STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Service Employees International Union, Local 73,	)	
Petitioner	)	
and	)	Case No. S-UC-13-011
Village of Lombard,	)	
Respondent	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On August 6, 2012, Service Employees International Union (Petitioner or Union), filed a unit clarification petition in Case No. S-UC-13-011 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 the titles of Management Analyst and Customer Service Supervisor to an existing bargaining unit, certified in Case No. S-RC-12-093. The Employer objects to the inclusion of these titles in the bargaining unit.

A hearing was held on January 22, 2013, 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. I find that the Board has jurisdiction to hear this matter pursuant to Sections 5(a-5) and 20(b) of the Act.

2. I find that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

3. 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 the issues for hearing are: 1) whether Rhonda Heabel, the Management Analyst for the Village of Lombard is a confidential employee within the meaning of the Act; and 2) whether Sharon Myers, the Customer Service Supervisor for the Village of Lombard, is a supervisor and/or confidential employee within the meaning of the Act.

6. The parties stipulate, and I find, that, in the event that either position is found to be a public employee within the meaning of the Act, the proposed bargaining unit is appropriate.

II. ISSUES AND CONTENTIONS

The central issues to be resolved are whether the Village customer service supervisor is a supervisory and/or confidential employee within the meaning of Sections 3(r) and 3(c) of the Act

and whether the Village management analyst is a confidential employee within the meaning of Section 3(c) of the Act. The Employer contends that the customer service supervisor is a supervisor and a confidential employee within the meaning of the Act and therefore is not a public employee under the Act. The Employer further contends that the management analyst is a confidential employee and therefore is not a public employee under the Act. The Union argues that the record does not support the Employer's contentions and that the petitioned-for employees are public employees as defined by the Act.

II. FINDINGS OF FACT

A. Management Analyst

Timothy Sexton is the Director of Finance for the Village of Lombard. He has held this position since July 2007. In this position, he oversees all financial programs for the Village, including payroll and benefit issues. Sexton was formerly the Assistant Finance Director from 2003 to 2007. In the role of Assistant Finance Director, he oversaw the daily operations of the Finance Department. From 1999 to 2003, Sexton was the accountant for the Village.

Sexton serves on the Village's negotiating team for contracts with four of the unions that represent Village employees. In that capacity, Sexton works with the other members of the team on making, considering, and costing out proposals, including those related to wages, benefits, and other economic items. SEIU is one of the unions for which Sexton serves as a member of the Village's bargaining team. Even where Sexton is not a member of a bargaining team, he meets with negotiating teams prior to the teams making economic proposals to the unions in order to consider costs of the proposals. Sexton makes recommendations to bargaining teams regarding what the Village should propose, what the cost impacts of the proposals are, and how such proposals might affect the Village's budget.

With regard to the Village's annual budget, Sexton and the Village manager develop the proposed annual budget to present to the Village Board. Sexton indicated that the first step of the budget creation process is for the departments to enter their requests into the software system utilized for the Village's financial information. The departments do not make requests regarding wages and benefits. If a department wishes to add employees in the upcoming year, the Department submits an Additional Personnel Request form to the finance department. Rhonda Heabel, the management analyst, costs that proposal out and submits it to the Village manager for consideration. At the second step of the budget process, each department meets with Sexton, Cunningham, and Heabel to discuss the departments' budgets in detail, including possible reductions in personnel levels.

Rhonda Heabel is the management analyst for the Village. She reports to Jamie Cunningham, who is the Assistant Finance Director, and to Sexton. Sexton testified that Heabel's job description was generally accurate. During her tenure with the Village, Heabel has served as a customer service representative, HR generalist, assistant finance director, and her current title, management analyst.

During the budget process, Heabel inputs all wage and benefit information into the software system. Sexton provides Heabel with this information. These data include historical information as well as anticipated costs for particular departments. Specifically, the previous year's wage information is utilized in the new budget, and raises are calculated based on that wage information. Some of the raise information comes directly from the Village's existing collective bargaining agreements. For data pertaining to new collective bargaining agreements or for those for which a successor contract is being negotiated, Sexton and the Village manager discuss the amount at which they anticipate they will settle with the Union. Sexton then provides

Heabel with that information so that Heabel can calculate the anticipated increase for the upcoming budget year. The information entered into the software system can be changed if necessary.

Heabel calculates pay increases for all employees as part of the budget process. Heabel then places the amounts of money that the Village budgets for the anticipated pay increases into a separate contingency account. Sexton testifies that this is done so that the bargaining units would be unable to tell exactly how much the Village was budgeting for pay increases for groups of employees. At this stage of the process, Sexton, the Village Manager, Cunningham, and Heabel meet with each of the department heads individually to discuss the department's requests. In these meetings, the participants discuss the department's entire budget, including operating supplies, professional services, and equipment. In addition, they may discuss changes in personnel and staffing that a department wants to make, such as adding or eliminating a position, changing a position, or outsourcing a position. During the meetings, Heabel updates the budget numbers in real time on a computer if changes are made to the budget numbers for a particular department. However, if a change is made regarding personnel, this requires a more extensive calculation that Heabel will perform and update at a later time. As an example, Sexton testified that, during FY 2010 budget discussions, these meetings included discussions of eliminating positions throughout the Village as part of budget cuts, and the positions were eventually eliminated. Heabel was present for these meetings, but these plans were not disclosed to the general public, Village employees, or bargaining units at this time. Sexton testified that such a disclosure would have compromised the Village's bargaining position with the unions and would have been premature at the time that the meetings were being held.

After meetings with the departments are held, the departments make presentations to the Village Board in executive session regarding their budget requests. These presentations may include personnel issues, such as the 2010 cuts in personnel. After these meetings, a budget is presented to the Village's Finance Committee and the Village Board. The Finance Committee and Board have the opportunity to make changes at that level. Once any necessary changes are made, the Village Board will vote to adopt the budget in open session. The budget document is published for the public to view, but it does not specifically identify any particular wage increases to particular bargaining units so that the public cannot tell what amount the Village is anticipating it will agree to pay any particular unit in wage increases during contract negotiations. Heabel has access to all of this information throughout the budget process, which takes four to five months per year.

Heabel is not personally involved in actual collective bargaining negotiations, nor is she involved in Village meetings to discuss strategy for those negotiations. Heabel testified that, while she may know negotiations are ongoing, she may not know the reason for any particular requests made to her to "cost out" a situation. Heabel also testified that Brian Koehler, the Village accountant, is a bargaining unit employee and has access to some of the information that she prepares regarding employee salaries and benefits, but Koehler does not have access to the anticipated settlement amounts for wage increases that Heabel places in the contingency accounts. Koehler is also not present for the budget meetings with department heads in which personnel planning is discussed. Heabel confirmed that she does not share the anticipated settlement amounts with anyone in the bargaining units. Kathy Dunne is the Human Resources Administrator for the Village. In this role, she is responsible for payroll, benefits, compensation, insurance, performance appraisals, and training. She is also a member of the labor negotiation

team for the Village. Dunne testified that Rhonda Heabel has been involved in strategy sessions regarding the Village's insurance plans and attempts to cut costs by modifying facets of the plan. Dunne testified that this kind of information is not to be shared with the unions because it may affect contract provisions that must be negotiated or because proposed changes to the insurance plan could result in grievances. Moreover, Dunne indicated that, in the future, it would be necessary to discuss bargaining proposals in meetings regarding insurance changes.

Sexton testified that Heabel had been asked to analyze the cost of replacing one full-time bargaining unit employee with two part-time employees. Heabel provides this type of analysis several times throughout the year. Heabel may be called upon, more specifically, to determine whether a position could be filled such that the person taking the position would be under the IMRF pension limit to reduce costs to the Village. Heabel discusses these matters with Sexton, who provides a rationale for the request. Sexton testified that he does not want Heabel to share such information with a union because such information could compromise the Village's bargaining position with the union. Some of the requests that Heabel is required to analyze may be connected with particular bargaining obligations. Heabel may also provide such analysis to the Assistant Finance Director. In one such instance, Heabel advised Cunningham that she did not believe that the Village should get into the practice of allowing employees to carry over tuition reimbursement to another fiscal year because it would not be a good idea to set such a precedent. Sexton testified that Heabel's performance evaluation accurately reflects the Village's expectations for her job performance and knowledge.

Heabel participates in risk management duties with upper management. She is involved in discussions regarding workers' compensation claims, liability claims, and lawsuits. Union employees, including administrative coordinator Gina Sanders, are also present at these

meetings. Regarding settlements with bargaining unit members on such topics, Sexton testified that the Village might have to engage in conversations with the bargaining unit representative regarding such settlements. In addition, Sexton testified that, in some cases, the Village may need to comply with contractual requirements for terminating employees who can no longer perform their jobs. Sexton testified that, in both of these situations, the discussions are not to be made known to the union because that would place the Village at a disadvantage in terms of collective bargaining.

B. Customer Service Supervisor

The assistant finance director, Jamie Cunningham, has worked for the Village for approximately 5 years. She was formerly the Village accountant. As Assistant Finance Director, Cunningham oversees the Management Analyst, the Accounting Department, the Customer Service Department, and performs tasks as assigned by the Director of Finance.[1]

Sharon Myers is the Customer Service Supervisor. There are two part-time, one paid-on-call, and two full-time customer service representatives. Included in this number is one water billing representative who is a full-time employee. The paid-on-call employee answers phones during busy times. The customer service employees greet customers, answer phones, take payments, perform administrative tasks, and sort and process mail. Myers has a cubicle that is not accessible by the public. Of the representatives, the water billing representative has a cubicle type desk that is open to the public, while the other representatives sit behind the front desk of the Village Hall.

Cunningham testified that the job description for the customer service representatives was accurate. Cunningham further testified that the water billing representative fills in for

[1]Cunningham testified that she infrequently supervises the customer service representatives when Myers is out of the office, and that she has also performed some customer service duties when staffing has been low.

customer service representatives from time to time but is mainly assigned to work with customers regarding their water and sewer bills, send bills to the third-party printer, and update accounts. Other than the fact that the Commuter Parking Program has been moved to the accounting manager's department, Cunningham testified that the job description for the customer service supervisor is accurate.

Cunningham testified that Myers oversees the representatives, writes their job descriptions, evaluates them on a yearly basis, has authority to issue verbal and written reprimands, and trains her subordinates. Myers also completes month-end reports for water billing and attends administrative staff meetings. Myers is responsible for daily balancing of the money received by the customer service department. At times, this duty is performed by the accounting assistant or, very occasionally, by a representative. Myers is also responsible for overseeing the Vehicle Sticker Program.

In terms of hiring, Myers helps to advertise vacancies for representatives, assists with the interviews, and she and Cunningham reach a conclusion regarding which candidate to hire. Myers also drafts and finalizes the work schedules for the representatives, taking into consideration their requested days off for the month and the hours of the office. She must also stay within the office's budget for personnel costs in determining how to schedule and utilize part-time employees and overtime. If additional personnel are needed, Myers can call in an employee to work or perform representative duties herself. She has complete authority regarding whether to approve or deny time off requests from her subordinates. Myers is responsible for using her judgment to perform these scheduling and time off duties. Myers is responsible for monitoring and correcting the performance of the representatives. Myers may address

performance issues by talking with an employee, counseling an employee, training an employee, or pursuing discipline.

With regard to evaluations, Myers is responsible for completing performance evaluations for her subordinates on an annual basis. She is not required to share the evaluations with Cunningham after completing them, and Cunningham could not remember ever changing any of the evaluations Myers has performed. Sexton reviews evaluations conducted by supervisors within his Department, including those by Sharon Myers. He has never rejected or modified the contents of any of these evaluations performed by Myers. Dunne testified that a rating of "Below Expectations" on an employee's evaluation can result in that employee not receiving an annual pay increase (COLA).

With regard to discipline, Myers has authority to issue verbal and written reprimands, and she has done so in the past. Myers may consult with Cunningham for her opinion in the issuance of these levels of discipline, but she is not required to do so before issuing the discipline and uses her judgment as to whether to issue the discipline. With regard to more serious discipline, Myers would have to seek approval from upper management, but she can recommend or request a suspension or termination. In one such case, Myers recommended termination for a subordinate employee, gathered additional information for management regarding the employee's performance, and the employee was ultimately discharged in accordance with Myers' recommendation. Myers can also choose not to issue discipline if she does not believe that the conduct in question rises to the level at which it requires disciplinary action.

As customer service supervisor, Myers performs some duties that overlap with the duties of the representatives, but she has many duties that the representatives do not perform, including the duties described above. Myers is responsible for working with third-party administrators

who provide contract services to the Village for printing, vehicle stickers, and the like. Myers' salary, at approximately $34 per hour, is significantly higher than that of the representatives. Myers normally works an eight hour shift unless she works overtime.

From her personal experience in observing Myers at work, Cunningham estimated that Myers spends approximately one to three hours per day in her cubicle area, while Myers spends the rest of her work time around her subordinates, assisting with their duties, attending meetings, and training subordinates. Myers disputed this estimate somewhat, stating that she spends most of her time at her desk. Cunningham testified that most of Myers' duties entail oversight and evaluation of her subordinates. Myers elaborated that she believes that she spends approximately an hour each day on what she considers "supervisory" functions. Myers also performs other functions for the Village, including collections, liens, radio reception of meter readings, billing reminders, invoices for third-party contracts, and purchasing.

IV. DISCUSSION AND ANALYSIS

A. Legal Standards

The Employer asserts that the customer service supervisor is a supervisory employee within the meaning of Section 3(r) of the Act.[2] Under that Section, petitioned-for 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, (3) consistently exercise

[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.

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 (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).

The Employer further asserts that the management analyst and the customer service supervisor are confidential employees within the meaning of Section 3(c) of the Act. Under that Section, petitioned-for employees are confidential employees if they meet one of three tests established by the Board, namely: the labor nexus test, the authorized access test, or the reasonable expectation test. Chief Judge of the Circuit Court of Cook County v. American Federation of State, County and Municipal Employees, Council 31, 153 Ill. 2d 508, 523 (1992). The labor nexus and authorized access tests require analysis of the employee's "regular course of duties." State of Illinois, Department of Central Management Services, 26 PERI ¶34 (ILRB-SP 2010). In order to find that the petitioned-for individual is a confidential employee within the meaning of the Act, the Employer must demonstrate by clear and specific evidence that the individual at issue meets all the elements necessary to prove the statutory exclusion. See Union County State's Attorney, 25 PERI ¶ 1 (IL LRB-SP 2009); Village of Bolingbrook, 19 PERI ¶ 125; County of Boone and Sheriff of Boone County, 19 PERI ¶ 74.

B. Management Analyst

The Employer asserts that the management analyst is a confidential employee within the meaning of the Act. Under the labor nexus test, if an employee assists in a confidential capacity in the regular course of his or her duties a person or persons who formulate, determine, or effectuate labor relations policies, then the employee holds confidential status within the meaning of the Act. Chief Judge, 153 Ill. 2d at 523. Performance of these three functions is evidenced by whether the individual has primary responsibility for labor relations matters, makes recommendations with respect to collective bargaining policy and strategy, drafts management proposals and counterproposals, evaluates proposals, and participates in collective bargaining negotiations. Id., Village of Homewood, 8 PERI ¶ 2010 (IL SLRB 1992); City of Wood Dale, 2 PERI ¶ 2043 (IL SLRB 1986). While the frequency in which an employee assists in a confidential capacity is relevant, the fact that a task is performed only occasionally does not necessarily mean it is not performed in the regular course of his or her duties. See City of Chicago, 26 PERI ¶ 114 (IL LRB-LP 2010); City of Sycamore, 10 PERI ¶ 2002 (IL SLRB 1993). The record reflects that Sexton is a member of the Village's bargaining team for contract negotiations with four of the six of the Village's employee bargaining units. Moreover, Sexton works on proposals to be made to the unions during negotiations, analyzing the costs of proposals, and strategizing on economic proposals. For those unions for which Sexton does not serve on the bargaining team, he meets with those negotiating teams prior to their making economic proposals to analyze costs and recommend what the proposals should contain. The record reflects that Heabel, in the normal course of her duties, assists Sexton by costing out wage increase proposals and placing the amounts for anticipated wage increases in a contingency account. In addition, Heabel assists Sexton in preparing the Village's budget in the course of her

duties, during which Sexton obtains budgetary information from the departments that factor into his duties in formulating and analyzing proposals and strategy for collective bargaining negotiations. Therefore, the labor nexus test is satisfied in this instance, and Heabel is a confidential employee within the meaning of the Act.

Under the authorized access test, an employee will be deemed a confidential employee if, in the regular course of his or her duties, the employee has authorized access to information concerning sensitive matters arising from the collective bargaining process, such as information concerning the employer's strategy in dealing with an organizational campaign, collective bargaining proposals, and information relating to matters concerning contract administration. Chief Judge, 153 Ill. 2d at 523; see also City of Chicago, 26 PERI ¶114; State of Illinois, Department of Central Management Services, 26 PERI ¶34; County of DeKalb, 4 PERI ¶2029 (IL SLRB 1988). Access to confidential information unrelated to the collective bargaining process is insufficient to confer confidential status within the meaning of the Act. City of Evanston v. State Labor Relations Board, 227 Ill. App. 3d 955, 978 (1st Dist. 1992). In this context, an individual will be found a confidential employee if that person regularly handles or has access to information which, if divulged, would give bargaining unit members advance notice of the employer's policies in regard to labor relations. See City of Sycamore, 10 PERI ¶2002; Village of Homewood, 8 PERI ¶2010.

"[A]ccess to 'confidential information' concerning statistical information upon which an employer's labor relations policy is based is insufficient to confer confidential status." State of Illinois, Department of Central Management Services, 25 PERI ¶161 (ILRB-SP 2009). Considering a similar provision to Section 3(c) in Section 2(n) of the Illinois Educational Labor Relations Act (115 ILCS 5), the Illinois Educational Labor Relations Board found that a school

district's business department secretaries were not confidential employees where they assisted management in costing out collective bargaining proposals but there was no evidence that the secretaries had a role beyond compiling information or that they knew how the information was going to be used. Board of Education of Community Consolidated School District #15, 21 PERI ¶183 (IELRB 2005). Of particular import to the IELRB was the fact that these employees were not actually costing out the proposals but merely assisting those who were costing out the proposals. Id. See also Community Consolidated School District No. 59, 2 PERI ¶1088 (IELRB 1986) (holding that an employee was not confidential when she compiled employee benefits information for an individual who costed out proposals); City of Bloomington, 12 PERI ¶2011 (ISLRB 1996), aff'd 13 PERI ¶4007 (Ill. App. 4th Dist. 1996).

The facts of this case are distinguishable from the cases cited above for several reasons. The record consistently indicates that Heabel, in the regular course of her duties, is engaged in costing out proposed wage increases for the purposes of collective bargaining negotiations. Moreover, by way of costing out these anticipated wage increases, Heabel is aware of the amount at which the Employer believes it will settle on with individual unions in terms of wage increases. Here, the information that Heabel has goes beyond simply statistical information. See State of Illinois, Department of Central Management Services, 28 PERI ¶51 (ILRB-SP 2011) (holding that legislative liaison who had prior knowledge of proposed legislation as well as contemplated budget and pension changes was a confidential employee within the meaning of the Act). Moreover, the record reflects that Heabel has also been privy to budget discussions with department heads concerning changes to staffing levels (including potential reductions in staffing) and the composition of the Village budget prior to the unions having access to such information. Indeed, Heabel is privy to budget information that is not made part of the publicly

available budget at all, such as the amounts placed into the contingency account in anticipation of yet-unsettled wage increases. The record indicates that Heabel regularly has authorized access to information specifically pertinent to the collective bargaining process between labor and management. Accordingly, Heabel must be deemed a confidential employee within the meaning of the Act.

The Board has also adopted a third confidential test called the reasonable expectation test. The reasonable expectation test is to be applied where no collective bargaining unit was previously in place, but it is expected that the establishment of the unit will require that confidential responsibilities be assumed by the employee. This test was designed to determine, in the absence of a collective bargaining relationship, whether the onset of collective bargaining would reasonably bring the individual confidential duties. Chief Judge, 153 Ill. 2d at 524; City of Burbank, 2 PERI ¶ 2036 (IL SLRB 1986).

The reasonable expectation test does not apply where collective bargaining is actually taking place. Pike County Housing Authority, 28 PERI ¶ 13 (IL LRB-SP 2011); City of Burbank, 2 PERI ¶ 2036. Furthermore, the reasonable expectation test should only be applied where the responsibilities may reasonably be expected but have not yet been assumed. Chief Judge, 153 Ill. 2d at 528. Because the record indicates that Heabel has already assumed responsibilities connected to the collective bargaining process, the reasonable expectation test need not be applied.

C. Customer Service Supervisor

1. Supervisor

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 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 the customer service supervisor can and does occasionally perform a number of job duties that her subordinates also perform, her essential functions are substantially different from that of her subordinates. The customer service supervisor is responsible for a variety of administrative and planning duties that her subordinates do not perform, and the testimony shows that Myers does not spend the majority of her time doing the same work as her subordinates. Therefore, I find that the Employer has met the first prong of the supervisory test in that the principal work of the customer service supervisor is substantially different from that of her 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 eleven 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, 153 Ill. 2d at 531; Freeport, 135 Ill. 2d at 531; 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.[3] 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

[3] 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).

(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 eleven possible indicia) accompanied by independent judgment is enough to establish supervisory status. Chief Judge, 153 Ill. 2d at 529. In this case, the evidence establishes that the customer service supervisor does 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 customer service supervisor performs the supervisory indicium of directing employees with independent judgment when she monitors the work performance of her subordinates to ensure that the work he assigns is being completed properly. 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, in the case of supervising sanitarians for the City of Chicago, 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 the type of activity in which Myers engages with regard to monitoring the work of her subordinates, as she is ultimately responsible for ensuring that the work of the department is performed properly. She also performs this activity through her daily balancing duties, which provide another check on the performance of her subordinates. Myers also assigns and schedules the work of her employees without input from her supervisor. The fact that Myers may, at times, be monitoring the work performance of her subordinates as measured against the policies of the Village does not take away from the fact that she is exercising discretion and independent judgment when she instructs her subordinates, assists them in performing their duties, and monitors their work. Moreover, Myers approves time off and overtime, and she is responsible for evaluating subordinates. These evaluations can be used to deny an employee a wage increase. Based on the foregoing, I find that Myers directs subordinates using independent judgment.

ii. Discipline

Myers has authority to discipline her subordinates if she perceives that an individual has a performance or behavioral deficiency. The record demonstrates that she has authority to give verbal or written reprimands, recommend suspension or termination, or decline to discipline altogether. These include the types of disciplinary action that have been found to satisfy the requirements of the Act. See, e.g., Freeport, 135 Ill. 2d at 518-519; Village of Glen Carbon, 8 PERI ¶2025 (ILRB 1992). The record indicates that Myers has taken disciplinary action regarding her subordinates in the past, and it further indicates that she does not need supervisory approval to issue verbal or written reprimands. Myers uses independent judgment in deciding whether to impose lower levels of discipline, and examples also show that she has made effective recommendations concerning higher levels of discipline. Therefore, I find that Myers disciplines with independent judgment within the meaning of the Act.

iii. The remaining indicia

With regard to the other supervisory indicia, the record does not demonstrate that the customer service supervisor has authority to hire, transfer, lay off, recall, reward, promote, 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. A minor amount of testimony suggests that Myers has some input into the hiring process, but this portion of the record does not reflect that Myers engages in hiring subordinates with the requisite independent judgment contemplated by the Act. Notwithstanding these considerations, because the Employer has submitted evidence showing that the customer service supervisor directs the work of subordinates, I find that the second and third prongs of the supervisory test are satisfied.

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 at 86.

In this case, a clear estimate of the percentage of time that Myers spends on supervisory duties was not provided by either the Employer or the Union. However, what is clear from the record is that Myers' work as a supervisor is of significant importance to the position and to the Employer. The customer service supervisor is charged with overseeing and supervising the customer service staff in order to ensure that the work of the department is accomplished in an efficient and appropriate manner and that the public is adequately served. Myers works closely with the customer service staff, and the employer relies on her to manage that staff appropriately as she is in a unique position to be able to do so. Accordingly, I find that the Employer has demonstrated that the customer service supervisor is a supervisor within the meaning of Section 3(r) of the Act.

2. Confidential

As described above, the Board has utilized three tests to determine whether a petitioned-for employee is a confidential employee within the meaning of the Act. With respect to Myers, there is no evidence that she confidentially assists a person with responsibility for formulating, effectuating, or determining labor relations policies or strategy. Moreover, there is insufficient evidence that Myers has authorized access to the type of sensitive labor relations information that would place the Employer at a disadvantage vis-à-vis a union should that information be disclosed. While Myers has access to information regarding employee discipline that may not be publicly available, the record does not reflect that this information is of the kind that would satisfy the authorized access test. Moreover, there was no indication in the record that Myers has a reasonable expectation of beginning confidential duties in the future. Therefore, the customer service supervisor position does not meet any of the tests for a confidential employee under the Act.

V. CONCLUSIONS OF LAW

The management analyst at the Village of Lombard is not a public employee within the meaning of the Act because she is a confidential employee pursuant to Section 3(c) of the Act and must consequently be excluded from collective bargaining. The customer service supervisor at the Village of Lombard is not a public employee within the meaning of the Act because she is a supervisory employee pursuant to Section 3(r) of the Act and must consequently be excluded from collective bargaining.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the unit clarification petition to represent the customer service supervisor and management analyst at the Village of Lombard is DENIED.

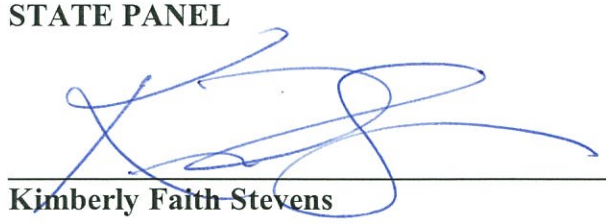
VII. EXCEPTIONS

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 8th day of July, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL



Kimberly Faith Stevens
Administrative Law Judge