

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

City of Chicago,)	
)	
Employer)	
)	Case No. L-RC-24-009
and)	
)	
Chicago Fire Fighters Union)	
Local 2 IAFF,)	
)	
Petitioner.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On November 9, 2023, the Chicago Fire Fighters Union, Local 2 IAFF (Petitioner or Union), filed a petition with the Illinois Labor Relations Board (Board) seeking to add employees in the titles Deputy District Chief (DDC) and Assistant Deputy Chief Paramedic (ADCP) to its historical unit of uniformed members of the Chicago Fire Department. The Employer objected to the petition on the grounds that the petitioned-for employees were supervisory, managerial, and/or confidential employees within the meaning of the Act, and that the petition was barred in part by a prior agreement of the parties.

On February 6, 2024, the Union withdrew its petition as to the Assistant Deputy Chief Paramedics. It also withdrew its petition as to the Deputy District Chief in the Manpower Division. The parties stipulated that the Deputy District Chief in the Manpower Division is appropriately excluded from the bargaining unit as confidential within the meaning of the Act. The Employer maintained its objection that all the petitioned-for DDCs were supervisory within the meaning of Section 3(r) of the Act and that the six remaining DDCs outside the Fire Suppression and Rescue Division were also managerial within the meaning of Section 3(j) of the Act.

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 July 29, 30, & 31 and August 30, 2024, at which both parties appeared and were given a full opportunity to participate and adduce relevant evidence and arguments. Both parties elected to file post-hearing briefs. After

full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. STIPULATIONS

The parties stipulate, and I find that:

1. The City of Chicago (City) is a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act (Act).
2. The City is a unit of local government subject to the jurisdiction of the Board's Local Panel pursuant to Section 5(b) of the Act.
3. The Chicago Fire Fighters Union, Local 2, IAFF (Petitioner or Union) is a labor organization within the meaning of Section 3(i) of the Act.
4. The Illinois Labor Relations Board, Local Panel, has jurisdiction over the matters contained in the Representation/Certification Petition, L-RC-24-009, under the terms of Section 6 of the Illinois Public Labor Relations Act.

II. ISSUES AND CONTENTIONS

The issues are whether the Deputy District Chiefs (DDCs) are supervisory within the meaning of Section 3(r) of the Act and whether certain of the DDCs are also managerial within the meaning of Section 3(j) of the Act.

The Employer argues that the DDCs are above the highest rank of company officer and therefore must be excluded from collective bargaining as supervisory under Section 3(r)(1) of the Act. It contends that captains are the highest rank of company officer within the department and that the DDCs are two ranks above that of captain. The Employer also asserts that a commonsense definition of company officer, acknowledged by the courts and applied by one Board ALJ, must still apply irrespective of statutory changes cited by the Union. The Employer contends that, under this definition, the DDCs do not perform the duties of company officers because they are not assigned to an apparatus, are not responsible for designating the roles of each member assigned to it, are not obligated to respond to each emergency incident, and have discretion to perform other tasks that company officers are obligated to perform.

In the alternative, the Employer argues that the DDCs satisfy the four-part test for supervisory authority. The Employer contends that the DDCs' principal work is obviously and

visibly different from that of their subordinates, the battalion chiefs. It contends that the DDCs' principal work is administrative whereas the BCs' principal work is related to incident response and that the DDCs have administrative tasks that the BCs do not perform. In the alternative, the Employer argues that the DDCs work is also substantially different from the BCs' work in nature and essence because the DDCs are the highest ranked on shift during the nights and weekends. The Employer contends that the DDCs have authority in the interest of the Employer to engage in the supervisory functions of discipline, transfer, and direction, and that they do so with the requisite independent judgment. The Employer additionally contends that the DDCs in Special Operations, the Training Academy, and the Fire Prevention Bureau also have authority to hire. The Employer concludes that the DDCs spend a preponderance of their work time engaged in supervisory functions under either a qualitative or quantitative analysis.

The Employer additionally argues that the six specialty DDCs, those outside the Fire Suppression and Rescue Division, are also managerial within the meaning of Section 3(j) of the Act. It contends that they are predominantly engaged in executive and management functions because they are responsible for running their respective divisions/units and ensuring they operate efficiently and effectively. The Employer argues that each of these DDCs also direct the effectuation of management policies and procedures in various ways including through the development of budgets for their respective units, making and implementing policies, making effective recommendations on technological changes, and coordinating and implementing training.

The Union argues that the DDCs are company officers and therefore cannot be excluded from the bargaining unit as a rank above that of the highest company officer within the meaning of Section 3(r)(1) of the Act. It contends that the 2022 amendment to the Act's definition of company officer allows the DDCs to be considered company officers because that term can now include employees who, like the DDCs, are responsible for multiple companies, multiple apparatuses, and even an entire shift. The Union contends that Fire Suppression and Rescue DDCs qualify as the highest company officer because they are the highest-ranking members of the department to work the platoon schedule and are responsible for an entire shift. It contends that the specialty DDCs are likewise company officers because they are similarly responsible for their units and shifts. The Union argues that the Employer's own definition of a company officer's duties and internal designation of the ranks that qualify as company officer are not controlling but

notes that even some of the Employer's own documentation identifies DDCs as companies, rendering the DDCs company officers.

The Union argues, in the alternative, that the DDCs are appropriately included in the bargaining unit even if they are deemed above the rank of highest company officer. It contends that the four-part supervisory test controls whether a rank or position may be included in the bargaining unit regardless of company officer status.

Next, the Union argues that the DDCs are not supervisors under the four-part test for supervisory authority. Addressing the Fire Suppression and Rescue (FSR) DDCs, the Union contends that their principal work is substantially the same as that of their subordinate BCs. It further asserts that the DDCs do not exercise any indicia of supervisory authority with independent judgment in the interest of the employer. It contends that the DDCs do not direct with independent judgment because their decisions are controlled by detailed policies and procedures, from which they only deviate based on their training, education, and experience; further, their functions at the fire scene are not performed in the interest of the Employer. It contends that the DDCs do not discipline with independent judgment because there is no evidence that their counselings affect their subordinates' terms and conditions of employment, they do not make determinations on the outcomes of internal reviews, and their authority is no different from that of their subordinates. The Union concludes that the FSR DDCs cannot satisfy the preponderance requirement where they lack supervisory authority.

Addressing the specialty DDCs, the Union likewise contends that they do not satisfy the supervisory test where they do not exercise any supervisory functions with independent judgment. The Union observes that the Training DDC does not serve as incident commander and contends that his input on training is clerical, routine, advisory, and/or prescribed by his supervisor or State requirements. The Union asserts that the Special Operations DDCs likewise do not serve as incident commanders and notes that their training schedules are subject to approval by the district chief and their decisions are circumscribed by the Department's procedures. The Union observes that the DDC in the Fire Prevention Bureau forwards nearly every employment-related matter to his superior for review and approval and that the DDC in the Mobile Reporting Unit performs purely administrative functions. The Union concludes that none of the specialty DDCs spend a preponderance of their work time on supervisory activities.

Finally, the Union argues that the six specialty DDCs are not managerial. It contends that their authority is purely advisory and subordinate, that they lack authority to affect the department's goals more broadly, and that they simply gather information and provide their opinions to facilitate decision-making at a higher level.

II. FACTS

1. Overall Structure and Function

The Chicago Fire Department ("CFD") promotes fire safety, provides emergency care, and extinguishes fires. CFD is the largest fire department in the Midwest and one of the largest departments in the nation. CFD is also one of the oldest major organized fire departments, established before 1833.

CFD is a paramilitary organization and maintains a traditional chain of command hierarchy. CFD is led by Fire Commissioner Annette Nance-Holt, whose position is appointed by the mayor and confirmed by City Council. In descending order, CFD's current exempt ranks, who are appointed to their positions by the Fire Commissioner and approved by the mayor, include the First Deputy Fire Commissioner, four (4) Deputy Fire Commissioners ("DFC"), four (4) Assistant Deputy Fire Commissioners ("ADFC"), 12 District Chiefs ("DC"), 19 Deputy District Chiefs ("DDC"), and 11 Assistant Deputy Chief Paramedics ("ADCP").

The First Deputy Fire Commissioner is Mary Sheridan. Sheridan oversees the four Deputy Fire Commissioners who manage the department's bureaus: Marc Ferman is the Deputy Fire Commissioner of the Bureau of Operations. Cynthia Herring is the Deputy Fire Commissioner of the Bureau of Fire Prevention. Brian Helmold is the Deputy Fire Commissioner of the Bureau of Administrative Services. Brandon Keller is the Deputy Fire Commissioner of the Bureau of Logistics.

CFD also employs individuals who hold various ranks represented by the Union. Within CFD's Division of Fire Suppression and Rescue, these ranks include, in ascending order, Candidate Firefighter/Emergency Medical Technician (or Paramedic), Firefighter, Firefighter/Paramedic, Firefighter/Emergency Medical Technician, Engineer, Lieutenant, Lieutenant/Paramedic, Lieutenant/Emergency Medical Technician, Captain, Captain/Paramedic, Captain/Emergency Medical Technician, Battalion Chief, Battalion Chief/Paramedic, and Battalion Chief/Emergency Medical Technician. Within CFD's Division of Emergency Medical

Services (“EMS”), these ranks include Candidate Fire Paramedic, Fire Paramedic, Paramedic in Charge, Ambulance Commander, and Paramedic Field Chief.

CFD employs one-hundred and nine (109) employees in the ranks of Battalion Chief, Battalion Chief/Paramedic, and Battalion Chief/Emergency Medical Technician.

The Bureau of Operations is CFD’s largest bureau, with approximately 4,500 employees. The Bureau of Operations is subdivided into the following divisions: Fire Suppression and Rescue Division, Emergency Medical Services (“EMS”) Division, Special Operations Division, and Office of Fire Investigations.

CFD’s Bureau of Administrative Services is comprised of the Divisions of Labor Relations, Manpower, Training, and Human Resources & Medical Section. The Manpower Division handles the rehiring of members to ensure adequate manpower and it is also responsible for detailing individuals from one district to another.

CFD uniformed employees work either a 40-hour week or work a platoon schedule, which means they work a 24-hour shift and then have 48-72 hours off before their next shift.

2. Bureau of Operations - Fire Suppression and Rescue Division

The Fire Suppression and Rescue Division (FSR) is headed by ADFC Donald Walker. It is responsible for the day-to-day operation of all fire suppression companies in the 98 firehouses dispersed throughout the City. The rank structure below ADFC Walker is DC, DDC, battalion chief, captain, lieutenant, engineer, and firefighter. The Union currently represents all ranks below DDC.

There are 5 Districts in the City. The DC positions in Districts 1 and 2 are currently filled but the DC positions in District 4 and District 5 are vacant. The DC position in District 4 has been vacant for at least three years, and the DC position in District 5 has been vacant for one year. These districts do not have a District Chief because the Department has not promoted anyone to those positions. DFC Helmold testified that the DDCs in fire suppression in District 4 assume some of the duties performed by the DC when there is no DC. However, no DDC has ever acted up into the District Chief positions when those positions have been vacant.

There are currently 12 DDCs assigned to the Fire Suppression and Rescue Division. Three DDCs are assigned to each district, each working separate shifts, with only one DDC working in a district at a time. The DDCs report to a District Chief assigned to their District or ADFC Walker if there is no assigned District Chief. The highest rank under ADFC Walker in Districts 4 and 5

is a DDC. The DDC is responsible for his entire district during his tour of duty. This includes companies under his command and the fire stations within his district. A DDC does not have authority to go outside his district unless he is dispatched there.

Each district is comprised of 5-6 battalions. A battalion is a group of three to four firehouses, overseen by a battalion chief. The division has single houses and double houses. A single house is staffed with a captain or a lieutenant, four or five firefighters, and an engineer. A double house can be staffed with up to 13 members and could include a battalion chief or a paramedic chief.

DDCs are assigned to district headquarters and have their own room where they sleep. They are based out of the same firehouse as the DC of the district. There are instances in which a battalion chief can be based out of the same firehouse as the DDC and the DC. However, there is no district where a battalion chief is permanently assigned to district headquarters.

The DDCs in Fire Suppression and Rescue and all the ranks below them work the platoon schedule. In contrast, ADFC Walker, the DCs and all other ranks above DDC work 40-hour per week schedules, Monday through Friday. When ADFC Walker and the DCs end their shift, the DDCs are the highest-ranking exempt members of the fire department on duty. However, there is a 311 chief and a 211 chief who remain on call.

a) Duties of Battalion Chiefs within Fire Suppression and Rescue

The battalion chiefs are responsible for their battalions, which include three to four fire houses.

The official start time for a battalion chief's shift is 6:30 am. When a battalion chief arrives, he relieves the prior battalion chief and speaks to him to discuss what occurred on the prior shift. He then checks his rig and equipment. He reviews the email from Manpower regarding company movement and any other emails that may arrive; this email is also sent to the DDCs. He ensures that there are no conflicts in the required company movements. If he sees a conflict, he contacts the DDC. The DDC and the battalion chief decide how to resolve the conflict. The DDC then obtains the DC's approval, and the change is made.

The battalion chief conducts a roll call at 8 am with a company officer, who has primary responsibility for conducting the roll call. He selects a firehouse at which to conduct the roll call,

checks that the members are fit for duty, that the rigs are clean, and that the proper equipment is on the rigs. He then plans the day for his fire companies.

After roll call, the battalion chief conducts training. The City issues a schedule for training each day called an Individual Training Record (ITR). Lieutenants, captains, battalion chiefs, and DDCs receive the ITR. The battalion chief discusses them and conducts the assigned training for the day. He then reviews with his companies the general orders, special operations orders, or other memos that the department may have issued. Then he conducts a drill. After the drill, the battalion chief documents what occurred at the firehouse in the journal. He then proceeds to another firehouse.

At 10 am, the battalion chief attends a chiefs' meeting at district headquarters. The meeting may include an after-action review. The battalion chief then returns to the firehouse for lunch.

For the rest of the shift, the battalion chiefs handle runs, conduct drills, or set up a walkthrough of a new building with their companies to identify the location of the fire pumps, the alarm panels, the exits, and to assess whether it has any hazardous materials. The battalion chiefs must respond to all emergency incidents except for ambulance assists and gas investigations. A battalion chief has discretion to monitor the radio and to respond to other types of calls within his battalion and is not required to take command. At an incident, the battalion chief can deviate from the general orders based on unique situations. A battalion chief responds to an incident in his own vehicle, an SUV, also known as a buggy, which he drives himself.

The battalion chief is required to conduct night visits at two fire houses between 6 and 9 pm, which are roll calls without an SCBA check. The battalion chief checks for fitness, ensures that the rigs are clean that that they have the proper equipment.

Battalion chiefs have authority to move or "detail" their subordinates to other houses if necessary to balance manpower on the rigs. DDCs have a very limited role in the battalion chief's decision to balance manpower. If a member is injured on duty, a battalion chief may make a recommendation to the DDC that another member act up temporarily into the injured member's position, but the battalion chief cannot make that assignment unilaterally.

Battalion chiefs do not have a role in approving or denying Daley day exchanges.

Battalion chiefs complete firefighter candidate field evaluation forms and forward them to the DDC, who forwards them to the DC. Battalion chiefs are also responsible for completing administrative forms for their battalions, such as inspection forms and inventories.

Battalion chiefs sometimes act up as DDCs if there is no DDC available to work on an overtime shift or if there is an extra battalion chief available. When battalion chiefs act up into the DDC role, they are paid whatever the DDC would earn for the day.

Battalion chiefs have authority to issue their subordinates' oral counselings, which they document in the company journal. Battalion chiefs also have authority to initiate an investigation review if a subordinate engages in misconduct. When a battalion chief initiates an IR, he performs an investigation. The battalion chief will interview the member and draft an account of what occurred. The DDC then also performs an investigation.¹ However, battalion chiefs lack authority to immediately move a member to a different firehouse if there is physical violence between two subordinate members quartered there.

b) Fire Suppression and Rescue DDCs – Supervisory Indicia²

i) Direction

The DDC is responsible for his entire district during his tour of duty. The DDCs oversee the battalion chiefs and ensure that the battalion chiefs are performing their day-to-day responsibilities of overseeing the companies underneath them. For example, the DDCs ensure that the battalion chiefs attend roll call and that they ensure that their companies conduct roll call.

A DDC arrive at work around 5:30 am to prepare for the shift that begins at 7 am. When the DDC arrives, he speaks with the DDC he is relieving, who updates him on what happened on his shift.

The DDC then performs administrative work for their district for approximately two hours. Each DDC receives an email from Manpower with a list of battalion chiefs who will be present that day (“chief sheet”) and information about company movements. The information about company movements could include trainings, preventative maintenance of apparatuses, fit testing, or walk-throughs. The DDC notifies the battalion chief of company movements. If a company is scheduled to be in two places at one time, the DDC resolves the conflict by determining where the company should go, but the DDC may also receive direction from Manpower or Logistics on such matters. The DDCs' decision must be approved by the DC.

¹ Lieutenants and captains likewise have authority to issue oral counselings to their subordinates, to initiate IRs and conduct their own investigations into allegations.

² The DDCs in Fire Suppression and Rescue all perform the same duties as outlined below.

DDCs review reports completed by battalion chiefs. The reports include inspection reports, inventory reports, and open National Fire Incident Reporting System reports (NFIRS). A NFIR report must be filed each time a rig responds to a call. The battalion chief reports his open NFIRs to the DDC, who documents the number of open NFIRs on his A.M. report, and he sends the A.M. report up the chain of command. DDC Giordano testified that the DDC ensures that the paperwork he receives is submitted, accurate, and complete. ADFC Walker testified that the DDC ensures that the battalion chiefs are doing a “correct job according to the [Employer’s] policies and procedures.” If the DDC identifies an error in the paperwork, he may send it in regardless of the errors, if it needs to be submitted immediately. Alternatively, he will ask the battalion chief to make corrections. The DDCs then forward all the administrative paperwork to their respective DCs, to whom they report.

Some scheduling is performed by the Logistics Bureau or by higher-level department members. For example, Deputy Fire Commissioner Ferman schedules building surveys, which must be conducted by all engine and truck companies, and the hydrant repair/drainage inspection schedule. The captain of each house assigns each engine a geographic area to inspect. The Logistics Bureau creates the schedule for inspections, cleaning, and garment repair, as outlined in an operations order.

The DDC observes a roll call at 8 am at a fire house, which takes approximately two hours and includes a drill, conducted by a battalion chief. The roll call is governed by a general order that establishes its procedures and the subjects that must be covered. The DDC makes comments about what went well and what could have been done differently and provides feedback to both the battalion chief and the members. Any participant in the drill can also make recommendations about what could be done differently. The DDC and the battalion chiefs are not always at the same firehouse during morning roll call and DDC Giordano testified that the DDC conducts the roll call and conducts the drill in the same manner as the battalion chief would. The ranks at roll call and the drill include captain or lieutenant, all the firefighters, and the engineer. It will also include the DDC and the battalion chief if he is present.³

After the drill and roll call, each DDC holds a battalion chief meeting every day that begins around 10 and lasts approximately two hours. The DDC discusses new operations or memos and

³ If there is no battalion chief or DDC at the firehouse, the company officer who is a captain or a lieutenant will conduct the roll call.

discusses the prior day's incidents. During the meeting, the DDC can exercise authority to assign a battalion chief to cover another battalion, in addition to his own battalion, when that second battalion is out of service for preventative maintenance or assigned to a special event such as a presidential visit.

Also at the chief's meeting, the DDC gives out training assignments, checks the battalion chiefs' fitness for duty, and ensures they are in their proper uniform. The Manpower division assigns or communicates fit trainings for staff for the day, which can include training on new equipment, hazmat training, training on CPR or training for special events. Pursuant to an order from Deputy Fire Commissioner Ferman, the battalion chiefs must schedule one or more companies to conduct a Run-Out Evolution drill on a daily basis. A DDC may decide to add his own training such as a high-rise drill and may also assign training on a particular tool or at a particular site as part of pre-fire planning so that staff know how they would attack a fire in that building if one were to occur. The battalion chief also decides whether to train for the day as part of his pre-fire planning. The DDCs then witness and participate in the training selected by the battalion chiefs.

The DDCs approve their subordinates' Daley day exchanges. A Daley day is a day off that occurs after a firefighter has worked four 24-hour shift cycles (24-on/48-off) in a row. Department members may exchange their Daley days with other members. In Fire Suppression and Rescue, such exchanges must be between employees of the same rank, but a DDC has discretion under the collective bargaining agreement to allow captains and lieutenants to exchange Daley days with each other. A DDC may deny a request for a Daley day exchange. The department's rules and protocols determine whether the DDC must grant or deny the Daley day exchange request. ADFC Walker testified that a DDC will deny a Daley day exchange where the requester has exceeded the allowed number of trades or if the individual with whom he is trading is unavailable to work.

The DDCs also consider requests for shift trades, i.e. tour of duty trades, by bargaining unit members. The DDC may also exercise discretion to allow trades between company officers who are not of the same rank.

There are certain incidents to which a DDC must respond and incidents to which a DDC may respond pursuant to the Department's policies and procedures. DDCs are required to respond to a still and box alarm and a still in a high rise, which is an expanded fire response in a high rise.

They are also required to respond to level II hazmat incidents, still and box in a subway, active shooter incidents, incidents when a battalion chief has been on the scene for more than an hour, incidents where a department member has been injured, and non-fire emergency responses that require 10 ambulances. The Office of Emergency Management and Communication dispatches DDCs to incidents to which they are required to respond. A DDC must take command of an incident if he is dispatched to it.

The DDC has discretion to respond to lower-level incidents. The DDC listens to the radio when the battalion chief is at a fire incident and can dispatch himself to the fire scene to oversee the battalion chief. When the DDC dispatches himself to that fire scene, the DDC does not automatically take over as incident commander. Rather, when a battalion chief is at an incident, he is the incident commander and remains the incident commander unless and until a higher ranked member wants to take over command. When the DDC exercises discretion to respond to lower-level incidents, he does not necessarily respond to assume the incident commander role but has discretion to assume command if things are going awry.

The DDC might assume command when the battalion chief on the scene is relatively inexperienced or if the battalion chief is not following protocol. If the battalion chief is not following protocol, the DDC could choose to address that matter with the battalion chief in lieu of taking over. ADF Walker explained that if a battalion is fighting an aggressive fire and firefighters are still on the second floor, “it's abundant that we want to, you know, make -- change our tactics, go from offense to defense. We want to get them guys out of there.” In addition, if the building is vacant, the DDC will ensure that the battalion chief removes the firefighters, or he will give the order himself. The firefighting group will then proceed with a defensive attack on the fire.

If the DDC assumes command, the overall fire incident then becomes the DDC's responsibility until he is relieved by a higher-ranking chief. At the fire scene, the DDC gives instructions to the battalion chiefs, who then disseminate them to the members under them, or the DDC may provide instructions directly to the responding companies to ensure that his subordinates are fighting fires in a safe manner. Those companies report directly to him if he is the incident commander. The DDC may elect to escalate the alarm if the fire is severe.

The DDCs assign work at the fire scene. There are operations orders addressing each category of fire, the apparatuses that are responsible for responding, and the duties and responsibilities of the individuals on the apparatuses.

If a firefighter is injured on duty (a “layup”), the battalion chief notifies the DDC, who notifies his district chief or the duty chief, if the injury happened after hours. The Manpower Division determines whether to rehire a firefighter or whether to operate with a variance, meaning that the shift or apparatus would run with fewer than the minimum number required by the collective bargaining agreement. Pursuant to the collective bargaining agreement, the employer is permitted to have up to 35 variances on each shift. DDC Giordano testified that the DDCs have no role in determining whether the shift or apparatus will operate with a variance or whether the employer will rehire an employee to fill the vacancy. He further stated that the DDCs have no authority to rehire to fill a vacancy when a member is unable to work. Manpower is responsible for filling the position, and it updates the DDC on who is rehired to cover the vacancy. When a member is rehired to work in place of an ill or injured firefighter that member is rehired at the overtime rate.

The DDC may temporarily move someone into a different spot on a company for a couple hours so that the apparatus does not go out of service. For example, if an engineer was injured, the DDC could assign an individual from another company to act up as an engineer for an hour or two. When a member acts up in this instance, it is a voluntary assignment provided the individual has the required qualifications for the position. The parties’ collective bargaining agreement provides that in the Division of Fire Suppression and Rescue the senior person on the particular apparatus on the shift shall have priority for the acting assignment” and that on an ALS ambulance, priority is given to the “senior person in the district on the shift.” CBA, Section 16.3(B)(iii). The DDC will discuss the selection with the battalion chief. In such cases the member receives pay for the period that they acted up.

After a fire, the DDC attends an after-action meeting. The attendees include the commissioner, the first deputy, the deputy fire commissioner, the assistant fire commissioner, and all staff members who were involved in the fire including DDCs, battalion chiefs, captains, lieutenants, engineers, and firefighters. The attendees discuss how the firefighting went and how it could be improved. During these meetings, the DDC provides instructions to the battalion chiefs for improvement.

The DDC has access to the field evaluation forms completed by the battalion chiefs for their subordinates and is responsible for signing them and sending them up the chain of command to the district chief, who also signs the forms. The DDC has responsibility to work to remediate

any deficiencies that were noted on the form, in consultation with the battalion chief and district chief. To that end, the DDC may observe a drill performed by a firefighter.

After dinner, the DDC is required to visit one firehouse for an evening roll call called a “night visit.”

The DDC’s shift ends at 5:50 am. Before leaving, the DDC must complete a morning AM report, which is an account of the DDCs’ activities of the last 24 hours. It includes the daily activity of the battalion chiefs and companies. It also includes any layups, fires, civilian injuries and deaths, accident investigations, and newsworthy incidents. The AM report is sent to the commissioner and all the exempt ranks.

On a yearly basis, the district chiefs, DDCs, and battalion chiefs perform inspections of the firehouses to ensure that they are clean and to address maintenance issues. The Deputy Fire Commissioner of the Bureau of Operations or the First Deputy generally establish the schedules for house inspections, but if they have not done so, the district chief will establish the schedule. If there is no district chief, the DDCs establish the schedules for their district but inform the next rank above them.

ii) Transfer /Temporary Details

When there is an incident at a firehouse involving physical violence between two members, the DDC can immediately move one of the members to another firehouse. The Department’s general order on physical violence states the following: “[S]upervisors shall take appropriate action to avoid any escalation of arguments into physical violence or aggression wherever possible. Such action may include temporarily detailing or relief from duty,⁴ if appropriate under the circumstances.”

In addition, a DDC has authority to select a firefighter to serve as the driver of his buggy, the DDC’s assigned vehicle. When the DDC selects a firefighter to serve as his buggy driver, the firefighter moves to the firehouse where the DDC is located, if the firefighter is not already stationed there. The buggy driver effectively serves as the DDC’s assistant instead of performing the duties that other firefighters perform on a day-to-day basis. A DDC must operate within the

⁴ Testimony did not reflect that the DDCs relieve employees from duty or recommend their relief from duty. The Employer has not contended that any of the DDCs have authority to suspend a subordinate either directly or through effective recommendation.

confines of the collective bargaining agreements manning and staffing requirements when moving an individual from one firehouse to another.

iii) Discipline

A DDC has discretion to counsel a member for alleged misconduct. When the DDC counsels a member, he must document it in his DDC journal, which is used to record the events of the day, and in the company journal where the member is located.

If a DDC has counseled a member repeatedly for the same issue, the DDC may initiate the Investigatory Review (IR) process or notify his district chief. The DDC decides based on his own judgment whether to counsel a member or initiate an IR. If the DDC elects to initiate an IR for a recurring infraction, the DDC will explain why he has initiated the IR. He will also explain that he had counseled the member in the past for the same issue and that the member was not responding to the counseling.

An IR starts the investigative process into an alleged violation of the Department's code of professional conduct. The DDC performs an investigation into the allegation and completes a form that explains the incident. The DDC includes witness statements in accordance with the Department's investigation policy. Once the investigation is complete, it is forwarded to the district chief and then ADFC Walker. Walker reviews the submitted materials and determines whether the allegations are founded or unfounded. He then drafts the charges for founded allegations and sends the materials to the Department's labor division, which decides whether discipline should issue. The DDCs have no role in determining whether an allegation is sustained and do not have a role in recommending the level of discipline that should issue as a result of an IR.

When the labor division issues discipline, the DDC is not always made aware of the level of discipline imposed on a bargaining unit member. However, the DDC is sometimes responsible for providing the unit member with notification review. In a notification review, the DDC explains the discipline that was issued. DDC Giordano testified that he provides notification review to a bargaining unit member in the district chief's absence.

iv) Preponderance

ADFC Walker testified that the DDCs oversee the battalion chiefs for the entirety of their platoon. He further stated that they are held accountable “as supervisors.”

3. Bureau of Operations - Special Operations Division

CFD’s Special Operations Division is the “special rescue” branch of the CFD that is intricately involved in homeland security activities. It includes the Hazardous Materials Unit, the Air Sea Rescue Unit, and the Technical Rescue Unit. District Chief Jamar Sullivan manages the Division and oversees its 153 budgeted positions.

DDC Jason Lach is assigned to the Marine and Dive Operations Unit, DDC Douglas Schick is assigned to the Hazardous Materials Unit, and DDC David Doggett is assigned to the Air Sea Rescue Unit. The DDCs in Special Operations work 40-hours per week, and all members under their command, except for the dive instructor, are assigned to the platoon schedule, working 24 hours on and 48 hours off.

The Marine and Dive Operations Unit has 40 members and runs out of two locations. DDC Lach is the dive coordinator for all dive operations and is responsible for the units within those stations, though he is not responsible for the stations overall. The ranks below DDC Lach are captain, lieutenant, engineer, and firefighter. The Marine and Dive Operations Unit has two dive boats and a dive truck, to which these ranks of employees are assigned. The dive boats each have four members assigned, a company officer, an engineer, and two firefighters. The company officer holds the rank of lieutenant or captain. The dive truck has four members assigned, a company officer who holds the rank of captain or lieutenant, and three other members who are either firefighters or engineers. DDC Lach is not assigned to a particular boat or truck but has an individual vehicle. The manned boats under Lach’s command are considered marine companies. Lach is responsible for these multiple companies and their apparatuses.

DDC David Doggett is the air operations coordinator. The ranks below DDC in the Air, Sea, and Rescue Unit are captain, lieutenant, and firefighter. There is also an ambulance commander who is the rotary craft pilot. There are helicopters assigned to the unit. When they respond to an incident, they are staffed with four members, a pilot in charge, a second in charge, and two rescue divers. The pilot and the second are not assigned by rank but by their qualifications to operate and command the aircraft. DDC Doggett is not assigned to the daily response teams. The helicopter is considered a company. Doggett is responsible for that company including the

staff and the apparatus. The helicopter runs out of a station and Doggett is responsible for that station.

DDC Douglas Schick heads the Hazardous Materials Unit and holds the career service rank of captain. The ranks below DDC in the Hazardous Materials Unit are captain, lieutenant, and firefighter. There are 30 members assigned to the Hazardous Materials Unit. The unit has five apparatuses, but only two full-time units. Each unit is a five-man company that includes either a lieutenant or a captain, and four firefighters. Additional apparatuses are used as needed. DDC Schick is not regularly assigned to one of the apparatuses. He has his own vehicle that he uses to respond to an incident. Schick is responsible for two companies including the hazmat apparatuses.

Each of the DDCs in special operations generally perform the same duties within their respective units. They are responsible for ensuring that they have appropriate staffing on each one of their apparatuses, that their groups are performing training, that the equipment is operating properly, and that repairs are being done. They schedule the fitness exams for their staff, recruit staff, and help develop their subordinates.

None of the DDCs in the Special Operations Division act up into the role of district chief.

- a) Supervisory Indicia
 - i) Direction

The DDCs in special operations are responsible for assigning work to the members within their respective units. There are dispatch protocols, policies, and procedures that specify when the special operations units must respond, and what apparatus and equipment must respond. There are also policies and procedures that dictate when the DDCs from special operations must respond to an incident and when they may respond. For example, the Marine and Dive Unit and the Air, Sea, and Rescue Unit respond when there is a person in the water, when a boat is on fire, when a boat is in distress, when there is a car or an animal in the water, when a person is threatening to jump in the water, or any other related maritime incident where an investigation may be warranted. The Air, Sea, and Rescue Unit additionally responds to 2-11 alarms, high rise incidents, and train derailments. DDC Lach must respond to a mass casualty on the water⁵, but he has discretion to

⁵ Mass casualties on the water are rare.

respond to any marine event and exercises that discretion when he believes that an event warrants his expertise.

DDC Schick must respond to level III incidents, large-scale level II incidents, and active shooter incidents.⁶ However, DDC Schick may respond to any incident where he feels he could be of assistance. DDC Schick uses his discretion to respond to a Level 1 event, the least severe type of incident, and will respond when it is unusual. Sometimes a district chief will direct him to respond to a Level 1 event. This has occurred four times in the past year and a half.

When the special operations DDCs respond to emergency calls, they do so alongside the captains, lieutenants, and firefighters assigned to their units, and act as technical advisors to the incident commander who is already on the scene. The incident commander could be another DDC, a battalion chief, or an assistant deputy fire commissioner. The DDCs answer to the incident commander, who has authority to dismiss them from the scene and return them to service. DDC Lach testified that when he arrives on the scene, he is responsible for the divers. However, the incident commander oversees the special rescue teams.

The DDCs do not determine whether overtime is necessary when there is a staffing shortage, for example when a member is absent from work. If there is a shortage of manpower, the DDCs in the Special Operations units must inform the Manpower Division, which determines whether overtime is needed in such cases.

However, DDCs may make recommendations for the use of overtime for special events or when a member is required to take a class for a necessary certification. The Special Operations DDCs make recommendations to DC Sullivan to rehire members on overtime for special events. Their recommendation includes the number of staff required and number of hours for which the overtime is required. The number of hours of necessary overtime is determined by the event, but the DDCs decide when to excuse staff from the special event in cases where overtime is granted. DDC Schick testified that DC Sullivan approves his recommendations to rehire members most of the time. The decision must be approved further up the chain of command or by Manpower.⁷ In cases where the overtime is for a special event, Manpower provides the DDCs with a list of individuals who are eligible for hire back.

⁶ The mandatory-response incidents occur approximately three times a month.

⁷ Schick testified that he believed that further review was required beyond Sullivan. This is consistent with testimony from DFC Herring who stated that the Commissioner must approve requests for the use of overtime.

When a new member is hired into the Marine and Dive Unit, he must pass an endorsement class to be able to stay. DDC Lach evaluates the members and determines whether they will obtain the endorsement. There have been cases in which DDC Lach determined that the member should not obtain the endorsement. Members must pass a nationally recognized standardized swim test on the first day to continue through the endorsement process and are “sent home” if they cannot pass. The standards for evaluation of the endorsement class are drawn from Emergency Dive International, the entity that certifies divers, and existing Department policies. When members pass the endorsement process, they are eligible for incentive pay. Incentive pay is set by the collective bargaining agreement. Lach cannot withhold incentive pay from an individual who passes the class.

The DDCs in Special Operations plan the work schedules of their subordinates without DC Sullivan’s input. The DDCs then make recommendations on the coordination and scheduling of training. For example, DDC Lach coordinates and schedules all dive training for the City. Lach coordinates with District Chief Sullivan to ensure that companies are available for the training and to ensure that he is covering the topics that need to be covered. District Chief Sullivan approves DDC Lach’s training schedule a majority of the time.

DDC Lach also coordinates dive dates, which is dive rescue training for the dive unit members who are outside the dedicated marine unit. He sets the schedule and notifies his superiors and subordinates of the schedule. DDC Lach can postpone the training dates if there is inclement weather, if there are equipment issues, or if there is an incident that may interfere with the ability to conduct a class that day. DDC Lach can also schedule other types of training and add it to company movement. DC Sullivan typically approves DDC Lach’s training requests.

Similarly, DDC Schick works with the commander of training, who holds the career service rank of engineer, to set the training schedule. DDC Schick has authority to determine when and where company training should occur. He informs Commander Patrick Jessee, who is the individual who sets the company movement calendar.

Likewise, DDC Doggett is responsible for coordinating annual training for all his helicopter pilots. He communicates with the Manpower division to coordinate training for individuals who attend flight safety school.

The DDCs in Special Operations also conduct training. For example, Lach conducts all training for members to become divers in the fire department. The captains and the two lieutenants

also conduct dive training, but DDC Lach is the lead on it, ensuring that it is scheduled, that the training is conducted, and that the trainees pass their training and move forward. The dive training is conducted pursuant to standard departmental procedures and procedures of Emergency Dive International, the entity that certifies divers. Some of the training for the Hazardous Materials Unit is required by the Illinois State Fire Marshall's Office. Helicopter pilots in the Air, Sea, and Rescue Unit receive standard training.

ii) Transfer/Temporary Details

The DDCs in Special Operations appear to have the same authority to make temporary details as the DDCs in the FSR Division.

iii) Discipline

The authority of the Special Operations DDCs with respect to disciplinary matters is the same as that of the DDCs in the Fire Suppression and Rescue Division. DDC Lach testified that discipline does not occur often in his unit and that he has not had occasion to initiate the IR process.

iv) Hiring

Members from other divisions within the CFD can apply for positions within the Special Operations Division if they have the minimum qualifications for the positions.

The DDCs in special operations participate in the hiring process for their units. The individuals on the interview panel are the DDC from the special operations unit that is seeking to hire and DC Sullivan, who serves as the hiring manager. The DDC and DC Sullivan then hold a consensus meeting, where they aim to reach agreement on whom to recommend for the position. A representative from HR also attends the consensus meeting but has no input on whom to hire. The department then selects from among those recommended on the basis of seniority. DC Sullivan has never hired a candidate into a special operations unit where the DDC did not support the candidate.

The positions of rescue diver and endorsed rescue diver require special qualifications that entitle the position holders to extra pay. There is also incentive pay for hazardous material technicians within the Hazardous Materials Unit.

v) Preponderance

DC Sullivan testified that the most important duties of the DDCs in Special Operations are their administrative duties. These include conducting/arranging for training, ensuring schedules are complete, overseeing equipment and vehicles, and researching necessary purchases for their units and making the purchases.⁸

The DDCs in Special Operations spend approximately 20% of their time assigning work and organizing training by determining the training that is needed to meet certain goals, and working with company officers or outside groups to ensure that the training is implemented.

The DDCs spend approximately 5% of their time engaged in the hiring process. DDC Schick attends two sets of interviews each year and spends approximately 6 days per year engaging in the interview process.

DC Sullivan testified that he did not know how much time the DDCs spend on disciplinary matters. The DDCs are not required to inform DC Sullivan when they issue a counseling.

The DDCs spend varying amounts of time responding to incidents. DDC Schick spends approximately 10 hours a month going on hazmat service calls. DDC Lach responds to 20-30 incidents per month in the summer but responds to fewer incidents at other times of the year.

b) Managerial Indicia

The DDCs in Special Operations have developed policies and procedures for their respective groups. For example, DDC Doggett developed a new procedure applicable to helicopter landings after a landing incident occurred where a pilot had made several attempts to land a helicopter without wheels on a landing pad. DDC Doggett determined that the pilots should have a cool down period before making second attempt at a landing or that another pilot should make the landing after the first attempt. DDC Doggett formulated and implemented that policy unilaterally without review or approval by DC Sullivan. DDC Lach recommended the development of the endorsement class that applicants to the Marine and Dive Unit must pass to be accepted. He deemed it important for new members to have both the knowledge base it provided and the hands-on practical experience. Special Operations instituted the endorsement class, and applicants to the Marine and Dive Unit must pass it to be accepted into the unit.

⁸ This duty is discussed further in the next section.

The Special Operations DDCs serve as representatives of the department in meetings with organizations and companies and are authorized to speak on the department's behalf, to make representations about what the department can and cannot do under certain circumstances and the resources that the department can provide. For example, DDC Lach attends meetings of the Maritime Boaters Association on behalf of the department to share the department's capabilities and serve as their contact within the fire department for resources they may need. He also represents the department at water-related special events such as a triathlon to discuss the safety features of the event, determine the event's needs, and secure required resources from the department. The Commissioner supports DDC Lach's decisions concerning the commitment of resources. Similarly, DDC Schick attends meetings with the Local Environmental Protection Committee and utility companies. He also attends meetings related to special events that might need hazardous material monitoring or protection.

Each of the Special Operations units have separate budgets.⁹ The overall budget for the division is prepared by the department's headquarters. The Commissioner together with the Office of Budget and Management determine how much money is available to each of the Special Operations units. The DDCs in special operations have no authority to decide the amount of money available for their units. However, at the end of the year, the DDCs request a budget and write justifications for their units to ask for the resources they need to operate in the coming year. For example, DDC Lach gives District Chief Sullivan information on how much money his unit needs to service equipment, obtain training material, and make equipment purchases. District Chief Sullivan has made changes to DDC Lach's requested budget as it relates to the quantities of material requested.

The DDCs of each unit are responsible for spending down the funds within their budget so that they are not lost. The DDCs do not have authority to unilaterally make purchases for their units but make recommendations to DC Sullivan. The DDCs identify equipment and training that would assist their members in performing their duties, procure quotes from vendors, and recommend the purchase of equipment and training for their units. They have discretion to decide what equipment to recommend for purchase, when they need to replace or upgrade equipment, and how much PPE is needed. They complete the purchase requisition forms, and send them through

⁹ The Air, Sea, and Rescue Unit and the Marine and Dive Operations Unit share a funding line for life raft rehabilitation and refurbishment.

the proper channels for DC Sullivan's approval. They are then submitted into the Workfront system where the purchases are approved and made through the Finance Department. DC Sullivan generally rubberstamps purchase requests from the DDCs in Special Operations. DDC Lach testified that in some cases DC Sullivan may ask what the proposed equipment is for, and Lach will explain its purpose. DC Sullivan follows up with the DDCs to ensure that they are spending down their funds in a timely manner and that the units have appropriate funding.

Some purchases are paid using grant funds, such as the 2022 Port Authority Grant. To obtain funds from a grant, the DDCs must also submit their requests to Assistant Commissioner Bethany Hand.

4. Bureau of Administrative Services - Training Division

Director of Training Shun T. Haynes is the district chief who oversees the Training Division. He is responsible for the training for both EMS and fire suppression. The director oversees a DDC on the fire side and an ADCP on the EMS side. The DDC oversees commanders. Below the commanders are lieutenants who are assigned as instructors. There are fewer than 20 employees permanently assigned to the training division. Some members are temporarily detailed to the academy to serve as academy instructors. These individuals hold the rank of firefighter, engineer, or lieutenant.

The Training Division operates and conducts classes at two (2) locations: the Quinn Fire Academy and the Bauer-Plummer Joint Training Academy (also referred to as the West Side Academy). The responsibilities of the Training Division include the initial training of all probationary firefighters and paramedics, required continuing education for all department members, and promotional training for all ranks including engineer, lieutenant, captain, and battalion chief. It is also responsible for some training for the DDCs and DCs.

DDC Curtis Hudson was assigned to the Quinn Fire Academy until his retirement on November 30, 2023. Now DDC Richard Stack holds the position. DDC Stack is responsible for all the duties performed by Hudson and serves as the assistant director of training. Stack reports directly to Director Haynes.

a) Supervisory Indicia

i) Direction

DDC Richard Stack is responsible for overseeing the staff assigned to the academy. He is the lead for training and ensures that training attendees are in uniform and properly groomed. He ensures that the candidate class members are in compliance with the rules and regulations, that safety precautions are in place, that the building is functioning, and that the programs start on time. DFC Helmold testified that DDC Stack ensures that the commanders are “doing what they need to do.”

DDC Stack oversees the training conducted by the commanders and other staff. He also runs lieutenant promotion training after the individuals have already been tested and ranked for promotion. DDC Stack does not decide whether individuals are promoted and does not establish the promotional order. The training follows state objectives. DDC Stack is not assessing the lieutenants for specific qualities.

DDC Stack responds to hazardous material response (hazmat) calls when he is on his rotation. He is responsible for responding to calls as an incident commander every four or five weeks if the call requires a hazmat response. There are no trucks or engine companies assigned to the Training Division. When there is a call, he meets with the incident commander and the hazardous material team to confirm activities. He then assists them operationally to mitigate the incident. A battalion chief is also present on the scene and acts as the incident commander on that scene. When a battalion chief is an incident commander, he has authority to dismiss DDC Stack if he determines the DDC is no longer needed on the scene.

The DDC of training does not evaluate lieutenants or captains who are undergoing training at the academy. The DDC of training does not evaluate individual probationary candidates unless there is a particular issue.

ii) Discipline

Director Haynes testified that DDC Stack ensures that the companies who attend training are adhering to the rules and that he has discretion as to how he will address a member’s non-compliance. According to Haynes, DDC Stack may orally counsel the individual or he could initiate an IR, depending on the nature of the infraction. DDC Stack testified that the director would typically handle the counseling of a member and that he would counsel a member at the director’s direction.

iii) Transfer/ Temporary Detail/ Hiring

DDC Stack serves on a team to hire permanent instructors for the Training Division and to temporarily detail members to serve as instructors. Individuals who are permanently hired to serve as instructors hold the ranks of commander and lieutenant. Individuals who are temporarily detailed include members in the ranks of firefighter, engineer, or lieutenant. Individuals who are temporarily detailed to the academy receive incentive pay. The dollar amount of the financial incentive is set through agreement between the Union and the Employer.

DFC Helmold testified that the hiring team for both detailed and permanent personnel includes Director Haynes and a commander in addition to the DDC of training. On one occasion, DDC Stack served as the highest-ranking member of the hiring team to recommend the selection of individuals to be temporarily detailed as instructors at the fire academy; the other members of that team included a commander and a lieutenant.

The interview process for temporary details includes questions from the members of the panel and a presentation by the candidate, which allows the panel to assess whether the candidate has the skillset to serve as an instructor. DFC Helmold testified that the interview process for temporary details is how the division determines whether an individual will be temporarily detailed to serve as instructors in the training division. The district chief must approve the candidate before he receives incentive pay that accompanies the temporary detail.

iv) Preponderance

DDC Stack spends 25% of his time interviewing instructors, 35% of his time ensuring compliance with rules, and 15% of his time scheduling. DDC Stack spends 10% of his time engaged in instruction.

b) Alleged Managerial Functions

The DDC of training does not establish the budget for the Training Division, which is set by headquarters. DDC Stack lacks authority to unilaterally purchase items for the academy but he meets with vendors, obtains quotes, and makes recommendations to Director Haynes on materials and equipment the academy may wish to purchase. The recommendations go up the chain of command to the commissioner's office. For example, the DDC of training met with a vendor to obtain a quote for the purchase of training tower to be built at Engine 70s. He submitted the quote

to Haynes and it was subsequently provided to Deputy Fire Commissioner Chief Helmold. The DDC may also make requests for services and goods to be paid off of a grant, subject to the approval of Director Hayes.

The DDC of training has authority to sign purchase agreements for services necessary to execute the master agreement between the department and the Illinois Field Service Institute (IFSI), which is part of the University of Illinois. The master agreement is signed by the fire commissioner. It states that the IFSI will provide the department with fire instructors, instructional services, and materials. Haynes testified that the DDC evaluates the staff on hand and has discretion to determine that there is a need for external instructors. However, there are documents in the record entitled “Program Form Master Agreement” which more specifically outline the date of training, the number of instructors, and the cost. The Employer does not appear to claim that the DDC signs these documents or participates in their creation.

The DDC works with IFSP on the curriculum that the IFSI instructor will teach. The Office of the State Fire Marshall establishes the responsibilities and objectives for candidate training and establishes protocols and requirements for Instructor 1 and Instructor 2 classes. Headquarters establishes the focus of promotional training. The training academy compiles the training in accordance with directives provided by headquarters in collaboration with the Bureau of Operations.

Former DDC Hudson sat on the advisory board to establish a new joint training academy. The advisory board included members from the Office of Public Safety Administration (OPSA) and the Department of Assets and Information Services. The OPSA oversees the finance and payroll functions of the fire department. When Hudson served on the committee, he was responsible for “looking out for the training needs” of the fire academy. For example, he informed the Fire Commissioner that the EMS rate was minimized.

DDC Stack testified that he and Director Haynes work hand in hand on many things in running the training division. DDC Stack and Director Haynes schedule their furloughs so that one or the other will always be present at the training academy and coordinate their schedules so that either one or the other is present. DDC Stack testified that he has never acted up into the role of director at the training academy.

5. Bureau of Fire Prevention

The Bureau of Fire Prevention protects the citizens of Chicago against the loss of life and property through its enforcement of the Municipal Fire Codes. The Fire Prevention Bureau has four area offices: North, South, West, and Central. These offices conduct general inspections of businesses, schools, hotels, public places of assembly, and high-rise occupancies within their geographic boundaries.

Cynthia Herring is Deputy Fire Commissioner of the Fire Prevention Bureau. She manages the bureau's divisions, attends budget hearings to answer questions, ensures that inspections occur and that documentation for inspections is correct, consults with the assistant commissioner to ensure that buildings comply with codes and regulations, and works with other departments to ensure that codes and regulations are enforced. DFC Herring does not determine the budget for her bureau. She submits a budget request, which the commissioner must approve. The City then issues the bureau a budget, which may or may not be in line with the request.

Herring oversees DDC Evan Person, two battalion chiefs, one commander, three captains, 39 lieutenants, three engineers, and 25 firefighters. The bureau also has eight civilian employees including Deputy Commissioner John Javorka, administrative assistants, a staff assistant, and a fire prevention engineer III. The bureau has a budgeted district chief position, but that individual is currently assigned as the director of training at the fire academy. There has not been a district chief in the Fire Prevention Bureau in over three years.

DDC Person oversees the battalion chiefs in the bureau. The record does not clearly specify the duties of the battalion chiefs assigned to the Fire Prevention Bureau except to note that they oversee their subordinate ranks in conducting inspection duties for which they are responsible. A commander or battalion chief can assign an inspector to follow up on a complaint or a special request but must notify the chain of command. Battalion chiefs may recommend a rehire at the overtime rate but cannot approve rehires and must submit their recommendations up the chain of command for approval. Battalion chiefs do not shadow inspectors on assignments.

Battalion chiefs have authority to initiate an IR if they believe a member has committed an infraction of the rules. Neither a lieutenant nor a captain has the authority to assign a member to the office for two weeks to address a personnel matter without seeking DDC Person's approval. It is not clear whether a battalion chief would have authority to act unilaterally.

a) Supervisory Indicia

i) Direction

DDC Person is responsible for remaining in contact with his subordinates to ensure that inspections are performed and that compliance issues are addressed.

DDC Person makes recommendations through the chain of command for his subordinates to work overtime for special events. He forwards requests for overtime through the chain of command to the fire commissioner. Ultimately, it is DFC Herring's duty to determine whether there is a staffing shortage for a particular weekend and to inform the commissioner of the shortage. DDC Person's request for overtime, submitted through the chain of command, specifies whether he needs pyrotechnic inspectors or general inspectors, the hours of the event, and the hours that the inspectors need to be present at the event. He makes this recommendation based on his knowledge and experience. DDC Person can deny a subordinate's request for overtime if he believes that it is not necessary; he makes such determinations based on his knowledge and experience. The fire commissioner typically approves DDC Person's requests for overtime. The collective bargaining agreement between the parties governs how overtime is distributed in each bureau and the department follows the contractually bargained-for process to fill the overtime slot. The contract provides that overtime is distributed on a voluntary basis in accordance with a list that was developed based on seniority. When an overtime assignment requires specialized personnel, the same list is used but individuals who lack such specialization are skipped over.

DDC Person has authority to temporarily reassign a member from one office to another to ensure that there is adequate staffing and to balance the workload. He does not need to confer with DFC Herring on these decisions.

DDC Person assigns inspectors to emergency inspections or special events at locations such as the United center of McCormick place to ensure that fire alarm panels and systems are operating properly. DFC Herring testified that DDC Person selects the inspector based on who is best qualified to handle the problem at issue, based on his day-to-day interactions with the inspectors and the inspector's area of expertise, e.g., general inspections or hotels. However, DFC Herring also conceded that when special assignments arise or emergency requests are submitted, the bureau sends an inspector who is already assigned to the area where the complaint arose. Section 16.7.C of the contract provides that "assignment vacancies in the classifications and/or

ranks of firefighter, lieutenant, captain, and battalion chief in the Bureau of Fire Prevention shall be filled on the basis of seniority by geographically designated offices in that bureau.”

Non-emergency assignments are listed in a computer system, and when those assignments are due, the inspectors conduct them. The computer sends out the rotation schedule and the inspectors’ superiors in the individual offices dispense those assignments to staff. DDC Person is copied on these assignments and has authority to make adjustments based on the information he receives.

DDC Person sometimes monitors inspectors at special events by shadowing them at their assigned location to observe their actions. In conducting inspections, the bureau is required to follow municipal ordinances and applicable parts of the National Fire Code, the International Building Code, and the Chicago Fire Code. DDC Person ensures that the inspector inspects all required areas and writes violations for issues that are not in compliance with the code.

DDC Person and DFC Herring decide whether to grant members’ requests for time off. Timely submitted requests for time off appear to be routinely granted but untimely requests may be denied unless there is an emergency. DDC Person instructed the battalion chiefs and commanders that requests for furlough/time-off would not be granted if the request was submitted in the same week as the scheduled weekend duty. He further stated that if a member of staff requested furlough/time-off for their weekend duty in the same week as the weekend duty was scheduled, the request would need to be approved by DFC Herring. At hearing, Herring explained that she and DDC Person would need additional information as to why the time-off was needed because it would constitute an emergency request. Both she and DDC Person would evaluate such requests to determine whether they should be granted.

When new members are hired into the bureau toward the end of the year, after members have made their weekend duty selections, DDC Person and DFC Herring determine how many weekend duty assignments the new member should receive. DFC Herring has ultimate authority to determine how many weekend duties should be assigned to new members who start mid-year, but DDC Person has authority to make such decisions unilaterally in her absence. On one occasion, Inspector Murphy from Manpower asked DDC Person how many weekend duty selections a new member of the bureau should be assigned and stated that the past practice for new members who started in the last third of the year was to give them one weekend duty assignment. DDC Person

responded that “unless DFC Herring states otherwise[,] let’s give them (1) for the remainder of the year.”

ii) Discipline

DDC Person has the same disciplinary authority as the DDCs in Fire Suppression and Rescue. He has authority to initiate an IR to begin the formal discipline process. He may also counsel members instead of initiating an IR. When discipline issues against a member, he is responsible for conducting notification review. He informs the member of the discipline, explains the specifics, and answers the member’s questions.

On one occasion, DDC Person addressed a personnel issue by modifying an individual’s assignment. He made this decision in collaboration with lower-ranked employees in the interests of safety. A firefighter who was serving as an inspector began displaying intimidating and hostile conduct towards his superiors after he received the results from the lieutenant’s eligibility list. DDC Person informed the inspector that he should remain in the office for at least two weeks until he showed a change in behavior. DDC Person ultimately allowed the inspector to resume normal duties when his demeanor improved. DDC Person did not need DFC Herring’s approval before assigning that individual to the office for two weeks or before reinstating the individual’s normal duties and responsibilities.

iii) Hiring

DDC Person participates in the hiring process for his division. For example, he served on an interview panel to hire a commander. DFC Herring was also on the interview panel and served as the hiring manager. Deputy Commissioner Javorka and Battalion Chief Mullen also participated on the panel. DDC Person and DFC Herring each had a recommendation of who they believed to be the best candidate. DFC Herring testified that she relied on DDC Person’s recommendation to hire the candidate for commander. The individual he recommended was the individual who was ultimately hired. DFC Herring had the final authority to determine who obtained the commander position.

iv) Preponderance

DDC Person spends 90% of his time monitoring and analyzing overtime, participating in the hiring process, approving/denying overtime requests, balancing manpower, handling discipline and personnel matters, and giving assignments to members in the bureau. He spends approximately 10-20% of his time on each of those tasks. DDC Person spends the remainder of his time meeting with Herring to discuss ways in which the bureau can improve its operations, e.g., by acquiring new equipment or books, to discuss how the bureau can operate more efficiently.

b) Managerial Indicia

Prior to DDC Herring's arrival at the bureau, DDC Person was involved in establishing the bureau's goals. Herring described Person's participation in this process as being "involved with some of the meetings that we've had in the past as it pertains to training." Herring noted that prior to her arrival at the bureau, a goal had been in place to ensure that all inspectors were state certified. DDC Person implemented the training to ensure that more inspectors had state certification to meet that goal. As a result, 90% of the bureau's inspectors are state-certified. DDC Person also helped achieve the bureau's goal of minimizing the use of overtime by ensuring that members do not take off work during weekend duty without prior approval.

An email in the record from DDC Person to DFC Herring has the subject line "Goals Past & Future." Person indicated that the bureau had achieved a goal in reducing overtime and successfully recruiting personnel.¹⁰ He also stated that he believed that future goals would include more extensive training/certifications.¹¹

When the bureau receives a request for an inspector to be present for a pyrotechnic event such as the use of a laser light and a smoke machine during a reception, DDC Person reviews the request to determine whether the request can be honored. He denies the request if it is unsafe or unreasonable. He makes his decision based on the specifics of the applicable code language and his judgment. There is one example in the record where an event holder for a private wedding requested an inspector for a laser show. DFC Herring denied the request on the grounds that the bureau did not assign inspectors to this kind of event, and she recommended that they not use the

¹⁰ "Goals achieved I believe was a reduction in overtime. I also believe we successfully recruited personnel that want to serve in Fire Prevention." City Exh. 1, p. 34.

¹¹ Future goals I believe will be more extensive training/certifications in fire prevention/protection which will allow us to be more proficient in our service to the citizens we serve. Id.

lasers because it was unsafe. If a request is granted, DDC Person notifies the Manpower Division so that Manpower can send an inspector to the event.

DDC Person attends meetings on behalf of the bureau. He attends budget meetings with DFC Herring at City Hall. He and Herring answer alderpersons' questions about the budget, the bureau's staffing, and any concerns they may have about the building code; and they also make requests for additional inspectors. DDC Person participates in meetings with other members of administrative staff to discuss proposed legislation pertaining to fire protection systems and fire safety, and he makes recommendations as to whether the proposed legislation would benefit the City. DDC Person also attends meetings of the bureau's supervisors; DFC Herring leads the meetings.

DDC Person performs DFC Herring's duties in her absence. Herring took a leave of absence from January to May 2023 and DDC Person performed her duties during that time. He also assumes her duties during the approximately 30 days per year that she is on furlough. DFC Herring and DDC Person coordinate so that they do not take their furloughs at the same time. DDC Person leads supervisor meetings in Herring's absence.

When DFC Herring was absent, DDC Person sent an email to the Fire Prevention Bureau manpower and training staff, which stated that any training going forward would be put on hold or vetted through the chain of command, and that DFC Herring would outline the path moving forward upon her return. The impetus for this email was that the bureau had conducted certain state-certification training that had not been vetted and should not have been performed.

6. Medical Administration and Regulatory Compliance Division & Mobile Reporting Unit – DDC Mark Kiely

Mary Sheridan is the First Deputy Fire Commissioner for the department and directly oversees both the Medical Administration and Regulatory Compliance (MARC) Division and the Mobile Reporting Unit ("MRU"). The MARC Division is responsible for compliance with licensing, educational, and Illinois Department of Public Health mandates, and the mandates imposed by Region 11, a group of four resource hospitals within a geographic region, including Chicago, that determines standards of care for paramedics. Joanne Farrell is the Director of EMS Compliance for the department and is assigned to the Medical Administration and Regulatory Compliance (MARC) Division. The Mobile Reporting Unit ("MRU") is responsible for the electronic documentation of patient care records. It is also responsible for the tablets used by the

department in the field to record patient care reports and ensures that they remain functional. A tablet is assigned to each suppression and ambulance unit and is used to document all the care that is provided. The department has 325 tablets.

DDC Mark Kiely is assigned to the MRU and reports directly to First Deputy Sheridan.¹² He works a 40-hour week. There are three employees within the MRU apart from Kiely. They work the platoon schedule. Although it is not clear from the record what ranks these individuals hold, they are lower ranked than Kiely. The ranks below Kiely, on the EMS side are ambulance commander, paramedic in charge, and fire paramedic. DDC Kiely is not assigned to an ambulance.

The three subordinate employees in the MRU work within EMS Logistics and also report to another chief, Chief Ronstadt; DDC Kiely testified that these individuals effectively “belong to” Ronstadt. DDC Kiely testified that if he observed misconduct by one of these individuals, he would report the matter up the chain of command and would confer with Chief Ronstadt because Ronstadt is “more their direct report.”

DDC Kiely does not have any incident response duties, and unlike the other DDCs, he does not have an assigned City vehicle. However, he works at special events when the department needs a chief to fill in. At the Pride Parade, he oversaw a casualty collection point. In that capacity, he oversaw a couple of bike teams, a foot team, one or two ambulances, and an ALS fire company. When the department conducted a drill at Midway Airport, he served as a liaison in the 911 center to oversee and observe the flow of data. If DDC Kiely is attending a special event with members who are assigned to the event, he has discretion to counsel subordinate members if he sees inappropriate conduct and would document what occurred. To date, DDC Kiely has never disciplined anyone.

The MRU staff provides 24-hour support to any paramedic or firefighter EMT who has technical problems with their cardiac monitor or patient care documentation. DDC Kiely relies on MRU staff to troubleshoot equipment or software issues when he is off duty or not in the office; they perform a limited amount of his duties when he is not on duty.

DDC Kiely is responsible for ensuring that the patient care data collected by paramedics in the field via patient care reports flows to the appropriate federal, state, and local entities, as required by state and federal law. Fire and EMS companies complete their patient care reports on

¹² DDC Kiely previously reported to Farrell when the MRU fell under the MARC Division. They are now separate entities that each fall directly under First Deputy Sheridan’s oversight.

tablets equipped with software called ImageTrend. The department shares demographic and medical data with National Emergency Medical Services Information System (“NEMSIS”) as mandated by federal law and with the State of Illinois Department of Public Health as mandated by state law. The department also shares data about overdoses with the Chicago Department of Public Health. Such data is automatically uploaded and shared via the cloud after paramedics collect it on their runs and document it in the tablets. DDC Kiely engages in trouble shooting of software issues with the company that provides the software, ImageTrend, when there is an interruption in the data flow and works towards a resolution. He oversees the repair of equipment and ensures that it is completed. In the mornings, he meets with the oncoming platoon at the beginning of the day to discuss what happened overnight and to assess whether there were any problems with the tablets. In essence, DDC Kiely provides technical support or “customer service” for the tablet users in the field.

DDC Kiely is responsible for ensuring that the tablets comply with rules imposed by NEMSIS, the organization that sets the standards for EMS data collection/sharing and establishes requirements for the types of data that the department must collect. DDC Kiely is also responsible for ensuring that the department complies with other data collection requirements imposed by federal, state, and local laws. To that end, DDC Kiely keeps abreast of federal, state, and local requirements for data collection. When NEMSIS mandates changes to the fields that must be included on patient care reports or if there are changes to federal, state, and local requirements for data collection, DDC Kiely recommends changes to the patient care reports to comply with the requirements. If a new element is required by law, DDC Kiely works with the software vendor to include that element in the patient care report system. DDC Kiely does not create compliance standards and merely ensures that the department is collecting the information to maintain compliance with pre-established standards. Kiely does not determine the drop-down menus that are available within the tablet as those choices are predetermined by NEMSIS, and he is not authorized to unilaterally create a new drop-down menu on the tablet.

On one occasion, the State requested information on dispatch delay for each call. DDC Kiely determined that it was not practical to collect such information because of the volume of calls. DDC Kiely reached out to the department’s state contact, Dan Lee, and informed him that it would be a great strain on the department’s paramedics to collect such information. Lee agreed that mandatory collection of such information would not be practical. The element remained on

department's patient report form, but it was left optional for the paramedics to complete. DDC Kiely does not make a unilateral determination about whether to collect optional information. He obtains feedback from First Deputy Sheridan, Region 11, or Joanne Farrell, depending on the type of data at issue.

DDC Kiely helped create training to educate paramedics in the field about the changes to the patient care report. Kiely had final say over the material he submitted; Farrell did not remove any part of his contributions but added to them as part of a collaborative process. The paramedics take the training on an online platform or learn the information through the department's chief officers. When the paramedics learn the material in person, DDC Kiely conducts the training alongside a fire paramedic and a paramedic in charge.

When an entity wishes to create a data-sharing agreement with the department, DDC Kiely directs them to headquarters and the legal department. DDC Kiely then informs First Deputy Sheridan and General Counsel Haim of whether the department collects the information and informs the entity that the department will not be able to provide requested data if it is not data that the department already collects. DDC Kiely testified that he does not make recommendations about whether the department should collect new types of data that it is not legally obligated to collect.¹³ If the department collects the requested information, DDC Kiely determines whether the data will be provided at one time or as an ongoing data stream. DDC Kiely does not decide whether to enter into data sharing agreements and does not approve them. The content of the agreements as they relate to the data and its transfer is developed by DDC Kiely and the external agencies, but they are subject to changes made by the attorneys on legal issues. The fire commissioner signs data sharing agreements.

Once the department enters into a data-sharing agreement, DDC Kiely facilitates the provision of the data at issue. He and Farrell discuss how to place the required questions into the patient care report without adding burden on the paramedics completing it.

DDC Kiely also responds to requests for data from outside entities including FOIA requests. He checks whether the department collects the data in its patient care reports to determine whether the department can share the data and then channels the request through First Deputy Sheridan and General Counsel Haim to ensure that the data meets Personal Health Information

¹³ Sheridan testified that Kiely has authority to recommend that the department begin collecting data that it is not legally required to collect but did not offer an example in which he had ever exercised it.

(PHI) requirements. He shares the data once he receives permission from his superiors and the legal department.

DDC Kiely makes recommendations to Farrell about purchases for his unit, and Farrell relies on his recommendations. Kiely has also requested quotes from equipment suppliers. For example, he recommended the purchase of CFD L 10 battery replacements and followed up with the vendor when they were not shipped when anticipated.

DDC Kiely helps the department select vendors for the purchase of new hardware and software for the department. He makes recommendations on what hardware and software the department should select based on feedback he receives from the field and the technological limitations of the device in question. He also leads the discussion that takes place among First Deputy Sheridan, the MARC Division, Chief Hernandez, Chief Stinnet, and the Office of Budget and Management on these matters. First Deputy Sheridan testified that in these discussions she relies heavily on DCC Kiely's recommendations. The Commissioner makes the final decision on the selection of hardware or software.

For example, DDC Kiely served on a committee of 10 individuals established by the finance department to help compile a list of vendors for the purchase of cardiac monitors for the finance department's consideration. The committee included First Deputy Commissioner Sheridan, chiefs, fire department personnel and non-fire department personnel/civilians, and a paramedic in charge, Steven Baranowski, who is a bargaining unit member. The finance department narrowed down the list of vendors who would perform a product demonstration. After the product demonstrations, Kiely served on the selection committee to choose the cardiac monitors. There were approximately 5 or 6 voting members on the committee including a district chief, another DDC, a paramedic in charge, and Director Farrell. First Deputy Sheridan sat on the committee but was not a voting member. Both DDC Kiely and the paramedic in charge were voting members. DDC Kiely testified that he did not know how others on the committee voted. First Deputy Sheridan testified that DDC Kiely was integral to the discussions regarding the purchase of new cardiac monitors for the department, which cost almost \$11 million.

DDC Kiely also compiled a list of potential vendors for the purchase of new tablets. Chief Hernandez and Chief Stinnet in EMS Operations likewise participated in identifying products to test, as did two or three members within the Bureau of Logistics. In deciding which devices to trial, DDC Kiely considered the cost of the item and functionality. Farrell testified that

the department plans to seek Kiely's opinion on the functionality of potential replacement tablets because he has years of experience with tablets.

When the department trials new tablets, DDC Kiely coordinates their field testing, and obtains feedback about their performance from staff. DDC Kiely compiles the feedback, makes a recommendation of the preferred device or hardware based on the feedback and his own assessments, and sends it to procurement, to the MARC Division, and the first deputy. On one occasion, DDC Kiely recommended a Panasonic tablet, and his recommendation was rejected because the tablet was too expensive.

DDC Kiely does not have authority to set the budget for the MRU and has no role with respect to the budget. However, Sheridan testified that DDC Kiely recommended that the department abandon its existing software vendor for the tablets, SafetyPAD, after it was acquired by another company EOS because EOS planned to increase the price of the software and could not provide the department with all the features it required. DDC Kiely testified that the recommendation to abandon SafetyPAD was made jointly by him and Director Farrell and that they made this recommendation because EOS informed the department that it planned to charge the department more money for the same service. The department accepted their recommendation to cease its business with EOS.

When the department found two alternative vendors, DDC Kiely listed their pros and cons. The department field tested the software in the same manner as it field-tests proposed hardware. The department then chose its new vendor through a selection committee. First Deputy Sheridan testified that the selection committee relied heavily on DDC Kiely's analysis and recommendations in choosing a new vendor. However, she could not recall whether DDC Kiely made a recommendation to select ImageTrend, the vendor ultimately chosen by the Department.

Kiely attends the quarterly meetings of the finance committee for EMS services, which reviews reports submitted by the billing company contracted by the City. The billing company reviews the department's patient care reports and submits them to the appropriate payment entity, which could include Medicare, Medicaid, or private insurance. If the billing vendor receives feedback from a payment entity that an ambulance transportation was not medically necessary, it transmits the information to DDC Kiely and raises the issues in quarterly meetings with the Finance Department. DDC Kiely recommends changes to improve patient care documentation to ensure that the documentation complies with all medical and legal requirements, allowing the

department to be paid for the services it provides. DDC Kiely implements the changes in the patient care report system.

Kiely helped develop the order pertaining to the Xplore Electronic Patient Care Reporting Tablet, applicable to ambulance companies, by adding the information to the order related to the tablet. Director Farrell added portions related to compliance.

DDC Kiely flags issues for Farrell's attention when there are issues with the tablet information. For example, the new NEMESIS information fields required the input of a date of birth, name, and address, which may not always be available to the user who is providing care. This issue was addressed in a data call.

First Deputy Sheridan testified that DDC Kiely's most important functions are to ensure that the department's ambulance crews and fire companies are able to document their patient care reports clearly and concisely and to ensure that the data the department collects is shared with the appropriate entities.

7. Company Officer Issue

Within the Employer's fire department, a fire company refers to the personnel that is assigned to a truck, an engine, or an ambulance. A company officer, on the fire side of the department, is the lieutenant or captain on the truck, engine, or apparatus who leads the group and oversees them. On the EMS side of the department, the term company officer refers to paramedic in charge and ambulance commander.

The Employer considers the DDCs chief officers rather than company officers. On the fire side of the department, the department uses the term chief officer to refer to battalion chiefs, DDCs, DCs, and assistant deputy fire commissioner. On the EMS side of the department, the department uses the term chief officer to refer to paramedic field chief, assistant deputy chief paramedic, district chief, and assistant deputy fire commissioner. The Employer does not consider the DDCs to be company officers because they are not assigned to a truck, an engine, or an ambulance. Rather, they drive a buggy and oversee the battalion chiefs, whom the department also does not consider to be company officers. Both parties' witnesses testified that when they served as company officers, they held the rank of either lieutenant or captain.

Through the chain of command, DDCs are responsible for multiple companies or apparatus on a shift. They are responsible for all the multiple fire stations within their district. The FSR DDCs are responsible for the shift when there is no higher ranked officer on duty. However, the

DDCs do not act down into the ranks of those who serve as company officers, by the Employer's definition. If a company officer is unexpectedly absent, the department will rehire another company officer, typically a captain or lieutenant, to take over that role or will have a firefighter or fire paramedic act up into the role, if they satisfy the minimum contractual requirements.

On the scene of an incident, the company officer directs the firefighters, ensures that a water source is secured, has authority to escalate the alarm, and relays necessary information to the incident commander. At the fire house, the company officer is responsible for conducting roll call, completing company drills, holding company school, doing pre-fire planning, and conveying what he expects of his subordinates that day. The company officer on an ambulance oversees the care of the patient, ensures that the members of the company are acting safely and appropriately, and that they complete appropriate documentation.

Within the department, one company officer may be in charge of multiple companies. For example, if there are two companies on a scene, the highest-ranking company officer will be in charge of the scene. If a company officer is at a double house, which includes an engine company and a truck company, the company officer is responsible for multiple companies including an engine and a truck. In such circumstances, the highest-ranking company officer, a captain, is in charge of the firehouse. ADFC Walker testified that a company officer may also be responsible for an entire shift. There are no circumstances where one company officer is in charge of multiple fire houses.

The Employer recently issued an order to establish the issuance of the G1 Face Piece Air Purifying Respirator to Fire Suppression and Rescue companies. Section IV of the order states that "the following companies will be assigned the respirators:" and it lists "deputy district chiefs (operations)" as companies that will receive the G1 respirator in addition to engine, truck, tower and squad companies, hazardous incident teams, battalion chiefs, and other companies as determined by the fire commissioner.

The Operations Orders entitled "Chief Officer Notification and Response to On-Scene Times Greater Than One Hour" and "Deputy District Chief Fire Death Report 11.202 and Battalion Chief Potential Fire Death Report 11. 201" identify DDCs as chief officers.

The parties' most recent collective bargaining agreement, executed on September 18, 2020, before the amendments to Section 3(r)(1) of the Act became effective, states that for purposes of Daley day exchanges, company officers are captains and lieutenants. For purposes of tour-of-duty

exchanges, company officers are captains, lieutenants, paramedics-in-charge, and ambulance commanders.

II. DISCUSSION AND ANALYSIS

1. Company Officer Issue

The Deputy District Chiefs are appropriately excluded from the unit because they are above the rank of the highest company officer. This conclusion finds support in the plain language of the 2022 amendments to Section 3(r)(1) of the Act, case law describing the function of company officers, and legislative history.

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)(1) of the Act sets forth the test for supervisory exclusion in non-peace-officer units, discussed more fully in the next section. 5 ILCS 315/3(r)(1). The second paragraph of Section 3(r)(1) of the Act was recently amended by Public Act 102–686 and became effective on June 1, 2022. It states the following, with the relevant changes noted with strike throughs and underlines: “Notwithstanding the provisions of the preceding paragraph, in determining supervisory status in fire fighter employment, no fire fighter shall be excluded as a supervisor who has established representation rights under Section 9 of this Act. Further, in ~~new~~ fire fighter units, employees shall consist of fire fighters of the **highest** rank of company officer and below. **A company officer may be responsible for multiple companies or apparatus on a shift, multiple stations, or an entire shift. There may be more than one company officer per shift.** If a company officer otherwise qualifies as a supervisor under the preceding paragraph, however, he or she shall not be included in the fire fighter unit. If there is no rank between that of chief and the highest company officer, the employer may designate a position on each shift as a Shift Commander, and the persons occupying those positions shall be supervisors.¹⁴ All other ranks above that of the **highest** company officer shall be supervisors.” Id.

¹⁴ This sentence of Section 3(r)(1) is not implicated in this case because there is least one rank, and in some cases multiple ranks, between each DDC and the fire commissioner.

In short, if an individual in firefighter employment is above the highest rank of company officer, that individual is a supervisor and is excluded from the bargaining unit. An individual who is a company officer may still be excluded as a supervisor if the four-part test for supervisory authority is satisfied or if there is no rank between him/her and the fire chief, and s/he is designated by the employer as a shift commander.

“The primary goal of statutory construction is to “ascertain and give effect to the drafters’ intention, and the most reliable indicator of intent is the language used, which must be given its plain and ordinary meaning.” People v. Smith, 236 Ill. 2d 162, 167 (2010); Village of Homewood, 25 PERI ¶ 137 (IL LRB-SP 2009) (considering ordinary meaning of the term “rank”).

Here, the plain meaning of the statutory language shows that the amendment made four main modifications. The meaning of the first three are not disputed by the parties: (1) the language became applicable to all firefighter units, not just new units; (2) the language clarified that such bargaining units would consist of firefighters in the highest rank of company officer and below; (3) the legislature specified that there could be more than one company officer per shift.

The parties dispute the meaning of the fourth change, which stated that “a company officer may be responsible for multiple companies or apparatus on a shift, multiple stations, or an entire shift.” 5 ILCS 315/3(r)(1). The Union primarily argues that this change redefines the term company officer, rendering employees who perform such listed functions to qualify as such. The Employer contends that this language did not eliminate the common understanding of the term company officer. For the reasons set forth below, the Employer’s argument is more persuasive.

A review of the amendment and its legislative history shows that the legislature intended primarily to clarify the term “company officer” rather than overrule existing precedent, as outlined below.

First, a plain reading of the amendment shows that the list of responsibilities that a company officer “may” have, was not intended to set forth the defining features of company officer work. “Legislative use of the word ‘may’ is generally regarded as indicating a permissive or directory reading, whereas use of the word ‘shall’ is generally considered to express a mandatory reading.” People v. Reed, 177 Ill. 2d 389, 393 (1997). Furthermore, where the legislature identifies functions as definitional for employees unified by common responsibilities, it does so in definite terms. See 5 ILCS 315/3(p), (d), & (m) (defining security employees, craft employees, and professional employees, respectively). Thus, when the legislature stated that a company officer

“may be responsible for multiple companies or apparatus on a shift, multiple stations, or an entire shift” it reasonably meant to convey that these were potential functions of a company officer, rather than proof of company officer status, standing alone.

In turn, the plain language of the amendment preserved the existing definitions of “companies” and “company officer” established by case law and Board precedent. Those authorities hold that a company is the personnel assigned to a vehicle and that the company officer is the individual immediately in charge of the crew: In City of Freeport, the Illinois Supreme court stated that “[a] ‘company’ refers to the personnel assigned to a vehicle, generally three persons to the engine and two to the ambulance” and that “[a] ‘company officer’ is the person in charge of the people on the vehicle.” City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 522 (1990); see also Vill. of Elk Grove Vill. v. Illinois State Lab. Rels. Bd., 245 Ill. App. 3d 109, 111 (2nd Dist. 1993) (company officers are “in charge of and generally held accountable for the actions and conduct of the fire fighters in their company”). In City of Evanston, the Board noted that “[a] company officer is an employee who has the immediate authority over a group of fire fighters assigned to a particular piece of equipment.” City of Evanston, 5 PERI ¶ 2033 fn. 6 (IL SLRB 1989).

The Board’s 2009 decision in Village of Palatine, is consistent with these earlier cases in that it rested on a similar definition of company officer, while also implicitly acknowledging some broader responsibilities of the particular employees at issue in that case. There, it was undisputed that lieutenants were company officers, and the question presented was whether captains could also qualify as such. The Board held that the case turned on the captains’ function in the workplace and concluded that the captains were company officers where they spent approximately half their work time functioning as company officers “no differently than the lieutenants.” Village of Palatine, 25 PERI ¶ 114 (IL LRB-SP 2009). A review of the facts shows that the function underlying this determination was the employees’ immediate responsibility for the personnel of one or more crews (engines and ambulances) either by virtue of being “in charge of” a station that was comprised of those crews or by being “in charge of” the crew on a particular piece of equipment at an incident.¹⁵

¹⁵As summarized by the ALJ in that case, “a company officer may either be in charge of a particular station on a particular shift or he may be in charge of a particular crew on a particular piece of equipment at an incident.” Village of Palatine, 25 PERI ¶ 114 (IL LRB-SP ALJ 2009).

The legislative discussion of the 2022 amendment confirms this interpretation of the term “company officer,” discussed above, and shows that the amendment was intended more to clarify than to reject prior, common understandings. Representative Lawrence Walsh stated:

“By adding this language that the company officer may be responsible for the things mentioned above, it basically is changing the definition of what a company officer is and clarifying that and going along with the ruling from the Illinois Labor Relations Board.” Illinois House Transcript, 2021 Reg. Sess. No. 19, at p. 53-54.

Walsh’s reference to “changing...and clarifying” indicates an intent to ensure that individuals do not forfeit company-officer status merely because their immediate crew-command duties sometimes expand to more than one apparatus or station, or even to a whole shift. His reiteration of the word “may” confirms that these listed responsibilities are merely illustrative. See discussion supra. Finally, Walsh’s reference to “going along with a ruling from” the Board confirms this view because it implicitly references the Board’s decision in Palatine, where captains were still company officers, despite having broader responsibilities, when they spent approximately 50% of their worktime performing the same immediate crew-oversight as lieutenants. Village of Palatine, 25 PERI ¶ 114.

Applying the definition discussed above, the DDCs are above the highest rank of company officer. The highest rank immediately responsible for crew on the fire side of the department is captain. The highest rank that is immediately responsible for crew on the EMS side of the department is ambulance commander. The highest rank immediately responsible for crew at a fire house is captain. The DDCs on the fire side of the department are two ranks above captain¹⁶ and are therefore above the highest rank of company officer. Likewise, the DDC on the EMS side of the department is one rank above ambulance commander. Moreover, neither DDCs on the fire side nor the EMS side act down into the ranks that serve as company officers. Furthermore, whenever DDCs attend a fire incident there is always a lower-ranking individual who has immediate responsibility for the crew and remains the company officer. The DDCs never act down to perform this function. Similarly, the DDCs’ responsibilities over crew at a station are likewise several layers removed. They oversee the crew at the stations only indirectly through the battalion chiefs and the captains. Cf. Village of Palatine, 25 PERI ¶ 114.

¹⁶ The rank of battalion chief is the intervening rank between captain and DDC.

The interpretation of the term “company officer” applied internally by the Employer and the petitioned-for DDCs, while not determinative, corroborates the definition applied above particularly where it is long-held and not a post-petition change. Cf. Village of Palatine, 25 PERI ¶ 114 (rejecting employer’s claims that determination of company officer status must be made in accordance with employer’s most recent revision of rules, “finding them completely irrelevant, especially given the circumstances surrounding their enactment”). None of the DDCs who testified considered themselves to be company officers but noted that they served as such when they held lower ranks. The Employer’s witnesses likewise testified that the DDCs are chief officers not company officers. The Employer’s internal documentation honors this distinction. The Employer’s operations orders expressly identify DDCs as chief officers when outlining their incident response obligations and their responsibilities with respect to fire death reports, rather than as company officers.

The document identified by the Union, mandating the distribution of respirators to a list of “companies” including DDCs, does not support the Union’s claim that the Employer considers DDCs to be company officers. Initially, the document is an equipment allocation list that was not intended to define broader duties related to fire suppression or incident response. It uses the word “companies” loosely and also fails to explicitly state that DDCs are company officers. By contrast, the operations orders that are more closely tied to incident response activities expressly identify the DDCs as chief officers. These include the operations orders entitled “Chief Officer Notification and Response to On-Scene Times Greater Than One Hour” and Deputy District Chief Fire Death Report 11.202 and Battalion Chief Potential Fire Death Report 11. 201.”

The Union appears to suggest that the definition of company officer, applied above, makes the amendment meaningless because individuals immediately responsible for crew, would never have the broader responsibilities listed in the amendment. However, even within the Employer’s large department, there are cases where one company officer exercises some such broader responsibilities. For example, in the Employer’s fire department, a company officer may be responsible for multiple companies when there are two companies on a scene or when a company officer is assigned to a double house, which includes both a truck and an engine company. In such cases, the highest-ranking company officer is responsible not just for his own company but for others, even though each company on an apparatus has its own company officer. ADFC Walker testified that a company officer may likewise be responsible for an entire shift of employees at the

firehouse. Although there is never a circumstance within the Chicago Fire Department where a company officer (an individual assigned to an apparatus and responsible for the crew) is responsible for multiple stations, this type of responsibility might occur in a smaller fire department or in cases where a higher-ranking member of a fire department acts down as a company officer for a significant portion of his work time.

Although the Union disputes the construction of the statute applied here, it has not offered a workable definition of “company officer” that would both apply consistently to all the DDCs but would not also include higher ranking officers, whom the Union claims are not company officers. The Union asserts that the DDCs are the last rank of the department to work 24-hours-on and 48-hours-off and are responsible for the shift when there is no higher ranked member on duty. However, the six specialty DDCs who work 40-hours a week are not responsible for their shifts because higher-ranking members of the Department are on duty at the same time. Furthermore, although the Union contends that the DDCs are broadly responsible for multiple companies or apparatus on a shift and multiple stations, that is also true of officers who are higher ranked than them.

The Union cites to Village of Palatine for the proposition that the DDCs should be considered company officers because they spend most of their work time functioning in that capacity. However, the Union sidesteps the fact that petitioned-for captains in Palatine had have immediate responsibility for crew on apparatuses either during an incident or at the station whereas the DDCs do not. Village of Palatine, 25 PERI ¶ 114.

Finally, there is no merit to the Union’s contention that, even if the DDCs are above the highest rank of company officer, the four-part test for supervisory exclusion controls the outcome of the case. On its face, the Act provides three alternative avenues for supervisory exclusion in firefighter employment: (1) the four-part supervisor test; (2) status in a rank above that of highest company officer; and (3) designation as a Shift Commander, if there is no rank between that of chief and highest company officers. 5 ILCS 315/3(r)(1). The Union points to the first sentence of the second paragraph of Section 3(r)(1) of the Act to support the proposition that the four-part test for supervisory status controls irrespective of rank. However, that language in fact supports the opposite conclusion. It provides that “notwithstanding the provisions of the preceding paragraph” setting forth the four-part test, in fire fighter units, “employees shall consist of fire fighter of the highest rank of company officer and below.” The word “notwithstanding” means

“despite,” or “nevertheless,” which is used to indicate that irrespective of the four-part test, the following rules pertaining to an individual’s status, can justify exclusion standing alone. Accordingly, the DDCs are supervisors without application of the four-part supervisor test where they hold a rank higher than that of highest company officer, as found in this case.

The Union correctly observes that the four-part supervisor test is the applicable test to exclude company officers, but that is immaterial here, where the DDCs are not company officers and are instead are within a “rank[] above that of the highest company officer” and under the Act therefore “shall be supervisors.” 5 ILCS 315/3(r)(1).

Thus, the DDCs are supervisors because they are above the rank of highest company officer.

2. Four-Part Supervisor Test

Should the Board reverse my primary determination, above, I would find that none of the Deputy District Chiefs satisfy the four-part test for supervisory authority.

i. Fire Suppression and Rescue DDCs

The DDCs within the Fire Suppression and Rescue Division are not supervisory under the four-part test set forth in Section 3(r) of the Act.

The first paragraph of Section 3(r) 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, 135 Ill. 2d at 505-6.

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); State of Illinois, Department of Central Management Services, 24 PERI ¶ 112 (IL LRB-SP 2008). The employer must present specific evidence as to each petitioned-for employee and connect that

evidence to the controlling law. Sec'y of State v. Illinois Labor Relations Bd., State Panel, 2012 IL App (4th) 111075, ¶ 55. In other words, the employer needs to develop arguments as to each specific employee that synthesize, analyze, and explain to the finder of fact how the facts show the petitioned-for employees are supervisory. Sec'y of State, 2012 IL App (4th) 111075 ¶ 57.

In addition, the Board generally requires parties to present specific examples of the alleged authority to prove the exclusion. State of Ill., Dep't of Cent. Mgmt. Servs. (PSA Option 1), 25 PERI ¶ 184 (IL LRB-SP 2009); State of Ill., Dep't of Cent. Mgmt. Servs. (Dep't of Public Health), 24 PERI ¶ 112; Cnty. of Union, 20 PERI ¶ 9 n. 2 (IL LRB-SP 2003).

However, there is some dispute among the districts of the Illinois Appellate Court on whether specific examples of the exercise of supervisory authority are required as proof. For instance, the Fifth District has held that conferring authority to perform supervisory indicia is enough to satisfy the requirements of the Act even if there is no evidence that the individual has performed that duty in a manner that impacts employees' terms and conditions of employment. Village of Maryville v. ILRB, 402 Ill. App. 3d 369, 374-5 (5th Dist. 2010); see also Illinois Department of Central Management Services v. ILRB. State Panel, 2011 IL App 4th 090966 (Fourth District opinion discussing authority to perform supervisory tasks even in apparent absence of concrete examples of performance); but see Illinois Department of Central Management Services v. ILRB. State Panel, 382 Ill. App. 3d 208, 228-29 (4th Dist. 2008) (finding that, although job description purported to give authority to alleged supervisors, these alleged supervisors did not "in practice" have significant discretionary authority to affect subordinates' employment). The First and Third districts have focused on specific examples of authority as exercised in analyzing the supervisory test and have found that rules and regulations or job descriptions, while important, are not alone sufficient to meet the burden of proof. See Village of Broadview v. ILRB, 402 Ill. App. 3d 503, 508-9 (1st Dist. 2010); cf. City of Peru v. ISLRB, 167 Ill. App. 3d 284, 291 (3rd Dist. 1988).

a) Principal work

The principal work of the DDCs in Fire Suppression and Rescue is obviously and visibly different from that of their subordinates, the battalion chiefs.

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.

The DDCs’ principal functions are administrative, to ensure that the battalions under their command are operating in accordance with department protocols, whereas the battalion chief’s duties are principally directed towards fire response. The DDCs have administrative oversight of five to six battalions, comprising between 15 and 24 firehouses, and exclusive responsibility for these battalions when the DC, who works a 40-hour week, is not present. By contrast, the battalion chiefs are responsible for only one battalion each. And although both the DDCs and the battalion chiefs complete reports, it is the DDCs’ sole responsibility to compile information from all the battalions under their authority to create the AM report, a comprehensive summary of shift events for their respective district, for submission to all exempt ranks. The DDCs’ greater and primary, administrative responsibility is also reflected in their earlier shift arrival time, 5:30 am instead of 6:30 am for the battalion chiefs, and their obligation to hold daily battalion chief meetings. Village of Roselle (Fire Department), 41 PERI ¶ 112 (IL LRB-SP 2025) (considering responsibility for shift and differences in start times when finding principal duties to be administrative duties).

The DDCs’ incident response duties, narrower in some respects and geared toward oversight of more weighty incidents, underscore the finding that their principal work is obviously and visibly different from that of the battalion chiefs. The Board in Roselle relied upon this factor in reaching its conclusion that the petitioned-for battalion chiefs satisfied the principal work requirement. Village of Roselle (Fire Department), 41 PERI ¶ 112. There, the petitioned-for battalion chiefs could exercise discretion in deciding whether to respond to ambulance calls whereas their subordinate lieutenants did not. Id. In addition, while the lieutenants could serve as incident commanders they would relinquish that position upon the arrival of the battalion chiefs. Id.

Similarly, here, the DDCs incident response functions are limited and frequently discretionary in that they have mandatory response obligations only with respect to expanded fire

responses and larger scale incidents whereas the battalion chiefs must respond to all fire incidents.¹⁷ As to the lower-level incidents, the DDCs follow the incident response remotely, by radio, and may elect to respond if something goes awry. Although the battalion chiefs, here, also have discretion in responding to some incidents, such as ambulance assists, this does not render the principal work of the DDCs and the battalion chiefs substantially similar where the battalion chiefs' fire response obligations are so clearly different in scope. In addition, while the battalion chiefs in this case routinely act as incident commanders, they, like the lieutenants at issue in Roselle, relinquish that authority when a DDC is dispatched to the scene or when a DDC self-dispatches and exercises discretion to take over.

Finally, the DDCs' authority on certain personnel and administrative matters highlights the administrative aspect of the DDCs' functions and underscores the differences between their principal work and that of the battalion chiefs. The DDCs have authority to approve their subordinates' Daley day exchanges whereas the battalion chiefs have no role in approving such exchanges. In addition, the DDCs have authority to immediately transfer a firefighter's work location as a means of resolving a violent personnel conflict whereas a battalion chief can merely temporarily reassign subordinate staff to balance the workload. In addition, a DDC can permanently transfer a firefighter to serve as his personal buggy driver whereas a battalion chief does not have a buggy driver at all.

Contrary to the Union's suggestion, Operations Order 17-010 does not support the claim that the principal work of the battalion chiefs and the DDCs is essentially the same. The purpose of that order is to list fire department activities that must be reported in the tour of duty including roll calls, drills, inspections, fire related injuries/deaths. It does not purport to describe how the DDC and battalion chiefs perform their respective incident response obligations or administrative duties discussed above. Indeed, the cited order illustrates the distinction between the two titles' duties, with an emphasis on the DDCs' overarching administrative functions, because it requires the DDCs to instruct the battalion chiefs on the contents of the order and gives the DDCs ultimate responsibility to compile information into a more comprehensive report for superiors.

In sum, the DDCs satisfy the principal work requirement.

¹⁷ They need not respond to ambulance assists or gas inspections.

b) Supervisory Indicia

i) Discipline

The DDCs in fire suppression and rescue exercise authority to discipline with 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 (IL SLRB 2003). 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. Metropolitan Alliance of Police v. Illinois Labor Relations Board, 362 Ill. App. 3d 469, 478 (2nd Dist. 2005); Village of Hinsdale, 22 PERI ¶ 176 (IL LRB-SP 2006); 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 (IL SLRB 2000).

Here, the DDCs in fire suppression have authority to issue documented verbal counselings. Furthermore, they exercise independent judgment in doing so because they determine whether the conduct warrants such a counseling or whether it represents a more severe and unremedied pattern of misconduct that warrants initiation of an Investigatory Review, the process used to determine whether higher-level discipline should issue. Furthermore, the preponderance of the evidence demonstrates that the documented verbal counseling can serve as the basis for higher-level disciplinary action through the Investigatory Review process. When a DDC initiates an IR, the DDC completes a form that explains the background of the incident and notes whether the DDC has previously counseled that employee for the same issue; he submits that form to ADFC Walker who determines whether the charges are founded, and the labor division determines whether a more severe sanction should issue for repeated misconduct.

The Union relies on two cases for the proposition that the DDCs do not discipline with independent judgment, but both cases are non-precedential and are also distinguishable. In Greater Round Lake Fire Protection District, the petitioned for lieutenants lacked independent judgment

in making the decision to issue reprimands unilaterally and their recommendations were made only after discussion with, and approval of, a superior. Greater Round Lake Fire Protection District, 24 PERI ¶ 51 (IL LRB-SP ALJ 2008). In Village of North Riverside, there was no evidence that the oral reprimands issued by the petitioned-for employees were recorded, used as the basis of subsequent discipline, or had any impact on the subordinates' terms and conditions of employment. Vill. of North Riverside, 19 PERI ¶ 59 (IL LRB-SP ALJ 2003). Here, in contrast to the employees at issue in the cited cases, the DDCs make independent decisions to issue counselings, they document them, and they consider them in determining whether to initiate the IR process that can lead to more severe discipline.

Contrary to the Union's suggestion, the DDCs' disciplinary authority remains supervisory even though some members of the historical bargaining unit have similar authority. The Act contemplates that the supervisory authority of ranks included in historical units might overlap with supervisory authority of titles that do not have historical protections, such as the DDCs here. This is because fire fighters who have established historical representation rights are appropriately included in bargaining units "[n]otwithstanding the provisions" of the four-part supervisor test set forth in the first paragraph of Section 3(r) of the Act. 5 ILCS 315/3(r) & 9(b). Accordingly, the fact that the DDCs possess some of the same disciplinary authority as employees within the historical unit does not preclude a finding that the DDCs' authority is supervisory when examined under the four-part test and applicable case law. Furthermore, while the Board may closely scrutinize and reject an employer's attempts to remove historical protections through reclassification of positions, there is no claim of such conduct occurring here. Cf. City of Evanston, 5 PERI ¶ 2033 aff'd City of Evanston v. State Labor Rel. Bd., 227 Ill. App. 3d 955 (1st Dist. 1992).

ii) Transfer

The Fire Suppression and Rescue DDCs do not have authority to transfer subordinates, but the authority addressed herein is considered under the indicium of direction, to the extent that it may be relevant. The authority to transfer subordinates within the meaning of the Act involves the authority to move employees from one department to another department. Village of Bolingbrook, 19 PERI ¶ 125 n. 13; Circuit Clerk of Champaign County, 17 PERI ¶ 2032 (IL SLRB 2001). Here, the authority described by the DDCs does not constitute authority to permanently

move employees between departments, divisions, or to otherwise change their job classifications. While a DDC can assign a member to serve as his buggy driver, this is more akin to a temporary, albeit sometimes long-term, reassignment indicative of direction because the member's department does not change. Similarly, the DDC's authority to temporarily move a firefighter to another firehouse to address a violent altercation is more appropriately addressed under direction as this move is likewise temporary. State of Ill. Dep't of Cent. Mgmt. Servs., 10 PERI ¶ 2037 (IL SLRB 1994) (temporary detail is not a transfer).

iii) Direction

The Fire Suppression and Rescue DDCs direct their subordinates with independent judgment when they assign them certain types of work and temporarily reassign their work location, but they do not exercise the supervisory authority to direct their subordinates in other respects.

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; County of Cook, 16 PERI ¶ 3009 (IL LLRB 1999); County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022 (IL LLRB 1999); 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), 382 Ill. App. 3d at 224 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. In other words, the functions of direction listed above do not constitute supervisory authority to direct if the petitioned-for employees lack significant discretionary authority to affect their subordinates' employment.

Ill. Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 225; County of Lake, 16 PERI ¶ 2036.

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 and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022; State of Illinois (Department of Central Management Services), 11 PERI ¶ 2021 (IL SLRB 1995); cf. Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123 (IL LRB-SP 2003). 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.

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. County of Cook and Sheriff of Cook County (Department of Corrections), 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 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.

The discussion of the Fire Suppression DDCs' authority to direct will focus on the arguments presented by the Employer on brief, which include functions of reviewing their

subordinates' reports, making assignments and/or transfers, and taking command of the work at a fire scene, and approving shift trades or Daley Day exchanges.¹⁸ Duties and functions applicable solely to DDCs in other divisions will be addressed separately.

The DDCs in Fire Suppression and Rescue do not review their battalion chiefs' reports with independent judgment. The preponderance of the evidence shows that their review of these reports is routine. DDC Giordano testified that the DDC simply ensures that all forms are submitted and that the forms are complete before forwarding them further up the chain of command. However, checking whether standardized forms have been completed is a routine and clerical function that does not require a choice between two or more significant courses of action. State of Illinois, Department of Central Management Services (Department of Professional Regulation), 11 PERI ¶ 2029 (IL SLRB 1995); see also City of Chicago, 10 PERI ¶ 3017. Although the DDC may elect to either require the battalion chief to fix an identified issue on a form or simply forward it up the chain of command, this determination rests on the routine factor of whether the form must be submitted immediately.

Testimony offered by ADFC Walker, that the DDC must also ensure that the battalion chief is doing a "correct job according to the [Employer's] policies and procedures," does not warrant a different conclusion. As indicated by Walker, the completion of these forms and the performance of functions described therein are governed by the Employer's detailed policies, and it is not clear that the DDCs exercise any discretion in determining whether the battalion chiefs' have conformed to them. Village of Roselle (Fire Department), 41 PERI ¶ 112 (where battalion chiefs' oversight over subordinates was governed by employer's procedures, it did not require exercise of independent judgment absent evidence to the contrary).

There is insufficient evidence that the DDCs exercise independent judgment when assigning a member to act up on an apparatus into a vacancy created by illness or injury so that a company does not go out of service. Where decisions are based on seniority and other pre-determined requirements, they do not require the consistent exercise of independent judgment. Vill. of Broadview v. Illinois Lab. Rels. Bd., 402 Ill. App. 3d at 512. Here, the collective

¹⁸ The Employer additionally contends that, in the event the DCCs' documented counselings are not deemed evidence of disciplinary authority, they should qualify as evidence of the authority to direct. However, as the counselings were found herein to demonstrate disciplinary authority, they are not addressed under direction.

bargaining agreement requires the DDC to assign the act-up duty based on seniority, which is a routine determination. Notably, the DDC also lacks the authority to determine whether the vacancy will be filled, as that is a determination made by the Manpower Division.

The DDCs do not direct their subordinate battalion chiefs with independent judgment in the interest of the employer at the fire scene or when electing to take command of the scene. While the DDCs may exercise discretion at the fire scene, they do so using their superior, skill, experience and expertise acquired as a firefighter to make tactical choices in a manner that does not require the use of independent judgment “in the interest of the employer.” See infra. Similarly, the DDCs’ determinations about whether they should self-dispatch to the fire scene when monitoring fire suppression activities over the radio, or whether to take over command from a battalion chief upon arrival at the fire, are likewise tactical determinations, as underscored by ADFC Walker’s testimony. He explained that if a DDC hears on the radio that an incident is not “going right” and “its abundant that we want to...change our tactics go from offense to defense,” the DDC will give instructions to the battalion chief to address the issue, thereby ensuring, for example, that firefighters are removed from a severely burning but vacant building. These directives are made in the immediate interests of public and firefighter safety, based on the DDCs’ superior skill and experience in firefighting, and not performed in the interest of the employer. City of Freeport, 135 Ill. 2d at 532; Village of Elk Grove Village, 245 Ill. App. 3d at 120; Vill. of Downers Grove v. Illinois State Lab. Rels. Bd., 221 Ill. App. 3d 47, 55 (2d Dist. 1991).

There is insufficient evidence that the DDCs direct with independent judgment when they assign trainings to battalion chiefs as the record does not reveal how the DDCs make determinations on these issues.

There is insufficient evidence that the DDCs direct with independent judgment when they assign battalion chiefs to cover a second battalion’s area when that battalion is out of service for maintenance or performing other functions. The evidence does not reveal the basis for the DDCs’ decision-making authority on this matter, and there is no indication that the DDCs consider factors indicative of the exercise of independent judgment, such as a battalion chief’s skills and abilities when selecting him (and his subordinates), to provide coverage of a second area. Accordingly, based on this record, it is equally likely that the DDCs select the battalion chief based on routine factors, such as balancing the workload or physical proximity to the coverage area, which do not require the consistent exercise of independent judgment. Chief Judge of Circuit Court of Cook

County, 153 Ill. 2d at 518 and 522; Serv. Employees Int'l Union, Local 73, 2013 IL App (1st) 120279, ¶ 52.

The DDCs do not exercise independent judgment when determining whether to grant Daley Day exchanges, wherein one member of the department exchanges a day off with another member. In practice, such exchanges appear to be routinely granted except under narrow and well-defined circumstances where the requester has exceeded the allowed number of trades, when the trading partner is unavailable to work, or if the requestor already has a trade pending. Such determinations are clear-cut and do not require the consistent exercise of independent judgment.

There is insufficient evidence that the DDCs exercise independent judgment in granting or denying shift trades. Although the contract grants the DDCs discretion to deny shift trades, the record does not outline how the DDCs make these determinations. Nor does it reveal whether the DDCs' discretion, in practice, is any broader than the well-cabined decision-making exercised with respect to Daley Day exchanges, discussed above.

The DDCs do not exercise independent judgment in the interest of the employer when selecting trainings for their subordinates. Training can be evidence of the supervisory authority to direct if the supervisor is choosing between discipline or training. State of Illinois, Department of Central Management Services (Department of Human Services), 26 PERI ¶ 116 (IL LRB-SP 2010). Here, the training ordered by DDCs applies broadly to large groups of subordinates and does not represent a choice between discipline and training. Moreover, their selection of training derives from their greater skill, experience, and technical expertise as firefighters and is directed toward maintaining professional norms and standards of firefighting rather than toward effectuating the employer's policies. City of Freeport, 135 Ill. 2d at 532.

However, the DDCs direct with independent judgment when they assign firefighters to serve as their buggy drivers. The DDCs have unfettered discretion to select an individual to serve as the driver of their buggy, an SUV. This reassignment changes the selected employee's day-to-day duties from fire suppression to largely administrative duties akin to those performed by a personal assistant. The DDCs' decision-making exemplifies the greatest extent of independent judgment because the selection may be based on the DDCs' personal preference.

The DDCs also direct with independent judgment when temporarily reassigning a firefighter to a different firehouse after an altercation, to separate the firefighters involved, as the evaluation of interpersonal exchanges and the need for separation requires subjective assessments.

While this change may not substantively impact the day-to-day work performed by the firefighter who has been moved, it is reasonably viewed as a non-disciplinary means of providing immediate feedback to a firefighter regarding his conduct at the firehouse and therefore represents direction.¹⁹ City of Geneva, 39 PERI ¶ 93 (IL LRB-SP 2023) (analyzing fine-tuning documentation as part of direction).

c) Preponderance

The FSR DDCs do not spend a preponderance of their worktime exercising supervisory authority.

To satisfy the fourth prong of the supervisor test, the Employer must demonstrate that the petitioned-for employee spends a preponderance of his 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, 85-6 (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 532. Under this test, the only consideration is the time spent exercising the authority. Vill. of Downers Grove, 221 Ill. App. 3d at 56. The employer must provide detail with respect to the amount of time the employee spends engaged in supervisory functions. Sec'y of State, 2012 IL App (4th) 111075, ¶ 113-114.

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 significance of these functions to show whether they are more important than the petitioned-for employees' non-supervisory tasks. Sec'y of State, 2012 IL App (4th) 111075, ¶ 114.

In applying these standards, the Board's recent decision in Roselle is instructive as it concerns the unit placement of battalion chiefs who, like the DDCs, perform a combination of administrative, fire suppression, and oversight duties. In Roselle, the Board affirmed the ALJ's

¹⁹ It is unnecessary to determine whether such reassignment alone is sufficient to impact employees' terms and conditions of employment where, as discussed above, the DDCs have disciplinary authority.

finding that the petitioned-for battalion chiefs did not spend a preponderance of their time exercising supervisory authority under a quantitative test, though they directed their subordinates through evaluation and when disciplining them. Village of Roselle (Fire Department), 41 PERI ¶ 112. The battalion chiefs' 24-hour-shifts included sleeping, eating, and exercising, and a considerable amount of time performing duties that did not fall within any supervisory indicia; the battalion chiefs also did not spend more than 50% of their time engaged in evaluation and discipline. Id. Key to the Board's finding on the quantitative analysis, and most applicable here, was that the battalion chiefs did not supervise through the oversight and monitoring of subordinates, which the Board affirmed was not exercised with independent judgment and/or in the interests of the employer. Id.

Turning to the qualitative analysis, the Board likewise affirmed the ALJ's conclusion that the battalion chiefs' supervisory functions of discipline and direction through evaluation, were not more significant than their non-supervisory functions related to firefighting and emergency response. Id. In most relevant part, the Board acknowledged that the battalion chiefs' principal work was administrative, rendering it obviously different from that of their subordinates, but noted that this finding did not warrant a different conclusion on the preponderance element. Id. In so holding, the Board reasoned that the employer's arguments improperly conflated the performance of administrative duties with the exercise of supervisory authority. Id.

Like the battalion chiefs in Roselle, the FRS DDCs do not spend a preponderance of their work time exercising supervisory authority under a quantitative analysis. The DDCs here similarly work a 24-hour shift, and spend significant time sleeping, eating, and performing a variety of duties including administrative work that does not fall within any indicium of supervisory authority. The DDCs' monitoring and oversight of their subordinates is likewise non-supervisory. The DDCs' assignments of buggy driver duty, reassignments of firefighters involved in altercations, and disciplinary functions, do not demonstrably consume any significant portion of their work time, let alone more time than any non-supervisory function. ADFC Walker's testimony that the DDCs spend 100% of their worktime engaged in supervisory functions is therefore not reflected by the evidence, discussed above.

The FSR DDCs also do not spend a preponderance of their work time on supervisory functions under a qualitative analysis. The DDCs' non-supervisory work related to fire suppression is the DDCs' most important function where the DDCs are responsible for serving as

incident commanders to a host of serious fire incidents and responding to lower-level events on a discretionary basis to make tactical decisions in the interests of firefighter and public safety. The fact that the principal work requirement was deemed satisfied based on the DDCs' performance of administrative functions does not warrant a different conclusion on the preponderance element where these two prongs of the test entail separate inquiries. And in this case, many of the DDCs' administrative tasks do not qualify as supervisory.²⁰ Village of Roselle (Fire Department), 41 PERI ¶ 112.

Finally, although the Employer emphasizes that the DDCs are, for several hours, the highest ranked employees on their 24-hour shift, this observation is not sufficient to satisfy the preponderance requirement. Cnty. of Vermilion v. Illinois Lab. Rels. Bd., State Panel, 344 Ill. App. 3d 1126, 1136 (4th Dist. 2003). Notably, the Board in Village of Roselle found the petitioned-for battalion chief to be public employees even though they were the highest ranked employees on their platoon shifts.²¹ Village of Roselle (Fire Department), 41 PERI ¶ 112.

ii. Special Operations DDCs

The Special Operations DDCs do not satisfy the four-part test for supervisory authority.

a) Principal Work

The DDCs in Special Operations satisfy the principal work requirement because their principal work is obviously and visibly different from that of their subordinates. Their principal work is to ensure that the apparatuses are appropriately staffed and maintained, ensure that their subordinates perform training, schedule their subordinates, research and recommend equipment for purchase, and serve as technical advisors to incident commanders on a scene in their respective specialties. The principal work of their subordinates is to man the apparatuses to which they are assigned when responding to incidents to which they are dispatched. The Special Operations DDCs, unlike their subordinates, do not ordinarily serve on those apparatuses.

b) Supervisory Indicia

i) Discipline

²⁰ The non-precedential decision cited by the Employer in support of its arguments on the preponderance prong of the test is not relied upon here where there is precedential case law directly on point.

²¹ Village of Roselle did not present the question of whether the petitioned-for employees were supervisory on the grounds that they were above the rank of the highest company officer.

The Special Operations DDCs discipline their subordinates with the requisite independent judgment because their authority is the same as that of the DDCs in Fire Suppression and Rescue. The analysis conducted above with respect to the Fire Suppression and Rescue DDCs is incorporated by reference here.

ii) Transfer/Hire

The Special Operations DDCs do not effectively recommend the transfer or hire of employees into their units.

Initially, the DDCs' authority to participate in the selection of current employees to serve in their units is not hiring because the candidates are already employed by the department. It is also not strictly a transfer as it does not involve the movement of employees from one department to another. Village of Bolingbrook, 19 PERI ¶ 125 n. 13.

Moreover, the Special Operations DDCs recommendations are neither effective nor independent. 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; County of Lake, 16 PERI ¶ 2036; see also Village of Bolingbrook, 19 PERI ¶ 125 n. 13 (addressing transfer). Furthermore, decisions reached by consensus of the petitioned-for employee and his supervisor are not supervisory within the meaning of the Act. Cnty. of Cook (Health & Hosp. Sys.), 32 PERI ¶ 55 (IL LRB-LP 2015) aff'd 2016 IL App (1st) 152770-U; County of Lake, 16 PERI ¶ 2036 (addressing promotion). However, a hiring recommendation may still be deemed independent when made by two co-equal employees who reach consensus on the recommendation, as long as the recommendation is not impacted by the influence of a supervisor. Illinois Dep't of Cent. Mgmt. Servs. (Dep't of Children and Family Servs.), 8 PERI ¶ 2037 fn. 2 (IL SLRB 1992).

Here, the DDCs do not independently or effectively recommend the transfer of employees into their units because they serve on a selection panel with their supervisor, DC Sullivan, and reach consensus on a candidate. The structure of this decision-making process renders it non-supervisory. See cases supra.

iii) Direction

Like the FSR DDCs, the Special Operations DDCs do not exercise independent judgment in the interest of the employer when overseeing their subordinates in incident response,²² reviewing their subordinates' reports, and selecting training.

Like the FSR DDCs, the Special Operations DDCs exercise independent judgment when assigning subordinates to buggy duty and temporarily detailing firefighters to another location in the event of an altercation. However, the DDCs in Special Operations do not exercise independent judgment when they assign other work to their subordinates as the Department's protocols determine the apparatus and equipment that must respond to any given type of special operations incident, significantly circumscribing the DDCs' authority to assign work.

The Special Operations DDCs do not exercise independent judgment when coordinating and scheduling training. The initial setting of the schedule is a routine task primarily focused on ensuring companies are available for training. Any subsequent modifications or cancellations are based on routine factors such as inclement weather, equipment issues, or the existence of an ongoing incident.

The Special Operations DDCs do not direct with independent judgment in connection with their recommendations for overtime. Initially, the Special Operations DDCs do not make recommendations for the use of overtime when there is a general staffing shortage as the Manpower Division is responsible for making such determinations. Although the Special Operations DDCs make recommendations for the use of overtime for special events with the exercise of independent judgment, there is insufficient evidence that their recommendations are effective, as discussed below.

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, in other words, when they have discretion to recommend or 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 (IL LRB-LP 2016); Cnty. of McHenry, 15 PERI ¶ 2014 (IL SLRB 1999); State of Ill. (Dep't

²² Unlike the FSR DDCs, the Special Operations DDCs report to the serving incident commander and act as their technical advisor on the scene. They do not appear to have authority to decide whether to take over as incident commander.

of Cent. Mgmt. Servs.), 12 PERI ¶ 2032 (IL SLRB 1996). 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 and seniority. County of Vermilion, 18 PERI ¶ 2050 (IL LRB-SP 2002).

Here, the Special Operations DDCs exercise independent judgment in making recommendations for the use of overtime for special events because they make a threshold determination that existing staffing is insufficient and identify the number of additional staff members needed without the guidance of rules or regulations.²³ However, there is insufficient evidence concerning the rate at which the DDCs' recommendations are ultimately approved. While DDC Schick testified that DC Sullivan approves his recommendations to rehire staff for special events most of the time, there is no evidence concerning the rate of acceptance for other DDCs by DC Sullivan. Furthermore, the recommendations are subject to further review up the chain of command or by the Manpower Division, and there is insufficient evidence as to whether the higher-level decisionmakers routinely accept the DDCs' recommendations.

DDC Lach does not evaluate employees with the consistent use of independent judgment during the diver endorsement process, which determines whether employees are eligible to stay in the Marine and Dive Unit and receive incentive pay. A subjective or qualitative assessment of work requires the exercise of independent judgment, whereas objective or quantitative assessments do not. City of Chi., Dep't of Bldgs., 32 PERI ¶ 155 (IL LRB-LP 2016), aff'd AFSCME Council 31 v. Ill. Labor Relations Bd., 2017 IL App (1st) 160835-U (unpublished order); City of Chicago, 35 PERI ¶ 129 (IL LRB-LP 2019); Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60; Illinois Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227 (absent evidence concerning performance evaluation categories, court was unable to say that the categories were "more subjective than quantitative."). In determining whether a petitioned-for employee evaluates with the requisite independent judgment, one must assess whether the evaluation is weighted more toward objective or subjective criteria. Village of Hinsdale, 22 PERI ¶ 176 (where a far greater number of criteria required subjective assessments; independent judgment was found).

Here, the endorsement process appears, by design, to be grounded in more objective

²³ This is sufficient to demonstrate independent judgment even where the length of the overtime period is circumscribed by the duration of the event and the Manpower Division determines who will receive the time.

criteria, as the standards for evaluation are derived from existing Department policies and Emergency Dive International, the entity that certifies divers. Furthermore, endorsement requires the candidate to pass a standardized swim test, which by virtue of its standardization, appears to be graded on objective, quantitative criteria. Even if the endorsement process necessarily includes some subjective assessments based on Lach's evaluation of the candidates' skill and performance, the Employer did not present sufficient evidence to show that they predominate over the objective ones. Indeed, the most specific evidence offered by Lach concerning his decision to deny endorsement was that it was based on the employee's inability to pass the standardized swim test.

Contrary to the Employer's contention, Lach's participation in recommending implementation of the endorsement class and incorporation of Emergency Dive International Standards does not show that he consistently exercises independent judgment in determining whether those standards are met.

Finally, DDC Doggett does not direct with independent judgment when instructing pilots to rest between unsuccessful landing attempts as his decision on this matter is derived from his superior skill and experience as a pilot, in the interest of pilot and public safety. City of Freeport, 135 Ill. 2d at 532.

c) Preponderance

The Special Operations DDCs do not spend a preponderance of their work time exercising supervisory authority.

There is insufficient evidence that the Special Operations DDCs spend a preponderance of their worktime exercising supervisory authority under a quantitative analysis. The Special Operations DDCs exercise supervisory authority through discipline and through some aspects of direction, specifically assigning buggy work and reassigning employees to address altercations. However, the time spent on discipline was not provided, and the evidence presented with respect to the time spent on various other allegedly supervisory functions was aggregated. Although testimony was presented that the DDCs spend 20% of their time assigning work including trainings, the assignment of training is not supervisory, work assignments were only deemed supervisory to a limited extent outlined above, with most assignments being dictated by existing guidelines. Thus, the Employer has not demonstrated that the Special Operations DDCs spend more time on supervisory functions than on any one non-supervisory function.

There is also insufficient evidence that the Special Operations DDCs satisfy the preponderance prong of the test under a qualitative analysis. The Special Operations DDCs' most important functions are administrative, as the Employer asserts. However, many if not most of these administrative tasks, including the researching of necessary purchases, oversight of equipment and vehicles, and routine scheduling matters, are not supervisory.

Thus, the DDCs in Special Operations do not satisfy the four-part test for supervisory authority.

iii. DDC in the Training Division - Richard Stack

DDC Stack does not satisfy the four-part test for supervisory authority set forth in the first paragraph of Section 3(r) of the Act.

a) Principal Work

DDC Stack's principal work is obviously and visibly different from that of his subordinate commanders. The commanders are primarily responsible for conducting the training whereas DDC Stack primarily oversees such training and serves as a lead. In addition, DDC Stack performs administrative functions that his subordinates do not perform. He assesses the need for additional staff, signs purchase agreements to execute the Department's master agreement with the IFSI to obtain external trainers and works with IFSI on the curriculum.

b) Supervisory Indicia

i) Discipline

DDC Stack has authority to discipline his subordinates with independent judgment. According to DC Haynes, DDC Stack has authority to orally counsel an individual or initiate an IR, depending on the circumstances of the misconduct. This testimony is given considerable weight where it is consistent with the testimony describing the disciplinary authority of DDCs in other divisions. Although, DDC Stack testified that he would, in effect, defer to DC Haynes to handle disciplinary issues and would counsel a member at Haynes's direction, this is not sufficient to demonstrate a limitation on Stack's authority given that virtually every other witness testified to the DDCs' authority to make such determinations independently.

ii) Transfer/Hire

DDC Stack's participation in the selection of employees for temporary detail to his division is not indicative of authority to transfer because temporary details are not transfers. For the same reason, Stack's selection of a buggy driver is also not a transfer. These functions will be considered under direction, to the extent that they may be relevant to that indicium. See discussion of FSR DDCs, supra.

As noted in the section addressing the Special Operations DDCs' similar authority, the authority to participate in the selection of current employees to serve in a different area of the department is not hiring authority because the applicants are already employed by the department. It is also not strictly a transfer as it does not involve the movement of employees from one department to another. Village of Bolingbrook, 19 PERI ¶ 125 n. 13. Furthermore, Stack, like the Special Operations DDCs, does not independently or effectively recommend the selection of permanent employees into his division because he serves on a hiring panel with his superior, who independently reviews the candidates at issue. See RDO, Section 2.ii.b.ii).

Although there was one occasion where Stack was the highest-ranked member of a selection panel, this panel was for the selection of temporary details, which does not constitute a transfer. State of Ill. Dep't of Cent. Mgmt. Servs., 10 PERI ¶ 2037.

iii) Direction

Like the FSR DDCs, DDC Stack exercises independent judgment when assigning buggy driver work.

In addition, DDC Stack exercises independent judgment when recommending the temporary detail of employees, assigning them to work in the training academy, when he serves as the highest-ranking member of a selection panel.²⁴ He reviews the candidates based on subjective factors such as the candidate's comfort and facility in making the presentation.

²⁴ DDC Stack does not exercise independent judgment in temporarily detailing members into the training division when he serves on a selection team with his own supervisor because this is not a process that allows for independent decision-making. State of Illinois, Department of Central Management Services, 25 PERI ¶ 184; 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); County of Lake, 16 PERI ¶ 2036 (addressing promotion).

Furthermore, his recommendations are independent because while they may be informed by input of subordinate panel members, they are not influenced by any superior officer.

The preponderance of the evidence demonstrates that DDC Stack's recommendations are effective when Director Haynes does not participate on the panel with him. Here, Director Haynes approves the panel's recommendations, but he does not perform any independent review of the candidates when he does not serve on the selection panel. Thus, the panel's recommendations are influential, accepted, and thus effective. Dep't of Cent. Mgmt. Servs./Illinois Com. Comm'n v. Illinois Lab. Rels. Bd., 406 Ill. App. 3d 766, 777 (4th Dist. 2010) (the litmus test of effective recommendation is its influence); Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993) (collecting cases).

However, there is insufficient evidence that DDC Stack exercises independent judgment when establishing the training schedule for the academy. Although he has final authority over the schedule, there was insufficient evidence as to how he makes his determinations on scheduling matters and whether this function is routine and clerical or instead necessitates the consistent use of independent judgment.

There is also insufficient evidence that DDC Stack exercises independent judgment when establishing the schedules for other trainings, apart from the academy's training schedule. These other trainings are scheduled as part of a collaborative process between DDC Stack and his superior, DC Haynes,²⁵ and generally, decisions reached by consensus of the petitioned-for employee and his superior are not supervisory. County of Lake, 16 PERI ¶ 2036; State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 (IL LRB-SP 2011) (disciplinary decisions reached collaboratively as a matter of course were not supervisory) aff'd by Dep't of Cent. Mgmt. Servs. v. Illinois Lab. Rels. Bd., 2012 IL App (4th) 110209. While "independent judgment" does not mean that the putative supervisor cannot involve anyone else in the decision-making process, it is not clear from the record that Stack elected to involve his superior in this process, rather than being required to do so. Cf. Dep't of Cent. Mgmt. Servs. v. Illinois Lab. Rels. Bd., State Panel, 2011 IL App (4th) 090966, ¶ 216.

DDC Stack does not direct with independent judgment in the interest of the employer when serving on rotation to respond to Level 2 hazmat incidents as the preponderance of evidence

²⁵ One of DDC Stack's subordinates also assists in this process.

indicates that his decisions on the scene are based on his greater skill, experience, technical expertise, and detailed departmental procedures. City of Freeport, 135 Ill. 2d at 532.

Finally, there is insufficient evidence that DDC Stack exercises independent judgment in ensuring that training attendees are properly groomed and that members are in compliance with rules and regulations during the training process. The Department has detailed regulations, and the Employer has not identified circumstances where the exercise of discretion would be required or has been exercised. Vill. of Roselle (Fire Dep't), 41 PERI ¶ 112.

c) Preponderance

DDC Stack does not spend a preponderance of his work time exercising supervisory authority. DDC Stack's supervisory functions include the authority to discipline and to direct through assignment and temporary details to the academy. However, the performance of these functions does not satisfy the preponderance element under either a quantitative or a qualitative analysis.

Turning to the quantitative analysis, Stack does not appear to spend appreciable time engaged in disciplinary activities, and most of the functions analyzed under direction were deemed non-supervisory. Furthermore, while Stack spends 25% of his time interviewing for instructors, most of that time includes the non-supervisory work of serving on a panel with his superior. Furthermore, the largest single component of Stack's time (35%) is spent ensuring compliance with rules in a manner that is non-supervisory. Thus, Stack does not spend more time on supervisory functions than on any one non-supervisory function.

Turning to the qualitative analysis, there is insufficient evidence that Stack's supervisory functions are more important than his non-supervisory functions. Indeed, Stack's supervisory functions are likely less important than his non-supervisory functions where DFC Helmold offered testimony indicating that the director of training customarily serves on interviewing panels, thereby diminishing the importance of Stack's exercise of supervisory authority in relation to his non-supervisory functions.

iv. DDC in Fire Prevention Bureau - Evan Person

DDC Person does not satisfy the four-part test for supervisory authority.

a) Principal Work

DDC Person's principal work is obviously and visibly different from that of his subordinates within the Fire Prevention Bureau. His subordinates primarily oversee subordinate ranks in conducting routine fire prevention inspections whereas DDC Person focuses on overseeing and assigning inspectors at special events and emergencies. In addition, he, unlike his subordinates, is responsible for ensuring that compliance issues are being addressed and that the branch offices are operating as they should. To that end, he exercises authority to modify employees' assignments to address personnel matters, when necessary, and balances the workload among offices, and makes recommendations for the use of overtime for special events. In addition, unlike the lower-ranked employees, DDC Person performs DFC Herring's duties in her absence while she is on furlough.

b) Supervisory Indicia

i) Discipline

DDC Person disciplines his subordinates with independent judgment in the same manner as the DDCs in the Fire Suppression and Rescue Division. However, in addition to exercising independent judgment by choosing between counseling and initiating an IR to address a disciplinary issue, he has also exercised discretion by addressing behavioral issues through modifying a subordinate's assignment. When a firefighter, serving as an inspector, exhibited hostile and intimidating behavior after receiving disappointing results from his lieutenants' examination, DDC Person elected to assign the inspector to the office for at least two weeks until his behavior changed. Although he made this decision in collaboration with others, he retained independence in decision-making because the individuals he collaborated with were all subordinate to him in rank.

ii) Transfer/Hiring

DDC Person's participation in the selection of individuals to serve in the Fire Prevention Bureau is not participation in the hiring process because the candidates (engineers and commanders) are already employed by the department. It is also not strictly a transfer as it does not involve the movement of employees from one department to another. Village of Bolingbrook, 19 PERI ¶ 125 n. 13.

In the alternative, DDC Person does not independently and effectively recommend the transfer /hire of employees into the division because he serves on a panel with his supervisor, DFC Herring. Although DFC Herring testified that she relies on DDC Person's recommendation on whom to hire, she conceded that they both express their opinions during the process, and the structure of this decision-making process eliminates the independence of DDC Person's recommendation. See cases supra.

iii) Direction

DDC Person directs with independent judgment when he makes effective recommendations that his subordinates work overtime for special events. DDC Person exercises independent judgment in making recommendations to the fire commissioner²⁶ about whether overtime is needed, how much is necessary, and the specialties of the employees required for the event. These determinations are not circumscribed by any policies, procedures, or minimum manning requirements, and are instead based on DDC Person's assessment of operational need including the scope of work and the number of staff and hours necessary to complete it. Furthermore, DDC Person's recommendations are effective because the fire commissioner typically approves DDC Person's requests for overtime for special events. Although the selection of the individual chosen for overtime is determined by seniority and specialization, DDC Person nevertheless makes independent and effective recommendations as to whether overtime is needed. See Dep't of Cent. Mgmt. Servs./Dep't of Transp., 2013 IL App (4th) 110825, ¶ 52; State of Ill. (Dep't of Cent. Mgmt. Servs.), 12 PERI ¶ 2032.

DDC Person assigns work with independent judgment when he assigns inspectors to emergency inspections or special requests, but not when he reassigns a member from one office to another or when he makes adjustments to non-emergency assignments. When he assigns inspectors to emergency inspections or special requests, he exercises independent judgment because he considers the employees' relative levels of skill based on his personal experience of the employee, the scope of their skills, and the employer's operational needs. County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022. Although DDC Person must choose from an inspector assigned to the area where the complaint arose, this does not eliminate the need for independent judgment absent evidence that there is only one possible choice.

²⁶ DDC Person copies DFC Herring.

However, he does not assign work with independent judgment when he reassigns a member from one office to the other because he does so merely to balance the workload. Serv. Employees Int'l Union, Local 73, 2013 IL App (1st) 120279, ¶ 52. There is insufficient evidence that DDC Person exercises independent judgment when he makes adjustments to the rotation schedule for non-emergency assignments because there is no evidence concerning the basis for his decision-making.²⁷

DDC Person does not exercise independent judgment when considering timely submitted (i.e., non-emergency) requests for time off because it appears that such requests are routinely granted.

DDC Person exercises independent judgment in granting or denying untimely requests for time off from weekend duty when DFC Herring is absent but not when she is present. When Herring is absent, DDC Person unilaterally determines whether to grant an emergency request for time off from a weekend duty assignment. Such a determination necessarily requires the exercise of independent judgment to determine whether the request constitutes a bona fide emergency such that the request should be granted even though it was not timely submitted.

However, DDC Person lacks such discretionary authority when Herring is present because Herring makes the ultimate decision herself, and there is insufficient evidence that DDC Person makes any discrete and effective recommendations on such matters. At best, the evidence indicates that DDC Person is obligated to consult with his superior, Herring, and engage in a collaborative process with her to reach a determination on the request, in a manner that diminishes his exercise of independent judgment.²⁸ County of Lake, 16 PERI ¶ 2036 (addressing decisions made by consensus); State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 (addressing collaborative decision-making).

However, DDC Person does not exercise independent judgment in the interest of the employer in monitoring and overseeing inspectors at special events when he shadows them at their assigned locations to ensure the inspectors are issuing the appropriate violations for non-

²⁷ Like the other DDCs, DDC Person also exercises independent judgment in assigning work when he selects his buggy driver.

²⁸ In this respect, DDC Person's authority on this matter is comparable to DDC Stack's non-supervisory authority to determine scheduling matters, and the analysis and case law applied there is equally applicable here. See RDO 2.iii.b.iii).

compliance with the applicable fire codes because he is simply exercising his greater skill, experience, and technical expertise. City of Freeport, 135 Ill. 2d 499.

c) Preponderance

DDC Person does not spend a preponderance of his worktime exercising supervisory authority.

There is insufficient evidence that DDC Person spends a preponderance of his worktime exercising supervisory authority under a quantitative analysis. Although the Employer contends that Person spends 90% of his time exercising supervisory functions, most of the functions identified by the Employer as comprising this number were deemed non-supervisory in whole or in part. Person does not exercise the supervisory authority to hire/transfer. Furthermore, while the Employer correctly notes that Person directs when making assignments and effective recommendations on overtime, such supervisory direction is limited to decisions made in connection with special and emergency events, which by their nature are not everyday occurrences; and the assignment of a buggy driver occurs at most every 90 days. Similarly, Person's authority to make independent determinations on time off is limited to when DFC Herring is absent. Although she recently was on extended medical leave, in ordinary circumstances she is furloughed for only 30 days a year, which diminishes the time spent by Person on this function. The amount of time that DDC Person spends on disciplinary matters was not specifically outlined in the record. Thus, the record on the whole does not show that Person spends more time collectively on the supervisory functions discussed above than on any one non-supervisory function. City of Freeport, 135 Ill. 2d at 533 (where "lieutenants rarely exercise[d] authority to suspend or discipline firefighters...it [was] therefore clear that the lieutenants [did] not spend more time exercising this authority than they devote[d] to any other function").

There is also insufficient evidence that DDC Person satisfies the preponderance prong of the test under a qualitative analysis. The Employer contends that DDC Person's most important functions are the consideration of time off requests, assignment of work, and approval of overtime assignments. However, the importance of Person's supervisory authority with respect to these functions is diminished by the fact that each of these tasks qualifies as supervisory direction only in limited part. The Employer has not shown that the authority to address personnel matters through counseling and reassignment is more significant than certain key non-supervisory, routine

functions necessary to the smooth operation of the bureau such as balancing the workload among offices and the technical but non-supervisory oversight of inspectors during special events.

Thus, DDC Person does not satisfy the four-part test for supervisory authority.

v. DDC in MRU - Mark Kiely

DDC Kiely does not satisfy the four-part test for supervisory authority set forth in the first paragraph of Section 3(r) of the Act.

DCC Kiely's principal work is obviously and visibly different from that of his three subordinates within the MRU. Although both DDC Kiely and his subordinates troubleshoot hardware and software issues on the tablets used by paramedics and firefighter EMTs, DDC Kiely has added responsibilities over the tablets and their data, which set his principal work apart from those of his subordinates. For example, DDC Kiely, unlike his subordinates, is responsible for ensuring that the tablets comply with data collection laws and data sharing agreements, and for implementing changes necessary to maintain compliance. In addition, DDC Kiely, unlike his subordinates, is responsible for coordinating the testing of new hardware and software used by the paramedics in the field.²⁹

DDC Kiely's principal work is also obviously and visibly different from that of the EMS teams he oversees during special events as they are mainly focused on completing EMS-related tasks whereas Kiely's primary work concerns ensuring the functionality of tablets and data collection.

However, there is insufficient evidence that DDC Kiely directs his MRU subordinates with independent judgment in the interests of the employer. The evidence concerning the nature and extent of Kiely's oversight of MRU subordinates was minimal, and the Employer has not met its burden to show that Kiely directs them with independent judgment in their day-to-day duties. The department's reporting structure diminishes the claim that Kiely directs his MRU subordinates with independent judgment because Kiely's MRU subordinates also report directly to the Director of Logistics, ADCP Ronstadt, and Kiely offered un rebutted testimony that Ronstadt is "more their direct report."

²⁹DDC Kiely is also responsible for helping select new hardware and software for use by paramedics, but lower-ranked employees also participate in this process, and it is not clear whether those lower-ranked employees include DDC Kiely's subordinates.

There is insufficient evidence that DDC Kiely directs subordinates with independent judgment in the interest of the employer when overseeing EMS teams at the Pride Parade or overseeing the Midway 911 drill. It is not clear how Kiely oversees their work, whether he is called upon to make choices between two or more significant courses of action, and whether he acts in the interests of the employer in a manner that would show the exercise of independent judgment.

DDC Kiely has authority to discipline subordinates with independent judgment because his authority is similar to that of the other DDCs. He testified that he has authority to counsel subordinate staff during a special event to which he was assigned if he observed misconduct and noted that he would document the incident. Such documented counselings qualify as discipline, as discussed above. See RDO, Section 2.i.b).i). His admitted authority to issue such documented counselings to subordinates outside the MRU supports a finding that he possesses that authority with respect to individuals within the MRU, who also report to Ronstadt. Although Kiely stated that he would likely consult with ADCP Ronstadt before counseling a member who also reports to Ronstadt, this appears to be a matter of preference and courtesy given that he possesses disciplinary authority over non-MRU subordinate staff, who likewise usually report to others.

However, DDC Kiely does not spend a preponderance of his worktime exercising supervisory authority under either a quantitative or a qualitative analysis. Quantitatively, DDC Kiely does not spend more time on supervisory functions than on any one non-supervisory function because the evidence was insufficient to show that he directs with subordinates with independent judgment, and he has never exercised authority to discipline. Qualitatively, DDC Kiely's most important function is non-supervisory, to troubleshoot the hardware and software of the tablets to ensure that the department can clearly document and report data appropriately.

Thus, DDC Kiely does not satisfy the four-part test for supervisory authority.

3. Managerial Exclusion

The DDC Kiely is managerial within the meaning of Section 3(j) of the Act, but the remaining DDCs discussed below are not.

The Act excludes managerial employees from engaging in collective bargaining to “maintain the distinction between management and labor and to provide the employer with undivided loyalty from its representatives in management.” Chief Judge of 16th Judicial Cir. v. Ill. State Labor Rel. Bd., 178 Ill. 2d 333, 339 (1997). Section 3(j) of the Act defines a managerial

employee as “an individual who is engaged predominantly in executive and management functions and is charged with the responsibility of directing the effectuation of management policies and practices.” 5 ILCS 315/3(j). A two-part “traditional test” is used to determine managerial status under Section 3(j): first, the employee at issue “must be engaged predominately in the executive and management functions,” and second, “the employee must direct the effectuation of management policies and procedures.” Vill. of Elk Grove Vill., 245 Ill. App. 3d at 121-22 (quoted text); City of Evanston, 227 Ill. App. 3d at 974-975.

With respect to the first prong of the test, “executive and management” functions require more than the simple exercise of discretion or specialized expertise; rather, an employee must possess and exercise sufficient authority and autonomy to establish department goals or the means of achieving such goals on a broad scale. Vill. of Elk Grove Vill., 245 Ill. App. 3d at 122 (citing City of Evanston, 227 Ill. App. 3d at 975); Cnty. of Cook, 351 Ill. App. 3d at 386; Dep’t of Cent. Mgmt. Servs / Dep’t of Healthcare & Family Servs. v. Illinois Labor Relations Bd., State Panel, 388 Ill. App. 3d 319, 331 (4th Dist. 2009). “The fact that employees make independent decisions with regard to carrying out their duties does not mean that their actions transcend to the level of executive or management function.” County of Cook, 351 Ill. App. 3d at 387. The Act does not define “executive and management functions.” However, the Board has defined them as functions that “specifically relate to the running of an agency or department, which may include establishment of policies and procedures, preparation of the budget and the responsibility for assuring that the agency or department operates effectively and efficiently.” City of Evanston, 227 Ill. App. 3d at 974-75, citing Ill. Dep’t of Cent. Mgmt. Servs., 1 PERI ¶ 2014 (IL SLRB 1985). Other executive and management functions include changing the focus of an employer's organization, using independent discretion to make policy decisions, being responsible for day-to-day operations, and negotiating on behalf of an employer with its employees or the public. Sec’y of State, 2012 IL App (4th) 111075, ¶ 122; Dep’t of Cent. Mgmt. Servs / Dep’t of Healthcare & Family Servs., 388 Ill. App. 3d at 330. Where an individual’s decisions are “significantly circumscribed by predetermined requirements and procedures, the employee's activities are not managerial under the Act.” Chief Judge of the Eighteenth Judicial Circuit v. Ill. State Labor Relations Bd., 311 Ill. App. 3d 808, 815 (2nd Dist. 2000); see also City of Chicago (Mayor’s Office of Information and Inquiry), 10 PERI ¶ 3003 n. 7 (IL LLRB 1993).

With respect to the second prong of the test, the employee must have “substantial discretion

to determine how and to what extent policies will be implemented and [also] have the authority to oversee and direct that implementation.” Village of Elk Grove Village, 245 Ill. App. 3d at 122. It is not enough that an employee performs duties that are essential to an employer’s ability to accomplish its mission; rather, he “must possess the authority or responsibility to determine the specific methods or means of how the employer’s services will be provided.” Dep’t of Cent. Mgmt. Servs / Dep’t of Healthcare & Family Servs., 388 Ill. App. 3d at 331.2

“An element to be considered in determining an employee's managerial status is whether his policymaking role is advisory or subordinate since ‘it is the final responsibility and independent authority to establish and effectuate policy that determines managerial status under the Act.’” Cnty. of Cook, 351 Ill. App. 3d at 387-8 (quoting Village of Elk Grove Village, 245 Ill. App. 3d at 122 and City of Evanston, 227 Ill. App. 3d at 975); Dep’t of Cent. Mgmt. Servs / Dep’t of Healthcare & Family Servs., 388 Ill. App. 3d at 330-31. However, an advisory employee who makes “effective recommendations” may also be managerial. Dep’t of Cent. Mgmt. Services/Illinois Commerce Comm'n v. Illinois Labor Relations Bd. (“ICC”), 406 Ill. App. 3d 766, 775 (4th Dist. 2010) (citing Chief Judge of the Sixteenth Judicial Circuit, 178 Ill. 2d at 339-40). And although “effective recommendation or control rather than final authority” over employer policy is the relevant consideration, the employee must still “formulate and effectuate management policies by expressing and making operative the decisions of their employer.” County of Cook, 351 Ill. App. 3d at 387.

1. DDCs in Special Operations - Jason Lach, Douglas Schick, and David Doggett

The DDCs in Special Operations are not managerial within the meaning of Section 3(j) of the Act.

Initially, the paramilitary structure of the Department, and the four levels of hierarchy above the DDCs weighs against a finding that the DDCs are predominantly engaged in executive and management functions, in a managerial capacity. City of Evanston v. State Lab. Rels. Bd., 227 Ill. App. 3d 955, 975 (1st Dist. 1992).

Although managerial status is not limited to those at the very highest level of a government entity, the DDCs’ authority here is limited. They do not develop the budgets for their units, which are set by the Commissioner and the Office of Budget and Management, and their participation in the purchase of equipment and training falls short of the responsibility for budget preparation indicative of managerial status. Their influence on the budget for their units is advisory. They

submit a request for resources to DC Sullivan, who has modified the requests regarding the quantity of materials before submitting them further up the chain of command; furthermore, insufficient evidence was presented to show whether or to what extent the DDCs' requests are reflected in the final budget. Although the DDCs subsequently make recommendations for the purchase of training and equipment that are generally accepted by DC Sullivan, these purchases are made within existing budgetary priorities set by high-level members of the department; training paid for by grant funding requires not only approval by DC Sullivan but also Assistant Commissioner Hand. Moreover, there is insufficient evidence as to whether DDCs' recommended purchase of equipment is geared towards replacements and upgrades or instead evidences authority to effectively recommend equipment changes that broadly affect the department's goals and the means of achieving them. Vill. of Elk Grove Vill. v. Illinois State Lab. Rels. Bd., 245 Ill. App. 3d at 122 (2nd Dist. 1993); see also Village of Roselle (Fire Department), 41 PERI ¶ 112 and Northlake Fire Protection Dist., 15 PERI ¶ 2032 (IL SLRB 1999).

Furthermore, the DDCs' authority to establish policies for their respective units on a unilateral basis does not broadly affect the department's goals or the means of achieving its goals. The primary record example of such a unilaterally implemented policy was DDC Doggett's directive requiring pilots to take a cool down period before making a second landing attempt. This exercise of discretion derives from his professional and technical expertise and is also exceedingly narrow in scope and represents an operational modification rather than a major policy change. There is no indication that he has authority over the department's goals and policies more broadly. See City of Evanston, 227 Ill. App. 3d at 975 (“[e]xecutive functions require more than the exercise of professional discretion and technical expertise; an individual must possess and exercise authority and direction sufficiently to broadly effect a department's goals or means of achieving its goals.”); County of Cook, Cook County Hosp., 3 PERI ¶ 3032 (IL LLRB 1987) (biochemist IVs responsible for development of new test procedures were not managerial where their authority was limited to laboratory and did not broadly affect hospital); see also, Chicago Transit Authority, 36 PERI ¶ 36 (IL LLRB 2019) (distinguishing between recommendations on major policy issues versus day-to-day operational issues).

DDC Lach's effective recommendation to implement an endorsement process for applicants who wish to join the Marine and Dive Unit is more akin to a managerial recommendation than Doggett's, discussed above, as it establishes a new method for assessing and

training candidates. However, this single procedural recommendation is insufficient to demonstrate that Lach, or the other Special Operations DDC, are predominantly engaged in executive and management functions. State of Ill., Dep't of Cent. Mgmt. Servs., 5 PERI ¶ 2012 (IL SLRB 1989) (sporadic involvement in policy formulation without more was not sufficient to show employee was predominantly engaged in executive and management functions).

Although the DDCs have operational, administrative, and training duties, their authority over their units is distinguishable from that held by unit heads found to be managerial. Virtually, all the DDCs' decision-making is advisory, reflecting their status as fourth highest in an extensive paramilitary hierarchy and concomitant lack of autonomy. Cf. State of Illinois, Dep't of Cent. Mgmt. Serv. (Historical Preservation Agency and Dep't of Conservation) (herein, "Historical Preservation Agency"), 10 PERI ¶ 2037 (noting, in part, that Site Managers did not operate within paramilitary structure). Even within that advisory role, they lack the authority to shape the focus of their units, which remain directed toward incident response and governed by strict protocols. Cf. Historical Preservation Agency, 10 PERI ¶ 2037 (petitioned-for employees had authority to implement, change, replace or discontinue programs or events offered at their sites, without approval); cf. State of Illinois, Dep't of Cent. Mgmt. Servs (Dep't of Commerce and Econ. Opportunity), 27 PERI ¶ 56 (IL LRB-SP 2011) (petitioned-for employees effectively recommended three- to five-year strategies, goals, and programs for their respective regions). While the DDCs may interact with outside entities in helping meet their needs for special events (e.g. a triathlon), the DDCs do not appear to be engaged de facto negotiation with the public nor do they have broader negotiation authority. Cf. State of Illinois, Dep't of Cent. Mgmt. Servs (Dep't of Commerce and Econ. Opportunity), 27 PERI ¶ 56 (authority to unilaterally negotiate of office leases and employment contracts). Finally, though the DDCs may select and schedule some outside training for their members, the fundamental certification requirements for their members are set by outside entities, for example the dive certification requirements for the Marine and Dive unit are established by Emergency Dive International.

Nor is there sufficient evidence that the DDCs in Special Operations are responsible for directing the effectuation of management policies and practices. The Employer contends that the DDCs in special operations make effective recommendations sufficient to satisfy the managerial test. However, there is insufficient evidence that the Special Operations DDCs make effective recommendations on major policy issues or their implementation. Their recommendations on

policy matters are rare and are not the means by which the Department accomplishes its missions of firefighting, EMS, and fire prevention. Cf. Dep't of Cent. Mgmt. Servs./Illinois Com. Comm'n, 406 Ill. App. 3d at 778 (comparing job function to overall mission of agency). While they make effective recommendations on the purchase of equipment, the evidence did not reveal that their determinations reflect a substantial measure of discretion to determine how policies will be effected. Village of Roselle (Fire Department), 41 PERI ¶ 112. To the extent that they have authority to determine certain additional trainings and qualifications, this too is limited as they do not determine minimum training standards, which are determined by existing policies and outside entities.

In sum, the Special Operations DDCs are not managerial.

2. DDC in the Training Division - Richard Stack

DDC Stack is not managerial within the meaning of Section 3(j) of the Act.

Initially, the hierarchy within the Department, a paramilitary organization, suggests that DDC Stack is not managerial and that he does not run the department or the division to which he is assigned. There are four levels of hierarchy above Stack within the Department, the District Chief, the Deputy Fire Commissioner of the Bureau of Administrative Services, First Deputy Fire Commissioner, and the Fire Commissioner. City of Evanston, 227 Ill. App. 3d at 975.

While managerial status is not limited to only the highest levels of the governmental entity, there is insufficient evidence that Stack is predominantly engaged in executive and management functions, in other words, that he possesses the requisite independent authority and discretion to broadly affect a department's goals or means of achieving its goals. Stack does not establish the budget for his division and merely has authority to make requests for purchases that then move up the four levels of the chain of command before final approval. The Employer notes that DDC Stack submitted a request for the purchase of a training tower, but there is no evidence as to whether his recommendation was effective or whether this type of purchase represents a mere upgrade to existing processes. Village of Roselle (Fire Department), 41 PERI ¶ 112 (upgrades to systems and processes did not show discretion to determine policy and broadly affect department's goals).

Stack's authority to sign purchase agreements for Illinois Field Service Institute (IFSI) training arranged under a master agreement is not an executive and management function. The

master agreement represents the Commissioner's determination that the department has a need for fire instruction outside the department. Other documentation establishes the cost, duration, and number of instructors required; and it does not appear that the DDC signs these documents or participates in their creation. Even if the DDC of training has authority to determine that it is time to engage external instructors, the limits of his authority regarding the number of instructors he may engage are significantly circumscribed by the scope of the master agreement.

The DDC of training does not have significant discretionary authority to establish the training curriculum used by IFSI. The objectives and responsibilities for training are established by the Office of the State Fire Marshall and department headquarters. While "the mere existence of government regulations does not require a finding that an employee lacks managerial discretion," in this case, the Employer has not identified instances of the DDC's exercise of discretion in establishing the training curriculum, even within the confines of existing requirements. County of Will, 34 PERI ¶ 91 (IL LRB-SP 2017). The Employer's general assertion that DDC Stack assists in the development of the curriculum is insufficient to establish that he is predominantly engaged in executive and management functions.

Former DDC Husdon's responsibility to sit on an advisory board for the establishment of a new joint training academy does not appear to be an executive and management function. While his function on the board was to "look out" for the academy's training needs, the record evidence does not show that he was any more than gatekeeper of information, acting in a non-managerial capacity, without making any recommendations. Am. Fed'n of State, Cnty., & Mun. Emps. (AFSCME), Council 31 v. State, Illinois Lab. Rels. Bd., 2014 IL App (1st) 130655, ¶ 43.

Stack's participation in the hiring process and other potential indicia of supervisory authority do not establish managerial status as "supervisory and managerial status entail different inquiries." City of Evanston v. State Lab. Rels. Bd., 227 Ill. App. 3d at 976 (1st Dist. 1992).

DDC Stack is also not responsible for directing the effectuation of management policies and practices. To direct the effectuation of management policy, an individual "must be empowered with a substantial measure of discretion to determine how policies will be effected." City of Evanston, 227 Ill. App. 3d at 975. As discussed above, the evidence does not demonstrate that Stack exercises substantial discretion in his duties. His impact on purchases of goods for the Training Division is advisory, and when he has authority to sign purchase orders unilaterally, it is to effectuate existing contracts where the terms, including costs and services, have been set by

others. The Employer contends that Stack proposed a new training structure, but the outcome of that recommendation is yet undetermined, and there is no indication that he made an effective recommendation that could be deemed managerial. Cf. Dep't of Cent. Mgm't Svcs./Ill. Commerce Com'n v Ill. Labor Relations Bd., 406 Ill App. 3d at 777. Although the Employer generally asserts that the DDCs are engaged in policy creation, changes, and implementation, it points to no specific evidence with respect to DDC Stack not otherwise discussed here.

The Employer notes that Stack performs DC Haynes's duties when Haynes is absent, but DDC Stack does not formally act up into Haynes's position or thereby assume his full responsibilities. Furthermore, the record is devoid of instances in which Stack exercises discretion, in determining how to implement the Department's policies. County of Peoria and the Chief Judge of the Tenth Judicial Circuit, 2 PERI ¶ 2022 (IL SLRB 1986) (Deputy Auditor's discretion to make supply purchases and authority to be in charge in Auditor's absence did not render deputy predominantly engaged in executive and management functions absent authority to establish new office procedures).

Thus, DDC Stack is not managerial within the meaning of the Act.

3. DDC in Fire Prevention Bureau - Evan Person

DDC Evan Person is not managerial within the meaning of Section 3(j) of the Act.

Initially, the hierarchy within the Department, a paramilitary organization, suggests that DDC Person is not managerial and that he does not run the department or the division to which he is assigned. There are three levels of hierarchy above Person within the Department, the Deputy Fire Commissioner of the BFP, First Deputy Fire Commissioner, and the Fire Commissioner. City of Evanston, 227 Ill. App. 3d at 975. Furthermore, unlike some of the other DDCs, discussed herein, Person does not oversee or head a unit of his own and does not appear to have responsibility over establishing or spending down his bureau's budget.

In addition, there is insufficient evidence that DDC Person exercises the autonomy to establish department goals or the means of achieving such goals on a broad scale. The evidence on this point was vague. DFC Herring suggested that DDC Person developed the goal of having the bureau's inspectors obtain State certification. However, this goal was established before DFC Herring joined the bureau, and the most specific evidence Herring could offer about Person's participation in developing it was that he was "involved with some of the meetings" on this subject.

Although Person identified that a “future goal...[would be] more extensive trainings/certifications,” this appears to be the continuation of a preexisting goal for increased certification, wherein the nature of DDC Person’s involvement was not clearly established. The Employer notes that a goal was established to reduce use of overtime in the bureau, but it is not clear from the record that DDC Person set that goal.

Although, as discussed above, DDC Person may use discretion when addressing personnel issues and special events assignments, that does not mean that his actions “transcend to the level of executive or management function” because such functions require more than the exercise of independent judgment. County of Cook, 351 Ill. App. 3d at 387. Chief Judge of Eighteenth Jud. Cir., 311 Ill. App. 3d at 815 (2nd Dist. 2000).

The Employer contends that DDC Person is predominantly engaged in executive and management functions because he is the highest ranked employee within the bureau when Herring is absent and performs some of her functions. However, the preponderance of the evidence indicates when broader policy decisions must be made, they are reserved to Herring for when she returns. For example, on one occasion, DDC Person informed his subordinates that all training would need to be placed on hold or vetted up the chain of command until Herring’s return at which point she would “outline our path moving forward.”

There is also insufficient evidence that DDC Person is responsible for directing the effectuation of management policies and practices through policy making or effective recommendations of policy. The Employer contends that DDC Person created a policy whereby certain time off requests would be denied if made with insufficient notice or were not based on an emergency, but it is not clear from the record that this policy originated with Person. What is clear is that the final determination on whether to grant untimely requests rests with Herring, and the need for her approval on these matters was announced to subordinate staff. DDC Person’s limited exercise of discretion to make determinations on whether to grant emergency overtime in DDC Herring’s absence does not show that he is responsible for directing the effectuation of management policies and practices. Village of Elk Grove Village, 245 Ill. App. 3d at 122 (requiring “substantial discretion to determine how and to what extent policies will be implemented”).

Thus, DDC Person is not managerial within the meaning of Section 3(j) of the Act.

4. DDC in MRU - Mark Kiely

DDC Kiely is managerial within the meaning of Section 3(j) of the Act.

In analyzing Kiely's status under the managerial test, two decisions issued by the Board regarding individuals involved in public-sector information technology (IT) functions are most instructive. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38 (IL LRB-SP 2013) State of Illinois, Department of Central Management Services (Illinois Commerce Commission), 30 PERI ¶ 206 (IL LRB-SP 2014). In those cases, the Board acknowledged both expressly and implicitly that addressing the unit placement of top-level positions engaged in IT, there may be a "lack of a tight fit between the evidence presented and the statutory formulation...due to the nature of IT positions" which enable an agency's programs rather than administering the programs directly. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38 and State of Illinois, Department of Central Management Services (Illinois Commerce Commission), 30 PERI ¶ 206 aff'd Am. Fed'n of State, Cnty. & Mun. Emps., Council 31 v. State Dep't of Cent. Mgmt. Servs. (Illinois Com. Comm'n), 2018 IL App (1st) 140656. The Board has nevertheless recognized that effective recommendations by top-level employees related to IT goals, services, and equipment may help satisfy the managerial test where they are the means by which the agency attempts to reach its policy objectives. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38. Nevertheless, while high-ranking status in an organization and responsibility for, or participation, in IT services are relevant, more is required. For example, purchase recommendations to replace existing equipment may be ministerial while advocating for the inclusion of new technology to further the agency's goals is more consistent with executive and management functions. Id. Responsibility for developing and delivering IT training for can qualify as executive and management functions where they evidence a creative resolution to impediments in the interest of furthering more effective operations. Id. Furthermore, although the compilation of data into a training manual likely does not qualify as an executive or management function, writing training independently, combined with an individual's status as the top IT person in the agency is evidence that an individual is predominantly engaged in executive and management functions. Id. Also relevant to the Board's determination is a finding that an individual is the top "person with respect to information services in a huge agency involved in highly technical work and accumulation of massive amounts of data" and where the individual sets policy for information security. Id.

Applying these principles, Kiely is predominantly engaged in executive and management functions as the head of the mobile reporting unit, which is responsible for electronically collecting patient care data, transmitting it to outside agencies, and training department members on use of its technology.

DDC Kiely is engaged in executive and management functions when he makes decisions or, alternatively, effective recommendations on Department policy regarding the collection of data for submission to third parties such as the State of Illinois. Such recommendations show that he is responsible for running a major component of the Department and for ensuring its effective operations. For example, when the State requested that the Department begin collecting information on the dispatch delay for each ambulance call, DDC Kiely informed the State that such a requirement would place a great strain on the Department's paramedics and would be impractical. Due to Kiely's advocacy, the State allowed the Department to collect such information on an optional basis. Kiely thereby ensured that the department could maintain its standards of service when providing patient care, allowing fire companies to continue document their patient care reports clearly and concisely, without undue delay. Significantly, the impetus to oppose the State's directive originated with Kiely, and although Kiely offered general testimony that he is not empowered to act unilaterally, the Department accepted Kiely's recommendation in this case, rendering it effective. Dep't of Cent. Mgmt. Services/Illinois Commerce Comm'n, 406 Ill. App. 3d at 775.

DDC Kiely also makes effective recommendations concerning the need to change software vendors based on pricing increases, which demonstrates a consideration of expenditures indicative of broader responsibility. He recommended that the Department abandon its existing software vendor, SafetyPad, after the vendor was acquired by a new company that announced that it would increase its prices for tablet software without change in its services. Although this recommendation was made jointly with Director Farrell, Kiely's influence on the process was still apparent. Kiely does not report to Farrell rendering their joint recommendation more akin to a recommendation of co-equals, and not overly diffused. This recommendation was likewise effective because the Department followed it and ceased business with SafetyPad. State of Ill. Dept' of Cent. Mgmt. Servs., 8 PERI ¶ 2037 n. 2 (finding effective recommendation in hiring when decision made by consensus of two or more individual of within the same title, absent superior's

input); Cf. Village of Downers Grove, 6 PERI ¶ 2035 (IL SLRB 1990), aff'd 221 Ill. App. 3d 47, 581 N.E.2d 824, 8 PERI ¶ 4002 (1991).

Although the Employer rejected Kiely's recommendation to purchase Panasonic tablets on the grounds that they were too expensive, the Board has held that the fact that budget concerns cause some recommendations to be rejected shows that the individual may be attempting to initiate more than fiscal restraints allow. In the context of proposed technological improvements, it has not found such rejections to undermine a finding of managerial authority, where, as here, there is other evidence that the employee is engaged in executive and management functions. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38 (see analysis of Saputo).

Kiely's responsibility for developing and delivering training on the tablets used by paramedics in all Department ambulances further supports a finding that he is predominantly engaged in executive and management functions. In the context of how the Department uses the tablets—to record patient care, ensure its continuity, and to obtain reimbursement for patient care from Medicare, Medicaid or private insurance—Kiely's responsibility for creating and implementing training on the tablets broadly influences the effectiveness of agency operations. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38. Although Director Farrell also contributed to the training materials, Kiely contribution to the training was adopted, unchanged, and merely compiled with Farrell's.

Not all of Kiely's recommendations are managerial, but this does not mean that he lacks managerial authority. See generally, State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38. For example, Kiely's recommendations for the purchase of battery replacements and other, similar supplies are not executive and management functions, as they concern routine matters, and there is no indication that he thereby considers the advancement or development of the department's broader goals. Likewise, Kiely's participation in the recommendation of new cardiac monitors, software, and tablets as part of a five- or six-member voting group alongside individuals above his rank, is to diffuse to constitute an effective recommendation. Village of Downers Grove, 6 PERI ¶ 2035. Even assuming, that the group followed Kiely's advice and voted in accordance with Kiely's recommendation, it is not clear whether the recommendation advanced by the group was the one adopted by the commissioner. The testimony on this point was overly generalized. Although First Deputy Sheridan testified that Kiely was integral to conversations pertaining to the selection processes for new equipment and software and that during discussions, she personally

relies heavily on his recommendations, First Deputy Sheridan could not recall whether the Department's new software vendor was the one Kiely recommended. The record is likewise unclear as to whether Kiely recommended a particular cardiac monitor or whether the Department ultimately chose the monitor he recommended.

Finally, Kiely's authority to both develop and oversee the implementation of tablet training indicates that he is responsible for developing the means of reaching policy objectives. State of Ill., Dep't of Cent. Mgmt. Servs., 30 PERI ¶ 38. Similarly, his authority to make effective recommendations, to avoid mandatory collection of information that could burden paramedics in their day-to-day functions and to change software vendors for tablets, demonstrates that Kiely is empowered to develop the IT means by which the Department achieves its objectives.

Thus, DDC Kiely is managerial within the meaning of Section 3(j) of the Act.

III. CONCLUSIONS OF LAW

1. The Deputy District Chiefs are supervisory within the meaning of Section 3(r) of the Act because they are above the highest rank of company officer.
2. Should the Board find that the Deputy District Chiefs are not above the highest rank of company officer, I would find that none of the Deputy District Chiefs satisfy the four-part test for supervisory authority.
3. The DDCs in Special Operations, Jason Lach, Douglas Schick, and David Doggett, are not managerial within the meaning of Section 3(j) of the Act.
4. DDC Richard Stack is not managerial within the meaning of Section 3(j) of the Act.
5. DDC Evan Person is not managerial within the meaning of Section 3(j) of the Act.
6. DDC Mark Kiely is managerial within the meaning of Section 3(j) of the Act.
7. Pursuant to the parties' stipulation, the Deputy District Chief – Manpower Division is appropriately excluded from the bargaining unit as confidential within the meaning of Section 3(c) of the Act.

IV. RECOMMENDED ORDER

1. The petition is dismissed.

V. 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 Board's General Counsel, Helen J. Kim, by electronic mail to the Board's designated email address for electronic filings, at ILRB.Filing@Illinois.gov, with copy to helen.j.kim@illinois.gov, or by regular U.S. Mail or hand delivery at 160 North LaSalle Street, Suite S-400, Chicago, Illinois 60601-3103. 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 7th day of May, 2025

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

/s/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

