**STATE OF ILLINOIS**
**ILLINOIS LABOR RELATIONS BOARD**
**LOCAL PANEL**

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| Chicago Joint Board, Local 200, RWDSU, United Food and Commercial Workers International Union, | ) | |
| Petitioner, | ) | Case No. L-RC-14-018 |
| and | ) | |
| County of Cook (John H. Stroger Hospital), | ) | |
| Employer | ) | |

## ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On June 19, 2014, the Chicago Joint Board, Local 200, RWDSU United Food and Commercial Workers International Union (Local 200 or Union) filed a petition with the Illinois Labor Relations Board (Board) seeking to represent the titles Pharmacy Supervisor IV employed at the County of Cook, John H. Stroger Hospital (Employer or County). The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2012), pursuant to the exemption for supervisory employees. In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on December 17, 2014. Both parties elected to file post-hearing briefs.

### I. Preliminary Findings

The parties stipulate and I find:

1. The Employer is a public employer within the meaning of Section 3(o) of the Act and the Board has jurisdiction over this matter pursuant to Section 5(b) and 20(b) of the Act.

2. The Union is a labor organization within the meaning of Section 3(i) of the Act.
3. The principal work of the Pharmacy Supervisor IVs is substantially different from that of their subordinates.

## II. Issues and Contentions

The issue is whether the petitioned-for employees are supervisory within the meaning of Section 3(r) of the Act.

The Employer argues that the petitioned-for employees hire, direct, discipline, and discharge their subordinates using independent judgment, and asserts that they spend a preponderance of their work time exercising this supervisory authority.

The Union asserts that the petitioned-for employees do not hire, direct, discipline or discharge their subordinates using the requisite independent judgment. Further, the Union argues that the petitioned-for employees spend a preponderance of their work time compiling reports on pharmacy production and monitoring the pharmacy customer lines, rather than in exercising any purported supervisory authority.

## III. Facts

Catanya Norwood is the Interim System Director of Pharmacy Services at the Cook County Health and Hospital System. She also serves as a Director of Pharmacy at Stroger Hospital. The Cook County Health and Hospital System includes the following hospitals: Stroger Hospital (Stroger), Cermak Hospital (Cermak), Oak Forest Hospital (Oak Forest), and Provident Hospital (Provident). Each hospital has at least one pharmacy. A Director of Pharmacy (Director) oversees the pharmacies at her assigned hospital. The Pharmacy Manager (Manager) reports to the Director and oversees the Pharmacy Supervisors, at issue in this case. In turn, the Pharmacy Supervisors oversee Pharmacists and Technicians, who dispense medication, perform prescription verification, and conduct patient counseling. Each Pharmacy Supervisor oversees between approximately 20 to 40 subordinates.

Jay Silver is the Director of Pharmacy at Oak Forest Health Center. He oversees Pharmacy Supervisors Charnell Hall and Gervaise Hunter-Morris. Hall is a Pharmacy Supervisor at Oak Forest Health Central Fill Pharmacy. She oversees nine Pharmacists and 12 Technicians. Hunter-Morris is a Pharmacy Supervisor at the Oak Forest Health Center

Outpatient Pharmacy. She oversees eight Pharmacists and approximately ten Technicians. Hunter-Morris previously worked as a Pharmacy Supervisor at Cermak. During that time, she reported to Mary Ann Wrobel, the Director of Pharmacy Cermak Health Services at Cermak.

Charlia Arbo is the Director of Pharmacy at Provident. She oversees Dawn Purnell who is the Pharmacy Supervisor at the Provident Outpatient Pharmacy. Purnell oversees eight Pharmacists and nine Technicians. There are a combined total of 29 Pharmacists and Technicians at Provident.

Catanya Norwood is a Director of Pharmacy at Stroger. She oversees Pharmacy Supervisor Denise Davis and two other Pharmacy Supervisors. Davis oversees approximately 12 Pharmacists and over 20 Technicians.

The parties stipulate that the principal work of the Pharmacy Supervisors is substantially different from the work performed by their subordinate Pharmacists and Technicians. The Pharmacists and Technicians dispense medication to patients whereas the Pharmacy Supervisors are responsible for quality control at the pharmacies. According to the Pharmacy Supervisor's job description, they "work under administrative guidance to manage, coordinate, and assist in the day to day operation of the pharmacy." This includes data processing, inventory, drug distribution, prescription, scheduling, and manufacturing services of the area.

1. Hiring

Pharmacy Supervisors participate in the hiring process. Their job description provides that they are required to "interview and hire new employees." They are part of the interview team that evaluates potential candidates. They meet prior to the interview to formulate and select interview questions.[1] The Pharmacy Supervisor cannot add qualifications that should be required for the position and cannot add questions to the interview process once the team has selected the questions. The members of the team discuss the candidates following the interview. Then, each individual on the interview team scores and ranks the candidates. Each team member's score assignment is given equal weight. The team is usually comprised of three individuals and may include a Manager, a Pharmacy Supervisor, and/or a Director. Once the team determines to accept a number of candidates, based on their aggregate score, the members of the interview team rank the accepted candidates as their first, second, or third choices. If a

[1] Hunter-Morris testified that she does not formulate interview questions and that she merely selects them.

panel is comprised of two individuals, a Pharmacy Supervisor and a Director, the Pharmacy Supervisor may recommend the hire of the individual to the Director, her own superior. A Pharmacy Supervisor offers her own opinion and recommendation on hiring. Norwood testified that the Director may defer to the Pharmacy Supervisor on the basis that the Pharmacy Supervisor is the individual with direct oversight over the individual hired. Similarly Pharmacy Director Mary Ann Wrobel testified that she always defers to her subordinate Pharmacy Supervisor with respect to hiring because the Pharmacy Supervisor is the frontline manager who would be responsible for the employee's oversight. Each interviewer's score is given equal weight. Following a discussion, the Pharmacy Supervisor fills out and signs a form for each interviewee that reads "accept" or "do not accept."

The Cook County Health and Hospital Board determines whether a position should be posted. A Pharmacy Supervisor cannot initiate the hiring process on her own, though she can identify that the facility is understaffed and may request additional employees.[2] Further, a Pharmacy Supervisor is not alone vested with the power to hire employees. The Pharmacy Supervisor is not informed as to whether the County extends an offer of employment to the individual selected by the interview team.

Director Norwood testified that Pharmacy Supervisors at Stroger spend approximately 40% of their work time participating in the hiring process.[3] Eureva Walker, another Pharmacy Director at Stroger, testified that when she served as a Pharmacy Supervisor between 2009 and 2012, she spent 25% of her time participating in the hiring process. Director Wrobel testified that the Pharmacy Supervisors at Cermak spend approximately 40% of their time engaged in the hiring process.[4] Director Arbo testified that the Pharmacy Supervisors spend approximately 20 to 30% of their time engaging in the hiring process.[5]

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[2] The Pharmacists have also informed Norwood that the Employer should hire more employees.

[3] Norwood specified that they may spend as long as approximately two to three hours a day, over a five day period aiding the hiring process. They could also spend an entire workday engaged in such duties.

[4] In the past three and a half years Cermak hired approximately 10 employees. Hunter-Morris was involved in each hire.

[5] Arbo testified that Pharmacy Supervisor Purnell spent approximately 12 days over the past two years participating in the hiring process.

Pharmacy Supervisors Hunter-Morris and Purnell testified that they spend approximately 10% of their work time participating in the hiring process. Pharmacy Supervisor Hall has spent approximately two days participating in the hiring process since she was hired.[6]

2. Discipline

The Pharmacy Supervisor's job description provides that the Pharmacy Supervisors must "administer corrective and disciplinary action when required." The County's personnel code also provides that "except as otherwise directed by the Department Head, the Employee's direct Supervisor may impose discipline if the maximum disciplinary action to be taken is a verbal or written reprimand."

The collective bargaining agreement covering the Pharmacy Supervisors' subordinates provides that oral and written warnings in an employee's personnel file are considered with respect to future discipline. Director Norwood testified that counseling forms and employee conference forms filled out by the Pharmacy Supervisors also become part of a subordinate's personnel file, are considered in progressive discipline, and that counseling and conferencing are grievable. However, George Leonard, Pharmacist and President of Local 200, testified that counseling is not a grievable event. Similarly, Pharmacy Supervisor Purnell testified that counseling is not discipline The County's Personnel Rules do not include counseling as a form of discipline and instead define discipline as a verbal reprimand, written reprimand, suspension, or discharge.

The record contains examples of documents issued by Pharmacy Supervisors to their subordinates, including the following: employee conference; counseling; verbal reprimand; and notice of suspension.

The Pharmacy Supervisors identify their subordinates' misconduct by monitoring employees on the work floor and identifying violations of Cook County policy. Pharmacy Supervisors are also apprised of misconduct by EMRS, a reporting system that flags medication errors or deviations from established standards and sends a report to the Pharmacy Supervisor's email account. The Pharmacy Supervisor investigates the incident of alleged misconduct and reports it to her Manager or Director.

[6] Her participation occurred after the Union filed its petition.

The witnesses agree that a Pharmacy Supervisor does not issue an oral reprimand or a counseling without her Director's consent and approval. However, the witnesses disagree as to whether the decision to issue discipline originates with the Director or with the Pharmacy Supervisors.

The Pharmacy Supervisors testified that they simply raise instances of misconduct to their superiors' attention and receive instruction as to the level of discipline, if any, the misconduct warrants. Pharmacy Supervisor Hall testified that her superiors determine whether an incident deserves a written reprimand or a counseling. Pharmacy Supervisor Purnell testified that she was instructed to simply inform her Pharmacy Director when she observes instances of misconduct. Pharmacy Supervisor Davis testified that Manager Lorna Pryor told her that she must not be involved in disciplinary matters and that she must only report the infractions.

In some cases, the Pharmacy Supervisors then draft the language on disciplinary forms by describing the circumstances of the alleged misconduct and adding language from the Cook County Employee Rules and Supervisor Handbook. In other cases, the Directors or the Employer's Labor Analyst tell the Pharmacy Supervisors what they should write on the form. The Directors may make grammatical corrections to the draft language.

Director Wrobel suggested that the decision to discipline originates with the Pharmacy Supervisors and stated that she approves disciplinary forms presented to her by her Pharmacy Supervisors, only recommending changes to the wording. Likewise, Director Silver testified that the Pharmacy Supervisors bring disciplinary matters to him and that he supports their decisions on disciplinary matters. However, Director Arbo stated that she and her Pharmacy Supervisors reach a disciplinary decision together, following a discussion, and that she supports her Pharmacy Supervisor's decision.

Not every instance of alleged misconduct brought to the attention of a Director or Manager results in discipline. Pharmacy Supervisor Hunter-Morris recalled reporting a Pharmacist's failure to complete the Controlled Substance Audit and Director Wrobel informed her that the Assistant Director would handle the matter. Pharmacy Supervisor Hall recalled an occasion in which she was told to do nothing by a Director after a reporting a situation in which an employee had departed from preexisting standards.

After the decision to discipline is made, Pharmacy Supervisors issue the discipline to their subordinates, accompanied by a member of management. Pharmacy Supervisors are

instructed not to talk with staff about disciplinary or performance matters without a witness present.

The Employer holds pre-disciplinary hearings before a hearing officer concerning alleged violations of the Employer's rules. The Pharmacy Supervisor's identification of a rule violation initiates the disciplinary hearing process. However the Pharmacy Supervisor does not determine whether employees should undergo a pre-disciplinary hearing. During the hearing, the Pharmacy Supervisor presents management's version of events.

The Hearing Officer makes a recommendation to the Manager or the Director as to the discipline that should be imposed.[7] After the hearing, if the Hearing Officer determines that discipline is warranted, the Pharmacy Supervisor presents the results of hearing to her subordinate.

The Employer introduced a notice of a five-day suspension issued by Pharmacy Supervisor Hunger-Morris to a pharmacy Technician. Hunter-Morris testified that her role in the incident was solely to deliver the suspension letter to the employee via email and to hand deliver it. Hunter-Morris did not draft the letter; she did not decide to issue the employee notice of a pre-disciplinary hearing; she did not decide to issue the employee a five-day suspension; she was not asked to offer a recommendation on that discipline.

Director Wrobel testified that Pharmacy Supervisors spend approximately 30% of their work time performing discipline. Director Arbo testified that the Pharmacy Supervisors spend approximately 20% to 30% of their time engaged in discipline. Director Norwood testified that Pharmacy Supervisors spend approximately 60% of their time disciplining their subordinates. Director Walker testified that she spent approximately 60% of her work time on disciplinary matters when she was a Pharmacy Supervisor between 2009 and 2012.

Pharmacy Supervisor Davis testified that she spends approximately 5% of her time counseling employees and 5% of her time addressing reprimands, suspensions, and discharges. Pharmacy Supervisor Purnell testified that she spends approximately 5 to 10% of her work time engaged in employee counseling and stated that she has spent approximately three days involved in pre-disciplinary hearings over the past year. Pharmacy Supervisor Hall testified that she spends approximately 5% or less of her work time on counseling and approximately the same

[7] Norwood stated that Pharmacy Supervisors make recommendations on suspensions. There is no documentary evidence that supports this assertion. Further, it is contradicted by testimony that the Hearing Officer makes recommendations on such matters after a full pre-disciplinary hearing.

amount of time on reprimands, suspensions, and discharges. Pharmacy Supervisor Hunter-Morris testified that she spends approximately 5 to 7% percent of her work time engaged in disciplinary matters, which equates to approximately two to three hours a month.

3. Direction

Pharmacy Supervisors complete performance evaluations for their subordinate Pharmacists and Technicians annually. The evaluations rate an employee based on the following "factors": job skills and techniques, work habits, work quality, and work quantity. Each factor is broken down by responsibility and task. The Pharmacy Supervisor gives an employee a rating from one to five on each task. The last page of the evaluation contains a form in which the Pharmacy Supervisor may write a summary of the employee's performance, describing in detail any outstanding or unsatisfactory job performance.

They have direct contact with their subordinates and know what they are doing on a day to day basis. The evaluations become part of the employee's personnel file. If the evaluation is poor, and if the employee's performance is not corrected with training, the employee could be terminated. Before the Pharmacy Supervisor issues the evaluation to her subordinate, she provides it the Pharmacy Director to review.

Pharmacy Supervisors Hunter-Morris, Hall, and Davis testified that their Pharmacy Managers or Pharmacy Directors make changes to the evaluations they have completed for their subordinates if they disagree with the ratings.[8]

Pharmacy supervisors also conduct employee conferences. The witnesses disagree as to whether the Pharmacy Supervisors have authority to determine whether to conduct an employee conference. The more specific testimony in the record demonstrates that they do. Norwood testified that Pharmacy Supervisors make their own determination as to whether, when, and how they should initiate an employee conference with a subordinate. None of the Pharmacy Supervisors explained their role in employee conferences. They simply testified that their role in counseling and discipline is limited to reporting incidents of misconduct. Yet, the documentary evidence indicates that counseling and conferences are different actions because they are written on different forms. The one instance of an employee counseling was made on a disciplinary action form, while the employee conferences have their own separate form. Further, although a

[8] In Hall's case, the Supervisor who changed the evaluation was Pharmacy Manager Tasha Williams.

Director will instruct a Pharmacy Supervisor to investigate a medication error if she has not already done so, there is no indication that a Pharmacy Supervisor must report a medication error to the Director before conducting an employee conference.

The record contains examples of employee conference forms completed by Pharmacy Supervisors. One employee conference form instructs an employee to document on her work schedule if she leaves work early. Another employee conference form identifies a medication error and instructs the subordinate to (1) check the product against the label, (2) use check marks to ensure the product has been checked, and (3) take the product out of the packaging to check the drug.

In cases where an employee's performance is far below the established goal (metrics), a supervisor first discusses the discrepancy with their subordinate to investigate and understand the matter before reporting it to the supervisor.

The Pharmacy Supervisors uniformly testified that they spend the bulk of their work time conducting productivity reviews, writing reports, and engaging in work flow supervision. The percentages of time they quoted varied from 60% to 85%. The Pharmacy Supervisors perform these tasks using a computer program that records all data on prescriptions issued and medications that are dispensed. For Pharmacists, the program captures preverification and verification of prescriptions. For Technicians, it monitors the patients that the technician takes, the prescriptions the technician processes, daily entries, and the release of patients. The Pharmacy Supervisors access the system to ascertain how well their subordinates have performed. They place the information in a spreadsheet. Every two weeks, the Pharmacy Supervisors calculate the employees' progress and compare it to the standard performance metrics that have been established by the County. The Pharmacy Supervisors then submit the information to their managers. If an employee's performance has deviated from the standard metrics, the Pharmacy Supervisor discusses the matter with her Manager. The Pharmacy Supervisor makes recommendations to her Manager regarding what she thinks should be done about the discrepancy. The Manager then decides on a course of action. Arbo testified that a Pharmacy Supervisor will not always report a matter to her supervisor first. For example, if the standard is 40 and the subordinate is performing at a 2, the Pharmacy Supervisor will first speak to the employee to try and understand the reason for the discrepancy.

Director Silver testified that monitoring the metrics is a preliminary step in determining whether disciplinary action is warranted. If employees do not meet the established standards, Silver stated that "we need to sit down and talk to them as to why they are not meeting standards." However, Director Arbo testified that an employee's failure to meet established metrics has not become the basis for disciplinary actions. Arbo explained that management is not disciplining employees based on their failure to meet the metrics because the metrics and the established standards are an "ongoing process" that the employer is continuously modifying. Arbo suggested that the Employer does not wish to discipline employees based on a system that is changing.

Pharmacy Supervisors are also responsible for monitoring the prescription queues. If one queue is backed up, the Pharmacy Supervisor may switch a subordinate's assignment and tell him to help out.

## IV. Discussion and Analysis

The Pharmacy Supervisors are supervisors within the meaning of Section 3(r) of the Act because they discipline and direct their subordinates with independent judgment and spend a preponderance of their work time engaged in supervisory functions.

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. Supervisors as defined by Section 3(r) of the Act are not public employees and are therefore excluded from the Act's coverage. City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512, (1990).

Under Section 3(r), 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 exercise independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. Id. The Employer has the burden of proving by a preponderance of the evidence that the petitioned-for employees satisfy those four elements. Cnty. of Boone and Sheriff of Boone Cnty., 19 PERI ¶ 74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook Cnty., 18 PERI ¶2016 (IL LRB-SP 2002).

The parties in this case stipulate that the principal work of the Pharmacy Supervisors is substantially different from that of their subordinates. Accordingly, the only remaining issues are whether the Pharmacy Supervisors perform any indicia of supervisory authority and whether they devote a preponderance of their work time to exercising supervisory authority.

1. Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice 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 Circuit Court of Cook Cnty. v. Am. Fed. of State. Cnty. and Mun. Empl., Council 31, 153 Ill. 2d 508, 531 (1992); City of Freeport, 135 Ill. 2d at 531; Vill. of Justice, 17 PERI ¶ 2007 (IL LRB-SP 2000). An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superiors. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966 ¶ 193 (4th Dist. 2011).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[9] See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Servs. (PSA

[9] There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, 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. Vill. of Maryville v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 2011 IL App 4th 090966 (4th Dist. 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Ill. Dep't of Cent. Mgmt. Serv. v. Ill. Labor Rel. Bd., State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). The First and Third Districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Vill. of Broadview v. Ill. Labor Rel. Bd., State Panel, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru, 167 Ill. App. 3d at 291.

Option 1), 25 PERI ¶184 (IL LRB-SP 2009); Cnty. of Union, 20 PERI ¶ 9 (IL LRB-SP 2003); Northern Ill. Univ. (Dep't of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); Cnty. of Union, 20 PERI ¶ 9.

a. Hire

The Pharmacy Supervisors do not have the supervisory authority to hire or to make effective recommendations on hiring.[10]

First, there is little dispute that the Pharmacy Supervisors do not have the ultimate authority to hire because that responsibility rests with the Directors.

Second, the Pharmacy Supervisors do not effectively recommend the hire of employees because they participate on an interview team along with their superiors where decisions are reached by consensus. If an individual participates in a hiring committee that includes his or her supervisors and committee decisions are reached by consensus, her recommendation is not "effective" within the meaning of the Act. State of Ill., Dep't of Cent. Mgmt. Serv., 30 PERI ¶ 38 (IL LRB-SP 2013); Cnty. of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); Peoria Hous. Auth., 10 PERI ¶ 2020 (IL SLRB 1994) (employee had no authority to transfer because that power was exercised in consensus with another employee) aff'd by unpub. order, docket No. 3-94-0317 (3rd Dist. 1995). The interview panels in this case are usually comprised of three individuals, the Pharmacy Supervisor, the Pharmacy Manager, and the Pharmacy Director. The members of the panel discuss the applicants and then assign each applicant a score. Each panel member's score is weighted equally. One Director testified that she defers to her Pharmacy Supervisor in hiring decisions when participating with her on a panel. Nevertheless, the process is designed so that the Pharmacy Supervisor could not recommend the hire of an individual and have his recommendation accepted as a matter of course, and with little or no review. Rather, the process is designed to ensure that no one panel member has such influence. Moreover, Pharmacy

[10] There is no dispute in this case that the Pharmacy Supervisors have no authority to hire individuals on their own.

Supervisor's impact on the process is speculative because her score in favor of hiring may be overridden by the scores of the other members.[11]

Finally, the Pharmacy Supervisors' role in identifying vacant positions to fill does not establish that they have the authority to hire. State of Ill. Dep't of Cent. Mgmt. Serv., 30 PERI ¶ 38 (holding that alleged supervisor lacks supervisory authority to hire where he alerts superiors to vacancies and has role in screening applicants); see also State of Ill., Dep't of Cent. Mgmt. Serv., 26 PERI ¶ 116 (IL LRB-SP 2010).

a. Discipline

Pharmacy Supervisors have the authority to effectively recommend the discipline of their subordinates, though they do not have the authority to unilaterally impose discipline.

As a preliminary matter, the Pharmacy Supervisors do not have authority to unilaterally discipline their subordinates because they are required to bring disciplinary matters to their Pharmacy Director's attention before issuing discipline to a subordinate. The Pharmacy Directors confirmed that they review and approve all disciplinary action issued by Pharmacy Supervisors. Further, all the Pharmacy Supervisors testified that their superiors ultimately determine whether discipline should be imposed for an infraction and the level of discipline warranted by the identified misconduct. Chief Judge of the Cir. Court of Cook Cnty., 153 Ill. 2d at 517 & 521 (affirming determination by the Board that petitioned-for employees had no supervisory authority to discipline when discipline could not be implemented without prior discussion with a superior); Chief Judge of the Circuit Court of Cook Cnty., 26 PERI ¶ 117 (IL LRB-SP 2010)(petitioned-for employees did not possess authority to discipline where they made no recommendations, simply investigated possible violations, and presented their findings to a superior who made the disciplinary determination).

However, the weight of the evidence supports the conclusion that the Pharmacy Supervisors do have the authority to effectively recommend the discipline of their subordinates. An effective recommendation is one that is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Ill. State Labor Rel. Bd., 167 Ill. App. 3d 284, 289 (3rd Dist. 1988); State of Ill., Dep't of Cent. Mgmt. Servs., 26

[11] This is the rationale applied by then-ALJ John Brosnan in City of Chicago, Dep't of Animal Care and Control, 25 PERI ¶ 152 (IL LRB-LP 2009).

PERI ¶ 116. However, the effectiveness of a recommendation is judged by its influence and not by the presence or absence of review. Am. Fed'n of State, Cnty. and Mun. Empl. (AFSCME), Council 31, v. Ill. Labor Rel. Bd., State Panel, 2014 IL App (1st) 123426 ¶ 44; Dep't of Cent. Mgmt. Servs./Ill. Commerce Comm'n v. Ill. Labor Rel. Bd., State Panel, 406 Ill. App. 3d 766, 777 (4th Dist. 2010). The testimony of Directors Silver, Wrobel, and Walker indicates that the impetus to impose discipline originates with the Pharmacy Supervisors, that the Pharmacy Supervisors do in fact make disciplinary recommendations, and that the Directors routinely accept them. Director Silver testified that he supports the Pharmacy Supervisors in their decisions on disciplinary matters. Similarly, Director Wrobel stated that she approves disciplinary forms presented to her by the Pharmacy Supervisors. Now-Director Walker similarly stated that when she served as a Pharmacy Supervisor she simply informed her Director as to how she planned to proceed and her decision thereby dictated the disciplinary outcome.[12] Although one Director stated that she and her subordinates come to a decision together, this appears to be the exception rather than the rule.

The Pharmacy Supervisor's broad authority to select a non-disciplinary approach to employee misconduct supports the finding that they possess the complementary authority to effectively recommend a disciplinary one. It is undisputed that Pharmacy Supervisors make their own determination as to whether, when, and how they should initiate an employee conference with a subordinate. Furthermore, it is clear that employee conferences are non-disciplinary because the subordinates' collective bargaining agreement does not provide that an employee conference may serve as the basis for greater discipline, and there is insufficient evidence in the record that it has in fact served that purpose. Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003)(purportedly disciplinary document supports a finding of supervisory authority to discipline if it is placed in an employee's personnel file, and can serve as the basis for more severe discipline); but see City of Chicago Heights, 28 PERI ¶ 128 (IL LRB-LP ALJ 2012) (the fact that counseling document was placed in personnel file did not satisfy the employer's burden where there was no evidence that it was used to have an adverse effect on employee's terms and conditions of employment). Moreover, the record indicates that the Pharmacy Supervisor's decision to undertake an employee conference in fact precludes further disciplinary action for the

[12] The fact that Walker served without a manager during her tenure as a Pharmacy Supervisor is immaterial where she was still required to report disciplinary matters to her Director, as do the petitioned-for employees.

same misconduct. Indeed, there is no evidence that a subordinate has ever received conferencing and discipline for the same instance of misconduct.

Further, the Pharmacy Supervisors exercise independent judgment in effectively recommending such discipline. As discussed above, the Pharmacy Supervisors determine whether to select a disciplinary approach by recommending discipline or whether to preclude discipline by choosing to conference an employee instead. The fact that the Directors may in some cases tell the Pharmacy Supervisors what to write on their forms does not eliminate the Pharmacy Supervisors' independent judgment to determine whether to effectively recommend discipline, as a threshold matter. Metro. Alliance of Police, Bellwood Command Chapter No. 339 v. Ill. Labor Rel. Bd., 354 Ill. App. 3d 672, 680 (1st Dist. 2004)(determining whether discipline is warranted requires the consistent use of independent judgment); Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) (petitioned-for employee's determination as to whether officer's conduct should be documented in a disciplinary manner constituted independent judgment).

The Pharmacy Supervisors' testimony does not warrant an alternate conclusion because it is either unreliable in light of additional evidence or it does not suggest that the Pharmacy Supervisors in fact lack the authority to effectively recommend discipline. First, the Pharmacy Supervisors' unsupported assertion that they have no part in the disciplinary decision is unreliable in light of fact that they have the authority to preclude the imposition of discipline by choosing a non-disciplinary course of action. It is likewise belied by the fact that the Pharmacy Supervisor's name is the only signature on the disciplinary action forms and the fact that it is the Pharmacy Supervisors, not the Directors, who have direct contact with the Technicians and Pharmacists. State of Ill., Dep't of Cent. Mgmt Servs. (Dep't of Revenue), 29 PERI ¶ 62 (IL LRB-SP 2012)(disregarding self-serving statement by petitioned-for employee that participation in direction was collaborative rather than supervisory where there was evidence to the contrary). Second, the Pharmacy Supervisors' assertions that they are "directed" or "instructed" to issue discipline does not rule out a finding that their recommendations precipitated that direction. Finally, the Pharmacy Supervisors' authority is not diminished by the disputed claim that the Directors determine the level of discipline to impose. See Metro. Alliance of Police, Bellwood Command Chapter No. 339, 354 Ill. App. 3d at 680 (decision to impose discipline is itself indicative of independent judgment); City of Peru, 167 Ill. App. 3d at 290 (recommendation need

not be rubber stamped to be effective). Cnty. of Cook, Dep't of Environmental Control, 29 PERI ¶ 121 (IL LRB-LP ALJ 2013) (recommendation on discipline is effective as long as some form of discipline is imposed pursuant to recommendation, even if the level of discipline changes).

Finally, the alleged counterexamples offered by the Union do not demonstrate that the Pharmacy Supervisors lack the authority to effectively recommend discipline. The Union references an instance in which a Director instructed a Pharmacy Supervisor to impose disciplinary action; yet, this does not show that the Director rejected the Supervisor's disciplinary recommendation. In fact, there reasonably was no recommendation because the Supervisor was not at work when the misconduct occurred and would not have even known about it. The Union references two other circumstances in which subordinates did not receive discipline following a report from the Pharmacy Supervisor to the Director; yet, there is no indication that the Pharmacy Supervisors suggested that discipline should result in those cases.

Thus, the Pharmacy Supervisors have authority to effectively recommend the discipline of their subordinates.

b. Direct

Pharmacy Supervisors direct their subordinates with independent judgment when they review their subordinates' day to day activities and evaluate their work.

The authority to direct encompasses a variety of job functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook Cnty., 19 PERI ¶ 123 (IL SLRB 2003); Cnty. of Cook, 16 PERI ¶ 3009 (IL LLRB 1999); Cnty. of Cook, 15 PERI ¶ 3022 (IL LLRB 1999); City of Naperville, 8 PERI 2016 (IL SLRB 1992). In order to constitute "direction" within the meaning of the Act, an employee's responsibility for his or her subordinates' work performance must also involve discretionary authority that affects the subordinates' terms and conditions of employment. Serv. Employees Intern. Union, Local 73 v. Ill. Labor Rel. Bd., 2013 IL App (1st) 120279; Dep't of Cent. Mgmt. Serv./Dep't of Public Health v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110209, ¶ 27; Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-SP 2011); State of Ill., Dep't of Cent. Mgmt. Serv., 25 PERI ¶ 186 (IL LRB-SP 2009).

Contrary to the Employer's assertion, the Pharmacy Supervisors do not direct when they engage in work flow supervision. Although the Pharmacy Supervisors assign work to their subordinates, they do not do so with the requisite independent judgment. The Pharmacy Supervisors monitor the prescription queues and switch around subordinates' assignments if a queue becomes backed up. However, such decisions merely balance the workload among employees. Serv. Empl. Intern. Union, Local 73, 2013 IL App (1st) 120279 ¶ 52 (assignments that simply balance workload do not require independent judgment); Chief Judge of the Circuit Court, 153 Ill. 2d at 518.

However, the Pharmacy Supervisors engage in supervisory direction when they review their subordinates' work to assess its quality. Review of subordinates' work constitutes supervisory direction when it involves checking, correcting and giving instructions to subordinates without guidelines or review by others. Id. at 515. Here, Pharmacy Supervisors investigate their subordinates' mistakes and then conduct employee conferences in which they inform their subordinates of deficiencies in performance and provide instructions in how they should improve. The Pharmacy Supervisors exercise independent judgment because they make their own determinations as to whether, when, and how they should initiate an employee conference with a subordinate. For example, medication errors may sometimes warrant a recommendation of discipline to the Director; however, Pharmacy Supervisors exercise discretion in determining whether to instead use the incident as a teaching moment that warrants an employee conference. In one case, a Pharmacy Supervisor identified a medication error and undertook an employee conference in which she offered specific, step-by-step instructions that were not clearly drawn from any established policy to help the subordinate avoid future errors. See State of Ill. (Dep't of Cent. Mgmt. Servs.), 12 PERI ¶ 2024 (IL SLRB 1996); Peoria Hous. Auth., 10 PERI ¶ 2020 (IL SLRB 1994); City of Naperville, 8 PERI ¶ 2016 (IL SLRB 1992).

Next, Pharmacy Supervisors direct their subordinates with independent judgment when they make effective recommendations concerning their subordinates' evaluations. Pharmacy Supervisors evaluate their subordinates based on job skills and techniques, work habits, work quality, and work quantity. They exercise independent judgment by providing ratings in a number of subjectively-judged categories, including communication, team work, reliability, and quality of work, and describing in detail any outstanding or unsatisfactory job performance. Cf. State of Ill., Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227 (where there was

no evidence concerning the categories in performance evaluations, the Court was " unable to say that the categories [were] more subjective than quantitative," and therefore found that the petitioned-for employees did not exercise independent judgment). Notably, the fact that the Pharmacy Supervisor's own superior must approve the recommendation fails to diminish the fact that Pharmacy Supervisor's initial determination is an exercise in judgment between the various rating choices. See Dep't of Cent. Mgmt. Serv./Dep't of Public Health v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 110013 ¶ 77.

The Pharmacy Supervisors' recommendations on these ratings are effective because they are accepted almost all the time, without change. Each evaluation contains 15 to 20 different categories in which the subordinate is judged; yet, of the approximately nine evaluations introduced into the record, only one contained corrections. Further, corrections were made only on two of the 20 rating categories. The Managers' authority to change the evaluations does not diminish the Pharmacy Supervisors' supervisory authority where the changes are minimal and where the bulk of the Pharmacy Supervisors' rating recommendations are approved. Dep't of Cent. Mgmt. Servs./Pollution Control Bd. v. Ill. Labor Rel. Bd., State Panel, 2013 IL App (4th) 110877 ¶ 26; (effective recommendations are those that are almost always implemented or followed; addressing recommendations in the context of managerial authority); Service Employees Intern. Union, Local 73, 2013 IL App (1st) 120279 ¶ 61 (finding evaluations to constitute effective recommendations on direction where reviewing superior had never rejected the evaluations completed by the purported supervisor)

Finally, the Pharmacy Supervisors' responsibility to formally evaluate their subordinates' work performance is evidence of the supervisory authority to direct because an employee is subject to termination if he receives a poor evaluation and does not improve. Vill. of Elk Grove Village, 245 Ill. App. 3d 109 (2nd Dist. 1993); Serv. Empl. International Union, Local 73, 2013 IL App (1st) 120279 ¶ 61 (finding direction affected subordinates' terms and conditions of employment where petitioned-for employees evaluated their subordinates and where performance evaluations were considered in promotions); Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013)(same); City of Naperville, 8 PERI ¶ 2016; Ill. Dep't of Cent. Mgmt. Serv. (Division of Police), 4 PERI ¶ 2013 (IL SLRB 1988).

Thus, the Pharmacy Supervisors have the supervisory authority to direct and to effectively recommend the direction of their subordinates.

2. Preponderance Requirement

The Pharmacy Supervisors spend a preponderance of their work time engaged in supervisory functions because their most important task is to ensure the quality of their subordinates' work through supervisory direction and discipline. Further they spend over 50% of their work time performing these functions.

The Illinois Supreme Court, in City of Freeport, interpreted that preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions. Stated another way, the employee must spend more time on supervisory functions than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 532.

Since the City of Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued different interpretations of how preponderance may be analyzed. The first interpretation defines preponderance as requiring that the employee spend a majority, or more than 50% of his or her time, engaged in supervisory authority. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 249 Ill. App. 3d 740, 746 (4th Dist. 1993). The second interpretation of preponderance relies on whether the supervisory functions are more "significant" than the non-supervisory functions. Dep't of Cent. Mgmt. Serv. v. Ill. State Labor Rel. Bd., 278 Ill. App. 3d 79, 85 (4th Dist. 1996).

Applying the numerical test, Pharmacy Supervisors spend approximately 60 to 80% of their work time engaged in supervisory direction because this is the amount of time they spend reviewing the quality of their subordinates' work. These percentages are an accurate picture of the Pharmacy Supervisors' supervisory time even though one aspect of their review (assessment of work quantity) is routine. It would be counterintuitive to separate the assessment of quantity from the assessment of quality in considering the time requirement because an employee's productivity is simply one measure of the quality of that employee's work. Separating out the two inquiries would improperly place emphasis on the number of times a Pharmacy Supervisor had actually corrected a subordinates' work which would not be dispositive of petitioned-for employees' actual authority. Indeed, a good Pharmacy Supervisor with attentive and dutiful subordinates may need to issue corrective guidance very rarely, despite the fact that her primary function is to review various aspects of her subordinates' work. Dep't of Cent. Mgmt. Servs./The Dep't of Public Health, 2012 IL App (4th) 110013 ¶ 84 (quoting City of Peru, 167 Ill.

App. 3d at 292; City of Freeport, 135 Ill. 2d at 518 (finding improper the Board's reliance on number of times supervisory authority was exercised; finding that the superior's training and experience would bear on that number).

Under these circumstances, the high number of subordinates overseen by each Pharmacy Supervisor (approximately 20 to 40) likewise weighs in favor of finding the preponderance of time element met, particularly where Pharmacy Supervisors also discipline their subordinates.[13]

Applying the qualitative test, the most important components of the Pharmacy Supervisors' work are supervisory direction and discipline because the very purpose of the Pharmacy Supervisor position is to maintain quality control of their subordinates' work. Moreover, the Pharmacy Supervisors achieve quality control in part by assessing their subordinates' mistakes, determining whether to initiate employee conferences or to effectively recommend discipline, and giving employees guidance on how to improve.

Thus, the Pharmacy Supervisors spend a preponderance of their work time engaged in supervisory functions.

## V. Conclusions of Law

The petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act.

## VI. Recommended Order

The petition is dismissed.

## VII. Exceptions

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of the exceptions. In such responses, parties that have not previously filed exceptions may

[13] It is unnecessary to determine exactly how much time the Pharmacy Supervisors spend on disciplinary matters where the preponderance of time element has already been met by direction alone. Moreover, in this case there is some overlap between direction and discipline since employee misconduct may warrant either supervisory discipline or supervisory direction.

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 the Board's General Counsel, Jerald Post, 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 at Chicago, Illinois this 16th day of April, 2015**

**STATE OF ILLINOIS**
**ILLINOIS LABOR RELATIONS BOARD**
**LOCAL PANEL**

/S/ *Anna Hamburg-Gal*

**Anna Hamburg-Gal**
**Administrative Law Judge**