

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Petitioner,)	Case No. L-UC-16-007
)	
and)	
)	
City of Chicago,)	
)	
Respondent.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On December 16, 2015, the American Federation of State, County and Municipal Employees, Council 31 (AFSCME or Union) filed a unit clarification petition in Case No. L-UC-16-007 with the Local Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois 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 1300 (Rules), seeking to include the title of Reprographics Technician in Charge (Reprographics Technician IC), in the City of Chicago’s Office of the City Clerk (Department), in the AFSCME-represented Unit #1. The title of Reprographics Technician IC is solely held by Steven Wallace (Wallace). The City of Chicago (City or Employer) opposed the petition, asserting that the Reprographics Technician IC is supervisory as defined by the Act. A hearing was held on June 21, 2016, before the undersigned Administrative Law Judge (ALJ).

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. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS

The parties stipulate and I find that:

1. The City is a public employer within the meaning of Section 3(o) of the Act.
2. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel, pursuant to Section 5(b) of the Act.
3. The City is a unit of local government subject to the Act, pursuant to Section 20(b) of the Act.
4. The Union is a labor organization within the meaning of Section 3(i) of the Act.
5. At all relevant times, the City and the Union have been parties to a collective bargaining agreement.
6. On or about October 21, 2015, the Union filed a majority interest petition, Case No. L-RC-16-013, seeking to represent the following titles and include them in its bargaining unit, Unit #1: Reprographics Technician II; Reprographics Technician IC; and Procurement Control Officer.
7. On or about November 20, 2016, the City did not object to the petition with respect to the Reprographics Technician II and Procurement Control Officer titles (undisputed titles). However, the City did object to the petition with respect to the Reprographics Technician IC.
8. On or about November 23, 2015, the Board certified the undisputed titles and excluded the Reprographics Technician IC pursuant to the Board's Rules and Regulations.
9. On or about December 16, 2015, the Union filed a unit clarification petition, Case No. L-UC-16-007, seeking to represent the Reprographics Technician IC.

10. On or about January 19, 2016, the City responded to Case No. L-UC-16-007 and raised the same objection to the disputed title it previously raised in response to Case No. L-RC-16-013.
11. There is currently one employee in the disputed title who is employed in the Department.
12. The Reprographics Technician IC is assigned to the Reprographics Section of the City Council Division within the Department.
13. The Reprographics Technician IC directly reports to the Managing Editor.
14. Reprographics Technicians II-IV are represented in collective bargaining matters by the Petitioner.

II. ISSUES AND CONTENTIONS

The only issue to be resolved is whether the Reprographics Technician IC is supervisory within the meaning of Section 3(r) of the Act.

The City argues that the Wallace's position is excluded from the Act's coverage because: (1) his work is substantially different than that of the subordinates; (2) he has the authority to recommend the direction and discipline of his subordinates; (3) he uses independent judgement to recommend his supervisory functions; and (4) his supervisory functions are more significant than his non-supervisory functions.

The Union asserts that based on Wallace's lack of subordinates, he cannot be a supervisor within the meaning of the Act.

III. FINDINGS OF FACT

The Office of the City Clerk is the most visited office in the City of Chicago's government. The Department is divided into four Divisions: (1) Communications; (2) Finance and Human Resources; (3) Vehicle License; and (4) City Counsel. The Communications,

Finance and Human Resources, and Vehicle License Divisions are supervised by the title of Deputy Director. The Reprographics Technician IC is in the City Council Division, which is supervised by the title of Managing Editor. At the time of hearing, Peter Polacek, the only witness to testify, served as the Managing Editor of the City Council Division. As the Managing Editor, Polacek reports to John Gay (Gay), Chief Counsel and Director of Policy for the Office of the City Clerk¹, who in-turn reports to the Deputy City Clerk, with Susana Mendoza serving as the Chicago City Clerk.

The primary functions of the City Council Division include acting as the official record keeper of all City Council legislative matters and records, acting as the custodian and archivist for City Council documents, and publishing the City Council's Journal of Proceedings and any other documentation directed by the City Council. The City Council Division is also the keeper of the City Code and the City Seal. As Managing Editor, Polacek is responsible for oversight of the operation of the City Council Division's projects, creation and execution of the Division's short and long-term goals, personnel issues, and coordination with the Division's staff. The Division's staff fall within one of four Sections: (1) Index and Research; (2) Journal of Proceedings; (3) Reprographic; and (4) Claims. Each Section is headed by a manager, who is responsible for the day-to-day supervision of the lower level staff. These managers regularly report to Polacek to discuss projects and general office issues. Specifically, Wallace reports to Polacek to discuss the status of his pending assignments. Polacek testified that he meets less frequently with Wallace than with the other Section managers.

A. Reprographics Section

¹ Gay's official title is Chief Counsel and Director of Policy for the Office of the City Clerk, but is labeled as Office Administrator on the Organizational Chart.

The function of the Reprographics Section is to develop and publish documents, brochures, pamphlets, placards, and books, in either paper or digital format, for the City Clerk. Examples of the Reprographics Section's work product include the Journal of Proceedings, legislative pamphlets, informational brochures, pamphlets for vehicle licensing, and training manuals.

The Reprographics Section was designed to have been staffed with Reprographics Technicians II-IV, who report to the Reprographics Technician IC. Looking to each respective Reprographics Technicians' job description, the Reprographics Technicians II-IV would be responsible for the physical operation of the printing equipment and performing print-related tasks. The main difference between the Reprographics Technicians II-IV is the level of experience and technical expertise, allowing a Reprographics Technician IV to be able to handle more complex projects than a Reprographics Technician II. With the most training and expertise, the Reprographics Technician IC oversees all operations within the Reprographics Section.

B. Wallace's Current Duties

The above mentioned job descriptions contemplate the division of labor when the Reprographics Section is fully staffed. Currently, Wallace is the only employee in the Reprographics Section. The last time the Reprographics Section had any other employee was July 2013, when the last Reprographics Technician IV retired. Polacek testified that it would be the Department's "eventual goal" to hire additional staff.

As the Reprographic Technician IC, Wallace is responsible for overseeing all print jobs, reviewing work orders, establishing work priorities and schedules, monitoring the status of projects to ensure quality standards, and ensure that deadlines are met. When the City Clerk's

Office has a print project, a Deputy Director will contact Wallace, either directly or via email. Polacek is normally copied or included on the project request. Print projects can be either reoccurring or independent. With each work order, Wallace will coordinate the production of the request with the Deputy Director, including timelines, deadlines, and address any other project need. When Wallace has multiple work orders pending, he works with the Deputy Directors to determine priority and coordinate production.

As the only employee in the Reprographics Section, Wallace is also responsible for the physical operation of the printing equipment and performing print-related tasks. As part of preparing the production schedule, Wallace also determines if there is a need for additional staff or overtime. Assistance is usually requested if a project has a short deadline, there is a large volume of work, or a project is required by law to be finished on a certain date. If Wallace determines that additional help is necessary that requires overtime, he can request a volunteer from a predetermined pool of qualified candidates. To fill the request, he emails Polacek with a specific recommendation. Polacek does not deny these requests unless there are unforeseen circumstances. When an assistant staff member volunteers for overtime, Wallace is responsible for his or her oversight, and will sign off on their overtime sheets. On at least two instances in 2011, Wallace has overseen assistant staff and signed off on their overtime sheets.

When assistant staff works in the Reprographics Section, Wallace is responsible for their work and the quality of the finished product. Polacek testified that he relies on Wallace to address any personnel or performance issues of the staff. Since 2008, there is evidence of two instances where Wallace disciplined his staff for poor work quality. In April 2008, Wallace issued a written reprimand to a Reprographics Technician IV for omitting pages from the record

of a City Council meeting. In April 2009, Wallace issued another written reprimand to a Reprographics Technician IV for errors in the printing of a Journal of Proceedings.

As part of his duties as Reprographics Technician IC, Wallace is responsible for training individuals on production functions. This can include the proper use of machinery, equipment, and software. In September 2013, Wallace trained Steven Hoffman (Hoffman), a Reprographics Technician IV assigned to a different Section. During the two-month training period, Wallace trained Hoffman on how to operate and maintain the printing machinery and computer software used in the Reprographics Section. After the training period, Wallace determined that Hoffman could not perform the functions of a Reprographics Technician IV, because he did not have the requisite computer experience and knowledge. Wallace recommended that Hoffman remain in the Vault and Mail Section. Since 2013, Wallace has also trained a Graphic Artist, Jonathan Sangster; two Web Authors, Marvin Cespedes and Ken Polit; and the assistant staff on the pre-qualified overtime list.

Finally, Wallace advises the Department about necessary hardware and software purchases and contract renewals. Polacek relies on this advice because of Wallace's experience and knowledge as to whether the equipment or service is necessary. For example, on April 9, 2015, Wallace recommended the Department purchase an updated version of Adobe for the online Journal of Proceedings. Similarly, on June 1, 2016, Halyna Shuruk, the Department's Director of Finance and Human Resources, asked Wallace whether the Department should renew its Velobinding service agreements. Based on Wallace's advisement that the services were still required, the contracts were renewed. In addition, Wallace often maintains personal relationships with vendors.

IV. DISCUSSION AND ANALYSIS

A public employee will be deemed a supervisor within the meaning of the Act if he: (1) performs principal work substantially different from that of his subordinates; (2) possesses 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 exercises independent judgment in exercising supervisory authority; and (4) devotes a preponderance of his employment time to exercising that authority. City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 512 (1990). As the party seeking to exclude the position of Reprographics Technician IC from the bargaining unit, the City has the burden to prove by a preponderance of the evidence that the position satisfied each of the four elements of the Act's definition of supervisor. Village of Wheeling, 3 PERI ¶ 2005 (IL SLRB 1986). To satisfy this burden, the City must present "sufficient evidence" to support the exclusion. 80 Ill. Admin. Code ¶ 1210.107(a).

Under the first prong of the supervisory test, the initial consideration is whether Wallace's work is "obviously and visibly" different from that of his subordinates. City of Freeport, 135 Ill. 2d 499, 517-520; Village of Glen Carbon, 8 PERI ¶ 2026 (IL SLRB 1992); County of Kane (Kane County Sheriff), 7 PERI ¶ 2043 (IL SLRB 1991). If so, then the principal work prong of the supervisor test is satisfied. If the work is not obviously and visibly different (that is, it is facially similar to the work of his subordinates), then I must determine whether the nature and essence of the alleged supervisor's duties is substantially different from that of his subordinates. Id.

Before determining whether Wallace's principal work is substantially different from that of his subordinates, it must be determined whether he has any subordinates. Without subordinates, Wallace cannot be a supervisor within the meaning of the Act. Village of Maywood, 4 PERI ¶ 2014 (IL SLRB 1988); City of Mount Vernon, 9 PERI ¶ 2022 (IL SLRB

2000); County of Kane (Kane County Sheriff), 7 PERI ¶ 2043 (IL SLRB 1991); Chicago Transit Authority, 16 PERI ¶ 3026 (IL LRB GC 2000). When the Reprographics Technician IV retired in June 2013, Wallace was left as the only permanent employee in the Reprographics Section. From 2013 until the time of hearing, Wallace remained the only employee within the Reprographics Section. This is clearly demonstrated by the City Clerk's organizational chart. The City Council Division oversees four Sections, including Reprographics. Under the Reprographics heading there is only one position listed, Reprographics Technician IC. Accordingly, at the time of hearing, Wallace lacked permanent subordinates in the Reprographics Section.

In the absence of permanent subordinates, an employee can only be a supervisor under the Act if he spends a "regular and substantial portion of his working time performing supervisory tasks." City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011), citing Honda of San Diego, 254 NLRB 1248 (1981); City of Mount Vernon, 9 PERI ¶ 2022 (IL SLRB 1993) (sergeants who were scheduled to work as shift commanders at least two days a week were shift commanders on a regular and substantial basis). In this case, it is clear that Wallace lacked any permanent subordinate since 2013. But the City demonstrated that after 2013, Wallace would receive assistance from employees employer outside the Reprographics Section.

After June 2013, Wallace not only performed the duties of the Reprographics Technician IC, but also the duties of the Reprographic Technicians II-IV. So in addition to being responsible for overseeing the Section's operations, Wallace became responsible for the physical operation of the printing equipment and performing all other print-related tasks. As would be imagined, the operational tempo dictated by the needs of the City Clerk's Office would overcome Wallace's ability to maintain deadlines. For example, Deputy Directors would give

Wallace a short deadline or a large volume of work, or a project that's completion was required by law. Under these circumstances, Wallace determines the need for additional assistance or overtime to maintain the required production schedule. If assistance or overtime is necessary, Wallace emails a request to Polacek. The email would contain a name from a predetermined pool of trained assistant staff. All the trained assistant staff were permanently employed in other Sections or Divisions of the City Clerk's Office. Polacek testified that he does not deny these requests unless there are unforeseen circumstances.

In finding that Wallace received assistance from staff outside the Reprographics Section, the next issue is whether he spent a regular and substantial portion of his working time performing supervisory tasks related to these staff members. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011). Here, the City has failed to produce evidence that sufficiently demonstrates the frequency with which Wallace performs supervisory tasks. This inquiry only looks only to the supervisory interactions Wallace had with the non-permanent employees from outside Sections or Divisions. Specifically, the City must adduce evidence that sufficiently demonstrates Wallace supervised the non-permanent employees on a regular and substantial bases. These non-permanent employees fall into two categories: trainees and assistant staff. Each will be addressed in turn.

The evidence fails to demonstrate that Wallace supervised non-permanent trainees on a regular basis. Polacek testified that over the past three years, Wallace trained four non-permanent employees to assist him in fulfilling print requests. Most recently, Wallace trained Jonathan Sangster, who now works as a graphic novelist in the City Council Division. Before that, Wallace trained web developers Marvin Cespedes and Ken Polit. Finally, in 2013, Wallace trained Steven Hoffman. Of these four trainees, the City only introduced evidence about the

duration of Hoffman's training- two months. Although two months of training can demonstrate a substantial basis of supervision, the record lacks any evidence relating to the regularity of the training over this two month timespan.

Further, the City offered no substantive evidence to demonstrate that Wallace supervised non-permanent assistant staff on a substantial or regular basis. Polacek did testify that Wallace requests individuals to assist him "almost all of the time." But this statement, with nothing more, is merely conclusory and fails to satisfy the burden imposed on the challenging party. See State of Ill. Dep't of Cent. Mgmt. Servs., 24 PERI ¶ 112 (IL LRB-SP 2008) (noting that it is a long-standing, settled" area of the law that the challenging party does not meet its burden of proof by producing vague, generalized statements regarding the disputed individual's job functions). The only other evidence that can arguably demonstrate the frequency of interaction between Wallace and the non-permanent assistant staff are two overtime sheets from 2011, and three Vacation/Comp Request Forms. Polacek's conclusory statement and five specific instances of Wallace working with assistant staff, over the course of years, does not warrant a finding that he is a supervisor within the meaning of the Act. Ultimately, the record does not bear sufficient evidence to determine how often he worked with assistant staff.

Therefore, in the absence of subordinates, either as permanent Reprographics Section staff or non-permanent trainees and assistant staff, Wallace cannot be a supervisor under the Act.

VI. CONCLUSION OF LAW

Pursuant to the Union's unit clarification petition, Wallace is not a supervisor within the meaning of Section 3(r) of the Act.

VII. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the unit clarification petition filed in Case No. L-UC-16-007 is granted. The Reprographics Technician IC position held by Steven Wallace is included in the AFSCME-represented Unit #1.

VIII. 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 in briefs in support of those exceptions no later than 15 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 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 with the General Counsel of the Illinois Labor Relations Board, 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filing must be 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 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 13th day of October, 2016.

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

s/ PATRICK C. HEERY

**Patrick C. Heery
Administrative Law Judge**