

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

International Union of Operating Engineers,)	
Local 150,)	
)	
Petitioner,)	
and)	Case No. S-UC-20-051
)	
Village of Winnetka,)	
)	
Employer,)	

**DECISION AND ORDER OF THE ILLINOIS LABOR RELATIONS BOARD
STATE PANEL**

On March 4, 2021, Administrative Law Judge (ALJ) Anna Hamburg-Gal issued a Recommended Decision and Order (RDO) in the above-referenced matter, granting the unit clarification petition filed by the International Union of Operating Engineers, Local 150 (Union or Petitioner). The Union seeks to include employees in four job titles—Refuse Supervisor, Fleet Services Supervisor, Sewer Supervisor, and Street Supervisor (together referred to as Public Works Supervisors or Supervisors)—in the Public Works Department of the Village of Winnetka (Village or Employer) in the bargaining unit represented by the Union that includes “all regular full-time employees in the Public Works Department in the classifications of Fleet Mechanic, Refuse Collector and Maintenance Worker.” The Employer opposed the petition on the basis that the employees in those positions are supervisors within the meaning of Section 3(r) of the Illinois Public Labor Relations Act (Act), 5 ILCS 315/1 *et seq.* The Employer filed exceptions to the RDO; the Union did not file a response to the Employer’s exceptions.

Upon review of the RDO, exceptions, and record, we find accept the ALJ’s findings and conclusions contained in the RDO and adopt them as a decision of the Board as discussed below.

I. Discussion

A. Summary of the RDO

The ALJ determined the petition presented the following issue: whether the job positions of Refuse Supervisor, Fleet Services Supervisor, Sewer Supervisor, and Street Supervisor in the Village of Winnetka are

supervisory within the meaning of Section 3(r) of the Act and therefore excluded from bargaining. Applying the four-part supervisory test, the ALJ concluded that the positions are not supervisory and the petition seeking their inclusion in the bargaining unit should be granted.

The ALJ determined that the Public Works Supervisors perform work that is substantially different from that of their subordinates. She further found that the Sewer Supervisor and the Street Supervisor exercise supervisory authority when they assign work in the exercise of independent judgment. She also found that all the Public Works Supervisors also have authority to effectively recommend discipline of their subordinates with independent judgment. However, she found that the Public Works Supervisors do not spend the preponderance of their work time, either quantitatively or qualitatively, directing or disciplining their subordinate employees. The ALJ further found that no Public Works Supervisor exercises any other supervisory authority with the required independent judgment. Accordingly, she concluded that the Public Works Supervisors are not supervisors within the meaning of the Act.

B. The Village's Exceptions

The Village excepted to the RDO asserting that the ALJ erred in granting the petition and challenging her findings that the Public Works Supervisors are not supervisors within the meaning of the Act. The Village contends that the ALJ incorrectly found that the Public Works Supervisors do not exercise supervisory authority in the exercise of independent judgment outside providing direction and of recommending discipline. The Village also excepts to the ALJ's findings that the Public Works Supervisors do not direct their subordinates in the exercise of independent judgment when they oversee and monitor their subordinates; conduct and/or make recommendations regarding employee evaluations; assign work to their subordinates; reward or effectively recommend the award of subordinates; evaluate or recommend subordinates' merit evaluation; effectively recommend employee hiring; and do not spend a qualitative or quantitative preponderance of their work time exercising supervisory authority.

Furthermore, the Village points out that the ALJ made her findings without considering that the Union failed to present the Sewer Supervisor to testify regarding his job duties. The Village argues that the ALJ should have applied the missing witness rule and drawn an inference that his testimony would have been

unfavorable to the Union's position that he is not a supervisory employee within the meaning of the Act. According to the Village, the Union did not present any evidence to contradict the evidence demonstrating that the Sewer Supervisor does not meet the Act's definition of supervisor.

C. Analysis

Missing Witness Rule

First, we reject the Village's argument that the ALJ's findings are flawed because she did not apply the missing witness rule and draw an adverse inference from the Union's failure to present the Sewer Supervisor's testimony regarding his job duties and its failure to present evidence contrary to the Village's with respect to that employee. The ALJ correctly did not apply the missing witness rule when weighing the record evidence as the missing witness rule is inapplicable in a representation case. The missing witness rule is a rule of evidence based on the principle that failure of a party to produce evidence favorable to it gives rise to a presumption against that party. Bd. of Educ. City of Peoria School Dist. No. 150 v. Ill. Educ. Labor Relations Bd., 318 Ill. App. 3d 144, 148 (4th Dist. 2000).

It is well-established that the party claiming the supervisory exclusion has the burden of proving the exclusion by a preponderance of the evidence. Sec. of State v. Ill. Labor Relations Bd., State Panel, 2012 IL App (4th) 111075, ¶ 55 (Sec. of State); Vill. of Homewood, 25 PERI ¶ 137 (IL LRB-SP 2009). Accordingly, it was incumbent upon the Village to provide evidence sufficient to demonstrate that the Public Works Supervisors have the authority to perform at least one of the eleven supervisory functions listed section 3(r), and to do so in the exercise of independent judgment. Either it presented the necessary quantum of evidence, or it did not. If the record demonstrates that it did not the result is a finding that the employee is not supervisory within the meaning of the Act. And, in that circumstance, it is immaterial that the Union did not present testimony or evidence contrary to the Village's.

Moreover, the missing rule applies if the following four conditions are satisfied: (1) the missing witness was under the control of the party to be charged and could have been produced by reasonable diligence, (2) the witness was not equally available to the party requesting that the inference be made, (3) a reasonably prudent person would have produced the witness if the party believed that the testimony would be favorable,

and (4) no reasonable excuse for the failure to produce the witness is shown. Simmons v. Univ. of Chi. Hosp. & Clinics, 162 Ill. 2d 1, 6 (1994). An adverse inference is drawn only when a witness, under the control and direction of one party, fails to appear and testify. Bd. of Regents of Regency Universities v. Ill. Educ. Labor Relations Bd., 208 Ill. App. 3d 220, 233 (4th Dist. 1991). As an employee of the Village, the Sewer Supervisor was available to the Village, and it could have presented his testimony if it believed it would be helpful to its position. It did not do so and cannot rely on the Union's failure to do so in seeking to convince the Board to reject the ALJ's finding with respect to the Sewer Supervisor.

Tellingly, in support of its argument that the ALJ should have applied the missing witness rule in this case, the Village relies on the Illinois Educational Labor Relations Board's decision in Bd. of Regents of Sangamon State Univ., 6 PERI ¶ 1049 (IELRB 1990) which involved an unfair labor practice charge, rather than a representation petition. The Village does not provide a Board decision in a representation case in which the Board applied the missing witness rule, nor have we found such.

Supervisory Employee Analysis

The Act establishes a four-part test to determine whether an employee is a supervisor within the meaning of Section 3(r) of the Act and, therefore, excluded from the definition of "public employee" contained in Section 3(n) of the Act and from collective bargaining. City of Freeport v. Ill. State Labor Relations Bd., 135 Ill. 2d 499, 512 (1990) (City of Freeport); Chief Judge of the Circuit Court of Cook Cnty. v. Am. Fed'n of State, Cnty. & Mun. Emps., Council 31, 153 Ill. 2d 508, 515 (1992) (Chief Judge). Under section 3(r) of the Act, an employee is a supervisor if he or she (1) performs principal work substantially different from that of his or her subordinates; (2) possesses authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in Section 3(r); (3) consistently uses independent judgment in exercising supervisory authority; and (4) devotes a preponderance of his or her employment time to exercising that authority. City of Freeport, 153 Ill. 2d at 512. All four parts of the statutory test must be met for the party claiming the exclusion to establish supervisory status. 5 ILCS 315/3(r); see also Chief Judge, 153 Ill. 2d at 515-16.

“Independent judgment” is exercised when an individual must choose between two or more significant courses of action without substantial review by a superior. City of Freeport, 153 Ill. 2d at 532; Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). If the decisions involved in the exercise of an allegedly supervisory function are “routine or clerical in nature or made on the basis of an individual's superior skill, experience or knowledge,” then those decisions do not involve the exercise of independent judgment. Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). Only one indicium of supervisory authority with independent judgment is needed. See City of Peru v. Ill. State Labor Relations Bd., Ill. App. 3d 284, 289 (3rd Dist. 1988) (citing Maine Yankee Atomic Power Co. v. NLRB, 624 F.2d 347 (1st Cir. 1980)).

The Village argues that the evidence demonstrates the Public Works Supervisors all have authority in the exercise of independent judgment to direct their subordinates by overseeing and monitoring, evaluating, hiring, and rewarding their subordinates, and that they have authority to discipline their subordinates in the exercise of independent. The Village also argues the Supervisors perform these duties for the preponderance of their time.

Direct

1. Assign

We find the ALJ’s finding that the Supervisors do not assign work to their subordinates in the exercise of supervisory authority is supported by the record. The RDO contrasts the duties the Sewer Supervisor and Street Supervisor, whose authority to assign she found is supervisory within the meaning of the Act. The Sewer and Street Supervisors, who assign based on their subordinates’ experience and skills relative to the Employer’s operational needs and consider the subordinates’ training needs, while the Fleet Services and Refuse Supervisors do not do so. The Fleet Services Supervisor oversaw one employee for the eight months preceding the hearing and, therefore, work assignments are straightforward. Either he or his subordinate performs the work at hand. Moreover, Board caselaw supports the ALJ’s determination that the prioritization of tasks is not enough to find that he is supervisory when there is no evidence that he considers the subordinate’s skills when assigning tasks. See State of Ill. (Dep’t of Cent. Mgmt. Servs.), 12 PERI ¶ 2032 (IL SLRB 1996). The Village argues that the we should not base a supervisory determination on a temporary

vacancy. The RDO recognizes that there is testimony that the Village intended to fill the mechanic vacancy, which left the Fleet Services Supervisor with only one subordinate mechanic. But the Village's exceptions do not explain how filling the vacancy will impact the Fleet Services Supervisor's duties such that that potentiality requires a different finding with respect to this employee.

We find the record also supports the ALJ's finding with respect to the Refuse Supervisor, although the evidence is closer here. The Employer points out, and the RDO notes, the record indicates the previous Refuse Supervisor adjusted his subordinates' assignments if there were special collections, staff reductions, or vehicle breakdowns. The evidence supports the ALJ's finding that he did so primarily to balance the workload. Balancing workload does not require the use of independent judgment and therefore does not indicate the exercise of supervisory authority. Chief Judge, 153 Ill. 2d at 518; Serv. Emps. Int'l Union, Local 73 v Ill. Labor Relations Board, 2013 IL App (1st) 120279, ¶ 52.¹

2. Oversee and Monitor

The Village excepts to the ALJ's findings that the Supervisors do not exercise supervisory authority within the meaning of the Act by overseeing and monitoring their subordinates. The ALJ found that the Village provided only vague, generalized testimony as to how the Supervisors monitor their subordinates. She found that the Sewer Supervisor monitors his subordinates because he works alongside them. Also, the evidence is that the Supervisors make sure that their subordinates work is complete but that reviewing and monitoring work for that purpose does not constitute supervisory direction. She found that the Supervisors provide direction to their subordinates based on their superior skill and experience. Moreover, there is no evidence that the Supervisors are held responsible for their subordinates' work, which would constitute the authority to direct.

¹ In RDO footnote 21 (p. 29), the ALJ stated that even if the previous Refuse Supervisor adjusted assignments in the exercise of independent judgment, the current practice is routine. The RDO cites the Board decision in Vill. of S. Holland, 24 PERI ¶ 27 (IL SLRB 2008) for the holding that employees did not exercise independent judgment where they made assignments on rotation although a previous employee exercised such authority by considering subordinates' skills and experience. However, Illinois courts have held that it is the existence of the authority that is essential and not the number of times the employee exercises the authority. Dep't of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 110013, ¶ 84. We thus adopt the ALJ's finding regarding the Refuse Supervisor without adopting footnote 21 in the RDO.

The Village argues that the Supervisors make decisions as to whom to send on specific jobs, ensure work is complete, establish priorities, instruct subordinates on proper and safe techniques and that they do so without a “playbook” or guide to instruct them on how they should do so. We find that argument unpersuasive. It does not point out any error in the ALJ’s findings of fact and only asserts that she incorrectly interpreted those facts to conclude that they perform those tasks relying on their superior skills and knowledge. Although such tasks can constitute supervisory authority, the ALJ determined that the testimony was too generalized and did not include the necessary evidence from which to make that finding. Thus, we find the ALJ’s determination is supported by the record and reject this exception.

3. Evaluate

The Employer excepts to the ALJ’s finding that the Public Works Supervisors do not exercise supervisory authority to annually evaluate their subordinates because the evaluations are not accepted as a matter of course. We find the Employer’s exceptions on this point are without merit.

Evaluations that directly affect an employee’s pay or employment status are evidence of supervisory direction. Elk Grove Vill., 245 Ill. App. 3d 109, 117-18 (2d Dist. 1993); Vill. of Hinsdale, 22 PERI ¶176 (IL SLRB 2006). The ALJ found that the evaluations affect the employees’ pay. She also found that the evaluations go through three layers of extensive review by the Superintendent, Assistant Director, and Director of the Department of Public Works, which includes independent investigation to ensure that all the accident and discipline reports are included, and that the Supervisors’ superiors frequently accept their recommended evaluation scores. The record can be viewed to support these findings. Relying on Board and court caselaw, the ALJ found that although the evaluation scores are frequently accepted by the Supervisors’ superiors, they do not constitute effective recommendations because the review process is extensive and exhaustive. See Dep’t of Cent. Mgmt. Servs. v. Ill. Labor Relations Bd., 2012 IL App (4th) 110209, ¶ 31

The court, however, has also instructed that the proper focus in the context of effective recommendation is the influence of the recommendation and whether the superior almost always follows it. State of Ill. Dep’t of Cent. Mgmt. Servs. (Ill. Commerce Comm’n), 406 Ill. App. 3d 766, 777 (4th Dist. 2010). In that case, the court explained that the extent of review could be an indication of the effectiveness

of the recommendations, but it is not the litmus test. Rather, the test is whether the recommendations almost always persuade the superiors.

Here, we find the record evidence supports the ALJ's findings and recommendations regarding the Supervisors' authority with respect to evaluations. For example, there is testimony that the Supervisors' changes to the evaluations generally involve consistency, grammar, wording, and completeness. Oct. 15 Tr. 72. There is also testimony that the Supervisors' superiors have insisted on changes that a Supervisor did not want to make occasioning heated discussion with the result that the Supervisor's superior made and initialed the changes himself. Oct. 15 Tr. 29.

Reward

The Village excepts to the ALJ's finding that the Supervisors do not have supervisory to reward their subordinates through the performance of merit evaluations, which are additional to the annual evaluations and are conducted for employees hired after January 1, 2003, and who are in their tenth year of employment. The ALJ found that the merit evaluations are similar to the annual performance evaluations in that they evaluate and assign a score to twelve categories of job performance some of which overlap with those included on the performance evaluations. Depending on the overall score, an employee may receive a lump sum merit bonus. The ALJ found that the preponderance of the evidence demonstrated that the Supervisors do not make independent recommendations with respect to the merit evaluations because they complete them jointly with their superiors.

Because we found the Supervisors do not make independent recommendations with respect to the merit evaluations as discussed above, we find they do not possess the supervisory authority to reward. Accordingly, we accept the ALJ's findings on the Supervisors' authority and find the Supervisors have supervisory authority to reward.

Hire

The Employer's exception to the ALJ's finding that the Supervisors' lack authority to hire or to effectively recommend a hire lack merit. The ALJ found that the Supervisors do not exercise supervisory authority to hire. She found that they do not exercise independent judgment in hiring because hiring is done

by a panel consisting of the interested Supervisor and his superiors. The ALJ's determination is supported by the record and by our decisions holding that a hiring recommendation is not effective where the hiring decision is reached by the committee. The Village does not cite to evidence undermining the ALJ's finding and in support of its position it cites only a non-precedential ALJ decision in *City of Geneva (Street & Fleet Div.)*, 31 PERI ¶ 81 ILRB ALJ 2014). Thus, we reject the Employer's exceptions to the ALJ's findings regarding supervisory authority to hire.

Discipline

The Employer's excepts to the ALJ's determination that the Supervisors, whom she found have supervisory authority to discipline subordinates, do not spend the preponderance of their time, both quantitatively and qualitatively, in the exercise of their disciplinary authority. We, however, agree with the ALJ's findings and analysis regarding the preponderance of time part of the supervisory test and find the Village's exception regarding preponderance of time prong to lack merit.

For the above reasons, we accept the ALJ's findings and recommendations and grant the unit clarification petition. We adopt the RDO as a decision of the Board with the exception of footnote 21 and direct the Executive Director to issue a certification consistent with our decision.

BY THE STATE PANEL OF THE ILLINOIS LABOR RELATIONS BOARD

/s/ William E. Lowry
William E. Lowry, Chairman

/s/ John S. Cronin
John S. Cronin, Member

/s/ Kendra Cunningham
Kendra Cunningham, Member

/s/ Jose L. Gudino
Jose L. Gudino, Member

/s/ J. Thomas Willis
J. Thomas Willis, Member

Decision made at the State Panel's public meeting in Chicago and Springfield, Illinois, via WebEx videoconference on July 15, 2021, written decision approved at the State Panel's public meeting in Chicago and Springfield, Illinois via videoconference on August 12, 2021, and issued on August 12, 2021.

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

International Union of Operating Engineers,)	
Local 150,)	
)	
Petitioner/Labor Organization,)	
)	
and)	Case No. S-UC-20-051
)	
Village of Winnetka,)	
(Public Works Department),)	
)	
Employer.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On February 12, 2020, the International Union of Operating Engineers, Local 150 (Petitioner or Union), filed a petition with the Illinois Labor Relations Board (Board) seeking to represent the titles Refuse Supervisor, Fleet Services Supervisor, Sewer Supervisor, and Street Supervisor employed by the Village of Winnetka (Village or Employer). The Employer opposed the petition, asserting that the employees sought to be represented are excluded from coverage under the Illinois Public Labor Relations Act (Act), 5 ILCS 315 (2014), as amended, pursuant to the exemption for supervisory employees.

In accordance with Section 9(a) of the Act, an authorized Board agent conducted an investigation and determined that there was reasonable cause to believe that a question concerning representation existed. A hearing on the matter was conducted on October 14 & 15, 2020, before ALJ Michelle N. Owen. The case was subsequently transferred to the undersigned. Both parties elected to file post-hearing briefs.

I. PRELIMINARY FINDINGS¹

The parties stipulate and I find:

1. At all times material, the Village has been a public employer within the meaning of Section 3(o) of the Act.

¹ Some of the parties’ stipulations are incorporated into the statement of fact.

2. At all times material, the Village has been subject to the jurisdiction of the State Panel of the Board, pursuant to Section 5(a-5) of the Act.
3. At all times material, the Union has been a labor organization within the meaning of Section 3(i) of the Act.
4. On January 31, 2020, the Illinois Labor Relations Board issued a Certification of Representative in Case No. S-RC-20-039, identified as Joint Exhibit 1, which recognizes the Union as the exclusive representative of all regular full-time employees in the Village's Public Works Department in the positions of Fleet Mechanic, Refuse Collector, and Maintenance Worker. Four positions were disputed and excluded under Section 1210.100(b)(7)(B) of the Board's Rules and Regulations: Street Supervisor, Refuse Supervisor, Sewer Supervisor, and Fleet Services Supervisor.
5. Pursuant to the certification in Case No. S-RC-20-039, the Union filed a timely unit clarification petition on February 12, 2020, which has been designated by the Board as Case No. S-UC-20-051, and is identified as Joint Exhibit 2.
6. The Village filed a timely position statement in response to the unit clarification petition, which is identified as Joint Exhibit 3.
7. A hearing in this matter was originally scheduled for May 20 and 21, 2020. The parties and Administrative Law Judge Michelle Owen (ALJ) agreed to extensions of the original hearing date as a result of the COVID-19 pandemic. The hearing in this matter was rescheduled for October 14 and 15, 2020, by agreement of the parties and the ALJ.
8. The Village of Winnetka is a suburb of Chicago seated in Cook County, Illinois. The Village maintains a full-service public works department that is responsible for street and sewer management; maintenance and repairs; refuse collection; maintenance of the Village's fleet of vehicles; tree management and maintenance; infrastructure design; and construction management.
9. The Public Works employees are covered by the Village's Employee Handbook. The Handbook includes the Village's EEO policies (Sections 1. 1, 6. 4), compensation plan (Section 5), and standards of conduct and disciplinary policies (Section 6). Movement through the Village's compensation plan is based on individual employee performance. Some employees also qualify for merit bonuses, which are again based on individual employee performance.

10. The Village does not contend in these proceedings that any of the four purported supervisors exercise authority to suspend, layoff, recall, or promote, as those terms are used in the Act.

II. ISSUES AND CONTENTIONS

The issue is whether the Refuse Supervisor, Fleet Services Supervisor, Sewer Supervisor, and Street Supervisor are supervisors within the meaning of Section 3(r) of the Act.

The Employer argues that the petitioned-for employees are statutory supervisors. It reasons that their principal work is substantially different from that of their subordinates and that they direct, discipline, discharge, hire, transfer, reward, and adjust their subordinates' grievances with the requisite independent judgment. The Employer concludes that the petitioned-for employees exercise supervisory authority for a preponderance of their work time under both a qualitative and quantitative assessment.

The Union denies that the petitioned-for employees are statutory supervisors. It asserts that their principal work is substantially the same as that of their subordinates. In addition, it denies that the petitioned-for employees exercise independent judgment in directing, disciplining, discharging, hiring, transferring, rewarding, and adjusting their subordinates' grievances. The Union contends that the petitioned-for employees' decisions and/or recommendations on each indicium of supervisory authority are routine or informed by their superior skill and experience. The Union further contends that the petitioned-for employees' recommendations are not effective within the meaning of the Act. The Union concludes that the petitioned-for employees do not spend a preponderance of their work time exercising supervisory authority.

III. FACTS

Steve Saunders is the Public Works Director/Village Engineer for the Employer. He oversees the Assistant Director of Public Works position, which was held by Jim Bernahl when the Union filed its petition. The Assistant Director of Public Works oversees the Superintendent of Operations, Steve Auth. The Superintendent of Operations oversees the following four divisions: Street Division, Sewer Division, Fleet Services Division, and Refuse Division. A public works supervisor oversees each division. Ann Erikson is the HR generalist for the Village of Winnetka.

The Street Division maintains and repairs streets and sidewalks, marks road surfaces, makes and installs signs, removes snow, collects leaves, and maintains buildings, parkways, and parking lots. Mike Mahoney is the Street Supervisor. The Street Supervisor is responsible for overseeing the day-to-day operations of the Street Division. He inspects areas in need of maintenance to determine the type of work required, and the equipment, materials, and personnel needed. He confers with other public works supervisors to coordinate personal and equipment required for day-to-day operations and in the event of emergency personnel shortage, or major construction or maintenance activity. He also oversees eight maintenance workers and some seasonal laborers. The maintenance workers in the Street Division operate equipment and machinery in the construction, maintenance, repair, installation and replacement of the Village's streets and parkways. They also participate in leaf and snow removal operations.

The Sewer Division maintains storm and sanitary sewers. Mike Rivard is the Sewer Supervisor. The Sewer Supervisor is responsible for overseeing the day-to-day operations of the Sewer Division. He is responsible for the general maintenance and upkeep of the Village's sanitary and storm sewer system and drainage ditches. He inspects Village areas to determine whether they require maintenance or installation of new sanitary and storm sewer systems and develops plans for service. He is also responsible for the operation of equipment needed to repair those systems, pump stations, and components. He coordinates with other public works supervisors regarding personnel and equipment. He also orders parts, responds to email, performs research online, and maintains files pertaining to operations. He oversees four maintenance workers and some seasonal laborers. The maintenance workers in the Sewer Division operate equipment in the construction, maintenance, repair, installation, and replacement of the Village's water, sanitary sewer, and storm drainage facilities.

The Fleet Services Division maintains the vehicles and equipment for all the Village's departments. Jon Olson is the Fleet Services Supervisor. The Fleet Services Supervisor is responsible for overseeing day-to-day operation of the Fleet Services Division. The Fleet Services Supervisor is responsible for developing recommended routine maintenance schedules for vehicles and equipment, monitoring fuel levels, and keeping an inventory of parts. If different departments in the Village make competing requests for service, the Fleet Supervisor prioritizes them. He coordinates with other public works supervisors regarding personnel and equipment required for day-to-day operations and in the event of emergencies. He also responds to emails, orders

materials online, and maintains records of the fleet, department vehicles, budgets, inventory, service requests, worked performed, and personnel files. The Fleet Supervisor oversees two mechanic positions. One of those positions is currently vacant but the Employer is seeking to fill it. The mechanics perform skilled mechanical work in the maintenance and repair of automotive, construction, and other Village equipment. This division does not use seasonal or contract employees.

The Refuse Division is responsible for commercial and residential refuse collection. Skip Moran formerly held the position of Refuse Supervisor, but he retired in January 2020. The Refuse Supervisor is responsible for overseeing day-to-day operation of his division. He is responsible for establishing efficient and effective approaches to refuse collection. To that end, he coordinates with other public works supervisors regarding personnel and equipment. He also recommends maintenance or repair of vehicles, responds to emails, orders products, and maintains files regarding collection and personnel. Ron Turner, formerly a refuse collector, is currently serving as Acting/Interim Refuse Supervisor. Acting Refuse Supervisor Turner oversees six refuse collectors. The refuse collectors pick up commercial and residential refuse and transport collected material to disposal sites.

All the Public Works Division Supervisors earn an hourly wage and receive overtime pay for hours worked in excess of 40 hours per week. They all perform blue collar work. Each Public Works Supervisor works alongside his subordinates every day performing the same type of manual labor as his subordinates. The Refuse Supervisor collects refuse, the Fleet Services Supervisor performs mechanic work, the Sewer Supervisor performs sewer-related repairs, and the Street Supervisor performs manual labor to repair the streets, plow snow, and collect leaves. All the Public Works Division Supervisors also perform administrative work and have workstations to assist in these duties.

The maintenance workers and the refuse collectors do not have work stations because they do not perform any administrative tasks. However, the mechanics do have work stations because they also do some research and look at parts online, though they have no personnel responsibilities.

The Village has sent two Public Works Supervisors, Street Supervisor Mahoney and Fleet Services Supervisor Olson, to a specialized supervisory training course conducted by the Illinois Public Employer Labor Relations Association (IPELRA), which includes training on how to

document, issue, and implement discipline. The Village has sent three Public Works Supervisors² to the Midwest Advanced Public Service Sector Institute (MAPPSI), which provides training on management style topics and how to handle personnel-related matters. The Village also provides the Public Works Supervisors anti-harassment training and training on its drug and alcohol policy, which teaches them how to assess whether there is any reasonable suspicion to require a subordinate to undergo drug and alcohol testing.

1. Direction

- a. Oversight and Monitoring

The Sewer Supervisor works alongside his subordinates in the field and has direct oversight over their tasks, unless his subordinates are spread out. The Sewer Supervisor uses his experience to make sure that the job is done correctly and that the employees are safe in meeting the requirements of the task and safety protocols. Bernahl testified that if the Sewer Supervisor observes an employee performing a task in a way that is different from the Village's normal operating practices, the supervisor is responsible for addressing and correcting the issue.

The Fleet Services Supervisor monitors and oversees the work performed by his subordinate on a daily basis. He is responsible for ensuring that his subordinate performs mechanic work safely using appropriate work methods. He also answers his subordinate's questions. The Fleet Services Supervisor and the mechanic work in close proximity to each other. If the Fleet Services Supervisor sees the mechanic working on the wrong vehicle, the supervisor will correct the mechanic and redirect him. Similarly, if the Fleet Services Supervisor sees the fleet mechanic perform an unsafe procedure, he will inform the mechanic of the proper technique.

Street Supervisor Mahoney communicates with his subordinates during the day by speaking to them using the radio and also stopping by at the job sites to do periodic check ins. Also, the maintenance groups report back to him when the assignments are complete so that they can receive new assignments. Mahoney works alongside a maintenance crew each day and works in direct view of that crew. The other crews report back to him at the end of the day.

² Street Supervisor Mike Mahoney, former Refuse Supervisor Paul Moran, and Fleet Services Supervisor Jon Olson have received such training.

The Refuse Supervisor collects refuse during the day and also coordinates other programs for the Refuse Division. As he is performing his tasks, he “visually stops by” to oversee his subordinates and he is also in communication by phone with the refuse collectors.

b. Assignment

Refuse collectors have assigned routes and they work the same routes each day. There are three routes, and two refuse collectors per route. The Refuse Collectors come in to work two hours before the Refuse Supervisor and begin their assigned routes. Bernahl testified that the Refuse Supervisor can change team assignments in consideration of work volume and employee performance, and that Former Refuse Supervisor Moran had done so to ensure equitable division of work and completion of the tasks (i.e., to “improve activity”³).

Bernahl testified that the time it takes to complete each route can vary in unpredictable ways and that the Refuse Supervisor may need to make adjustments in assignments through the day. For example, the Refuse Supervisor may need to make adjustments in collection activities if there are special collections,⁴ reductions in staff, or if a vehicle breaks down. The Refuse Supervisor bases his decision on his experience, knowledge of the team, the amount of work, and the division’s priorities.

If the division is short staffed, the Refuse Supervisor will request assistance from the Street Division or the Sewer Division. In 99% of cases, the Street Supervisor will send his least senior employee to perform the task. If the least senior employee from one division is unavailable, the least senior employee from another division gets the assignment. This is not a permanent transfer. Bernahl acknowledged that when the refuse division needs another staff member, the public works supervisor of the other divisions usually sends the least senior employee, but he noted that the public works supervisor has discretion to choose a different employee.

The Refuse Supervisor may also determine that he can operate with fewer staff members if it is a lower-volume collection day. In such cases, the Refuse Supervisor can decide to run the division one person short.

³ Bernahl did not further explain what he meant by this phrase.

⁴ Sometimes residents call stating that they put their trash out late and need it to be picked up. The Department usually accommodates those requests.

Sewer Supervisor Rivard meets with his subordinates at the beginning of the day and gives them their daily assignments. He assigns tasks to employees based on their experience level, whether he is trying to provide an employee with training, or how the jobs are spaced sequentially during the day.

Street Supervisor Mahoney meets with his subordinates in the morning to assign tasks and place employees into groups for work.⁵ Bernahl testified that Mahoney groups employees based on the task, the employees' experience level, the overall workload, and whether he wants to initiate training. Mahoney testified that he distributes the assignments based on his knowledge of what needs to get done and his experience in the department, but he did not expressly contradict Bernahl's more specific description of the basis for the assignments.

If the Streets Division is conducting a large snow removal or leaf removal operation, the Streets Division Supervisor will request help from the Sewer Division. The Supervisors of the Street and Sewer divisions decide collaboratively on which employees should perform the needed work based on the employee's experience in the tasks to be completed.

Fleet Services Supervisor Olson assigns work in the morning based on the service requests he has received and the work to be done for the day. He bases his assessments on his skill and experience as a mechanic. He also considers the importance of the vehicle to the Village's operations and the severity of the problem that needs to be fixed, and may sometimes delay preventative maintenance functions to focus on more critical items. It takes Olson a couple of minutes to make daily assignments.

c. Overtime

The Public Works Supervisors have authority to schedule emergency overtime. However, they lack authority to unilaterally schedule non-emergency overtime, and there is no evidence in the record that any Public Works Supervisor has ever recommended scheduled overtime.

The four Public Works Supervisors rotate each week as on-call supervisors for emergency overtime. The Public Works Supervisors are designated as the "first call."⁶ The evidence suggests dispatch may have authority to disregard the rotation system and contact the Public Works

⁵ Mahoney receives the assignments from the Director, Assistant Director, and Superintendent. The Assistant Director and the Superintendent do not typically bypass the supervisor and give assignments to the supervisors' subordinates

⁶ See Tr. Day 1, P. 225.

Supervisor who is responsible for the division in which the emergency falls. A maintenance worker or mechanic is designated as the “second call” each week. When an emergency arises outside of normal working hours, dispatch calls the first-call Public Works Supervisor, and if he is unreachable, dispatch contacts the second-call.

Street Supervisor Mahoney testified that when an emergency arises and dispatch contacts the first-call, the Public Works Supervisor must respond to it. The weight of the evidence supports his assertion. Although Director Bernahl testified that the Public Works Supervisor has discretion to determine whether to respond to the emergency call or to send one of his subordinates instead, the Village handbook notes that employees on rotation for standby duty are “required” to report.

When a Public Works Supervisor cannot complete the emergency overtime on his own, he contacts the “second call” maintenance worker, and they perform the job together. Street Supervisor Mahoney noted that if he requires additional workers, apart from the second-call worker, he must contact his superiors.

The Sewer Supervisor can grant emergency overtime during snow removal operations to ensure that the sewer systems operate properly during the removal. The Refuse Supervisor can grant emergency overtime if there is a special event or a weather event that produces debris. The Street Supervisor can likewise grant emergency overtime for emergency calls received from the police department or the electric plant. It is not clear from the record whether the Public Works Supervisors always receive notice of an emergency from dispatch or whether they make their own assessment of the existence of an emergency.

Interim Refuse Supervisor Turner testified that in the Refuse Division, employees perform weekend overtime on a fixed rotation but can agree to trade with each other, if they want.

d. Training

The Employer’s handbook states that corrective action may include training, counseling, oral/written reprimands, or higher-level discipline.

The Public Works Supervisors provide initial training to new hires and also on-the-job training. The Sewer Supervisor trains new hires in equipment operation, safety and proper techniques related to cleaning sewers, inspections, snow removal, and some refuse removal. The Refuse Supervisor trains his subordinates in refuse collection. The Fleet Services Supervisor will be responsible for training any newly hired fleet mechanics using his superior skill and experience

as a mechanic. The Street Supervisor trains new employees of the Street Division by providing his subordinates instruction in duties required within the Street Division.

The record contains a document entitled “performance review, note to file,” drafted by Sewer Supervisor Rivard. The document indicates that it is part of the employee’s “ongoing training” and explained how the employee’s conduct was improper under the Employer’s handbook. The Employer maintains the “note to file” in the employee’s personnel file, and Bernahl testified that Public Works Supervisors consider past infractions when determining whether, and what type of discipline to recommend.

e. Evaluations

The Public Works Supervisors evaluate their subordinates annually. The Public Works Supervisor bases the evaluation on his observation of the employee’s performance throughout the year. The Village expects supervisors to continuously monitor their direct reports’ performance throughout the year and to keep records of the employees’ performance during the year to assist in the yearly evaluation.

The evaluation considers the subordinate’s job competence, punctuality & dependability, productivity & work quality, communication, workplace conduct, decision making & problem solving, teamwork, and customer service. For each category, the Public Works Supervisor rates the subordinate as outstanding, exceeds expectations, meets expectations, needs improvement, or unacceptable, and he provides narrative comments. The evaluation also considers whether the employee has received any disciplinary action, including coaching, verbal reprimands, or written reprimands. The Public Works Supervisor determines how much weight to give the disciplinary actions in the evaluation process. The evaluation similarly considers whether the employee was at fault for any vehicle accidents during the evaluation period.

After the supervisor completes the evaluation, he meets with the superintendent to discuss it. The superintendent reviews the evaluations for consistency, wording, grammatical errors, and to ensure that the Public Works Supervisor included all the subordinates’ personnel issues and accidents. The assistant director then also reviews the evaluation for consistency but does not make substantive changes. The director performs the final review of the evaluations.

The evaluations impact employee pay. The Employer maintains a salary step schedule, which has 15 steps. Employees who have not yet attained the highest step are eligible to earn

zero, one or two steps, depending on their performance.⁷ Generally, an employee who receives a rating of meets expectations receives a one-step increase and an employee who receives a rating of exceeds expectations receives a two-step increase. However, the Public Works Supervisor can recommend a one-step increase despite rating an employee as exceeding expectations. This occurred in one case.

The Employer frequently changes the Public Works Supervisors' evaluations for consistency and modifies the verbiage. However, the Employer rarely changes the overall score or the recommended wage increase. Street Supervisor Mahoney testified that in the 20 years that he has served as a public works supervisor the Employer has changed the overall score on only five or six of his draft evaluations.⁸

2. Discipline

When a Public Works Supervisor observes an incident by a subordinate, or a pattern of behavior that needs improvement, he has authority to address the performance shortcoming with an undocumented verbal discussion. Alternatively, the Public Works Supervisor can recommend that his subordinate receive a documented coaching/counseling⁹ or higher-level discipline. There is no matrix in the Village's handbook or the Village's policies that defines the level of discipline that should issue for any particular level of offense. The Public Works Supervisor bases his recommendation as to the appropriate level of discipline on its severity, whether the infractions are habitual, the existence of past coaching sessions, whether others were involved, how recently the last instance of discipline occurred, and the impact of the misconduct on the Department.

The Public Works Supervisor provides a written recommendation for coaching or discipline to the superintendent. Street Supervisor Mahoney testified that the superintendent may "bump up" the public works supervisor's recommendation to the assistant director and the director

⁷ The steps are different for employees hired after January 1, 2003, also known as non-grandfathered employees. Their increases do not include an additional 2.9% increase.

⁸ Although Bernahl suggested that he and the director lacked authority to change a Public Works Supervisor's evaluation if he disagreed with it, this is not consistent with more explicit testimony from public Works Supervisor Mahoney, in which he identified specific instances in which the Employer changed his evaluations.

⁹ The parties use the terms "coaching" and "counseling" interchangeably. They appear to refer to the same action.

“so that the entire organization is on the same page and we know where we are.”¹⁰ Mahoney testified that, following the recommendation, the Public Works Supervisor and management work as a team to determine whether the infraction requires disciplinary action that is higher than a coaching. HR may also consult on the matter to ensure the discipline is fair and appropriate for the stated infraction. The Director makes the final decision on the level of discipline that should issue.

The Employer maintains coaching documents in the affected employee’s personnel file. Some coaching documents bear the signature of solely the public works supervisor.¹¹ Other coaching documents bear the signature of the public works supervisor and the superintendent. Public Works Supervisors have recommended documented coachings for attendance issues, failure to timely report injuries on duty, abuse of sick leave, accidents while operating village equipment, interpersonal issues, and poor attitude and performance.

Public Works Supervisors have taken different approaches to their subordinates’ attendance in different cases, and they are granted leeway to do so. For example, in one case, Sewer Supervisor Rivard recommended a documented coaching session for an attendance issue, noting that the employee failed to show up for work on two occasions without call off. He noted that if the pattern continued, the subordinate could be subjected to time off without pay. In another case, Sewer Supervisor Rivard waited until an employee accumulated 14 unanticipated sick leave occurrences and several late report occurrences to issue a coaching. The Employer did not discipline Rivard for this disparity.

When the Employer issues higher-level discipline, it is labeled by number, one through three, depending on the severity. Disciplinary forms usually bear the signature of the public works supervisor and the superintendent or the HR Director. Disciplinary notices signed by the Public Works Supervisors reference prior coachings for similar infractions. In one case, former Refuse Supervisor Moran issued a disciplinary action to a subordinate for poor attendance, and noted that discipline was required in this instance because prior verbal and written communications were not successful in correcting the employee’s behavior.¹² In two other instances where Refuse Supervisor Moran issued discipline, he noted that he had previously discussed similar issues with

¹⁰ Tr. Day 2, p. 22.

¹¹ See ER Exh 39, p. 3692 [Mahoney]; ER Exh. 23, pp. 3667 & 3676 [Moran], 3677 & 3813 [Moran and Rivard].

¹² Er Exh. 23, p 3664.

the subordinate “through coaching sessions.”¹³ And in one of those instances, he added that the subordinate was now receiving “the next level of the disciplinary process.”¹⁴

Street Supervisor Mahoney testified that the Employer has never rejected his recommendation to conduct a coaching session. He further testified that the Employer has edited his disciplinary documents for “legal reasons,” but identified only one case in which the Employer rejected his request to impose any discipline at all. Bernahl testified that he would approve a Public Works Supervisor’s recommendation on discipline even if he disagreed with it.

Fleet Services Supervisor Olson has never recommended discipline because it has never been needed in his division.

3. Adjustment of Grievances

The Public Works Supervisors are responsible for resolving problems that occur day-to-day at the work place. If the Public Works Supervisor cannot resolve the problem, the employee presents the issue to the department head and then the Village manager.

Public Works Supervisors have resolved interpersonal disputes and disputes over assignments. When Fleet Services Supervisor Olson oversaw two mechanics,¹⁵ they disagreed over which one of them would perform a particular task. Fleet Services Supervisor Olson addressed the situation verbally by directing the employees to their respective assignments and instructing them to work together collaboratively. A similar dispute arose in the Streets Division where two maintenance workers disagreed on who should receive the street sweeper assignment. Street Supervisor Mahoney made the ultimate decision. Likewise, Sewer Supervisor Rivard resolved an interpersonal dispute among his subordinates by separating their tasks and talking with them to resolve the issue.

4. Hiring

The Public Works Supervisors participate in the hiring process for full-time maintenance workers and mechanics. They serve on a panel with their superiors to make hiring decisions. The panel includes the Director, the Assistant Director, the Superintendent, and the Public Works

¹³ Er Exh. 23, 3669, 3674.

¹⁴ Er Exh. 23, p 3669.

¹⁵ He now only oversees one mechanic.

Supervisor. HR Specialist Ann Eriksson performs the initial screening of applicants and provides a list to the panel. Then, each panelist rates each candidate a zero, one, or two, to help determine which candidates the panel will interview.

The witnesses disagree on how the scores determine the interview list. However, the preponderance of the evidence demonstrates that the candidates with the highest scores receive an interview. Street Supervisor Mahoney testified that the Village adds the scores of each rater to obtain a total, and interviews the individuals with the highest total ratings. This is consistent with the documentary evidence provided by the Employer which demonstrates that the Village designates a percentage score calculated using the raw scores of all the raters. Witnesses for the Village testified that the Village will not grant a candidate an interview if the supervisor rates a candidate as a zero, unless a member of management feels strongly about that candidate or if there is a light applicant pool. However, the record does not include an example in which a Public Works Supervisor overruled the other raters to remove a candidate from consideration. The Employer notes that it did not seek to interview any candidates for a maintenance position where Sewer Supervisor Rivard rated them a zero. Yet, in each such case the candidate's overall score was fairly low because another member of the panel gave the candidate merely an average score. The Employer notes another case in which the Village interviewed a candidate based on the recommendation of former Refuse Supervisor Moran and ultimately hired the candidate, though the candidate's experience would not have initially qualified him for an interview; however, the record does not reflect how the other panelists rated that candidate.

After the panelists complete the screening process, discussed above, the panel conducts an interview of the remaining candidates, which is scripted and hosted by HR Specialist Eriksson. At the end of the process, each interviewer individually ranks the candidates in order of preference. The panel members then meet as a team to discuss the candidates. The Director has the final say in determining who is hired.

Bernahl testified that the Department will typically hire a candidate if the Public Works Supervisor likes him and typically decline to hire a candidate if the Public Works Supervisor does not like him. The evidence does not reveal how many times the Employer has conducted the hiring process for full-time employees in the Public Works Department. However, on two occasions, the Employer declined to hire the candidates preferred by Fleet Services Supervisor

Olson. And on two occasions, the Employer declined to hire the candidates preferred by Street Supervisor Mahoney.

The Public Works Supervisors also participate in the hiring and rehiring process for seasonal employees. They offer feedback on the past performance of seasonal employees to help the Employer determine whether the seasonal employee is eligible to be considered for rehire in the next season. Apart from questions of threshold eligibility, the preponderance of the evidence demonstrates that the process for hiring seasonal workers is the same as the process for full-time employees. Street Supervisor Mahoney offered testimony to that effect, and the documentary evidence related to hiring appears the same for seasonal and full-time employees.

5. Discharge

The Employer has not argued that the Public Works Supervisors have authority to discharge or effectively recommend the discharge of their full-time subordinates. However, Bernahl testified that the Streets Supervisor has authority to discharge contract workers. The Employer engages two private corporations, Impact Staffing and Options Incorporated, to provide such workers. Streets Supervisor Mahoney denied that he has authority to unilaterally discharge a contractor or a laborer sent to the Employer by those corporations. He noted that he has recommended the discharge of a contractor in several cases, but that the Employer accepted his recommendation only in one case.

Street Supervisor Mahoney denied that he had authority to unilaterally terminate the employment of a seasonal employee.

6. Reward

Separate and apart from the annual performance evaluations that the Public Works Supervisors conduct for all their subordinates, the Public Works Supervisors also conduct merit evaluations for employees hired after January 1, 2003, who are in their tenth year of employment.¹⁶ Eligible employees receive a lump sum, performance-based merit bonus based on the merit

¹⁶ The merit program evaluation process does not take the place of regular evaluations, which determines employees' movement through the wage steps.

evaluations they receive. Not all of the Public Work Supervisors oversee employees who are eligible for merit bonuses.

The merit evaluations are similar to the annual performance evaluations. The Public Works Supervisor evaluates the employee in the following twelve categories: attendance & punctuality, job competence, problem-solving and decision-making, adaptability, communications, customer service, cooperation & teamwork, integrity, and safety. The Public Works Supervisor must rate each employee as outstanding, exceeds expectations, meets expectations, needs improvement, or unsatisfactory. The overall score is based on the category (e.g., exceeds expectations, meets expectations, etc.) in which the employee receives the majority of his ratings.

Each overall rating score correlates with a particular merit percentage range. Eligible employees who rank as “outstanding” can receive an increase of between 2.6% and 2.9%. Eligible employees who rank as “meets expectations” can receive an increase of between .6 and 1.5%. The Public Works Supervisor does not make a recommendation pertaining to the exact percentage increase that the employee will receive. The Director makes that determination by having a conversation with the Public Works Supervisor and asking him questions. The Director then submits it to the budgeting process.

Street Supervisor Mahoney testified that the evaluation process for the merit evaluations is more complicated than for the annual evaluations. All employees who receive merit evaluations also receive separate annual evaluations, but the annual evaluation rating categories do not exactly match the categories of the merit evaluations. Some categories overlap and the two types of evaluations can conflict. For that reason, Mahoney explained, the Employer almost always made changes to his merit evaluations. When asked whether his superiors ever changed his evaluations, he stated the following: “Yes. They’re—almost all the time we’ll have to work on certain categories especially when it comes to...making sure that every category is accurately evaluated....” Day 2, Tr. 33. He further explained that the merit evaluations, like the annual evaluations, are subject to the review of the superintendent, the assistant director, and the director.

Bernahl could not recall an instance in which upper management had ever modified a Public Works Supervisor’s scores on merit evaluations. However, Street Supervisor Mahoney testified that when he oversaw merit program-eligible employees, the Village almost always made changes to his merit evaluations.

7. Preponderance

Bernahl testified that he expects Sewer Supervisor Rivard to spend 90-95% of his day overseeing his subordinates. Bernahl asserted that the Sewer Supervisor spends only 50% of his time actually working in the field “in a hole working with the tools of the job,” but the daily worksheets submitted by the Employer show that Rivard performs manual labor for significantly more than 50% of his work time. Bernahl further asserted that the Sewer Supervisor oversees the work of his subordinates while performing manual labor.

Bernahl testified that he expects the Street Supervisor to spend approximately 90-95% of his time overseeing and evaluating the work performed by his subordinates. Bernahl asserted that the Village expects the Street Supervisor to be monitoring the work of his subordinates while he is also performing manual labor. Street Supervisor Mahoney testified that he spends 85-95% of his day performing work in the field alongside his subordinates, performing the same physical labor as they do. For example, when his team is performing snow removal, Street Supervisor Mahoney likewise plows a route, and if his subordinates are doing leaf removal, he is also performing leaf removal. He spends the remainder of his time doing administrative tasks such as entering payroll, working on evaluations, or planning projects.

Bernahl testified that he expects the Refuse Supervisor to spend 90-95% of his time directing, monitoring, and evaluating the work of the refuse collectors. The Refuse Supervisor is in the field 90% of the day and works his own refuse collection route. Interim Refuse Supervisor Turner testified that he spends 85-90% of his time in the field performing physical labor related to refuse collection. Turner testified that he sees the refuse collectors from time to time, for about an hour a day, when he is out on his route. They contact him to let him know when they are done with their work. He further asserted that he is in communication with them if there is an issue such as an accident or blocked garbage.

Bernahl testified that he expects the Fleet Services Supervisor to spend approximately 90-95% of his day directing and redirecting the work of the fleet mechanic. Bernahl testified that the Village expects the Fleet Services Supervisor to monitor the fleet mechanic, while he himself is performing mechanic work, to ensure the mechanic is working safely and correctly. Fleet Services Supervisor Olson testified that he spends approximately 25-30% of his time performing work in the shop, and that he spends the remainder of his time paying bills for the parts, conducting inventory, researching what parts are needed, and breaking down tires. He noted that the time he

spends performing mechanic work can vary, and that he can sometimes spend all day in the mechanic shop.

IV. DISCUSSION AND ANALYSIS

1. Supervisory Exclusion

The Public Works Supervisors are not supervisors within the meaning of Section 3(r) of the Act.

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. 5 ILCS 315/2. Section 3(n) of the Act defines the term public employee and excludes “supervisors [from that definition] except as provided in [the] Act.” 5 ILCS 315/3(n).

The first paragraph of Section 3(r) defines the term supervisor and sets forth a four-part test for establishing supervisory status in non-peace officer employment. Under that test, individuals 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 use independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. 5 ILCS 315/3(r); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 505-6 (1990).

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. Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016 (IL LRB-SP 2002). It “cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee’s job function.” Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-LP 2011).

1) Principal Work

The Public Work Supervisors perform work that is substantially different from that of their subordinates.

In determining whether the principal work requirement has been met, the initial question 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. If the answer is yes, the principal work requirement is satisfied. Id. If the answer is no, the determinative factor is whether the “nature and essence” of the alleged supervisor's principal work is substantially different than the “nature and essence” of his or her subordinates' principal work. Id. This requires the Board to consider the petitioned-for employees’ supervisory authority and the ability to exercise it at any time, and to identify the point at which the employee's supervisory obligation conflicts with his or her participation in union activity with the employees he or she supervises. Id. at 518. However, the “mere possession of any indicia of supervisory authority” is insufficient to change the nature and essence of substantially similar principal work. Chief Judge of the Circuit Court of Cook County, 6 PERI ¶ 2047 (IL SLRB 1990).

The principal work of the Fleet Services Supervisor is obviously and visibly different from that of his subordinate mechanic. The Fleet Services Supervisor spends up to 75% of his time outside the mechanic’s shop performing administrative, planning, and organizational tasks, whereas the mechanic spends almost all his time repairing vehicles.¹⁷ Unlike the mechanic, the Fleet Services Supervisor prioritizes work, pays bills, and conducts inventory. He establishes maintenance schedules, monitors fuel levels, and coordinates with other departments in the event of an emergency. He also completes evaluations for his subordinate, assigns work, oversees his subordinate, and participates in the hiring process. Although Fleet Services Supervisor Olson noted that he spends some of his time outside the shop breaking down tires, it stands to reason that he spends more of his time outside the shop performing administrative tasks where those tasks are varied and numerous. Indeed, the Fleet Supervisor spends only 25-30% of his time performing the type of hands-on mechanic work that his subordinate performs. While the Fleet Services Supervisor and the mechanic both perform some research on parts, the focus of their work and the tasks to which they devote most of their time are obviously and visibly different.

The principal work of the remaining three Public Works Supervisors is not obviously and visibly different from that of their subordinates because both the supervisors and the subordinates

¹⁷ Fleet Services Supervisor noted that he spends some of his time outside the shop breaking down tires—which presumably entails removing the tire from the rim—but it stands to reason that there is a limit on the number of tires that must be broken down in a relatively small, suburban municipality, and that more of his time outside the shop is spent on administrative tasks.

spend a vast majority of their work time performing the same type of manual labor. However, the three Public Works Supervisors' principal work is nevertheless different from that of their subordinates in its nature and essence. The Board has found the performance of certain administrative tasks can render a petitioned-for employee's work substantially different from that of his subordinates in nature and essence. State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Health), 27 PERI ¶ 10 (IL LRB-SP 2011) aff'd by State of Ill., Dep't of Cent. Mgmt. Servs. v. Illinois Labor Relations Bd., 2012 IL App (4th) 110209; County of Cook, 15 PERI ¶ 3022 (IL LLRB 1999); Village of Bolingbrook, 11 PERI ¶ 2020 (IL SLRB 1995).

Here, the Sewer Supervisor, the Refuse Supervisor and the Street Supervisor are uniquely responsible for the day-to-day operation of their respective divisions. Unlike their subordinates, they are charged with assessing the type of work that needs to be completed within their divisions, and the manner in which it should be performed. And unlike their subordinates, they oversee their subordinates' activities, conduct training, complete evaluations for their subordinates, approve emergency overtime, and identify misconduct. These responsibilities, taken together, demonstrate that the principal work of the Refuse Supervisor, the Street Supervisor, and the Sewer Supervisor is substantially different from that of their subordinates in its nature and essence.

Thus, the principal work requirement is met as to all the Public Works Supervisors.

2) Supervisory Indicia and Independent Judgment

Some Public Works Supervisors direct with independent judgment when they assign work. The Public Works Supervisors also have authority to effectively recommend the discipline of their subordinates with independent judgment. However, they exercise no other supervisory authority with the requisite independent judgment.

With respect to the second and third prongs of the Act's supervisory definition, the Employer must establish that the employee at issue has the authority to perform or effectively recommend any of the 11 indicia of supervisory authority listed in the Act, namely, to hire, transfer, suspend, lay off, recall, promote, discharge, direct, reward, discipline, or adjust grievances, and consistently exercise that authority with independent judgment. The use of independent judgment must involve a consistent choice between two or more significant courses of action and cannot be routine or clerical in nature. City of Freeport, 135 Ill. 2d at 521 & 532.

Moreover, the alleged supervisor must exercise his independent judgment in the “interest of the employer.” 5 ILCS 315/3(r). In City of Freeport, the Court held that decisions made merely on the basis of the alleged supervisor’s superior skill, experience, or knowledge do not require the petitioned-for employee to exercise independent judgment “in the interest of the employer.” City of Freeport, 135 Ill. 2d at 532. The Board has clarified that the petitioned-for employee’s exercise of superior, skill, experience, and knowledge does not itself preclude a finding of supervisory authority. See infra. Rather, the critical question is whether the petitioned-for employee uses those attributes to ensure that his subordinates comply with standards established by the employer, thereby acting in the interest of the employer, or simply to ensure compliance with industry-wide or professional norms and standards. County of Cook, 15 PERI ¶3022; State of Illinois (Department of Central Management Services), 11 PERI ¶2021 (IL SLRB 1995); see also Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123 (IL LRB-SP 2003).

i. Direction

Some Public Works Supervisors direct with independent judgment when they assign work to their subordinates. However, the Public Works Supervisors do not direct their subordinates with independent judgment when they oversee and monitor them, conduct their evaluations, and make determinations about overtime.

The term “direct” encompasses several distinct but related functions: giving job assignments, overseeing and reviewing daily work activities, providing instruction and assistance to subordinates, scheduling work hours, approving time off and overtime, and formally evaluating job performance when the evaluation is used to affect the employees’ pay or employment status. County of Lake, 16 PERI ¶ 2036 (IL SLRB 2000); County of Cook, 16 PERI ¶3009 (IL LLRB 1999); County of Cook, 15 PERI ¶3022; City of Naperville, 8 PERI ¶2016 (IL SLRB 1992).

However, employees cannot be found to be statutory supervisors based solely on their authority to direct unless they also possess significant discretionary authority to affect their subordinates’ employment in areas likely to fall within the scope of union representation, such as discipline, transfer, promotion, or hire. County of Cook v. Illinois Labor Relations Bd.-Local Panel, Serv. Employees Int’l Union, Local 74-HC, 351 Ill. App. 3d 379, 396-7 (1st Dist. 2004) (citing City of Freeport, 135 Ill. 2d 499); Illinois Dept. of Cent. Mgmt. Services (State Police) v. Illinois Labor Relations Bd., State Panel, 382 Ill. App. 3d 208, 224 (4th Dist. 2008) aff’ing State

of Illinois, Departments of Central Management Services and State Police, 23 PERI 38 (IL LRB-SP 2007); County of Lake, 16 PERI ¶ 2036; County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022 (IL LLRB 1999).

a. Oversight and Monitoring

The Public Works Supervisors do not direct their subordinates with independent judgment in the interest of the employer when they oversee and monitor them.

Petitioned-for employees' oversight/review of their subordinates' work is performed "in the interest of the employer" when they require their subordinates to perform the work in the manner prescribed by the standards and regulations established by the employer. County of Cook, 15 PERI ¶ 3022; State of Illinois (Department of Central Management Services), 11 PERI ¶2021; cf. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123. Petitioned-for employees' exercise of superior skill, experience, and expertise, does not preclude a finding that they exercise independent judgment in the interest of the employer, provided that they ensure the work is performed according to the employer's standards. State of Illinois (Department of Central Management Services), 11 PERI ¶2021 (distinguishing City of Freeport, 135 Ill. 2d 499). In addition, the petitioned-for employees must oversee and review their subordinates' work with the consistent exercise of independent judgment, which requires actively checking, correcting, and giving instructions to subordinates, without guidelines or review by others. County of Lake, 16 PERI ¶ 2036; City of Lincoln, 4 PERI ¶ 2041 (IL SLRB 1988); City of Chicago, 10 PERI ¶ 3017 (IL LLRB 1994). Furthermore, their oversight and review activities must not be routine or clerical. City of Freeport, 135 Ill. 2d at 520.

Here, the preponderance of the evidence demonstrates that the Public Works Supervisors' oversight and review of their subordinates is driven primarily by professional norms and standards and based on their greater experience, not by an obligation to effectuate the Employer's policies. For example, Fleet Supervisor Olson directs his subordinate as to the proper, and safe mechanic techniques based on his superior skill as a mechanic and in accordance with the standards of the mechanic profession. He answers his subordinate's questions on the same basis. Furthermore, while Fleet Supervisor Olson may redirect his subordinate, in the interest of the Employer, if the subordinate is working on the wrong vehicle, this is nothing more than a routine decision that does not require the consistent exercise of independent judgment.

Similarly, Sewer Supervisor Rivard uses his experience in the field of sewer maintenance to ensure that employees are performing the job in a safe and correct manner. The Employer's handbook generally requires employees to follow operating instructions and safety standards, but such a broad directive effectively codifies the obligation to adhere to professional norms and standards, without adding any safety specifications unique to the Employer. Indeed, the Employer did not introduce any Employer-established procedures specifically related to sewer maintenance. Moreover, Rivard's obligation to ensure that employees follow equipment operating instructions is a routine, well-defined task that does not require the exercise of discretion or a choice between two or more significant courses of action. Cf. County of Cook, 15 PERI ¶3022; cf. State of Illinois (Department of Central Management Services), 11 PERI ¶2021.

The evidence pertaining to Street Supervisor Mahoney and Interim Refuse Supervisor Turner fails to demonstrate that they oversee and monitor their subordinates with independent judgment in the interest of the employer. Street Supervisor Mahoney works alongside some of his crew members for most of the day, but there is insufficient evidence that he is actively checking and correcting their work or giving them instructions. And it is not clear how often he provides them with instruction, which is a necessary but missing fact in this case. See County of Lake, 16 PERI ¶ 2036. Even assuming that he provides his subordinates with some guidance on proper maintenance techniques, such direction is not performed in the interest of the employer. Rather, Mahoney uses his superior skill and experience in the field of street maintenance to ensure that his subordinates perform the work in accordance with professional norms. Similarly, Interim Refuse Supervisor Turner "visually stops by" to oversee his subordinates when he himself is between refuse collection tasks and communicates with them over the phone, but it is not clear what kind of instruction he provides his subordinates during that time or whether he is actively correcting their work. Nor is there evidence that any guidance he provides them is based on policies promulgated by the Employer as opposed to his greater experience and skill as a refuse collector.

At best, all the Public Works Supervisors simply provide their subordinates with objective factual information about how to properly perform their jobs, in a capacity that does not require the consistent exercise of independent judgment in the interest of the employer. See County of Cook, 27 PERI ¶ 58 (IL LRB-LP 2011) (instruction pertaining to proper insertion of an I.V. and other nursing techniques); City of Chicago (Dept. of Sewers), 17 PERI ¶3017 (IL LRB-LP 2001)(instructions pertaining to sewer specifications at cave-in locations); County of Lake, 16

PERI ¶ 2036 (instruction pertaining to proper dispatching methods); City of Sparta, 9 PERI ¶ 2029 (IL SLRB 1993) (instruction pertaining to proper construction methods); City of Naperville, 8 PERI ¶ 2016 (instruction pertaining to proper dispatching methods, computer use, or geographical jurisdiction).

Finally, the answers provided by the petitioned-for employees in response to the Employer's job analysis questionnaires do not warrant a different outcome on the issue of independent judgment. The Employer observes that some public works supervisors described their work as requiring a high level of independent judgment. However, such conclusory statements cannot form the basis for a determination that an individual is a supervisor because it is analogous to testifying to a legal conclusion. See Vill. of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). Moreover, the petitioned-for employees' blanket statements fail to address the key question of whether they exercise their alleged independent judgment in the interest of the employer, as is required of a statutory supervisor.

b. Evaluations

The Public Works Supervisors do not exercise authority to direct their subordinates when they make recommendations regarding their subordinates' evaluations because their recommendations are not effective within the meaning of the Act.

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. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011); County of Lake, 16 PERI ¶ 2036; State of Ill., Dep't. of Cent. Mgmt. Services (Division of Police), 4 PERI ¶ 2013 (IL SLRB 1988); Vill. of Hinsdale, 22 PERI ¶ 176 (IL SLRB 2006). And in this case, it is undisputed that evaluations determine whether employees will receive wage increases and how much of an increase they will receive.

However, for a recommended evaluation to qualify as evidence of the authority to direct, the recommendation must also be effective. Recommendations are effective if they are accepted as a matter of course with little, if any, independent review. Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993) (collecting cases). However, a recommendation need not be rubber-stamped to be effective because the term "recommendation" implies some form of review by the person to

whom the recommendation is made. City of Peru v. Illinois State Labor Relations Bd., 167 Ill. App. 3d 284, 290 (3d Dist. 1988).

Here, the preponderance of the evidence demonstrates that the Employer does not accept the Public Work Supervisors' evaluations as a matter of course. Rather, the Employer subjects the evaluations to at least three levels of review. The Superintendent reviews them, then the Assistant Director, and finally the Director of the Department. There is some indication that HR is also involved in the financial aspects of the evaluation.

Moreover, the review of the evaluations in this case is extensive, and at least one reviewer considers new facts revealed through his independent investigations into the evaluated employees' performance. Superintendent Auth undertakes a review of the Village's records pertaining to each evaluated employee to ensure that the evaluation includes references to all of the evaluated employees' accidents and disciplinary actions. He notably conducts such a review even though the Employer instructs the Public Works Supervisors to attach all disciplinary records to the evaluation themselves. Even though the structure of the evaluation process would easily permit a more superficial review, the Superintendent nevertheless supplements the Public Works Supervisors' descriptions and documentation with his own investigation.

The Employer's frequent acceptance of the final scores recommended by the Public Works Supervisors does not render their recommendations effective where the review process is extensive and exhaustive. As the appellate court made clear, in Dep't of Cent. Mgmt. Services v. Illinois Labor Relations Bd., the fact that an employer ultimately accepts a petitioned-for employee's recommendation, does not necessarily mean that the employer accepted it "as a matter of course." Dep't of Cent. Mgmt. Services v. Illinois Labor Relations Bd., 2012 IL App (4th) 110209, ¶ 31.¹⁸ A multi-level and thorough review process of the type presented here can reasonably justify a finding that a recommendation is not effective. Id. at ¶¶ 29 & 31.

Finally, the Employer's reliance on the Board's decision in City of Chicago, Department

¹⁸ The court explained in full:

The Board could reasonably have found insufficient proof that the regional supervisors' recommendations regarding a subordinate employee's discipline, work schedule, annual evaluation, or final probationary evaluation were effective recommendations. Just because the Department accepted the regional supervisors' recommendations on these topics in the exhibits provided, it does not necessarily follow that the Department accepted his or her recommendations as a matter of course. The evidence simply did not demonstrate the regional supervisors possess the authority to exercise the independent judgment as required under the Act.

of Buildings is misplaced because the Board's decision in that case did not focus on the extent of the review, at issue here. City of Chicago, Department of Buildings, 32 PERI 155 (IL LRB-LP 2016). Instead, the Board considered whether the Employer ultimately accepted the recommended result and, in turn, whether the petitioned-for employee had the authority to impact his subordinates' terms and conditions of employment. Id. The Board reasoned that the petitioned-for employee's recommended evaluations were effective and impactful because the employer's modifications never changed the score below that needed for a wage increase. Id. The Employer contends that the same outcome should result here, but it disregards the fact that the focus of the analysis in this case is the nature and extent of the review process. In City of Chicago, by contrast, the Board's analysis of the review process was less significant, presumably because the employer did not conduct any independent investigation into the subordinates' performance. Id. Here, by contrast, the Superintendent conducts a separate investigation of the subordinates' performance history and there is at least one additional level of review beyond that presented in City of Chicago. Thus, it is the independent and material nature of the review process that precludes a finding of effective recommendation, not the extent of the changes. See Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶¶ 29 & 31; cf. City of Chicago, Department of Buildings, 32 PERI 155.

c. Overtime¹⁹

The Public Works Supervisors do not exercise the consistent use of independent judgment in making overtime determinations. Recommendations for overtime require independent judgment when the petitioned-for employees must determine whether to use overtime or to instead perform the work with the available manpower. State of Ill. (Dep't of Cent. Mgmt. Servs.), 12 PERI ¶ 2032 (IL SLRB 1996). Similarly, they exercise independent judgment when they have discretion to decide when overtime is needed. Dep't of Cent. Mgmt. Servs. / Dep't of Transp. v. Ill. Labor Relations Bd., State Panel, 2013 IL App (4th) 110825, ¶ 52; Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60; Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999). However, overtime decisions do not require the exercise of independent judgment if they are made based on criteria over which the petitioned-for employee has no control, such as minimum manning requirements or seniority. Vill. of Bolingbrook, 19 PERI ¶ 125; County of Vermilion, 18 PERI ¶ 2050 (IL LRB-SP 2002).

¹⁹ The Employer did not address this issue on brief, but raised it at hearing.

Here, the preponderance of the evidence demonstrates that the Public Works Supervisors do not consistently exercise independent judgment in determining whether emergency overtime is needed. When an emergency event occurs outside normal working hours, dispatch calls the Public Works Supervisor who is on call for that week, and that individual must perform the work. It is not clear from the record whether dispatch notifies the Public Works Supervisors of all emergency events or whether the Public Works Supervisors have an opportunity to make their own assessments about whether an emergency exists. Given these ambiguities and the Employer's failure to make any arguments on brief on this issue, it is impossible to determine whether there are any cases in which the Public Works Supervisors determine the existence of an emergency.

Furthermore, the Public Works Supervisors do not exercise independent judgment in assigning emergency overtime, once the opportunity arises. Rather, when they receive an emergency call, they must show up to perform the work.²⁰ They cannot exercise discretion to defer the matter to a subordinate, and if they require additional assistance, they must select the designated "second call" employee from the rotation list. City of Freeport, 135 Ill. 2d at 524 & 531 (noting that assignments issued based on rotation system do not require the consistent exercise of independent judgment); Dep't of Children and Family Services, 8 PERI ¶ 2037 n. 2 (IL SLRB 1992), aff'd 249 Ill. App. 3d 740 (1993). Moreover, they lack discretion to unilaterally call in additional manpower beyond the employee designated as the "second call," and must instead contact their superiors. Cf. Village of Romeoville, 2 PERI ¶ 2031 (IL SLRB 1986).

d. Assignment

Some of the Public Works Supervisors consistently exercise independent judgment when assigning work, but others do not.

A purported supervisor exercises independent judgment in making assignments when he considers discretionary factors such as his knowledge of the individuals involved, the nature of the task to be performed, the employees' relative levels of experience and skill, and the employer's operational needs. Cnty. of Cook and Sheriff of Cook County, 15 PERI ¶ 3022. However, assignment of work that merely balances the workload among employees does not require the use of independent judgment. Chief Judge of Circuit Court of Cook County v. Am. Fed'n of State, County & Mun. Employees, Council 31, AFL-CIO, 153 Ill. 2d 508, 518 & 522; Serv. Employees

²⁰ They perform this work at the overtime rate, as do their subordinates.

Int'l Union, Local 73 v. Illinois Labor Relations Bd., 2013 IL App (1st) 120279, ¶ 52. Likewise, an assignment of tasks that is determined by standard operating procedures or a rotation system does not require independent judgment. City of Freeport, 135 Ill. 2d at 524 & 531.

Sewer Supervisor Rivard and Street Supervisor Mahoney exercise independent judgment in assigning work because they consider their subordinates' experience and skill in relation to the employer's operational needs, and also consider their subordinates' need for training in a particular area. County of Lake, 16 PERI ¶ 2036 (considering training needs). Likewise, when Street Supervisor Mahoney requests additional manpower from Sewer Supervisor Rivard, Rivard considers his staff and selects the employee best suited to Street Division work based on that employee's experience. Street Supervisor Mahoney makes the same type of assessment when Sewer Supervisor Rivard is the one to request additional manpower from the Street Division.

However, Fleet Services Supervisor Olson does not exercise independent judgment in assigning work to his subordinate. While Olson undoubtedly prioritizes the work that his division needs to complete, this finding, standing alone, is insufficient to demonstrate the requisite independent judgment. Indeed, there is no evidence that he considers the knowledge of the individuals involved, the nature of the task to be performed, and the employees' relative levels of experience in relation to the employer's operational needs. City of Tuscola, 15 PERI ¶ 2034 (IL SLRB 1999); State of Illinois (Department of Central Management Services), 12 PERI ¶ 2032. Moreover, for the eight months prior to hearing, Olson had just one subordinate, and the assignment of work does not require the exercise of independent judgment if there is only one obvious and self-evident choice for the assignment. Oakwood Healthcare Inc., 348 NLRB 686, 693.

The Refuse Supervisor does not assign work with the requisite independent judgment. The refuse collectors have previously established, set routes, which they begin before the Refuse Supervisor arrives at work. The Interim Refuse Supervisor does not exercise independent judgment in assignment where he merely follows prior practices by maintaining such assignments. Schnurmacher Nursing Home v. N.L.R.B., 214 F.3d 260, 266 (2d Cir. 2000) (no independent judgment involved in merely following "prior practice in making assignments"). Although the former Refuse Supervisor changed assignments more frequently, the evidence on the whole

indicates that his ultimate goal was to balance the workload to ensure timely completion of required refuse collection.²¹

Similarly, while the Refuse Supervisor may need to adjust assignments if there are special collections, reductions in staff, or vehicle breakdowns, the preponderance of the evidence demonstrates that he merely balances the workload. Although Bernahl testified that the Refuse Supervisor also considers his “knowledge of the team” and the employer’s priorities, such generalized testimony is insufficient to suggest that the Refuse Supervisor considers his subordinates’ experience and skill in relation to the Employer’s operational needs. Chief Judge, 153 Ill. 2d at 518 & 522; cf. Serv. Employees Int’l Union, Local 73, 2013 IL App (1st) 120279 ¶ 52 (“[w]here the assignment of work merely balances the workload among employees, however, the assignment does not involve the use of independent judgment”); Cnty. of Cook (Health & Hosp Sys.), 32 PERI ¶ 55.

e. Training

There is insufficient evidence that the Public Works Supervisors exercise independent judgment in the interest of the employer when training their subordinates. Training in and of itself is not a supervisory function, “but it can be when a supervisor is choosing between discipline or training.” State of Ill., (Dep’t of Cent. Mgmt. Servs.), 26 PERI ¶116 (IL LRB-SP 2010). In this case, the Employer’s handbook states that corrective action can include discipline or training. However, the Employer pointed to no instances in which Public Works Supervisors provided a subordinate with instruction on how to perform a job properly in lieu of documenting the incident in the employee’s personnel file as some form of discipline. There are instances in which Public Works Supervisors have declined to issue written coachings for certain behavior that might warrant it, but it is not clear that they chose to address the matter with training instead. Instead, they simply exercised discretion to overlook the matter.²² While there is one document in the record labeled as a “performance review note to file,” which was provided as part of an employee’s first-

²¹ Even assuming that the former Refuse Supervisor exercised independent judgment, he has since retired, and the current practice of assignment is undoubtedly routine. Village of South Holland, 24 PERI ¶ 27 (IL LRB-SP 2008) (watch commanders did not exercise independent judgment where they rotated beat assignments even though, in the past, watch commanders considered their subordinates’ skills and experience).

²² This authority is considered more fully in the section addressing discipline.

year training, this document qualifies as discipline under Board case law²³ and does not represent a non-disciplinary approach to the performance deficiency. Indeed, the Employer maintains the document in the employee's personnel file, and Former Assistant Bernahl testified that Public Works Supervisors consider such past infractions when deciding whether to recommend discipline in subsequent cases.

The Public Works Supervisors do not exercise independent judgment when they provide generalized, initial and on-the-job training. The record demonstrates that they predominantly use their superior skill and experience to show their subordinates how to properly operate equipment and how to perform the different types of manual labor required within their respective divisions. Flagg Rochelle Park District, 20 PERI ¶ 75 (IL LRB-SP 2004) (applying same analysis to Park Superintendent).

ii. Reward

The Public Works Supervisors do not reward or effectively recommend the reward of their subordinates through merit evaluations.

The Board has adopted dictionary definition of reward which is “money given or offered for a special service.” Chicago Park District, 9 PERI ¶ 3007 (relying on dictionary definition); see also County of Lake, 16 PERI ¶ 2036; Northwest Mosquito Abatement District, 13 PERI ¶ 2042 (IL SLRB 1997), aff'd, 303 Ill. App. 3d 735 (1999); cf. Peoria Housing Authority, 10 PERI ¶ 2020 (IL SLRB 1994), aff'd by unpub. order, Docket No. 3-94-0317 (3rd Dist. 1995). In some cases, the Board has held that petitioned-for employees have authority to reward their subordinates through their evaluations of them where the evaluations impact the subordinates' pay. City of Chicago, 28 PERI ¶ 86 (IL LRB-LP 2011); Village of Streamwood, 26 PERI ¶ 134 (IL LRB-SP 2010).

However, decisions reached by consensus, particularly those impacted by a superior's influence, are not indicative of supervisory authority. Stephenson County Circuit Court, 25 PERI 92 (IL LRB-SP 2009); County of Lake, 16 PERI ¶ 2036; Peoria Housing Authority, 10 PERI ¶ 2020 (IL SLRB 1994) (decisions made by consensus are not independent); State of Illinois, Department of Central Management Services, 8 PERI ¶ 2037 n. 2 (considering influence of superior when determining whether recommendations exhibited the requisite independent

²³ See discussion infra addressing discipline.

judgment). Similarly, when an individual's authority is exercised in conjunction with a second individual, with their decisions and recommendations made jointly, it lacks the requisite independent judgment. City of Naperville, 20 PERI ¶ 184 (IL LRB-SP 2004); City of Chicago (Chicago Public Library), 10 PERI ¶ 3016 (IL LLRB 1994); see also County of Cook (Health & Hospital System), 31 PERI ¶ 154 (IL LRB-LP 2015) (“group decisions are neither independent nor supervisory”). Also, for a recommendation to be deemed “effective” within the meaning of the Act, it must be adopted as a matter of course, with little, if any, independent review by the alleged supervisor's superiors. Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993) (collecting cases).

Here, the preponderance of the evidence demonstrates that the Public Works Supervisors do not make independent or effective recommendations regarding their subordinates’ merit evaluations because they complete them jointly with their superiors. While the Public Works Supervisor may submit an initial draft of the evaluation to the superintendent, the superintendent’s heavy involvement in editing it demonstrates that the evaluation is a collaborative and joint process. As Street Supervisor Mahoney explained, he and his superiors work on certain evaluation categories together to develop an accurate rating. The reason, he noted, was the added complexity of the merit evaluation process. The merit evaluation and the annual evaluation (which merit-eligible employees also receive), have overlapping categories, which can create conflict between an employee’s merit evaluation and his annual evaluation. It is therefore not surprising that the Public Works Supervisors need managerial assistance in drafting the merit evaluations to render the evaluations both accurate in terms of employees’ performance and also harmonious with those same employees’ annual evaluations. Thus, the superintendent’s active participation in the drafting process precludes a finding that the Public Works Supervisors make independent or effective recommendations on their subordinates’ merit evaluations.

Even if the Board were to consider the Public Works Supervisor’s work on the merit evaluation to be an independent recommendation, it still would not qualify as an effective one. As noted above, effective recommendations are those that are adopted as a matter of course with little, if any, independent review. See supra. And in this case, the review provided by the Public Works Supervisors’ superiors is granular and substantive, for the purpose of obtaining accuracy. The draft is additionally subject to two additional layers of review and approval, amounting to three levels of review in total, which further diminishes any claim that the recommendations are

effective. See State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶10 (IL LRB-SP 2011) aff'd by Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 29 & 31; State of Illinois, Department of Central Management Services, 25 PERI ¶ 161 (IL LRB-SP 2009) (considering extent of review).

In light of the extensive review process, outlined above, the frequency with which the director ultimately accepts the merit evaluations does not demonstrate that the director accepts the evaluations as a matter of course. Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 31.

iii. Discipline

The Public Works Supervisors have authority to effectively recommend the discipline of their subordinates with the requisite independent judgment.

To constitute discipline within the meaning of the Act, reprimands must have an impact on an employee's job status or terms and conditions of employment. Village of Bolingbrook, 19 PERI ¶ 125. Documented verbal reprimands constitute supervisory authority to discipline if 1) the individual has the discretion or judgment to decide whether to issue such a reprimand, 2) the reprimand is documented, and 3) the reprimand can serve as the basis for future disciplinary action, that is, it functions as part of a progressive disciplinary system. Village of Hinsdale, 22 PERI ¶ 176 (citing Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 478 (2nd Dist. 2005)); see also Northern Illinois University (Department of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000) (verbal reprimands that are not recorded are not discipline within the meaning of the Act). In other words, verbal or written warnings are not supervisory in nature unless they are included in the employee's personnel file or somehow impact the employee's job status. County of Lake, 16 PERI ¶ 2036.

The Public Works Supervisors exercise authority to effectively recommend the discipline of their subordinates with independent judgment when they recommend documented coachings. As a threshold matter, coachings qualify as discipline under Board case law because they are documented, the employer maintains the documented coachings in the subordinate's personnel file, and such coachings can serve as the basis for future disciplinary action. The coaching forms caution that if the cited pattern of behavior continues, the employee could be "faced with time off without pay and/or disciplinary actions up to and including termination." Disciplinary forms signed by former Refuse Supervisor Moran reference prior coachings to justify more severe

discipline. One notes the existence of prior coachings on the subject at issue, and emphasizes that the current disciplinary form was the “next level” of discipline. Vill. of Hinsdale, 22 PERI ¶ 176.

Next, the Public Works Supervisors exercise independent judgment in deciding whether to recommend coachings. They make a choice between two or more significant courses of action when they decide whether to address a performance deficiency with an unrecorded verbal reprimand or with an effective recommendation²⁴ for a documented coaching. They similarly make a choice between two or more significant courses of action when they exercise discretion to overlook certain attendance-related infractions. Metro. All. of Police, Bellwood Command Chapter No. 339 v. Illinois Labor Relations Bd., 354 Ill. App. 3d 672, 680-1 (1st Dist. 2004). Furthermore, their recommendations are not routine because the Employer’s policies do not specify the type of corrective action required for any particular infraction. See City of Chicago (Dep’t of Public Health), 17 PERI ¶ 3016 (IL LRB-LP 2001). Indeed, Sewer Supervisor Rivard treated two subordinates differently with regard to similar attendance issues. In the case of one employee, he recommended a documented coaching after the employee accumulated two no call/no shows. Yet in the case of another employee, he waited to recommend a coaching until the employee had accumulated 14 unanticipated sick leaves. Moreover, the Employer’s failure to reprimand Rivard for this disparate treatment of his subordinates demonstrates that the Employer grants the Public Works Supervisors the leeway in how they address their subordinates’ performance deficiencies.

The Union points to one clear example in which the Employer instructed Refuse Supervisor Turner to issue a coaching and drafted it on his behalf, but the circumstances surrounding this incident do not exemplify the authority of the petitioned-for position. First, Turner is new to the Public Works Supervisor role, holds the position solely on an interim basis, and lacks the benefit of discipline- and/or personnel-related training provided to most other public works supervisors. Second, this is the only instance in the record where the Employer applied such a process.

Next, the preponderance of the evidence indicates that the Public Works Supervisors’ recommendations to issue discipline are effective. A disciplinary recommendation may be deemed effective even if the particular method and extent of the recommended discipline is not carried out. City of Chicago (Dep’t of Public Health), 17 PERI ¶ 3016 (IL LRB-LP 2001). The Board considers whether the Employer relies upon the materials presented by the petitioned-for

²⁴ The effectiveness of the Public Works Supervisors’ recommendations is discussed fully below.

employee, or instead conducts a separate investigation of the circumstances, and whether the Employer imposes any discipline as a result of the recommendation. Id. Provided that some discipline issues following the recommendation, the Employer's closer examination of the recommended sanction does not preclude a finding that the recommendation was effective. Id.

Here, the preponderance of the evidence demonstrates the Public Works Supervisors' threshold recommendation to impose discipline is almost always accepted. Street Supervisor Mahoney affirmatively noted that the Employer has never rejected his recommendations to issue a coaching. And the Union cited only one example in which the Employer entirely rejected a Public Works Supervisor's recommendation for discipline by determining that no discipline should result.

Furthermore, the Employer does not perform an independent investigation into the facts as described in the Public Works Supervisor's written recommendation. There is no indication that any member of management contacts the affected employee for his side of the story, nor is there evidence that any member of management even reviews the affected employee's personnel file. Human Resources and management consult on the matter to ensure that the discipline is fair for the stated infraction. And Mahoney testified that his superiors may edit the disciplinary documents he drafts for "legal reasons," in cases where the recommended discipline is severe. But Mahoney's testimony does not suggest that management conducts an inquiry into the circumstances of the event.

Nor is there sufficient evidence that the Public Works Supervisors make their recommendations jointly with their superiors. Mahoney confirmed that he drafts either a coaching document or a disciplinary document and presents it to the superintendent. But his testimony is too vague to support the Union's specific claim on brief that the Public Works Supervisor and the superintendent draft the document jointly. After Mahoney presents the superintendent with the draft document, they "formulate a plan from there," but it is not clear whether such formulation refers to the disciplinary decision or the manner in which the Employer will present the discipline to the employee. The Union emphasizes that coaching forms can bear the signature of the superintendent, in addition to that of the public works supervisor, perhaps suggesting joint ownership of the document. However, there are at least four coaching forms that bear only the signature of the Public Works Supervisors, which supports a more independent approach.

There is likewise insufficient support for the Union’s claim that all levels of management perform a substantive review of the coaching recommendations. Mahoney testified that the superintendent frequently “bumps” a coaching recommendation “up the chain,” but he does so for informational purposes, so that “the entire organization is on the same page and we know where we are.” Noticeably absent from the record is any example in which any member of management modified a Public Works Supervisor’s recommendation for a documented coaching.

Thus, the Public Works Supervisors make effective disciplinary recommendations when they effectively recommend coachings.

iv. Discharge²⁵

The Public Works Supervisors do not have authority to discharge or effectively recommend the discharge of their subordinates.

The Public Works Supervisors’ alleged authority to discharge contractors is not indicative of supervisory authority. For an individual to qualify as a supervisor under Section 3(r) of the Act, he must exercise his authority over “employees.” 5 ILCS 315/3(r). The definition of “employee” under Section 3(n) of the Act includes “any individual employed by a public employer,” but it expressly excludes independent contractors and short-term employees. 5 ILCS 315/3(n). Both the Illinois Labor Relations Board and the National Labor Relations Board apply analogous rules. Chicago Board of Education, 4 PERI ¶ 1074 (IELRB 1988) (a supervisor under the Illinois Educational Labor Relations Act must exercise supervisory authority over other educational employees) aff’d by Chicago Principals Ass’n v. Educ. Labor Relations Bd., 187 Ill. App. 3d 64, 70 (4th Dist. 1989); Connecticut Humane Society, 358 NLRB No. 31 (2012) (“it is well settled that an individual must exercise supervisory authority over employees of the employer in order to qualify as a supervisor”).

In this case, there is insufficient evidence that the “contract employees” supplied by Impact Staffing and/or Options Incorporated are employees of the Employer. The Board considers a variety of factors to determine whether an individual is an independent contractor or an employee. See infra. These include whether the individuals at issue have other employment; the amount of time they spend performing duties for the employer; how their work is assigned; whether they can refuse work; whether and to what extent the employer supervises and directs their work; whether

²⁵ This purported authority would apply only to the Street Supervisor and the Sewer Supervisor.

they exercise independent discretion in performing their work or deciding what work they will do; whether the employer provides any training or evaluates their performance; whether the employer provides them with an office, secretarial assistance and/or equipment, or pays any expenses for the same; whether they determine the hours they will work for the employer and whether they are required to record their hours worked; the extent of the employer's authority to discipline them; whether they receive a flat salary regardless of the amount of work they perform; whether taxes are withheld or other deductions made from their paychecks; and whether the employer provides them with any fringe benefits, such as health insurance or paid vacation leave. Metropolitan Pier and Exposition Authority, 22 PERI ¶87 (ILRB LP 2006), aff'd by unpub. order, 23 PERI ¶57 (1st Dist. 2007); Chief Judge of the Circuit Court of Cook County, 18 PERI ¶2016; Rockford Metropolitan Exposition Auditorium & Office Building Authority, 7 PERI ¶ 2030 (IL SLRB 1991), rev'd on other grounds, 224 Ill. App. 3d 1007 (2nd Dist. 1992); County of Will, 4 PERI ¶ 2028 (IL SLRB 1988). However, the record fails to address the vast majority of these factors, and the Employer presented no arguments on this issue. Absent evidence that the contracted workers are employees of the Employer, the Public Works Supervisors' alleged authority to discharge them is not indicative of supervisory status within the meaning of Section 3(r) of the Act. See Crenulated Co., 308 NLRB 1216 (1992) (shift security supervisors who oversaw security guards employed by outside contractor were not supervisors).

The Public Works Supervisors' authority over the seasonal employees likewise fails to demonstrate supervisory authority to discharge. As a preliminary matter, the Employer has again failed to demonstrate that the seasonal employees at issue in this case are anything more than "short-term" employees who are excluded from the definition of "employee" under Section 3(n) of the Act. Section 3(q) defines "short-term employee" as an employee who is employed for less than two consecutive calendar quarters during a calendar year and who does not have a reasonable assurance that he or she will be rehired by the same employer for the same service in a subsequent calendar year. 5 ILCS 315/3(n); see also City of Tuscola, 15 PERI ¶ 2034. The evidence in this case does not reveal whether the seasonal employees have any reasonable assurance that they will be rehired by the Village in the following year. The Employer presented no evidence concerning the number of employees rehired from year to year, whether past employees enjoy a hiring preference, whether employees must reapply each year or whether the Employer made any indication or assurance of future employment. These are all factors that are relevant to assessing

whether seasonal workers are public employees or short-term employees. City of Tuscola, 15 PERI ¶ 2034 (collecting cases). Absent evidence on this issue, the Employer has failed to demonstrate that the Public Works Supervisors' authority over the seasonal workers is evidence of supervisory authority.

Finally, even if the Board were to determine that the Village's seasonal employees are public employees, there is insufficient support for the Employer's contention that Public Works Supervisors make effective recommendations to discharge them. The Public Works Supervisors do not make express recommendations to discharge seasonal employees. They merely provide feedback to their superiors about the employees' performance, which the Employer uses to determine their eligibility for rehire in the next season. Even if the Public Works Supervisors' feedback could be viewed as a recommendation not to re-hire a seasonal employee, it would still fail to qualify as a recommendation to discharge, as the Employer urges it does on brief. A discharge concerns the employment status of an active employee, but seasonal employees are no longer active employees when the Employer makes decisions on whether to rehire them.

Thus, the Public Works Supervisors lack authority to discharge or to effectively recommend the same.

v. Transfer

The Public Works Supervisors do not have authority to transfer their subordinates. The authority to temporarily reassign employees does not qualify as the authority to transfer them within the meaning of the Act. City of Chicago (Dept. of Sewers), 17 PERI ¶3017. Here, the Public Works Supervisors' purported authority to transfer is more accurately characterized as the authority to temporarily reassign employees to another division if the supervisor of that division requests assistance on a particular day due to increased work load. Indeed, there is no evidence that any Public Works Supervisor has ever effectuated a permanent transfer of a subordinate. Thus, the Public Works Supervisors' authority on such matter is more appropriately considered under the authority to direct.

vi. Hiring

The Public Works Supervisors do not make effective recommendations on hiring.

Where an individual participates in a committee which includes his or her supervisors, his or her recommendation is not “effective” within the meaning of the Act. State of Illinois, Department of Central Management Services, 25 PERI ¶ 184 (IL LRB-SP 2009); County of Lake, 16 PERI ¶ 2036; Village of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990), aff’d 221 Ill. App. 3d 47 (2nd Dist. 1991); see also Village of Bolingbrook, 19 PERI ¶ 125 n. 13 (addressing transfer).

Here, the Public Works Supervisors do not exercise independent judgment in hiring because they each serve on a panel with three of their superiors—the Director, the Assistant Director, and the Superintendent. After the interviews, the panel members meet to discuss the candidates and reach a group decision in which the Director has the final say. This decision-making structure fails to preserve the Public Works Supervisors’ exercise of independent judgment in hiring. See cases supra.

The fact that the Employer sometimes agrees with the Public Works Supervisors’ hiring preferences, does not show that the Public Works Supervisors make effective recommendations on hiring. A recommendation is effective within the meaning of Section 3(r) of the Act when it is adopted as a matter of course, with very little, if any, independent review. Village of Justice, 17 PERI ¶ 2007 (IL SLRB 2000); Peoria Housing Authority, 10 PERI ¶ 2020; Chicago Park District, 9 PERI ¶ 3007 n. 3. However, since the term recommendation implies some form of review by the person to whom the recommendation is made, a recommendation may still be effective even if it is not rubberstamped. City of Peru, 167 Ill. App. 3d at 290. The extent of that review is a factor in determining whether the recommendation is effective. State of Illinois, Department of Central Management Services, 25 PERI ¶ 161 (citing City of Peru, 167 Ill. App. 3d at 290); Village of Glen Carbon, 8 PERI ¶ 2026 (IL SLRB 1992).

Here, in each case, the Director performs an independent review of the candidates by participating in the interview process himself, which demonstrates that the Public Works Supervisors’ recommendations are neither independent nor effective. The Employer notes that former Refuse Supervisor Moran once advocated for a particular candidate who did not appear qualified on paper, and that the Employer ultimately hired that candidate. However, the Director’s independent observation of all the candidates still precludes a finding that Moran’s recommendation was effective. See Village of Downers Grove, 6 PERI ¶ 2035.

Next, there is insufficient support for the Employer's blanket claim that the Village honors the Public Works Supervisors' preference in hiring decisions where Fleet Supervisor Olson and Street Supervisor Mahoney each provided examples of two instances in which the Employer declined to hire their preferred candidates.

Contrary to the Employer's contention, the alleged authority possessed by the Public Works Supervisors in formulating the initial list of interviewees does not demonstrate authority to make effective recommendations on hiring. As a preliminary matter, the narrowing of candidates at the first stage of the process is not the same as the authority to effectively recommend a particular candidate for hire. Moreover, the Employer, on brief, overstates the authority of the Public Works Supervisors to narrow the candidate pool. It broadly contends that candidates disfavored by the Public Works Supervisors are not offered interviews, characterizing their authority as "veto power." However, the Employer fails to acknowledge that in each case where the Employer declined to interview a candidate who was rated poorly by a Public Works Supervisor, another panelist's rating contributed to lowering the candidate's overall score below that of several other candidates.

Finally, the Public Works Supervisors' authority with respect to seasonal employees is not evidence of supervisory authority within the meaning of the Act. As noted above in the discussion pertaining to discharge, an individual must exercise his authority over employees of the employer to qualify as a supervisor under Section 3(r) of the Act. 315 ILCS 315/3(r). Here, the record does not reveal whether seasonal employees are public employees under Section 3(n) of the Act or short-term employees who are excluded from that definition. 315 ILCS 315/3(n) & (q). Absent a resolution of this issue, the Public Works Supervisors' authority in hiring seasonal employees is not evidence of supervisory authority.

Even if the Board considers the hiring of seasonal employees relevant to the supervisory analysis, the Public Works Supervisor's participation in that process is largely the same as it is for full-time employees. Although the Employer considers their feedback in determining whether a seasonal employee is eligible for rehire in the following season, the interview process is still a panel process in which the Director and other high-level managers are active participants. In turn, the Public Works Supervisors' participation in the ultimate hiring decision similarly lacks the requisite independent judgment.

Thus, the Public Works Supervisors lack authority to make effective recommendations on hiring.

vii. Adjustment of Grievances

The Public Works Supervisors do not adjust grievances with the requisite independent judgment.

The term “grievance” within the meaning of Section 3(r) of the Act refers to “any complaint by an employee concerning any aspect of the employment relationship” and is not limited to formal grievances filed pursuant to the parties’ collective bargaining agreement. State of Illinois (Department of Central Management Services), 12 PERI ¶ 2032 (manpower or schedule complaints). Resolving workplace complaints that involve issues such as inequitable work assignments, personality disputes, and equipment problems can also qualify as “grievances” within the meaning of the Act. City of Freeport, 135 Ill. 2d at 530; Vill. of Roselle, 27 PERI ¶ 59 (IL LRB-SP 2011); City of Springfield, 27 PERI ¶ 69 (IL LRB-SP 2011). However, “[w]here the adjustment of grievances extends only to minor matters of a routine nature, the exercise of that authority does not require the consistent use of independent judgment.” City of Freeport, 135 Ill. 2d at 532; State of Illinois, Dep’t. of Cent. Mgmt. Servs., 26 PERI ¶ 113 (IL LRB-SP 2010); State of Illinois, Dep’t of Cent. Mgmt. Serv., 25 PERI ¶ 184; Village of Bolingbrook, 19 PERI ¶ 125 (quote). The Board requires evidence that the employees have authority to provide substantive relief, such as relief against the employer’s pecuniary interest. State of Illinois, Dep’t of Cent. Mgmt. Servs., 26 PERI ¶ 113.

Here, the Public Works Supervisors exercise authority to adjust grievances, but there is insufficient evidence that they do so with the consistent use of independent judgment. They undoubtedly adjust grievances because they resolve their subordinates’ complaints about inequitable work assignments and personality disputes. City of Freeport, 135 Ill. 2d at 530 (identifying these as grievances). However, as the Freeport court noted, these types of disputes concern minor and routine matters that do not require the consistent exercise of independent judgment. Id. at 530 & 532.

Even if the Board were to determine that the Public Works Supervisors have authority to resolve more substantive and less routine employee concerns, there is still insufficient evidence that the Public Works Supervisors would exercise independent judgment in doing so. The Board

requires an employer to provide evidence concerning the basis for the petitioned-for employees' decision-making, and such evidence is absent in this case. Village of Bolingbrook, 19 PERI ¶ 125 (requiring evidence showing the basis for the petitioned-for employees' decisions; addressing grievances); Village of Frankfort, 20 PERI ¶ 83 (IL LRB-SP 2004) (addressing discipline); Vill. of Glen Carbon, 8 PERI ¶ 2026 (addressing overtime).

Thus, the Public Works Supervisors do not adjust grievances with the requisite independent judgment.

3) Preponderance

The Public Works Supervisors do not spend a preponderance of their work time exercising supervisory authority.

To satisfy the fourth prong of the supervisor test, the Employer must demonstrate that the petitioned-for employees spend a preponderance of their employment time exercising supervisory authority. 5 ILCS 315/(r)(1). Preponderance of time can be measured quantitatively or qualitatively. Dep't of Cent. Mgmt. Services v. Illinois State Labor Relations Bd., 278 Ill. App. 3d 79, 86 (4th Dist. 1996) (“Preponderance’ can mean superiority in numbers or superiority in importance”). Measured quantitatively, an employee spends a preponderance of his time on supervisory functions when he spends more time on supervisory functions than on any one nonsupervisory function. City of Freeport, 135 Ill. 2d at 533. Measured qualitatively, an employee spends a preponderance of his time on supervisory functions when these functions are more significant than his nonsupervisory functions, regardless of the amount of time spent on those supervisory functions. State of Ill. Dep’t of Cent. Mgmt. Serv., 278 Ill. App. 3d at 86. The employer must provide details with respect to the amount of time the purported supervisor spends engaged in supervisory functions or the significance of these functions. Sec’y of State v. Ill. Labor Rel. Bd., State Panel, 2012 IL App (4th) 111075, ¶ 108-116.

None of the Public Works Supervisors spend a preponderance of their work time exercising supervisory authority under the quantitative assessment. Three of the four Public Works Supervisors spend the vast majority of their work time performing manual labor, alongside their subordinates. Street Supervisor Mahoney testified that he spends up to 95% of his day performing manual labor including street maintenance and snow or leaf removal. Interim Refuse Supervisor Turner testified that he spends up to 90% of his work time collecting refuse. Sewer Supervisor

Rivard spends the vast majority of his time in the field performing manual labor related to sewer maintenance, according to the daily worksheets provided by the Employer. The fourth Public Works Supervisor, Fleet Services Supervisor Olson, spends approximately 35% of his work time performing mechanic work, which is more time than he spends on any single supervisory function.

The Employer contends that these time estimates in fact support a finding of supervisory status, reasoning that the Public Works Supervisors simultaneously oversee their subordinates in a supervisory capacity while performing manual labor, but this argument is flawed in key respects. First, the Employer has failed to explain how the Public Works Supervisors oversee and monitor their subordinates while they themselves are performing the non-discretionary manual labor that is a significant part of their regularly-assigned functions. Absent from the evidence is information detailing how often the public works supervisors check, correct, and provide their subordinates with feedback. County of Lake, 16 PERI ¶ 2036 (rejecting employer’s argument on similar grounds; addressing direction). More importantly, even if the time spent by the Public Works Supervisors performing manual labor could be viewed as permitting simultaneous oversight of their subordinates, it still would not satisfy the preponderance prong of the supervisor test. As discussed earlier in this decision, the Public Works Supervisors’ oversight of their subordinates is not supervisory because they do not exercise independent judgment “in the interest of the employer” when performing such work. Instead of ensuring that their subordinates perform work in accordance with the Employer’s own guidelines, they ensure adherence to professional norms and standards, in a non-supervisory capacity. See discussion supra. Thus, the time spent by the Public Works Supervisors in overseeing and monitoring their subordinates’ day-to-day activities cannot satisfy the preponderance prong of the test.

The Public Works Supervisors have authority to effectively recommend discipline with independent judgment and some Public Works Supervisors direct their subordinates in a supervisory capacity by assigning them work; however, these tasks do not comprise the preponderance of the Public Works Supervisors’ work time. The Employer presented no evidence concerning the amount of time that the Public Works Supervisors spend on disciplinary matters, and at least one Public Works Supervisor, Olson, spends zero time on discipline because he has never issued any. City of Freeport, 135 Ill. 2d at 533 (preponderance of time element not met where “lieutenants rarely exercise[d] their authority to suspend or discipline firefighters”). Public Works Supervisors Rivard and Street Supervisor Mahoney exercise independent judgment in the

assignment of work, but such assignments take up a minimal amount of time each morning. Downers Grove v. Illinois State Labor Relations Board, 221 Ill. App. 3d 47, 56 (2nd Dist. 1992) (preponderance element considers the “actual exercise of authority rather than being in a position of possessing supervisory authority”). There is no merit to the Employer’s suggestion that the Public Works Supervisors’ mere presence as a highest-status employee in the field satisfies the preponderance prong of the test where they do not oversee their subordinates with the requisite independent judgment in the interest of the employer. Cnty. of Vermilion v. Illinois Labor Relations Bd., 344 Ill. App 3d 1126, 1136 (4th Dist. 2003).

The Public Works Supervisors likewise do not spend a preponderance of their work time exercising supervisory authority under a qualitative assessment. The Public Works Supervisors supervisory tasks are not their most important functions. Each Public Works Supervisor performs important oversight and administrative operations for his division that are non-supervisory. These include identifying the work that needs to be done, ordering parts, maintaining inventory, and exercising superior skill and experience to ensure that the work is done in accordance with professional norms and safety standards. By contrast, the Public Works Supervisors’ disciplinary tasks are less important, particularly where members of management also exercise some authority over the maintenance workers and can direct the Public Works Supervisors to counsel them when necessary. Likewise, the authority of some Public Works Supervisors to direct with independent judgment through assigning work is not the most important of their tasks, given the overriding significance of the other tasks described above.

Contrary to the Employer’s contention, the difference in pay between the Public Works Supervisors and their subordinates is insufficient to satisfy the preponderance prong of the test. The Act was intended to extend bargaining rights broadly, and its exclusions should be narrowly construed because individuals who fall under the exclusions are precluded from exercising collective bargaining rights given to all public employees. City of Decatur v. Am. Fed’n of State, County, & Mun. Employees, Local 268, 122 Ill. 2d 353, 364-5 (1988) (noting broad scope of the Act); Health & Hosp. Sys. of County of Cook v. Illinois Labor Relations Bd., Local Panel, 2015 IL App (1st) 150794, ¶ 51 (addressing confidential exclusion); Am. Fed’n of State, County & Mun. Employees, Council 31 v. Illinois Labor Relations Bd., 2014 IL App (1st) 132455, ¶ 31 (same). Moreover, the determination of “whether a person is a ‘supervisor’ must be made in accordance with the particular legislative formula set forth in section 3(r).” Cnty. of Vermilion, 344 Ill. App

3d at 1136. Here, the amount of money that the Employer pays the Public Works Supervisors is not part of the legislative formula. In the alternative, any relevance of the pay difference is diminished where the pay scales of the Public Works Supervisors and their subordinate overlap, such that a senior maintenance worker near the top of his pay scale could earn more than a newer Public Works Supervisor.

In sum, the Public Works Supervisors are not supervisors within the meaning of Section 3(r) of the Act and are instead public employees within the meaning of Section 3(n) of the Act.

V. CONCLUSIONS OF LAW

1. The Fleet Services Supervisor, the Sewer Supervisor, the Refuse Supervisor, and the Street Supervisor are not supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the International Union of Operating Engineers, Local 150, shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: The titles Fleet Services Supervisor, Sewer Supervisor, Refuse Supervisor, and Street Supervisor are to be added to the existing unit represented by the International Union of Operating Engineers, Local 150, and certified by the Board in Case No. S-RC-20-039.

EXCLUDED: All supervisory, managerial, and confidential employees within the meaning of the Act.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules and Regulations, 80 Ill. Admin. Code Parts 1200-1240, the parties may file exceptions to this recommendation and briefs in support of those exceptions no later than 14 days after service of this recommendation. Parties may file responses to any exceptions, and briefs in support of those responses, within 10 days of service of

the exceptions. In such responses, parties that have not previously filed exceptions may include cross-exceptions to any portion of the recommendation. Within five 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 filing must be served on all other parties. Exceptions, responses, cross-exceptions and cross-responses will not be accepted at the Board's Springfield office. 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. 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 4th day of March, 2021

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**