STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Illinois Council of Police and Sheriffs, Local 7, AFL-CIO,	)	
Petitioner	)	
and	)	Case No. S-RC-12-019
Northeastern Illinois University,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On September 21, 2011, the Illinois Council of Police (Petitioner or Union), filed a majority interest petition in Case No. S-RC-12-019 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. Adm. Code, Parts 1200 through 1240 (Rules). This petition seeks to include the title of sergeant with the Northeastern Illinois University Police Department in a bargaining unit consisting only of the sergeants at issue. The Employer, the Board of Trustees of Northeastern Illinois University (Employer or NEIU), objects to the representation of these employees.

A hearing was held on January 17 and 18, February 8, and March 6, 2012, before Administrative Law Judge Eileen Bell at the Board's offices in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, introduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 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 Employer is a public employer within the meaning of Section 3(o) of the Act.
4. The parties stipulate, and I find, that the issue for hearing in this case is whether any or all of the four sergeants at issue meet the supervisory exclusion and are public employees within the meaning of the Act.
5. The parties stipulate, and I find, that, should I find that any of the sergeants are public employees within the meaning of the Act, the proposed bargaining unit is appropriate.

II. ISSUES AND CONTENTIONS

The central issue to be resolved is whether the petitioned-for employees are supervisors within the meaning of Section 3(r) of the Act. The Employer contends that these employees are supervisors within the meaning of the Act and therefore are not public employees under the Act. The Union contends that the record does not support the Employer's contention and that the petitioned-for employees are public employees as defined by the Act.

III. FINDINGS OF FACT

Approximately 12,000 students attend Northeastern Illinois University (NEIU), which has a main campus as well as several satellite campuses. The police department at NEIU is responsible for law enforcement, security, key control, and emergency management for the

University and satellite campuses[1]. Broadly, the police department is responsible for ensuring the safety and security of campus students, faculty, staff, and visitors.

Chief James Lyon, Jr., is the chief of police for NEIU. At the time of hearing, Chief Lyon had held that position for over six years. He is the chief law enforcement officer for the University and is responsible for the police department. More specifically, the chief is responsible for hiring and recruitment of officers, supervision of officers, and providing leadership to ensure that the department is fulfilling its mission.

The police department maintains twenty-four hour per day operations with three shifts, running from 11:00 p.m. to 7:00 a.m., 7:00 a.m. to 3:00 p.m., and 3:00 p.m. to 11:00 p.m. The department employs approximately 25 sworn officers. There are approximately 16 sworn employees who hold the classification of Police Officer 1 (police officer). The police officers are represented by the Metropolitan Alliance of Police (MAP). At the time of hearing, there were four sergeants employed by the department: David DeClet, Brandon Fields, John Martin Foley, and John Shulz. At the time of hearing, the department also employed two lieutenants, Moore and Kruszynski. As operations lieutenant, Moore is responsible for the day-to-day operations of the department, including patrol. As administrative lieutenant, Kruszynski is responsible for administrative functions of the organization. The department utilizes a paramilitary chain of command structure.

Sergeants act as watch commanders of the shifts, or watches. As such, they have authority to oversee the watch to which they are assigned. If no sergeants are on duty on a particular shift, the most senior officer on duty is temporarily assigned as acting watch commander in the absence of the sergeants. Sergeants have oversight for all officers and

[1] One of the satellite campuses, CCICS, no longer operates with a sergeant assigned to this location. Therefore, work formerly performed at this location by a sergeant is no longer relevant, as Sergeant DeClet recommended and the Chief accepted the recommendation to eliminate the use of sergeants at this location.

telecommunicators assigned to their watches. Sergeants report to Lieutenant Moore, and Moore reports directly to Chief Lyon. Lyon testified that the chain of command is important within the department to ensure proper communication and appropriate span of supervision for the personnel within the organization.

Lieutenant India Moore provided specific evidence about the duties of sergeants and officers within the department. She began working at the department as a telecommunicator in 1999. She became a police officer in 2002. As a police officer, Moore reported directly to the sergeants in the department. In 2008, Moore was promoted to sergeant in the department. As a sergeant, Moore oversaw a shift of subordinates and monitored their daily activities.

While serving as a sergeant, Moore assisted subordinate officers with traffic stops and would determine whether an arrest was warranted. Moore also had discretion to decide when to intervene in a traffic stop or assist a police officer with a stop or arrest. Moore would consider a particular officer's performance and experience in determining whether she needed to assist or direct that officer in a certain circumstance. Moore testified that, as a sergeant, she had complete discretion over roll call, shift assignments, and discipline up to a written reprimand. If discipline was warranted for one of Moore's subordinates, Moore would gather the information regarding the incident, document the incident, and speak with her superior, the operations lieutenant, to advise him about the incident in order to maintain communication within the ranks of the department and, at times, to have the lieutenant look over her documentation. If a counseling, oral reprimand, or written reprimand would be given, Moore would make that decision and did not need approval of her superior. If a higher level of discipline was warranted, Moore would not have discretion over that decision. Moore testified that she did, on perhaps one occasion, change the level of discipline pursuant to advice from her superior. It appears that this type of

change is infrequent, and Moore testified that, as a lieutenant, it is rare that she has directed a sergeant to change a level of discipline.

As a sergeant, Moore was also responsible for scheduling and overtime assignments for two of the campuses in compliance with the seniority requirements of the applicable collective bargaining agreement. Moore was also responsible for determining whether overtime is necessary and for scheduling opportunities to work overtime for special events at NEIU. Moore also testified that these activities are still performed in the same way within the department and that the sergeants can decide when and how to do these tasks. As a sergeant, Moore also performed some internal investigations, and she could recommend training as a result of these investigations. Moore served as a sergeant for a year before she was promoted to lieutenant.

As operations lieutenant, Moore is now responsible for the department's patrol functions, including telecommunication. Moore directly supervises the sergeants, who oversee the police officers. Sergeants consult with Moore regarding scheduling or overtime issues that may cause a union grievance, but generally they have discretion over these matters. Sergeants may recommend training for officers but cannot transfer subordinates between shifts due to shift preference requirements of the applicable collective bargaining agreements.

Sergeants are also responsible for maintaining minimum staffing levels on their shifts, and for taking action to remedy the situation if the minimum staffing level is not met. When a shift is not fully staffed by officers, a sergeant can decide whether to fill in for the officer or whether to distribute the work among the officers that are present. Sergeants also have complete discretion to assign beats and traffic enforcement details within the shifts. The department has four beats, two of which are vehicle beats and two of which are foot patrol beats. If a sergeant has five police officers on a particular shift, that sergeant can decide how to utilize the one

officer that will not be assigned to one of the four beats. To an extent, the beats are typically rotated, but the sergeant has discretion to assign the beats to the officers.

As operations lieutenant, Moore created the NEIU Police daily operations manual.[2] The operations manual requires that officers be held responsible for tardiness, enforcement of which is the responsibility of sergeants. Sergeants also assign vehicles to officers in conjunction with the monthly schedule created by the operations lieutenant and determine which officer is assigned to which vehicle. Sergeants have authority to allow police officers on foot patrol to utilize a vehicle to go to lunch, do errands, and the like. Sergeants direct the telecommunicators to give particular instructions to the police officers, and they have discretion to require officers to stay past the end of their shift to complete paperwork or duties. Sergeants are responsible for monitoring and reviewing citations written by the police officers and are also authorized to give police officers approval to initiate the felony review process for more serious offenses.

At the beginning of a shift, the sergeant assigned to that shift conducts roll call, gives assignments to the police officers, and provides updates on special events and details. The police officer employees are responsible for performing foot and vehicle patrol, ensuring safety and security of the University environment, promoting education, and responding to emergencies and suspicious activities. They are also responsible for complying with policies and procedures as well as directives and assignments given by the sergeants. Sergeants require police officers to conduct reports based on department criteria, and the sergeants approve these reports. Sergeants also require and oversee follow-up investigations by police officers.

In terms of patrol, police officers have some discretion as to how to patrol within their zones, but they are generally required to remain within those zones. In order to return to the

[2] At the time of hearing, the sergeants had recently been involved in writing and revising the department's policies.

office from patrol, police officers need to get authorization from their sergeant or the telecommunicator. Police officers are assigned incidents for investigation by the telecommunicator, and they then investigate each situation in order to formulate a report on the incident. If follow-up investigations are required, police officers share the information regarding the investigation with their sergeant/watch commander, who then advises the police officers on the next steps in processing the investigation. Police officers may undertake field investigations of situations on their own initiative, but formal investigations must be approved by a supervisor. If a police officer brings charges against a suspect, that officer must work with the State's Attorney's office with approval by the officer's sergeant or other supervisor. Sergeants may conduct interviews with suspects without approval, but police officers must have a supervisor's approval to do so. Police officers who have been trained as field training officers may be assigned a trainee by a lieutenant.

Sergeants are expected to use decision-making judgment in determining proper procedures in terms of the policies and laws governing the department. At times, if the chief and lieutenants are not present, the sergeant on duty is the highest level of authority for the department.

In terms of discipline, the chief, lieutenants, and sergeants have authority to issue discipline in the form of letters of reprimand. Discipline above a letter of reprimand is issued from the director of human resources upon recommendation from the chief. Sergeants do not need approval to discipline police officers or telecommunicators by way of a written reprimand. Discipline must be consistent with department policy as well as any applicable collective bargaining agreement. The department utilizes progressive levels of discipline, starting with a counseling or "coaching", moving to an oral reprimand, written reprimand, suspension, and

termination. Recommendations for suspension or termination must be forwarded to the human resources department according to the State University Civil Service process. Sergeants have issued discipline in the past in the forms of oral and written reprimands, and they have used discretion in so doing.

On a day-to-day basis, the sergeants monitor and correct the performance of their subordinates. Sergeants are responsible for ensuring that the duties of the police officers and telecommunicators are conducted in compliance with policy, procedure, and applicable law. To this end, they perform annual evaluations of their subordinates. Sergeants evaluate probationary employees on a more frequent basis. Sergeants do not need approval to conduct these evaluations. They are then reviewed by the sergeants' supervisors, after which they are sent to the department of human resources. Lieutenant Moore testified that she sometimes makes comments on or suggests additions to the evaluations, but that she does not change the ratings made by the sergeants.

Sergeants are ultimately responsible for the conduct of investigations and collection of evidence arising during their watches, and they assign work to police officers pursuant to those investigations. They also directly oversee the conduct of the police officers in investigating and collecting evidence. Furthermore, sergeants can recommend their subordinates for commendations from the department, and they are responsible for discussing career goals and planning with their subordinates. Sergeants coach and counsel officers and telecommunicators regarding their performance and compliance with the orders and policies.

Sergeants are responsible for serving as incident commanders on the scenes of emergency situations. Sergeants are also responsible for evaluating the arrests made by the police officers to determine whether they are appropriate and whether the subjects will be detained or jailed.

Moreover, it is the duty of sergeants to inspect the uniforms of subordinate police officers to ensure that they are wearing the appropriate equipment, inspecting the work product of officers, and checking officers' performance. The sergeants have wide discretion in conducting such inspections. With regard to uniforms, sergeants' uniforms are different from their subordinates' uniforms in that sergeants have chevron patches on their sleeves as well as gold stars and name tags.

Sergeants investigate citizen complaints regarding subordinates and can require information from the subordinate or subordinates involved in the complaint. Sergeants have also been involved in the process of interviewing and hiring new candidates for open sergeant positions, wherein they provided written and oral feedback and recommendations on the candidates.

Sergeant DeClet has been a sergeant since February 1, 2010. He testified at hearing that Lieutenant Moore has stressed uniformity between watches. Sergeant DeClet further testified that sergeants decide whether a leave, vacation, or compensatory time request can be granted based on staffing levels for the shift or whether others have already requested time off for the same time period. If a leave request will result in a shortage on the shift, DeClet testified that he would have to contact the lieutenant to determine whether the chief would approve filling the absence left by the request. This process is similar for telecommunicators, although their requests are generally required to be submitted weeks to months in advance of the time off they intend to use.

In drafting responses for a University salary survey of non-union employees, Sergeant DeClet indicated that his job duties included serving as immediate supervisor for subordinates, performing evaluations, and assigning beats to officers. Moore made additions and corrections

to this draft, noting that Sergeant DeClet uses discretion performing many of his duties and that he had issued discipline in the past. Moore also made corrections and additions to the draft of the survey by Sergeant Foley, and she testified in support of those corrections, noting that Foley uses discretion in his job duties, sets goals and objectives for subordinates, assigns work, and establishes standard procedures for his shift.

DeClet testified that, with regard to evaluations, he meets with his lieutenant to review each employee before he completes the evaluation form, and that he reviews the evaluation with the lieutenant twice more before the process is completed. Even so, DeClet could only identify one instance where the lieutenant directed him to make a change to the evaluation. DeClet also testified that sergeants have a role in overseeing the training process conducted by the field training officer.

DeClet testified that sergeants engage in informal discipline of their subordinates, such as directing a subordinate to comply with the seat belt policy. DeClet also testified that he merely recommends discipline, and that certain instances of inappropriate behavior that he forwarded to his superiors resulted in no discipline to the individuals involved. With regard to one instance, DeClet alleged that one of the lieutenants directed him to write up a recommendation for discipline for an officer who worked at one of the satellite campuses, but that no discipline was issued to the officer. DeClet took issue in his testimony with the use of the word "supervise" in his official job description, stating that his role was more to "oversee" the officers on his shift, a term that he defined, in part, as helping officers make the right decisions about their work. He also disputed the percentages of time spent in each category from the job description, stating that, with regard to performing police officer job duties, the percentage should be closer to 70%, while the percentages on other categories should be lower. DeClet did not dispute the job duties

in the section of the job description regarding planning and scheduling, including review and approval of time off requests, maintaining appropriate coverage of officers, and planning for tactical matters.

IV. DISCUSSION AND ANALYSIS

The Employer asserts that the sergeants are supervisors within the meaning of Section 3(r) of the Act.[3] Under that Section, petitioned-for police employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the Employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, and (3) consistently exercise independent judgment in exercising supervisory authority. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 162 (1990); Village of New Lenox, 23 PERI ¶104 (IL LRB-SP 2007); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003); Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). The party which seeks to exclude an individual from a proposed bargaining unit has the burden of proving that statutory exclusion by a preponderance of the evidence. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

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[3] Section 3(r) of the Act states, in relevant part:

> "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.

Principal Work Requirement

In determining whether the principal work requirement has been met, the initial consideration is whether the work of the alleged supervisor and that of his or her subordinates is obviously and visibly different. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Northwest Mosquito Abatement District, 13 PERI ¶2042 (IL SLRB 1997), aff'd. 303 Ill. App. 3d 735, 708 N.E.2d 548 (1st Dist. 1999). If that work is obviously and visibly different, the principal work requirement is met. Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162. However, in other cases, where the alleged supervisor performs functions facially similar to those of his or her subordinates, the Board has looked at what the alleged supervisor actually does to determine whether the "nature and essence" of his or her work is substantially different from that of his or her subordinates. See Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Village of Alsip, 2 PERI ¶2038 (IL SLRB 1986); City of Burbank, 1 PERI ¶2008 (IL SLRB 1985).

The Petitioner alleges that the work of the sergeants is not substantially different from that of their subordinates. In this case, the work of sergeants appears to be, in many cases, facially similar to that of the police officers. Although the sergeants do perform many of the same tasks as the police officers and may even spend a substantial amount of their work time on such tasks, the nature and essence of their work is markedly different. Sergeants consistently function at a higher level of responsibility and decision-making than police officers, and they are responsible for oversight of the job duties performed by the police officers as well as for running shifts. While they may indeed perform police work along with the police officers, the evidence demonstrates that the essence of the sergeants' work is that of oversight, coordination, and shift management of the police officers. Therefore, I find that their principal work is substantially different than that of their subordinates.

Supervisory Indicia and Independent Judgment

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature or be made merely on the basis of the alleged supervisor's superior skill, experience, or knowledge. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007. An effective recommendation satisfying the Act's supervisor requirements is one that is almost always adopted by the employee's superiors. Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011).

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[4] See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central

[4]There is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 342 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB, State Panel, 2011 IL App 4th 090966 (4th Dist. September 28, 2011) (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB, State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" perform the tasks with significant discretionary authority). The First and Third Districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that, while important, rules and regulations or job descriptions therein are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508 (1st Dist. 2010); City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

Management Services (PSA Option 1), 25 PERI ¶184 (IL LRB-SP 2009); County of Union, 20 PERI ¶9 (IL LRB-SP 2003); Northern Illinois University (Department of Safety), 17 PERI ¶2005 (IL LRB-SP 2000). Furthermore, a party asserting a statutory exclusion cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Instead, the Board requires that a party support its arguments with specific examples of the alleged supervisory, managerial, or confidential status. State of Illinois, Department of Central Management Services (Department of Public Health), 24 PERI ¶112 (IL LRB-SP 2008); County of Union, 20 PERI ¶9. Notwithstanding these considerations, a single indicium of supervisory authority (of 11 possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 529, 607 N.E.2d at 192. In this case, the evidence presented establishes that the sergeants do perform more than one of the supervisory indicia using independent judgment.

i. Direct

The indicium "direct" includes a variety of job functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees' pay or employment status. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶123 (IL SLRB 2003); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022 (IL LLRB 1999); City of Naperville, 8 PERI ¶2016 (IL SLRB 1992). In order to constitute "direction" within the meaning of the Act, an employee's responsibility for his or her subordinates' work performance must also involve discretionary authority that affects the subordinates' terms and conditions of

employment. County of Cook, 28 PERI ¶85 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 25 PERI ¶186 (IL LRB-SP 2009).

In the instant case, the record demonstrates that the sergeants do perform the supervisory indicium of directing employees with independent judgment. Moreover, it appears from the record that they largely perform these functions without consulting a supervisor in order to obtain approval or review.

Ultimately, the sergeants are responsible for ensuring that the work of their subordinate officers is completed in compliance with the rules and regulations of the department. They assign beats and vehicles, and they must decide the most effective way to assign and distribute the work of the officers in order to accomplish departmental objectives and duties. Sergeants have discretion to allow officers to use department vehicles to go to lunch, run errands, and the like. Sergeants are also responsible for determining operational needs in assigning work to subordinates as well as in granting or denying requests for leave. In doing so, they direct the work of subordinate employees. While the specific patrol beats on campus are predefined and beats are typically rotated, sergeants are responsible for assigning these beats to the officers in order to provide the best coverage and protection possible for the University. The sergeants also have authority to inspect the uniforms of their subordinates and to direct subordinates to bring their uniforms into compliance with the rules and regulations of the department if necessary.

Indeed, where an employee considers "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 needs" without review by a supervisor, that employee engages in assigning work with independent judgment. County of Cook, 15 PERI ¶3022 (IL LLRB 1999). The record demonstrates that this is precisely the type of activity in which sergeants engage with

regard to assignment of work. The Board has held that, where assignments and approval of time off are contingent only upon minimum staffing levels, such actions are not performed with independent judgment. See, e.g., Village of Oak Brook, 26 PERI ¶7 (IL LRB-SP 2010); Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 511-512 (1st Dist. 2010). Here, although sergeants must consider minimum staffing, the testimony showed that the concept of how the staffing levels are achieved is flexible and chiefly within the discretion of the sergeants. For instance, sergeants have discretion to determine whether they will assign a police officer to a beat or to patrol that beat personally in the absence of an officer. Furthermore, as the sergeants are often the highest-ranking member of the division on duty on a shift, they are in the best position to judge what assignments need to be made to effectively carry out the work of the department. Therefore, it is evident that the sergeants have and use discretion in assigning work.

Moreover, the sergeants monitor, instruct, and assist their subordinates in the performance of their job duties. Testimony shows that the sergeants assist their subordinates with their work, instruct subordinates on how to properly complete work or respond to particular situations, and monitor their work to ensure that they are performing it properly. Even Sergeant DeClet's testimony indicates that he views his role, in part, as one of helping subordinates to make the right decisions about their work. This is the very essence of assisting and instructing a subordinate employee.

Similarly, the sergeants are responsible for reviewing and directing corrections to the reports written by their subordinates regarding incidents that occur at the University. In addition, the sergeants are responsible for directing the actions of their subordinates in response to crime scenes, investigations, and arrests stemming from incidents on the campuses. Indeed, sergeants are responsible for monitoring and reviewing citations written by the police officers and are also

authorized to give police officers approval to initiate the felony review process for more serious offenses. While certain components of this direction are based on the skills and experience of the sergeants, the record shows that they also use independent judgment in performing aspects of this function.

The fact that the sergeants may, at times, be monitoring the work performance of their subordinates as measured against directives of the department does not take away from the fact that they are exercising discretion and independent judgment when they instruct their subordinates, assist them in performing their duties, and monitor their work. Where a supervisor has an active role in "checking, correcting, and giving instructions to subordinates" and "assesses his subordinates' performance and behavior to ensure compliance with departmental norms," this is evidence of directing subordinates with independent judgment. County of Cook, 15 PERI ¶3022, citing City of Chicago, 10 PERI ¶3017 (IL LLRB 1994); City of Lincoln, 5 PERI ¶2041 (IL SLRB 1988). In addition, the Board has found that reviewing subordinates' work and monitoring and instructing subordinates in the field are examples of directing the work of subordinates. City of Chicago (Department of Public Health), 17 PERI ¶3016 (IL LRB-LP 2001). The record reflects that this is precisely the type of activity in which sergeants engage with regard to monitoring, reviewing, and instructing the work of their subordinates.

The sergeants are responsible for approving time off requests for their subordinates, and they must evaluate staffing levels and operational needs in so doing. The sergeants are responsible for approving or denying time off based on operational needs of the department, such as maintaining staffing levels during times when other officers may have already asked for that same period of time off. Moreover, the sergeants exercise independent judgment in evaluating subordinate personnel. The evidence demonstrates that the sergeants are in the best position to

evaluate the police officers and telecommunicators and that their ratings of these individuals are rarely changed by upper command in the department. Therefore, their recommendations in this area are also effective recommendations as they are usually accepted.

For the foregoing reasons, the Employer has demonstrated that the sergeants direct subordinates using independent judgment and discretion as required by the Act.

ii. Discipline

Sergeants have authority to discipline their subordinates if they perceive that an individual has a performance or behavioral deficiency. The record demonstrates that sergeants have authority to counsel a subordinate and give oral or written reprimands without seeking approval from their superiors. These include the types of disciplinary action that have been found to satisfy the requirements of the Act. See, e.g., City of Freeport, 135 Ill. 2d at 518-519; Village of Glen Carbon, 8 PERI ¶2025 (ILRB 1992). Higher levels of discipline are issued by the University's human resources staff upon recommendation by the Chief. Moreover, the record demonstrates that sergeants have initiated and issued discipline in the past. Discipline must be consistent with department policy as well as any applicable collective bargaining agreement, but sergeants can determine within that context whether particular behavior warrants disciplinary action. Sergeants have issued discipline in the past in the forms of oral and written reprimands, and they have used discretion in so doing. The record reflects that there are a limited number of examples in which a sergeant has recommended discipline for a subordinate and no discipline has been issued by the department. However, some level of discipline is usually issued to the subordinate when recommended by a sergeant.

A recommendation is not ineffective "simply because it is not rubber-stamped." City of Peru v. ISLRB, 167 Ill. App. 3d 284, 290 (3d Dist. 1988). Moreover, the fact that the specific

level of discipline may not always remain the same does not render the recommendations ineffective so long as a form of discipline is imposed per the recommendation of the sergeant. See City of Chicago (Department of Public Health), 17 PERI ¶3016. As the testimony indicates, in most cases, when a sergeant recommends discipline, a form of discipline is issued to the subordinate, making these recommendations effective. Indeed, Lieutenant Moore confirmed that it was a rare occurrence for her to reject discipline issued by a sergeant. Therefore, I find that the sergeants have authority to discipline using independent judgment as defined by the Act.

iii. The remaining indicia

With regard to the other supervisory indicia, the record shows that the sergeants do not hire, transfer, reward, promote, adjust grievances, or effectively recommend any of the remaining indicia of supervisory authority using independent judgment of the kind that would satisfy the requirements of the Act. While sergeants have had some input in hiring decisions in the past, their role in this process does not appear to be one of exercising independent judgment. Moreover, sergeants do not have authority to transfer subordinates outside contractually mandated processes. Sergeants can recommend departmental commendations for subordinates, but do not appear to have any independent authority to reward subordinates.

Notwithstanding these considerations and because the Employer has submitted evidence showing that the sergeants direct the work of subordinates and make effective recommendations on discipline using independent judgment, I find that the second and third prongs of the supervisory test are satisfied.

V. CONCLUSIONS OF LAW

I find that the Employer has demonstrated that the sergeants are supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the majority interest petition to represent the sergeants in the police division of Northeastern Illinois University as filed by the Illinois Council of Police, is denied.

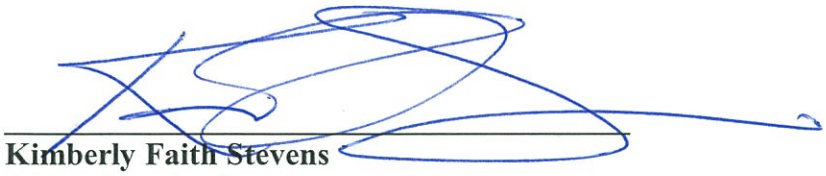
VII. EXCEPTIONS

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 General Counsel of the Illinois Labor Relations Board, 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 9th day of May, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Kimberly Faith Stevens
Administrative Law Judge