

**STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL**

International Brotherhood of Electrical	)	
Workers, Local 196,	)	
	)	
Petitioner	)	
	)	Case No. S-UC-14-007
and	)	
	)	
City of Geneva (Street and Fleet Division),	)	
	)	
Employer	)	

**ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER**

On August 13, 2013, the International Brotherhood of Electrical Workers, Local 196 (Petitioner) filed a unit clarification petition in Case No. S-UC-14-007 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 the Street Maintenance Supervisor and Fleet Maintenance Supervisor positions of the City of Geneva (Street and Fleet Division) (Employer) in the existing bargaining unit affiliated with Case No. S-RC-13-091.

A hearing was held on November 20, 2013 before the undersigned Administrative Law Judge 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. Subsequently, both parties timely filed briefs. After full consideration of the parties’ stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following.

**I. PRELIMINARY FINDINGS**

1. The parties stipulate and I find that, at all times material, the Employer has been a public employer within the meaning of Section 3(o) of the Act.
2. The parties stipulate and I find that, at all times material, the Employer has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5 of the Act.
3. The parties stipulate and I find that, at all times material, the Employer has been subject to the Act pursuant to Section 20(b) thereof.
4. The parties stipulate and I find that, at all times material, the Petitioner has been a labor organization within the meaning of Section 3(i) of the Act.
5. The parties stipulate and I find that, on June 24, 2013, the Petitioner was certified as the collective bargaining representative for the following bargaining unit in Case No. S-RC-13-091:

Included: All employees of the Employer within the Street and Fleet Division in the following titles: Street Maintenance Lead Worker, Street Maintenance Worker, Fleet Maintenance Technician.

Excluded: Street Maintenance Supervisor and Fleet Maintenance Supervisor (Titles are disputed and therefore excluded under Section 1210.100(b)(7)(B) of the Board's Rules), seasonal and part-time employees, and all other employees of the Employer.

6. The parties stipulate and I find that, on August 13, 2013, the Petitioner filed a unit clarification petition in the instant matter, Case No. S-UC-14-007. The Petitioner seeks to add the Street Maintenance Supervisor and Fleet Maintenance Supervisor to the bargaining unit certified in Case No. S-RC-13-091.
7. The parties stipulate and I find that the Employer timely objected to the petition, and the matter was fully briefed. On October 3, 2013, the undersigned Administrative Law Judge issued a determination that a hearing was necessary to make a ruling on the petition.

8. The parties stipulate and I find that Dan Dinges is the current Director of Public Works for the Employer.
9. The parties stipulate and I find that, prior to Dan Dinges, Tom Talsma served as the Director of Public Works for the Employer.
10. The parties stipulate and I find that Chris Bong is the current Superintendent of Street and Fleet for the Employer.
11. The parties stipulate and I find that, prior to Chris Bong, Steven LeMaire served as the Superintendent of Street and Fleet for the Employer.

## **II. ISSUES AND CONTENTIONS**

The Employer contends that the petition should be denied and the Street Maintenance Supervisor and Fleet Maintenance Supervisor should be excluded from the petitioned-for bargaining unit because they are “supervisors” as that term is defined by the Act. The Petitioner disputes that contention and contends that the Employer has failed to meet its burden of proof.

## **III. FINDINGS OF FACT**

The two positions at issue are affiliated with the Employer’s Street and Fleet Division, which is overseen by Chris Bong, the Superintendent of Street and Fleet. The Street and Fleet Division is part of the Employer’s Public Works Department, which is overseen by Dan Dinges, the Director of Public Works. The Street and Fleet Division has two units: Street Maintenance and Fleet Maintenance.

The highest ranking employee in each unit of the Street and Fleet Division is the unit’s Supervisor. Tim Kohorst is the Street Maintenance Supervisor. Gary Paris is the Fleet

Maintenance Supervisor. Kohorst directly oversees a number of subordinate Street Maintenance Workers and Street Maintenance Lead Workers, all of whom are represented by the Petitioner. (The Street Maintenance Lead Workers are also called “crew leaders.”) Paris directly oversees two subordinate Fleet Maintenance Technicians who, like Kohorst’s subordinates, are also represented by the Petitioner.

#### Hire and Promote

Both Supervisors interview job applicants. Because Kohorst has two levels of subordinates beneath him, he can also interview subordinates who are seeking a promotion. For each potential hire or promotion, the Supervisor, the Director, the Superintendent, and a Human Resources Coordinator are given copies of all of the relevant applications. That group of four then determines which applicants will be interviewed. The same four also attend each interview. During interviews, each of the four can ask interviewees whatever questions he or she wants.

After an interview is completed, all four share their opinions and make recommendations regarding whether the interviewee should be hired or promoted. The Director ultimately signs off on the hire or promotion, but who is hired or promoted is a group decision. The Supervisors’ recommendations are highly valued and consistently followed. In practice, the Director would not disagree with a Supervisor’s recommendation.

All of the Street and Fleet Division’s new hires are closely reviewed by his or her Supervisor and the Superintendent during a six-month introductory period. At the end of that period, the relevant Supervisor drafts a formal performance appraisal. That Supervisor and the Superintendent then decide whether the employee should be retained or let go. The Supervisor makes a recommendation to the Director, who subsequently makes a final determination. The Supervisor’s recommendation is given “substantial weight.”

## Direct

Kohorst creates his subordinates' schedules and assigns his subordinates work on a daily basis. Kohorst generally decides what each of his subordinates is going to do, how long assignments should take, when the work should be done, with whom each subordinate is going to work, and what material, equipment, supplies, and facilities are needed. His assignments cover a range of work including but not limited to asphalt repair, tree trimming, snow removal, and sign installation and repair. He can also assign training.

No fixed set of rules tells Kohorst how to assign work. When Kohorst assigns work, he considers a number of factors including what work needs to be done, what work must be done first, who is available at the time, who works well together, the weather, the jobsite locations, and the difficulty of each assignment.

Kohorst typically divides his subordinates into several crews every morning and gives each crew general assignments. Kohorst independently decides who is on a crew and how many subordinates are assigned to each. While some kinds of assignments generally require a certain number of people, Kohorst can change that number and even make someone work alone. Kohorst can also decide to have a local contractor perform some of his unit's work.

When Kohorst is going to be absent, he generally assigns the work in advance. If Kohorst is going to be absent for an extended period of time, however, the Superintendent assigns the work. The Street Maintenance Lead Workers can sometimes choose the "specifics" of the assignments they receive or which of their crew's assignments should be done first, but Kohorst can overrule their decisions.

Kohorst does not assign himself to any one crew. Instead, after Kohorst makes his morning assignments, he visits his subordinates' jobsites and communicates with his crews by

cell phone or radio to make sure his subordinates are working correctly, following work rules, and on time. When Kohorst is at a jobsite, he watches his subordinates work and gives them feedback. Kohorst decides which jobsites to visit and how long he stays at each.

Some of the work Kohorst assigns comes from service requests. Those requests generally emanate from residents or another department. When Kohorst receives a request, he often drives to the area of concern and determines what work needs to be done and who should do it. If the request presents a simple task (such as picking up a tire off the side of the side of the road), Kohorst can decide to do the work himself.

Paris similarly assigns his two subordinates work, makes sure their work is completed, and provides instruction. Also, like Kohorst, Paris can decide to perform Fleet Maintenance unit work himself or hire outside vendors. The work Paris assigns generally includes vehicle and equipment repairs. When Paris assigns that work, he considers each subordinate's strengths and weaknesses, the roles of each vehicle, the parts involved, the season, and the current weather conditions. When a subordinate calls in sick, Paris reassigns the work as Paris sees fit. The Superintendent is not involved with Paris' assignments.

Both Supervisors review then either approve or deny their subordinates' vacation time requests. Not all of those requests are approved. When Supervisors review the requests, they check for scheduling conflicts and safety issues. Though preferences exist, there is no hard rule regarding how many subordinates can be off at a time. Approved requests are submitted to the Superintendent, who can conduct an additional review. Denied requests are not submitted. In practice, the Superintendent rarely questions or reverses a Supervisor's approval.

Each Supervisor conducts detailed performance reviews of each of his subordinates twice a year. For every review, the Supervisor meets with the subordinate and later completes a draft

evaluation based on his observations of the subordinate's work. In his draft, the Supervisor chooses a variety of performance ratings and establishes objectives for the next appraisal period. Every draft is subsequently reviewed by the Superintendent. While the Superintendent can make changes to a draft, he very rarely does so, and would not make a change without first having a "back and forth" conversation about it with the Supervisor.

The Supervisors' performance reviews are tied to the subordinates' compensation and employment. Each year, if a reviewed subordinate's performance exceeds expectations, the subordinate receives a 2.5% pay increase. If the performance meets expectations, the subordinate receives a 1.5% pay increase. If the performance fails to meet expectations, the subordinate receives no pay increase and is assigned a formal performance improvement plan that is drafted by the Supervisor. The Supervisor then monitors whether the subordinate is improving in accordance with the plan and shares his observations with the Superintendent. If the subordinate's performance does not improve, the subordinate is terminated.

Both Supervisors complete accident reports or significant incident reports when they decide it is appropriate to do so. Significant incident reports can memorialize either positive or negative events, and are placed in a subordinate's personnel file. They are also considered during performance reviews and when a subordinate seeks a promotion. Negative significant incident reports can lead to discipline including termination.

### Discipline

Although discipline is rarely needed in practice, the two Supervisors are responsible for disciplining their subordinates or recommending discipline when appropriate. No rules strictly dictate what actions require discipline or what level of discipline is appropriate. However, the

Supervisors are expected to consider several factors including whether the issue is a recurring problem, the severity of the issue, and whether the subordinate is repentant.

A Supervisor can give a verbal warning, an oral reprimand, or a written reprimand without consulting a superior. Alternatively, a Supervisor can determine that no discipline is necessary, choose to handle an issue informally, or write a report. He can also recommend a suspension or a termination to a superior. Those recommendations are given “a great amount of weight.”

#### Grievances

According to the Employer’s Personnel Policy Manual, both Supervisors can receive and review their subordinates’ grievances and “deal with” stewards. That could occur when a subordinate has an issue with his or her pay. If that particular concern is brought to a Supervisor, the Supervisor can refer the subordinate to another employee who handles that kind of issue. A Supervisor can also adjust an assignment if a subordinate is unhappy with it. However, no formal grievances have been filed.

### **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 Act’s definition of public employees (contained in Section 3(n) of the Act) and therefore the Act’s coverage are supervisory employees as defined by Section 3(r) of the Act. City of Freeport v. Illinois State Labor Relations Board, 135 Ill. 2d 499, 512, 554 N.E.2d 155, 162 (1990).

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.<sup>1</sup> Id. As the party seeking to exclude the petitioned-for employees from bargaining, the Employer has the burden of proving by a preponderance of the evidence that the employees satisfy those four elements. County of Boone and Sheriff of Boone County, 19 PERI ¶74 (IL LRB-SP 2003); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002).

#### Principal Work

In determining whether the threshold principal work element 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. If that work is obviously and visibly different, the principal work element 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. I also note that the first element is not necessarily a quantitative test. City of Freeport, 135 Ill. 2d at 514, 544 N.E.2d at 162; Village of Broadview v. Illinois Labor Relations Board, 402 Ill. App. 3d 503, 507, 932

---

<sup>1</sup> In relevant part, Section 3(r) states:

“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.

N.E.2d 25, 30 (1st Dist. 2010); Peoria Housing Authority, 10 PERI ¶2020 (IL SLRB 1994); Village of Alsip, 2 PERI ¶2038 (IL SLRB 1986); City of Burbank, 1 PERI ¶2008 (IL SLRB 1985).

Here, Kohorst does perform some work that resembles that of his subordinates. For example, Kohorst occasionally performs some manual labor. However, in my view, that is not his “principal work.” Moreover, unlike his subordinates, it generally appears that Kohorst decides when he does it. Kohorst’s principal work – assigning and monitoring all of the Street Maintenance unit’s work – is not performed by regular Street Maintenance Workers. While I would grant that the Street Maintenance Lead Workers can perform a related function at times, their work is much narrower in scope and thus substantially different. Street Maintenance Lead Workers do not make general assignments or complete formal performance reviews, and their limited authority never reaches beyond the Street Maintenance Workers Kohorst temporarily assigns them. Accordingly, Kohorst’s position satisfies the principal work element.

Paris also performs some manual work that is similar to that of his subordinates. However, Paris only spends less half of his time or less doing so, and like Kohorst, Paris decides when he does it. Further, even while Paris is performing manual work, he is uniquely monitoring and correcting his two subordinates. Paris also uniquely assigns and schedules all of his unit’s work. Those “supervisory and administrative aspects,” which I consider Paris’ principle work, sufficiently distinguish Paris’ work in nature and essence from that of his subordinates, and accordingly, Paris’ position satisfies the principal work element as well. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 477, 839 N.E.2d 1073, 1080 (2nd Dist. 2005).

### Supervisory Indicia and Independent Judgment

The language of Section 3(r) of the Act notes that the authority to hire, promote, or recommend either of those actions is supervisory authority. Both Supervisors have that authority. As outlined, the two can help to determine which applicants will be interviewed, fully participate in interviews, and later recommend whether applicants should be hired. At each of those stages, the Supervisors have the freedom to utilize meaningful independent judgment. Although a superior has the ultimate authority to hire or promote, as noted, the Supervisors' recommendations are highly valued and have consistently been followed, and in practice the Director would not disagree with the Supervisors' recommendations. Thus, the second and third elements of the Act's supervisor test have been satisfied.

The positions at issue also direct with independent judgment as required by the Act.<sup>2</sup> Kohorst and Paris assign their subordinates work, review their work, and provide instruction and training. No fixed set of rules dictate how they should assign work, and the specifics of their assignments can vary greatly. When either Supervisor is making an assignment, he considers a variety of factors. Further, both Supervisors consider their subordinates' vacation time requests without clear rules dictating whether the Supervisors must grant or deny them. They also draft individualized performance reviews that are based on the Supervisor's daily observations. In practice, the Supervisors' ratings are rarely changed by the Superintendent and would not be changed without a Supervisor's involvement. As detailed above, those reviews can affect the subordinates' compensation and employment.

---

<sup>2</sup> The authority to direct within the meaning of the Act encompasses several distinct but related functions and generally requires the alleged supervisor to be responsible for the work of his or her subordinates and have the authority to make operational decisions 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. Illinois Department of Central Management Services (Department of Professional Regulation), 11 PERI ¶2029 (IL SLRB 1995).

In addition to the foregoing, the petitioned-for employees have the authority to discipline their subordinates and recommend discipline with independent judgment. As noted, the Supervisors' recommendations are given "a great amount of weight." No rules strictly dictate what actions require discipline (or a report) or what level of discipline is appropriate. When determining whether to discipline or recommend discipline, the two Supervisors can consider several factors and several types of discipline. The fact that discipline is rarely needed in practice does not destroy the existence or the effectiveness of their authority. City of Freeport, 135 Ill. 2d at 521, 554 N.E.2d at 166; City of Peru v. Illinois State Labor Relations Board, 167 Ill. App. 3d 284, 292, 521 N.E.2d 108, 114 (3rd Dist. 1988).

As indicated above, the two employees at issue are also expected to receive and review their subordinates' grievances and "deal with" stewards. However, no formal grievances have been filed, and the record does not meaningfully demonstrate whether either Supervisor would consistently use meaningful independent judgment when doing exercising that authority. Under those ambiguous circumstances, I cannot find that either petitioned-for employee adjusts grievances within the meaning of the Act. The mere designation as the first step of a grievance procedure, without more, is not enough to establish supervisory authority. Metropolitan Alliance of Police, 362 Ill. App. 3d at 479, 839 N.E.2d at 1082.

To be clear, resolving personal workplace complaints that involve work assignments can sometimes qualify as resolving "grievances." State of Illinois, Department of Central Management Services, 26 PERI ¶116 (IL LRB-SP 2010); State of Illinois (Department of Central Management Services), 12 PERI ¶2032 (IL SLRB 1996). Moreover, here, a Supervisor can change a job assignment if a subordinate is unhappy with it. Nevertheless, I find that in this instance the resolution of such "minor disputes" does not rise to the level of authority required by

the Act. Metropolitan Alliance of Police, 362 Ill. App. 3d at 479, 839 N.E.2d at 1082. I am similarly unmoved by the fact that a Supervisor can refer complaints to others.

#### Preponderance

As noted, the fourth and final element of the Act's supervisor test requires that the alleged statutory supervisor devote a preponderance of his or her employment time exercising supervisory authority as defined by the Act. The Illinois Supreme Court, in City of Freeport, interpreted that 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 authority. 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). The Petitioner simply concludes that the Employer has failed to show that over half of the Supervisors' work days are spent exercising supervisory authority, and thus appears to oversimplify the issue. State of Illinois, Department of Central Management Services (Department of Revenue), 29 PERI ¶62 (IL LRB-SP 2012).

Kohorst appears to spend little time hiring, promoting, disciplining, or recommending those supervisory actions. However, Kohorst spends 10% or 20% of his time scheduling and assigning work. Significantly, he also spends as much time as he wants checking on his crews and monitoring and correcting his subordinates. Kohorst has his “hands on the tools” for just 15 or 30 minutes a day, and only does that when he chooses to do so. Under those circumstances, I find that Kohorst devotes a preponderance of his employment time to exercising supervisory authority.

Like Kohorst, Paris spends an insignificant amount of time hiring, promoting, disciplining, or recommending the same. Nevertheless, Paris spends around 30% or 35% of his time scheduling his subordinates’ work. He also spends 40% or 50% of his time working alongside his subordinates on the shop floor, and when he does that, he is also monitoring and correcting their work. Under those circumstances, I find that Paris also devotes a preponderance of his employment time to exercising supervisory authority.

#### **V. CONCLUSIONS OF LAW**

I find that the Street Maintenance Supervisor and the Fleet Maintenance Supervisor are supervisors as defined by the Act.

#### **VI. RECOMMENDED ORDER**

IT IS HEREBY ORDERED that the positions of Street Maintenance Supervisor and Fleet Maintenance Supervisor are excluded from the petitioned-for 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 in Chicago, Illinois on September 12, 2014.

STATE OF ILLINOIS  
ILLINOIS LABOR RELATIONS BOARD  
STATE PANEL

A handwritten signature in cursive script that reads "Martin Kehoe". The signature is written in black ink and is positioned above a horizontal line.

---

**Martin Kehoe**  
**Administrative Law Judge**