STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County, And Municipal Employees, Council 31,	)	
Petitioner	)	
and	)	Case No. S-RC-12-046
City of Columbia (Emergency Medical Services),	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On February 24, 2012, American Federation of State, County, and Municipal Employees, Council 31 (Petitioner or Union), filed a majority interest petition in Case No. S-RC-13-046 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 include all full-time and regular part-time employees of the City of Columbia in the titles of emergency medical technician (EMT) and paramedic. The Employer objects to the representation of these employees.

A hearing was held on June 19, 2012, before Administrative Law Judge Michelle Owen at the Board's offices in Springfield, 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-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 is a unit of local government subject to the jurisdiction of the Board's State Panel pursuant to Section 5(a-5) of the Act.

5. The parties stipulate, and I find, that the Employer is a unit of local government subject to the Act pursuant to Section 20(b) of the Act.

6. The parties stipulate, and I find, that Ken Buss, Chief of Emergency Medical Services for the City of Columbia, is a supervisor within the meaning of the Act and is excluded from the petitioned-for unit.

7. The parties stipulate, and I find, that Shannon Bound, Office Manager in the EMS Department for the City of Columbia, does not hold the title of EMT or paramedic, is not part of the petitioned-for unit, and is thereby excluded from the unit.

II. ISSUES AND CONTENTIONS

The Employer presented three issues for hearing. First, the Employer contends that the full-time EMT (Emergency Medical Technician) paramedics with the City, the captains, and the lieutenants, are managerial employees or supervisors within the meaning of Sections 3(j) or 3(r) of the Act. Second, the Employer contends that a unit comprised of EMT "paid volunteers" is

not appropriate. Third, the Employer contends that the full time EMT paramedics and EMT paid volunteers do not share collective interest suitable for collective bargaining in a single unit and therefore alleges that the bargaining unit is inappropriate. 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 and should, as such, be included in the petitioned-for unit.

II. FINDINGS OF FACT

The City of Columbia EMS Department is part of the Southwest Illinois EMS Region IV, which is organized under the authority of the Illinois Department of Public Health. Region IV is one of 11 EMS regions throughout Illinois and covers Bond, Clinton, Fayette, Greene, Macoupin, Madison, Monroe, Randolph, St. Clair, and Washington counties. The City's chief of police, Joseph A. Edwards, is the director of the EMS Department. Ken Buss is the acting chief of the EMS Department; at the time of hearing, Buss was serving on an interim basis as he had submitted his resignation on March 26, 2012. As interim acting chief, Buss testified that he works very few hours and is not present often during the shifts.

The City of Columbia EMS Department, as part of Region IV, operates under a medical control hospital and a physician's license. Columbia EMS operates under Belleville Memorial Hospital's medical control (the medical resource hospital), and it also has a medical control doctor. Medical paramedic procedures are administered by the resource hospital and medical control doctor. Buss stated that the EMS Department operates under a standard operating procedure book and that the licensed EMTs/paramedics are tested every four years to maintain their licenses. All medical skills and patient care are regulated by the resource hospital.

The EMS Department operates 24 hours a day, 7 days a week with two shifts per day, 5:00 a.m to 6:00 p.m. and 6:00 p.m. to 5:00 a.m. The day shift is an 11-hour shift; the night shift

is a 13-hour shift. The EMS Department employs 4 full-time EMTs/paramedics: Captain Jason Sitzes, Lieutenant Gary Hutchinson, Lieutenant Darin Hartman, and Ryan Anderson, who does not hold a rank. The full-time EMTs/paramedics work 24-hour shifts, 10 days per month. The full-time ranked employees, the captains and the two lieutenants, are divided into A, B, and C shifts, which are 24-hour shifts separate from the day and night shifts staffed by the Department. The captain works on the B shift, and the lieutenants work on the A and C shifts. The Department operates three ambulances and one advanced life support supervisor's vehicle. Two of the ambulances are advanced life support vehicles, and one is a basic life support vehicle. There are no more than three calls per shift on average.

The full-time EMT/paramedics ensure that emergency services are provided in conformity with Region IV guidelines. The full-time EMTs/paramedics respond to emergency calls. When on duty and not responding to a call, the full-time employees are expected to perform cleaning and maintenance duties within the EMS station and regarding the vehicles. The full-time EMTs/paramedics are paid by salary. They also receive fringe benefits, including vacation, pension, and insurance.

In addition, Captain Sitzes is responsible for scheduling the full-time and non-full-time EMTs/paramedics. When non-full-time EMTs/paramedics submit the days on which they are available to work for a given month, Captain Sitzes creates the schedule based on this information. Buss testified that Siztes is solely responsible for this function, but Buss approves the schedule to make sure that the schedule is compatible with the budget.

Lieutenant Hutchinson is responsible for training for full-time and non-full-time EMTs/paramedics. He is the field training officer, which is a designation given through the region and medical resource hospital. As field training officer, Hutchinson must score a certain

percentage on standard operating procedure tests and attend certain meetings. In addition, Hutchinson oversees field training of individuals who wish to become paramedics. An individual must initially be licensed as an EMT Basic. Then, that individual can attend paramedic school, and this training includes a number of field training runs. Hutchinson both grades and evaluates their performance during training and provides these reports to the medical resource hospital. When the hospital determines that an individual is sufficiently trained, it will release that individual to take the state examination for licensure as an EMT Paramedic.

Lieutenant Hartman is responsible for assisting the office manager with billing for EMS services. Hartman assists with IT issues, and the office manager has trained him on certain of her duties so that those functions can continue if she is out of the office.

Buss relies on the three shift supervisors, or ranked officers, to provide him with information on the operations of the Department. He communicates with them in person if he is present, or by e-mail, telephone, and text message. The ranked officers in charge of each shift are responsible for making sure that the other individuals on duty are acting in accordance with standard operating procedure of the region and performing work correctly. One of the primary responsibilities of the shift supervisors is to respond to emergency calls. They also oversee the shifts, deal with immediate problems, and bring major problems to the attention of the chief.

The EMS Department also employs 30-35 non-full-time EMTs/paramedics. The Union and the Employer disagree as to what the appropriate term for these individuals should be. The Union contends they should be characterized as "part-time employees", while the Employer characterizes them as "paid volunteers." For purposes of this recommended decision and order, I will refer to these individuals as "non-full-time" EMTs/paramedics.

The non-full-time EMTs/paramedics are paid on an hourly basis. They do not receive vacation days, pensions, or insurance from the Employer. They notify the Department on a monthly basis which shifts they are available to work in the succeeding month. The non-full-time employees are expected to work a minimum of two shifts per month. The non-full-time EMTs/paramedics are issued identification cards as mandated by the State, identifying them as an EMT or paramedic within the EMS Department. Most non-full-time EMTs/paramedics also work as emergency services personnel for employers other than the Employer herein. If they do not sign up for two shifts per month, they may eventually be removed from the schedule or be asked to leave. At that point, they would need to return their issued identification and uniforms.

The EMS Department has a station house with sleeping and living quarters for the use of both the full-time and the non-full-time EMTs/paramedics. The non-full-time EMTs/paramedics are not required to remain at the EMS station between calls, but are asked to stay nearby so that they can still provide a quick response to incoming calls. They are also not allowed to consume alcohol while on duty but away from the station. Both the full-time and non-full-time individuals are subject to discipline.

All EMTs/paramedics that work shifts for the Department are provided with allowance for uniforms, the amount of which is based on their need as determined by the amount of shifts they work. Officers wear gray shirts; those who are not officers wear white or gray shirts; and non-full-time EMTs/paramedics or regular full-time paramedics wear blue shirts. All of the EMTs/paramedics wear pants with pockets and boots. The uniform also includes a winter coat and a "job shirt" that is similar to a sweatshirt. These items are the same for all types of EMTs/paramedics except that the ranked employees have their rank embroidered on the clothing

items along with their name and title, while non-ranked individuals have only their name and title embroidered.

While on a shift, an EMT/paramedic is expected to respond to all calls received by their assigned vehicle. A vehicle may be staffed by two full-time EMTs/paramedics, a full-time and a part-time, or two part-time individuals. If an officer is on a call, that officer is in charge of the vehicle. If two part-time individuals are staffing a vehicle, the senior of the two medics would be in charge. If the vehicle is staffed by a paramedic and an EMT, the paramedic is in charge. If it is staffed by two paramedics, the senior paramedic would be in charge. While on calls, patient treatment by the EMTs/paramedics is governed by standard operating procedures as established by the resource hospital.

Certain training for all EMTs/paramedics is mandated by the Department as it relates to relicensing. EMTs/paramedics must attain continuing education units. Moreover, certain training, such as training on blood borne pathogens, is required by the State. The Department provides monthly continuing education classes and other training as required. Hutchinson is in charge of this training. All full-time and non-full-time EMTs/paramedics are paid every two weeks, on alternating Fridays. Both full-time and non-full-time individuals have normal payroll deductions withheld from their paychecks.

IV. DISCUSSION AND ANALYSIS

A. Supervisory Exclusion

The Employer asserts that the full-time EMTs/paramedics are supervisors within the meaning of Section 3(r) of the Act.[1] Under that Section, petitioned-for employees are

[1] 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

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, (3) consistently exercise independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that 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. Northwest Mosquito Abatement Dist. v. Illinois State Labor Relations Board, 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

---

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.

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).

With regard to the Department's full-time ranked officers, when acting as shift supervisors, the captain and lieutenants are ultimately responsible for ensuring that emergency medical services are performed in conjunction with standard operating procedures in Region IV. They are responsible for administrative and personnel duties that their subordinates do not perform, such as scheduling, coordinating training, and assisting with billing. Also, the full-time employees are responsible for care and maintenance of the station and equipment, a function not assigned to the part-time EMTs/paramedics. Although the full-time employees do have some additional duties, the true essence of their job duties is not different from those of the non-full-time EMTs/paramedics. Their principal function is still to provide competent emergency medical service to individuals in their service area. Therefore, I find that the Employer has not met the first prong of the supervisory definition.

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 employees at issue have 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.

With regard to evidence of performance of supervisory indicia, job descriptions alone may be insufficient evidence to establish employees' duties or their supervisory status.[2] See City of Carbondale, 27 PERI ¶68 (IL LRB-SP 2011); State of Illinois, Department of Central 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

[2] 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, in a case involving police employment which does not require an employee to perform supervisory tasks a preponderance of time, 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 (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).

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 full-time employees do not perform any of the supervisory indicia using independent judgment.

As an initial consideration, there was no evidence that the one full-time paramedic employed by the Department who is not an officer performs any supervisory duties with independent judgment. Therefore, the Employer has not established that this position is supervisory under the Act. With regard to the full-time ranked officers, the Employer provided no evidence that the full-time officers hire, transfer, suspend, lay off, recall, promote, discharge, reward, discipline, or adjust grievances. The indicium "direct" is the only indicium about which the Employer arguably provided evidence.

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 does not demonstrate that the officers direct other employees using the requisite independent judgment. Specifically, the record indicates that Captain Sitzes completes the schedule for the EMTs/paramedics. By doing so, Sitzes is arguably assigning work to other employees. However, there is no evidence that Sitzes uses any independent judgment in so doing. Assigning work can be evidence of supervisory direction; 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). However, the record demonstrates that Sitzes simply ensures appropriate coverage for the shifts while taking into consideration the availability submitted by the non-full-time EMTs/paramedics. There is no evidence that he takes into consideration their skill, experience, or the nature of a particular task when coming up with the schedule. The schedule is also reviewed by Buss to ensure that it complies with the Department's budget. 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). The work of Sitzes in scheduling the shifts, while important, is more akin to assigning work in conjunction with minimum staffing levels. Sitzes ensures that the shifts are covered with sufficient staff, but there was no evidence that any other considerations weigh into his scheduling of shifts.

Moreover, there was no evidence as to whether any of the officers has a role in approving or denying time off for other EMTs/paramedics.

The record also indicates that Lieutenant Hutchinson has some responsibility for training other staff. However, the record is not clear as to what extent Hutchinson is exercising independent judgment in training staff. Indeed, Hutchinson appears to coordinate provision of continuing education units and State-mandated training, such as blood borne pathogen training, but the record does not show that he has any input into the subject matter of training, the way in which the training is conducted, or the decision as to whether or not to provide training. The record also shows that he is responsible for monitoring the progress of EMTs seeking to become licensed paramedics by overseeing their field training runs and evaluating and grading them afterward. However, the testimony also showed that the medical resource hospital determines whether the EMT is released to take the State examination for licensing, not Hutchinson. The record is not clear as to whether Hutchinson makes effective recommendations in this process of grading and evaluation, and it does not elaborate regarding to what extent, if any, the medical resource hospital relies on Hutchinson's input in determining whether to release an EMT to take the licensure exam. Indeed, the Employer alleges in its post-hearing brief, referring to non-full-time EMTs/paramedics, that "[t]he City has no control over their progress, if any, from the EMT/Basic to the EMT/Paramedic position." Employer's Brief, at p.11. Similarly, it is not clear to what extent, if any, Hutchinson's ratings or evaluation affects the pay or employment status of the EMTs. Hence, the Employer has not established that Hutchinson performs these duties using independent judgment as required by the Act.

With regard to the ranked officers overseeing shifts, there was testimony that they are responsible for ensuring that the staff on the shift are functioning in accordance with standard

operating procedures for the region. It is true that, 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).

However, the evidence regarding the duties of the ranked officers falls short of what is contemplated by these cases. The evidence did not establish whether the ranked officers take an active role in monitoring, checking, correcting, and instructing other individuals on the shift. It does not appear that the ranked officers are present on every call when on duty so as to be able to observe and monitor all of the EMTs/paramedics generally, as evidenced by the testimony that a vehicle may operate with two non-ranked individuals. The bare allegation that they are responsible for overseeing the operation of the shift, without more, is insufficient to establish that they are directing work within the meaning of the Act. See AFSCME Council 31 and State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (ILRB-SP 2011). Moreover, the standard operating procedures followed by the ranked officers and EMTs are not policies and procedures of the Department, but are more akin to "industry professional norms"; therefore, if ranked officers are urging compliance with these procedures, they are not necessarily doing so with independent judgment in the interest of the Employer. County of Lake, 16 PERI ¶2036 (ISLRB 2000). Therefore, the Employer has not shown that the

ranked officers exercise supervisory authority to direct using independent judgment as required by the Act.

Preponderance Requirement

Except with respect to police employment, petitioned-for employees are only deemed supervisory if they spend the preponderance of their work time performing supervisory functions. To satisfy this test, employees must spend more time on supervisory functions than on any one nonsupervisory function. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 83-85 (4th Dist. 1996); State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (IL LRB-SP 2011). The Employer must demonstrate such allotments of time by setting forth the employees' day-to-day activities, as documented by specific facts in the record. State of Illinois, Department of Central Management Services (EPA, DPH, DHS, DCEO), 26 PERI ¶155 (citing Stephenson County Circuit Court, 25 PERI ¶92 (IL LRB-SP 2009)); Village of Bolingbrook, 19 PERI ¶125. The calculation of time under the preponderance requirement is based on time spent in the exercise of supervisory authority that qualifies as such under the Act. See Department of Central Management Services, 26 PERI ¶155 (citing Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 55 (2nd Dist. 1992) (noting that actual time does not include work time spent instructing or directing employees, when such instruction or direction does not qualify as supervisory direction under the Act)). An alternate test for preponderance focuses on importance of supervisory job duties to the position rather than mathematical time spent on the duties. Specifically, the Fourth District of the Illinois Appellate Court has stated that "[w]hether a person is a 'supervisor' should be defined by the significance of what that person does for the employer, regardless of the time spent on particular types of functions."

Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 86 (4th Dist. 1996).

In this case, no estimates of time spent by the ranked officers in performing the supervisory indicia are provided in the testimony. Moreover, the more significant portion of work performed by the ranked officers is their work in responding to calls and providing competent emergency medical services to their assigned area. Accordingly, I find that the Employer has not demonstrated that any of the full-time EMTs/paramedics are supervisors within the meaning of Section 3(r) of the Act.

B. Managerial Exclusion

The Employer also argues that the full-time EMTs/paramedics are managerial employees under Section 3(j) of the Act. The Employer does not appear to argue that these employees are managerial as a matter of law; therefore, I assume that the Employer alleges that they are managerial as a matter of fact. The Board and the courts have applied a two-pronged test in order to determine whether an employee is a managerial employee within the meaning of the Act. Department of Central Management Services (Department of Healthcare and Family Services) v. Illinois Labor Relations Board (State Panel), 388 Ill. App. 3d 319, 330 (4th Dist. 2009). "First, the employee must be engaged predominantly in executive and management functions. Second, the employee must be charged with the responsibility of directing the effectuation of management policies and procedures." Id. "Management functions" include such activities that relate to running a department, formulating policy, preparing the budget, and assuring effective and efficient operation of the department. Id. (citing Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 121-22 (2nd Dist. 1993)). Other managerial duties have been found to include using discretion to make policy decisions

rather than simply following established policy, changing the focus of an organization, responsibility for day-to-day operations, negotiating with employees or the public on behalf of the employer, or pledging the employer's credit. Id., at 330-331, citing Department of Central Management Services, 21 PERI ¶205 (2005). Central to the determination of whether an employee is a managerial employee is the employee's ability to broadly affect the department's goals and means of achieving those goals. Department of Central Management Services, 278 Ill. App. 3d at 87.

An employee need not necessarily formulate policy to be considered a managerial employee; rather, directing effectuation of policy is the hallmark of an employee engaged in running a department. Department of Central Management Services (Illinois Commerce Commission) v. Illinois Labor Relations Board (State Panel), 406 Ill. App. 3d 766, 780 (4th Dist. 2010). The Fourth District has also noted that directing a division of a department "in a hands-on way" is evidence of managerial activity. Department of Central Management Services, 2011 IL App (4th) 090966. The court further noted that "exclusivity in the implementation of management policy is not a requirement" of the Act, and "[t]he fact that these employees do not [direct effectuation of policy] 'independently' is unimportant, given that the Act does not require such independence in management functions." Id. For purposes of the Act, recommendations on policy actions are effective if they are almost always accepted by the recommending employee's superiors. Department of Central Management Services, 406 Ill. App. 3d at 777.

In this case, the evidence simply falls short of supporting a conclusion that the full-time employees are managerial employees within the meaning of the Act. There was no evidence that these employees recommend policy actions or that they establish or implement *Department* policy. They may indeed function in accordance with standard operating procedures and policies

for the region, but there was no evidence as to whether they truly implement policies or procedures of the Department in such a way that it would qualify as managerial activity under the Act. There is no evidence that these employees are involved with budgeting; indeed, the closest evidence to this type of activity was the evidence that Lieutenant Hartman assists the office manager with billing. This is not the type of managerial activity contemplated by the Act with regard to financial operations of the employer, and it does not imply any ability to make spending decisions or pledge the credit of the employer.

The Employer argues that to find that these employees are not managerial employees would be to find that no one is managing the Department or its operations. In support of this point, the Employer points to the relatively small amount of hours apparently worked by Buss as acting chief of the Department. However, it is clear that Buss has more involvement in the running of the Department than is suggested by the Employer; indeed, as discussed above, he even approves the schedules compiled by Captain Sitzes to ensure that they comply with the Department's budget. The Employer has offered little more than conclusory statements that the full-time employees are "running the department" to support its contention that these are managerial employees. While I recognize that the Department is limited in size and that these full-time employees engage in important functions for the Department, the Employer simply has not provided evidence to support a conclusion that these individuals should be considered to be managerial employees within the meaning of the Act. Hence, I find that the Employer has not established that the full-time EMTs/paramedics are managerial employees under the Act.

C. Appropriateness of Unit Including Non-Full-Time EMTs/Paramedics

The Employer alleges that the non-full-time EMTs/paramedics, to whom it refers as "paid volunteers," should not be included in a bargaining unit. To this end, the Employer argues

that the non-full-time individuals choose when to work and have limited regular interaction with one another. Moreover, most of these individuals are employed elsewhere as emergency workers. The Employer alleges that it has no control over the progress of these individuals in advancing to designation as a paramedic from designation as an EMT.

As does the Union, I interpret the Employer to be alleging that these non-full-time individuals are not "employees" under the Act but are instead in the nature of "independent contractors." Section 3(n) of the Act specifically excludes "independent contractors" from the definition of a public employee. In determining whether an employee is considered an independent contractor within the meaning of the Act, the Board adopted the approach of the NLRB, which "focuses upon an employer's authority to direct the individual at issue in the method or means used to achieve a given result, including a consideration of all the elements which define the relationship between the employer and the individual." County of Will, 4 PERI ¶2028 (ISLRB 1988). The Board has historically considered a number of such elements, with no one element proving decisive, but rather all being assessed and considered together. See Id. (citing NLRB case law to this effect). These elements may include: whether the individuals performed duties that were an essential part of the employer's normal operation; whether they did business in the employer's name and with its assistance; whether they received fringe benefits from the employer; whether they had a permanent working arrangement with the employer under which they could continue working as long as their performance was satisfactory; whether they maintained control over their own offices and were responsible for their own expenses; whether the employer deducted taxes or other withholding from their pay; whether they have other employment; the amount of time they spend performing duties for the employer; whether and to what extent the employer supervises and directs their work; the

amount of time they spend working for the employer; how their work is assigned; whether they can refuse work; whether they exercise independent discretion in performing their work or deciding what work they will perform; whether the employer provides training or evaluates their work; whether the employer provides them with equipment and pays for that equipment; whether they determine the hours they will work for the employer; whether they are required to record their hours worked; the extent of the employer's authority to discipline them; and whether they receive a flat salary regardless of the amount of work they perform. Id.; Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (ILRB-SP 2002) (citations omitted). In County of Will, the Board considered such elements in determining that assistant public defenders were not independent contractors under the Act. 4 PERI ¶2028. Similarly, in Chief Judge of the Circuit Court of Cook County, the Board found that per diem interpreters for the courts were not independent contractors under the Act. 18 PERI ¶2016.

In this case, as in those cited above, the elements weigh in favor of determining that the non-full-time EMTs/paramedics are not independent contractors within the meaning of the Act. While they do not have fringe benefits, the Employer deducts standard tax and payroll deductions from their paychecks, and they are paid on the same schedule as all other employees. They are an essential part of the Department's day-to-day operations; indeed, without these individuals and with only four full-time employees, it is hard to imagine how the Department could function. The Department provides these individuals with equipment, uniforms, and facilities for their use at the expense of the Department. The uniforms, facilities, and equipment provided are the same for full-time employees and non-full time EMTs/paramedics, with the exception of a slight difference in uniform for the ranked officers. While the non-full-time individuals do, to some extent, dictate their own availability for shifts, the testimony established

that if they do not work the minimum amount of shifts per month, the Department may sever ties with them and not schedule them further. Moreover, as in the case of the per diem interpreters in Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016, once a non-full-time EMT/paramedic signs up for a shift, that individual is responsible for working that shift and for taking all calls assigned to that individual's vehicle during the shift. They are also responsible for providing emergency services in conjunction with the established standard operating procedures of Region IV. Buss also testified that these individuals are subject to discipline. They must account for their time by clocking in and out when they are on a shift. While they may leave the station while on duty and not on a call, they are expected to stay nearby and return to the station quickly if a call is received.

As discussed above, the Department coordinates training on a monthly basis for all of the EMTs/paramedics. In addition, similar to the per diem interpreters, the non-full-time EMTs/paramedics are paid a flat rate for the number of hours they work and are not paid by the call or by how many times they provide emergency services. It is true that the non-full-time EMTs/paramedics do not receive fringe benefits and that they do have other employment than their work for the Department. However, the parties' joint exhibit regarding other sources of employment shows that all four of the full-time EMTs/paramedics also retain employment in addition to their work for the Department.

For the foregoing reasons, I find that the evidence presented at hearing weighs against determining that these individuals are independent contractors within the meaning of the Act. As such, I find that the non-full-time EMTs/paramedics are public employees within the meaning of the Act and are therefore appropriate for inclusion in a collective bargaining unit.

D. Appropriateness of Single Bargaining Unit

With regard to the appropriate bargaining unit for a petitioned-for employee, Section 9(b) of the Act provides, in pertinent part:

> The Board shall decide in each case, in order to assure public employees the fullest freedom in exercising the rights guaranteed by this Act, a unit appropriate for the purpose of collective bargaining, based upon but not limited to such factors as: historical pattern of recognition; community of interest including employee skills and functions; degree of functional integration; interchangeability and contact among employees; fragmentation of employee groups; common supervision, wages, hours and other working conditions of the employees involved; and the desires of the employees. For purposes of this subsection, fragmentation shall not be the sole or predominant factor used by the Board in determining an appropriate bargaining unit.

The Board has held that "[t]he standard for judging whether a unit is appropriate is not whether the petitioned-for unit is the most appropriate but whether it is an appropriate unit." City of Chicago, 23 PERI ¶172 (IL LRB-SP 2007), citing Rend Lake Conservancy District, 14 PERI ¶2051 (IL SLRB 1998).

In considering the factors outlined by the Act for purposes of determining whether a proposed bargaining unit is appropriate, I find that the proposed bargaining unit of all full-time and part-time EMTs/paramedics is appropriate. Specifically, the employees at issue have a community of interest concerning their skills and functions; indeed, they work side-by-side to provide emergency medical services when on duty. Some are EMTs and some are further educated and licensed as paramedics, but they all provide critical emergency services needed in their service area. They are functionally integrated and interchangeable, as evidenced by the testimony that a vehicle may be staffed by two full-time employees, a non-full-time and a full-time employee, or two non-full time EMTs/paramedics. They have comparable working conditions in that the same facilities, equipment, and uniforms are provided to all EMTs/paramedics by the Department. Therefore, I find that the factors outlined by the Act weigh in favor of a finding that the proposed bargaining unit is appropriate as petitioned.

The Employer argues that including the full-time EMTs/paramedics in a bargaining unit with other EMTs/paramedics would create an inherent conflict of interest. Moreover, the Employer argues that, should a full-time EMT/paramedic become a union steward, their assessment of another EMT/paramedic's work would be inherently suspect. The Employer further alleges that service and performance issues related to the services provided by the Department could not be reviewed or investigated in an unbiased manner. The Employer's arguments fail for three reasons. First, the Employer has not shown how including all of the EMTs/paramedics in the same bargaining unit would serve to create a conflict of interest, especially when the Employer has not shown that the full-time EMTs/paramedics are engaging in supervisory or managerial functions under the Act. Second, the Employer's speculation that the full-time employees would be rendered incapable of fairly assessing the work of another EMT/paramedic is not supported by anything more than conjecture. I can only assume that the Employer is referring here to the evaluation by Lieutenant Hutchinson of EMTs who are attempting to become paramedics in conjunction with the standard operating procedures of Region IV, but there is no evidence that Hutchinson's ability to assess in this manner would be hampered by union representation. Third, the Employer's allegation that service and performance issues could not be reviewed or investigated without bias is a hypothetical situation that does not even appear to apply in this case. Specifically, the Employer has not shown that the full-time employees are actually responsible for investigating or reviewing service issues or performance issues of other EMTs/paramedics outside of the evaluation of EMTs' training runs performed by Hutchinson.

Ultimately, the Employer has not shown that including all of the petitioned-for employees in the same bargaining unit would violate the Act or its intent. Therefore, I find that the proposed bargaining unit is appropriate under the Act.

V. CONCLUSIONS OF LAW

The Employer has not demonstrated that the employees at issue are supervisors within the meaning of Section 3(r) of the Act. The Employer has not demonstrated that the employees at issue are managerial employees within the meaning of Section 3(j) of the Act. The non-full-time EMTs/paramedics are not independent contractors under the Act; therefore, the Employer has not shown that a unit including these individuals is inappropriate. Moreover, the full-time EMTs/paramedics and non-full-time EMTs/paramedics share collective interests suitable for collective bargaining in a single unit. Therefore, the petitioned-for unit is an appropriate unit.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the majority interest petition to represent all full time and regular part time employees of the City of Columbia in the job titles of Emergency Medical Technician and Paramedic is granted and the bargaining unit be certified including all full-time and regular part-time employees of the City of Columbia in the titles of emergency medical technician (EMT) and paramedic.

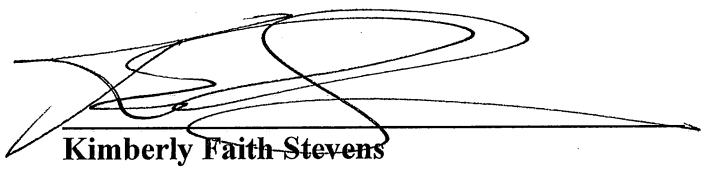
VII. EXCEPTIONS

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 18th day of December, 2012.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Kimberly Faith Stevens
Administrative Law Judge