

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

American Federation of State, County and)	
Municipal Employees, Council 31,)	
)	
Charging Party/Petitioner)	
)	
and)	Case Nos. S-CA-24-104
)	S-UC-24-061
)	
Macon County Conservation District,)	
)	
Respondent/Employer.)	

ADMINISTRATIVE LAW JUDGE’S RECOMMENDED DECISION AND ORDER

On June 19, 2024, the American Federation of State, County and Municipal Employees, Council 31, (Charging Party or Union) filed a charge with the Illinois Labor Relations Board’s State Panel (Board). The charge alleges that the Macon County Conservation District (Respondent, Employer, or District), engaged in unfair labor practices within the meaning of Sections 10(a)(4) and (1) of the Act. The charge was investigated in accordance with Section 11 of the Act. On July 30, 2024, the Board’s Executive Director issued a Complaint for Hearing.

On June 20, 2024, the Union filed a unit clarification petition in Case No. S-UC-24-061 pursuant to the Act and the Rules seeking to add the titles of Site Superintendent and Natural Resources Manager to its existing unit, which were excluded due to being disputed in Case No S-RC-24-053.

On August 7, 2024, the Board’s general counsel issued an order consolidating Case Nos. S-CA-24-104 and S-UC-24-061. A hearing was held on September 30 and October 1, 2024, in Chicago, Illinois. Both parties appeared at the hearing and were given a full opportunity to participate, to adduce relevant evidence, to examine witnesses, to argue orally and to file written briefs. After full consideration of the parties' stipulations, evidence, arguments, and briefs, and upon the entire record of the case, I recommend the following:

I. PRELIMINARY FINDINGS¹

The parties stipulate and I find that:

1. At all times material, the Respondent has been a public employer within the meaning of Section 3(o) of the Illinois Public Labor Relations Act.
2. At all times material, the Respondent has been subject to the jurisdiction of the State Panel of the Board pursuant to Section 5(a-5) of the Act.
3. At all times material, the Charging Party has been a labor organization within the meaning of Section 3(i) of the Act.

II. ISSUES AND CONTENTIONS

The issue in the representation petition is whether the titles of Natural Resources Manager and Site Superintendent are appropriately included in the bargaining unit or whether they must be excluded as supervisory. The issue in the unfair labor practice complaint is whether the Respondent violated Sections 10(a)(4) and (1) of the Act by allegedly refusing to bargain with respect to employees Gage Elder, Andy Murphy, and Adam Reef, individuals allegedly covered by the Board-issued certification in Case No S-RC-24-053.

The Employer argues that the Natural Resources Manager (NRM) is a supervisor within the meaning of the Act. It contends that the NRM's work is unique to his position and different from the work of his subordinate technician and seasonal employee. The Employer further asserts that the NRM has authority to make recommendations with independent judgment on hiring, promotion, and discipline. The Employer also argues the NRM directs his subordinates with independent judgment and that such direction impacts his subordinate technician's terms and conditions of employment because evaluations are used to determine wage increases. The Employer concludes that the NRM devotes a preponderance of his time to directing staff and ensuring that the Employer's projects and goals are accomplished.

The Employer next argues that the Site Superintendents are supervisors within the meaning of the Act. It argues that the Site Superintendents' work is beyond the scope of that performed by their subordinates. In addition, the Employer asserts that the Site Superintendents have authority to make effective recommendations on hiring, promotion, and discipline. It further asserts that the Site Superintendents direct their subordinates with independent judgment and have authority to

¹ The remainder of the parties' stipulations are included in the findings of fact.

impact their subordinates' terms and conditions of employment through their evaluations, which are used to determine merit increases. The Employer concludes that the Site Superintendents spend the preponderance of their work time directing their subordinates and ensuring their sites effectively provide the Employer's services.

The Employer denies that it violated Sections 10(a)(4) and (1) of the Act and contends that it simply maintained its objections to the inclusion of the Site Superintendent in the bargaining unit, which was excluded from the Board's certification as a disputed title. It notes that it bargained in good faith over bargaining unit employees' terms and conditions of employment.

The Union argues that the NRM is not a supervisor within the meaning of Section 3(r) of the Act because he does not have the authority to perform any indicia of supervisory authority with the requisite independent judgment or recommend the same. It contends that the former NRM's disciplinary recommendations were not effective and that the current NRM does not possess disciplinary authority at all. The Union further contends that the NRM does not have authority to effectively recommend the hiring of employees because all hiring decisions are ultimately made by consensus with superiors. The Union next argues that the NRM does not consistently exercise independent judgment when directing his subordinates, and that any direction he provides is not supervisory where he lacks authority to impact his subordinates' terms and conditions of employment. Regarding the impact of the NRM's evaluations, the Union contends that the evaluations are subject to several layers of review, rendering them ineffective. It further argues that the Employer failed to provide sufficient evidence that the evaluations impact wage increases. The Union concludes that the NRM does not spend a preponderance of his time performing supervisory functions.

The Union next contends that the Site Superintendents are not supervisors. It argues that the Site Superintendent title is the successor to the Unit Superintendent title, which is included in the unit, and that it therefore warrants the same unit placement where there has been no change in duties. In the alternative, the Union contends that the Site Superintendents do not satisfy the test for supervisory status set forth in Section 3(r) of the Act because they lack authority to discipline, hire, and direct their subordinates with independent judgment or effectively recommend the same and spend the vast majority of their time on the same manual labor performed by their technicians.

With respect to both the NRM and the Site Superintendents, the Union argues that even if the NRM and the Site Superintendents exercise some authority over the seasonal employees as a

result of the Employer's hiring practices, it does not justify their exclusion from the unit. The Union contends that this authority does not change the analysis of the preponderance prong of the test. In the alternative, the Union argues that the petitioned-for employees' authority over hiring with respect to the seasonal employees would not create a conflict of interest because the seasonals are not in the bargaining unit.

Finally, the Union argues that the Employer violated Sections 10(a)(4) and (1) of the Act by refusing to bargain over the terms and conditions of employment of Gage Elder, Andy Murphy, and Adam Reef, the individuals currently identified by the Employer as holding the Site Superintendent title. The Union notes that the Employer, in its response to the Union's representation petition in Case No. S-RC-24-053, identified these employees as Unit Superintendents, and that the Board-issued certification includes the Unit Superintendent title. The Union concludes that the Employer's refusal to bargain over these employees' terms and conditions of employment violated the Act because the certification imposed a duty to bargain.

III. FINDINGS OF FACT

Jerry Culp is the Executive Director of the Macon County Conservation District (District or Employer), which encompasses 4000 acres and employees approximately 29 employees. He oversees three departments, the Department of Operations, the Department of Program Services, and the Department of Finance and Human Resources. Each department is overseen by a director, and the directors report to Culp. Philip Julius is the director of the Department of Operations, which performs the maintenance and natural resource work for the District. Julius has held his position for a year and a half. He was preceded by Shawn Ravellette, who left the position in 2022. Julius has four direct reports including three Site Superintendents and a Natural Resources Manager (NRM). The three Site Superintendents each oversee a group of sites, referred to by their primary location, Friends Creek, Sands Creek, and Rock Springs.

1. History of the Site Superintendent Position and Bargaining History

On March 28, 2024, the Union filed a representation petition in Case No. S-RC-24-053 to represent the District's full- and part-time employees including, among others, the Natural Resources Manager and the Unit Superintendent/Resident Guards. The Employer objected to the petition on the grounds that the Natural Resources Manager and the Site Superintendent positions

were supervisory within the meaning of the Act. During the representation proceeding, the Employer submitted an employee list with signature exemplars. The list stated that Andy Murphy and Gage Elder held the titles of Unit Superintendent/Resident Guard and that Adam Reef held the title of Unit Superintendent. These individuals signed the document. The list also identified the title of Site Superintendent but stated that it was vacant.

On April 22, 2024, the Board in Case No. S-RC-24-053 certified the Union as the exclusive representative of a unit of District employees that included the position of Unit Superintendent/Resident Guard and Unit Superintendent but excluded the positions of Site Superintendent and Natural Resources Manager as disputed. The certification stated the following:

Accordingly, pursuant to Sections 6(c) and 9(d) of the Act, the named labor organization is the exclusive representative of all employees **INCLUDED** in the following bargaining unit, found appropriate for purposes of collective bargaining with regard to rates of pay, wages, hours of employment, and other conditions of employment:

All Full Time and regular Part time employees employed at the Macon County Conservation District in the following positions: Administrative Assistant, Custodian, Historical Sites Manager, Marketing Specialist, Natural Resources Technician, Part Time Naturalist, Program Specialist, Site Technician, Site Technician/Resident Guard, Unit Superintendent, Unit Superintendent/Resident Guard, Volunteer Coordinator, Weekend Naturalist.

The titles of Natural Resources Manager and Site Superintendent are currently in dispute, therefore, are **EXCLUDED**.

On June 20, 2024, the Union filed a unit clarification petition to add the Site Superintendent and Natural Resources Manager to its certified bargaining unit. The Employer reiterated its objections that the Site Superintendent and Natural Resources Manager positions were statutorily excluded from collective bargaining under Section 3(r) of the Act. The matter proceeded to hearing on September 30 and October 1, 2024.

Executive Director Culp testified that two years prior to hearing, Shawn Ravellette, then-Operations Manager, requested to change his title to Director of Operations and to change the titles of his subordinates from Unit Superintendent to Site Superintendent. He contends that the District, at that time, made the change and updated the job description of the Unit Superintendent position

to reflect the new title. The District circulated an updated list of employee phone numbers on May 27, 2022, which showed a change only to Ravellette's title. It still identified Reef as a Unit Superintendent and Murphy and Elder as Unit Superintendent/Resident Guards. Reef testified that his title changed from Unit Supervisor to Unit Superintendent, not Site Superintendent, in 2022. Reef further stated that he changed his email signature to reflect that new title, and he continues to use the Unit Superintendent title in his email signature. Reef has a nameplate on his office that identifies his title as Unit Superintendent. Director of Operations Julius has been to Reef's office and has never commented on the title stated on his name plate.² No one from the District told Reef that he was a Site Superintendent rather than a Unit Superintendent.

The District considers the positions of Site Superintendent and Unit Superintendent to be the same and did not change the positions' duties when it made the title change. Executive Director Culp testified that there is currently no one employed by the District who holds the position of Unit Superintendent, that there is no job description in effect for that title, and that the title of Unit Superintendent no longer exists. However, he acknowledged that the terms Unit Superintendent and Site Superintendent are sometimes used interchangeably, and that the title Unit Superintendent exists in some documents still maintained by the District.

Culp personally reviewed the signature exemplar form submitted to the Board in Case No. S-RC-24-053 that identified Murphy, Reef, and Elder, as Unit Superintendents and listed the Site Superintendent title as vacant.

On May 10, 2024, Union Staff Representative Michael Wilmore demanded to bargain an initial collective bargaining agreement with the District to cover the certified unit.

On June 5, 2024, the District's attorney, Susan Nicholas, sent an email to Wilmore to schedule a date to commence bargaining. She asserted that the District maintained its objection to the inclusion of supervisory positions as set forth in its objections to the Board and that it did not intend to waive those objections by engaging in negotiations for the initial collective bargaining agreement applicable to the certified positions.

² Elder testified that his title changed from Unit Supervisor to Site Superintendent in around 2021, but I do not give great weight to this testimony as it conflicts with the Employer's updated employee directory from 2022 that shows his title to be that of Unit Superintendent as of 2022, the signature exemplar list that identifies him as a Unit Superintendent/Resident Guard, and the Employer's testimony that the title change occurred sometime later.

On June 6, 2024, Wilmore asked Nicholas for clarification about the names and job titles of the employees that the District considered to be excluded. Later that day, Nicholas provided the following list: Natural Resources Manager: Mitch Lovgren; Sand Creek Site Superintendent: Gage Elder; Friends Creek Site Superintendent: Andy Murphy; Rock Springs Site Superintendent: Adam Reef.

On August 8, 2024, Wilmore sent an email to Nicholas with a wage proposal, which included wages for the Site Superintendent position but did not reference the position of Unit Superintendent. Wilmore explained this choice, noting that the District had informed him that it was referring to the Unit Superintendents as Site Superintendents, and that he used the District's terminology to ensure that the District understood the Union's proposal.

The District did not agree to negotiate the wages of the individuals they identified as Site Superintendents. However, the parties have negotiated and reached tentative agreements on multiple other provisions.

2. Natural Resources Manager – Mitch Lovgren

The Natural Resources Manager (NRM) is responsible for the natural resources work within the District, which encompasses restoration of the land. Restoration work includes spraying of invasive species, removal of trees, rough mowing,³ seeding, pre-planting with native tree species, and controlled burning, a management technique used to control invasive species and to promote the health of native species.

Mitch Lovgren is the District's current NRM. He previously held the position from March/April 2015 to the end of 2015, when he left employment with the District. The District then hired Ethan Snively as NRM. He held the position until the end of March 2024, when he left employment with the District. The District rehired Lovgren to serve as NRM in May 2024.

After Snively's departure but before Lovgren assumed the position, the District changed the job description of the NRM position to give it a "semi-supervisory role" over natural resource work. The District wanted an individual who could plan the District's natural resources work, be aware of what the Site Superintendents worked on, and schedule the natural resources work to show progress. Under the new job description, the NRM is responsible for "supervis[ing] and

³ Rough mowing is performed to manage an area until restoration is performed or to manage a newly-planted restoration area. It is done to remove underbrush and requires heavier equipment.

direct[ing] assigned staff including seasonals, volunteers, consultants, and contractors in restoration and land management tasks.”

The NRM is newly responsible for developing a natural resources plan for the District’s land restoration work. As of the date of hearing, NRM Lovgren had not submitted such a plan to Executive Director Culp and had not presented any natural resources projects or goals to Operations Manager Julius. Any natural resources plan would be subject to multiple layers of review and would need to be submitted to the Board of Trustees for final approval.

The NRM is responsible for updating hunting maps for the hunting program and submitting them to the Board for their approval. The NRM also develops and evaluates annual project budgets for review by his superiors and submission to the Board for approval. The NRM is newly expected to write and submit grant applications related to natural resources, though he has not done so yet.

NRM Lovgren directly oversees one full-time natural resources technician, Mitch Ward, and one intern/seasonal technician, Patrick Dorn. The natural resources technician is predominantly responsible for performing herbicide control, rough mowing, brush clearing and maintenance of equipment. The seasonal employee performs largely the same work as the natural resources technician, but it is more limited in scope due to his more limited abilities.⁴

i. Direction

Director of Operations Julius informed Lovgren that he is responsible for the 4000 acres of natural resources, that Lovgren has the final say on natural resources work that is to be performed, and that he must coordinate with the Site Superintendents on the different types of projects performed by the department. Executive Director Culp confirmed that there is coordination of efforts between the Natural Resources Manager and the Site Superintendents. Julius informed both NRM Lovgren and the Site Superintendents that Lovgren is responsible for natural resources projects and that the NRM must approve the Site Superintendents’ natural resources work. In practice, the Site Superintendents frequently conduct spraying and rough mowing of invasive species without Lovgren’s oversight or knowledge.

Julius testified that the NRM has authority to require a site superintendent or site technician to perform a certain duty. Lovgren testified that he did not believe that he had the authority to

⁴ The Natural Resources Manager also oversaw the contractors on the District’s most recent site cleanup, but sometimes Director of Operations Julius oversees the contractors directly.

mandate the Site Superintendents to perform work for him when they have their own duties. Julius acknowledged, consistent with Lovgren's testimony, that if the NRM was overseeing a prescribed burn, he would not have authority to mandate that a site superintendent or technician participate if they informed him that they have other work to do. Lovgren has asked the superintendents for assistance on some projects, and in some cases, they have declined because they had other work to do. Lovgren recently asked for Site Superintendent Elder's assistance on a farm cleanup together at Friends Creek, removing concrete, cleaning up metal, and fixing machinery; Elder assisted when he was available. There have not been any disagreements between Lovgren and the Site Superintendents concerning the performance of natural resource work. There has never been a case where Lovgren and the Superintendents decided that what Lovgren needed them to do was more important than their existing projects.

Lovgren creates a rough plan for work each week, that may change due to weather. He determines the type of work to distribute to his technician based on the weather and the season. Spraying is conducted during the summer. Brush removal and tree clearing occurs in the winter. Burning occurs in the fall and spring.

Lovgren discusses his weekly plan during the Monday meetings with the Site Superintendents and Operations Director Julius. Lovgren and the superintendents will sometimes discuss how to coordinate use of equipment for their respective tasks. Following the Monday meetings, Lovgren meets with his natural resources technician and seasonal employee to give them updates on their work if Julius has identified specific projects that he wants them to complete.

Lovgren's technician checks in with him every morning at his office location unless he has been assigned to report elsewhere for the day. Lovgren generally makes assignments on a daily basis. He assigns work to the technician and the seasonal based on their skills and abilities. For example, the seasonal employee cannot run a skid steer and Lovgren therefore does not assign him work that requires use of that equipment. Similarly, the seasonal employee is unable to identify all the invasive species, so he is responsible for spraying the one species he is currently able to identify. Lovgren also considers the jobs that need to be done, which are recurring, based on the seasons. He assigns his technician to attend the archery deer management program if he, Lovgren, cannot attend due to a scheduling conflict or if he is off for the day.⁵

⁵ Work at the archery deer management program includes conducting the weekly archery drawing, where hunters seek an opportunity to hunt, and record-keeping related to the hunts.

Lovgren sometimes works alongside his technician. Most recently, they worked on a farm cleanup together at Friends Creek, removing concrete, cleaning up metal, and fixing machinery. Lovgren and his technician may also sometimes attend the archery deer management program together. However, Lovgren and his technician may also sometimes split up, depending on the project.

Lovgren is responsible for overseeing prescribed burns, though he has not yet performed this function. He is responsible for creating burn plans, reviewing them with staff, informing staff of the burns and leading the burns if he is on scene. During a prescribed burn, Site Technicians and Site Superintendents from several locations may come and help, and the NRM may give them instructions. Anybody who is available participates in prescribed burns including the director of operations and the executive director. If a Site Superintendent has other work that he must perform, he may not attend; the decision to attend is a judgment call reserved to the site superintendent.

Site Superintendents also have burn boss certifications and have overseen prescribed burns on their sites. Julius testified that the Site Superintendents must obtain the approval of the NRM before performing such natural resource work on their sites but could not recall a case where that had occurred. The Site Superintendents and the NRM however do coordinate their work during the weekly meetings. The District's burn season begins in November/December and ends in March/April. No burns have been conducted since the District updated the NRM job description.

The NRM may sometimes also oversee a site technician from another location. For example, when the district worked on a farmstead cleanup, where employees were digging up concrete, Lovgren had a site technician from Friends Creek running a skid steer on his behalf.

Lovgren reviews requests for time off from his subordinates, the natural resources technician and the seasonal employee. The District is transitioning to an online system for time off requests, but employees are still required to submit a paper request when they seek time off. Lovgren never denies his subordinates' requests for time off. He grants the subordinate's request if they have the available accrued time. Prior to the advent of the online system, Lovgren was not able to access information concerning his subordinates' accrued time. He is now able to check, but does not usually do so. The system will not allow employees to take time off if they have not accrued the benefit time. The District has never reversed Lovgren's decision to approve a

subordinate's leave request. Time off requests must be further approved by both Director of Operations Julius and Executive Director Culp.

Lovgren reviews the timesheets submitted to him by his natural resources technician and seasonal employee. The timesheets list the hours the employees have worked and lists the work they have performed. He checks the timesheets for accuracy but does not assess whether employees are being efficient in their time management. Lovgren corrects timesheets if he finds a mathematical or clerical error. For example, if an employee noted that they worked seven hours but actually worked eight, Lovgren will follow up with the employee to ensure that this was accurate and corrects it if it is not. Lovgren then uses the timesheets to make his weekly report to Director of Operations Julius. Julius reviews the timesheets and corrects errors if he finds them. For example, if an employee marked down having worked only seven hours instead of eight, he will double check with the employee to ensure that this was correct. Julius will also correct the mathematical tally of hours if it is wrong; he relies on the timesheets for payroll.

The NRM is responsible for evaluating the natural resources technician, however NRM Lovgren has not yet performed evaluations for his technician.⁶ The evaluation process is the following: The subordinate completes a self-evaluation and submits it to the NRM. The NRM makes comments on the technician's evaluation and meets with him to discuss it. If the NRM believes that the technician needs to make corrections in his performance, he will note that on the evaluation form. The NRM does not make any recommendation for a merit increase on the technician's evaluation. After the NRM completes his comments, he submits the evaluation to the director of operations for review. Director of Operations Julius testified that he does not make any modifications or changes to the evaluations completed by the NRM. Director of Operations Julius then submits the evaluation to the Executive Director, who signs off on the evaluation and passes it to human resources for implementation.

Julius completes and submits a separate form to authorize a merit increase. He indicated that he makes his recommendation for a raise based on his review of the evaluation. He further testified that he has a verbal discussion with the NRM about what the recommendation should be but later testified that he discusses the NRM's view of the subordinate's performance and that the NRM will recommend that the technician should get a "nice increase" if he has done a good job. However, Julius admitted on cross examination that, in his discussions with his subordinates about

⁶ He also did not have the opportunity to evaluate his technician when he last held the position of NRM.

the technicians' performance, he does not speak specifically about raises or how the technician's performance might result in a raise.

Executive Director Culp testified that the NRM does not evaluate the seasonal subordinate and only evaluates the natural resources technician. Director of Operations Julius never informed Lovgren that he would be involved in the evaluation of the site superintendents.

The NRM is responsible for training subordinates in performing natural resource work, but the record includes only one example in which the NRM provided training. On one occasion, the NRM showed all available operations department staff how to make cuts with a chain saw.

ii. Discipline

The District informed NRM Lovgren that he has authority to issue discipline, but Lovgren testified that he was unsure of the process.

Former Natural Resources Manager Snively recommended the discharge of Aaron Wrigley, a seasonal employee whom the District hired in early 2024. Wrigley would come in late, leave early, and sometimes did not come in at all. In early March 2024, Snively recommended that Julius terminate Wrigley's employment because Wrigley's attendance problems had become an every-day occurrence. Julius informed Snively that he needed to document Wrigley's attendance issues and discuss the matter with Wrigley.⁷ Snively documented the issue for two weeks and then spoke to Wrigley about his expectations in the second week of March 2024. Wrigley's attendance issues improved for a few days but then recurred.

Snively continued documenting Wrigley's attendance issues following his discussion, provided documentation of the deficiency to Julius, and reiterated his recommendation to terminate Wrigley's employment. Pam Smith, the Director of Finance and Human Resources, informed Snively that she had spoken to Julius, Culp, and the District's attorney, and that they had rejected his recommendation to terminate Wrigley's employment. Snively left employment with the District one or two weeks after this incident. Wrigley remains employed with the District and did not receive any discipline based on the absenteeism Snively raised to Julius's attention.

⁷ Julius also noted that at least some of Wrigley's absences appeared to have been excused because when Wrigley said he could only work two hours on a given day, Snively told him not to come in at all.

iii. Hiring

The NRM is responsible for interviewing and making recommendations to hire the seasonal employee/intern assigned to him and the natural resources technician. Recommendations for hire must be approved by Director of Operations Julius and Executive Director Culp to be finalized. Culp testified that he has never rejected any recommendations on hiring.

NRM Lovgren has not had an opportunity to participate in the hiring process for the natural resources technician position, but has participated in hiring a seasonal technician/intern. Lovgren interviewed two candidates, Patrick Dorn and another. Julius did not participate in the interview process. Lovgren recommended to Julius that Dorn should be offered the position. Lovgren based his recommendation on the fact that the other candidate did not have sufficient experience, was not suited to the job, and did not seem to have an interest in the work. Julius accepted Lovgren's recommendation, Culp approved, and the District hired Dorn.

Former Natural Resources Manager Snively also interviewed individuals for the seasonal employee and intern positions. When Ravellete was director of operations, he sat in on all the interviews for seasonal employees and asked questions; Snively did not ask Ravellette to join in the interviews. However, after Julius replaced Ravellette as director of operations, Snively interviewed a seasonal employee on his own and recommended an applicant for the position. There was only one applicant, Aaron Wrigley. Snively recommended that the District hire him, and Julius accepted his recommendation.

The NRM is not involved in hiring Site Superintendents, site technicians, or seasonal employees who report to the Site Superintendents.

iv. Preponderance

Lovgren testified that he spends approximately 10% of his worktime directing his subordinates, assigning work, interviewing candidates, scheduling, and completing evaluations. He spends another 10% of his time performing office work, which includes a half an hour a week preparing the weekly plan of work. Lovgren testified that spends 80% of his time in the field performing invasive species work and restoration, removing brush and trees. For eight weeks in the fall, he spends a significant portion of his time conducting the archery deer management program and handles the frequent telephone inquiries about the program.

Director of Operations Julius has not performed a time study of the NRM's day to day activities.

3. Site Superintendents⁸

Andy Murphy is the Friends Creek Site Superintendent and is assigned to the Friends Creek Nature Preserve, which consists of 626 acres, and Bois du Sangamon. Murphy performs facility, equipment, and grounds maintenance, and takes care of the campground. Facility maintenance ensures that the buildings are clean, that the lights are working and that there are no leaks. Grounds maintenance includes spraying weeds, line trimming, mowing, and filling potholes. The spraying of weeds occurs in the parking lots and is not considered natural resources work. Equipment maintenance includes greasing, servicing, and cleaning mowers, tractors, skids steers, chain saws, line trimmers, and leaf blowers. When he performs work on the campground, he serves as a host, handles reservations and makes sure the campground runs smoothly. Murphy testified that his duties have not changed in the past four years.

Murphy oversees a site technician, Ethan Spain, and one seasonal employee, Steve Dixon, who is the campground host. Dixon takes care of the campground and keeps the facilities clean at Friends Creek. He works 36 hours a week, sometimes over the weekend.⁹ He is expected to stay at the Friends Creek campground while he is at work. He cleans the toilets, makes sure the garbage is taken out, performs intake and outtake of campers, and picks up trash along the roadsides. Site technician Spain mows, trims, and repairs equipment.

Gage Elder is the Sands Creek site superintendent and is assigned to the site that includes Sand Creek, Fort Daniel, Willow 1, Willow 2, Grove Branch, and Kaufmann Conservation Area. These locations are within a 30-minute drive of each other. Grove Branch is eight or nine miles away from the other areas. Site Superintendent Elder is responsible for mowing turf grass, picking up trash, and maintaining trails. He spends most of his time at Sands Creek. He also performs natural resources work within his area, including spraying and manually removing invasive species, and performing prescribed burns. He has previously served as a burn boss but has not participated in any prescribed burns since May 2024 because there have not been any. No one has ever informed him that he is no longer to serve as a burn boss.

⁸ The disputed title will be referred to herein as “Site Superintendent” because this is the title listed on the Union’s unit clarification petition.

⁹ Dixon has worked as a seasonal employee for the past nine years but is rehired each year. Julius set the number of hours that Dixon works when he was rehired. The seasonal camp host worked weekends before Murphy assumed his role as site superintendent.

Elder oversees one full-time site technician, Doug Ellison, and two seasonal employees, Tim Lay and Steve Chebak. Site technician Ellison mows the turf, trims the weeds, sprays the weeds in the parking lot, clears trails, and maintains equipment. The seasonal employees mow the turf, trim the weeds, pick up the trash, and prune trees around the trails. They may also clean the bathrooms. Seasonal employee Tim Lay works almost exclusively at Fort Daniel, which is four to five miles away from Sands Creek. Lay was hired as the seasonal for the Fort Daniel location; his location was set by the job posting for his position. Lay has not worked outside of Fort Daniel except to assist in prescribed burns. Chebak was hired as the Sand Creek seasonal, but Elder has asked him to work at Fort Daniel.

Adam Reef is the Rock Springs Site Superintendent and is assigned to the site that includes Rock Springs, Griswold conservation area, Leiby Hall conservation area, Wright-Baton Audubon area, Powers Woods, Governor Oglesby's mansion, and the Trobaugh-Good house. Site Superintendent Reef is responsible for vehicle and equipment maintenance, maintenance of roads, turf, hiking trails, lots, and infrastructure. He also performs mowing and spraying, though he does not mow on a weekly basis. Reef testified that his job duties have not changed since around 2002.

Reef oversees two full time site technicians, Matt Sayers and Jeff Fasick,¹⁰ and three seasonal employees, Kent Aufrecht, Dave Keck, and Mitch Simpson. There have always been two site technicians assigned to Reef's site, one who performed the outdoor work while the other was responsible for maintenance of the facilities. Both site technicians are responsible for equipment and fleet maintenance. Sayers is responsible for the facilities maintenance and spends his time fertilizing, overseeding, and taking care of the facilities by completing a maintenance check list that includes flushing toilets, turning valves, running the septic pumps, and checking lights at the Rock Springs nature center. Fasick is responsible for the outdoor work. He was a professional landscaper.

The seasonal employees work part time. Seasonal employees Mitch Simpson and Kent Aufrecht are responsible for posting reservations, cleaning restrooms, picking up roadside litter, replacing trash bags, and blowing out leaves. Simpson works Monday through Thursday, and this schedule was listed on the job posting used to hire him.¹¹ Kent Aufrecht works Friday, Saturday

¹⁰ Jeff Fasick is not currently working and has not worked since June 2023. Fasick has a medical issue which makes him unable to perform his job duties.

¹¹ Reef did not create the posting, but he communicated to someone within the District that he needed a staff member during the workweek

and Sunday. Although Reef's predecessor set Aufrecht's schedule, Reef testified that he does not have authority to unilaterally change it and needs to ask Julius for permission to do so. Seasonal employee Keck was hired to work at the Griswold Conservation Area, which is 14 miles from Rock Springs.¹² He is responsible for mowing, line trimming, posting reservations, cleaning up, and clearing trails. Reef testified that he does not have authority to modify the days worked by his subordinates but may ask a seasonal to pick up a shift when another seasonal is taking time off.

The Site Superintendents do not set the hours of their technicians. The number of hours worked by the seasonal employees is set by the job postings under which they were hired but can vary from week to week. The seasonal employees are allotted a specific number of hours to work each season. Elder's seasonal employee, Chebak works three days a week for up to a total of 24 hours, but he does not have a minimum number of hours each week that he must work. Site Superintendent Elder leaves the schedule up to the seasonal employees as to how they reach their total number of hours. Site Superintendent Reef's seasonal employee, Keck, sets his own hours but works part time; he cannot work over 40 hours a week but has discretion to determine the number of hours he will work. Site Superintendent Elder's seasonal employee Lay chooses his hours based on his availability as he has another job as a full-time firefighter; Elder does not have advance knowledge of when Lay comes into work, and Lay does not need to check in with Elder every day. Site Superintendent Elder's other seasonal employee, Chebak, has discretion as to how many hours he will work each week and does not need to check in with Elder unless he is working away from Fort Daniel. Julius testified that Site Superintendent Elder decides when Chebak should show up to do the outdoor work. However, Elder testified that Chebak's schedule changes based on the weather because he is unable to fulfill his duties when it is raining or storming. Chebak also prefers not to work outside in the rain.

Executive Director Culp testified that the Site Superintendents are responsible for any natural resources work assigned to them by the NRM. He further stated that the District's natural resource efforts are overseen by the NRM and the Site Superintendents coordinate their work with him.

¹² Reef was not involved in the decision to have a seasonal employee assigned to the Griswold Conservation Area.

All the Site Superintendents¹³ are additionally responsible for putting together a proposed operations budget covering their sites, for submission to Director of Operations Julius.

i. Direction

The Site Superintendents review their subordinates' weekly timesheets for submission to the director of operations each week. The timesheets include specific descriptions of the work that has been performed, broken down by half an hour. The Site Superintendents review their subordinates' timesheets to ensure that the hours stated are accurate and to ensure that the technicians have made no mathematical errors in adding up the hours worked. The Site Superintendents may make changes to their subordinates' time sheets to correct mathematical errors or if their subordinates have noted their time off or sick leave in the wrong columns. Site Superintendent Reef does not review the timesheets to assess the manner in which the technicians and seasonals are performing their work. Site Superintendent Murphy does not substantively review the narrative portion of his subordinates' timesheets.

Julius reviews the timesheets and corrects errors if he finds them. For example, if an employee marked down having worked only seven hours instead of eight, he will double check with the employee to ensure that this was correct. Julius will also correct the mathematical tally of hours if it is wrong; he relies on the timesheets for payroll.

The Site Superintendents use their subordinates' time sheets to compile a report that summarizes the work that has been done that week, and they submit the report to Director of Operations Julius during their weekly meeting with him.¹⁴ The weekly meeting includes all the Site Superintendents and the NRM. During the meeting, the attendees provide an oral report about the different projects they have worked on throughout the week and concerns they may have about their subordinates' performance.

During that meeting, the Site Superintendents also submit a plan for a list of work that they intend to complete in the coming week. The plan includes work to be performed by the Site Superintendents and the site technicians. The Site Superintendents generally do not include the

¹³ The job description for the site superintendent position states that the site superintendent "[a]ssists with the development and administration of the division budget." Director of Operations Julius offered testimony on this responsibility, which is also shared by the Natural Resources Manager, but he appears to have misspoken and attributed this responsibility to the site technicians who do not in fact have such responsibilities, when viewing the transcript on the whole. Tr. P. 125

¹⁴ The site superintendents also complete their own time sheets and submit them to Julius.

work of their seasonal employees on their weekly plan as their duties are routine and outlined in their job descriptions and include mowing, trimming, and cleaning. The one exception, noted in the record, is that Site Superintendent Elder includes seasonal employee Chebak on his weekly plan for one of Chebak's three days of work. That day's work varies depending on the District's need and Chebak's own preferences. The other two days of work are spent doing routine mowing and trimming that is not included on the weekly plan.

Director of Operations Julius discusses the assignments with the Site Superintendents and may make changes to a Site Superintendent's weekly plan. Julius changes Site Superintendent Murphy's weekly plan approximately once a month. Julius regularly changes Reef's weekly plans to assign Reef specific work that he (Julius) or Executive Director Culp want completed. Julius makes changes to Site Superintendent Elder's weekly plan at least a couple times a month. For example, on one occasion Julius directed Elder to address rubble that a contractor had placed along a stream bank in Fort Daniel. This shifted Elder's focus away from his plan that included other matters such as invasive species spraying.

Director of Operations Julius tries to coordinate such assignments through the Site Superintendent. When Julius makes changes to the Site Superintendent's weekly plans, the Site Superintendents either perform the work themselves or assign it to a site technician. Reef does the work himself if he is available but otherwise assigns the work to site technician Sayers. Site superintendent Elder testified that he does not always have discretion to distribute assignments that result from Julius's changes to the weekly plan; and that at least a couple times a month, Julius will direct Elder to assign site technician Ellison to complete certain tasks that arise on short notice such as trees that need trimming or trash that needs to be collected.

Director of Operations Julius has also given assignments directly to site technicians if he knows that something needs to be completed. He makes such assignments once or twice a month. For example, when the District began construction in the nature center basement, Julius noticed that a fire extinguisher needed to be removed and directed the technician, who was present, to perform that work.

The Site Superintendents assign work to their technicians on a weekly basis. Elder makes decisions about assignments of work to his technician based on the season, the weather, and the needs of the District, i.e., whether the grass needs to be mowed. For example, there is more brush removal in the winter, and no mowing is done in the rain. Elder does not assign spraying work to

seasonals because they do not have the proper licensing. Both Elder and Ellison can perform tree trimming and mowing. Elder performs work involving the chainsaw himself because it would be dangerous for his technician to perform the work. Reef assigns his technicians the spraying of weeds and turf, which is a regular and recurring process that must be performed three or four times between April and October; both technicians are licensed to spray. Reef has a recurring plan under which the site technician completes the facility check list. Reef's subordinate technicians also spread seed and fertilize areas, but Reef does not actively assign such work as his subordinates know when to mow and seed when and where needed.

The seasonal employees' duties are identified in the job postings from when they were hired, and the Site Superintendents explain these duties to them when they begin work. Site Superintendent Reef does not actively assign work to his seasonal subordinates. Site Superintendent Murphy's seasonal employee, Dixon, performs routine work and knows his responsibilities. Site Superintendent Elder's seasonal employee Lay, who works at Fort Daniel, similarly performs work that is routine and can be done independently.

Site Superintendent Elder recommended to Director of Operations Julius that seasonal employee Chebak work at Fort Daniels, though he was initially hired to the Sand Creek location. Former Director of Operations Ravellette had previously identified the need for an individual to service that area, which was then being mowed by Site Superintendent Elder and Site Technician Ellison, on rotating weeks. Elder subsequently recommended Chebak for such mowing based on the need previously identified by Ravellette. Chebak did not have the licensing or skill set to perform other functions that would have required the running of heavy equipment, whereas Elder and his site technician could perform tasks other than mowing.¹⁵

Site Superintendent Elder may look over his subordinates' work if he is stopping by at their locations to ensure that they are picking up litter, mowing the grass, and running the weed eater, but he does not otherwise actively monitor their work. Site technician Ellison works independently and Elder does not see him every day. Similarly, Site Superintendent Elder does not actively monitor the work of his seasonal employees. He spends approximately one day a week at Fort Daniels, where his seasonal subordinates may work, though he may spend more time there if he is at the location for an ongoing project. Similarly, Site Superintendent Reef does not activity

¹⁵ Julius testified that Elder recommended Chebak to perform this work because he was good at it, but I give greater weight to Elder's explanation for the decision outlined above.

monitor the work of seasonal employees Aufrecht or Keck. Reef visits seasonal employee Keck's work location at Griswold to perform a site inspection but does not go there to monitor Keck. Most of the site technicians' work is standard and routine. Site Superintendent Reef does not review the outdoor work that his site technicians have performed such as seeding and fertilizing, which are regular yearly activities. Reef also does not check his site technicians' work areas after they have performed spraying. Both of his site technicians have degrees in turf management and are good at performing outdoor work. Reef reviews the checklist completed by Sayers during facilities maintenance to review the pump readings to determine whether the readings are too high, which might indicate the presence of a leak. Reef often works alongside his subordinate site technician Sayers to help him trouble shoot facilities issues because he has more experience than Sayers.

The Site Superintendents recommend approval of their subordinates' time off requests. They do not perform an investigation into the request to determine whether the employee has sufficient accrued time before approving it. The District activated an electronic timekeeping system in summer of 2024 and employees are now submitting leave requests both on paper and electronically. Before 2024, the Site Superintendents had no way of determining whether the requesting employee had the available accrued time. Under the new timekeeping system, the electronic system will not allow a site technician to take time off if he does not have the available accrued hours. The Site Superintendents have never denied a subordinate's leave request, and the District has never reversed a decision by a Site Superintendent to approve a leave request except to correct a clerical error made by the subordinate requesting the leave. Time off requests must be further approved by both Director of Operations Julius and Executive Director Culp.

The Site Superintendents evaluate their subordinate site technicians. The technicians complete a self-evaluation, rating themselves in various criteria, not described in the record. They submit their self-evaluation to their site superintendent, who rates how the technician has performed in those areas and makes comments. The site superintendent then meets with the technician to discuss the evaluation. The director of operations is not typically included in meetings to discuss a technician's evaluation but will attend if requested. Julius reviews and approves the site superintendents' evaluations of their subordinates, but he does not make changes to them. The Site Superintendents do not make recommendations on the evaluation for merit increases or promotions, though the form itself states that the evaluations can impact wages.

The District has a set amount of money allocated for raises each year. After the Site Superintendents complete their comments on their technicians' evaluations and submit the evaluations to Julius, Julius determines whether to recommend a merit increase and submits a recommendation to Executive Director Culp on a separate form. The form includes the employee's name and personal information including their current wage and whether they are eligible for a merit raise. Culp has never denied a recommendation for a raise made by the director of operations.

Julius asserted that he determines whether to recommend an increase by speaking to the technician's superior and reviewing the evaluation. Julius discusses the site superintendents' view of the technicians' performance, but he does not speak specifically about raises or how the technicians' performance might result in a raise.¹⁶ Julius has not asked a site superintendent whether a technician should not receive a raise and he does not notify the Site Superintendents of whether their technicians will receive a merit increase. Although Julius testified that employee performance is the primary factor in determining whether an employee receives a raise, all the site technicians received comparable raises in 2023 even though Site Superintendent Murphy gave technician Coates a critical evaluation, which Julius accepted without modification. Site Superintendents Elder and Reef testified that they did not believe that the District's evaluations impacted wages in practice because they received the same percentage increase regardless of how they were evaluated.

In October 2023, the District instituted an evaluation for seasonal employees, which is a shorter version of the self-evaluation used for the site technicians. Director of Operations Julius is not involved in the evaluation of the seasonal employees and would not be involved unless he was asked for assistance. Site Superintendent Elder testified that he did not believe the evaluations for seasonal employees was a formal process. Elder gave seasonal employee Lay an evaluation but Lay never returned it to Elder. When Elder notified Julius that Lay did not return the

¹⁶ As noted in the facts pertaining to the NRM, Julius also testified that if a technician has done a good job, the site superintendent will recommend that the technician get a "nice increase." However, his subsequent testimony on cross examination, that he does not speak specifically about raises in his conversations with the site superintendents or how the technicians' performance might result in a raise, undermines his claim. The testimonies of at least two site superintendents support this finding. Site Superintendent Reef has never made a recommendation to anyone about what he believed a subordinate's wage increase should be. Similarly, Site Superintendent Elder testified that Julius has never asked his opinion on whether an individual should receive a raise and further stated he never proffered his opinion.

evaluation, Julius did not respond. Two of Reef's seasonal subordinates completed the evaluations with a couple words or a sentence; one did not complete the evaluation at all. Reef testified that he did not evaluate the performance of his subordinate seasonal employees and Julius did not ask him to do so. Reef merely provided the evaluations to Julius.

Site supervisors train technicians on day-to-day machinery use. The chain saws have instructional manuals and safety procedures, which the Site Superintendents are expected to follow and explain to their technicians. Julius characterized this training as routine. Director of Operations Julius oversees safety training.

ii. Discipline

Discipline is uncommon within the District. The director of operations and Executive Director Culp would both review recommendations for discipline.

Site Superintendent Elder has never disciplined a subordinate or recommended discipline. He has never been told that he has the authority to discipline and does not know where employees' personnel files are kept.

Similarly, Reef has never disciplined or recommended the discipline of a subordinate. No one at the District has ever informed Reef that he has the authority to discipline a subordinate. Reef does not know where his subordinates' personnel files are kept and does not believe that he has access to them. On one occasion, Site Superintendent Reef inquired about replacing a technician who was on medical leave and had exhausted all his leave time. The technician is currently still listed as a staff member.

Site Superintendent Murphy has never disciplined a subordinate. When Murphy's technician Coates did not perform work as instructed, Murphy informed Julius. Julius told Murphy to document the matter, which he did. Murphy did not submit his documentation to anyone.

iii. Hiring

The Site Superintendents interview candidates for the site technician positions assigned to their respective sites. The director of operations sits in on the interview and asks questions. Director of Operations Julius stated that if he does not like the candidate, he expresses that to the site superintendent during the interview. The director of operations reviews the site superintendents' recommendations and then makes his own hiring recommendation to the executive director.

Site Superintendent Elder participated in interviews to fill two separate site technician positions during the tenure of former Director of Operations Shane Ravellette. Ravellette participated in the interviews for both positions. For the first position, two candidates were interviewed. Elder and Ravellette conferred and reached agreement on the candidate to select for hire. For the second position, only one candidate, Doug Ellison was interviewed. Elder recommended that the District decline to hire Ellison. Ravellette rejected Elder's recommendation and hired Ellison over Elder's objections.

Site superintendent Murphy interviewed candidates for the site technician positions during the tenure of Director of Operations Julius. Julius sat in on the interview and asked questions, sharing responsibility for the interview with Murphy; Murphy did not ask Julius to attend. After the interview, Julius and Murphy discussed the candidates and agreed that Ethan Spain was a good candidate for the position.¹⁷ The District hired Spain as the site technician. Murphy also interviewed candidates for the site technician position during the tenure of former Director of Operations Ravellette. Ravellette was present for the interviews. Ravellette wished to hire Darryl Coates but Murphy did not. Ravellette hired Coates over Murphy's objections.

Reef participated in interviews to fill site technician positions during the tenure of former Director of Operations Shane Ravellette. Ravellette sat in on the interview, and Reef and Ravellette alternated in asking questions. Ravellette asked Sayers his opinion on then-candidate Matt Sayers. Reef offered his opinion that Sayers had done a good job. Ravellette agreed and the District hired Sayers.

The Site Superintendents also participate in the process of hiring seasonal employees for their respective sites. They select the individuals they wish to interview for seasonal employee positions and conduct the interviews of candidates for seasonal employee positions assigned to their respective sites. Director of Operations Julius does not participate in the interview process for seasonal employees. The Site Superintendents make recommendations to Julius on whom to hire. Julius has never rejected a site superintendent's recommendation to hire a seasonal employee.

Site Superintendent Murphy has recommended the hire of two seasonal employees, Ethan Spain¹⁸ and Gaylan Oros. Spain was the only applicant for the position. There were two

¹⁷ Ethan Spain previously held the position of seasonal employee. However, he needed to complete the entire application process to obtain the technician position. When Ethan Snively held the natural resource technician position and applied for the Natural Resources Manager position, he needed to reinterview.

¹⁸ Spain subsequently applied for and received the site technician position.

applicants for the position obtained by Oros. Murphy recommended Oros because the other candidate said that his only experience operating a mower was that he almost wrecked it.

Site Superintendent Reef recommended the hire of two seasonal employees, Mitch Simpson in 2022 and Dave Keck in 2023. Keck was the only applicant for the position. Reef considers whether the applicants have used mowing equipment and are willing to do janitorial work. Julius accepted Reef's recommendations in both cases.

Site Superintendent Elder recommended the hire of two seasonal employees, Tim Lay and Steven Chebak. Both individuals were the only ones to interview for their respective positions. Elder recommended that Julius hire Chebak because he had the skills to do the work. Elder recommended that Julius hire Lay because he had previously volunteered for the District. Julius accepted Elder's recommendations.

Seasonal employees must be rehired each year or each new season. Some seasonal employees come back year after year to work for the District. If a seasonal employee is a rehire, he does not go through an interview process.

Site Superintendent Reef testified that he does not have any say in whether a seasonal employee can return. Murphy recommended that the District decline to rehire seasonal employee Steven Dixon for the 2024 camping season. Director of Operations Julius rejected Murphy's recommendation and rehired Dixon over Murphy's objections. In 2023, Murphy had a seasonal subordinate, Bob Marshiner, who resigned suddenly after becoming upset about a work interaction. Murphy informed Julius that Marshiner had resigned. When Marshiner conducted his exit interview with Julius and human resources, he apologized for having resigned suddenly and indicated that he wished to return to work. Julius and human resources allowed Marshiner to return to work the following week. Murphy had no part in this decision.

iv. Preponderance

Site Superintendent Reef spends 10-15% of his time interviewing candidates, directing his subordinates, evaluating them, assigning them work, and scheduling them. He spends the rest of his time with his subordinate site technicians doing the same work they do.

Murphy spends 10% of his time directing his subordinates, monitoring, and assigning them work, or recommending their discipline. He spends the rest of his time working in the field performing the same work as his subordinate site technician. In the summer, Murphy spends the majority of his time mowing, trimming, and maintaining the facilities. In the winter or fall,

Murphy spends the majority of his time performing major services on equipment, monitoring the trails that are open over the winter, and performing some natural resources work.

Site Superintendent Elder spends less than 10% of his time directing assigning, evaluating, hiring, and interviewing employees. He spends 40% of his time performing natural resources work, which includes pre-clearing, brush clearing, spraying and removal of invasive species, and prescribed burns. Elder spends 50% of his time performing maintenance and basic operations work.

Executive Director Culp testified that the Site Superintendents spend a majority of their time performing natural resources work but has not done any time study to support that determination. Nor has the District performed a time analysis to determine the amount of time that the Site Superintendents spend training, assigning, or scheduling work to their subordinate technicians or seasonal employees.

IV. DISCUSSION AND ANALYSIS

1. Alleged Refusal to Bargain

The District violated Sections 10(a)(4) and (1) of the Act when it refused to bargain over the terms and conditions of employment of Andy Murphy, Gage Elder, and Adam Reef because they held bargaining unit titles when the Board certified the unit.

Section 10(a)(4) of the Act provides that it is an unfair labor practice for an employer to refuse to “bargain collectively in good faith with a labor organization which is the *exclusive representative* of public employees in an appropriate unit . . . (emphasis added).” 5 ILCS 315/10(a)(4). Section 3(f) of the Act defines an “exclusive representative” as the labor organization historically or voluntarily recognized by the employer in accordance with Board procedures or “*designated by the Board* as the representative of a majority of public employees in an appropriate bargaining unit . . . (emphasis added).” 5 ILCS 315/3(f). Such designation occurs when the Board certifies that the labor organization is the exclusive representative. Chief Judge of the Circuit Court of Cook County, 5 PERI ¶ 2024 (IL SLRB 1989), aff’d, 196 Ill. App. 3d 238, 553 N.E.2d 415, 6 PERI ¶ 4016. Accordingly, an employer’s duty to bargain with the exclusive representative arises when the Board issues a certification of representation designating a labor organization as the exclusive representative of the specified unit. Chief Judge of the Circuit Court

of Cook County, 5 PERI ¶ 2024. An employer therefore violates the duty to bargain in good faith where it refuses to bargain with a labor organization over the terms and conditions of employment of employees within the certified unit. Quadcom Pub. Safety Comm. Syst., 13 PERI ¶ 2046 (IL SLRB 1997) (refusal to bargain following certification and during pendency of appellate review was unlawful); County of Woodford, 14 PERI ¶ 2015 (IL SLRB 1998) (employer violated the Act by withdrawing recognition upon belief that the union no longer continued to represent a majority of employees in the certified unit). Applying these principles, an employer likewise violates the Act if it refuses to bargain with an exclusive bargaining representative over the terms and conditions of employment of employees who hold a title within the certified bargaining unit.

In this case, there is no dispute that the District refused to bargain over the conditions of employment of Andy Murphy, Gage Elder, and Adam Reef on the grounds that these employees were excluded-as-disputed from the certification that issued on April 22, 2024. Accordingly, the sole question presented is whether Murphy, Elder, and Reef held the excluded title of Site Superintendent when the Board’s certification issued or whether they held the bargaining unit titles of Unit Superintendent or Unit Superintendent/Resident guard.

It is clear from the District’s own records that Murphy, Elder, and Reef held the titles of Unit Superintendent or Unit Superintendent/Resident Guard when the Board issued its certification in Case No. S-RC-24-053 and that they were therefore included in the bargaining unit. The controlling piece of evidence on this point is the employee list with signature exemplars submitted by the District in Case No. S-RC-24-053. This list, which was compiled by the District and approved by District Executive Director Culp, identifies Reef as a Unit Superintendent and Murphy and Elder as Unit Superintendent/Resident Guards. None of the three employees are identified as Site Superintendents. The District never indicated to the Board that the title of Unit Superintendent was in disuse, nor did it inform the Board that the District used the titles “Unit Superintendent” and “Site Superintendent” interchangeably. Rather, the District’s employee list demonstrates that the Unit Superintendent titles were in then-current use and that the identified employees—Murphy, Elder, and Reef—held those titles exclusively.

The District's potential error¹⁹ when responding to the Union's petition in Case No. S-RC-24-053 does not justify the Respondent's refusal to bargain over the terms and conditions of employment of Murphy, Elder, and Reef. As discussed above, the certification identifies the scope of the unit and the positions whose terms and conditions of employment the employer must bargain. The District's representations during the pendency of Case No. S-RC-24-053 show that Murphy, Elder, and Reef held Unit Superintendent titles, which were not objected to by the District and were subsequently included in the bargaining unit. The Board has emphasized that parties must exercise due diligence both in their dealings with the Board²⁰ and with each other during the negotiation process.²¹ Allowing a party's unilateral mistake to evade its bargaining obligation would be contrary to the purposes and policies of the Act which are intended to foster stability in labor relations. 5 ILCS 315/2.

The District's good faith negotiation over the terms and conditions of employment of other titles within the certified unit is not a defense to its refusal to bargain over the terms and conditions of employment of Murphy, Elder, and Reef. The certification imposed the duty to bargain over the terms and conditions of employment of all titles within the bargaining unit. See cases supra. This included an obligation to bargain over the Unit Superintendent titles, which the District confirmed in Case No. S-RC-24-053 were titles held Murphy, Elder, and Reef. The District's current assertion, that Murphy, Elder, and Reef held different titles during the pendency of Case No. S-RC-24-053 is inconsistent with its representation to the Board in that case. Although there is testimonial evidence that the District changed the title of Unit Superintendent to Site Superintendent sometime in 2022, it is clear from the signature exemplar document that the District did not fully formalize this change before the certification issued.

¹⁹ The District failed to identify Murphy, Elder, and Reef as Site Superintendents when responding to the Union's representation petition, though Culp testified that they had held this title since 2022. The District also failed to object to the inclusion of the Unit Superintendent titles, which the District now contends was defunct and also performed identical duties to the allegedly supervisory Site Superintendents.

²⁰ City of Chicago (Fire Department), 33 PERI ¶ 51 (ILRB-LP 2016) (counsel's inadvertence in calendaring due date did not preclude default judgment); City of Markham, 27 PERI ¶ 7 (IL LRB-SP 2011); First Trust/River Valley Metro, 26 PERI ¶ 38 (IL LRB-SP 2010), aff'd unpub. order, River Valley Metro Mass Transit Dist. v. Illinois Labor Relations Board, 27 PERI ¶ 61 (3rd Dist. 2011).

²¹ Woodford County Sheriff, 8 PERI ¶ 2019 (IL SLRB 1992) (respondent's failure to give proper "time and attention to its collective bargaining responsibilities" and consequent unilateral mistake did not permit withdrawal from tentative agreement that union had ratified).

Thus, the District violated Section 10(a)(4) and (1) of the Act when it refused to bargain over the terms and conditions of employment of Murphy, Elder, and Reef.

2. Unit Placement of the Site Superintendents

The Site Superintendent title is properly included in the bargaining unit as it is a successor to the bargaining unit title of Unit Superintendent.

“It is well settled that, as a general rule, a successor job title should be treated as the predecessor title with regard to bargaining unit placement.” Cnty. of Peoria (Sheriff), 14 PERI ¶ 2049 (IL SLRB 1998), aff’d sub nom. Cnty. of Peoria v. Ill. State Labor Relations Bd., 305 Ill. App. 3d 827 (3d Dist. 1999); City of Aurora, 18 PERI ¶ 2020 (IL LRB-SP 2002). A successor title takes the same unit position as its predecessor title; if the predecessor title is included in the unit, the successor title also is included. Cnty. of Peoria (Sheriff), 14 PERI ¶ 2049. A successor title is either a new classification or a reallocation of employees in an existing title, where the job duties performed by the employees are *substantially similar* to those they performed in the previous classification. See infra. By contrast, a new title is one that was not previously used, encompassing job duties that are *substantially different* than those performed by employees in an existing job classification. State of Ill., Dep’t of Central Management Services, 38 PERI ¶ 72 (IL SLRB 2021); Ill. Dep’t of Cent. Mgmt. Servs. and Ill. State Fire Marshal, 5 PERI ¶ 2023 (IL SLRB 1989).

Here, the Site Superintendent title is a successor to the Unit Superintendent title because the duties of the Unit Superintendent title are identical to the duties of the Site Superintendent title. The change was in name only, with no alteration of the position holders’ functions or responsibilities. Even the position holders remain the same. The Site Superintendent title must therefore be added to the bargaining unit as a successor title to the bargaining unit title of Unit Superintendent.

There is no merit to the District’s anticipated contention that the title change occurred before certification of the unit and that its objection to the Site Superintendent title should therefore be examined on the merits. The Site Superintendent title did not actually supplant the Unit Superintendent title until after the Board certified the union as the exclusive representative of a bargaining unit that included the Unit Superintendents. The District demonstrated that the Unit Superintendent title was the sole title in formal use for the petitioned-for employees when it filed a signature exemplar list in response to the union’s representation petition. The list included the

Unit Superintendent title and identified its position holders as Murphy, Elder, and Reef, the same individuals the District now claims hold the Site Superintendent title. Although the Site Superintendent title was listed as a position within the District, the District identified it as vacant. Thus, while the District may have updated the Unit Superintendent job description with the title of Site Superintendent and used the two titles concurrently on an informal basis, the Site Superintendent title did not formally replace the title of Unit Superintendent until after certification.

Record evidence apart from the signature exemplar document undermines the District's assertion that it formally changed the Unit Superintendent title to Site Superintendent in 2022, when it changed former-Operations Manager Ravellette's title to Director of Operations. The 2022 phone directory that lists Ravellette with his new title still refers to the petitioned-for employees as Unit Superintendents, not Site Superintendents. Moreover, the District did not convey the change to all employees or ensure that they represented themselves as holding the new title. Reef testified that no one told him that he was a Site Superintendent, his office nameplate still bears the allegedly defunct title of Unit Superintendent, and he continued to use the title Unit Superintendent on his email signature without apparent comment by the Respondent.

In sum, the Site Superintendent title should be included in the bargaining unit as the successor title to the bargaining unit title of Unit Superintendent. However, should the Board disagree with this analysis, I would find that the Site Superintendents are not supervisors within the meaning of the Act, as outlined in section three of this decision, and that they should be included in the unit on that basis.

3. Supervisory Exclusion

The Natural Resources Manager is not a supervisor within the meaning of Section 3(r) of the Act. If the Board deems it necessary to address the authority of the Site Superintendents, I would find that they are likewise not supervisors within the meaning of Section 3(r) of the Act.

Section 2 of the Act grants public employees full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of negotiating wages, hours, and other conditions of employment. 5 ILCS 315/2. Section 3(n) of the Act defines the term public employee and excludes "supervisors [from that definition] except as provided in [the] Act." 5 ILCS 315/3(n).

The first paragraph of Section 3(r) defines the term supervisor and sets forth a four-part

test for establishing supervisory status in non-police employment. Under that test, individuals are supervisors if they (1) perform principal work substantially different from that of their subordinates, (2) possess authority in the interest of the employer to perform one or more of the 11 indicia of supervisory authority enumerated in the Act, (3) consistently use independent judgment in exercising supervisory authority, and (4) devote a preponderance of their employment time to exercising that authority. 5 ILCS 315/3(r); City of Freeport v. Ill. State Labor Rel. Bd., 135 Ill. 2d 499, 505-6 (1990).

In a representation case, the party that seeks to exclude an individual or job classification from a proposed bargaining unit via a statutory exclusion has the burden of proving that exclusion by a preponderance of the evidence. Chief Judge of the Circuit Court of Cook County, 18 PERI ¶ 2016 (IL LRB-SP 2002). It cannot satisfy its burden by relying on vague, generalized testimony or contentions as to an employee's job function. Cnty. of Cook, 28 PERI ¶ 85 (IL LRB-LP 2011); 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 alleged supervisory, managerial, or confidential 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 may be sufficient to satisfy the requirements of the Act absent evidence of specific instances where it was exercised in a manner that showed an impact on 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; 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).

i. Natural Resources Manager

The Natural Resources Manager (NRM) is a public employee and not a supervisor.

(a) Principal Work

The NRM’s principal work is substantially different from that of his direct subordinates, the natural resources technician and the seasonal employee.

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 employee’s 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 NRM’s principal work is obviously and visibly different from that of his subordinate technician and seasonal employee because the NRM is responsible for overseeing the entirety of the District’s natural resources, whereas his subordinates are not. Although the NRM has not yet helped formulate a natural resources plan, the NRM’s broader responsibilities are not speculative where Operations Manager Julius informed NRM Lovgren of his responsibilities for natural resources, district-wide. In addition, the NRM is responsible for performing significant administrative tasks that his subordinates do not perform including serving as burn boss to oversee prescribed burns, recommending a plan for the District’s restoration work, coordinating with other staff to ensure the completion of natural resources work, and preparing a preliminary budget.

Unlike his subordinates, the NRM also plans weekly work, approves leave requests, reviews his subordinates' timesheets, participates in the hiring process, and evaluates his subordinates.

In the alternative, the NRM's principal work is substantially different from his subordinates in nature and essence. Although the NRM spends 80% of his work time performing the same type of natural resources work as the technician and the seasonal employee, some of his administrative work has the potential to influence personnel decisions in areas most likely to affect the employment of his subordinates. For example, his assignment of work, review of timesheets and leave requests, and evaluation of his subordinates are most likely to fall within the scope of representation and are sufficient to differentiate the nature and essence of his work from that of his subordinates. Flagg Rochelle Park District, 20 PERI ¶ 75 (IL LRB-SP 2004); County of Cook and Sheriff of Cook County (Department of Corrections), 15 PERI ¶ 3022 (IL LLRB 1999) aff'd by unpub. order, 16 PERI ¶4004 (1999).

(b) Discipline

The NRM does not have authority to discipline or effectively recommend the discipline of his subordinates with the requisite independent judgment.

NRM Lovgren has never issued discipline and there is no indication that the District has trained him on how to do so. Although the District informed Lovgren that he has authority to discipline his subordinates, the Board has held that the failure to instruct employees as to how to exercise supervisory authority, particularly where it is rarely exercised, demonstrates that they do not have that authority. Circuit Clerk of Champaign County, 17 PERI ¶ 2032 (IL LRB SP 2001), aff'd by unpub. order, Docket No. 4-01-0472 (2003). Here, there is no indication that the District instructed Lovgren on how to issue discipline when he initially held the position in 2015 or when he reassumed the position in May 2024. Indeed, Lovgren testified that he was unsure of the disciplinary process.

There is also insufficient evidence that Lovgren has authority to effectively recommend the discipline of his subordinates with the requisite independent judgment. Recommendations are effective if they are accepted as a matter of course with little, if any, independent review. Chicago Park District, 9 PERI ¶ 3007 n. 3 (IL LLRB 1993) (collecting cases). Initially, it is difficult to find that Lovgren's disciplinary recommendations would be effective where he has made none. Furthermore, the recommendations for discipline and discharge made by his predecessor, Snively,

were not effective. Snively made two separate recommendations to discharge his seasonal subordinate Wrigley for attendance issues. The Employer not only rejected them both but failed to issue any discipline at all. The District suggests that it would have followed Snively's recommendation, but for the fact that he raised the issue to the District's attention shortly before leaving his position, but this is speculative.

Thus, the NRM does not have authority to discipline his subordinates, or effectively recommend the same.

(c) Hiring

The NRM exercises the supervisory authority to effectively recommend the hire of seasonal subordinates, but not technicians.

Recommendations are effective if they are accepted as a matter of course with little, if any, independent review. Chicago Park District, 9 PERI ¶ 3007 n. 3 (collecting cases). 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 (IL SLRB 2000); 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.

With respect to the seasonal employees, the NRM exercises independent judgment in making a hiring recommendation. The NRM serves as the sole interviewer for the seasonal position and bases his hiring recommendation on his assessment of the candidates' suitability for the position, considering subjective factors such as their interest in the work. The NRM's recommendations are effective because they are accepted by Director of Operations Julius and finalized by Executive Director Culp without any substantive review, as neither Julius nor Culp

participate in the interview process. Following this process, NRM Lovgren effectively recommended the hire of seasonal employee Dorn.²²

The Union notes that former Operations Manager Ravellette sat in on interviews for seasonal employees conducted by a former NRM, but this does not alter the finding that the current NRM exercises independent judgment recommending the hiring of seasonal employees. The Employer presented evidence that the interview process has changed with respect to seasonal employees since Ravellette left his position. Julius, who assumed Ravellette's position, has never sat in on an interview of a seasonal employee and did not sit in on the interview that preceded the hiring of Dorn.

The Union emphasizes that Julius has rehired seasonal employees overseen by the Site Superintendents over their objections, but this is more relevant to the Site Superintendent's authority than the authority held by the NRM, at issue here.

The Union does not cite authority for the proposition that a rubber-stamped-like review of the NRM's recommendation renders the hiring decision as made by consensus. In cases where the Board has found a decision made by consensus, it was where the superior and the subordinate have a discussion and reach a decision together, but that is not the process applied here. Cf. County of Lake, 16 PERI ¶ 2036 (addressing promotion); see also, State of Illinois, Department of Central Management Services, 25 PERI ¶ 161 n. 7 (IL LRB-SP 2009) (the mere fact that superior signed off on evaluations is not, by itself, sufficient to make such evaluations collaborative efforts) aff'd in part, rev'd in part and remanded on other grounds 2011 IL App (4th) 090966.

However, there is insufficient evidence that the NRM has authority to effectively recommend the hire of the natural resources technicians as neither the current Natural Resources Manager nor his predecessor have participated in the hiring for that position.

(d) Promotion

There is insufficient evidence that the NRM promotes his subordinates or effectively recommends their promotion. Although the Employer contends that the NRM has authority to make recommendations regarding promotions, the Employer points to no record evidence of any recommendations for promotions that have been made by NRM Lovgren or his predecessors. It

²² Unlike Site Superintendents, discussed below, the NRM considers subjective factors and does not largely make recommendations by default.

is therefore impossible to judge whether such recommendations would be accepted by the NRM's superiors with little independent review.

(e) Direction

The Natural Resources Manager does not exercise the supervisory authority to direct with the requisite independent judgment.

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; City of Naperville, 8 PERI ¶ 2016.

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.

1) Review/oversight /monitoring

The Natural Resources Manager does not oversee or review his subordinates’ work with the requisite independent judgment in the interests of the employer.

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.

As a preliminary matter, there is insufficient record evidence that the NRM consistently oversees and monitors his subordinate technician and seasonal employee in a supervisory manner. While the NRM and his subordinates sometimes work side-by-side performing restoration work, it is not clear from the record how the NRM oversees their work, or checks and corrects it, while he himself is engaging in seeding, rough mowing, and spraying. See e.g., County of Lake, 16 PERI ¶ 2036.

To the extent that the NRM does monitor or oversee the work of his subordinates, there is insufficient evidence that he does so with the requisite independent judgment in the interests of the employer. Although the Employer contends that the NRM is responsible for effectuating the Employer’s natural resources plan, there is insufficient evidence that the NRM in fact oversees his subordinates in accordance with standards and regulations established by the Employer. The preponderance of the evidence demonstrates there is currently no natural resources plan in place. Accordingly, it is difficult to determine whether Lovgren’s oversight of his subordinates in accordance with such a plan, arguably in the interests of the employer, would require the consistent exercise of independent judgment. See Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123.

The Employer contends that the NRM is also responsible for oversight and monitoring of the Site Superintendents' natural resources work; however, the record is lacking any specific examples in which such oversight has actually occurred. Furthermore, in practice, the Site Superintendents conduct natural resources work on their respective sites without the NRM's knowledge or approval.

There is also insufficient evidence that the NRM's responsibility to oversee prescribed burns would require the exercise of independent judgment in the interest of the employer. As an initial matter, NRM Lovgren has not conducted or overseen any prescribed burns since his return to his position. Assuming that he will perform this task in the upcoming burning seasons, the preponderance of the evidence demonstrates that any such oversight is likely to be conducted based on his superior skill, experience and expertise in conducting burns, in a manner that is non-supervisory. Although the NRM may initially determine when and where the prescribed burns occur, these determinations are of the type that derive from the NRM's skill and experience as a licensed burn boss. Furthermore, there is insufficient evidence that the NRM's oversight of subordinates or other employees while they conduct the burns would be to ensure that they conform to any specific policies maintained by the District, rather than in accordance with professional or industry standards. City of Freeport, 135 Ill. 2d at 532.

Similarly, to the extent that the NRM reviews his subordinates' field work, this likewise appears to be based on his superior skill and experience in mowing, spraying, and seeding. Id.

Finally, the NRM's review and approval of his subordinates' timesheets is not an exercise of independent judgment or an effective recommendation. His review of the weekly timesheets submitted by his seasonal intern and his technician is a clerical task, done solely to ensure that they have added their hours correctly. And while he recommends approval of those timesheets to Director of Operations Julius, such recommendations are not effective where Julius both double-checks the math and contacts the NRM's subordinates directly when he has questions about the accuracy of their hours.

2) Assignment

There is insufficient evidence that the NRM consistently exercises independent judgment in making assignments to his subordinate technician or seasonal employee. There is likewise insufficient evidence that the NRM exercises or possesses authority to assign work to the Site

Superintendents or their subordinates in a manner that demonstrates supervisory authority.

An individual 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, the mere assigning of jobs to employees does not constitute "directing" where the assignment criteria are routine. City of Chicago, 5 PERI ¶ 3031 (IL LLRB 1989). For example, 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 (1992); 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.

There is insufficient evidence that Natural Resources Manager Lovgren consistently exercises independent judgment in assigning work to his subordinate intern and technician. Although Lovgren stated that he considers his subordinates' abilities when assigning work, the examples concerning the basis for his assignments are scarce and demonstrate that the assignments are largely based on routine considerations, where the outcome is an obvious choice. For example, Lovgren does not assign the seasonal employee to use the skid steer because the seasonal employee cannot operate it; thus, the decision to have another employee run the skid steer is an obvious one based on common sense safety considerations. Similarly, Lovgren's assignment to his seasonal, to spray the one invasive the seasonal can identify, likewise appears to be a routine determination, an assignment by default. Such scant evidence is insufficient to demonstrate that Lovgren consistently exercises independent judgment in making assignments, even though there is more generalized evidence that Lovgren considers his subordinates' abilities. See e.g., State of Illinois, Department of Central Management Services, 21 PERI ¶ 46 (IL LRB SP 2005). Similarly, Lovgren assigns either himself or his technician to the archery program based on availability, which is a routine factor.

There is likewise insufficient evidence that the NRM exercises authority to assign work to the Site Superintendents. Rather, the preponderance of the evidence demonstrates that the working

relationship between the NRM and the Site Superintendents is collaborative and does not amount to supervisory control. The Site Superintendents can effectively decline natural resources tasks assigned by the NRM if they have other work to do, and according to Lovgren, have done so. Although Operations Manager Julius testified that Lovgren has assignment authority over the Site Superintendents, he acknowledged that Site Superintendents have discretion to decline attendance at prescribed burns if they have other priorities. Executive Director Culp's assertion that the NRM and the Site Superintendent coordinate their efforts is consistent with the finding that the NRM's authority with respect to the Site Superintendents is collaborative rather than directive, as is Culp's assertion that the NRM has only a "semi-supervisory" role over natural resources work.

The fact that the NRM lacks authority to enforce any assignment directives with respect to the Site Superintendents further supports the conclusion that any assignments made to them by the NRM are not supervisory. As noted above, to "direct" employees within the meaning of the Act, supervisors also must have the authority to affect the employees' terms and conditions of employment in areas likely to fall within the scope of union representation, such as wages, discipline, transfer, promotion, hiring, or other working conditions. Serv. Emps. Int'l Union, Loc. 73, 2013 IL App (1st) 120279, ¶ 51; Dep't of Cent. Mgmt. Servs. v. Illinois Lab. Rels. Bd., 2012 IL App (4th) 110209, ¶ 32. Here, however, the NRM does not interview, hire, or evaluate Site Superintendents. Nor is there evidence that the NRM exercises any other type of authority over the Site Superintendents in the areas of wages, discipline, transfer, promotion, or any other matters, directly or through effective recommendation. The NRM's purported authority to have the "final say" on natural resources work does not amount to supervisory authority where he has no means of enforcement.

The evidence of the NRM's assignment authority over the Site Superintendent's subordinates, the site technicians, is likewise scarce and, ultimately suffers from the same flaw as the NRM's purported authority over the Site Superintendents. There is only one example in the record of the NRM's assignment of work to a site technician, which was to run a skid steer. Assuming without finding that this assignment required the exercise of independent judgment, the preponderance of the evidence shows that the NRM lacks authority over the site technicians' terms and conditions of employment to render such assignment supervisory direction. The NRM does not evaluate the site technicians or hire them, and he also does not exercise authority over them in

the areas of wages, discipline, transfer, promotion, or any other matters, directly or through effective recommendation.

3) Time Off/Leave Requests

The NRM does not exercise independent judgment when recommending the approval of his subordinate's requests for time off as he routinely recommends approval, provided the subordinate has the available accrued leave time. Indeed, until the District began transitioning to an electronic system this past year, the NRM was not able to ascertain whether the requesting subordinate had the required leave time. Currently, the new electronic system will not permit the leave request to go through if the employee does not have the accrued leave time, and NRM Lovgren does not regularly check whether the employee has the time before recommending that the request be granted. Northern Illinois University (Department of Safety), 17 PERI ¶ 2005 (no independent judgment where leave requests were routinely granted, and conflicting time off requests were resolved by petitioned-for employees' superior; no independent judgment in overtime where petitioned-for employees merely signed and forwarded overtime requests up the chain of command).

5) Training

The NRM does not train his subordinates with independent judgment. Training in and of itself is not a supervisory function, "but it can be when a supervisor is choosing between discipline or training." State of Ill., (Dep't of Cent. Mgmt. Servs.), 26 PERI ¶116 (IL LRB-SP 2010). There is insufficient evidence that the Natural Resources Manager exercises discretion to choose between discipline and training because, as discussed above, the Natural Resources Manager lacks authority to discipline his subordinates with independent judgment or to effectively recommend the same.

The NRM does not exercise independent judgment when providing on-the-job training. He predominantly uses his superior skill and experience to show his subordinates how to properly operate equipment such as a chainsaw and how to perform the different types of manual labor including clearing, burning, planting, and spraying that are required on the job. See City of Freeport, 135 Ill. 2d 499, 532; Village of Winnetka, (Public Works Department), 38 PERI ¶ 26 (IL LRB-LP 2021) and Flagg Rochelle Park District, 20 PERI ¶ 75.

6) Evaluation

There is insufficient evidence that the NRM evaluates his subordinate technician with independent judgment. Furthermore, the preponderance of the evidence demonstrates that NRM Lovgren is not responsible for evaluating any employees other than the natural resources technician.

Responsibility for formally evaluating or rating work performance is evidence of the authority to direct when the rating or evaluation is used to affect the employees' pay or employment status. City of Carbondale, 27 PERI ¶ 68 (IL LRB-SP 2011); Vill. of Hinsdale, 22 PERI ¶ 176 (IL SLRB 2006); County of Lake, 16 PERI ¶ 2036. A subjective or qualitative assessment of work requires the exercise of independent judgment. City of Chi., Dep't of Bldgs., 32 PERI ¶ 155, aff'd AFSCME Council 31 v. Ill. Labor Relations Bd., 2017 IL App (1st) 160835-U; City of Chicago, 35 PERI ¶ 129 (IL LRB-LP 2019); Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60 (IL LRB-LP 2016). Evaluations that simply record objective, routine, or clerical facts do not require the consistent exercise of independent judgment. State of Ill., Dep't of Cent. Mgmt. Serv. (Dep't of Prof. Reg.), 11 PERI ¶ 2029 (IL SLRB 1995).

Initially, there is insufficient evidence that the NRM exercises independent judgment in making recommendations on the evaluation of his subordinate natural resources technician. The subordinate completes a self-evaluation, to which the Natural Resources Manager adds his comments. However, no evaluation forms were submitted into evidence and no witnesses described the evaluation questions or criteria on which the subordinate is evaluated. Although the current NRM, Lovgren, has not yet completed an evaluation for his subordinate, the District declined to present into evidence any evaluation forms for the natural resources technician position, or indeed for any technician position at all. Accordingly, it is difficult to find that the NRM exercises independent judgment when commenting on his subordinate's evaluation absent evidence that the categories of evaluation are more subjective than quantitative. Illinois Dep't of Cent. Mgmt. Servs. (State Police), 382 Ill. App. 3d at 227. Moreover, the routine nature of the technician's work, consisting primarily of herbicide control, rough mowing, brush clearing and maintenance of equipment, further suggests that any evaluation would be weighted toward objective criteria such as completion of tasks and attendance, the assessments of which do not require independent judgment.

There is also insufficient evidence that the evaluations impact the subordinates' pay or

employment status, such that NRM's completion of evaluations would be deemed evidence of the authority to direct. While the Employer contends that employee performance is effectively the deciding factor in whether technicians receive merit increases, there is evidence to the contrary where technician Coates received a critical evaluation but still received a wage increase. Although Coates reports to a Site Superintendent and not the NRM, the process for granting raises does not vary within the operations department, and evidence with respect to the site technicians is relevant here.

Furthermore, the NRM does not make recommendations on the evaluations of any positions other than his subordinate technician. Although Director of Operations Julius informed NRM Lovgren that he would also be responsible for evaluating his seasonal employee, Executive Director Culp testified that Lovgren does not evaluate the seasonal and only evaluates the technician. The preponderance of the evidence also demonstrates that the NRM is not responsible for evaluating the Site Superintendents or the Site Superintendents' technicians. Director of Operations Julius never informed Lovgren that he would be responsible for their evaluations, and Executive Director Culp's testimony indicates that Lovgren's responsibility for evaluation is limited to the natural resources technician.

Thus, there is insufficient evidence that the Natural Resources Manager evaluates the natural resources technician with independent judgment.

7) Reward

The NRM does not recommend rewards for his subordinate technician.

The Board has adopted the dictionary definition of reward which is "money given or offered for a special service." Chicago Park District, 9 PERI ¶ 3007 (relying on dictionary definition); see also County of Lake, 16 PERI ¶ 2036; Northwest Mosquito Abatement District, 13 PERI ¶ 2042 (IL SLRB 1997), aff'd, 303 Ill. App. 3d 735 (1999). In some cases, the Board has held that petitioned-for employees have authority to reward their subordinates through their evaluations of them where the evaluations impact the subordinates' pay. City of Chicago, 28 PERI ¶ 86 (IL LRB-LP 2011); Village of Streamwood, 26 PERI ¶ 134 (IL LRB-SP 2010); cf. Peoria Housing Authority, 10 PERI ¶ 2020 (IL SLRB 1994), aff'd by unpub. order, Docket No. 3-94-0317 (3rd Dist. 1995). A subjective or qualitative assessment of work requires the exercise of independent judgment, whereas objective assessments do not. City of Chi., Dep't of Bldgs., 32

PERI ¶ 155, aff'd AFSCME Council 31 v. Ill. Labor Relations Bd., 2017 IL App (1st) 160835-U (unpublished order); City of Chicago, 35 PERI ¶ 129; Chief Judge of the Circuit Court of Cook County, 33 PERI ¶ 60.

The NRM's authority to recommend the evaluation of his subordinate does not qualify as the supervisory authority to recommend reward where, as discussed above, there is insufficient evidence that the NRM exercises independent judgment in the evaluation process. There is also insufficient evidence that the NRM's evaluation impacts raises in practice. The fact that a poorly-performing technician (Coates) received a merit raise significantly calls into question the Employer's claim that evaluations impact wages. Although Coates reports to a Site Superintendent and not the NRM, the process for granting raises does not vary within the operations department, and evidence with respect to the site technicians is relevant here.

There is also insufficient evidence that the NRM recommends merit increases during oral discussions with Director of Operations Julius, as the Employer asserts. Although Julius testified that his subordinates, including the NRM, will recommend that a subordinate receive a good increase if the subordinate has done a good job, he later conceded that he does not actually speak about raises or how a subordinate's performance may result in a raise.

Thus, the Natural Resource Manager does not recommend the reward of his subordinate technician with independent judgment.

(f) Preponderance

The NRM does not exercise supervisory authority for a preponderance of his work time.

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. Measured qualitatively, an employee spends a preponderance of his time on supervisory functions when these functions are more significant than his nonsupervisory functions, regardless of the amount of time spent on those

supervisory functions. State of Ill. Dep't of Cent. Mgmt. Serv., 278 Ill. App. 3d at 86. The employer must provide details with respect to the amount of time the purported supervisor spends engaged in supervisory functions or the significance of these functions. Sec'y of State, 2012 IL App (4th) 111075, ¶ 114.

Here, the NRM does not spend a preponderance of his work time exercising supervisory authority under a quantitative analysis because he spends the vast majority of his time removing brush and trees. In comparison, he spends an insignificant amount of his time engaged in the process of recommending the hire of his seasonal employees, which is his only supervisory function.

Measured qualitatively, the NRM does not spend a preponderance of his time on supervisory functions. The NRM's most important functions relate to the performance of natural resources tasks, planning work, and distributing it to his subordinates as a lead worker in a non-supervisory capacity. These are the essence of his functions that he performs daily. The NRM's supervisory participation in the hiring process is not more important.

Accordingly, the Natural Resources Manager is not a supervisor within the meaning of Section 3(r) of the Act.

ii. Alleged Supervisory Status of the Site Superintendents

The Site Superintendents are not supervisors within the meaning of Section 3(r) of the Act.

(a) Principal Work

The principal work of the Site Superintendents is substantially different from that of their subordinates.

The principal work of the Site Superintendents is obviously and visibly different from that of their subordinate seasonal employees. The Site Superintendents must travel around their large sites to perform maintenance/outdoor work whereas the seasonal employees are usually hired to work in a single location and must remain there throughout their workday unless explicitly directed to work at another site. In addition, the seasonal employees' work is more janitorial than the work of the Site Superintendents, which does not include the cleaning of toilets.

The Site Superintendents' principal work is also obviously and visibly different from their subordinate site technicians where they, unlike their technicians, are responsible for overseeing

their entire site, preparing preliminary budgets, and, in some cases, serving as burn bosses.

In the alternative, the Site Superintendents' principal work is substantially different from that of their subordinates in nature and essence where their administrative work has the potential to influence personnel decisions in areas most likely to affect the employment of their subordinates. For example, their assignment of work, review of timesheets and leave requests, and evaluation of their technicians are likely to fall within the scope of representation and are sufficient to differentiate the nature and essence of their work from that of their subordinates. Flagg Rochelle Park District, 20 PERI ¶ 75; County of Cook, 15 PERI ¶3022.

Thus, the Site Superintendents satisfy the principal work requirement.

(b) Discipline

The Site Superintendents do not discipline their subordinates with independent judgment or effectively recommend the same. None of the Site Superintendents have ever disciplined their subordinates, and the preponderance of the evidence demonstrates that they lack the authority to do so directly or through effective recommendation. Here, the District never informed two of the Site Superintendents, Elder and Reef, that they possess the authority to discipline their subordinates, and there is no evidence that the District made any attempt to train them on the disciplinary process. Circuit Clerk of Champaign County, 17 PERI ¶ 2032 (considering failure to instruct regarding authority to adjustment of grievance), aff'd by unpub. order, Docket No. 4-01-0472 (2003). While Director of Operations Julius once instructed Murphy to document a Site Technician's failure to perform work as instructed, Julius did not tell Murphy what to do with the documentation or what steps would follow. Nor is there any indication that Julius expressly discussed Murphy's authority to implement or effectively recommend discipline. Murphy subsequently documented the issue but did not give the documentation to anyone, and it was not presented into evidence.

Even assuming that Julius's discussion with Murphy evidenced instruction on the disciplinary process, there is insufficient evidence that Murphy's documentation of his subordinate's performance qualified as disciplinary. To constitute "discipline" within the meaning of the Act, reprimands must have an impact on an employee's job status and conditions of employment. Village of Bolingbrook, 19 PERI ¶ 125 (IL LRB-SP 2003). Documented verbal reprimands constitute supervisory authority to discipline where (1) the individual issuing the reprimand has the discretion or judgment to decide whether to issue the 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). However, verbal reprimands that are not recorded are not discipline within the meaning of the Act. Northern Illinois University (Department of Safety), 17 PERI ¶ 2005 (IL LRB-SP 2000). Assuming, arguendo, that Murphy's documentation was a written record of a verbal reprimand, there is insufficient evidence that it is part of a progressive discipline process. Although Murphy documented the issue, the District did not explain how such documentation might be used in the future, if at all, or show that it could be used to enhance later discipline.²³ See State of Illinois, Departments of Central Management Services and State Police, 23 PERI ¶ 38.

Thus, the Site Superintendents do not have authority to discipline or effectively recommend the discipline of their subordinates.

(c) Hiring

The Site Superintendents do not make effective recommendations to hire their subordinate site technicians. They do not exercise independent judgment in recommending the hire of their subordinate seasonal employees.

The Site Superintendents do not exercise independent judgment or make effective recommendations on the hires of their subordinate site technicians because their superior, the director of operations, participates in the interviews. In addition, when the District accepts the Site Superintendents' recommendations, it is only because they have reached consensus on the matter with director of operations, which is not a process that evidences supervisory authority. State of Illinois, Department of Central Management Services, 25 PERI ¶ 184; County of Lake, 16 PERI ¶ 2036; Cnty. of Cook (Health & Hosp. Sys.), 32 PERI ¶ 55.

While the structure of the hiring process, described above, is sufficient to demonstrate that the Site Superintendents do not make effective recommendations on hiring site technicians, it is additionally noteworthy that the Site Superintendents' recommendations are also not accepted as

²³ Site Superintendent Reef's inquiry about replacing an absent technician is not evidence of authority to discipline, discharge, or effectively recommend the same. Reef made no recommendation, and the absent technician is still employed.

a matter of course because the director of operations rejected two out of five of the Site Superintendents' hiring recommendations for site technicians.

The Site Superintendents also do not exercise independent judgment in recommending the hiring of seasonal employees. An individual does not exercise independent judgment in hiring where there is a shortage of qualified candidates and where every applicant who possesses minimum qualifications is hired. Chief Judge of Cir. Ct. of Cook Cnty. v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31, AFL-CIO, 218 Ill. App. 3d 682, 714 (1st Dist. 1991), aff'd, 153 Ill. 2d 508 (1992) (employer hired all entry-level applicants who passed typing test and did not have a criminal record). Here, there is a shortage of qualified applicants for the seasonal employee positions reporting to the Site Superintendents. The Site Superintendents, in the aggregate, have recommended six seasonal employees to fill six positions. Four of those positions had only one applicant each, and each possessed the minimum qualifications for the job. The fifth position had two candidates, but one lacked the minimum qualifications as he admitted that his only experience with a mower was that he almost crashed it. Evidence is lacking to show that the sixth position was any different in terms of the number of candidates or the need for judgment in the Site Superintendent's decision-making process. Thus, the Site superintendents are not called upon to recommend a choice between multiple qualified candidates in a manner that would require the consistent exercise of independent judgment.

Notably, there is no indication that the Site Superintendents have ever declined to recommend a seasonal employee for *initial* hire who otherwise had minimum qualifications. The preponderance of the evidence suggests that such a recommendation would be rejected where Site Superintendent Elder once recommended that the District hire no one for a site technician position and was overruled by then-Director of Operations Ravellette, who elected to hire the lone applicant.

Finally, the Site Superintendents' lack of authority to make decisions/recommendations to *rehire* seasonal employees weighs in favor of a finding that the Site Superintendents lack authority to make independent judgments on the initial hiring of seasonal employees. The District's disregard of the Site Superintendents' input on questions of rehire shows that the Site Superintendents judgments are accepted where hiring is an administrative and routine task but rejected when it could be informed by the Site Superintendents' greater knowledge of the

employee's performance.

(d) Promotion

There is insufficient evidence that the Site Superintendents effectively recommend their subordinates for promotion, as the District contends. The District points to no record evidence of any recommendations for promotions that have been made by the Site Superintendents. It is therefore impossible to judge whether such recommendations would be accepted by the Site Superintendents' superiors with little independent review.

Although one seasonal employee, Ethan Spain, later became a site technician, this was not through promotion but rather through the standard hiring process, wherein the Site Superintendents lack authority to make effective recommendations, as discussed above.

(e) Direction

The Site Superintendents do not exercise the supervisory authority to direct. As detailed below, the Site Superintendents' direction of their subordinates is not performed with the consistent exercise of independent judgment, nor is it consistently performed in the interest of the employer. Even if some aspects of direction were found to require the exercise of independent judgment in the interests of the employer, such authority would not qualify as supervisory because the Site Superintendents lack authority to affect their subordinates' employment in areas likely to fall within the scope of union representation. See e.g., County of Cook, 351 Ill. App. 3d at 396-7; State of Illinois, Departments of Central Management Services and State Police, 23 PERI ¶ 38 aff'd by Illinois Dept. of Cent. Mgmt. Services (State Police), 382 Ill. App. 3d 208; County of Lake, 16 PERI ¶ 2036. As discussed above, the Site Superintendents do not hire, discipline, or promote with the requisite independent judgment or effectively recommend the same,²⁴ and there is insufficient evidence that their evaluations of their subordinates impact their subordinates' wages, whether viewed as direction or reward, discussed *infra*.

1) Review/oversight /monitoring

The Site Superintendents do not oversee and review their subordinates work with the

²⁴ No other indicia of supervisory authority were alleged.

requisite independent judgment in the interests of the employer.

Initially, the preponderance of the evidence demonstrates that the Site Superintendents do not actively monitor and oversee the work of their seasonal employees or their site technicians. Two of the Site Superintendents, Reef and Elder, each oversee more than six different locations, which are geographically spread out, and those Site Superintendents are often not performing their work at the same locations as some of their seasonal subordinates. For example, one of Site Superintendent Reef's seasonal subordinates works exclusively at Griswold Conservation Area, located 14 miles from Rock Springs where Reef is based. Site Superintendent Elder's seasonal subordinates work at Fort Daniel, which is a 30-minute drive from Sand Creek, where Elder does most of his work. Elder generally visits Fort Daniel only once a week. Similarly, Site Superintendent Murphy's seasonal employee, Dixon, works exclusively at the Friends Creek campground, whereas Murphy has works within the entire 626-acre nature preserve and Bois du Sangamon. With respect to the work of the site technicians, most of their work is standard and routine, such that it does not require active monitoring. At least one Site Superintendent, Elder, affirmatively testified that he does not actively monitor the work of his site technician, Ellison. While there may be some cases where the Site Superintendents work alongside their technicians, the record does not show that they are actively monitoring, checking, and correcting their work. County of Lake, 16 PERI ¶ 2036; cf. Cnty. of Cook and Sheriff of Cook County, 15 PERI ¶3022.

There is also insufficient evidence that the Site Superintendents review their subordinates' outdoor work with the independent judgment in the interest of the employer. The preponderance of the evidence shows that they do not ordinarily check to see how well a subordinate has sprayed invasives, spread, seed, or mowed turf and instead review their subordinates work to ensure that it is completed, which is a routine determination. Chief Judge of Cir. Ct. of Cook Cty., 218 Ill. App. 3d at 713. Moreover, there is insufficient support for the claim that any such review is performed "in the interests of the employer," in other words, in compliance with the Employer's own standards rather than in accordance with industry standards of grounds keeping and based on the Site Superintendents' superior skill and experience. City of Chicago, 38 PERI ¶ 94 (IL LRB-LP 2022); Chief Judge of the Circuit Court of Cook County, 19 PERI ¶ 123; cf. State of Illinois (Department of Central Management Services), 11 PERI ¶ 2021.

Site Superintendent Reef additionally reviews the facilities checklist completed by his site technician, but the preponderance of the evidence demonstrates that he does so without the exercise

of independent judgment, but primarily to ensure that it has been completed. Although Reef performs site inspections, it is not clear from the record whether he is thereby conducting a review of his subordinates' work. Reef also assists his maintenance-focused technician while working alongside him on maintenance tasks. However, to the extent that such assistance qualifies as oversight and review, it is not performed in the interest of the employer as it appears merely to ensure that the work conforms to professional maintenance standards.

Furthermore, as the Union argues, the additional layer of oversight provided by Director of Operations Julius during his weekly meetings with the Site Superintendents and site visits during the week weigh against a finding that the Site Superintendents oversee, monitor, and review their subordinates' work with independent judgment. City of Chicago (Dep't of Sewers), 17 PERI ¶ 3017.

Finally, the Site Superintendents' review and recommended approval of their subordinates' weekly timesheets is not an exercise of independent judgment and is also not an effective recommendation. Their review of timesheets is routine and clerical. It is also subject to independent review by Director of Operations Julius who double checks the calculation of hours and contacts the Site Superintendents' subordinates directly when he has questions about the accuracy of their hours.

2) Assignment

The Site Superintendents do not assign work to their seasonal subordinates and technicians with the consistent exercise of independent judgment.

The Site Superintendents do not consistently assign work to their subordinate seasonal employees after they are hired, and the initial assignment of tasks upon hire is a routine determination. The seasonal employees' duties are set by the job postings established by the Employer through which they were hired, which include cleaning bathrooms, campsites, and trails, arranging campsite reservations, changing trash bags, and mowing. Although the Site Superintendents explain those duties to the seasonal employees upon hire, generally, assignments are not made to seasonals on a daily or weekly basis.²⁵ The assignment of work based on a job description, combined with the fact that the seasonal employees complete their duties

²⁵ One seasonal, Chebak, is assigned work from the weekly plan on one day of the week.

independently supports a finding that this assignment is routine. Peoria Housing Authority, 10 PERI ¶ 2020 (IL SLRB 1994).

There is insufficient evidence that the Site Superintendents consistently exercise independent judgment in assigning work to their subordinate technicians. The assignments, which include trimming, mowing, spraying, and seeding, are cyclical and governed by the seasons and the weather, which are routine factors. While the Site Superintendents may need to determine whether grass needs mowing, this is not the type of independent judgment that requires a choice between two or more significant courses of action. City of Washington, 23 PERI ¶ 101 (IL LRB-SP 2007) aff'd by 383 Ill. App. 3d 1112 (3rd Dist. 2008). To the extent that more nuanced decisions must be made about the Employer's needs, the preponderance of the evidence demonstrates that these decisions are determined by Director of Operations Julius. Julius regularly makes changes to the Site Superintendents' weekly plans to accommodate special tasks such as the removal of rubble created by a contractor or the preparation of an area for a contractor's work.

The Site Superintendents may occasionally need to consider an employee's abilities when determining whether to assign a specific task, but the preponderance of the evidence demonstrates that these decisions are routine in that they are based on common sense or legal requirements. For example, Site Superintendents do not assign spraying to subordinates who are not licensed to spray, and they do not assign subordinates to operate dangerous machinery when they are unable to handle it.

While Site Superintendent Elder once effectively recommended that seasonal employee Chebak work at Fort Daniels to perform mowing, this was not a recommendation that derived from Elder's independent judgment. Rather, former Director of Operations Ravellette first identified the need to have an individual service that area when it was then being mowed by Elder and his site technician on a rotating basis, and Elder conveyed that need to the new director of operations.

Operations Director Julius's continued involvement in the assignment of work to particular site technicians further weighs against a finding that the Site Superintendents have authority to make independent judgments when an assignment is not of a routine nature. Julius can and does make assignments directly to site technicians if he is on site and sees an issue that needs to be addressed. Although Julius testified that he tries to coordinate assignments through the Site Superintendents, Superintendent Elder identified instances in which Julius has instructed him on

the subordinate who should perform the task. City of Chicago (Dep't of Sewers), 17 PERI ¶ 3017.

3) Time Off/Leave Requests

The Site Superintendents do not exercise independent judgment when approving their subordinates' requests for time off as they routinely grant such requests, provided the subordinate has the available accrued leave time. Indeed, until the District began transitioning to an electronic system this past year, the Site Superintendents were not even able to ascertain whether the requesting subordinate had the required leave time. While Site Superintendent Reef denied a leave request on one occasion, he did so only after consultation with HR and at the request of an employee who mistakenly requested the wrong day off. This was not a decision that was made in the interests of the Employer's effective operations, nor did it require the exercise of independent judgment. Northern Illinois University (Department of Safety), 17 PERI ¶ 2005.

4) Scheduling

The Site Superintendents do not schedule their subordinates with independent judgment. The hours of the site technicians are fixed and cannot be changed by the Site Superintendents. Site Superintendents' scheduling of their seasonal subordinates turns on routine factors such as the seasonal employees' availability given their other jobs, the employees' choosing, and the weather. Quincy Public Library, 11 PERI ¶ 2041 (IL SLRB 1995) (employee sign up); Village of Campton Hills, 31 PERI ¶ 132 (addressing assignment based on employee choosing in order of seniority).

5) Training

The Site Superintendents do not train their subordinates with independent judgment. There is insufficient evidence that the Site Superintendents have discretion to choose between discipline and training because, as discussed above, they lack authority to discipline their subordinates with independent judgment or to effectively recommend the same. Furthermore, any training that they provide their subordinates concerns basic objective facts of the job such as how to use day-to-day machinery and is either routine, as characterized by Director of Operations Julius, or derives from the Site Superintendent's superior skill, experience, and/or knowledge and is thus not supervisory within the meaning of the Act. City of Freeport, 135 Ill. 2d at 532; see also Flagg Rochelle Park District, 20 PERI ¶ 75 (addressing training on equipment).

6) Evaluation

The Site Superintendents do not evaluate their seasonal subordinates. They evaluate their subordinate site technicians, but there is insufficient evidence that they exercise independent judgment when doing so. There is also insufficient evidence that the Site Superintendents' evaluations impact their subordinates' receipt of merit raises, as the Employer contends.

The Site Superintendents do not evaluate their seasonal subordinates. Although they provide the seasonals with a self-evaluation form, the seasonal employees are not required to complete them. If the seasonal employees do complete the evaluations, the Site Superintendents do not provide comments and simply forward them to the director of operations.²⁶

The Site Superintendents complete evaluations for their technicians by making comments on the technicians' self-evaluations, but the evidence does not permit a finding that they exercise independent judgment in doing so. None of the evaluations were submitted into evidence, and there was no testimony describing the categories in which the employees evaluate themselves and in turn, are evaluated by the Site Superintendents. Although the Site Superintendents comment on their subordinates' evaluations, there is insufficient evidence from which to determine that these comments are anything more than the recording of objective or routine facts. The most detailed evidence presented about the substance of an evaluation concerned an instance in which Site Superintendent Murphy gave Site Technician Coates critical comments because he did not do his work, but this appears to have been an objective recording of facts rather than a qualitative assessment.

Finally, the Employer has not proven by a preponderance of the evidence that the Site Superintendents' evaluations of their subordinates impact their subordinates' terms and conditions of employment. The Employer contends that the evaluations impact merit raises because Julius considers the evaluations when deciding whether to recommend a wage increase for technicians. However, the evidence shows that site technicians have received merit increases irrespective of negative performance evaluations, thereby undermining the claimed link between the performance evaluation and employees' wages. Technician Coates obtained a wage increase in 2023 even

²⁶ There has been no claim that the Site Superintendents have any role in evaluating seasonal employees for purposes of determining whether a seasonal is rehired. The Employer does not solicit the Site Superintendents' input on such issues, it and rejects their recommendations when they offer them unsolicited.

though he received an evaluation so critical from Site Superintendent Murphy that Murphy asked Julius to be present during discussion of the evaluation with Coates after which Coates asked to submit a rebuttal.

For the same reason, testimony offered by Operations Director Julius, that he considers the Site Superintendents' evaluations of their subordinates in determining the magnitude of a technician's wage increase, is likewise insufficient to show that the Site Superintendents' evaluations impact their subordinates' wages in practice. In the prior year, all technicians received comparable wage increases, even though at least one performed demonstrably poorly. Accordingly, based on the evidence presented, it is equally likely that the Employer simply distributes the money it has allocated for raises to all employees in a relatively equal fashion, irrespective of performance. The Employer's generalized claims that the evaluations impact raises in not sufficient to satisfy its burden, particularly where there is evidence to the contrary. See generally, Cnty. of Cook, 28 PERI ¶ 85; State of Illinois, Department of Central Management Services, 24 PERI ¶ 112.

7) Reward

The Site Superintendents do not recommend the reward of their subordinates.

The Site Superintendents' completion of evaluations for their subordinate site technicians does not qualify as the supervisory authority to recommend reward. As discussed above, there is insufficient evidence that the Site Superintendents exercise independent judgment in completing the evaluations. There is also insufficient evidence that the evaluations impact employee raises in practice where all technicians have received wage increases irrespective of poor performance.

There is likewise insufficient evidence that the Site Superintendents recommend merit increases during oral discussions with Director of Operations Julius. While Julius initially testified that a Site Superintendent would recommend a "nice increase" for an employee who did well, he later admitted that he does not speak directly about raises in his conversations with the Site Superintendents about their subordinates' performance. Unsurprisingly, the Employer also failed to present any examples in which Site Superintendents recommended raises, or where the Employer accepted such recommendations. Cf. Dept. of Cent. Mgmt. Serv. (Dep't of Children and Family Services), 8 PERI ¶ 2037 (examples provided to show recommendations for merit increases were followed).

Thus, the Site Superintendents do not recommend the reward of their subordinates.

(f) Preponderance

The Site Superintendents do not exercise supervisory authority for a preponderance of their work time because they do not possess any indicia of supervisory authority alleged by the District. State of Illinois, Department of Central Management Services (Department of Public Health), 27 PERI ¶ 10 (IL LRB-SP 2011) aff'd by Dep't of Cent. Mgmt. Services, 2012 IL App (4th) 110209, ¶ 34 & 36. Accordingly, the Site Superintendents are not supervisors within the meaning of Section 3(r) of the Act.

V. CONCLUSIONS OF LAW

1. The District violated Sections 10(a)(4) and (1) of the Act when it refused to bargain over the terms and conditions of employment of Andy Murphy, Gage Elder, and Adam Reef.
2. The Site Superintendent title is appropriately added to the bargaining unit as a successor title to the bargaining unit title of Unit Superintendent.
3. The Natural Resources Manager is not a supervisor within the meaning of Section 3(r) of the Act.
4. As a conclusion in the alternative, the Site Superintendents are not supervisors within the meaning of Section 3(r) of the Act.

VI. RECOMMENDED ORDER

Unless this Recommended Decision and Order Directing Certification is rejected or modified by the Board, the American Federation of State, County and Municipal Employees, Council 31, shall be certified as the exclusive representative of all the employees in the unit set forth below, found to be appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment pursuant to Sections 6(c) and 9(d) of the Act.

INCLUDED: The titles of Natural Resources Manager and Site Superintendent are to be

added to the AFSCME-represented bargaining unit certified by the Board in Case No. S-RC-24-053.

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

IT IS HEREBY ORDERED that the Respondent, its officers and agents, shall:

1. Cease and desist from:
 - i. Refusing to bargain in good faith with the Union over the terms and conditions of employment of Andy Murphy, Gage Elder, and Adam Reef.
 - ii. In any like or related manner, interfering with, restraining or coercing its employees in the exercise of the rights guaranteed them in the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act:
 - i. Bargain in good faith with the Union over the terms and conditions of employment of employees Andy Murphy, Gage Elder, and Adam Reef.
 - ii. Post, at all places where notices to employees are normally posted, copies of the Notice attached to this document. Copies of this Notice shall be posted, after being duly signed, in conspicuous places, and be maintained for a period of 60 consecutive days. The Respondent will take reasonable efforts to ensure that the notices are not altered, defaced or covered by any other material.
 - iii. Notify the Board in writing, within 20 days from the date of this Decision, of the steps the Respondent has taken to comply with this order.

VII. EXCEPTIONS

Pursuant to Section 1200.135 of the Board's Rules, parties may file exceptions to the Administrative Law Judge's Recommended Decision and Order and briefs in support of those exceptions no later than 30 days after service of this Recommendation. Parties may file responses to exceptions and briefs in support of the responses no later than 15 days after service of the exceptions. In such responses, parties that have not previously filed exceptions may include cross-

exceptions to any portion of the Administrative Law Judge's Recommendation. Within seven 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. The exceptions and/or cross-exceptions sent to the Board must contain a statement of listing the other parties to the case and verifying that the exceptions and/or cross-exceptions have been provided to them. The exceptions and/or cross-exceptions will not be considered without this statement. If no exceptions have been filed within the 30-day period, the parties will be deemed to have waived their exceptions.

Issued at Chicago, Illinois this 3rd day of March, 2025

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

/S/ Anna Hamburg-Gal

**Anna Hamburg-Gal
Administrative Law Judge**

NOTICE TO EMPLOYEES

FROM THE ILLINOIS LABOR RELATIONS BOARD

Case No. S-CA-24-104

The Illinois Labor Relations Board, State Panel, has found that the Macon County Conservation District has violated the Illinois Public Labor Relations Act and has ordered us to post this Notice. We hereby notify you that the Illinois Public Labor Relations Act (Act) gives you, as an employee, these rights:

- To engage in self-organization
- To form, join or assist unions
- To bargain collectively through a representative of your own choosing
- To act together with other employees to bargain collectively or for other mutual aid and protection
- To refrain from these activities

Accordingly, we assure you that:

WE WILL cease and desist from failing and refusing to bargain collectively in good faith with the American Federation of State, County and Municipal Employees, Council 31, (“the Union”) over the terms and conditions of employment of Andy Murphy, Gage Elder, and Adam Reef.

WE WILL cease and desist from, in any like or related manner, interfering with, restraining, or coercing our employees in the exercise of rights guaranteed them under the Act.

WE WILL bargain in good faith with the Union over the terms and conditions of employment of all individuals within the bargaining unit, including employees Andy Murphy, Gage Elder, and Adam Reef.

DATE _____

Macon County Conservation District
(Employer)

ILLINOIS LABOR RELATIONS BOARD

One Natural Resources Way, First Floor
Springfield, Illinois 62702
(217) 785-3155

160 North LaSalle Street, Suite S-400
Chicago, Illinois 60601-3103
(312) 793-6400

**THIS IS AN OFFICIAL GOVERNMENT NOTICE
AND MUST NOT BE DEFACED.**
