

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

Policemen’s Benevolent Labor Committee,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-11-009
	)	
City of Chicago Heights,	)	
	)	
Employer	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On August 19, 2010, Policemen’s Benevolent Labor Committee (Petitioner or Union), filed a majority interest representation/certification petition in Case No. S-RC-11-009 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2010), as amended (Act), and the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin Code, Parts 1200 through 1240 (Rules). The Petitioner seeks to become the exclusive representative of all full-time sworn peace officers in the rank of sergeant assigned to the traffic unit and patrol division employed by the City of Chicago Heights (Employer or City).<sup>1</sup>

---

<sup>1</sup> The Union initially sought to represent all full-time sworn peace officers in the rank of sergeant in all of the Employer’s divisions and units. However, in its post-hearing brief, the Union conceded that Chief of Detectives/Investigations Sergeant Rogers and Administrative Commander Sergeant Robustelli should be excluded from the unit. Sergeant Rogers is in charge of the Investigations division and oversees eight patrol officers. The Union concedes that Rogers is a supervisor “so long as he continues to serve as the highest ranking officer in the employer’s detective bureau.” Sergeant Robustelli oversees six divisions and units. The Union concedes that he is a managerial employee within the meaning of the Act. However, the Union still maintains that he is not a supervisor within the meaning of the Act because he does not “supervise any sworn personnel.” Since the Union now only seeks to represent the sergeants in the traffic unit and patrol division, I will not address whether the positions held by Sergeant Rogers and Sergeant Robustelli should be excluded from the unit.

A hearing was held on January 26 and 27, 2010, before Administrative Law Judge Joseph Tansino in Chicago, Illinois, at which time all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. The Petitioner timely filed a brief. The Employer did not file a brief.<sup>2</sup> After full consideration of the parties' stipulations, evidence, arguments, and the Petitioner's brief, and upon the entire record of this case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. The parties stipulate, and I find, that the Employer is a public employer within the meaning of Section 3(o) of the Act and is subject to the Board's jurisdiction pursuant to Section 5(a) and 20(b) of the Act.
2. The parties stipulate, and I find, that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.
3. The parties stipulate, and I find, that the petitioned-for employees are peace officers within the meaning of Section 3(k) of the Act.

**II. ISSUES AND CONTENTIONS**

The issue in this case is whether the petitioned-for sergeants are supervisors within the meaning of Section 3(r) of the Act.<sup>3</sup> The Employer contends that the petitioned-for sergeants are

---

<sup>2</sup> The case was subsequently reassigned to the undersigned Administrative Law Judge.

<sup>3</sup> The Employer had previously asserted that all of the petitioned-for sergeants were also managerial employees and that two were confidential employees under the Act. On September 15, 2010, Administrative Law Judge Tansino directed the Employer to provide sufficient evidence raising a question of law or fact as to the petitioned-for employees' status as supervisory, managerial, and confidential employees. On September 29, 2010, the Employer asserted that only five of the petitioned-for sergeants were managerial employees, and abandoned its argument that two of the petitioned-for

supervisors and, therefore, must be excluded from the proposed bargaining unit. The Petitioner asserts that the petitioned-for sergeants are, instead, public employees as defined by the Act, and accordingly, the unit should be certified.

### III. FINDINGS OF FACT<sup>4</sup>

#### A. Background

The City's police department (Department) currently employs 80 sworn personnel: one chief of police, four captains, one lieutenant, 11 sergeants, and 63 patrol officers.<sup>5</sup> The Department has three commanders; each responsible for various divisions and units. Administrative Commander Sergeant Robustelli oversees Records, Evidence, Information Technology, 911 Communications, Maintenance, and Fleet Services. Operations Commander Captain Guiliani oversees Patrol, Investigations, Traffic, Community Policing, Crime Prevention, Lock Up, Court Officer, and Animal Control.<sup>6</sup> Training Commander Captain Brink oversees Weapons Range and Photo Red Light Enforcement. The three commanders report to Chief of Police Camilli, who in turn reports to the mayor. The petitioned-for sergeants work in the Traffic unit and Patrol division. The petitioned-for sergeants hold the following titles: one supervisor of accident investigations, two watch commanders, and six field supervisors.<sup>7</sup>

---

sergeants were confidential employees. On October 4, 2010, Administrative Law Judge Tansino determined that the Employer provided sufficient evidence to raise an issue for hearing with respect to the supervisory exclusion but not the managerial exclusion. He also informed the parties that the evidence at hearing would be limited to that relevant to the supervisory exclusion.

<sup>4</sup> The facts are based on the testimony of Michael Camilli, Charles Guiliani, Jr., Keith Applequist, Bryan Howard, and Michael Leuser.

<sup>5</sup> The patrol officers are members of a bargaining unit and subject to a collective bargaining agreement.

<sup>6</sup> The parties also referred to the operations commander as the patrol commander.

<sup>7</sup> The parties also referred to the field supervisors as patrol supervisors.

## 1. Traffic

Supervisor of Accident Investigations Sergeant Romano oversees the Traffic unit. He is responsible for conducting accident investigations, as well as finding and applying for traffic-related grants for the Department. In the past, the unit has included one to two patrol officers. For the past six months, Sergeant Romano has been the only employee within the unit and has had no subordinates. The two officers who were working in the Traffic unit have been placed in the Patrol division due to low staffing levels. Sergeant Romano has on occasion filled in for sergeants in the Patrol division when all of the sergeants on the shift were ill or otherwise absent.

## 2. Patrol

The Patrol division has three eight-hour watches. A majority of the time, each watch has one watch commander and two field supervisors. About ten days per month, field supervisors act as watch commanders. When a field supervisor acts as a watch commander, he or she has all of the same duties and responsibilities as a watch commander. If both field supervisors are absent, the watch commander will fulfill the field supervisor's duties.

The watch commanders are Sergeant Leuser (first watch), Sergeant Howard (second watch), and Captain Bohlen (third watch). The field supervisors are Sergeants Cristelli and Barker (first watch), Sergeants Simonetti and Applequist (second watch), and Sergeants Petrarca and Millon (third watch). The Department's minimum manning policy requires that six or seven patrol officers are assigned to each watch, depending on the shift and day of week. Patrol officers answer calls for service from dispatch, patrol the streets, write tickets, make arrests, and enforce laws. They spend the majority of their shift on the street.

At the beginning of a shift, the watch commander will review the events from the previous shift, directives from the operations commander and chief of police, and the shift logs.<sup>8</sup> The shift log details which patrol area and vehicle each patrol officer will be assigned for that shift. The assignments are made by the previous day's watch commander. The watch commander on duty will then generate the next day's shift logs and give them, along with the patrol officer sign in sheets, to the operations commander. During his shift, the watch commander monitors the police radio and computer, and fields phone calls from dispatch. The calls from dispatch may include whether to send out patrol officers or whether additional assistance is needed. The watch commander is also responsible for assisting the public either over the phone or in person. Watch commanders spend at least the first and last hour of their shift in the office. For the remainder of the shift, they have discretion to determine whether they will be on the street or in the office. Some of the watch commanders spend all of their time in the office; others spend very little.

At the beginning of a shift, the field supervisor will review the shift log and receive updates from the watch commanders. The field supervisor will check for damage to the patrol vehicles that will be used that shift. Either a watch commander or a field supervisor will conduct roll call, where he or she will give out the patrol officer assignments and relay information that he or she has received from the previous watch commander and/or operations commander. After roll call, the field supervisor will go out on the street to assist the patrol officers and to ensure that proper procedures and the watch commander's orders are being followed.

Field supervisors are not assigned to any specific patrol area. Rather, they generally decide which areas to go to based on their experience, training, and information they hear on the

---

<sup>8</sup> References to watch commander refer to Watch Commanders Leuser and Howard and to the field supervisors when they are acting as watch commanders.

radio. However, the watch commander on duty may also assign the field supervisors to specific patrol calls throughout the shift. Field supervisors, like patrol officers, write tickets and make arrests. Generally, a patrol officer writes up the police report after an incident, not the field supervisor. However, sometimes, the field supervisor will do it. The field supervisor may also fill out a supplemental report in addition to the patrol officer's report. Field supervisors spend about one hour of their shift in the office and the rest on the street.

a. Promote

Promotions to the rank of sergeant are governed by the rules and regulations of the City's Board of Fire and Police Commissioners. The promotion process is further laid out in the patrol officers' collective bargaining agreement.

b. Direct

i. Reviewing and monitoring work activities, instructing employees

Field supervisors and watch commanders review and sign patrol officers' police reports. The reports are reviewed for accuracy and grammatical errors and to ensure that the patrol officer followed proper procedures during the call. The reports are then turned into the Records Division.

Watch commanders monitor the patrol officers through the radios and computer, reports they receive from the field supervisors, and direct observation when the watch commander is present on a patrol officer's call. When a watch commander or a field supervisor is on a call, he or she is monitoring the patrol officers to make sure that the Department's guidelines and procedures are being followed. They are also assessing whether the patrol officer needs them to intervene in the call or provide assistance.

Field supervisors respond to calls for assistance from patrol officers. The field supervisor answers questions, gives guidance, and helps the patrol officer develop a solution on how to properly handle the call.

The Department has an established protocol for handling major incidents. In the event of a major incident, the watch commander will go to the scene and be in charge until relieved by a superior officer. Further, if the first officer on the scene is a patrol officer, he or she is in charge until relieved by a superior officer. One major incident involved threats made at a funeral. Field Supervisor Sergeant Howard, while acting as watch commander, called out for additional patrol officers from other patrol areas, told them to secure the inside of the funeral home, and had them set up a perimeter around the home. He then contacted the chief of police because the operations commander was not available. Patrol officers can also set up a perimeter if they are the first officers to arrive on the scene.

Another major incident involved a homicide. Field Supervisor Sergeant Applequist, while acting as watch commander, arrived on the scene and contacted Operations Commander Guiliani to advise him of the situation. Guiliani told Applequist that if Applequist had any issue or needed anything to call him. Applequist also contacted Sergeant Rogers from the Investigations Division. Rogers notified the detectives and the South Suburban Major Crimes Task Force. Applequist coordinated the scene by calling out for additional patrol officers and another field supervisor for assistance. He advised the patrol officers to secure the area, gather witnesses and evidence, and locate the shooter. Applequist stated that in handling the incident, he relied on his experience and training, followed protocol and procedure, and did what he was trained to do.

Field Supervisor Sergeant Romano and Officer Hofrichter are members of the South Suburban Major Accident Reconstruction Team (SSMART). SSMART is a unit comprised of officers from several south suburban police departments. The unit is called out for accidents involving fatalities, serious injury, major property damage, and those involving police department vehicles. When an accident occurs, the field supervisor at the scene or a SSMART team member will determine if SSMART should be called in to assist. He or she will then notify the watch commander on duty, who will contact SSMART. All of the officers in the Department have been told to err on the side of calling out the unit to assist. To go out on a SSMART call, Patrol Officer Hofrichter must request permission from his field supervisor or watch commander. He is allowed to go based upon manpower needs for that watch.

The chief of police must approve changes to the Department's policies and procedures. In 2009, a committee made up of patrol officers, sergeants, and "management" was formed in order to review and update the Department's standard operating policies and procedures manual.<sup>9</sup> It is not clear from the record whether the committee's suggestions have been implemented.

ii. Assigning work

The City is broken up into five geographic areas for patrol purposes. Areas one, three, and four have one patrol officer each; areas two and five have two patrol officers each. Watch commanders assign patrol officers to particular patrol areas. Assignments are generally made randomly. However, the watch commander may try to accommodate a patrol officer's preference for working with certain individuals or in a particular area. The watch commanders do not discuss the assignments with the operations commander or chief of police. However,

---

<sup>9</sup> The record did not reveal which individuals Chief of Police Camilli was referring to when he said "management."

assignments have been reviewed and changed by the operations commander. Operations Commander Guiliani has made changes to the shift logs without the watch commander's knowledge and has also ordered the watch commander on duty to change the assignments. Guiliani has also told the watch commanders when he prefers that certain patrol officers are assigned to particular patrol areas. As previously stated, the watch commander on duty may also assign the field supervisors to specific patrol calls throughout the shift.

Field Supervisor Sergeant Howard, while acting as watch commander, has allowed patrol officers to leave their assigned patrol region due to concerns over officer safety. He did this without seeking approval from Operations Commander Guiliani. Howard reports that he was later "admonished" by Guiliani for allowing this and was told to discontinue the practice. Howard no longer tells the patrol officers that they can leave their assigned region. Guiliani, however, stated that he told the sergeant that he did not have a problem with this practice "as long as he [Howard] was aware of what they [the patrol officers] were doing."

Generally, five patrol cars are used for each shift, one for each patrol area, though sometimes a sixth or seventh is used. Operations Commander Guiliani has ordered that the sixth and seventh cars should be used for traffic calls, unless there is a directive from him or a sergeant to use them for a different purpose. The sixth and seventh cars have also been used for police calls.

### iii. Scheduling work hours, approving leave requests

The operations commander makes the patrol officers' work schedules each month. The schedules are made in accordance with the requirements of the collective bargaining agreement.

If a watch will fall below minimum staffing levels, the watch commanders or field supervisor must order patrol officers to work overtime. He or she does not need approval before

ordering mandatory overtime. If a shift is particularly busy, the watch commander or field supervisor can request voluntary overtime. To order voluntary overtime, the sergeant must receive authorization from the operations commander. Overtime is granted based on seniority pursuant to the collective bargaining agreement.

Patrol officers on the same watch can switch work days with one another. Watch commanders and field supervisors have the authority to approve or deny those requests. The requests are approved as long as minimum staffing is met and the requests do not interfere with the collective bargaining agreement. Sergeants cannot transfer a patrol officer from one shift to another.

Watch commanders have the authority to approve or deny leave requests. They base their decision on minimum staffing requirements and in accordance with the requirements of the collective bargaining agreement. If two officers have requested to use a personal day on the same shift, the watch commander must first get approval from the chief of police before approving or denying the request. For all other leave requests, the watch commander does not need approval before answering the request.

The patrol officer's collective bargaining agreement states that requests for personal days must be approved if the patrol officer gives 24 hours notice and he or she is the first patrol officer requesting a personal day for that shift. It also states that requests for compensatory time must be approved if the patrol officer has given 72 hours notice and it would not bring the shift below minimum staffing. The Department has different systems for dealing with vacation time requests. Requests for a week or more of vacation time are determined through a bidding process based upon patrol officer seniority. Requests for individual days are determined by the

watch commander. Operations Commander Guiliani could not recall a vacation time request ever being denied.

#### iv. Training

Patrol officer training is performed by an outside agency. Patrol officers can make requests to their field supervisor if they want to attend particular training sessions. Patrol officer requests are forwarded to the operations commander. Watch commanders do not request training for patrol officers.

In addition to being a field supervisor, Sergeant Barker is the Department's range master. In this role, Barker reports to Training Commander, Captain Brink. As range master, Barker conducts weapons training for all sworn personnel and is responsible for the Department's arsenal. Officers are required to pass a weapons proficiency course each year as mandated by the state. Sergeant Barker conducts the training course and also conducts a weapons refresher training every two months. For the bi-monthly training, Barker writes the curriculum and administers the training through his range staff, which includes Sergeant Millon.<sup>10</sup> He and his staff also grade the officers. If a patrol officer fails to qualify under the yearly test, the range master can give the officer additional one on one support and assistance. Barker cannot discipline, suspend, or discharge an officer if he or she fails to pass the test. Officers have not suffered any loss in pay because they have not been able to qualify.

#### v. Performance evaluations

Watch commanders are responsible for making sure that performance evaluations are completed for the patrol officers. The patrol officers' collective bargaining agreement contains the form that is to be used for performance evaluations. The patrol officers receive scores on ten performance factors, which are then averaged to come up with an overall evaluation score. After

---

<sup>10</sup> Besides Sergeant Millon, the evidence did not reveal which officers are included in the range staff.

being completed, the watch commander gives the evaluations to the operations commander, who reviews them, and then sends them to the chief of police. The chief of police then discusses the evaluation with the operations commander. If the evaluation states that a patrol officer is deficient in a certain area, the chief of police and operations commander will decide the appropriate action to take.

Sergeant Applequist recalls completing performance evaluations on one occasion. He and the other field supervisors on his watch each completed an evaluation form and assigned a score to each patrol officer. The field supervisors then gave the forms to Watch Commander Sergeant Howard who compiled them and ultimately decided what score to give each patrol officer. Applequist indicated that he saw the final evaluation forms and some of them reflected his comments and opinions.

When Howard conducts performance evaluations, he tries to get a consensus from the field supervisors on his watch on their opinion of each patrol officer. He will then give the patrol officers a score based on the field supervisors' opinions, his own observations, and the criteria set out on the evaluation form. He will then review the evaluations with the field supervisors and they will all sign off on the form. Operations Commander Guiliani has never asked Howard to change an evaluation form.

As stated previously, the collective bargaining agreement dictates the promotional process for patrol officers. The overall performance evaluation score makes up 10% of the patrol officer's total promotional examination score.<sup>11</sup>

---

<sup>11</sup> The remainder of the score is based on a written test (50%), oral examination (30%), professional achievements (5%), and seniority (5%).

d. Reward

Sergeants recommend patrol officers for written commendations. The recommendations are reviewed by the chief of police. His review consists of looking at any reports or documentation regarding the event which gave rise to the commendation. He will then determine whether the appropriate people are being commended, and if so, draft a commendation and issue it. The commendations are posted in the department hallway, given to the officer, and placed in the officer's personnel file. Patrol officers receive one-half point for each commendation and can accumulate up to five points to be used toward the promotional exam. Every recommendation that Applequist has submitted has been approved by the chief of police.

e. Discipline

Sergeants can issue verbal and written counselings. The patrol officers submit a form each day, which includes the volume of calls, the number of miles they put on the patrol car, and their productivity for the shift. Field supervisors can issue verbal or written counselings if the patrol officers' productivity is deficient. The written counselings go into the patrol officer's personnel file. Field supervisors do not need permission to issue counselings.

Sergeant Howard has sent an officer home for his behavior. Howard states that before sending the officer home, he notified the operations commander. However, Operations Commander Guiliani reports that Howard sent him home before calling Guiliani. Guiliani then told Howard to write a memo detailing the incident, including disciplinary recommendations. Howard indicated to Guiliani that he did not want to seek any further disciplinary action and the Department did not.

Sergeant Millon issued a written counseling to a patrol officer who was wearing his work uniform while off-duty at his part-time job. The counseling was forwarded to Operations

Commander Guiliani. No discipline was ever issued. Sergeant Millon had the authority to bring it to Operations Commander Guiliani's attention and to order the patrol officer to stop working that evening while in his work uniform.

The Department has an Accident Review Board, made up of Sergeant Romano, Sergeant Applequist, and Patrol Officer Newquist. The board reviews accidents that have involved patrol officers in Department vehicles. The members review the accident, listen to the officer's version of events, and then vote on whether the accident involved patrol officer negligence. The board does not suggest discipline. The chief of police reviews the board's findings and determines whether to issue discipline.

f. Adjust grievances

The patrol officer's collective bargaining agreement calls for a four-step grievance procedure. The first step is the watch commander. The second step is the operations commander. The third step is the chief of police. The fourth step is the mayor's office. The Department receives about six grievances per year. If an individual employee files a grievance, it goes to the watch commander. If the union files a grievance, it goes directly to step two.

Five grievances were submitted as evidence. In four of the grievances, the step one designee wrote that the grievance was unable to be handled at that level and instead forwarded it to Captain Brink or Chief of Police Camilli. The Employer provided only one example of a sergeant responding to a grievance. Watch Commander Sergeant Howard responded to a step one grievance and denied the grievance. It was then denied at steps two, three, and four for the reasons stated in Howard's response. The grievance concerned whether overtime was available for a shift. Howard found that it was not available and therefore denied the grievance. Initially, Captain Brink told Howard to not respond to the grievance. Later, Brink told Howard that the

chief of police wanted Howard to respond to it, and Brink ordered him to do so. Howard reports that it is not unusual or odd for him to be ordered to not respond to grievances. Howard formulated a response to the grievance on his own. He reports that the chief of police had overheard Howard discussing the grievance and the chief of police “knew that my opinion was in keeping with what the police department’s opinion was, and therefore, he went on and let me do it.” Howard further stated that he believes “if my opinion had been in conflict that I never would have been told to write an opinion.”

#### **IV. DISCUSSION AND ANALYSIS**

The Employer contends that the sergeants are supervisors within the meaning of Section 3(r) of the Act.<sup>12</sup> A supervisor is not a “public employee” or “employee” for purposes of the Act. A peace officer is a supervisor under the Act if he or she: (1) performs principal work that is substantially different than that of his or her subordinates; (2) has authority to perform one or more of the 11 indicia of supervisory authority, or to effectively recommend such action; and (3)

---

<sup>12</sup> 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, State supervisors notwithstanding. In addition, in determining supervisory status in police employment, rank shall not be determinative. The Board shall consider, as evidence of bargaining unit inclusion or exclusion, the common law enforcement policies and relationships between police officer ranks and certification under applicable civil service law, ordinances, personnel codes, or Division 2.1 of Article 10 of the Illinois Municipal Code, but these factors shall not be the sole or predominant factors considered by the Board in determining police supervisory status.

consistently exercises independent judgment in performing or recommending the enumerated actions.<sup>13</sup> City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512 (1990).

In order to be deemed a supervisor under the Act, the employee must have subordinates. City of Carbondale, 27 PERI ¶68 ( IL LRB-SP 2011); Village of Bensenville, 20 PERI ¶12 (IL SLRB 2003); Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). Without permanent subordinates, an employee may only be a supervisor if he or she spends a “regular and substantial portion of [his] working time performing supervisory tasks.” City of Carbondale, 27 PERI ¶68, citing Honda of San Diego, 254 NLRB 1248 (1981). Here, all sergeants currently have subordinates except for Supervisor of Accident Investigations Sergeant Romano. The Employer did not offer evidence as to how often he performs supervisory tasks, beyond stating that he on occasion fills in for sergeants in the patrol division. Without evidence of the frequency of the substitution, I cannot find that he is a supervisor. Thus, the Supervisor of Accident Investigations is a public employee under the Act. The following analysis will apply only to the remaining sergeants in the patrol division.

#### **A. Principal Work Requirement**

To satisfy the principal work requirement, an employer must establish that the work of an alleged supervisor and that of his or her subordinates is obviously and visibly different. City of Freeport, 135 Ill. 2d at 514. If not, the determining factor is whether the “nature and essence” of the alleged supervisor’s principal work is substantially different from the “nature and essence” of his or her subordinates’ principal work. Id.

Here, the work of the sergeants is obviously and visibly different from that of the patrol officers. Sergeants assign patrol officers to patrol areas and vehicles, monitor the radio and

---

<sup>13</sup> Peace officers, unlike other employees, are not required to devote a preponderance of their work time to exercising supervisory authority in order to be supervisors within the meaning of the Act. County of Cook (Department of Corrections), 14 PERI ¶3003 (IL LLRB 1997).

computer, field phone calls from dispatch, assist the public, check patrol vehicles for damage, conduct roll call, review police reports, order overtime, approve leave requests, conduct performance evaluations, write commendations, issue verbal and written counselings, and act as the first step in the grievance procedure. In addition, the range master sergeant conducts weapons training. The patrol officers do not perform any of these duties. The patrol officers' main duties are answering calls from dispatch and patrolling the streets. Therefore, the principal work requirement is met.

### **B. Supervisory Indicia and Independent Judgment**

The second and third prongs of the Act's supervisory definition are satisfied if the Employer establishes that the sergeants have the authority to perform or effectively recommend any of the 11 enumerated supervisory functions listed in the Act and consistently exercise that authority with independent judgment. In this case, the Employer asserts that the sergeants exercise supervisory authority under the Act to transfer, promote, reward, discipline, adjust grievances, direct or to effectively recommend the same.

#### **1. Transfer**

The authority to transfer involves the authority to move employees from one department to another department. Village of Bolingbrook, 19 PERI ¶125 (IL SLRB 2003); Circuit Clerk of Champaign County, 17 PERI ¶2032 (IL SLRB 2001); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994). Here, the Employer only presented evidence of sergeants having the ability to approve patrol officer requests to switch work days with one another. The Employer did not present any evidence of sergeants having the ability to move employees from one department to another or ever having effectively recommended such action. The sergeants also cannot transfer a patrol officer from one shift to another. Therefore, I find that the sergeants do

not possess the authority to transfer or to effectively recommend transfer within the meaning of the Act.

## 2. Promote

The authority to promote rests with the City's Board of Fire and Police Commissioners. However, the Employer argues that the sergeants have the ability to effectively recommend promotion. Sergeants recommend commendations for patrol officers. Patrol officers can accumulate up to five points from commendations to be used toward the promotional exam. The performance evaluations that sergeants complete make up 10% of a patrol officer's promotional examination score. However, the commendations and evaluations are not the most significant factor in promotion decisions. Rather, their significance is heavily outweighed by the value given to the written (50%) and oral examinations (30%), on which the sergeants have no effect. See Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 119 (2nd Dist. 1993) (sergeants who conducted performance evaluations worth five percent of a candidate for promotion's total score did not effectively recommend promotion).

In Village of Broadview, 25 PERI ¶63 (IL SLRB 2009), sergeants each awarded candidates for promotion a rating and the collective rating of all the sergeants constituted 78 out of 100 points. The Board affirmed the finding that each individual sergeant's impact on promotion was small and too speculative to constitute an effective recommendation. See also City of Carbondale, 27 PERI ¶68. Similarly, here, each field supervisor sergeant on a watch will assign a patrol officer a score for his or her performance evaluation. The watch commander will then compile the scores and ultimately decide which score to give each patrol officer. The final score makes up only 10% of the overall promotion score. Further, the commendations that sergeants recommend count for at most five percent of the overall score. For this reason, I find

that the sergeants' involvement in promotions is small and too speculative to establish that they effectively recommend promotions.

### 3. Reward

The sergeants have the authority to recommend written commendations for patrol officers. The commendations can count for up to five points for the promotional exam. One of the sergeants stated that every recommendation for commendation he has submitted has been approved. However, non-monetary commendations do not constitute reward within the meaning of the Act. County of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999). Further, the link between commendations and increased pay due to promotion is too speculative to demonstrate sergeants have the supervisory authority to reward.

### 4. Discipline

To constitute discipline within the meaning of the Act, verbal and written reprimands must have an impact on an employee's job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶125. Reprimands constitute supervisory authority to discipline if they are documented, placed in an employee's personnel file, and can serve as the basis for more severe discipline. Id.; Carpentersville Countryside Fire Protection District, 10 PERI ¶2016 ( IL SLRB 1994); City of Sparta, 9 PERI ¶2029; Village of Hinsdale, 2 PERI ¶2042 (IL SLRB 1986). Here, the sergeants can issue verbal and written counselings. The written counselings are documented and placed in the patrol officer's personnel file. However, the Employer did not present any evidence of these counselings having an adverse affect on a patrol officers' wages, hours, or terms and conditions of employment or serving as the basis for more severe discipline. The counselings that patrol officers issue when patrol officer productivity is deficient do not contain a recommendation for discipline and the Employer did

not present evidence of them serving as the basis for more severe discipline. In addition, the sergeant who sent an officer home for his behavior did not recommend discipline in that case and the Employer did not pursue any disciplinary action. Moreover, the sergeant who issued a counseling to a patrol officer wearing his uniform off duty also did not recommend discipline nor did the Employer seek any disciplinary action. The Operations Commander did not indicate that the sergeant had the authority to discipline or recommend discipline in that case, but instead only had the authority to bring it to the Operations Commander's attention and order the patrol officer to cease working in his uniform. Supervisory authority to discipline is not found if the employer fails to demonstrate the impact of documented counselings and verbal reprimands on the subordinates' terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶125. Here, the Employer failed to show how the sergeants' ability to issue counselings or send an officer home affects the patrol officers' terms and conditions of employment. Further, the sergeants on the Accident Review Board do not discipline or recommend discipline within the meaning of the Act but only make a finding of fault. See Village of Roselle, 27 PERI ¶59 (IL LRB-SP 2011). In sum, the Employer has failed to demonstrate that sergeants have the supervisory authority to discipline or effectively recommend discipline.

#### 5. Adjust Grievances

The mere designation as the first step in the grievance procedure is insufficient to establish supervisory authority. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469 (2nd Dist. 2005). Instead, the evidence must show that the sergeants consistently use independent judgment in the exercise of that authority. Village of Bolingbrook, 19 PERI ¶125. Here, although sergeants are designated as the first step in the grievance procedure, only one sergeant has responded to a grievance. In every other case, the step one

designee stated that he or she was unable to handle it at that level and forwarded it to the captain or the chief of police. In the one case where a sergeant did respond, he was initially told to not respond to the grievance and then later ordered to respond to it. The sergeant stated that he was allowed to respond to the grievance because his opinion was the same as that of the chief of police. Absent evidence that the sergeants make a choice between two or more significant courses of action, there is no basis to conclude that they utilize independent judgment in handling grievances. City of Freeport, 135 Ill. 2d 499. It appears the sergeant was allowed to respond to the grievance only after consultation with the chief of police. This does not constitute complete discretion to resolve grievances. Therefore, I find that the sergeants do not have the ability to adjust grievances or effectively recommend the adjustment of grievances.

#### 6. Direct

The term direct encompasses several functions including overseeing and monitoring work activities, instructing subordinates on how work is to be performed, assigning work if it is not based on routine factors like balanced workload, scheduling work hours, and approving leave and overtime requests if the requests are not routinely granted. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 518-19 (1992); City of Freeport, 135 Ill. 2d at 513; Village of Bolingbrook, 19 PERI ¶125; County of Boone, 19 PERI ¶74 (IL LRB-SP 2003). These functions are not supervisory unless they involve the consistent use of independent judgment. Independent judgment involves making consistent choices between two or more significant courses of action; these choices cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. City of Freeport, 135 Ill. 2d at 521.

a. Reviewing and monitoring work activities, instructing employees

Sergeants exercise independent judgment when reviewing patrol officer reports. Sergeants review the reports for accuracy and grammatical errors, which is routine and clerical. However, the sergeants also review the reports to ensure that proper procedures were followed during the call, which involves independent judgment. County of Kane (Kane County Sheriff), 7 PERI ¶2043 (IL SLRB 1991) (reviewing reports to ensure that they are adequately written demonstrates independent judgment). See also City of Carbondale, 27 PERI ¶68.

The sergeants also exercise independent judgment when they monitor and assist the patrol officers on calls. To be deemed supervisory, the evidence must show that the sergeants are actively involved in checking, correcting, and giving instructions to subordinates, rather than simply observing and monitoring subordinates. City of Carbondale, 3 PERI ¶2044 (IL SLRB 1987). While monitoring a patrol officer on a call, the sergeant must assess whether the patrol officer needs them to intervene on the call and provide assistance or whether the patrol officer can handle the call alone. This involves making a consistent choice between two or more significant courses of action. Further, by answering questions, giving guidance, and helping the patrol officer to formulate a solution on how to handle the call, the sergeant is actively involved in instructing the patrol officers how work is to be performed.

The sergeants do not exercise independent judgment when handling major incidents or deciding whether to call in the SSMART unit. Employees who determine how to proceed at the scene of a crime or accident based upon facts that are apparent to them as they arrive do so based on their superior skill, experience, and knowledge rather than independent judgment. Village of Bellwood, 19 PERI ¶106 (IL LRB-SP 2003); see also City of Carbondale, 27 PERI ¶68.

The sergeants' role in updating the standard operating policies and procedures manual is not evidence of supervisory authority. Patrol officers, sergeants, and "management" were all involved in providing suggestions, but the chief of police is responsible for approving all changes. Further, it is not clear from the evidence the extent of the sergeants' involvement in the process, the extent of review that the chief of police conducts when reviewing changes, or whether the committee's suggestions were in fact implemented.

b. Assigning work

The Employer did not establish that sergeants, when acting as watch commanders, exercise independent judgment when assigning field supervisors to patrol calls. The Employer did not provide evidence on how the watch commander makes this decision or whether it involves a consistent choice between two or more significant courses of action. City of Freeport, 135 Ill. 2d at 521.

The Employer also did not establish that sergeants exercise independent judgment when assigning patrol officers to geographic areas. The sergeants assign officers to areas randomly and sometimes based on the officer's preferences for working in particular areas or with particular individuals. Assignments based on routine factors are not indicative of supervisory direction. County of Vermillion, 18 PERI ¶2050 (IL LRB-SP 2002). Further, the assignments are not indicative of supervisory authority because they are subject to broad review by Operations Commander Guiliani. City of Freeport, 135 Ill.2d 499. Guiliani has changed the shift logs without the sergeant's knowledge, ordered the sergeants to change the assignments, and admonished a sergeant for allowing patrol officers to leave their assigned areas. The Employer also did not present evidence that sergeants exercise independent discretion in deciding whether to use additional patrol cars for traffic or police calls. The evidence merely

showed that Operations Commander Guiliani ordered that the additional cars should be used for traffic calls, unless there is a directive from him or a sergeant to use them for a different purpose. The evidence did not reveal that sergeants make a consistent choice between two or more significant courses of action when deciding whether the additional cars should be used for a purpose other than traffic calls.

c. Scheduling work hours, approving leave requests

The sergeants do not exercise supervisory authority to direct when they schedule overtime, approve the switching of shifts, or approve leave requests. Sergeants base their decisions on minimum staffing requirements, considerations of seniority, and in accordance with the patrol officers' collective bargaining agreement. Village of Morton Grove, 23 PERI ¶72 (IL SLRB 2007) (overtime decisions based on department policy are routine and clerical in nature); Village of Broadview, 402 Ill. App. 3d 503 (1st Dist. 2010) (leave decisions constrained by seniority and pre-determined staffing requirements do not establish supervisory authority). Thus, the Employer has failed to show that sergeants have the supervisory authority to direct when they schedule work hours and approve leave requests.

d. Training

Sergeant Barker does not exercise the supervisory authority to direct when performing his duties as range master. Training can be evidence of the supervisory authority to direct, if the supervisor is choosing between discipline or training. State of Illinois, Department of Central Management Services (Department of Human Services), 26 PERI ¶116 (IL LRB-SP 2010). Here, there is no evidence that the training is conducted in place of discipline. All sworn personnel must complete the training. Further, Sergeant Barker cannot discipline, suspend, or discharge an officer if he or she fails to pass the test. In addition, patrol officers have not

suffered any loss in pay because they did not pass the test. Thus, the Employer has failed to show that Sergeant Barker has the supervisory authority to direct when he conducts weapons trainings.

e. Performance evaluations

The sergeants do not exercise the supervisory authority to direct when they conduct performance evaluations. Performance evaluations that have only a limited or no role in determining pay or employment status do not constitute direction. State of Illinois, Department of Central Management Services, 12 PERI ¶2032 (IL SLRB 1996); Village of Elk Grove Village, 245 Ill. App. 3d. 109. Here, there was no evidence that evaluations have any effect on pay. Further, evaluation scores are considered in promotions, but they make up only a small percentage of the overall score. Therefore, sergeants neither possess nor exercise the supervisory authority to direct when they conduct performance evaluations.

The Employer has established that the sergeants direct within the meaning of the Act based on their reviewing police reports, monitoring patrol officers, and instructing patrol officers on how work is to be performed. However, employees cannot be found to be supervisors based solely on their ability to direct, unless they also have significant discretionary authority to affect their subordinates' employment in areas likely to fall within the scope of union representation, such as hire, promotion, transfer, or discipline. State of Illinois, Department of Central Management Services (State Police) v. Illinois Labor Relations Board, 382 Ill. App. 3d 208, 224 (4th Dist. 2008); County of Lake, 16 PERI ¶2036 (IL SLRB 2000); City of Bloomington, 13 PERI ¶2041 (IL SLRB 1997); City of Sparta, 9 PERI ¶2029. In this case, the Employer has presented insufficient evidence to establish that the sergeants have significant discretionary authority to transfer, promote, reward, discipline, adjust grievances, or effectively recommend

the same. Therefore, the sergeants' authority to direct is not supervisory authority within the meaning of the Act.

#### **V. CONCLUSIONS OF LAW**

I find that the petitioned-for employees are not supervisors as defined by Section 3(r) of the Act.

#### **VI. RECOMMENDED ORDER**

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, Policemen's Benevolent Labor Committee shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

**INCLUDED:** All full-time sworn peace officers in the rank of Sergeant assigned to the Patrol and Traffic Divisions employed by the City of Chicago Heights.

**EXCLUDED:** Chief of Detectives/Investigations (Sergeant Tommy Rogers), Administrative Commander (Sergeant Andrew Robustelli), and all managerial, supervisory, and confidential employees excluded by the Act, and all other Police Department employees and all other employees employed by the City of Chicago Heights.

#### **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 the Board's General Counsel 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 Springfield, Illinois, this 13th day of January, 2012.**

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

  
**Michelle N. Owen**  
**Administrative Law Judge**

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

Policemen's Benevolent Labor Committee,

Petitioner

and

City of Chicago Heights,

Employer.

Case No. S-RC-11-009

DATE OF  
MAILING: January 13, 2012

**AFFIDAVIT OF SERVICE**

I, Lori Novak, on oath, state that I have served the attached **ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER** issued in the above-captioned case on each of the parties listed herein below by depositing, before 1:30 p.m., on the date listed above, copies thereof in the United States mail pickup at One Natural Resources Way, Lower Level Mail Room, Springfield, Illinois, addressed as indicated and with postage prepaid for first class mail.

Shane Voyles  
Policemen's Benevolent Labor Committee  
435 W. Washington Street  
Springfield, IL 62702

Holly Tomchey  
Del Galdo Law Group  
1441 South Harlem Avenue  
Berwyn, IL 60402



\_\_\_\_\_  
Lori Novak

**SUBSCRIBED** and **SWORN** to  
before me, January 13, 2012

  
NOTARY PUBLIC

