 7, 2015

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
LOCAL PANEL

/s/ Kelly Coyle
Kelly Coyle
Administrative Law Judge