

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

Rolling Meadows Professional Firefighters	)	
Local 3075, IAFF,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-RC-15-092
	)	
City of Rolling Meadows	)	
	)	
Employer	)	

ORDER

On June 22, 2017, Administrative Law Judge Martin Kehoe, on behalf of the Illinois Labor Relations Board, issued a Recommended Decision and Order in the above-captioned matter. No party filed exceptions to the Administrative Law Judge's Recommendation during the time allotted, and at its October 17, 2017 public meeting, the Board, having reviewed the matter, declined to take it up on its own motion.

THEREFORE, pursuant to Section 1200.135(b)(5) of the Board's Rules and Regulations, 80 Ill. Admin. Code §1200.135(b)(5), the parties have waived their exceptions to the Administrative Law Judge's Recommended Decision and Order, and this non-precedential Recommended Decision and Order is final and binding on the parties to this proceeding.

Issued in Chicago, Illinois, this 19th day of October 2017.

**STATE OF ILLINOIS
ILLINOIS LABOR RELATIONS BOARD
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/s/Helen J. Kim
Helen J. Kim
General Counsel

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ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 19, 2015, the Petitioner, Rolling Meadows Professional Firefighters, Local 3075 IAFF (Union), filed a majority interest/certification petition in Case No. S-RC-15-092 with the State Panel of the Illinois Labor Relations Board (Board) pursuant to Section 9(a)(5) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended. The petition seeks to include all individuals employed by the City of Rolling Meadows Fire Department (RMFD) with the rank of battalion chief in a bargaining unit that was previously certified by the Board in Case No. S-VR-94-1. The petition is supported by evidence showing that a majority of battalion chiefs wishes to be represented by the Union for purposes of collective bargaining.

The RMFD filed an objection to the petition on July 8, 2015. Administrative Law Judge (ALJ) Kelly Coyle then heard the case on November 10, 2015. On January 21, 2016, the parties filed post-hearing briefs. Subsequently, the case was reassigned to the undersigned ALJ after ALJ Coyle left the employment of the Board. 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

The parties stipulate and I find that:

1. At all times material, the RMFD has been a “public employer” within the meaning of Section 3(o) of the Act.
2. At all times material, the Union has been a “labor organization” within the meaning of Section 3(i) of the Act.
3. At all times material, the RMFD has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) and Section 20(b) of the Act.
4. At the time of the hearing, the parties were subject to a collective bargaining agreement (CBA) that was effective from January 1, 2013 to December 31, 2015.

II. ISSUES AND CONTENTIONS

The petition seeks to add employees with the rank of battalion chief to the Union’s existing bargaining unit. In its objection, the RMFD contends that its battalion chiefs hold a rank above that of “company officer” as that term is used in Section 3(r)(1) of the Act and are therefore “supervisors” who must be excluded from the unit. The Union contends that they do not hold such a rank and thus may be included.

III. FINDINGS OF FACT

A. Organizational Structure

The RMFD maintains a traditional chain of command hierarchy with clearly defined ranks with corresponding authorities, duties, and responsibilities. In descending order, those ranks include chief, deputy chief, battalion chief, lieutenant, and firefighter. As of the date of the hearing,

the RMFD employed a single chief, a single deputy chief, 3 battalion chiefs, 6 lieutenants, and 33 regular firefighter positions. The Union is already the exclusive representative of a bargaining unit that includes the firefighters and lieutenants and excludes their superiors and a variety of other job titles. Chiefs, deputy chiefs, and battalion chiefs are appointed and subject to removal by a city manager.

Battalion chiefs, lieutenants, and firefighters work “a 24-on/48-off schedule.” Ordinarily, only one battalion chief is working at a time, with one battalion chief assigned to each of the department’s three shifts. That usually equates to just one battalion chief on duty per day. Each battalion chief oversees the day-to-day operations of and the individuals assigned to a specific shift, not just a particular fire station or “apparatus.” For that reason, battalion chiefs, as well as lieutenants temporarily “acting up” in their place, are often called “shift commanders.” Further, because the chief and the deputy chief normally do not work on Saturdays and Sundays, the battalion chief who works on either of those two days is essentially in charge of the entire department for a time.

Lieutenants and firefighters, on the other hand, are always assigned to a specific shift as well as one of the RMFD’s two fire stations: either Station 15 or Station 16. Under the authority of a battalion chief, each of those stations and their firefighters and apparatuses are overseen by the single lieutenant assigned to them for the current shift or by a firefighter who is temporarily acting up as a lieutenant. Thus, in practice, there are usually two lieutenants working at any given time, with one formally assigned to each station for each shift.

Station 16 is the RMFD’s headquarters. It contains the offices of the chief, the deputy chief, some administrative employees, and a civilian logistics coordinator. Station 16 is also where the three battalion chiefs are stationed. While working at Station 16, the battalion chiefs stay in

the same “company quarters” as the lieutenants and firefighters who are also assigned to that that location.

As indicated, each of the RMFD’s fire stations houses a number of vehicles. Station 15 houses a primary fire engine called Engine 15, a primary ambulance called Ambulance 15, a reserve ambulance called Reserve Ambulance 15, and a hazardous materials truck. Station 16 has a primary fire engine called Engine 16 and an ambulance called Ambulance 16. On top of that, Station 16 also houses a sport utility vehicle (SUV) that, despite its affiliation with Station 16, is always called Battalion 15, as well as a reserve fire engine called Reserve Engine 16, a reserve SUV, and an all-terrain vehicle.

Minimum manning for the RMFD is set by policy. Battalion chiefs do not have the authority to deviate from it. The minimum manning for the entire department is eleven people, five of whom are assigned to Station 15 and six of whom are assigned to Station 16. For Station 15, that number always includes three people who are assigned to Engine 15 and two who are assigned to Ambulance 15. The six assigned to Station 16 always includes three people assigned to Engine 16, two people assigned to Ambulance 16, and the shift’s battalion chief. That figure does not include Station 16’s administrative personnel.

To clarify, both stations have one primary fire engine and one primary ambulance, for a total of four primary apparatuses. Likewise, those particular apparatuses, which have also been called the department’s “front-line” vehicles, are always manned at all times as a rule. When an apparatus is fully manned, the group assigned to the apparatus is often called either a “company” or a “crew.” Accordingly, each fire station always has two main companies ready: an engine company and an ambulance company. However, under certain circumstances, the term “company”

can also be used to refer to a combination of multiple companies or manned apparatuses working together.

A fire station's reserve apparatuses are considered replacement vehicles. They are only staffed when necessary, like when a front-line vehicle is out of service or during certain high-risk or large events, or when the department is already staffed above its minimum manning and people are available. Whenever a reserve vehicle is filled with employees and deployed, that group of individuals may be called a "squad."

Again, three people are assigned to each fire station's primary fire engine at all times. As a rule, that includes (1) a "company officer," (2) a "fire apparatus engineer" (FAE), and (3) a "firefighter/paramedic." The "company officer" position on an engine company, who directs the other two people on the engine, is typically filled by a lieutenant, but could also be filled by a firefighter acting up as a lieutenant. The FAE, who drives the engine, is a firefighter who has obtained an FAE certificate. Firefighter/paramedics are firefighters who are also certified to act as paramedics. In practice, all firefighters are cross-trained as firefighter/paramedics, and an engine's FAE and firefighter/paramedic slots are rotated from one day to the next.

The RMFD's primary ambulances are always staffed by two firefighter/paramedics. Moreover, one of those two is always designated as the "paramedic in charge." Whoever the paramedic in charge is for a particular shift almost always remains in that role once his or her ambulance reports to a scene.

B. General Duties and Responsibilities

As suggested above, battalion chiefs are not assigned to a particular crew, engine, or ambulance. Instead, they are always affiliated with a specific shift and Station 16's SUV, which,

again, is called Battalion 15. At times, the same vehicle may be called the “incident command car” and the “shift commander vehicle.”

Among other things, battalion chiefs are responsible for mentoring and monitoring the lieutenants and firefighters assigned to their shifts, regardless of those employees’ fire stations. That involves reviewing and formally evaluating lieutenants’ and firefighters’ work. In practice, battalion chiefs routinely complete firefighter evaluations with a lieutenant’s help, but sometimes battalion chiefs do it on their own. Battalion chiefs are also responsible for making sure that both stations are properly manned and for determining whether an apparatus should go out for repairs.

Unlike battalion chiefs, lieutenants are normally only responsible for the firefighters and apparatuses at their station. That often means coordinating with the shift’s battalion chief and making sure that the firefighters assigned to a station are ready for duty, for example. It also involves ensuring that a station’s apparatuses and equipment are properly tested and maintained. Additionally, as indicated above, a lieutenant may occasionally act up in the role of a battalion chief. That could occur when a battalion chief is out sick, on vacation, or injured and the department is still above its minimum manning. However, the lieutenant filling that slot must always be sufficiently qualified to do so.

To be clear, a battalion chief does not “act down” as a lieutenant or a firefighter. Instead, lieutenants are always replaced by another lieutenant or by a firefighter. Also, firefighters cannot act up as a battalion chief. Ordinarily, if the department is below its minimum manning and a battalion chief is out, the department’s “hireback” procedures are triggered (as explained below) and the open battalion chief slot will be filled by another battalion chief or a lieutenant. That said, a deputy chief has acted down as a battalion chief, too. In the other direction, battalion chiefs have acted up as chief in the past. Lieutenants have not done so.

Separately, lieutenants are uniquely responsible for creating a digital report for every fire call a station gets. Medical call reports, on the other hand, are initially generated by the firefighters functioning as paramedics in charge. Battalion chiefs, in turn, are responsible for checking both kinds of reports for accuracy and quality. However, lieutenants do review medical call reports for quality at the first step then submit them up to the battalion chiefs. If a battalion chief ever notices a discrepancy, he or she can direct whoever created the report to change it, or may simply make a change on his or her own if it only involves a minor detail. Once battalion chiefs are done with the reports, they are turned over to the chief's office or to the state. Ultimately, battalion chiefs spend around an hour a day reviewing fire call reports for quality.

Despite their different roles, battalion chiefs and lieutenants attend similar trainings and are put on the same training calendar. Yet, lieutenants' requests for external training must initially go through a battalion chief for approval. If a battalion chief approves a request, the request is kicked up the chain of command until it is either approved or denied by the chief. Lieutenants are only involved with training requests while they are acting up as a battalion chief.

Beyond handling external training requests, battalion chiefs are also responsible for actually training the various firefighters, lieutenants, and companies assigned to their individual shifts. In practice, though, they only train firefighters on occasion, as the lieutenants beneath them are also responsible for training firefighters. One thing battalion chiefs do regularly do is train newly promoted lieutenants how to act up as a battalion chief.

All of that being said, in this fire department, employees of any rank may conduct some training so as long as they have some special knowledge or area of expertise. That can even include a regular firefighter if he or she is appropriately qualified. But while acting as instructor, that firefighter does not take over any other responsibilities from his or her superiors.

Continuing, battalion chiefs are the first step of the grievance procedure on behalf of management. In that role, they are expected to render a written response to the grievant within ten calendar days after a grievance is presented. Nonetheless, the chief has assisted battalion chiefs in the drafting of responses. In addition, on at least one occasion, the chief has intervened and explicitly reversed a battalion chief's initial grievance determination. The chief has also independently drafted a grievance response.

When appropriate, battalion chiefs are responsible for issuing verbal and written reprimands as well. Battalion chiefs document their verbal reprimands in the subordinate's personnel file. Later, those reprimands are noted in the employee's annual evaluation. Lieutenants, in contrast, do not issue verbal or written reprimands. Instead, they can only issue a counseling.

Battalion chiefs are likewise uniquely responsible for both short and long range implementation of plans after a general approval by the chief and the deputy chief. They also participate in the preparation and implementation of departmental budget programs and make recommendations for departmental improvements. On top of that, battalion chiefs always do the "mail run," which means physically delivering interdepartmental mail between fire stations and between a fire station and city hall. The mail run work takes around 45 minutes a day.

Battalion chiefs are occasionally given individual assignments, too. Currently, one battalion chief is in charge of the RMFD's communications equipment. Meanwhile, another battalion chief is responsible for managing a hazardous materials team, a swift water rescue team, and a tactical rescue team. He has also assisted with managing the RMFD's uniform and grooming policy. The third battalion chief is partially responsible for developing the department's field operation guide.

C. Deployment Protocols

The RMFD's various deployment protocols are set out in a policy and are well known among the ranks. Further, whoever is acting as the "incident commander" at a scene is generally expected to follow the RMFD's field operations guide. However, there is some room for variation from those guidelines, depending on the circumstances. Within the general chain of command framework, the chief, the deputy chief, the battalion chiefs, and the lieutenants all have similar authority to make those changes.

RMFD employees typically receive their initial emergency-related assignments via an overhead loudspeaker in their fire stations. Those particular announcements are often made shortly after an emergency call comes in. Generally, the computer-generated voice that presents the initial announcements identifies a specific company or apparatus that should respond to a scene. A battalion chief can technically override or modify such an assignment, but that rarely happens. Lieutenants do not have that authority, but they may pick up additional calls that were not assigned to their specific crews. That could happen if a lieutenant was already close to a scene, for example. Later, at some point after the computer-generated voice gives an assignment, a human voice may come in with further instructions.

Usually, the first fire engine to respond to a fire scene assumes initial command of the incident upon arrival. That engine is inevitably led by a lieutenant or by a firefighter temporarily filling the engine's "company officer" or lieutenant slot. In that scenario, the lieutenant becomes the acting incident commander of the whole scene and directs subordinate personnel until he or she is relieved. While incident commander, the lieutenant can direct multiple crews and apparatuses, depending on the size of the incident.

Once a battalion chief arrives at a scene, he or she “always” relieves the lieutenant and takes over command of the entire scene and whatever crews and apparatuses are there. The battalion chief cannot choose to take over just one vehicle or act down and fill an engine’s “officer” slot, for example. Once relieved by a battalion chief, the lieutenant’s oversight role is basically limited to working directly with his or her own crew to attack the fire, subject to a possible override from the battalion chief or another superior.

As a rule, a lieutenant does not relieve a battalion chief who has already arrived and taken over command of a scene. Yet, a battalion chief can technically be relieved of his or her incident commander role by either the deputy chief or the chief. That said though, when the deputy chief or the chief do arrive at fire scene, they typically will not replace the battalion chief, but will instead work with and aid the battalion chief in his or her incident commander role.

Lieutenants always arrive at fire scenes on a fire engine with the rest of their engine’s crew. On-duty battalion chiefs, however, always arrive at fire scenes alone in the Battalion 15 SUV, which, upon arrival, functions as an incident command post. That SUV also contains the battalion chiefs’ turnout gear. The lieutenants’ turnout gear, in contrast, is kept at the two fire stations. Whoever is working out of the incident command post – which is usually a battalion chief, the deputy chief, or the chief – typically does not have turnout gear on.

In general, battalion chiefs only respond to more serious incidents, but they could show up for any incident. On the medical side specifically, battalion chiefs typically do not respond to routine ambulance calls, which is the majority of ambulance calls. Furthermore, battalion chiefs ordinarily will not act as a third medic, directly assist the paramedic in charge, or take control of a scene while responding to an ambulance call, but will instead simply manage logistics. However,

on occasion, a battalion chief might assist with medical care or help out in some other hands-on way.

D. Callbacks and Hirebacks

Battalion chiefs utilize “callbacks” whenever they deem there is an especially urgent need for off-duty personnel (i.e., individuals assigned to a different shift) to come back in to work. That could happen when there is an unplanned, large-scale incident (such as a house fire or a hazardous materials incident, for example) or when several incidents are happening simultaneously and there are multiple calls coming in. While working a callback, an employee stays on until the shift’s battalion chief or a lieutenant acting up as that battalion chief determines that the extra workers are no longer needed, which typically is when the significant incident that triggered the callback has been mitigated.

To be sure, in recent years, callbacks have been very infrequent. It is also worth clarifying that battalion chiefs, lieutenants, and firefighters can all be “called back,” but may respond to the scene differently, depending on an individual’s rank. Furthermore, battalion chiefs uniquely only respond to large-scale incident callbacks, while lieutenants and firefighters may be called back in for large-scale incident callbacks as well as “multiple call situations.”

Under more normal circumstances, whenever it appears that the RMFD is not going to meet its minimum manning requirements, “hireback” procedures are initiated. When that happens, off-duty personnel are called in as needed for all or just part of a current shift. And unlike callbacks, which are all unplanned, some hirebacks are planned while others are unplanned. They can occur, for example, when someone is sick or injured, when there is a retirement, or when someone is otherwise temporarily unavailable.

As with callbacks, battalion chiefs typically make all of the department's hireback assignments. However, a battalion chief can delegate his or her hireback authority to a lieutenant if necessary. Ordinarily, a battalion chief takes about 20 minutes to a half hour each day working on hireback-related issues.

The hireback process is carried out in accordance with the CBA and the RMFD's standard operating procedures. Procedurally, anyone requesting to work a hireback must first notify his or her battalion chief. Afterward, a card is filled out and placed in the back of a hireback box in the battalion chiefs' office. Hireback cards for battalion chiefs, lieutenants, and firefighters are all placed in the same rotating card file in a hireback box. As people are selected and work a hireback, the battalion chief or his or her designee signs the time and date of the hireback on each card and then places the card in the back of the file.

Any person wishing to be removed from the hireback cards has to notify his or her battalion chief in writing. Also, when someone is called about a hireback opportunity, that person only has to accept the hireback opportunity if he or she wants to or if the RMFD cannot otherwise meet its minimum manning requirements. In the event that no one is voluntarily "hired back," a "forceback" will be necessary to fill manning requirements.

Generally, people do not fill in for a lower rank for a hireback. According to the standard operating procedures, battalion chiefs can only be hired back if the battalion chief's position is vacant, and lieutenants can only be hired back if a battalion chief or lieutenant position is vacant. Historically, a battalion chief has only worked down one time during a hireback, and that occurred after the instant petition was filed. Moreover, that battalion chief should not have done so.

E. Regular Scheduling

Battalion chiefs receive similar employment benefits to those of bargaining unit members, including the lieutenants. That includes similar compensatory and sick time rules, for example. However, lieutenants are ultimately given more overtime opportunities than battalion chiefs are, for lieutenants can routinely act up as a battalion chief while a battalion chief cannot act down as a lieutenant. But as suggested, a battalion chief may function as “acting chief” in the chief’s or the deputy chief’s absence. In addition, battalion chiefs may attend a city council meeting in the chief’s absence at the chief’s request. A lieutenant cannot do those things.

The City of Rolling Meadows itself is largely responsible for tracking and monitoring its employees’ benefit time, which includes vacation time, sick leave, and compensatory time. Nevertheless, battalion chiefs are responsible for filling out an attendance sheet for all of their subordinates on a daily basis. That includes marking whether someone is absent or out on a particular type of leave for a shift. The deputy chief holds the overall responsibility for overseeing the promulgation of daily absentee reports, though.

When someone calls in wanting to use benefit time, the active battalion chief checks to see if the individual has that time available in his or her bank. A lieutenant only has to do that if he or she is acting up as a battalion chief. Separately, battalion chiefs correct and sign the forms that are used when subordinates trade shifts. In the end, a battalion chief spends about 15 or 20 minutes “processing” calendars in a given day.

The chief is ultimately responsible for the annual scheduling of planned vacations and compensatory time off for the department, but battalion chiefs are also involved in that process, providing oversight and approval. That said, much of a battalion chief’s vacation-related role is dictated by policy, leaving little need for discretion from battalion chiefs. In any case, lieutenants

do not appear to have that sort of responsibility unless they are acting up as a battalion chief and schedules are still being selected at the time.

Each year, a battalion chief posts a schedule of the days available for vacation during the upcoming year. After that, all the employees in each shift select their vacation preferences in the order of their seniority, irrespective of rank, with the most senior employee having first choice, the next most senior having second choice, and so on. In other words, a firefighter could get to pick over a battalion chief. As a rule, up to three people per shift in total will be permitted to be on vacation at one time. After each person makes his or her selection, a battalion chief checks to make sure the correct number of days are accounted for.

Later, after a given year's vacation schedule has been established, employees can also reschedule and trade previously scheduled vacation days, but only with the approval of a battalion chief, as indicated. Likewise, requests to take previously unscheduled vacation must be submitted to a battalion chief and are subject to his or her approval.

Battalion chiefs also have some responsibility over requests for compensatory time. Upon receipt of a request to use compensatory time, a battalion chief confirms that the requesting employee has enough banked compensatory time to cover the time off requested. Approved compensatory time requests are subsequently signed and dated by the battalion chief.

IV. DISCUSSION AND ANALYSIS

The Act was intended to extend bargaining rights broadly, and its exemptions should be narrowly construed. Moreover, although the hearings in such matters are fact-finding in nature, in a representation case, the party that seeks to exclude an individual or job classification from a proposed bargaining unit via a statutory exclusion has the burden of proving that exclusion by a

preponderance of the evidence. Village of Homewood, 25 PERI ¶137 (IL LRB-SP 2009); City of Sandwich, 25 PERI ¶91 (IL LRB-SP 2009); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). In this case, the RMFD is that party, and the sole statutory exclusion that it relies upon is one that is provided in Section 3(r)(1) of the Act, which defines the term “supervisor.” That term is significant here because a statutory “supervisor” is not considered a “public employee” under the Act, and for that reason is ordinarily excluded from collective bargaining. City of Freeport v. Illinois State Labor Relations Board, 135 Ill.2d 499, 505, 554 N.E.2d 155, 158 (1990); Village of Elk Grove Village v. Illinois State Labor Relations Board, 245 Ill.App.3d 109, 115, 613 N.E.2d 311, 316 (2nd Dist. 1993); City of Chicago, 2 PERI ¶ 3017 fn. 8 (IL LLRB 1986).

In relevant part, the first paragraph of Section 3(r)(1) of the Act initially defines “supervisor” as:

[a]n employee whose principal work is substantially different from that of his or her subordinates and who has authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, or discipline employees, to adjust their grievances, or to effectively recommend any of those actions, if the exercise of that authority is not of a merely routine or clerical nature, but requires the consistent use of independent judgment. Except with respect to police employment, the term “supervisor” includes only those individuals who devote a preponderance of their employment time to exercising that authority, State supervisors notwithstanding.

In its second paragraph, Section 3(r)(1) further states:

Notwithstanding the provisions of the preceding paragraph, in determining supervisory status in fire fighter employment, no fire fighter shall be excluded as a supervisor who has established representation rights under Section 9 of this Act.¹

¹ As the certification in Case No. S-VR-94-1 shows, the Union has represented the lieutenant and firefighter ranks since 1993. Accordingly, Section 9 of the Act, which provides protection for “historical” bargaining units, was not a consideration in this case. See Village of Streamwood, 3 PERI ¶2006 (IL SLRB 1986). In addition, although this second paragraph mostly appears to only apply to “new fire fighter units” by its plain terms, neither party has raised that particular issue. I therefore consider the issue waived. City of Highwood, 15 PERI ¶2005 (IL SLRB 1999); Peoria Housing Authority, 10 PERI ¶2020 fn. 4 (IL SLRB 1994). I also have not yet seen a Board decision that focuses on that element of the statute.

Further, in new fire fighter units, employees shall consist of fire fighters of the rank of company officer and below. If a company officer otherwise qualifies as a supervisor under the preceding paragraph, however, he or she shall not be included in the fire fighter unit. If there is no rank between that of chief and the highest company officer, the employer may designate a position on each shift as a Shift Commander, and the persons occupying those positions shall be supervisors. All other ranks above that of company officer shall be supervisors.

Broadly speaking, the foregoing statutory language provides for two general means by which “fire fighters” can be excluded from the Act’s coverage as “supervisors.” Village of McCook, 17 PERI ¶2047 (IL SLRB 2001); Village of Streamwood, 3 PERI ¶2006 (IL SLRB 1986). Importantly, here, the RMFD explicitly does not contend that petitioned-for battalion chiefs are “supervisors” according to the first of those, which uses the traditional four-part test provided in the initial paragraph of Section 3(r)(1). See Pleasantview Fire Protection District, 17 PERI ¶2006 (IL LRB-SP 2000); City of Mount Vernon, 9 PERI ¶2022 (IL SLRB 1993); Village of Rantoul, 5 PERI ¶2031 (IL SLRB 1989). Instead, the RMFD contends that the battalion chiefs hold a rank above that of “company officer” as provided in the second paragraph of Section 3(r)(1) and are therefore statutory “supervisors” who may not be included in the existing unit.

To be clear, the RMFD does not argue that “there is no rank between that of chief and the highest company officer.” Accordingly, the Board need not determine whether there is a true “intervening rank” in this case. See Village of Sauget, 18 PERI ¶2021 (IL LRB-SP 2002); Village of McCook, 17 PERI ¶2047; City of Highwood, 17 PERI ¶2021 fn. 7 (IL LRB-SP 2001); Village of South Holland, 18 PERI ¶2009 (IL SLRB G.C. 2002). Furthermore, because the parties have not focused on the first paragraph of Section 3(r)(1), it follows that the Board need not conduct an in-depth analysis of the petitioned-for employees’ “supervisory” duties. Village of Homewood, 25 PERI ¶137; Village of McCook, 17 PERI ¶2047.

The proper framework to be used in this case was stated plainly in Village of Wheeling, 3 PERI ¶2005 (IL SLRB 1986), aff'd, 135 Ill.2d 499, 554 N.E.2d 155 (1990), the Board's first case involving the issue of supervisory status in firefighter employment. Therein, the Board stated in part, "The Act specifies that those ranks above company officer are supervisors and those ranks below company officer are public employees." Given that language and the parties' positions, the Board must ultimately determine whether it considers battalion chiefs to be ranked above "company officers." If it does, then the instant petition must be dismissed.

Notably, the statutory terms "company officer" and "rank" are not clearly defined in the Act. Lacking such definitions, the Board must use those terms' "plain and ordinary meanings" and consider the totality of the circumstances to arrive at a reasoned result. Department of Central Management Services v. Illinois Labor Relations Board, State Panel, 2011 Ill App (4th) 090966 at ¶224, citing People v. Smith, 236 Ill.2d 162, 167, 923 N.E.2d 259, 262 (2010); Village of Homewood, 25 PERI ¶137; Village of South Holland, 18 PERI ¶2009; City of Taylorville, 4 PERI ¶2039 (IL SLRB G.C. 1988). On their own, a particular fire department's internal rules and regulations are not dispositive. Village of Palatine, 25 PERI ¶114 (IL LRB-SP 2009).

Here, select testimony indicates that, in practice, the word "company" could at different times mean a variety of things, including a single station, a "piece of apparatus," or a particular shift. Indeed, it was even suggested that the entire fire department could be called a company. But in the end, a workable definition must be found and some legal line must be drawn. Moreover, in my view, the preponderance of the evidence presented suggests that the term "company" mainly refers to the group of employees specifically assigned to a particular apparatus, or in other words, a specific emergency vehicle's crew. Meanwhile, when the term "company officer" was used, it most clearly referred to the "company officer" slot on a front-line fire engine, which is reserved

for the internal leader of the engine's crew. An understandable, common sense definition of the term "company officer," therefore, could be "someone directly in charge of and part of a group assigned to an apparatus."

Under that recommended definition, the lieutenant rank is certainly the clearest example of a statutory "company officer" presented in this case. Further, it is apparent that the battalion chiefs do not meet the standard, as they are never directly tied to just one crew or apparatus. And because those battalion chiefs are undoubtedly always ranked "above" the lieutenants, it necessarily follows that they are "supervisors" within the meaning on Section 3(r)(1). Logically, the fact that lieutenants may at times also direct firefighters who are not part of their core engine crew does not change the lieutenants' basic underlying assignments, which are fundamentally different than those of the battalion chiefs. Neither does the fact that battalion chiefs and lieutenants otherwise have a variety of related duties. A rank's intimate connection to a single apparatus is key.

Significantly, the foregoing definition seems fairly consistent with a range of Board precedent. Among other things, that demonstrates an "ordinary," industry-wide usage. Village of McCook, 17 PERI ¶2047, for example, indicated, "A 'company' refers to the personnel assigned to a vehicle, while a 'company officer' is any individual in charge of the personnel assigned to a vehicle." Similarly, City of Evanston, 5 PERI ¶2033 fn. 6 (IL SLRB 1989), provided that "[a] company officer is an employee who has the immediate authority over a group of fire fighters assigned to a particular piece of equipment." Before that, in Village of Wheeling, 3 PERI ¶2005, the Board stated, "The complement of individuals assigned to an apparatus is called a 'company.' A 'company officer' is the lead officer on an apparatus." Later, when that Board case made it to the Supreme Court of Illinois in City of Freeport, 135 Ill.2d at 522, 554 N.E.2d at 167, the Court

stated, “A ‘company’ refers to the personnel assigned to a vehicle, generally three persons to the engine and two to the ambulance. A ‘company officer’ is the person in charge of the people on the vehicle.” In Village of Elk Grove Village, 245 Ill.App.3d at 111, 613 N.E.2d at 313, the Appellate Court of Illinois provided, “A company is a group of workers assigned to a specific apparatus which has a distinct role in the fire service. All of the lieutenants, on their respective shifts, serve in the role of company officer and are in charge of and generally held accountable for the actions and conduct of the fire fighters in their company.”

It is also worth highlighting that the foregoing definition effectively differentiates the term “company officer” from the term “Shift Commander,” which is also used in Section 3(r)(1)’s second paragraph. Despite the obvious presence of an “intervening rank” here, the statute’s “Shift Commander” role is nevertheless at least intuitively linked with the RMFD’s battalion chiefs, whose fundamental role is overseeing an entire shift. I note that, in Village of Alsip, 3 PERI ¶2051 (IL SLRB 1987), the Board concluded in part that the second paragraph of Section 3(r)(1) “allows employers to designate supervisors in equal number to the number of shifts.” Although that case admittedly addresses a slightly different issue, I posit that the obvious principle behind that quote may nevertheless merit at least some consideration in this particular case, where battalion chiefs are ordinarily the highest-ranking employees on duty for two full days in a row each week, and where even a chief or a deputy chief may take over and command companies at a major fire. To expand the definition of “company officer” here to cover anyone who directs a “company” of any sort would render the statutory divider virtually meaningless.

In their post-hearing briefs, both parties consider this case in light of Village of Palatine, 25 PERI ¶114, in which the Board concluded that, given the “highest company officer” terminology used in Section 3(r)(1), more than one rank may be labeled “company officer.” In

that case, the employer similarly argued that its captains (which the RMFD no longer has) should be excluded pursuant to the second paragraph of Section 3(r)(1) as those employees held a rank above “company officer.” Further, like the RMFD, that employer had one lieutenant in each of its fire stations and only one battalion chief in one specific station for each shift, plus a deputy chief and a chief above the battalion chief rank. Yet, in Village of Palatine, the parties clearly stipulated that the petitioned-for captains spent “approximately half their on-duty work time functioning as company officers.” In addition, whenever the captains did that they acted “no differently” than their subordinate lieutenants, who were delegated to specific crews. As detailed above, those are not the circumstances of this case, and therefore Village of Palatine is distinguishable. In short, here, the battalion chiefs are never supposed to be the immediate lead on an apparatus.

V. CONCLUSIONS OF LAW

The RMFD’s battalion chiefs are “supervisors” within the meaning of Section 3(r)(1) of the Act and therefore may not be included in the Union’s existing bargaining unit.

VI. RECOMMENDED ORDER

The petition is dismissed.

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 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of those the responses no later than 15 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 7 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, to either the Board's Chicago office at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103, or to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov. All filings must be 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 30-day period, the parties will be deemed to have waived their exceptions.

Issued in Chicago, Illinois on June 22, 2017

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

**/s/ Martin Kehoe
Martin Kehoe
Administrative Law Judge**