STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Laborers, Local 477,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-12-042
	)	
Village of Williamsville,	)	
	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On February 15, 2012, Laborers, Local 477 (Petitioner) filed a majority interest petition in Case No. S-RC-12-042 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). This petition seeks to create a unit that includes all full-time "police officers" employed by the Village of Williamsville (Employer or Village).[1]

A hearing was held on May 22, 2012 before the undersigned Administrative Law Judge in Springfield, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce 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.

[1] The record indicates that this petitioned-for unit of "police officers" includes the Employer's sergeant and patrol officer titles. The unit description filed by the Petitioner merely excludes the Employer's chief of police.

I. PRELIMINARY FINDINGS

1. The parties stipulate, and I find, that the Board has jurisdiction to hear this matter pursuant to Sections 5 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 Employer's sergeant and patrol officers are peace officers within the meaning of Section 3(k) of the Act.
5. The parties stipulate, and I find, that Patrol Officer David Smith is a public employee within the meaning of the Act.

II. ISSUES AND CONTENTIONS

The central issue to be resolved is whether the police department's sergeant is a supervisor within the meaning of Section 3(r) of the Act. The Employer contends that this sergeant is a supervisor within the meaning of the Act and therefore is not eligible to be a part of a bargaining unit with the Village's patrol officers. The Petitioner contends that the record does not support the Employer's contention and that the petitioned-for sergeant is a public employee as defined by the Act.

III. FINDINGS OF FACT

When instant petition was filed, the Village of Williamsville's police department employed Chief Richard Edwards, Sergeant Nathan Scott, and Patrol Officer David Smith. A

second patrol officer was hired on May 14, 2012. However, at the time of the hearing, this new employee was still considered a probationary employee.

The police department's sergeant and patrol officers similarly conduct patrols, enforce traffic regulations, and handle calls for service. However, Sergeant Scott has performed some work which apparently has not been performed by the patrol officers. For example, Sergeant Scott, unlike Patrol Officer Smith, uniquely submits racial profile data to the State of Illinois and submits other report forms to the Illinois Department of Transportation. Moreover, Sergeant Scott has uniquely detailed and removed the striping from old squad cars to prepare those cars for resale. Also, Sergeant Scott was once directed by Scott Butterfield (the chair of the Village's Public Safety Committee and a member of the Village's Board of Trustees) and Village President Thomas Yokley to generate and send letters to two local gas stations to inform them of the Village's policy concerning giving away gasoline to people with insufficient funds.

Testimony suggests that Chief Edwards and Sergeant Scott are in charge of an evidence room. Sergeant Scott's role specifically consists of looking at evidence that is brought in by a patrol officer, determining what needs to be transferred to the crime lab for processing, and locking up whatever needs to be stored in the evidence vault. Testimony also suggests that Sergeant Scott provided some input when the evidence vault was redone.

According to testimony, when Chief Edwards is on vacation or on leave, Sergeant Scott assumes some of Chief Edwards' duties. More specifically, when Chief Edwards is absent, if a patrol officer is presented with a death in the Village or other emergency, Sergeant Scott is expected to contact Chief Edwards, the mayor of the Village, and a "Public Health and Safety person" and inform them of the situation. Testimony indicates that, when Sergeant Scott is presented with a death in the Village, he is expected to follow a protocol.

Sergeant Scott has never given Patrol Officer Smith a pay increase. Furthermore, Sergeant Scott has never provided input regarding Patrol Officer Smith's pay increases. In addition, Sergeant Scott cannot fire, transfer, suspend, lay off, recall, promote, discipline, or adjust grievances and is not responsible for scheduling or reviewing patrol officers' reports.

On the other hand, testimony indicates that suspensions are generally handled by Village President Yokley and the Village's Board of Trustees. Ultimately, the Village's Board of Trustees also makes all decisions regarding hiring, pay increases, and promotions. Chief Edwards evaluates the performance of Sergeant Scott and Patrol Officer Smith and approves Patrol Officer Smith's time slips and time off (i.e., vacation and personal time) requests. Patrol Officer Smith has only ever been disciplined by Chief Edwards.

IV. DISCUSSION AND ANALYSIS

The Employer asserts that Sergeant Scott is a supervisor within the meaning of Section 3(r) of the Act.[2] 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 eleven indicia of supervisory authority enumerated in the Act, and (3) consistently exercise independent judgment

[2] 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.

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).

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).

Although Sergeant Scott and Patrol Officer Smith work opposite schedules, the record largely suggests that Sergeant Scott and Patrol Officer Smith routinely perform the same principal duties (i.e., conducting patrols, enforcing traffic regulations, and handling calls for

service).[3] To this extent, I find that Sergeant Scott's principal work is not "obviously and visibly different" than that of Patrol Officer Smith. Admittedly, Sergeant Scott appears to have uniquely performed certain secondary tasks. However, I find that the few unconnected examples provided do not convincingly demonstrate that the "nature and essence" of Sergeant Scott's work is consistently or appreciably different than that of Patrol Agent Smith. Moreover, these secondary tasks do not appear to evidence Sergeant Scott's principal work. Because this analysis is intended to establish a qualitative comparison of the "principle work" of the alleged supervisor and his or her subordinates, I find, on balance, that the Employer has failed to meet the first prong of the statutory test. See Village of Wheeling v. Illinois State Labor Relations Board, 170 Ill. App. 3d 934, 945, 524 N.E.2d 958, 966 (1st Dist. 1988).

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 eleven indicia of supervisory authority listed in the Act 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; Justice, 17 PERI ¶2007. An effective recommendation satisfying the Act's supervisor requirements is one that is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent

[3] Indeed, the Employer's post-hearing brief acknowledges that Sergeant Scott presently spends the majority of his time performing duties similar to those performed by a patrol officer.

review. City of Peru v. Illinois State Labor Relations Board, 167 Ill. App. 3d 284, 289, 521 N.E.2d 108, 112 (3rd Dist. 1988); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994); Justice, 17 PERI ¶2007.

Notably, in its post-hearing brief, the Employer does not articulate or allege with specificity which, if any, of the eleven indicia of supervisory indicia are performed or effectively recommended by Sergeant Scott. Instead, this brief, in part, generally alludes to evidence (such as a submitted job description and testimony offered by Village President Yokley) which allegedly suggests that Sergeant Scott is the "supervisor" of the patrol officers. However, while such evidence may nominally or generally describe Sergeant Scott as a "supervisor" in a general sense, significantly, it does very little to demonstrate that Sergeant Scott is a supervisor within the narrow meaning of Section 3(r) of the Act.

To explain, job descriptions alone are generally considered insufficient evidence to establish employees' duties or their supervisory status. See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central Management Services, 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, 24 PERI ¶112 (IL LRB-SP 2008); Union, 20 PERI ¶9.

In the instant case, the examples provided in the record clearly do not demonstrate Sergeant Scott's supervisory status. Moreover, to the extent that it is properly considered at all, I

find that the submitted job description is often contradicted or otherwise unsupported by the testimony provided at hearing. At the same time, the record plainly and consistently shows that Sergeant Scott has no authority to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, adjust grievances or effectively recommend any of these indicia of supervisory authority.

The Employer's post-hearing brief also references testimony which vaguely indicates that, when Chief Edwards is not present, Sergeant Scott is "in charge of the Village's day-to-day operations."[4] However, no supporting testimony or other evidence provides a meaningful explanation of what these operations entail, defines what being "in charge of" these operations really means, or indicates how often this alleged authority is exercised. In addition, the provided examples of Sergeant Scott performing this allegedly supervisory function actually demonstrate the non-supervisory nature of Sergeant Scott's position.

As noted above, when a patrol officer presents Sergeant Scott with a serious issue while Chief Edwards is absent, Sergeant Scott appears to simply inform his superiors of the situation according to protocol. This type of automatic response is not easily linked with any of the Act's supervisory indicia and hardly demonstrates the consistent exercise of independent judgment.[5] Likewise, the mere issuance of letters in accordance with superiors' directions plainly does not demonstrate supervisory authority within the meaning of the Act.

Indeed, a single indicium of supervisory authority (of eleven possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal

[4] The Employer also asserts that, if Chief Edwards resigned or was terminated, Sergeant Scott would be left to run the police department. However, I find that this assertion is not necessarily supported by the record.

[5] Similarly, the Employer's post-hearing brief notes that Sergeant Scott is in charge of an evidence room. However, the Employer has plainly failed to connect this alleged authority to any of the Act's supervisory indicia or demonstrate that this authority requires the use of independent judgment.

Employees, Council 31, 153 Ill. 2d at 529, 607 N.E.2d at 192. Nevertheless, the Employer has altogether failed to present evidence of such an indicium in this instance. Accordingly, I must find that the Employer has failed to demonstrate that the police department's sergeant is a supervisor within the meaning of Section 3(r) of the Act.

V. CONCLUSIONS OF LAW

I find that Sergeant Nathan Scott is not a supervisor as defined by Section 3(r) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the Village of Williamsville's sergeant and patrol officer titles be included in the petitioned-for unit.

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 16th day of July, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe

Martin Kehoe
Administrative Law Judge

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

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Petitioner	)	
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	)	
Village of Williamsville,	)	
	)	
Employer	)	
		DATE OF MAILING: **July 16, 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.

Rodney L. Masterson
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Randall W. Segatto
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Lori Novak
Lori Novak

SUBSCRIBED and **SWORN** to
before me, **July 16, 2012**

Jodi M Marr
NOTARY PUBLIC

OFFICIAL SEAL
JODI M. MARR
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 8-30-2014