STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

American Federation of State, County and Municipal Employees, Council 31,	)	
Petitioner	)	
	)	Case No. S-UC-13-037
and	)	
Village of Niles,	)	
Employer	)	

ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION AND ORDER

On January 4, 2013, the American Federation of State, County and Municipal Employees, Council 31 (Petitioner) filed a unit clarification petition in Case No. S-UC-13-037 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to the Illinois Public Labor Relations Act, 5 ILCS 315 (2012) as amended (Act), and the Rules and Regulations of the Board, 80 Ill. Admin. Code, Parts 1200 through 1240 (Rules). The Petitioner seeks to include certain positions employed by the Village of Niles (Employer or Village) in the bargaining unit originally certified in Case No. S-RC-13-003.

Initially, the petitioned-for positions were Administrative Assistant (Fire), Administrative Assistant (Police), Division Supervisor (Community Development), Fleet Manager (Public Services), Sewer Manager (Public Services), Shop Supervisor (Public Services), Streets and Signs Manager (Public Services), Water Manager (Public Services), and Water Plant Manager (Public Services). Subsequent to the filing of the instant petition, the parties agreed to include the Administrative Assistant (Fire) and Division Supervisor (Community Development)

positions in the bargaining unit. The parties also agreed to exclude the Administrative Assistant (Police) position.[1] The statuses of the other six petitioned-for positions remain in dispute.

A hearing was held on April 2 and 3, 2013 before the undersigned in Chicago, Illinois. At that time, all parties appeared and were given a full opportunity to participate, adduce relevant evidence, examine witnesses, and argue orally. Briefs were timely filed by both parties. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of this case, I recommend the following.

I. PRELIMINARY FINDINGS

1. The parties stipulate and I find that the Employer is a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate and I find that the Petitioner is a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The Employer contends that the employees occupying the Fleet Manager, Sewer Manager, Shop Supervisor, Streets and Signs Manager, Water Manager, and Water Plant Manager positions are supervisors as defined by Section 3(r) of the Act and therefore must be excluded from bargaining. Additionally, the Employer contends that the employee occupying the Fleet Manager position is also a manager as defined by Section 3(j) of the Act and must be excluded from bargaining for that reason as well. The Petitioner disputes those contentions and

[1] The Administrative Assistant (Fire) position (which is to be included) is currently occupied by Bernadette Knapik, the Division Supervisor (Community Development) position (which is to be included) is currently occupied by John Montejo, and the Administrative Assistant (Police) position (which is to be excluded) is currently occupied by Dena Ratajczyk.

argues that the Employer has waived its right to contend that employee is a manager. The Employer denies that it has waived that right.

III. FINDINGS OF FACT

The six petitioned-for positions that remain in dispute are affiliated with the Village's Department of Public Services, which employs around 70 employees and comprises a number of specialized divisions, including, but not limited to, Public Services' Fleet, Sewer, Streets and Signs, Water, and Water Plant divisions. Public Services as a whole is overseen by Scott Jochim, the Director of Public Services. A number of divisions are also overseen by Jochim's subordinate, Fred Braun, the Superintendent of Public Services.

Braun has three relevant direct reports: Lynn Ball, the Streets and Signs Manager; Tom Polcyn, the Sewer Manager; and Earl Salther, the Water Manager. Those three positions report indirectly to Jochim. Chris Colletti, the Water Plant Manager, and Michael Haws, the Fleet Manager, report directly to Jochim. Richard Blassick, the Shop Supervisor, and Duane Paulus, the Transportation Supervisor, report directly to Haws.[2]

Lynn Ball, Streets and Signs Manager

Ball has five subordinates, each of whom is a Serviceman II. Ball assigns those subordinates work at the beginning of each normal work day, monitors their daily work activities, and is responsible for making sure that they complete their work. Ball also reassigns and prioritizes his subordinates' work as needed.

When Ball assigns work, he considers the Streets and Signs division's operating needs, the skills and experience required by each assignment, how many employees should be given each assignment, and his subordinates' doctors' restrictions. However, some types of

[2] The Transportation Supervisor position is not in dispute.

assignments are routinely affiliated with certain subordinates.[3] Further, when Ball designates an informal crew leader, he simply selects the most senior subordinate. Because most Streets and Signs vehicles are special purpose vehicles, the assignment given largely dictates which vehicles are used.

Ball once successfully recommended that his five subordinates attend a half-hour product demonstration that involved the application of a manhole adjustment ring. That demonstration, which occurred during the subordinates' normal work hours, was provided by representatives of the supplier and the manufacturer of the demonstrated product.

Ball schedules and assigns his subordinates overtime work when necessary. When it is necessary, all of his subordinates are generally asked to perform the same overtime work at the same time. When Ball assigns overtime salting work, he assigns that work in accordance with an overtime list that lists employees by seniority. All of Ball's overtime assignments are reviewed by Jochim and thoroughly reviewed by Braun.

Ball has the authority to approve or deny his subordinates' vacation time requests. That authority is governed by a collective bargaining agreement (CBA) between and the Village and the International Union of Operating Engineers, Local 150 (IUOE), which represents all of Ball's subordinates. When determining whether to approve or deny a vacation time request, Ball considers how much vacation time the subordinate has available and the exclusions that are provided by the CBA.[4] The CBA states that Ball may also consider operating needs. If Ball approves a subordinate's vacation time request, he sends the request "up the chain of command."

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[3] In general, one or two of Ball's subordinates work exclusively on signs. Two or three others work exclusively on cold patch in the winter. In the summer, three to five normally work on hot patch. For eight to nine months a year, one subordinate exclusively drives a street sweeper.

[4] The CBA dictates, for example, that only a limited number of subordinates can be on vacation at one time. Ball cannot violate that rule without first discussing it with either Braun or Jochim and getting either Braun's or Jochim's approval to do so. The CBA also mandates certain "blackout periods."

Braun has denied a request (that had previously been approved by Ball) after Braun determined that Ball's approval would have violated the CBA.

Ball completes annual performance evaluations. Those evaluations (like all of those considered in this instance) often contain a range of personalized ratings, feedback, and goals. Ball's evaluations do not affect his subordinates' pay, but can be reviewed when a subordinate is being considered for a promotion.

Ball has never disciplined a subordinate and has never been trained how to do so. Nevertheless, Ball is responsible for disciplining his subordinates when they do not accept his assignments. Moreover, Ball has the authority to determine that, in a particular instance, no discipline is appropriate and, rather than discipline a subordinate, simply tell the subordinate to comply with a prior directive.

Although Ball has never received a grievance, Ball serves as the first step of the grievance procedure for his subordinates. Ball's authority to handle grievances is governed by the CBA, which suggests that Ball shall attempt to adjust each grievance. During the hearing, Ball testified that he does not feel that he has the authority to settle a grievance in a way "that would go beyond a verbal explanation." He also testified that he does have the authority to resolve a grievance with an apology.

Tom Polcyn, Sewer Manager

Polcyn has five subordinates who are represented by the IUOE. One subordinate is a Service Worker I and the other four subordinates are Service Worker IIs. Each morning, Polcyn determines the work that those subordinates will perform. Polcyn also reassigns their work as needed.

Much of the work of the Sewer division stems from complaints Polcyn receives. When Polcyn gets a complaint, Polcyn either investigates the complaint on his own or instructs a subordinate to conduct the investigation. Typically, after a subordinate conducts an investigation, he gives Polcyn his findings. Whoever conducts the investigation determines how the complaint should be addressed.

When Polcyn assigns his subordinates work, he tries to rotate the type of work each subordinate performs in order to make each subordinate's work less repetitive. Sometimes, Polcyn also considers which subordinates can operate the equipment an assignment requires.[5] In addition, Polcyn determines how many subordinates need to work together on an assignment. If the work is going to be performed in a subdivision, Polcyn has three subordinates perform that work. If the work is going to be performed on a highway, Polcyn gives the assignment to four subordinates.

Polcyn is occasionally contacted by another division and asked if his subordinates can help with that division's work. When that occurs, Polcyn can decide which of his subordinates can help. Polcyn selects those subordinates on a rotational basis. He can also decide that none of his subordinates can be spared.

Polcyn assigns his subordinates overtime work. When Polcyn schedules overtime work that must occur during a lunch break, he assigns that work to the subordinate who is already working on the assignment that needs to be completed. When Polcyn schedules after-hours work, he selects subordinates in accordance with a list. Polcyn assigns emergency overtime work by seniority. That being said, whenever Polcyn assigns overtime work, he is allowed to

[5] Polcyn considers, for example, whether a subordinate can operate a backhoe. Separately, I note that, when a flood occurs, Polcyn may also determine whether or not a Vactor needs to be used. However, his subordinates can also make that decision. If more than one street is flooded, Polcyn considers the severity of the flooding and determines where a Vactor should be used first.

consider whether he needs a subordinate who can operate a backhoe and assign the work accordingly. Polcyn also determines how many of his subordinates need to perform overtime work. If necessary, Polcyn can seek the assistance of employees affiliated with another division of Public Services.

Polcyn can approve or deny his subordinates' vacation time requests. When Polcyn receives a vacation time request, he considers how many subordinates have already asked for the same time off and determines whether the subordinate requesting the time off has already been scheduled to work at that time. Polcyn can also consider whether a snowstorm is coming. However, Polcyn has never denied a vacation time request.

Polcyn has the authority to issue a "Disciplinary Report" and has done so. Polcyn does not need Braun's or Jochim's approval to do that. Polcyn has also issued "write-ups."

Earl Salther, Water Manager

Salther has four subordinates, each of whom is either a Serviceman I or a Serviceman II and is represented by the IUOE. Salther assigns and reassigns those subordinates work on a daily basis and is responsible for making sure that their work is completed. When Salther assigns a subordinate work, he generally considers whether the subordinate is available and has the skills and abilities needed to perform the assignment. Salther generally does not need Braun's or Jochim's permission to assign or reassign a subordinate work.

Much of the work that Salther normally assigns his subordinates comes from complaints that Salther receives during regular work hours. When Salther receives such a complaint, he usually visits the source of the complaint, determines the severity of the issue presented by the complaint, decides when and how it should be addressed, and then assigns the necessary work accordingly. Salther can also decide which trucks or equipment should be used by his

subordinates, but he usually lets the subordinates make that decision. In practice, the backhoe operator typically takes the backhoe to the job site.

If the work demanded by the complaint is to be performed near a highway, Salther gives all four of his subordinates the same assignment. If the work demanded by the complaint is to be performed in a subdivision, he gives three subordinates the assignment. When only three subordinates are needed, he determines which three will be assigned that work. Salther generally assigns that work on a rotational basis, but he also makes sure that each group contains at least one subordinate who is qualified to operate a backhoe. Salther never has a subordinate work alone.

Salther is responsible for having his subordinates trained. If Salther sees a need for it, he can require retraining that that can occur during or after normal work hours. He can also recommend that a subordinate be sent to "off-site training." When Salther is in the field with his subordinates, he makes sure they are "following the rules" and shows them how to complete assignments.

When necessary, Salther can seek out employees affiliated with other divisions of Public Services to perform non-overtime Water division work. However, Salther cannot call in an employee from another division without first getting permission to do so from Braun or that employee's immediate superior. Braun generally gives Salther that permission.

Salther can offer his subordinates scheduled overtime work. That could occur when a repair can be done at night while a business or restaurant is closed. Salther's subordinates can opt to refuse to perform scheduled overtime work. If all of Salther's subordinates have refused to perform the work or if more employees are needed, Salther can offer the scheduled overtime work to employees affiliated with other divisions. Jochim has asked Salther to let Braun and

Jochim know when Salther is scheduling overtime work. Jochim has only "stopped" Salther's scheduled overtime assignments when Salther has tried to have overtime work performed during a holiday.

The Water division's scheduled overtime work is largely offered to employees in accordance with a scheduled overtime list. However, while selecting employees from his division or another for scheduled overtime work, Salther can also consider whether employees are qualified to perform the work required. For example, if excavation is needed, Salther can ensure that an employee who can operate a backhoe is selected. In addition, Salther can consider whether an employee is injured or has a light duty work restriction.

Salther can also assign overtime work while addressing emergencies as the "manager on call." Salther assigns that work in accordance with an after-hours overtime list. That particular list includes employees affiliated with the Water division and others affiliated with the Sewer division. All of those employees are listed by seniority. Salther can choose to select the employees of his own division first when he is responding to an issue related to Water division work.

Salther has the authority to grant or deny his subordinates' time off requests. In practice, when Salther receives such a request, he only considers whether the requesting employee has enough unused time available. However, he also has the authority to independently consider whether his approval would leave his division short-staffed. The number of subordinates who can be off at one time is dictated by the CBA. After Salther approves a time off request, he submits it to Braun, who may approve or deny the request. Salther has never denied a subordinate's time off request.

Salther completes annual performance evaluations. Those evaluations are reviewed by Jochim. Jochim generally agrees with Salther's evaluations, but Jochim once had Salther significantly modify an evaluation when Jochim disagreed with with it. While Salther's evaluations do not affect his subordinates' pay, Salther's evaluations can be "used for promotion" and can indicate that an evaluated subordinate needs training.

Salther testified that he does not have the authority to discipline his subordinates. However, the overall record indicates that Salther has the authority to report misconduct to Braun or recommend to Braun that a subordinate be disciplined.[6] Jochim testified that Salther has the authority to issue verbal or written warnings without seeking Braun's or Jochim's approval.

Salther has not had a grievance filed with him and has not been trained how to handle grievances. However, according to the CBA, Salther functions as the first step of the grievance process for his subordinates. That requires that Salther respond to and attempt to adjust or resolve the grievances he receives. Salther can resolve a grievance if Salther agrees with it and feels that a mistake has been made. He can also recommend to Braun or Jochim how a grievance should be resolved. The level of review that Salther's recommendation would be given would depend on the particulars of the grievance.

Chris Colletti, Water Plant Manager

Colletti has three "equally competent" subordinates, each of whom is a Water Plant Operator represented by the IUOE. Colletti assigns those subordinates work. He is also responsible for prioritizing their work on a daily basis and for making sure their work is completed.

[6] Salther can recommend to Braun that a subordinate be suspended. If Salther recommends a suspension, Braun informs Jochim of the recommendation. Braun and Jochim would then ask Salther questions about it and "take it from there."

Some Water Plant work that Colletti assigns is initially scheduled by employees of the Village's Finance Department who are otherwise unaffiliated with the Water Plant. They schedule work that emanates from the complaints of residents or businesses. At the beginning of each regular work day, Colletti distributes that scheduled work evenly between himself and each of his subordinates. Normally, Colletti determines whether he has assigned the work evenly. When Colletti is unable to assign that type of work, it is distributed evenly by the most senior Water Plant Operator.

Colletti assigns his subordinates routine maintenance work. That type of work often involves checking the Water Plant's many water tanks and pumping stations. Related work can also be assigned by Colletti when a subordinate has discovered an issue while performing routine maintenance work and is unable to fix the problem on his own. Colletti divides and assigns that work evenly between himself and each of his subordinates.

Colletti assigns and schedules his subordinates a range of water testing work. Colletti determines which subordinate will do the testing. When making that determination, Colletti considers what each subordinate is working on at the moment and gauges whether the subordinate is too busy to conduct a test. Colletti, like his subordinates, also performs water testing work.

Colletti has his subordinates respond to emergencies that arise during normal work hours. When Colletti assigns that type of work, he considers how many subordinates are needed to address the emergency. He also considers which subordinates are already scheduled to work at that time and what they have already been assigned. The assignment of emergency-related work can require Colletti to prioritize the Water Plant's work.

Colletti can instruct one of his subordinates to order parts. Colletti does not need the permission of Jochim, Colletti's immediate superior, to assign that work. However, Colletti can and generally does decide to order parts on his own.

A Water Plant Operator can be called to temporarily work for other divisions of Public Services. Before that occurs, however, Braun generally calls Colletti to ask for a Water Plant Operator's assistance. At that point, Colletti may be able to choose which of his Water Plant Operators should provide the assistance. Colletti distributes that work on a rotational basis when possible. However, it is possible that Braun might simply inform Colletti that a specific Water Plant Operator has been given an assignment.

Colletti can ask a subordinate to be on call for a week. That work is distributed on a rotational basis to all Water Plant employees.[7] Whoever is scheduled to be on call is responsible for responding to after-hours emergencies and is uniquely expected to come in to work during weekends and holidays. If an on-call employee determines that he cannot deal with an emergency on his own, he usually calls Colletti. At that point, Colletti decides how swiftly the emergency must be addressed, how many subordinates are needed to address the emergency, and which subordinate or subordinates should be used.

Colletti is responsible for approving or denying his subordinate's time off and vacation time requests. When Colletti receives a time off request from a subordinate, Colletti checks a schedule to determine whether other subordinates are already scheduled to take the same time off. He also tries to determine whether the requesting subordinate is already scheduled to be on call at the time. If Colletti determines that neither of those two conflicts exists, he approves the request and submits it to Braun.

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[7] Colletti is included in the "on-call rotation." When Colletti performs that type of work, he does the same work that a subordinate would do.

Colletti completes performance evaluations for each of his subordinates. Those evaluations are completed once a year. They do not affect his subordinates' pay.

Colletti has the authority to issue his subordinates verbal and written warnings and has done so. When Colletti determines that a warning has not corrected a subordinate's behavior, Colletti has a discussion with Jochim and recommends a level of additional discipline. Colletti can also choose to counsel a subordinate in lieu of discipline. Colletti does not need Braun's or Jochim's permission to issue discipline. That being said, Colletti rarely disciplines his subordinates.

Colletti is responsible for receiving his subordinates' formal grievances. However, he has neither received nor been involved with a grievance. Further, Colletti has never been told how he should handle grievances.

Michael Haws, Fleet Manager

Haws has three direct reports: Gina Ahlgrim, Haws' secretary; Richard Blassick, the Shop Supervisor; and Duane Paulus, the Transportation Supervisor. Haws also indirectly oversees the Fleet division's mechanics and bus drivers. Ahlgrim is represented by the Petitioner.[8] Blassick, Paulus, and the bus drivers are unrepresented. The mechanics are represented by the IUOE.

Haws assigns Ahlgrim work every day and can change or prioritize Ahlgrim's assignments as he sees fit. Haws sometimes has Ahlgrim type memos, purchase orders, and requisitions. On occasion, he tells Ahlgrim whether to hold or answer his calls. Ahlgrim is the only person that performs that work for Haws. Haws never asks Jochim how he should assign Ahlgrim work.

[8] At the time of the hearing, the Village and the Petitioner did not yet have a CBA.

If Ahlgrim needs her normal work hours adjusted, she can ask Haws for that adjustment. Depending on the particulars of her request, Haws may seek Jochim's approval before granting it. However, Ahlgrim's normal work hours have never been changed. Haws would not need Jochim's approval if Haws was simply allowing Ahlgrim to leave work early for a doctor's appointment.

Around 10 to 15 times a year, Haws has Ahlgrim perform overtime work when she is behind on her work. Haws can order Ahlgrim to stay late at work, shorten her lunch break, or come in to work early. Haws does not need Jochim's permission to assign Ahlgrim overtime work.

Haws gives some assignments to the mechanics. While any mechanic can "more or less" perform another mechanic's work, each of those assignments is generally given to the mechanic who usually works on the type of vehicle affiliated with the assignment. Typically, one mechanic works on police department vehicles, two mechanics work together on Pace buses, one mechanic works on fire trucks, two mechanics work on Public Works trucks, and one mechanic works on department heads' cars and "code enforcement."

Haws can also ask a mechanic to perform scheduled overtime work. According to the CBA, if a mechanic is being assigned scheduled overtime work, Haws must select a mechanic in accordance with an overtime seniority list. However, Haws may decide to select the mechanic who is already working on the assignment that must be completed and then have that mechanic work beyond the end of his shift. Alternatively, if something breaks down at the end of a shift, Haws can determine which mechanic is "best qualified" to make the necessary repair and then have that mechanic extend his shift. Haws has also asked mechanics to come in early.

Haws is responsible for approving or denying his direct reports' vacation time requests. Haws generally grants those requests if the direct report has unused vacation time available. As discussed below, Haws is also partially responsible for approving or denying the vacation time requests of the mechanics.

In accordance with a Village policy, the number of vacation days Ahlgrim can use in a year correlates with the number of years she has been employed by the Village. When Haws is handling one of Ahlgrim's vacation time requests, he must be aware of that number. He must also consider whether there is a scheduling conflict. That additional check is necessary because at least one of the department's secretaries must always be working. When Haws receives one of Ahlgrim's vacation time requests, it is submitted to Robert Pilat, Jochim's administrative assistant, who checks to see if the other secretaries are already scheduled to be off work at the time.[9] Ultimately, Jochim determines whether Ahlgrim's vacation time requests should be approved.

Haws is also responsible for approving or denying Ahlgrim's personal day requests. When presented with such a request, Haws must consider the amount of personal days Ahlgrim has available. (A Village policy dictates that Ahlgrim currently gets one personal day per year.) Haws must also consider whether there is a scheduling conflict. Jochim is generally not involved with that type of determination.

Haws completes annual performance evaluations for each of his three direct reports. Those evaluations can provide a positive or a negative review of a direct report's work, set goals for a direct report, or indicate that a direct report's performance needs improvement. However, Haws' evaluations do not affect his direct reports' pay and would not be considered if a direct

[9] Notably, Pilat also generally oversees and schedules all mandatory annual training. Pilat uses outside agencies to provide that training.

report requested a pay raise. After Haws completes an evaluation and presents it to the evaluated direct report, the evaluation is submitted to Jochim for his review. A copy of each completed performance evaluation is sent to the Village's Human Resources Department. Haws only spends one hour per year completing each of his three direct report's performance evaluations.

Haws does not have "final authority to decide to discipline someone," but Haws can recommend to Jochim that one of Haws' subordinates be disciplined. Haws determines the level of discipline that he recommends and whether he should recommend discipline at all. In lieu of recommending that a mechanic be disciplined, Haws can choose to let Paulus handle the situation. Most of Haws' disciplinary recommendations that are approved by Jochim are later submitted to "upper management" (which includes the Village Manager). Haws' disciplinary recommendations are not simply "rubber stamped," but the majority of his disciplinary recommendations are followed.

Haws is also responsible for approving or denying Paulus' disciplinary recommendations. If Haws disagrees with one of Paulus' disciplinary recommendations, Haws can deny the recommendation or order Paulus to recommend a different or a particular level of discipline. If Haws agrees with and signs Paulus' disciplinary recommendation, it is submitted to Jochim for his review. If it is approved by Jochim, the recommendation is then reviewed by the Village Manager, who also either approves or denies the disciplinary recommendation. If the Village Manager approves of the recommended discipline, the discipline can be issued.

In accordance with the CBA, Haws is expected to handle the grievances that have been filed by the mechanics and Blassick is unable to resolve. Haws has received one grievance that was filed by a mechanic. However, Haws did nothing to resolve that grievance.

Haws annually prepares and then recommends a detailed budget for the Fleet division. That draft budget is divided into a wide range of smaller budget items, and the amounts initially proposed for each of those budget items are largely determined by Haws. When determining the amount that should initially be recommended for a particular budget item, Haws carefully considers the amount allotted in the prior years' budgets, what has or has not been spent since the prior allotments, what Haws expects to be spent in the next year, and his own understanding of the division's needs. He may also decide to consult with a colleague such as Ahlgrim, Blassick, Colletti, or Paulus for technical advice.

The section of the Fleet budget that addresses the Pace buses is largely determined by Pace. However, Haws can still recommend changes to that section of the budget when he knows that a change is necessary. For example, Haws has recommended that the Village purchase a new chip key encoder for the Pace buses. That recommendation was upheld. Haws has also suggested cuts to the Pace bus portion of Fleet's budget. Some of those cuts were accepted.

Every year, Haws' recommended budget is submitted to Jochim for his initial review. Subsequently, Haws and Jochim discuss the recommendation in detail. The recommended budget is then presented to and reviewed by the Village Manager and representatives of the Finance Department during a series of meetings.[10] During those meetings, Haws and Jochim work together and "defend" and "sell" Haws' recommendation to the group. At that stage, there is often a "give-and-take."

In practice, the Finance Department can and often does disagree with some aspects of Haws' recommendations. The Finance Department can also simply modify Haws' recommended budget on its own. That being said, when the Finance Department asks Haws to reduce the recommended budget in some way, it is largely left to Haws to decide which budget

[10] Jochim has not rejected a draft budget that Haws has presented to him.

items should be reduced. When Haws disagrees with one of the Finance Department decisions, he shares that opinion with the Finance Department.[11]

Haws also receives bills for parts and repairs. Before such a bill can be paid, Haws must assign the bill an account number and give it to Ahlgrim, who types an official requisition that must then be approved by Haws, Jochim, the Finance Department, the Mayor, "the purchasing agent," and the Finance Director. If Haws evaluates a bill and determines that Fleet has been overcharged, he can hold the bill and attempt to negotiate with the vendor for a lower price. That determination is based on Haws' lengthy experience in the automotive field. When Haws negotiates a price, he does so without Jochim's involvement.

Although Haws does not necessarily do so on a daily basis, he is often responsible for ordering vehicles, parts, and repairs for the Fleet division. Haws also determines whether a necessary repair should be conducted "in-house" or by an outside vendor. He does not need Jochim's permission to make that determination.

When Haws orders an item or service that costs $1000 or less, he does not need the approval of his superiors. However, orders over $1000 must be approved by Jochim, representatives of the Finance Department, the Village Manager, and the Mayor. Moreover, for those orders, Haws can only order from the vendor with the lowest of three bids.[12] If Haws does not approve of any of the three bids he has collected, he can seek out bids from other vendors.

Haws attends "management meetings." Those meetings are held four or five times a year. Each management meeting usually lasts an hour. Discipline and "personnel" issues,

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[11] The Village Manager and the Village Board can also tell Haws to make cuts to the Fleet budget.

[12] Haws is not required to get bids when he is purchasing a police vehicle, as those vehicles are purchased in accordance with a state contract.

overtime budgets, "staffing," and IUOE-related matters have been discussed during those meetings.[13]

Richard Blassick, Shop Supervisor

Blassick oversees seven subordinate mechanics who are represented by the IUOE. Blassick assigns the mechanics work on a daily basis. He is also responsible for making sure that they complete that work.

Some of the mechanics' work is affiliated with vehicle repair requests or other work orders that are memorialized in tickets that Blassick assigns to his subordinates. Blassick gets those tickets from Haws. In practice, Blassick simply assigns each ticket to a subordinate who normally works on the type of vehicle noted in the ticket.

When mechanics are not working on other assignments, they are expected to perform preventative maintenance work. That work is distributed via a posted computer printout. The printout is created by Haws and printed by Ahlgrim. Preventative maintenance work can be assigned by Blassick, but mechanics can and do refer to the printout on their own.

Blassick also assigns his subordinates overtime work. However, he must do so on a rotational basis in accordance with a seniority list. The mechanics may refuse to perform an overtime assignment.

Blassick can approve or deny the mechanics' time off and vacation time requests, but he must do so in accordance with the CBA. According to a provision of the CBA, only two mechanics can take time off at the same time. Moreover, whether or not a time off request is granted depends on the mechanic's seniority. When Blassick approves a mechanic's vacation

[13] Management meetings are also attended by Ball, Blassick, Colletti, Polcyn, Salther, an unnamed engineer, Pilat, and the "acting managers" of the Buildings and Grounds division and the Forestry division. The two acting managers are represented by the IUOE.

time request, that approval is submitted to Haws, who can approve or deny Blassick's approval.[14] Blassick has never denied a mechanic's vacation time request.

During the hearing, Blassick testified that he could not deny a subordinate's personal time request if he found that there were operational reasons to do so. However, he also indicated that he could deny a vacation or personal day if he had five squad cars that he needed to get operational by the next day. Blassick has no authority to deny a sick leave request when a subordinate has sick time available.

Blassick completes annual performance evaluations. Those evaluations are sent to the Human Resources Department and maintained in the personnel files of his subordinates. Blassick's evaluations do not affect the mechanics' pay, but might be reviewed if a mechanic is being considered for an open "supervisory position." However, Blassick's evaluations would not play a "major role" in the decision-making process.

Blassick cannot suspend or discharge employees. However, he does have the authority to fill out a "Disciplinary Action form," which allegedly resembles a reprimand. Each of Blassick's Disciplinary Action forms is submitted to Haws. Blassick very rarely uses those forms.

Blassick functions as the first step of the mechanics' grievance procedure. He has received one grievance. To resolve that grievance, Blassick adjusted a mechanic's schedule. That arrangement was approved by all the other mechanics.

[14] If three mechanics have requested time off, Haws can ask whether one would consider changing his request. If no mechanic is willing to change his request, the third request is denied.

IV. DISCUSSION AND ANALYSIS

The Act's Supervisor Exclusion

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. Excluded from the definition of public employees (contained in Section 3(n) of the Act), and therefore the Act's coverage, are supervisory employees. State of Illinois, Department of Central Management Services, 5 PERI ¶2012 (IL SLRB 1989).[15] Here, the Employer contends that Ball, Blassick, Colletti, Haws, Polcyn, and Salther are supervisors within the meaning of Section 3(r) of the Act and therefore must be excluded from bargaining.[16]

Under Section 3(r), employees are supervisors if they: (1) perform principal work substantially different from that of their subordinates; (2) possess authority in the interest of the Employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act; (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). As the party seeking to exclude the petitioned-for employees at issue from bargaining, the Employer has the burden of proving, by a preponderance of the evidence, the employees are supervisors.

[15] The Act excludes supervisors from participation in a collective bargaining unit in order to ensure employers that pro-union bias will not impair the supervisor's ability to apply the employer's policies to subordinates according to the employer's best interests. County of Cook v. Illinois Labor Relations Board – Local Panel, 351 Ill. App. 3d 379, 393, 813 N.E.2d 1107, 1120 (1st Dist. 2004).

[16] 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.

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).

In determining whether the threshold 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. City of Freeport, 135 Ill. 2d at 514, 554 N.E.2d at 162; Northwest Mosquito Abatement District, 13 PERI ¶2042 (IL SLRB 1997), aff'd. 303 Ill. App. 3d 735, 708 N.E.2d 548 (1st Dist. 1999). If that work is obviously and visibly different, the principal work requirement is satisfied. 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. City of 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).

Though the alleged supervisor's main undertaking must differ from the main undertakings of his or her subordinates, he or she may, at times, engage in similar work as his or her subordinates and still be determined a supervisor if other indicia are present. City of Freeport, 135 Ill. 2d at 513, 554 N.E.2d at 162; Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994). The initial prong is not necessarily a quantitative test. City of Freeport, 135 Ill. 2d at 513, N.E.2d at 162; Village of Broadview v. Illinois Labor Relations Board, 402 Ill. App. 3d 503, 507, 932 N.E.2d 25, 30 (1st Dist. 2010).

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the eleven indicia of supervisory authority listed in the Act and consistently

exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action. Further, the petitioned-for employee's decisions 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, AFL-CIO, 153 Ill. 2d 508, 531, 607 N.E.2d 182, 193 (1992); City of Freeport, 135 Ill. 2d at 531, 554 N.E.2d at 170; Village of Justice, 17 PERI ¶2007 (IL SLRB 2000). Whether independent judgment is used is a fact-based determination to be made with a case-by-case analysis. Chief Judge of the Circuit Court of Cook County, 153 Ill. 2d at 522, 607 N.E.2d at 189. An effective recommendation satisfying the Act's supervisor requirements is one that is adopted by the alleged supervisor's superiors as a matter of course with very little, if any, independent review. City of Peru v. Illinois State Labor Relations Board, 167 Ill. App. 3d 284, 289, 521 N.E.2d 108, 112 (3rd Dist. 1988); Village of Justice, 17 PERI ¶2007; Peoria Housing Authority, 10 PERI ¶2020.

As noted, the fourth and final prong of the supervisor test requires that the alleged supervisor devote a preponderance of his or her employment time exercising supervisory authority as defined in the Act. The Illinois Supreme Court, in City of Freeport, interpreted the preponderance standard to mean that the most significant allotment of the employee's time must be spent exercising supervisory functions. Stated another way, the employee must spend more time on supervisory functions than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 532, 554 N.E.2d at 171.

Since the City of Freeport decision, two panels of the Fourth District of the Illinois Appellate Court have issued different interpretations of how "preponderance" can be analyzed.

The first interpretation defines preponderance as requiring that the employee spend a majority, or more than 50% of his or her time, engaged in supervisory activity. Department of Central Management Services v. Illinois State Labor Relations Board, 249 Ill. App. 3d 740, 746, 619 N.E.2d 239, 244 (4th Dist. 1993). The second interpretation of preponderance relies on whether the supervisory functions are more "significant" than the non-supervisory functions. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 85, 662 N.E.2d 131, 135 (4th Dist. 1996).[17] In this case, the Employer generally argues that each of the petitioned-for employees at issue spends the majority of his employment time performing supervisory functions.

The Act's delineation of the fourth prong, on its face, restricts the work time that is relevant under a self-referential standard which harks back to the second and third prongs of the supervisor test. The second and third prongs address the authority to undertake or effectively recommend various supervisory functions (indicia). In turn, the time that is relevant under the fourth prong, so far as determining whether the preponderance of work time requirement is met, is employment time actually spent exercising that authority. That time does not include, for example, time spent directing or disciplining employees when such activities do not amount to direction or discipline within the meaning of the Act. See Downer's Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 55, 581 N.E.2d 824, 829 (2nd Dist. 1991); State of Illinois, Department of Central Management Services (Department of Healthcare and Family Services), 28 PERI ¶69 (IL LRB-SP 2011). Crucially, an employee will only be deemed a supervisor if he or she meets all applicable parts of the test. City of Freeport, 135 Ill. 2d at 512,

[17] While the second panel appears to avoid a purely mathematical approach, it nonetheless reiterates that City of Freeport indicates that, in order for an employee to be considered a supervisor under the fourth prong of the supervisor test, the alleged supervisor must spend more time on supervisory functions than on any one nonsupervisory function. Department of Central Management Services, 278 Ill. App. 3d at 85, 662 N.E.2d at 135; City of Freeport, 135 Ill. 2d. at 532, 554 N.E.2d at 171; Secretary of State, 1 PERI ¶2009 (IL SLRB 1985).

N.E.2d at 162; Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 476, 839 N.E.2d 1073, 1079 (2nd Dist. 2005).

Ball's Supervisory Status

Ball, like his subordinates (the Serviceman IIs of the Streets and Signs division), performs street and sign maintenance. Moreover, Ball and his subordinates are equally responsible for salting and plowing snow. Indeed, according to Ball's testimony, Ball probably spends about half of his time performing the work of his subordinates. Nevertheless, on balance, that type of work is not Ball's "principal" work, as Ball performs a considerable amount of important work that his subordinates clearly do not. Unlike his subordinates, Ball considers vacation time requests, conducts performance evaluations, and uniquely performs research and certain clerical work. He is also uniquely responsible for deciding what work each of his subordinates should perform and for making sure their work is completed. Accordingly, the first prong, the principal work requirement, is satisfied.

The Employer contends that Ball directs within the meaning of the Act. The authority to so direct encompasses several distinct but related functions. Generally, it requires the alleged supervisor to be responsible for the work of his or her subordinates and have the authority to make operational decision affecting those subordinates in the areas of assigning work, granting time off or vacation requests, evaluating subordinates, reviewing work, or instructing how work is to be performed. See Illinois Department of Central Management Services (Department of Professional Regulation), 11 PERI ¶2029 (IL SLRB 1995). In the vast majority of circumstances, however, the day-to-day direction of subordinates, such as the oversight and review of their work and the assignments of tasks, does not evince supervisory direction. Significant discretionary authority to affect subordinates' employment in areas likely to fall

within the scope of union representation must accompany an individual's oversight authority in order to make that authority supervisory within the meaning of the Act. Illinois Department of Central Management Services (State Police) v. Illinois Labor Relations Board, State Panel, 382 Ill. App. 3d 208, 224, 888 N.E.2d 562, 577 (4th Dist. 2008); Village of Bolingbrook, 19 PERI ¶125 (IL LRB-SP 2003).

Ball regularly assigns his subordinates work. He is also responsible for making sure that work is completed. Although each of Ball's subordinates is often assigned a particular type of assignment, it does not appear that all his assignments are distributed that way. Ball often must consider the skills required by each assignment as well as his subordinates' work restrictions. Further, he must often decide which assignments should be completed first and how many employees are needed for each assignment. Even when Braun independently prioritizes some Streets and Signs work, Ball is left to determine how that work should be done. Those facts indicate that Ball consistently uses independent judgment when assigning work. Thus, Ball directs within the meaning of the Act.

As indicated, Ball once successfully recommended to a superior that Ball's subordinates be allowed to attend a brief product demonstration. However, that isolated example is not particularly probative of the consistent use of independent judgment. Accordingly, it is not compelling evidence of the authority to direct within the meaning of the Act.

Ball assigns overtime work, but why that overtime is assigned is unclear. Moreover, it generally appears that, when Ball does assign overtime work, he must do so in accordance with a list.[18] It also appears that Ball has all of his subordinates perform the same overtime work at the same time. Additionally, all of Ball's overtime assignments are reviewed by Jochim and

[18] Limited testimony suggests that whoever is assigning scheduled overtime work to IUOE members has some discretion to "skip" unqualified employees without Braun's or Jochim's permission. However, it is not clear that Ball or any of the petitioned-for employees at issue truly exercise that authority.

thoroughly reviewed by Braun. Those facts do not meaningfully demonstrate the consistent use of independent judgment and thus do not demonstrate the authority to direct within the meaning of the Act.

Ball handles his subordinates' vacation time requests, and the approval of such requests can often demonstrate the supervisory authority to direct within the meaning of the Act. See State of Illinois (Department of Central Management Services), 12 PERI ¶2032 (IL SLRB 1996). Yet, in this instance, the Employer has not sufficiently demonstrated that Ball consistently uses independent judgment when he does so. Therefore, Ball's handling of vacation time requests does not evidence supervisory authority.

All of Ball's vacation time approvals must be further approved by his superiors, and a number of his approvals have been overruled. Moreover, Ball's authority to handle his subordinates' vacation time requests is fairly strictly governed by the CBA. The CBA may allow Ball to consider operating needs, but that particular authority has not been exercised by Ball or meaningfully developed in the record. In practice, Ball's handling vacation of time requests is routine in nature and, as suggested above, leave requests that are routinely granted are not evidence of supervisory direction. See State of Illinois, Department of Central Management Services, 28 PERI ¶160 (IL LRB-SP 2012).

Ball completes annual performance evaluations. Generally speaking, responsibility for formally evaluating or rating work performance is evidence of the authority to direct when the rating or evaluation is used to affect the employees' pay or employment status. See City of Naperville, 8 PERI ¶2016 (IL SLRB 1992); State of Illinois, Department of Central Management Services, 4 PERI ¶2013 (IL SLRB 1988). Here, Ball's evaluations do not affect his

subordinates' pay. Nevertheless, Ball's evaluations may be reviewed if one of his subordinates is being considered for a promotion.

Ball's performance evaluations contain a range of personalized ratings, feedback, and goals. For that reason, they demonstrate independent judgment (and thus evidence the authority to direct). See State of Illinois, Department of Central Management Services, 5 PERI ¶2012. Granted, Braun once instructed Ball to revise an evaluation. However, that is not the norm. Also, Jochim generally only reviews Ball's evaluations to make sure that Ball is not showing favoritism.

Ball can discipline his subordinates when they do not accept his assignments. He can also decide that no discipline is appropriate and instruct a subordinate to comply with a prior directive. Those facts suggest that Ball has the authority to discipline within the meaning of the Act. Admittedly, Ball has never disciplined a subordinate and has never been told how to do so. However, at this point in the analysis, it is the authority to use independent judgment in imposing discipline, rather than how often such discipline is imposed, which is important. City of Freeport, 135 Ill. 2d at 521, N.E.2d at 166.

Ball has neither received nor resolved a grievance, but he would serve as the first step of his subordinates' grievance procedure. He is also expected to attempt to adjust grievances. That being said, Ball has never been trained how to handle formal grievances. Further, the record does not meaningfully demonstrate that Ball would exercise that authority with independent judgment. Accordingly, it cannot be found that Ball adjusts grievances within the meaning of the Act. The mere designation as the first step of a grievance procedure is not enough to establish supervisory authority. Metropolitan Alliance of Police, 362 Ill. App. 3d at 479, 839 N.E.2d at 1082; County of Kane and Sheriff of Kane County, 7 PERI ¶2043 (IL SLRB 1991).

When addressing the final prong of the supervisor test, the Employer relies on Jochim's testimony. Jochim estimated that Ball spends more than 50% of his time "assigning and directing work to his subordinates, evaluating employee performance, assigning/directing overtime, approving or denying time off, and disciplining." He also testified that Ball spends more time performing those functions than Ball spends performing "other job functions." However, Jochim conceded that he has not "done a time study to see how much time [Ball] spends evaluating, disciplining, directing, approving time off, [and] approving overtime" and has not studied Ball's job "to see how much time [Ball] spends on different tasks." Jochim based his estimations on "observation," assumptions, and questions that Ball has asked Jochim. Also, Jochim's estimations do not address whether Ball performed the relevant work with independent judgment. Those circumstances deprive Jochim's estimations of value.

Ball estimated that he probably spends no more than 15% of his time assigning work, directing the work of his subordinates, evaluating them, responding to grievances, recommending discipline, approving time off, and assigning overtime. As noted, he also testified that he probably spends half of his time performing the work of his subordinates. Ball's estimations are more in accord with the overall record than those of Jochim.

Although Ball assigns regular and overtime work and responds to his subordinates' vacation time requests, it does not appear that Ball spends a significant amount of time performing that work with independent judgment. Further, I do expect Ball to spend a significant amount of time completing five performance evaluations each year. Ball has spent no time disciplining or adjusting grievances. Under those circumstances, the final prong of the supervisor test has not been satisfied. Therefore, the Employer has failed to demonstrate that Ball is a supervisor within the meaning of the Act.

Blassick's Supervisory Status

Sometimes, Blassick assists his subordinates (the mechanics of Fleet) and performs similar work. However, that rarely occurs. Moreover, Blassick only performs his subordinates' work when they ask Blassick for his help. Unlike his subordinates, Blassick assigns regular and overtime work, handles time off and vacation time requests, and completes performance evaluations and Disciplinary Action forms. Likewise, Blassick uniquely buys fuels for the Village when necessary, orders parts from dealers and local vendors, and logs data into a Village vehicle repair database. Under those circumstances, the principal work requirement is satisfied.

As indicated, Blassick assigns his subordinates work on a daily basis and is responsible for having that work completed. Nevertheless, the record does not indicate that Blassick consistently uses independent judgment when he assigns work. Blassick largely assigns work to the subordinate traditionally affiliated with the type of work being assigned. He also appears to simply assign that work as it comes in. While Blassick does assign overtime work, the record does not clearly illustrate how he decides when to do so. Further, whenever he does assign overtime work, he does so on a rotational basis in accordance with an overtime list.

Blassick handles his subordinates' time off and vacation time requests, but must do so in accordance with the CBA. When Blassick approves a vacation time request, that approval must be submitted to Haws for his review. Blassick has never denied a mechanic's vacation time request. Blassick testified that he cannot deny a personal time request if he found that there were operational reasons to do so. Moreover, Blassick allegedly has absolutely no authority to deny a sick leave request when a subordinate has sick time available.[19] Those facts do not demonstrate that Blassick consistently uses independent judgment. See County of Boone and Sheriff of Boone County, 19 PERI ¶74; County of Lake and Sheriff of Lake County, 16 PERI ¶2036 (IL

[19] The CBA provides each mechanic ten sick days a year.

SLRB 2000). Blassick's brief statement theorizing that he could deny a vacation day or a personal day if he had five squad cars he needed to get operational by the next day does not meaningfully refute that conclusion.

Blassick completes performance evaluations that contain a range of personalized ratings, feedback, and goals. Those evaluations are maintained in each mechanic's personnel file and, although Blassick's evaluations do not affect his subordinates' pay or play a major role with promotions, they can be reviewed if a mechanic is being considered for an open "supervisory position." On balance, those facts demonstrate that Blassick directs within the meaning of the Act.

Blassick has the authority to fill out Disciplinary Action forms and has done so. However, the record does not demonstrate that Blassick consistently uses independent judgment when he exercises that authority, as it does not illustrate how Blassick decides when he should complete such a form. Further, each form must be submitted to Haws. Haws has only issued two Disciplinary Action forms, and the fates of those forms are unclear. Those facts do not persuasively evidence the authority to discipline within the meaning of the Act.

Blassick functions as the first step of his subordinates' grievance procedure. He has received and resolved a grievance. It appears that Blassick resolved the grievance without the guidance of a superior or standard procedures. Those facts demonstrate that Blassick adjusts grievances within the meaning of the Act.

When addressing the final prong of the supervisor test, the Employer references Jochim's estimation that Blassick spends more than 50% of his time assigning and directing work, reviewing subordinate performance, approving or denying overtime, approving or denying time off, and disciplining. However, Jochim also testified that he has not studied Blassick's job "to

see how much time [Blassick] spends on different tasks" and conceded that he has not "done a time study to see how much time [Blassick] spends evaluating, disciplining, directing, approving time off, [and] approving overtime." Jochim based his estimation on conversations he has had with Haws. Further, Jochim's estimation does not address whether Blassick performs his work with independent judgment. Those circumstances deprive Jochim's estimation of value.[20]

The overall record does not demonstrate that Blassick devotes a preponderance of his employment time exercising supervisory authority. As noted, although Blassick regularly assigns work, it does not appear that he does so with independent judgment. The same can be said about his authority to handle time off or vacation time requests. Blassick directs within the meaning of the Act when he completes performance evaluations but, because he only has seven subordinates to evaluate each year, he is unlikely to spend a significant portion of his employment time doing so. Because Blassick very rarely issues Disciplinary Action forms, it follows that he spends very little time disciplining his employees. Likewise, because Blassick has only received and resolved a single grievance, it appears that he spends very little time handling grievances. Accordingly, it must be found that the Employer has failed to demonstrate that Blassick is a supervisor within the meaning of the Act.

Colletti's Supervisory Status

Colletti testified that he spends at least 50% of his time doing work that is similar to that of his subordinates (the Water Plant Operators). However, unlike his subordinates, Colletti determines when and how he performs that work. Colletti also uniquely assigns work on a regular basis, handles time off and vacation time requests, disciplines, and orders and maintains

[20] In addition, Jochim's estimation conflicts with that of Blassick, who testified that he only spends between 20% and 25% of his time assigning work, recommending discipline, calling employees for overtime work, approving leave, preparing evaluations, and responding to grievances. However, Blassick also testified, somewhat ambiguously, that he spends most of his time on "parts inventory" and "giving out the work."

supplies for the Water Plant. Those important functions, which are substantially different than those of his subordinates, are more accurately characterized as Colletti's principal work. Accordingly, the first prong of the supervisor test is satisfied.

Colletti assigns his subordinates regular and overtime work, but that work is generally distributed evenly or on a rotational basis. Generally, such routine assignment does not evidence the use of independent judgment. See State of Illinois, Department of Central Management Services, 22 PERI ¶158 (IL LRB-SP 2006); City of Peru, 2 PERI ¶2040 (IL SLRB 1986). That being said, Colletti also prioritizes his subordinates' work on a daily basis, often considers his subordinates' availability, and has the authority to reprioritize their work when emergencies occur. Further, when there is an emergency, Colletti can determine the urgency of the emergency and decide how many employees are needed to respond to it. When exercising that kind of authority, Colletti uses independent judgment and thus directs within the meaning of the Act.

Colletti handles his subordinates' time off and vacation time requests. However, when presented with those requests, Colletti simply considers whether other subordinates are already scheduled to take the same time off and whether the requesting subordinate is already scheduled to be on call at that time. Those considerations evidence a routine handling of his subordinates' requests and therefore do not demonstrate the consistent use of independent judgment.

Colletti completes annual performance evaluations, and those evaluations contain a range of personalized ratings, feedback, and goals. However, those evaluations do not affect his subordinates' pay and have not been shown to affect employment status. Accordingly, that particular responsibility does not further evidence the authority to direct within the meaning of the Act.

As noted above, Colletti has the authority to issue verbal and written warnings and has done so. In addition, he can recommend additional discipline or choose to counsel a subordinate. Colletti does not need Braun's or Jochim's permission to issue discipline. Those facts demonstrate that Colletti disciplines within the meaning of the Act. The fact that Colletti rarely exercises that authority is not determinative.

According to the CBA, Colletti is responsible for receiving his subordinates' formal grievances, but Colletti has neither received nor been involved with a formal grievance and has never been told how to handle grievances. Nothing in the record demonstrates that Colletti would consistently use independent judgment when he receives a grievance. Thus, it cannot be found that Colletti adjusts grievances within the meaning of the Act.

Regarding the final prong of the supervisor test, I note that Jochim estimated that Colletti spends more than 50% of his time "assigning and directing work to his subordinates, evaluating employee performance, disciplining, approving or denying overtime, approving or denying time off, and training subordinates." However, Jochim also conceded that he has not studied Colletti's job "to see how much time he spends on different tasks" and has not "done a time study to see how much time [Colletti] spends evaluating, disciplining, directing, approving time off, [and] approving overtime." Jochim simply based his estimation on conversations he has had with Colletti. Also, the record does not address whether Colletti performs those functions with independent judgment or clarify what Jochim's understanding of "directing work" entails. Those circumstances limit the value of Jochim's estimation.

Colletti testified that he only spends 10% of his time assigning work, directing employees, preparing their evaluations, disciplining, approving time off, and approving overtime. That estimation is largely supported by the overall record. Although Colletti often

assigns his subordinates work, because that work is almost always distributed routinely, it generally follows that Colletti does not spend a significant amount of time performing that task. Likewise, I do not expect that Colletti spends a considerable amount of time routinely responding to time off requests. Colletti is unlikely to spend a significant amount of time completing three performance evaluations each year. As noted, Colletti rarely disciplines his subordinates and has neither received nor been involved with a formal grievance.

The foregoing circumstances do not convincingly demonstrate that Colletti devotes a preponderance of his employment time exercising supervisory authority. Accordingly, the Employer has not demonstrated that Colletti is a supervisor within the meaning of the Act.

Haws' Supervisory Status

Unlike Ahlgrim, Haws never functions as a secretary for a superior. Moreover, unlike that of Blassick and Paulus, Haws' oversight is not predominantly limited to one particular aspect of Fleet's work. Haws may occasionally "lend a hand" to a mechanic and, during snow removal operations, may help other employees repair equipment, but those functions cannot be viewed as Haws' principal work.[21] Haws does not drive a bus. None of Haws' subordinates have Haws' considerable budget-related responsibilities. In sum, the record indicates that Haws performs principal work that is substantially different from that of his subordinates. Accordingly, the first prong of the supervisor test is satisfied. (The Petitioner concedes that point.)

The Employer does not contend that Haws has the authority to promote, but one might nevertheless observe that Jochim testified that Haws can recommend that an employee receive a promotion, that Haws has done that, and that Haws' recommendation was followed. However,

[21] The record indicates that, sometimes, Haws, like a mechanic, works "under the hood" and changes oil, but he spends less than 10% of his time doing that work.

one must also observe that Jochim's testimony also hints at the existence of a group of superiors that is collectively responsible for interviewing candidates for promotion and ultimately making its own recommendation. That testimony implies a meaningful, independent review of Haws' recommendation. Thus, it should not be found that Haws can promote or effectively recommend a promotion within the meaning of the Act.

As noted, Haws assigns Ahlgrim work every day and can change or prioritize her assignments as Haws sees fit. Granted, Ahlgrim is the only employee available to perform Haws' secretarial work. Moreover, it is well-settled that the routine oversight of a subordinate in the performance of simple manual or clerical tasks is not supervisory direction within the meaning of the Act. City of Bloomington, 13 PERI ¶2041 (IL SLRB 1997); City of Chicago (Mayor's Office of Information and Inquiry), 10 PERI ¶3003 (IL LLRB 1993). However, those considerations are not wholly determinative in this instance.

Haws never asks Jochim how he should assign Ahlgrim work and, although Ahlgrim may often perform the same types of work, it is largely up to Haws to decide when and how Ahlgrim performs that work. Also, Haws has some authority to independently adjust Ahlgrim's normal work hours and, without Jochim's permission, can have Ahlgrim perform a variety of overtime work. On balance, those facts demonstrate that Haws directs within the meaning of the Act.

Haws also directs with independent judgment when he assigns mechanics overtime work. Although that particular authority is somewhat governed by the CBA, when Haws assigns overtime work, he can choose whether to select a mechanic in accordance with an overtime seniority list or select the mechanic who is already working on the assignment he needs

completed. Further, if something breaks down at the end of a shift, Haws can choose to select the mechanic he determines is best qualified and extend that mechanic's shift.[22]

While Haws directs Ahlgrim and the mechanics within the meaning of the Act, he does not so direct his other subordinates. Haws tells Blassick to find prices and pick up vehicles, reprioritizes Blassick's work when necessary, and can ask Paulus to help him with a resident's complaints. However, those facts have not been meaningfully developed and the record does not indicate whether Haws consistently performs those functions with independent judgment.

Haws handles his direct reports' vacation time requests, but that particular responsibility is not demonstrative of the authority to direct within the meaning of the Act. Although Haws does not need Jochim's approval before approving a direct report's vacation time request, it generally appears that Haws simply grants the request if he or she has unused time available and there is no clear scheduling conflict. That approach does not require independent judgment.

As indicated, Haws also handles Ahlgrim's personal day requests. However, because Haws only considers the amount of personal days Ahlgrim has available and whether there is a scheduling conflict, Haws' handling of Ahlgrim's personal time requests does not evidence independent judgment. The fact that Jochim is not as involved with the handling of Ahlgrim's personal day requests as he is with her vacation time requests does not change that conclusion.

The record does not address whether Haws uses meaningful independent judgment when he reviews the mechanics' vacation time requests. Haws does not appear to handle the bus drivers' vacation time requests at all. Therefore, Haws does not appear to direct within the meaning of the Act when he handles his indirect reports' vacation time requests.

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[22] Haws also assigns mechanics regular work but, because that work is simply assigned to the mechanics affiliated with the type of work needed, the assignment is largely routine.

Haws completes annual performance evaluations for each of his direct reports. Those evaluations contain a range of personalized ratings, feedback, and goals. While Jochim reviews Haws' evaluations, he does so after Haws has already presented the evaluation to the direct report. However, Haws' evaluations have not been shown to affect his subordinates' pay or employment status. Consequently, it cannot be found that Haws directs within the meaning of the Act when he completes performance evaluations.

Haws has the authority to recommend that a subordinate disciplined. Haws determines what level of discipline he recommends and whether he should recommend discipline at all. Although Haws' disciplinary recommendations are considered by his superiors, the majority of his recommendations are followed. Those circumstances evidence the authority to use independent judgment and, accordingly, the authority to effectively recommend discipline within the meaning of the Act. The mere fact that Haws rarely exercises that authority is not dispositive.

Haws is also responsible for approving or denying Paulus' disciplinary recommendations. If Haws disagrees with one of Paulus' disciplinary recommendations, he can order Paulus to recommend a different or a particular level of discipline. Pace does not determine the level of discipline that must be issued when a Pace policy is violated. Those facts further evidence Haws' authority to discipline with independent judgment.

A CBA dictates that Haws is expected to handle the grievances that have been filed by the mechanics and Blassick is unable to resolve. Haws has received one grievance that was filed by a mechanic, but Haws did nothing to resolve it. Those facts do not demonstrate that Haws consistently uses independent judgment when handling grievances. Therefore, it cannot be found that Haws adjusts grievances within the meaning of the Act.

When addressing the fourth prong of the supervisor test, the Employer references Jochim's estimation that Haws spends more than 50% of his time assigning his subordinates work, directing their work, evaluating their performance, granting time off, granting overtime, disciplining subordinates, training subordinates, and attending management meetings. A number of circumstances limit the value of that estimation.

Although Jochim has "personal knowledge" of Haws' job duties and responsibilities, Jochim has not studied Haws' job "to see how much time [Haws] spends on different tasks." Further, Jochim's estimation does not address whether Haws performs any of the aforementioned work with independent judgment. The estimation also conflicts with Haws' own testimony, which provides that he spends most of his time talking to vendors on the phone, conducting parts-related research, walking in the shop to "see what people are doing," and assigning jobs to mechanics. At least in this instance, attending management meetings does not clearly evidence any of the 11 indicia of supervisory authority specifically provided by Section 3(r) of the Act.

The overall record does not suggest that Haws devotes a preponderance of his time exercising supervisory authority. Haws has not been shown to spend a lot of time directing Ahlgrim or Blassick. Haws only gives Paulus orders "a few times a week." Haws has only once arranged for a subordinate's training and only spends one hour per year completing each of his three direct report's performance evaluations. The record does not indicate how often Haws assigns the mechanics regular or overtime work. Haws does not schedule, assign, or evaluate the bus drivers' work. He rarely recommends discipline, and it is unclear how often he handles Blassick's disciplinary recommendations. Haws has not handled any grievances. Under those circumstances, it cannot be found that Haws is a supervisor as defined by the Act.

Polcyn's Supervisory Status

Polcyn testified that, over the course of a year, he spends close to 60% of his time doing work that is similar to that of his subordinates (the Service Worker Is and IIs of the Sewer division). However, Polcyn also uniquely assigns his subordinates regular and overtime work, handles vacation time requests, and has the authority to issue Disciplinary Reports and write-ups. Those unique, vital functions sufficiently distinguish Polcyn's work from that of his subordinates. Accordingly, the first prong of the supervisor test is satisfied.

As noted, when Polcyn assigns work, he tries to rotate the type of work each of his subordinates performs in order to make the work less repetitive. When Polcyn decides how many subordinates should work together on an assignment, he simply determines where work will occur. When he decides which subordinates can help other divisions, he selects subordinates on a rotational basis. Those methods of distribution do not require independent judgment. See County of Lake and Sheriff of Lake County, 16 PERI ¶2036; State of Illinois, Department of Central Management Services (Department of Professional Regulation), 11 PERI ¶2029.

Polcyn also considers whether a subordinate can operate the equipment needed for an assignment, but, in practice, that appears to be a fairly routine determination. Although Polcyn has some control over what equipment is used, that aspect of his work does not appear to consistently require a significant amount of discretion. While Polcyn can decide that none of his subordinates can help another division, the record does not indicate how that decision is made. Moreover, it does not meaningfully explain how Polcyn reassigns subordinates' work.

Polcyn assigns his subordinates complaint-driven work. However, the record does not illustrate how it is decided who should conduct the initial investigations related to that work. It

is also unclear how Polcyn, after conducting one of those investigations, subsequently decides how to respond to complaints. Those ambiguous circumstances do not demonstrate that Polcyn directs within the meaning of the Act.

Polcyn assigns overtime work that occurs during lunch breaks to the subordinates who have already been assigned the work to be completed. The rest of Polcyn's overtime assignments are given in accordance with a list or by seniority. Those approaches do not require independent judgment. Additionally, all of Polcyn's overtime assignments are thoroughly reviewed by Braun. Those facts do not demonstrate supervisory direction. Granted, Polcyn may need to determine how many subordinates are needed or whether a backhoe operator is needed, but how those decisions are made is unclear.

When Polcyn handles his subordinates' vacation time requests, he considers how many subordinates have already asked for the same time off, whether the subordinate at issue has already been scheduled to work at the time, and whether a snowstorm is coming. Those relatively straightforward considerations do not require substantial independent judgment. In fact, Polcyn has never denied a vacation time request. Also, testimony suggests that Jochim has likely overruled a vacation time request that Polcyn approved. Those facts do not evidence the authority to direct within the meaning of the Act.

As noted, Polcyn completes annual performance evaluations. Although those evaluations may contain a range of personalized ratings, feedback, and goals (and therefore suggest some independent judgment), they have not been shown to affect his subordinates' pay or employment status. Accordingly, they do not sufficiently demonstrate the authority to direct.

Polcyn has the authority to issue a Disciplinary Report and has done so. He does not need Braun's or Jochim's approval to do that. Polcyn has also issued write-ups. While Polcyn

has been instructed by Braun and Jochim to issue write-ups and has been told to "handle" a subordinate who acted improperly, the record does not suggest that Polcyn can only discipline a subordinate when instructed to do so by a superior. Rather, it appears that Polcyn's superiors expect Polcyn to discipline subordinates "on his own." Accordingly, Polcyn can discipline with independent judgment.

Polcyn is expected to function as the first step of his subordinates' grievance procedure. However, Polcyn has neither received nor resolved a grievance and the record does not clarify how Polcyn would perform the role. Also, Polcyn has never received training related to the grievance procedure. To a degree, the failure to instruct an employee as to how to exercise supervisory authority, particularly where it is rarely exercised, suggests that the employee does not have that authority. Village of Bolingbrook, 19 PERI ¶135. Ultimately, it is not clear that Polcyn adjusts grievances within the meaning of the Act.

When addressing the final prong of the supervisor test, the Employer references Jochim's estimation that Polcyn spends more than 50% of his time "assigning and directing work to his subordinates, evaluating employee performance, approving or denying time off, assigning overtime work, [and] issuing discipline and/or training." The Employer also notes Jochim's estimation that Polcyn performs that work "more than any other job function Polcyn has." A number of circumstances limit the value of those estimations.

Jochim conceded that he has not studied Polcyn's job "to see how much time [Polcyn] spends on different tasks" and has not "done a time study to see how much time [Polcyn] spends evaluating, disciplining, directing, approving time off, [and] approving overtime." Jochim bases his testimony on "observation" and assumptions. Further, Jochim's estimations do not address

whether Polcyn uses independent judgment when performing the aforementioned duties. Moreover, the record does not clarify what Jochim views as "directing work."

Polcyn estimated that he spends 25% of his time assigning work, evaluating employees, assigning overtime, approving time off, recommending discipline or disciplining, responding to grievances, and evaluating subordinates. As noted, he also testified that he spends close to 60% of his time doing work that is similar to that of his subordinates. Polcyn's estimations are largely in accord with the overall record.

Polcyn has not been shown to direct within the meaning of the Act. Even if he had, he is unlikely to spend a considerable amount of time assigning work or handling vacation time requests so routinely. He is also unlikely to spend much time evaluating just five subordinates a year. Although Polcyn does discipline, it has not been shown that Polcyn spends a significant amount of time doing so. Polcyn has never handled a grievance. Those circumstances do not satisfy the fourth prong of the supervisor test. Accordingly, the Employer has failed to establish that Polcyn is a supervisor within the meaning of the Act.

Salther's Supervisory Status

Salther testified that he spends 20% of his time performing work that is similar to that of his subordinates (the Serviceman Is and IIs of the Water Division). Jochim speculated that less than 10% of Salther's time is spent performing that work. Neither of those percentages represents a significant portion of Salther's employment time. Moreover, unlike his subordinates, Salther talks to contractors on the phone, assigns regular and overtime work, handles time off requests, and completes performance evaluations. He is also uniquely responsible for having his subordinates trained, reporting misconduct, issuing verbal and written warnings, and functioning as the first step of the grievance procedure. Those circumstances

indicate that Salther performs principal work that is substantially different from that of his subordinates. Thus, the first prong is satisfied.

Salther assigns and reassigns his subordinates work and is responsible for making sure that work is completed. Salther does not need Braun's or Jochim's permission to do so. Indeed, when Salther prioritizes his subordinates' work, he informs his superiors of his decision to do so "after the fact." Granted, Salther often assigns work on a rotational basis. However, when Salther assigns work, he also personally considers his subordinates' skills and availability. He may also decide what issues are important and prioritize the work accordingly. Those considerations suggest that Salther uses some independent judgment and thus directs within the meaning of the Act. The fact that Salther's superiors may "override" his prioritization is not entirely dispositive.

Sometimes, Salther "fills in" for Braun when Braun is out of the office. When Salther does that, he allegedly has the same authority to "direct" Public Services that Braun does. While that authority could theoretically further evidence Salther's authority to direct within the meaning of the Act, that part of the record and Braun's authority to direct have not been meaningfully developed.

Salther offers his subordinates overtime work in accordance with overtime lists. Yet, even when Salther uses such a list, he independently considers whether his subordinates' are qualified to perform the work required. To that extent, Salther uses independent judgment (and thus directs) when assigning overtime work. The mere fact that all of Salther's overtime assignments are reviewed by Braun and Jochim does not change that finding. Likewise, the fact that Salther's subordinates can refuse to work the overtime work that is offered is not dissuasive. See County of Kane and Sheriff of Kane County, 7 PERI ¶2043.

Salther handles his subordinates' time off requests. If Salther approves such a request, it can be overruled by Jochim. Significantly, Salther has never denied a time off request and, in practice, whenever he receives such a request, he only considers whether the subordinate has enough unused time available. Those facts do not evidence the authority to direct.

Salther could also consider the number of employees who have already requested time off. However, the number of subordinates who can be off at one time is stipulated by the CBA. Leave decisions that are constrained by pre-determined staffing requirements do not establish supervisory authority. Village of Broadview, 402 Ill. App. 3d at 512, 932 N.E.2d at 34.

Salther "is responsible for having his crew trained" and has the authority to recommend that one of his subordinates be sent to training if Salther sees a need for it. The training Salther recommends can necessitate overtime work and require a subordinate to go off site. Also, when Salther is in the field with his subordinates, he makes sure they are "following the rules" and shows them how to complete assignments. Those facts generally demonstrate the authority to direct within the meaning of the Act.

Salther completes annual performance evaluations that can contain a range of personalized ratings, feedback, and goals. Although Jochim reviews Salther's evaluations, he allegedly only does so to make sure he and Salther are "along the same lines" and to make sure Salther is not showing favoritism toward a subordinate. Further, Jochim only reviews Salther's evaluations after they have been completed and presented to Salther's subordinates. While Salther's evaluations do not affect his subordinates' pay, they can be "used for promotion." Those facts evidence the authority to direct within the meaning of the Act. The fact that Jochim once instructed Salther to modify an evaluation does not change that.

The overall record does not clearly indicate that Salther can discipline a subordinate without a superior's involvement. However, it is relatively clear that Salther can report misconduct to Braun and can recommend to Braun that a subordinate be disciplined. Indeed, it appears that Salther can recommend discipline up to and including a suspension. Although testimony suggests that Salther must discipline in accordance with the CBA, it does not appear that Salther is strictly bound by a rigid system of progressive discipline. Those facts generally suggest that Salther can use independent judgment when making disciplinary recommendations and, accordingly, Salther can discipline within the meaning of the Act.[23]

As stated above, Salther has not has not had a grievance filed with him and has not been trained how to handle grievances. Yet, Salther is expected to function as the first step of his subordinates' grievance procedure and respond to and attempt to adjust the grievances he receives. Salther can resolve a grievance if Salther agrees with it. He can also recommend to Braun or Jochim how a grievance should be resolved. On balance, those facts generally indicate that Salther has the authority to adjust grievances within the meaning of the Act.

When addressing the final prong of the supervisor test, the Employer references Jochim's estimation that Salther spends more than 50% of his time assigning his subordinates work, directing their work, evaluating their performance, granting time off, granting overtime, and training subordinates. Although Jochim testified that he has personal knowledge of Salther's job duties, Jochim conceded that he has not studied Salther's job "to see how much time [Salther] spends on different tasks" and has not "done a time study to see how much time [Salther] spends evaluating, disciplining, directing, approving time off, [and] approving overtime." Also,

[23] To be clear, the authority to report misconduct, by itself, does not evidence the authority to discipline within the meaning of the Act. See State of Illinois, Department of Central Management Services, 4 PERI ¶2013.

Jochim's estimation does not address whether Salther performs the aforementioned duties with independent judgment. Those circumstances diminish the value of Jochim's estimation.

Salther estimated that he spends 20% of his time assigning his subordinates work, approving time off and overtime, evaluating his subordinates, and recommending discipline. He also estimated that he spends 20% of his time performing work that is similar to that of his subordinates and spends 30% of his time talking to residents and returning phone calls. Salther's estimations are more in accord with the overall record than that of Jochim.

Salther has not been shown to spend a significant amount of time assigning work, handling time off requests, or recommending his subordinates be sent to training. Further, I do not expect that Salther spends a lot of time completing just four evaluations a year. Salther has not been shown to discipline. He has not received a single grievance. Under those circumstances, the Employer has not demonstrated that Salther devotes a preponderance of his employment time exercising supervisory authority. Accordingly, Salther has not been shown to be a supervisor within the meaning of the Act.

Haws' Managerial Status

On July 13, 2013, the Petitioner filed a majority interest petition in Case No. S-RC-13-003 with the State Panel of the Board. Through that petition, the Petitioner sought to represent approximately 34 Village employees. On September 28, 2012, Administrative Law Judge Michelle Owen issued a Recommended Decision and Order (RDO) for that case that concluded that the Petitioner satisfied the required majority showing of interest.[24] It also noted that the Employer had asserted that seven of the petitioned-for employees were supervisors within the meaning of Section 3(r) of the Act and four of the petitioned-for employees were confidential employees within the meaning of Section 3(c) of the Act.

[24] A related erratum was issued on October 4, 2012. The erratum simply corrects a clerical error.

On December 11, 2013, the Board's General Counsel issued an order for Case No. S-RC-13-003 and, on December 27, 2012, the Board's Executive Director certified the undisputed petitioned-for petitions. See Village of Niles, 29 PERI ¶104 (IL LRB-SP G.C. 2012). The Petitioner then filed the instant unit clarification petition – Case No. S-UC-13-037 – on January 4, 2013. When originally filed, this petition sought to determine the statuses of nine of the eleven employees disputed in Case No. S-RC-13-003.

Since its first written response to the instant petition, the Employer has continuously asserted that Haws is a manager within the meaning of Section 3(j) of the Act and thus must be excluded from bargaining.[25] In response, the Petitioner observes that, in her RDO for Case No. S-RC-13-003, Administrative Law Judge Owen did not find that the Employer had raised any issues of fact or law for a hearing with respect to any claimed managerial exclusion. The Petitioner also notes that the parties did not file exceptions to the RDO and that, accordingly, the RDO was made final and binding on the parties to this case by the General Counsel's order. The Petitioner asserts that those circumstances constitute a waiver of the issue of whether Haws should be excluded as a manager. I do not find such a waiver.

While it is true that the instant unit clarification petition emanated from the preceding majority interest petition, conceptually, the Board has traditionally viewed such unit clarification petitions as new or separate petitions. Further, in this instance, when presented with the instant unit clarification petition and the Employer's position statement, I simply set the matter for hearing. I did not overtly limit the issues that would be considered. One might also note

[25] The Act excludes managerial employees from the class of employees who are entitled to engage in collective bargaining. Chief Judge of the Sixteenth Judicial Circuit v. Illinois State Labor Relations Board, 178 Ill. 2d 333, 338, 687 N.E.2d 795, 797 (1997); State of Illinois, Department of Central Management Services, 5 PERI ¶2012. The exclusion is intended to maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management. See Chief Judge of the 18th Judicial District, 14 PERI ¶2032 (IL SLRB 1998).

Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 364 Ill. 3d 1028, 1036, 848 N.E.2d 118, 124 (4th Dist. 2006), which, although not specifically on point, suggests that an employer should be allowed to pursue a statutory exclusion "at any time" if, "at any point," it determines an exclusion is appropriate.

Because a waiver has not been found, the instant analysis must determine whether Haws is a manager. To make that determination, two tests have been developed: (1) the traditional test, which generally considers whether the petitioned-for employee is a managerial employee as a matter of fact, and (2) the alternative test of managerial employee status as a matter of law. Department of Central Management Services/Department of Healthcare and Family Services v. Illinois Labor Relations Board, State Panel, 388 Ill. App. 319, 330, 902 N.E.2d 1122, 1130 (4th Dist. 2009). As the party seeking to exclude Haws from bargaining, the Employer has the burden of proving, by a preponderance of the evidence, that Haws is a manager. Illinois Department of Central Management Services (State Police), 382 Ill. App. 3d at 220, 888 N.E.2d at 575; Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016. Here, the Employer urges (and I find) that only the traditional test must be considered.

The traditional managerial employee test considers, factually, whether an employee conforms to the Act's definition of a managerial employee.[26] That definition sets down two elements or criteria, both of which the employee must meet to be considered a manager. 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. Department of Healthcare and Family Services, 388 Ill.

[26] Section 3(j) of the Act states:

> "Managerial employee" means an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.

App. 3d at 330, 902 N.E.2d at 1130; State of Illinois (Department of Central Management Services), 12 PERI ¶2024 (IL SLRB 1996).

As to the first criterion of the traditional test, the Act does not define "executive and management functions." However, the Board and the Illinois Appellate Court have indicated that those functions specifically relate to running an agency or department and may include such activities as formulating policy, preparing the budget, and assuring efficient and effective operations. Department of Healthcare and Family Services, 388 Ill. App. 3d at 330, 902 N.E.2d at 1130; Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 121, 613 N.E.2d 311, 320 (2nd Dist. 1993); City of Evanston v. State Labor Relations Board, 227 Ill. App. 3d 955, 974, 592 N.E.2d 415, 428 (1st Dist. 1992); State of Illinois, Department of Central Management Services, 21 PERI ¶205 (IL LRB-SP 2005). Other executive and management functions include, for example, using independent discretion to make policy decisions as opposed to following established policy, changing the focus of an employer's organization, being responsible for day-to-day operations, negotiating on behalf of the employer with its employees or the public, exercising authority to pledge an employer's credit, and attending managerial meetings. Department of Healthcare and Family Services, 388 Ill. App. 3d at 330, 902 N.E.2d at 1130; State of Illinois, Department of Central Management Services, 21 PERI ¶205; State of Illinois, Department of Central Management Services, 8 PERI ¶2052 (IL SLRB 1992).

To meet the first part of the traditional managerial employee test, the employee must possess and exercise authority and discretion which broadly affects an agency's or a department's goals and means of achieving those goals. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 87, N.E.2d 131, 136 (4th

Dist. 1996); State of Illinois, Departments of Central Management Services and Public Aid, 2 PERI ¶2019 (IL SLRB 1986). The first criterion also requires more than the exercise of professional discretion and technical expertise. Department of Central Management Services v. Illinois State Labor Relations Board, 278 Ill. App. 3d 79, 87, 662 N.E.2d 131136 (4th Dist. 1996).

With respect to the second criterion, it is not enough that the employee at issue merely performs duties essential to the employer's ability to accomplish its mission. Department of Healthcare and Family Services, 388 Ill. App. 3d at 331, 902 N.E.2d at 1130. An employee directs the effectuation of management policy when he or she oversees or coordinates policy implementation by developing the means and methods of reaching policy objectives, and by determining the extent to which the objectives will be achieved. The employee must also be empowered with a substantial measure of discretion to determine how policies will be effected. City of Evanston v. State Labor Relations Board, 227 Ill. App. 3d 955, 975, 592 N.E.2d 415, 428 (1st Dist. 1992); State of Illinois, Departments of Central Management Services & Public Aid, 2 PERI ¶2019 (IL SLRB 1986).

Generally speaking, Haws "runs" and is "in charge of" the Fleet division (a major unit of Public Services). Significantly, Haws is largely responsible for preparing and managing all aspects of the division's budget. Moreover, Haws, the highest-ranking employee in Fleet, is generally responsible for overseeing the divisions' purchases and repairs, "garage operations," and many, if not all, of the division's many employees. In addition, Haws regularly negotiates on behalf of the Village with outside vendors; calls for and selects from bids; and, in some instances, simply completes purchases without approval. He also attends management meetings.

The foregoing responsibilities, which could reasonably be characterized as Haws' "predominant duties," allow Haws to ensure efficient and effective operations and can greatly affect how the Fleet division achieves its goals. They also demonstrate that Haws does much more than provide technical expertise. Accordingly, the first criterion has been satisfied.

Admittedly, it appears that, at times, developing the budget is fairly mechanical. As Haws indicated, some aspects of his budget have not been changed in years. Further, as a rule, Haws' draft budget is reviewed by a series of superiors and subject to revision before being included in the overall Public Services (or Village) budget. Many of his purchases must also be approved. Thus, to some degree, Haws' role is subordinate or advisory. See Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill. App. 3d 109, 122, 613 N.E.2d 311, 320 (2nd Dist. 1993); City of Evanston, 227 Ill. App. 3d at 974, 592 N.E.2d at 428. However, that observation oversimplifies the issue. It also overlooks Haws' other important functions.

Managerial status is not limited to those at the very highest level of the governmental entity at issue. Salaried Employees of North America v. Illinois Local Labor Relations Board, 202 Ill. App. 3d 1013, 1020, 560 N.E.2d 926, 932 (1st Dist. 1990). Moreover, an advisory employee who makes "effective recommendations" can nevertheless be deemed a manager. Department of Central Management Services/Illinois Commerce Commission v. Illinois Labor Relations Board, 406 Ill. App. 3d 766, 775, 943 N.E.2d 1136, 1144 (4th Dist. 2010). Haws' "effective voice" and central role in budgetary and other matters should not be overlooked. See The Cooper Union for the Advancement of Science and Art, 273 NLRB 1768, 1174 (1985).

Haws' budgetary responsibilities are not wholly routine or ministerial. Further, while some aspects of the budget may go unchanged from one year to the next, Haws is not strictly

bound by any prior allotments. Notably, Haws has suggested cuts to the traditionally static Pace budget and has initiated changes to the Village's bus schedule. He has also sought out new equipment and projects (including a new car wash) and has recommended upgrades to a fuel site. Those facts demonstrate that Haws has the authority to use discretion and, in effect, to determine how his division's services will be provided.

Although Haws cannot independently implement a budget, "most, if not all," of Haws' budgetary recommendations are acted on or followed. See Illinois Commerce Commission, 406 Ill. App. 3d at 775, 943 N.E.2d at 1144. Moreover, when Haws is asked to reduce his budget, it is largely left to Haws to decide which budget items should be reduced. Generally, when a recommendation is rejected, it is simply because the money requested is unavailable.

Haws' superiors do not have firsthand knowledge of Fleet's operations and needs. They rely on what Haws tells them. The fact that Haws' superiors may occasionally exercise their power to reject or modify Haws recommendations and purchases does not diminish Haws' effectiveness. See Illinois Commerce Commission, 406 Ill. App. 3d at 776, 943 N.E.2d at 1145; Lewis and Clark College, 300 NLRB at 163; University of Dubuque, 289 NLRB 349, 352 (1988).

In light of the foregoing, I find that the second criterion of the traditional test has been satisfied. For that reason, I also find that the Employer has demonstrated, by a preponderance of the evidence, that Haws is a manager within the meaning of the Act. Accordingly, the Fleet Manager (Public Services) position should be excluded from the bargaining unit.

V. CONCLUSIONS OF LAW

1. I find that none of the petitioned-for employees in the positions of Fleet Manager (Public Services), Sewer Manager (Public Services), Shop Supervisor (Public Services), Streets and Signs Manager (Public Services), Water Manager (Public Services), and Water Plant Manager (Public Services) are supervisors within the meaning of Section 3(r) the Act.
2. I find that the petitioned-for employee in the position of Fleet Manager (Public Services) is a manager within the meaning of Section 3(j) of the Act.

VI. RECOMMENDED ORDER

IT IS HEREBY ORDERED that the positions of Administrative Assistant (Fire), Division Supervisor (Community Development), Sewer Manager (Public Services), Shop Supervisor (Public Services), Streets and Signs Manager (Public Services), Water Manager (Public Services), and Water Plant Manager (Public Services) be included in the bargaining unit originally certified in Case No. S-RC-13-003. The positions of Administrative Assistant (Police) and Fleet Manager (Public Services) are excluded from that bargaining unit.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 14 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 10 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the Administrative Law Judge's Recommendation.

Within 5 days from the filing of cross-exceptions, parties may file cross-responses to the cross-exceptions. Exceptions, responses, cross-exceptions, and cross-responses must be filed with the General Counsel of the Illinois Labor Relations Board at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, and served on all other parties. Exceptions, responses, cross-exceptions, and cross-responses will not be accepted at the Board's Springfield office. The exceptions and/or cross-exceptions sent to the Board must contain a statement listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 14-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois, this 7th day of October, 2013.

STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
STATE PANEL

Martin Kehoe
Administrative Law Judge