

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

City of Chicago,)	
)	
Employer)	
)	
)	Case No. L-RC-15-008
and)	
)	
American Federation of State, County and Municipal Employees, Council 31,)	
)	
Petitioner)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 16, 2014, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a petition with the Local Panel of the Illinois Labor Relations Board (Board) seeking to include the title of Assistant Chief Engineer of Sewers employed in the City of Chicago Department of Buildings in the Unit #4 bargaining unit. The City of Chicago (City or Employer) opposed the petition, asserting that the employee sought to be represented is excluded from coverage of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory employees.

A hearing on the matter was conducted on March 11, 2015, in Chicago, Illinois. 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 subject to the jurisdiction of the Local Panel of the Board pursuant to Section 5(b) of the Act.
- 2) The Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

- 3) The petitioned-for title, Assistant Chief Engineer of Sewers, is in the Employer's Department of Buildings.
- 4) The Petitioner represents employees in the title of Civil Engineer IV, Civil Engineer III, Engineering Technician III, Administrative Assistant III, Administrative Assistant II and Staff Assistant in the Department of Buildings.
- 5) These employees are currently included in Unit #4.
- 6) There exists a community of interest between the employee in the title of Assistant Chief Engineer of Sewers and the employees in Unit #4.

II. Issue and Contentions

At issue is whether the petitioned-for employee is a supervisor under Section 3(r) of the Act.

The Employer claims that Assistant Chief Engineer of Sewers Basil Rhymes' principal work is obviously and visibly different from his subordinate engineers and the administrative staff. The Employer alleges that the engineers' main work is to review permit applications and research to determine whether they comply with the Chicago Municipal Code (Code). Administrative staff performs clerical job functions. Rhymes is the only employee who attends preliminary meetings with contractors. The rest of Rhymes' time is spent reviewing his subordinates' work, managing the Sewer Permits Section's work load and managing the staff. The Employer claims that the essence and the nature of Rhymes' principal work is also different from that of his subordinates because he has the authority to assign them work, approve their requests for time off, recommend merit pay increases, issue discipline and respond to their grievances.

The Employer claims that the Assistant Chief Engineer of Sewers has the authority to perform or effectively recommend five statutory supervisory functions: direct, reward, discipline,

suspend and adjust grievances. The Employer alleges that Rhymes directs his subordinates' work by reviewing all permits to make sure they comply with the Code and, if necessary, advising engineers and customers how to alter a permit to comply with the Code. He also directs his subordinates by approving vacation time off requests and distributing the workload to ensure that permits issue quickly. The Employer claims that Rhymes rewards his subordinate employees by filling out performance evaluations that can effectively recommend a pay increase. The Employer asserts that Rhymes disciplines and suspends his subordinate employees by issuing oral reprimands, conducting pre-disciplinary hearings and effectively recommending more severe levels of discipline. Finally, the Employer alleges that Rhymes has the authority to adjust his subordinates' grievances at the first step.

The Petitioner claims that the Assistant Chief Engineer of Sewers does not exercise supervisory authority with independent judgment. The Petitioner alleges that Rhymes does not direct his subordinates' work because any authority he has is derived solely from his greater skill, experience and technical ability as an engineer. The Petitioner claims that Rhymes does not reward his subordinates because there is no evidence that his performance evaluations actually have an effect on terms and conditions of employment. The Petitioner asserts that Rhymes does not discipline and suspend his subordinates, because the Employer did not present evidence showing that Rhymes himself was able to issue anything more than an oral reprimand and there was no evidence oral reprimands have an effect on the employee's terms and conditions of employment. Finally, the Petitioner claims that Rhymes does not adjust grievances because designation as the responder to a grievance at the first step does not, by itself, constitute supervisory authority under the Act.

The Employer claims that, quantitatively, the petitioned-for employee spends a preponderance of his time exercising supervisory functions because he spends 75% of his time directing his subordinates' work, adjusting their grievances, issuing discipline in the form of oral reprimands and rewarding them by filling out performance evaluations. The Employer also contends that these supervisory duties are the most important job duties that the Assistant Chief Engineer of Sewers performs. The Petitioner claims that the petitioned-for employee does not spend a preponderance of his time exercising supervisory functions because his job duties are technical rather than supervisory.

III. Facts

The Department of Buildings is comprised of several divisions. The Permit Division includes the Easy Permit Process, Standard Plan Review and Developer Services subdivisions. The Easy Permit Process subdivision contains the Sewer Permits Section. As the Assistant Chief Engineer of Sewers, Basil Rhymes assigned to the Sewer Permits Section. This section also includes engineers and administrative staff. The primary function of the Sewer Permits Section is to issue sewer permits for the construction, repair, adjustment, rodding or cleaning of any subsurface structure designed to collect or transport storm or sanitary waste water. The section, overseen by Rhymes, seeks to issue permits that comply with the Chicago Municipal Code (Code) and to do so as quickly as possible. Usually, the section issues a permit on the same day as the application.

When a permit application is submitted, the administrative staff speaks to the contractor and accepts the application and an engineer reviews the permit to determine whether it complies with the Code. There is one engineer in the job title of Civil Engineer III, one employee in the job title of Civil Engineer IV and one engineer in the job title of Engineering Technician III. In some cases, an engineer may need to research sewer and pipe locations before making a

recommendation to Rhymes. If the engineer has a question about whether not the permit application complies with the Code, he or she brings it to the next highest engineer. For example, if the Civil Engineer III has a question, he or she asks the Civil Engineer IV. If the Civil Engineer IV has a question, he or she asks Rhymes. Ultimately, the engineer makes a recommendation to Rhymes who reviews the application himself and issues the permit if it complies with the Code. If the engineer is not sure that the permit application is in compliance with the Code, he or she brings it to Rhymes to decide. In this situation, Rhymes reviews the permit application himself and talks to the contractor to try to resolve any problems. After this review and consultation, Rhymes decides whether or not to issue the permit. Rhymes spends about 25% of his time reviewing his subordinate engineers' recommendations and resolving any disputes in order to issue permits that comply with the Code. Rhymes also spends about 25% of his time answering his subordinates' questions about whether a permit application complies with the Code for a total of 50% of his time devoted to these activities.

In the case of large or complex construction projects, Rhymes conducts preliminary meetings with designers, builders, architects, outside engineers and contractors to review their plans. In these meetings, Rhymes advises them on the best way to connect to the sewers and what the Code does and does not allow. The designers, builders, architects, outside engineers and contractors rely on Rhymes' information when finalizing their designs. In addition to these preliminary meetings, Rhymes also meets with consultants employed by the City regarding storm water issues. These consultants review plans, determine the amount of water retention needed for a project and give Rhymes the proper water flow rate for the project. Rhymes uses this information when advising the parties in preliminary meetings. Rhymes spends about 25% of his time in preliminary meetings with contractors and meetings with City consultants.

Rhymes is the primary employee in charge of managing the Sewer Permits Section and its work. He interacts with employees in other departments to ensure that his subordinate employees have sufficient office supplies. Rhymes also manages the schedule for the front desk to make sure that a member of the administrative staff is always at the desk to receive permit applications. When a permit application is received, Rhymes assigns it to a particular engineer. He makes this decision based on the engineer's skill and expertise and in order to balance workload between the engineers. Rhymes takes all of these things into consideration in order to ensure that the section issues permits quickly and in compliance with the Code. While Rhymes also must consider which employees are out of the office on paid time off, issuing permits quickly and accurately is Rhymes' primary consideration. Additionally, Rhymes approves vacation time off requests from his subordinates, but he does not approve sick time off requests.

The Employer and Petitioner are parties to a collective bargaining agreement (Agreement) that covers Rhymes' subordinate employees in the Sewer Permits Section. The Agreement is effective from July 1, 2012, to June 30, 2017. The Department of Buildings Commissioner is Felicia Davis and Assistant Commissioner Scott Loeff is responsible for day-to-day administration of the Agreement and handling grievances. Asif Rahman is the Deputy Commissioner for the Permit Division, and he reports to Managing Deputy Commissioner Marlene Hopkins.

The Agreement states that when a bargaining unit employee is due for a merit pay increase, Human Resources sends an evaluation form to that employee's immediate supervisor. In the Sewer Permits Section, this means that Rhymes fills out a performance evaluation for his subordinates and makes a recommendation to Rahman regarding a pay increase. Rahman either agrees or disagrees with Rhymes' recommendation and sends the recommendation up.

Ultimately, Commissioner Felicia Davis makes the final decision, relying heavily on Rhymes' recommendation and the information he provides as the immediate supervisor.

Assistant Commissioner Scott Loeff works with Rhymes when Rhymes handles discipline and grievances. The Agreement states that Rhymes has a role in responding to grievances at Step 1 as his subordinates' immediate supervisor. Rhymes can decide to deny the grievance and send it to the Step 2, deny the grievance and send it to a higher step or meet with the employee and resolve the grievance. In the case of a grievance filed on October 2, 2014, Rhymes denied the grievance at Step 1 and sent it up to Step 3 at the recommendation of Human Resources and Loeff. At the Step 1 space on the grievance, Rhymes wrote "HR indicated 'you can meet with the Union but indicated the decision was made above you.'" The union representative wrote on the grievance that the issue was not resolved and forwarded to the third step. The Employer did not present any other specific evidence of Rhymes acting to adjust a grievance in any way.

In the Sewer Permits Section, the disciplinary process is typically initiated by Hopkins or Loeff noticing an attendance problem with one of Rhymes' subordinates or a customer making a complaint about one of those employees. If the possible discipline is for an attendance problem, Loeff usually investigates the situation. If the possible discipline is for a behavioral problem, Loeff tends to do a shorter investigation and schedules a pre-disciplinary meeting. In cases where a customer raises a complaint about an employee, Loeff often asks Rhymes for more information about what happened. Section 20(b) of the Agreement states that Rhymes as the immediate supervisor informs his subordinates in the Sewer Permits Section when he or she receives an oral reprimand and also tells the employee the reasons for the reprimand. In the case of discipline other than oral reprimands, the Agreement states that Rhymes meets with the employee to notify him or her of the accusations and give the employee an opportunity to respond to the allegations.

The employee may have a union representative at this pre-disciplinary meeting. Loeff is usually also at the pre-disciplinary meeting and Rahman occasionally attends. After a pre-disciplinary meeting, Loeff asks for Rhymes' input regarding the appropriate level of discipline and Loeff makes a recommendation to Hopkins or Davis. Sometimes, Loeff and Rhymes both make a recommendation. If they agree, Loeff is the one who sends the recommendation to Hopkins. Rhymes spends 25% of his time on all of these tasks.

IV. Discussion and Analysis

The Employer argues that the Assistant Chief Engineer of Sewers is a supervisor within the meaning of Section 3(r) of the Act.¹ Under Section 3(r), employees are supervisors if they (1) perform principal work substantially different from that of their subordinates; (2) have the authority, in the interest of the employer, to perform any of the enumerated supervisory functions; (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. and Mun. Emps., Council 31, AFL-CIO, 153 Ill. 2d 508, 515 (1992).

As the party asserting the statutory exclusion, the Employer has the burden to prove, by a preponderance of the evidence, that the Assistant Chief Engineer of Sewers is a supervisor. Cnty.

¹ Section 3(r) of the Act states:

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

of Boone and Sheriff of Boone Cnty., 19 PERI ¶74 (IL LRB-SP 2003). The Employer “cannot satisfy its burden by relying on vague, generalized testimony.” State of Ill. Dep’t of Cent. Mgmt. Servs., 26 PERI ¶116 (IL LRB-SP 2010). Rather, it must “support its arguments with specific examples of the alleged supervisory, managerial, or confidential status.” Id.

1. Principal Work Requirement

If the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different, the principal work requirement is satisfied. Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). If not, the Employer can satisfy this prong where it is determined that the “nature and essence” of the alleged supervisor’s principal work is substantially different than the “nature and essence” of his or her subordinates’ principal work. Id.

Here, Rhymes performs many job duties that his subordinates do not or do not have the authority to perform. Rhymes and his subordinate engineers all review permit applications to determine if they comply with the Code, but all of Rhymes’ other job duties are unique to him. He is the only employee who meets with contractors in preliminary meetings to discuss ways that large constructions projects can comply with the Code. Rhymes is the only one who assigns work, evaluates employees, issues oral reprimands, conducts pre-disciplinary meetings and has the authority to adjust grievances at the first step. Therefore, the principal work requirement is satisfied.

2. Supervisory Indicia and Independent Judgment

To fulfill the second and third prongs of the Act’s supervisory definition, the Employer must establish that the Assistant Chief Engineer of Sewers has the authority to perform or effectively recommend any of the 11 supervisory functions listed in the Act, and exercises independent judgment when doing so. Vill. of Bolingbrook, 19 PERI ¶ 125. In order to rise to the

level of supervisory authority, an alleged supervisor must exercise significant discretionary authority which affects the terms and conditions of his subordinates' employment. Vill. of Broadview v. Ill. Labor Relations Bd., 402 Ill. App. 3d 503, 510 (1st Dist. 2010) *citing* County of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999) and Chief Judge of the Circuit Court of Cook County, 9 PERI ¶ 2033 (IL SLRB 1993).

A decision requires independent judgment when it involves a choice between two or more significant courses of action. Vill. of Bolingbrook, 19 PERI ¶ 125. Decisions that are “routine or clerical in nature or made on the basis of the alleged supervisor’s superior skill, experience, or knowledge” are not indicative of independent judgment. Id. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 532 (1990) (employees’ decisions “derived from their superior skill, experience and technical expertise... [do] not require the use of independent judgment ‘in the interest of the employer’ as required by the statute.”).

An effective recommendation satisfying the Act’s supervisor requirements is one that is almost always adopted by the employee’s supervisor. Dep’t of Cent. Mgmt. Serv. v. Ill. Labor Relations Bd., State Panel, 2011 IL App (4th) 090966. The Appellate Court has explained that because all recommendations necessarily involve some sort of a review by superiors, a superior’s review “is not the litmus test for effective recommendation. Rather the litmus test is the influence of the recommendations, i.e., whether they almost always persuade the superiors.” State of Ill. Dep’t of Cent. Mgmt. Serv. (Ill. Commerce Comm’n) v. Ill. Labor Relations Bd., State Panel, 406 Ill. App. 3d 766, 777 (4th Dist (2010)).

a. Direct

“The term ‘direct’ encompasses a number of distinct, yet related, functions when reviewing and monitoring work activities, scheduling work hours, approving time off and

overtime, assigning duties, and formally evaluating employees' pay and employment status." Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013) *citing* Ill. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 382 Ill. App. 3d 208, 224 (4th Dist. 2008). However, in order to qualify for "supervisory authority to direct" within the meaning of the Act, an alleged supervisor's responsibilities must involve significant discretionary authority to affect his or her subordinates' terms and conditions of employment." Id.

i. Review

A superior's oversight and review of a subordinate's work constitutes the statutory authority to direct if the superior is responsible for his or her subordinate's work. Cnty. of Lake and Sheriff of Lake Cnty., 16 PERI ¶ 2036 (IL LRB-SP 2000). That responsibility must involve more than merely observing and monitoring subordinates, or being responsible for the operation of a shift. Id. Rather, the supervisor is required to be actively involved in checking, correcting, and giving instructions to subordinates, without guidelines or review by others. City of Lincoln, 5 PERI ¶ 2041 (IL SLRB 1988); State of Ill. Dep't of Cent. Mgmt. Servs., 4 PERI ¶ 2013 (IL SLRB 1988); City of Chicago, 10 PERI ¶ 3017 (IL LLRB 1994). However, an employee relying on his or her skills as an engineer and knowledge of federal standards, rather than implementing employer policies, when reviewing subordinates' work is not using supervisory authority. State of Ill. Dep't. of Cent. Mgmt. Servs., 26 PERI ¶ 131 (IL LRB-SP 2010).

Here, Rhymes reviews his subordinate engineers' recommendations to issue permits and instructs the engineers and contractors on how to alter a permit to comply with the Code. Nobody other than Rhymes reviews permit applications or alters them before they are issued. His decisions do not need to be approved by anybody else. These job duties all fall squarely within the meaning of "review" as defined by the Act.

However, Rhymes' authority to review his subordinates' work appears to come primarily from his greater experience and technical expertise as an engineer. Rhymes and the three engineers in the Sewer Permits Section follow a chain of authority based primarily on experience and expertise. For example, the Civil Engineer III and Civil Engineer IV have the same job description and perform the same functions. The only distinction between the two is that if the Civil Engineer III has a question, he or she brings it to the Civil Engineer IV because the latter has greater experience and technical expertise. This chain continues up to Rhymes with the Civil Engineer IV bringing a question to Rhymes because of his greater experience and technical expertise. State of Ill. Dep't. of Cent. Mgmt. Servs., 26 PERI ¶ 131; Vill. of Bolingbrook, 19 PERI ¶ 125. Therefore, Rhymes does not possess authority to direct his subordinate employees with independent judgment when he reviews their work, because he possesses this authority due to his superior skill, experience and knowledge as an engineer.

ii. Assign work

Where an alleged supervisor considers "the knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the employer's operational need," he or she exercises independent judgment in assigning work." Vill. of Campton Hills, 31 PERI ¶ 132 (IL LRB-SP 2015) *citing* County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999).

Rhymes distributes work amongst his subordinate engineers but he does not assign work to the administrative staff. He distributes work in order to balance the workload so that the Section quickly issues permits that comply with the Code. When Rhymes assigns permit applications to certain engineers, he considers the engineer's own skill, experience and knowledge. Rhymes makes these decisions in the interest of the Employer and to fulfill the

operational goal of quickly issuing permits that comply with the Code. Therefore, I find that Rhymes assigns work to his subordinate engineers with independent judgment as required by the Act.

iii. Approve time off

The ability to approve requests for time off or to otherwise create schedules can constitute supervisory authority so long as the exercise of this authority involves the consistent use of independent judgement and is not of a mere routine or clerical nature. *See Vill. of Morton Grove*, 23 PERI ¶ 72 (IL LRB-SP 2010) *citing City of Carbondale*, 3 PERI ¶ 2044 (IL SLRB 1987).

Rhymes approves his subordinates' vacation requests but he does not review or approve time off requests for any other reason. He approves vacation requests in order to ensure there are enough engineers and administrative employees working so that the Section can quickly issues permits that comply with the Code. Rhymes makes these decisions in the interest of the Employer in order to fulfill this operational goal. While Rhymes makes many decisions based on his skill, experience and knowledge and expertise as an engineer, there is no evidence to suggest that he approves or denies vacation time off requests for these reasons. Rather, Rhymes' choices to approve or deny a subordinate's vacation time off request are based solely on the Employer's operational goal of issuing permits. Additionally, these choices are not merely routine in nature because Rhymes must take into account how a vacation time off request will impact the Section's ability to issue permits quickly. Therefore, Rhymes approves his subordinates' vacation requests with independent judgment, as required by the Act.

iv. Evaluate performance

Evaluating a subordinate's work performance is evidence of supervisory authority to direct if the evaluation is used to affect an employee's pay or employment status. Vill. of Plainfield, 29 PERI ¶ 123 (IL LRB-SP 2013). Rhymes evaluates his subordinates' job performance when he fills out their performance evaluations. These evaluations go into the employees' personnel files unaltered. The performance evaluations themselves are purely a product of Rhymes' own choices. Therefore, if the performance evaluations can affect terms and conditions of employment, then Rhymes satisfies the supervisory function of evaluating.

Here, the performance evaluations are accompanied by a recommendation for merit pay increases. The record reveals that they are considered together, and that the Department Commissioner Felicia Davis bases her decision on whether to grant merit pay increases, at least in part, on Rhymes' evaluation of his subordinates. Although Rhymes himself does not make the ultimate decision whether one of his subordinates receive a merit pay increase or not, Davis does not have any input in his performance evaluations and she does not change them. Accordingly, I find that Rhymes evaluates his subordinates with independent judgment as required by the Act.

b. Discipline

The supervisory authority to discipline employees can be established by the authority to give oral reprimands and does not require the authority to impose more severe discipline. State of Illinois (CMS) and Illinois Federation of Public School Employees, Local 4408, 12 PERI ¶ 2032 (IL SLRB 1996). In City of Freeport, the Illinois Supreme Court regarded oral warnings and written reprimands as discipline. City of Freeport, 135 Ill. 2d 499. Reprimands constitute supervisory authority to discipline if: (1) the individual has the discretion or judgment to decide

whether to issue such a reprimand; (2) the reprimand is documented; and (3) the reprimand can serve as the basis for future disciplinary action, that is, it functions as part of a progressive disciplinary system. Metro Alliance of Police v. Ill. Labor Relations Bd., 362 Ill. App. 3d 469, 478-9 (2nd Dist. 2005), *see also* Northern Ill. Univ. (Dep't of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000) (verbal reprimands that are not recorded are not discipline within the meaning of the Act.)

Here, the record shows that Rhymes has the authority to issue oral reprimands, and he has done so. These oral reprimands are given to his subordinate employees in writing and become part of that employee's personnel file. In cases of future discipline, these reprimands are included with all other past discipline and considered by the person determining the severity of any future discipline. For example, Rhymes issued an oral reprimand for tardiness to an Administrative Assistant II in May 2007 and the form noted that employee had received a prior oral reprimand on May 19, 2006. When Rhymes and Loeff discussed the severity of discipline for one of Rhymes' subordinates, Loeff noted that employee was disciplined on two previous occasions.

Rhymes is also involved in disciplining and suspending subordinates when he conducts pre-disciplinary hearings and makes recommendations for discipline more severe than an oral reprimand. Rhymes is usually accompanied by Loeff for the pre-disciplinary meeting and is occasionally accompanied by Rahman. However, the record reveals that Rhymes' recommendations are not effective. First, in many instances, Loeff is the one who makes the recommendation for consideration by superiors. The Employer presented evidence of one situation when Rhymes and Loeff disagreed on the severity of discipline. In this case, Loeff sent both of their recommendations to Hopkins, and she disciplined the employee according to Loeff's recommendation. Therefore, the Employer has not shown that Rhymes'

recommendations for discipline more severe than an oral reprimand are “almost always followed.” City of Peru v. Ill. Labor Rel. Bd., State Panel, 167 Ill. App. 3d 284, 290, 521 N.E.2d 108, 113 (3rd Dist. 1988). Accordingly, I find that Rhymes only exercises supervisory authority with independent judgment when he gives oral reprimands.

c. Reward

Rhymes has the authority to reward employees in that his recommendations for merit increases, supported by his evaluation of his subordinates’ performance, are effective. Rhymes submits his performance evaluations and accompanying recommendations for merit increases to Rahman who agrees or disagrees and forwards them to Department Commissioner Felicia Davis. Davis ultimately makes the decision whether or not to grant a merit pay increase, but she relies heavily on the information and recommendation Rhymes provides her. In this situation, it is Rhymes who gathers information, in his capacity as the immediate supervisor, to present to the decision maker. Although Davis does not accept the recommendation that Rhymes presents in his evaluation without review, she does rely heavily on the information he provides her. I find that in this situation, Rhymes’ recommendations almost always persuade Davis; therefore, he effectively recommends merit pay increases. State of Ill. Dep’t of Cent. Mgmt. Serv. (Ill. Commerce Comm’n) v. Ill. Labor Relations Bd., State Panel, 406 Ill. App. 3d at 777. Moreover, in using his discretion to recommend merit increases, Rhymes affects his subordinates’ employment in areas likely to fall within the scope of union representation. County of Lake, 16 PERI ¶ 2036 (IL SLRB 2000). Therefore, I find that Rhymes rewards his subordinate employees as that term is used in the Act.

d. Adjust grievances

Rhymes is designated as the employee who responds to grievances at the first step. However, designation as the first step in a grievance procedure, without more, does not constitute supervisory authority under the Act. State of Ill. Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2012 (IL SLRB 1989). Here, the Employer presented evidence of one situation where Loeff instructed Rhymes to deny a grievance and send it to step 3 instead of step 2; Rhymes followed Loeff's instructions. The Employer did not present any evidence of a situation where Rhymes made a decision himself to adjust a grievance at the first step. While the Agreement states that Rhymes possesses the authority to adjust grievances at the first step, the evidence presented shows that Rhymes does not, in practice, adjust grievances himself. The record is insufficient to find that Rhymes uses independent judgment in adjusting grievances as the only example in the record reveals that he was directed how to proceed. Therefore, despite the parties' Agreement, I find that the Employer has failed to show that Rhymes possesses the authority to adjust a grievance with independent judgment under the Act.

3. Preponderance Requirement

The fourth prong of the Act's definition of a supervisor requires that the alleged supervisor spend more time on supervisory functions than any one non-supervisory function. City of Freeport, 135 Ill. 2d at 533. Following City of Freeport, the Fourth District of the Illinois Appellate Court created two different tests for determining whether the preponderance standard has been met. The first test looks at a quantitative measure; it requires the alleged supervisor to spend more than 50% of his or her time engaged in supervisory duties. Dep't of Cent. Mgmt. Servs. v. Illinois State Labor Relations Bd., 249 Ill. App. 3d 740, 746-7 (4th Dist. 1993). The second test is a qualitative test, focusing on the significance of the supervisory duties rather than

on the time spent performing specific functions. Dep't of Cent. Mgmt. Servs. v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 85-87 (4th Dist. 1996). Regardless of the test used, the Employer must support its argument with specific examples and conclusory testimony is insufficient. State of Ill., Dep't of Cent. Mgmt. Servs., 26 PERI ¶ 116; See also State of Ill., Dep't of Cent. Mgmt. Servs., (EPA, DPH, DHS, DCEA), 26 PERI ¶ 155 (IL LRB-SP 2011).

Here, as discussed above, I find that the Assistant Chief Engineer of Sewers engages in the supervisory function of disciplining his subordinate engineers and administrative staff in the Sewer Permits Section with independent judgment when he issues oral reprimands. Rhymes directs his subordinate engineers with independent judgment when he assigns them work. Finally, Rhymes directs all of his subordinates when he approves time off, evaluates and rewards. The record reveals that Rhymes spends 50% of his time reviewing his subordinates' work and the remaining 25% in preliminary meetings with contractors and City consultants. This means that, at most, Rhymes spends 25% of his time engaging in supervisory functions and the other 75% of his time on non-supervisory job duties. Therefore, quantitatively, Rhymes does not spend a preponderance of his time engaging in supervisory functions.

Qualitatively, I find that Rhymes' most important job duties are conducting preliminary meetings with contractors and consultants and reviewing his subordinates' work. His job duties related to discipline, grievances and performance evaluations are all reviewed by one or more other employees and, more often than not, someone other than Rhymes makes the decision. If Rhymes was removed from these job duties, these other employees would likely still be able to make their decisions. In contrast, Rhymes is essential to the job functions of conducting preliminary meetings and directing work in the Sewer Permits Section. He is the only employee who attends the preliminary meetings. Also, while the Sewer Permits Section functions to review

permit applications by passing any questions for review up a chain of command to the next most experienced employee, Rhymes is ultimately the one who resolves any problems with a permit and decides if a permit will issue. As such, this is also qualitatively one of his most important functions. The Employer itself argues that these are Rhymes' most important functions and the facts show that to be the case. However, because these two functions are not supervisory functions under the Act, they do not support the Employer's contention that Rhymes' most significant duties are supervisory functions. Therefore, the Employer has failed to prove that Rhymes meets the qualitative preponderance test. Because the Employer has failed to prove that Rhymes' supervisory functions are quantitatively or qualitatively preponderant, it has failed to prove that Rhymes should be excluded from the Act's coverage as a supervisor.

V. CONCLUSIONS OF LAW

The Assistant Chief Engineer of Sewers is not a supervisor within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the position of Assistant Chief Engineer of Sewers in the Department of Buildings shall be included in Unit #4 currently represented by the American Federation of State, County and Municipal Employees, Council 31.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may

include cross-exceptions to any portion of the Administrative Law Judge's Recommendation. Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with Kathryn Nelson, General Counsel of the Illinois Labor Relations Board, at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 21st day of October, 2015.

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

A handwritten signature in cursive script that reads "Thomas Allen". The signature is written in black ink and is positioned above a solid horizontal line.

**Thomas Allen
Administrative Law Judge**